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SUPREME COURT

OF THE

PHILIPPINES

FROM

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MANILA
2018

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 6933. July 5, 2017]

GREGORIO V. CAPINPIN, JR., *complainant, vs.* **ATTY. ESTANISLAO L. CESA, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; CONFLICT OF INTEREST; PART OF THE LAWYER'S DUTY TO HIS CLIENT IS TO AVOID REPRESENTING CONFLICTING INTERESTS.— Evidently, respondent was working on conflicting interests – that of his client, which was to be able to foreclose and obtain the best amount they could get to cover the loan obligation, and that of the complainant's, which was to forestall the foreclosure and settle the loan obligation for a lesser amount. Indeed, the relationship between the lawyer and his client should ideally be imbued with the highest level of trust and confidence. Necessity and public interest require that this be so. Part of the lawyer's duty to his client is to avoid representing conflicting interests. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.

2. ID.; ID.; ID.; ID.; IF A LAWYER RECEIVES PAYMENT OF PROFESSIONAL FEES FROM THE ADVERSE PARTY, IT GIVES AN IMPRESSION THAT HE IS BEING

PAID FOR SERVICES RENDERED OR TO BE RENDERED IN FAVOR OF SUCH ADVERSE PARTY'S INTEREST WHICH CONFLICTS THAT OF HIS CLIENT.— Respondent's admission that he received advance payments of professional fees from the complainant made matters worse for him. As correctly found by the Investigating Commissioner, it was highly improper for respondent to accept professional fees from the opposing party as this creates clouds of doubt regarding respondent's legal practice. As aptly stated by the Investigating Commissioner, if a lawyer receives payment of professional fees from the adverse party, it gives an impression that he is being paid for services rendered or to be rendered in favor of such adverse party's interest, which, needless to say, conflicts that of his client's. Simply put, respondent's professional fees must come from his client. This holds true even if eventually such fees will be reimbursed by the adverse party depending on the agreement of the parties. Respondent cannot justify his act of accepting professional fees from the complainant by alleging that such was in accordance with the arrangement between his client and the complainant as there is no clear proof of such arrangement.

3. ID.; ID.; ENJOINED TO ACT WITH THE HIGHEST STANDARDS OF TRUTHFULNESS, FAIR PLAY, AND NOBILITY IN THE COURSE OF THEIR PRACTICE OF LAW.— This Court cannot overstress the duty of a lawyer to uphold, at all times, the integrity and dignity of the legal profession. The ethics of the legal profession rightly enjoin lawyers to act with the highest standards of truthfulness, fair play, and nobility in the course of their practice of law. Clearly, in this case, respondent failed to uphold such ethical standard in his practice of law.

D E C I S I O N

TIJAM, *J.*:

Before this Court is an administrative complaint[1] filed by complainant Gregorio Capinpin, Jr., praying for the suspension

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[1] *Rollo*, pp. 1-7.

from the practice of law or disbarment of respondent Atty. Estanislao L. Cesa, Jr. for violating the Canons of Professional Ethics in connection with the foreclosure of complainant's properties.

Factual Antecedents

On February 14, 1997, complainant executed a real estate mortgage (REM)[2] on his two lots in favor of Family Lending Corporation (FLC) as security for a loan amounting to PhP 5 Million with interest at two percent (2%) per month.

On April 29, 2002, due to complainant's default in payment, FLC, through its President Dr. Eli Malaya (Dr. Malaya), initiated foreclosure proceedings against the mortgaged properties.[3]

Complainant availed of legal remedies to stop the said foreclosure proceedings, to wit: (1) he filed a case for damages and injunction and also moved for the suspension of the sheriff's sale, wherein such motion for suspension was granted but the injunctive relief was denied after hearings. Complainant's motion for reconsideration (MR) therein was also denied; (2) he then filed a petition for *certiorari* and prohibition with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) with the Court of Appeals (CA), wherein no TRO was granted due to some deficiencies in the petition; (3) he also filed an annulment of REM with prayer for a WPI and/or TRO before the trial court, wherein this time a WPI was issued to stop the auction sale.[4] This prompted FLC to file a petition for *certiorari* before the CA, questioning the trial court's issuance of the injunctive writ. The CA nullified the said writ, mainly on the ground of forum shopping, which was affirmed by this Court on review.[5] For these cases, FLC engaged respondent's legal services.

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

[3] *Id*. at 2.

[4] Investigating Commissioner Manuel T. Chan's Report and Recommendation dated June 4, 2010, *id*. at 343-344.

[5] *Id*. at 344.

The complaint alleges that during the above-cited proceedings, respondent, without the knowledge of his client FLC, approached complainant to negotiate the deferment of the auction sale and the possible settlement of the loan obligation at a reduced amount without resorting to the auction sale. Respondent allegedly represented himself as being capable of influencing the sheriff to defer the auction sale, as well as his client FLC through Dr. Malaya to accept the amount of PhP 7 Million to fully settle the loan obligation. For this, the complaint alleges that on April 13, 2005, respondent demanded payment of professional fees amounting to Php 1 Million from complainant.[6] In fact, complainant already gave the following amounts to respondent as payment of such professional fees: (1) PhP 50,000 check dated April 13, 2005; (2) PhP 25,000 check dated April 18, 2005; (3) PhP 75,000 check dated April 22, 2005; (4) PhP 20,000 check dated May 16, 2005; (5) PhP 200,000 on June 30, 2005; and (6) PhP 30,000 on August 17, 2005.[7] Despite such payments, the auction sale proceeded.[8] Hence, the instant complaint.

For his part, respondent denies that he was the one who approached complainant for negotiation, the truth being that it was complainant who asked for his help to be given more time to raise funds to pay the loan obligation.[9] Respondent further avers that he communicated the said request to his client.[10] Aside from the checks dated April 13, 18, 22 and May 16, 2005, which respondent claims to be advance payments of his attorney's fees, respondent avers that he did not receive any other amount from the complainant.[11] All these, according to the respondent, were known to his client.[12] In fact, in a Letter dated April 22,

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

[7] *Id.* at 4-5, 345.

[8] *Id.* at 346.

[9] *Id.* at 82.

[10] *Id.*

[11] *Id.* at 234.

[12] *Id.* at 233.

2005 signed by the complainant and addressed to FLC through Dr. Malaya, complainant expressly stated that he will negotiate for the payment of respondent's fees as FLC's counsel.[13]

On July 16, 2007, this Court referred the instant administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation or decision.[14]

Report and Recommendation of the Commission on Bar Discipline

In his Report and Recommendation[15] dated June 4, 2010, the Investigating Commissioner gave credence to complainant's allegations that respondent, without the knowledge of his client, negotiated with the complainant for the settlement of the loan obligation, and that the respondent demanded and received professional fees in negotiating the said settlement.

According to the Investigating Commissioner, respondent's act of negotiating with the complainant on the deferment of the auction sale and the settlement of the loan for a substantially reduced amount was highly improper as respondent's primary duty, being FLC's counsel, was to protect the interest of FLC by seeing to it that the foreclosure proceedings be done successfully to obtain the best amount possible to cover the loan obligation.[16] The Investigating Commissioner explained that if a lawyer can collect professional fees or advanced payment thereof from the adverse party, it results to a conflict of interest.[17] From the foregoing, the respondent was found to have violated Canon 15, Rule 15.03 of the Code of Professional Responsibility (CPR), which states that a lawyer shall not represent conflicting

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[13] *Id*. at 20.

[14] *Id*. at 207.

[15] *Id*. at 341-349.

[16] *Id*. at 347.

[17] *Id*.

interests except by written consent of all concerned given after a full disclosure of the facts.[18]

The report further stated that the amounts collected by the respondent should be considered as money received from his client; as such, he has the duty to account for and disclose the same to his client in accordance with Canon 16, Rule 16.01 of the said Code.[19] The Investigating Commissioner found nothing on record that showed that respondent made such accounting for or disclosure to his client.[20]

Hence, the Investigating Commissioner concluded that respondent was liable for malpractice and recommended that he be suspended from the practice of law for one (1) year, thus:

> WHEREFORE, in view of the foregoing discussion, this Commissioner finds the respondent liable for malpractice and, accordingly, recommends that respondent be meted a penalty of ONE (1) YEAR suspension from the practice of law with a warning that a repetition of a similar offense will be dealt with more severity.[21]

Resolutions of the Board of Governors
Integrated Bar of the Philippines

On September 28, 2013, the Integrated Bar of the Philippines (IBP) Board of Governors issued Resolution No. XX-2013-84,[22] which states:

> *RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering that Respondent violated*

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[18] *Id*. at 348.

[19] *Id*.

[20] *Id*. at 349.

[21] *Id*.

[22] *Id*. at 340.

Canon 15, Rule 15.03, and Canon 16, Rule 16.01 of the Code of Professional Responsibility, Atty. Estanislao L. Cesa, Jr. is hereby ***SUSPENDED from the practice of law for one (1) year***.[23] (Emphasis supplied)

Respondent's MR[24] was denied in the IBP Board of Governor's Resolution No. XXI-2014-280[25] dated May 3, 2014 as follows:

RESOLVED to DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Commission and the resolution subject of the motion, it being a mere reiteration of the matters which had already been threshed out and taken into consideration.

Thus, Resolution No. XX-2013-84 dated September 28, 2013 is hereby AFFIRMED.[26]

Necessarily, We now give Our final action on this case.

Issue

Should Atty. Cesa, Jr. be administratively disciplined based on the allegations in the complaint and evidence on record?

The Court's Ruling

We are in full accord with the findings of the Investigating Commissioner that respondent violated Canon 15, Rule 15.03 and Canon 16, Rule 16.01 of the CPR.

CANON 15 – A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

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

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[23] *Id*.

[24] *Id*. at 350-353.

[25] *Id*. at 359.

[26] *Id*.

CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

> Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

Based on the records, We find substantial evidence to hold the respondent liable for violating Canon 15, Rule 15.03 of the said Code. It must be stressed that FLC engaged respondent's legal services to represent it in opposing complainant's actions to forestall the foreclosure proceedings. As can be gleaned from respondent's position paper, however, it is admitted that respondent extended help to the complainant in negotiating with FLC for the reduction of the loan payment and cessation of the foreclosure proceedings.[27] The case of *Hornilla v. Salunat*[28] is instructive on the concept of conflict of interest, *viz.*:

> There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client. This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. x x x. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double[-]dealing in the performance thereof.[29]

Evidently, respondent was working on conflicting interests – that of his client, which was to be able to foreclose and obtain the best amount they could get to cover the loan obligation, and that of the complainant's, which was to forestall the foreclosure and settle the loan obligation for a lesser amount.

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[27] *Id*. at 234.

[28] A.C. No. 5804, July 1, 2003, 405 SCRA 220.

[29] *Id*. at 223.

Indeed, the relationship between the lawyer and his client should ideally be imbued with the highest level of trust and confidence. Necessity and public interest require that this be so. Part of the lawyer's duty to his client is to avoid representing conflicting interests.[30] It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.[31]

Respondent's allegation that such negotiation was within the knowledge of his client will not exonerate him from the clear violation of Rule 15.03 of the CPR. Respondent presented a number of documents to support his allegation that all the communications between him and the complainant were relayed to his client but We find no record of any written consent from any of the parties, especially from his client, allowing him to negotiate as such.

Respondent's admission that he received advance payments of professional fees from the complainant made matters worse for him. As correctly found by the Investigating Commissioner, it was highly improper for respondent to accept professional fees from the opposing party as this creates clouds of doubt regarding respondent's legal practice. As aptly stated by the Investigating Commissioner, if a lawyer receives payment of professional fees from the adverse party, it gives an impression that he is being paid for services rendered or to be rendered in favor of such adverse party's interest, which, needless to say, conflicts that of his client's.

Simply put, respondent's professional fees must come from his client. This holds true even if eventually such fees will be reimbursed by the adverse party depending on the agreement

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[30] *Ylaya v. Gacott*, A.C. No. 6475, January 30, 2013, 689 SCRA 452, 476.

[31] *Castro-Justo v. Galing*, A.C. No. 6174, November 16, 2011, 660 SCRA 140, 146.

of the parties. Respondent cannot justify his act of accepting professional fees from the complainant by alleging that such was in accordance with the arrangement between his client and the complainant as there is no clear proof of such arrangement. The April 22, 2005 Letter[32] signed by the complainant and addressed to FLC through Dr. Malaya, invoked by the respondent, does not, in any way, prove that there was an agreement between complainant and FLC. Moreover, the fact that respondent was already receiving several amounts from the complainant even before the date of the said Letter, supposedly stating an agreement between the complainant and FLC as regards the settlement of the loan obligation and the payment of his professional fees, is also suspicious. Such circumstance reveals that even before the complainant and FLC have come to such purported agreement, he was already receiving professional fees from the complainant. Respondent's allegations to the effect that negotiations had already been going on between the parties through him via phone calls even before that Letter do not hold water. To be sure, it would have been easy for the respondent, as a lawyer, to present documentary proof of such negotiation and/or arrangements but respondent failed to do so.

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[32] *Rollo*, p. 20.

Dr. Eli Malaya
Family Lending Corporations
Through Atty. Cesa, Jr.

Atty. Cesa relayed to me that you are willing to accept Php 7,000,000.00 spot cash in settlement of my mortgage loan plus I negotiate for the payment of the fees of your counsel.

I accept this and I will pay you and your lawyer the said amount on May 30 or June 30, 2005. Hopefully, I can make it on May 30.

To avoid further expenses, please authorize your lawyer to suspend the auction sale scheduled for May 10, 2005.

Thank you.

Very truly yours,

(signed)
GREGORIO CAPINPIN

At any rate, even assuming that there was indeed an arrangement between FLC and complainant that respondent's professional fees shall be paid by the complainant, which will be later on deducted from whatever the latter will pay FLC for the settlement of his loan obligation, respondent's act of accepting such payments from the complainant and appropriating the same for his professional fees is still reprehensible. The said payments from the complainant are still considered FLC's money; as such, respondent should have accounted the same for his client. As correctly found by the Investigating Commissioner, there is nothing on record, aside from respondent's bare and self-serving allegations, that would show that respondent made such accounting or disclosure to his client. Such acts are in violation of Canon 16, Rule 16.01 of the CPR above-cited.

In addition, this Court is baffled by the idea that complainant opted to pay respondent's professional fees first before his loan obligation was even taken care of, and that FLC would actually agree to this.

This Court cannot overstress the duty of a lawyer to uphold, at all times, the integrity and dignity of the legal profession. The ethics of the legal profession rightly enjoin lawyers to act with the highest standards of truthfulness, fair play, and nobility in the course of their practice of law. Clearly, in this case, respondent failed to uphold such ethical standard in his practice of law.

In view of the foregoing disquisition, We hold that respondent should be suspended from the practice of law for a period of one (1) year as recommended by the Investigating Commissioner.

ACCORDINGLY, this Court **AFFIRMS** the Integrated Bar of the Philippines Board of Governor's Resolution No. XX-2013-84 dated September 28, 2013 and Resolution No. XXI-2014-280 dated May 3, 2014 and **ORDERS** the suspension of Atty. Estanislao L. Cesa, Jr. from the practice of law for one (1) year effective immediately upon receipt of this Decision.

Let a copy of this Decision be entered in the personal records of respondent as a member of the Bar, and copies furnished

the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Bersamin (*Acting Chairperson*), *Reyes, Perlas-Bernabe,*[*] and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[A.C. No. 10553. July 5, 2017]

FILIPINAS O. CELEDONIO, *complainant, vs.* **ATTY. JAIME F. ESTRABILLO**, *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; CONFLICT OF INTEREST; LAWYERS ARE DEEMED TO REPRESENT CONFLICTING INTERESTS WHEN, IN BEHALF OF ONE CLIENT, IT IS THEIR DUTY TO CONTEND FOR THAT WHICH DUTY TO ANOTHER CLIENT REQUIRES THEM TO OPPOSE.— The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. The legal profession dictates that it is not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest. Thus, part of the lawyer's duty in this regard is to avoid representing conflicting interests. Jurisprudence is to the effect that a lawyer's act which invites suspicion of

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[*] Designated additional Member per Raffle dated June 28, 2017 vice Associate Justice Presbitero J. Velasco, Jr.

unfaithfulness or double-dealing in the performance of his duty already evinces inconsistency of interests. In broad terms, lawyers are deemed to represent conflicting interests when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose. There is, thus, no denying that respondent's preparation and filing of motions on behalf of the complainant, the adverse party in the case filed by him for his client, conflicts his client's interest. x x x [D]ealing with conflicting interests in the legal profession is prohibited – it is not only because the relation of attorney and client is one of trust and confidence of the highest degree, but also because of the principles of public policy and good taste.

2. **ID.; ID.; ID.; ID.; IF EVER, FOR WHATEVER REASON, A LAWYER WILL BE INVOLVED IN CONFLICTING INTERESTS OR IF HE WOULD ACT AS A MEDIATOR OR A NEGOTIATOR, A WRITTEN CONSENT OF ALL PARTIES CONCERNED IS REQUIRED.—** Rule 15.03 x x x [of the CPR] expressly requires a written consent of all parties concerned after full disclosure of the facts if ever, for whatever reason, a lawyer will be involved in conflicting interests. Corollary to this, Rule 15.04 of the CPR substantially states that if a lawyer would act as a mediator, or a negotiator for that matter, a written consent of all concerned is also required. Notably, there is no record of any written consent from any of the parties involved in this case.

APPEARANCES OF COUNSEL

Antonio M. Vitug, Jr. for complainant.
Estrabillo Flores & Associates Law Office for respondent.

D E C I S I O N

TIJAM, *J.*:

For Our resolution is complainant Filipinas O. Celedonio's disbarment complaint[1] against respondent Atty. Jaime F. Estrabillo, charging the latter with the violation of Canon 1,

[1] *Rollo*, pp. 3-8.

Rule 1.01 and 1.02, Canon 9, Rule 1.09, Canon 10, Rule 10.01, Canon 15, Rules 15.03 and 15.04, Canon 17, and Canon 19, Rule 19.01 and 19.02 of the Code of Professional Responsibility (CPR).

The Facts

The instant disbarment case stemmed from a criminal case of Estafa filed by Alfrito D. Mah (Mah) against complainant's husband in 2006, the latter being accused of embezzling a substantial amount from Mah's company. In the said case, respondent was Mah's legal counsel.[2]

Complainant averred that she tried talking to Mr. Mah's wife, being one of the sponsors in their wedding, to drop the criminal case against her husband, but Mrs. Mah responded that the matter is already in the hands of their lawyer. Thus, complainant and her husband met several times with the respondent to negotiate the withdrawal of the criminal case. Respondent assured the complainant and her husband that he will talk to his client for the possibility of settling the case and delaying the prosecution thereof in the meantime.[3]

In the process of negotiating, respondent advised the complainant and her husband to execute a deed of sale over their house and lot covered by Transfer Certificate of Title (TCT) No. 502969-R, which will be used as a collateral for the settlement of the case. Respondent explained to them that the said deed of sale will merely be a security while complainant and her husband are paying the embezzled money in installments and he assured the spouses that the said deed of sale will not be registered nor annotated in the title. The criminal case against complainant's husband was then dismissed.[4]

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[2] *Id*. at 3.

[3] *Id*.

[4] *Id*.

Being the only one who shoulders the family expenses, complainant, at some point, decided to sell the subject house and lot.[5] However, on December 8, 2008, complainant received summons from the court regarding a complaint for specific performance with prayer for the issuance of a writ of preliminary injunction (WPI) and temporary restraining order (TRO) filed by Spouses Mah, subject of which was TCT No. 502969-R.[6] Apparently, the deed of sale that complainant and her husband executed as a security for the settlement of the criminal case was dated May 5, 2008 and notarized by the respondent. The said complaint averred that herein complainant and her husband have an obligation to deliver the subject property to Spouses Mah. Complainant found out that the respondent requested the Register of Deeds (RD) of Pampanga to register and annotate the said deed of sale on the title on November 27, 2008.[7]

This prompted the complainant to confront the respondent as this was contrary to what they have agreed upon. The respondent merely advised complainant to again negotiate with his client and assured her that he would back her up. However, complainant's efforts to negotiate were again proven futile.[8]

In the meantime, complainant has a deadline for the filing of a responsive pleading in the said civil case. Also, the hearing for the application for issuance of a TRO was already scheduled. When the complainant went back to the respondent for this matter, the respondent offered to and indeed prepared a Motion for Extension of Time and Urgent Motion to Postpone for the complainant dated December 22, 2008 and January 8, 2009, respectively. Complainant alleged that it was respondent's secretary upon respondent's instruction, who drafted the said motions and that she was required to pay the corresponding fees therefor. In view of the said motion for

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[5] *Id*. at 4.

[6] *Id*. at 9.

[7] *Id*. at 4.

[8] *Id.*

postponement, complainant did not appear in the January 9, 2009 hearing.[9]

It turned out, however, that the said hearing still proceeded. The respondent even appeared therein and manifested that he filed a notice of *lis pendens* and adverse claim with the RD of Pampanga. Complainant also found out that respondent filed a Motion to Declare Defendants in Default in the said case dated February 4, 2009, which was granted by the court on February 27, 2009. On March 31, 2009, a decision was rendered in the said case in favor of respondent's clients. The decision became final and executory and, thereafter, a writ of execution was issued.[10]

Realizing that respondent employed deceit and was double-dealing with her and her husband to their prejudice, complainant filed the instant administrative complaint, praying for the respondent's disbarment.

In his Answer to the instant administrative complaint, respondent denied complainant's accusations. Despite admitting that he told the complainant that he would help her out in negotiating with his client, he averred that he never compromised his relationship with the latter as counsel. Respondent explained that he suggested a deed of second mortgage be made on the subject property, as the same was still mortgaged with the bank, for the purpose of settling the criminal case with his client. He admitted preparing such deed of second mortgage but the same was not signed by his client as the latter preferred a deed of sale with a promissory note. The complainant and her husband then executed the preferred deed of sale. Consequently, Mr. Mah executed an affidavit of desistance relative to the estafa case against complainant's husband.[11]

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[9] *Id*.

[10] *Id*. at 5.

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

As to the civil case, respondent averred that upon learning that the complainant was selling the subject property, he filed an adverse claim on the said property to protect his client's rights.[12]

Respondent, further, denied that he was serving conflicting interests when he instructed his secretary to draft the motions for extension of time and postponement for the complainant. He averred that he informed his clients about it and denied demanding payment therefor from the complainant.[13]

Report and Recommendation of the Integrated Bar of the Philippines Commission on Bar Discipline

Aside from respondent's act of instructing his secretary to prepare and file motions for the complainant in the civil case filed by his client, the Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline (CBD) found no proof as to the other allegations in the complaint imputing deceit and other violations of the CPR against respondent.[14] On May 22, 2012, the IBP-CBD recommended thus:

WHEREFORE, in view of the foregoing, it is respectfully recommended that respondent Atty. Jaime E. Estrabillo be suspended from the practice of law for six (6) months.[15]

Resolutions of the IBP Board of Governors

On March 20, 2013, the IBP issued Resolution No. XX-2013-187, which reads:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner in the above-

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[12] *Id*. at 34.

[13] *Id*. at 185.

[14] *Id*. at 241-259.

[15] *Id*. at 259.

entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and for Respondent's violation of Rule 15.03 and Canon 17 of the Code of Professional Responsibility, it being not intentional, Atty. Jaime E. Estrabillo is hereby **REPRIMANDED**.[16]

Both the complainant and the respondent filed their respective motions for reconsideration (MR) of the above-quoted resolution.[17]

Acting on the said MRs, the IBP Board of Governors issued Resolution No. XXI-2014-116 on March 21, 2014, which reads:

RESOLVED to DENY respective Motions for Reconsideration of Complainant and Respondent, there being no cogent reason to reverse the findings of the Commission and they being a mere reiteration of the matters which had already been threshed out and taken into consideration. Further, the Board RESOLVED to **AFFIRM with modification**, Resolution No. XX-2013-187 dated March 20, 2013 and accordingly ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner **SUSPENDING** Atty. Jaime E. Estrabillo from the practice of law to [sic] six (6) months.[18]

This Court is now called to issue its verdict on the matter.

Issue

Should the respondent be administratively disciplined based on the allegations in the complaint?

Our Ruling

We answer in the affirmative.

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

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[16] *Id*. at 240.

[17] *Id*. at 260-265, 268-272.

[18] *Id*. at 283.

CANON 17 – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

Respondent admitted that he instructed his secretary to draft and file motions for the complainant in the civil case filed by his client against the latter. Such act is a clear violation of the above-stated rules. The respondent, however, explained that it was merely a humanitarian act on his part in helping the complainant on the matter, to give the latter an opportunity to settle their accountability to his client.[19] Respondent insisted that there was no intention on his part to violate the trust reposed upon him by his client. In fact, according to the respondent, it was his client's interest that he had in mind when he prepared the motions as this would extend the chance of getting a settlement with the complainant, which is the end favored by his client.

Such explanation cannot, in any way, absolve him from liability.

The rules are clear. The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence.[20] The legal profession dictates that it is not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest.[21] Thus, part of the lawyer's duty in this regard is to avoid representing conflicting interests.[22] Jurisprudence is to the effect that a lawyer's act which invites suspicion of unfaithfulness or double-dealing in the performance of his duty already evinces inconsistency of interests.[23] In broad terms, lawyers are deemed to represent conflicting interests

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[19] *Id*. at 269.

[20] *Jimenez v. Atty. Francisco*, A.C. No. 10548, December 10, 2014.

[21] *Penilla v. Atty. Alcid, Jr.*, A.C. No. 9149, September 4, 2013.

[22] *Jimenez v. Atty. Francisco*, *supra* note 20.

[23] *Id*.

when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose.[24]

There is, thus, no denying that respondent's preparation and filing of motions on behalf of the complainant, the adverse party in the case filed by him for his client, conflicts his client's interest. Indeed, a motion for extension to file an answer would not be favorable to his client's cause as the same would merely delay the judgment sought by his client in filing the case. Moreso, the motion for postponement of the TRO hearing would definitely run counter with the interest of his client as such remedy was precisely sought, supposedly with urgency, to protect his client's right over the subject property before complainant could proceed with the sale of the same.

Moreover, Rule 15.03 above-cited expressly requires a written consent of all parties concerned after full disclosure of the facts if ever, for whatever reason, a lawyer will be involved in conflicting interests. Corollary to this, Rule 15.04 of the CPR substantially states that if a lawyer would act as a mediator, or a negotiator for that matter, a written consent of all concerned is also required. Notably, there is no record of any written consent from any of the parties involved in this case.

Considering the foregoing, We sustain the findings of the IBP that respondent violated Rule 15.03 and Canon 17 of the CPR.

In addition, this Court cannot shun the fact that due to respondent's acts, complainant lost her day in court. Admittedly, the complainant cannot impute fault entirely to the respondent for losing the opportunity to present her defense in the civil case, as no prudent man will leave the fate of his or her case entirely to his or her lawyer, much less to his or her opponent's lawyer. However, We also cannot blame the complainant for relying upon the motions prepared by the respondent for her, thinking that in view of the said motions, she was given more time file an answer and more importantly, that there was no

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[24] *Id*.

more hearing on the scheduled date for her to attend. As it turned out, respondent even appeared on the date of the hearing that was supposedly sought to be postponed. This is a clear case of an unfair act on the part of the respondent. Respondent may not have an obligation to apprise the complainant of the hearing as the latter is not his client, but his knowledge of the motion for postponement, drafted by his secretary upon his instruction, calls for his fair judgment as a defender of justice and officer of the court, to inform the complainant that the hearing was not postponed.

This exactly demonstrates why dealing with conflicting interests in the legal profession is prohibited – it is not only because the relation of attorney and client is one of trust and confidence of the highest degree, but also because of the principles of public policy and good taste.[25]

As to the other matters raised in the complaint such as the allegations that the respondent deceived the complainant to execute the subject deed of sale, among others, We are one with the IBP-CBD that such imputations were not supported by sufficient evidence to warrant consideration.

Anent the penalty, considering that this is respondent's first infraction, and that there is no clear showing that his malpractice was deliberately done in bad faith or with deceit, We hold that respondent's suspension from the practice of law for six (6) months, as recommended by the IBP-CBD and adopted by the IBP Board of Governors, is warranted.

ACCORDINGLY, the Court resolves to **SUSPEND** Atty. Jaime F. Estrabillo from the practice of law for six (6) months to commence immediately from the receipt of this Decision, with a **WARNING** that a repetition of the same or similar offense will warrant a more severe penalty. Let copies of this Decision be furnished all courts, the Office of the Bar Confidant, and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is directed to append

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[25] *Foster v. Atty. Agtang*, December 10, 2014, A.C. No. 10579.

a copy of this Decision to respondent's record as member of the Bar.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Jardeleza, JJ.,* concur.

SPECIAL THIRD DIVISION

[G.R. No. 167952. July 5, 2017]

GONZALO PUYAT & SONS, INC., *petitioner, vs.* **RUBEN ALCAIDE (deceased), substituted by GLORIA ALCAIDE, representative of the Farmer-Beneficiaries,** *respondent.*

SYLLABUS

REMEDIAL LAW; COURTS; SUPREME COURT; SUPREME COURT *EN BANC*; EXERCISES NO APPELLATE JURISDICTION OVER ITS DIVISIONS.— Anent the first ground relied upon by petitioner in its Omnibus Motion, We reiterate that this Court, in its Resolution dated October 19, 2016, had already explained that the DAR Order dated June 8, 2001 had attained finality x x x. With respect to the second ground relied upon by the petitioner, x x x [a]s aptly explained in the x x x Resolution, DAR sufficiently complied with the prescribed procedure under DAR Administrative Order No. 1 of 1998, which afforded petitioner its right to due process. We, therefore, find no cogent reason to deviate from Our earlier Resolution and deem it unnecessary to grant petitioner's prayer to refer the case to this Court's *En Banc*. In *Apo Fruits Corporation and Hijo Plantation, Inc. v. Court of Appeals*, this Court already ruled: **"x x x The Supreme Court sitting En Banc is not an appellate court vis-á-vis its Divisions, and it**

exercises no appellate jurisdiction over the latter. Each division of the Court is considered not a body inferior to the Court en banc, and sits veritably as the Court en banc itself. It bears to stress further that a resolution of the Division denying a party's motion for referral to the Court *en banc* of any Division case, shall be final and not appealable to the Court *en banc*."

PERALTA, *J.*, *dissenting opinion*:

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; AN ORDER DOES NOT ATTAIN FINALITY WHEN A PARTY IS NOT PROPERLY SERVED WITH A COPY THEREOF; CASE AT BAR.—** [T]he Order dated June 8, 2001 of then DAR Secretary Hernani A. Braganza, declaring that the subject properties are agricultural land, has not become final and executory because the petitioner was not properly served a copy of the said Order. To recall, petitioner's counsel received a copy of the Order dated June 8, 2001 and the Order of Finality dated August 6, 2001 only when he received the letter of Director Delfin B. Samson on September 10, 2001. x x x [B]ased on the x x x chronological order of events that transpired leading to the filing of petitioner's motion for reconsideration on September 14, 2001, it was apparent that petitioner was not properly served a copy of the disputed Order and that the DAR rectified such failure by subsequently serving a copy of the Order upon petitioner's counsel at his new address. x x x Hence, contrary to the conclusion of the CA, the June 8, 2001 Order of the DAR Secretary has not attained finality. Petitioner's consequent appeal to the Office of the President, upon denial of its motion for reconsideration, was filed on time and it was proper for the Office of the President to have entertained the appeal.

2. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); COVERAGE AND ACQUISITION OF AGRICULTURAL LANDS; TO COMPLY WITH ADMINISTRATIVE DUE PROCESS, PROPER PRELIMINARY OCULAR INSPECTION IS REQUIRED IN THE PROCESS OF SUBJECTING PRIVATELY-OWNED LAND FOR DISTRIBUTION UNDER THE GOVERNMENT'S AGRARIAN REFORM**

PROGRAM.— [T]he determination of whether or not petitioner's landholdings are agricultural land is left to be determined upon proper compliance with the procedure set forth by law. As properly concluded by the Office of the President in its August 8, 2003 Decision, before the DAR could place a piece of land under CARP coverage, there must first be a showing that it is an agricultural land, *i.e.*, devoted or suitable for agricultural purposes. An important part in determining its classification is the procedure outlined in DAR Administrative Order No. 01, Series of 2003, or the *2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under RA 6657*. In the case at bar, it must be underscored that proper preliminary ocular inspection was not conducted as required by the Administrative Order. Being an essential part in the process of subjecting privately-owned land for distribution under the government's agrarian reform program, compliance therewith ensures that administrative due process was accorded to a landowner prior to its taking by the government for distribution to qualified beneficiaries. x x x No less than the Bill of Rights provides that "[n]o person shall be deprived of life, liberty or property without due process of law." Verily, before a piece of land could be placed under the coverage of the CARP, there must first be a showing that the land is an agricultural land or one devoted or suitable for agricultural purposes. In the present case, there is still no conclusive determination if the subject property can be placed under the coverage of the government's agrarian reform program because the procedural requirements that would validate the taking of land for purposes of the CARP were not fully complied with. To be sure, complying and adherence to the procedures outlined by law are part of due process, which should be accorded to the landowner before being divested of his property.

3. POLITICAL LAW; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; THE EXERCISE THEREOF REQUIRES THAT DUE PROCESS BE OBSERVED IN THE TAKING OF PRIVATE PROPERTY.— [B]eing an exercise of police power, the expropriation of private property under RA 6657 puts the landowner, not the government, in a situation where the odds are practically against him. Nevertheless, the Comprehensive Agrarian Reform Law was not intended to take away property without due process of law. The exercise of the power of eminent domain requires that due process be observed

in the taking of private property. Therefore, the Order of the Office of the President directing the Department of Agrarian Reform to determine whether or not petitioner's landholdings may be placed under the coverage of the CARP was just and proper.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioner.
Defensor Lantian Villamor and Tolentino collaborating counsel for petitioner.
Arnel D. Naidas for respondent.

R E S O L U T I O N

VELASCO, JR., *J.*:

For consideration of the Court is an Omnibus Motion[1] dated November 21, 2016 filed by petitioner Gonzalo Puyat & Sons, Inc. praying that the Resolution dated October 19, 2016 be set aside and reconsidered and that the Decision dated February 1, 2005 of the Court of Appeals in CA-G.R. SP No. 86069 be reinstated or, in the alternative, its Motion for Reconsideration be referred to this Honorable Court En Banc.

An examination of the issues raised in the Motion for Reconsideration readily reveals that the same are a mere rehash of the basic issues raised in the petition and which were already exhaustively passed upon, duly considered and resolved in the assailed Resolution.

In its Omnibus Motion, petitioner once again moves for the reconsideration of this Court's Resolution on the following grounds:

I.

THE DEPARTMENT OF AGRARIAN REFORM'S (DAR) ORDER DATED JUNE 8, 2001 DID NOT ATTAIN FINALITY; AND

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[1] *Rollo*, pp. 651-675.

II.

THE DAR FAILED TO COMPLY WITH THE PRE-OCULAR INSPECTION REQUIREMENTS OF DAR ADMINISTRATIVE ORDER NO. 1 OF 1998, WHICH VIOLATES GPSI'S CONSTITUTIONAL RIGHT TO DUE PROCESS.

Anent the first ground relied upon by petitioner in its Omnibus Motion, We reiterate that this Court, in its Resolution dated October 19, 2016, had already explained that the DAR Order dated June 8, 2001 had attained finality, to wit:

x x x x x x x x x

As can be derived from the foregoing, the June 8, 2001 Order of the DAR has already attained finality for several reasons. ***First*,** as aptly observed by the CA, petitioner's motion for reconsideration of the June 8, 2001 Order of the DAR was filed only on September 14, 2001, after an order of finality has already been issued by the DAR.

In its Motion to Lift Order of Finality dated August 20, 2001, petitioner's counsel expressly admitted that he received said order only on August 17, 2001.Granting that petitioner's counsel was forthright in making such an admission, then petitioner had only until September 1, 2001 within which to file its motion for reconsideration. Having filed its motion for reconsideration only on September 14, 2001, way beyond the 15-day reglementary period, the order sought to be reconsidered by petitioner has already attained finality.

***Second*,** even if this Court overlooks the admission of petitioner's counsel that he already received the June 8, 2001 Order on August 17, 2001, still, said order was already deemed to have been served upon petitioner when it failed to notify DAR of its counsel's change of address. On this point, the DAR issued an Order dated August 3, 2001, stating, *inter alia*:

> Per certification of the Records Management Division, **the counsel of petitioner has moved out without leaving any forwarding address** and, the petitioner's address is insufficient that it could not be located despite diligent efforts.
>
> WHEREFORE, premises considered, **the Order of June 8, 2001 is deemed to have been served** and let Order of Finality be issued.

SO ORDERED. (emphasis supplied)

Failure of petitioner's counsel to officially notify the DAR of its change of address is an **inexcusable neglect** which binds his client.

x x x x x x x x x

Considering that petitioner's counsel moved out of its previous address without leaving any forwarding address, the DAR was correct in issuing the Order dated August 3, 2001 where it was ruled that "the Order of June 8, 2001 is deemed to have been served" upon petitioner and which correspondingly led to the issuance of the order of finality. To be sure, such omission or neglect on the part of petitioner's counsel is inexcusable and binding upon petitioner.

And ***third*,** this Court is not unaware of the time-honored principle that "actual knowledge" is equivalent to "notice." Thus, when petitioner, through its counsel, filed its Motion to Lift Order of Finality dated August 20, 2001 with the DAR, this indubitably indicates that petitioner and its counsel already had prior "actual knowledge" of the June 8, 2001 Order, which "actual knowledge" is equivalent to "notice" of said order. As a matter of fact, in the said motion, petitioner even quoted the dispositive portion of the June 8, 2001 Order of the DAR. Inevitably, this leads to no other conclusion than that petitioner already had actual knowledge of the denial of its petition at the time said motion had been drafted and/or filed. Since the motion to lift order of finality was drafted and/or filed on August 20, 2001, it can be said that at the latest, petitioner had until September 4, 2001 within which to file its motion for reconsideration. Consequently, the filing of the motion for reconsideration only on September 14, 2001 was certainly way beyond the reglementary period within which to file the same.

Significantly, when a decision becomes final and executory, the same can, and should, no longer be disturbed. x x x

Considering the foregoing, it was clearly erroneous on the part of the OP to have taken cognizance of the appeal filed by petitioner given that the June 8, 2001 Order of the DAR has already attained finality and, thus, should no longer be disturbed.

With respect to the second ground relied upon by the petitioner, We find it worthy to reiterate the following parts of the above-mentioned Resolution:

x x x x x x x x x

The conclusion arrived at by the majority is flawed for two reasons. *First*, the fact that the MARO issued CARP Form No. 3.a, entitled "Preliminary Ocular Inspection Report," belies the majority's conclusion that no preliminary ocular inspection was conducted by the DAR. Strikingly, almost all the other details under said report were filled up or marked. Said report was also signed by the persons who conducted the inspection and attested by Flordeliza DP Del Rosario, the MARO in-charge. In this regard, it should be noted that with the issuance of the Preliminary Ocular Inspection Report, the MARO is presumed to have regularly performed his or her duty of conducting a preliminary ocular inspection, in the absence of any evidence to overcome such presumption.

To my mind, the failure to mark the checkboxes pertaining to "Land Condition/Suitability to Agriculture" and "Land Use" does not constitute as evidence that may overcome the presumption of regularity in the performance of official duty. If at all, such failure merely constitutes inadvertence that should not prejudice the farmers in the instant case.

Interestingly, a perusal of the Preliminary Ocular Inspection Report would reveal that the checkboxes pertaining to the sub-categories under "Land Condition/Suitability to Agriculture" and "Land Use" do not negate the finding that the subject landholding is an agricultural land, which led to the issuance of the notice of coverage over said property. Particularly, the following are the sub-categories and the checkboxes which the MARO failed to mark:

2. Land Condition/Suitability to Agriculture (Check Appropriate Parenthesis)

( ) Subject property is presently being cultivated/suitable to agriculture

( ) Subject property is presently idle/vacant

x x x x x x x x x

4. Land Use (Check Appropriate Parenthesis)

( ) Sugar land ( ) Unirrigated Riceland

( ) Cornland ( ) Irrigated Riceland

( ) Others (Specify) _____

Evidently, none of the abovementioned description of land would negate the determination of the DAR that the subject landholding is indeed an agricultural land. Whether the subject landholding is presently being cultivated or not or whether the same is sugarland, cornland, un-irrigated or irrigated riceland is of no moment. The primordial consideration is whether the subject landholding is an agricultural land which falls within the coverage of CARP.

Moreover, any doubt as to the conduct of an ocular inspection and as to the nature and character of the subject landholding should be obviated with the issuance of the Memorandum dated March 3, 2005 addressed to Luis B. Bueno, Jr., Assistant Regional Director for Operations of DAR Regional Office Region IV-A, and prepared by Catalina D. Causaren, Provincial Agrarian Reform Officer (PARO) of Laguna, where it was stated that an ocular inspection has been conducted and that the subject landholding is indeed an agricultural land. xxx

Clearly, MARO's failure to mark any of the checkboxes for "Land Condition/Suitability to Agriculture" and "Land Use" to indicate whether the subject properties were sugarland, cornland, un-irrigated riceland, irrigated riceland, or any other classification of agricultural land leading to the lifting of the notice of coverage over the subject landholding, without prejudice to the conduct of an ocular inspection to determine the classification of the land, is totally uncalled for.

And *second*, petitioner has miserably failed to present any evidence that would support its contention that the subject landholding has already been validly reclassified from "agricultural" to "industrial" land. According to petitioner, the subject landholding has already been reclassified as industrial land by the Sangguniang Bayan of the Municipality of Biñan, and that pursuant to such reclassification, petitioner has been assessed, and is paying, realty taxes based on this new classification.

Indeed, the subject landholding had been reclassified under Kapasiyahan Blg. 03-(89) dated January 7, 1989 of the Municipality of Biñan, Laguna. It is worth noting, however, that said reclassification has not been approved by the Housing and Land Use Regulatory Board based on its Certification dated October 16, 1997. x x x x

Neither was there any showing that said reclassification has been authorized by the DAR as required under Section 65 of Republic Act No. 6657 of the *Comprehensive Agrarian Reform Law*.

Aside from the reclassification by the Sangguniang Bayan of the Municipality of Biñan, petitioner also relies on the tax declaration purportedly reclassifying the subject landholding as industrial. However, as petitioner itself admitted, what was indicated in said tax declaration was merely "proposed industrial." Evidently a "proposal" is quite different from "reclassification." Thus, petitioner cannot also rely on said tax declaration to bolster its contention that the subject landholding has already been reclassified from "agricultural" to "industrial."

As aptly explained in the said Resolution, DAR sufficiently complied with the prescribed procedure under DAR Administrative Order No. 1 of 1998, which afforded petitioner its right to due process.

We, therefore, find no cogent reason to deviate from Our earlier Resolution and deem it unnecessary to grant petitioner's prayer to refer the case to this Court's *En Banc*. In *Apo Fruits Corporation and Hijo Plantation, Inc. v. Court of Appeals*,[2] this Court already ruled:

x x x x The Supreme Court sitting En Banc is not an appellate court vis-à-vis its Divisions, and it exercises no appellate jurisdiction over the latter. Each division of the Court is considered not a body inferior to the Court en banc, and sits veritably as the Court en banc itself. It bears to stress further that a resolution of the Division denying a party's motion for referral to the Court en banc of any Division case, shall be final and not appealable to the Court en banc. Since, at this point, the Third Division already twice denied the motion of LBP to refer the present Petition to the Supreme Court en banc, the same must already be deemed final for no more appeal of its denial thereof is available to LBP.[3] (Emphasis supplied)

WHEREFORE, the instant Omnibus Motion is **DENIED**. The Resolution of this Court dated October 19, 2016 is hereby **AFFIRMED *IN TOTO***. No further pleadings will be entertained. Let Entry of Judgment be **ISSUED**.

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[2] G.R. No. 164195, April 30, 2008, 553 SCRA 237.

[3] *Id*. at 248.

SO ORDERED.

Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Peralta, J., see dissenting opinion.

DISSENTING OPINION

PERALTA, *J.*:

With due respect to my colleagues, I vote to grant the Omnibus Motion dated November 21, 2016, filed by the petitioner, set aside the Court's Resolution dated October 19, 2016, and reinstate our Decision dated February 1, 2012, or at the very least, refer the resolution of petitioner's Motion for Reconsideration to the Court *En Banc*.

As I have earlier opined, the Order dated June 8, 2001 of then DAR Secretary Hernani A. Braganza, declaring that the subject properties are agricultural land, has not become final and executory because the petitioner was not properly served a copy of the said Order. To recall, petitioner's counsel received a copy of the Order dated June 8, 2001 and the Order of Finality dated August 6, 2001 only when he received the letter of Director Delfin B. Samson on September 10, 2001. The sequence of events which led to petitioner actually receiving a copy of the said Orders was outlined in the Court's earlier Decision, to wit:

> On June 8, 2001, then DAR Secretary Hernani A. Braganza issued an Order in favor of the respondent declaring that the subject properties are agricultural land; thus, falling within the coverage of the CARP, the decretal portion of which reads:
>
> x x x x x x x x x
>
> On July 24, 2001, respondents filed a Motion for the Issuance of an Order of Finality of Judgment praying that an Order of Finality be issued for petitioner's failure to interpose a motion for reconsideration or an appeal from the order of the DAR Secretary.
>
> On August 3, 2001, the DAR issued an Order granting the motion and directing that an Order of Finality be issued. Consequently, on

August 6, 2001, an Order of Finality quoting the dispositive portion of the June 8, 2001 Order of the DAR Secretary was issued.

On August 17, 2001, petitioner received a copy of the Orders dated August 3 and 6, 2001. Thereafter, on August 20, 2001, petitioner filed a Motion to Lift Order of Finality.

On August 28, 2001, petitioner's counsel filed a Manifestation with Urgent *Ex-Parte* Motion for Early Resolution informing the DAR of his new office address and praying that the petition be resolved at the earliest convenient time and that he be furnished copies of dispositions and notices at his new and present address.

In a Letter sent to the new address of petitioner's counsel, dated September 4, 2001, Director Delfin B. Samson of the DAR informed petitioner's counsel that the case has been decided and an order of finality has already been issued, copies of which were forwarded to his last known address. Nevertheless, Director Samson attached copies of the Order dated June 8, 2001 and the Order of Finality dated August 6, 2001 for his reference.

On September 14, 2001, petitioner filed a Motion for Reconsideration with Manifestation, questioning the Orders dated June 8, 2001 and August 6, 2001 and praying that the said Orders be set aside and a new one issued granting the petition.

On September 21, 2001, the DAR issued an Order directing the parties to submit their respective memoranda.

On November 5, 2001, the DAR issued an Order denying the motion for reconsideration, which was received by petitioner's counsel on November 15, 2001.

Aggrieved, petitioner filed an appeal before the Office of the President which was received by the latter on November 21, 2001.[1] The case was docketed as O.P. Case No. 01-K-184.[2]

Consequently, based on the foregoing and the chronological order of events that transpired leading to the filing of petitioner's motion for reconsideration on September 14, 2001, it was

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[1] *Id*.

[2] *Gonzalo Puyat & Sons, Inc. v. Alcaide*, 680 Phil. 609, 614-615 (2012). (Emphasis supplied)

apparent that petitioner was not properly served a copy of the disputed Order and that the DAR rectified such failure by subsequently serving a copy of the Order upon petitioner's counsel at his new address.

This belated notification was made through the Letter[3] of Director Delfin B. Samson, dated September 4, 2001, informing petitioner's counsel that the case has already been decided and an order of finality was already issued. Worthy of note is the statement, "[a]ttached, for reference, are copies thereof being transmitted at your new given address," which, taken together with the statements made by the DAR Secretary in the Order denying petitioner's motion for reconsideration dated November 5, 2001,[4] was proof that petitioner was only furnished a copy of the June 8, 2001 Order when it received the letter of Director Samson.

Hence, contrary to the conclusion of the CA, the June 8, 2001 Order of the DAR Secretary has not attained finality. Petitioner's consequent appeal to the Office of the President, upon denial of its motion for reconsideration, was filed on time and it was proper for the Office of the President to have entertained the appeal.

Accordingly, the determination of whether or not petitioner's landholdings are agricultural land is left to be determined upon proper compliance with the procedure set forth by law. As properly concluded by the Office of the President in its August 8, 2003 Decision, before the DAR could place a piece of land under CARP coverage, there must first be a showing that it is an agricultural land, *i.e.*, devoted or suitable for agricultural purposes. An important part in determining its classification is the procedure outlined in DAR Administrative Order No. 01, Series of 2003, or the *2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under RA 6657*.[5] In the case at bar, it must be underscored that proper

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[3] *Rollo*, p. 86.

[4] *Id*. at 103.

[5] Comprehensive Agrarian Reform Law of 1988.

preliminary ocular inspection was not conducted as required by the Administrative Order. Being an essential part in the process of subjecting privately-owned land for distribution under the government's agrarian reform program, compliance therewith ensures that administrative due process was accorded to a landowner prior to its taking by the government for distribution to qualified beneficiaries. As correctly discussed by the Office of the President in its Decision, *viz.*:

> In other words, before the MARO sends a Notice of Coverage to the landowner concerned, he must first conduct a preliminary ocular inspection to determine whether or not the property may be covered under CARP. The foregoing undertaking is reiterated in the latest DAR AO No. 01, s. of 2003, entitled "2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under RA 6657." Section 1 [1.1] thereof provides that:
>
> > *"1.1 Commencement by the Municipal Agrarian Reform Officer (MARO)* – After determining that a landholding is coverable under the CARP, and upon accomplishment of the Pre-Ocular Inspection Report, the MARO shall prepare the NOC (CARP Form No. 5-1)." (NOC stands for Notice of Coverage)
>
> Found on the records of this case is a ready-made form Preliminary Ocular Inspection Report (undated) signed by the concerned MARO. Interestingly, however, the check box allotted for the all-important items "Land Condition/Suitability to Agriculture" and "Land Use' was not filled up. There is no separate report on the record detailing the result of the ocular inspection conducted. These circumstances cast serious doubts on whether the MARO actually conducted an on-site ocular inspection of the subject land. Without an ocular inspection, there is no factual basis for the MARO to declare that the subject land is devoted to or suitable for agricultural purposes, more so, issue Notice of Coverage and Notice of Acquisition.
>
> The importance of conducting an ocular inspection cannot be understated. In the event that a piece of land sought to be placed from CARP coverage is later found unsuitable for agricultural purposes, the landowner concerned is entitled to, and the DAR is duty bound to issue, a certificate of exemption pursuant to DAR Memorandum Circular No. 34, s. of 1997, entitled "Issuance of Certificate of Exemption for Lands Subject of Voluntary Offer to Sell (VOS) and

Compulsory Acquisition (CA) Found Unsuitable for Agricultural Purposes."

More importantly, the need to conduct ocular inspection to determine initially whether or not the property may be covered under the CARP is one of the steps designed to comply with the requirements of administrative due process. The CARP was not intended to take away property without due process of law (Development Bank of the Philippines vs. Court of Appeals, 262 SCRA 245. [1996]). The exercise of the power of eminent domain requires that due process be observed in the taking of private property. In Roxas & Co., Inc. v. Court of Appeals, 321 SCRA 106 [1999], the Supreme Court nullified the CARP acquisition proceedings because of the DAR's failure to comply with administrative due process of sending Notice of Coverage and Notice of Acquisition of the landowner concerned.

Considering the claim of appellant that the subject land is not agricultural because it is unoccupied and uncultivated, and no agricultural activity is being undertaken thereon, there is a need for the DAR to ascertain whether or not the same may be placed under CARP coverage.[6]

No less than the Bill of Rights provides that "[n]o person shall be deprived of life, liberty or property without due process of law." Verily, before a piece of land could be placed under the coverage of the CARP, there must first be a showing that the land is an agricultural land or one devoted or suitable for agricultural purposes. In the present case, there is still no conclusive determination if the subject property can be placed under the coverage of the government's agrarian reform program because the procedural requirements that would validate the taking of land for purposes of the CARP were not fully complied with. To be sure, complying and adherence to the procedures outlined by law are part of due process, which should be accorded to the landowner before being divested of his property.

Verily, being an exercise of police power, the expropriation of private property under RA 6657 puts the landowner, not the government, in a situation where the odds are practically against

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[6] *Rollo*, pp. 120-121.

him.[7] Nevertheless, the Comprehensive Agrarian Reform Law was not intended to take away property without due process of law.[8] The exercise of the power of eminent domain requires that due process be observed in the taking of private property.[9] Therefore, the Order of the Office of the President directing the Department of Agrarian Reform to determine whether or not petitioner's landholdings may be placed under the coverage of the CARP was just and proper.

As a final note, while the agrarian reform program was undertaken primarily for the benefit of our landless farmers, this undertaking should, however, not result in the oppression of landowners. Indeed, although the taking of properties for agrarian reform purposes is a revolutionary kind of expropriation, it should not be carried out at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws.[10]

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[7] *Land Bank of the Philippines v. Orilla*, 578 Phil. 663, 673 (2008).

[8] *Development Bank of the Philippines v. Court of Appeals*, 330 Phil. 801, 809 (1996).

[9] *Roxas & Co., Inc. v. Court of Appeals*, 378 Phil. 727, 763 (1999).

[10] See *Land Bank of the Philippines v. Lajom*, G.R. Nos. 184982 and 185048, August 20, 2014, 733 SCRA 511, 526; *Land Bank of the Philippines v. Chico*, 600 Phil. 272, 291 (2009).

SECOND DIVISION

[G.R. No. 170341. July 5, 2017]

MANILA BULLETIN PUBLISHING CORPORATION AND RUTHER BATUIGAS, *petitioners, vs.* **VICTOR A. DOMINGO AND THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; SHALL RAISE ONLY QUESTIONS OF LAW, FOR THE FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE FINAL AND CONCLUSIVE AND MAY NOT BE REVIEWED ON APPEAL.— Section 1, Rule 45 of the Rules of Court explicitly provides that a petition for review on certiorari shall raise only questions of law, which must be distinctly set forth. x x x Under Rule 45, the Court is not required to examine and evaluate all over again the evidence which had already been passed upon by the lower courts. Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored. This becomes even more significant when the factual findings of the lower court had been sustained by the CA. Thus, the rule that factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal.

2. ID.; ID.; ID.; THE FACTUAL FINDINGS OF THE LOWER COURTS ARE GENERALLY CONCLUSIVE; EXCEPTIONS.— [T]he general rule that the factual findings of the lower courts are conclusive is not cast in stone since accruing jurisprudence continuously reiterate the exceptions to the limitation of an appeal by certiorari to only questions of law, viz: (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 fact 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 those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

3. CRIMINAL LAW; REVISED PENAL CODE; LIBEL; REQUISITES.— Under our law, criminal libel is defined as a public and malicious imputation of a crime or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead. For an imputation to be libelous under Art. 353 of the Revised Penal Code (*RPC*), the following requisites must be present: (a) it must be defamatory; (b) it must be malicious; (c) it must be given publicity; and (d) the victim must be identifiable.

4. ID.; ID.; ID.; DEFAMATORY ALLEGATION; IN DETERMINING WHETHER A STATEMENT IS DEFAMATORY, THE WORDS USED ARE TO BE CONSTRUED IN THEIR ENTIRETY AND SHOULD BE TAKEN IN THEIR PLAIN, NATURAL, AND ORDINARY MEANING AS THEY WOULD NATURALLY BE UNDERSTOOD BY PERSONS READING THEM, UNLESS IT APPEARS THAT THEY WERE USED AND UNDERSTOOD IN ANOTHER SENSE.— An allegation is considered *defamatory* if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt, or which tends to blacken the memory of one who is dead. In determining whether a statement is *defamatory*, the words used are to be construed in their entirety and should be taken in their plain, natural, and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense. Moreover, a charge

is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses or are sufficient to impeach the honesty, virtue or reputation or to hold the person or persons up to public ridicule.

5. **ID.; ID.; ID.; MALICE; THE ESSENCE OF THE CRIME OF LIBEL AND IT REFERS TO BAD FAITH OR BAD MOTIVE.—** *Malice* connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive. It is the essence of the crime of libel.

6. **ID.; ID.; ID.; PUBLICATION; IT IS NOT REQUIRED THAT THE PERSON DEFAMED HAS READ OR HEARD ABOUT THE LIBELOUS REMARK FOR WHAT IS MATERIAL IS THAT A THIRD PERSON HAS READ OR HEARD THE LIBELOUS STATEMENT.—** There is *publication* if the material is communicated to a third person. It is not required that the person defamed has read or heard about the libelous remark. What is material is that a third person has read or heard the libelous statement, for "a man's reputation is the estimate in which others hold him, not the good opinion which he has of himself." Simply put, in libel, publication means making the defamatory matter, after it is written, known to someone other than the person against whom it has been written. "The reason for this is that [a] communication of the defamatory matter to the person defamed cannot injure his reputation though it may wound his self-esteem. A man's reputation is not the good opinion he has of himself, but the estimation in which others hold him."

7. **ID.; ID.; ID.; IDENTIFIABILITY; IT MUST BE SHOWN THAT AT LEAST A THIRD PERSON OR A STRANGER WAS ABLE TO IDENTIFY THE VICTIM AS THE OBJECT OF THE DEFAMATORY STATEMENT.—** [T]o satisfy the element of *identifiability*, it must be shown that at least a third person or a stranger was able to identify him as the object of the defamatory statement. It is enough if by intrinsic reference the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know the person alluded to; or if the latter is pointed out by extraneous circumstances so that

those knowing such person could and did understand that he was the person referred to.

8. ID.; ID.; ID.; EXEMPTION FROM CRIMINAL LIABILITY; PRIVILEGED COMMUNICATIONS; KINDS; ELUCIDATED.— A privileged communication may be classified as either absolutely privileged or qualifiedly privileged. The absolutely privileged communications are those which are not actionable even if the author has acted in bad faith. This classification includes statements made by members of Congress in the discharge of their functions as such, official communications made by public officers in the performance of their duties, and allegations or statements made by the parties or their counsel in their pleadings or motions or during the hearing of judicial proceedings, as well as the answers given by witnesses in reply to questions propounded to them, in the course of said proceedings, provided that said allegations or statements are relevant to the issues, and the answers are responsive or pertinent to the questions propounded to said witnesses. The qualifiedly privileged communications are those which contain defamatory imputations but which are not actionable unless found to have been made without good intention or justifiable motive, and to which "private communications" and "fair and true report without any comments or remarks" belong. Since the qualifiedly privileged communications are the exceptions to the general rule, these require proof of actual malice in order that a defamatory imputation may be held actionable. But when malice in fact is proven, assertions and proofs that the libelous articles are qualifiedly privileged communications are futile, since being qualifiedly privileged communications merely prevents the presumption of malice from attaching to a defamatory imputation.

9. ID.; ID.; ID.; IN LIBEL CASES INVOLVING PUBLICATIONS WHICH DEAL WITH PUBLIC OFFICIALS AND THE DISCHARGE OF THEIR OFFICIAL FUNCTIONS, THE COURT IS NOT CONFINED WITH THE WORDINGS OF THE LIBEL STATUTE, IT LIKEWISE EXAMINES THE CASE UNDER THE CONSTITUTIONAL PRECEPT OF THE FREEDOM OF THE PRESS.— The conduct, moral fitness, and ability of a public official to discharge his duties are undoubtedly matters of public interest for he is, after all, legally required to be at

all times accountable to the people and is expected to discharge his duties with utmost responsibility, integrity, competence, and loyalty; and to act with patriotism and justice, lead modest lives, and uphold public interest over personal interest. Indeed, as early as 1918, the Court had already laid down a legal teaching recognizing the right to criticize the action and conduct of a public official x x x. It is for this reason that, when confronted with libel cases involving publications which deal with public officials and the discharge of their official functions, this Court is not confined within the wordings of the libel statute; rather, the case should likewise be examined under the constitutional precept of freedom of the press. But if the utterances are false, malicious, or unrelated to a public officer's performance of his duties or irrelevant to matters of public interest involving public figures, the same may give rise to criminal and civil liability. In contrast, where the subject of the libelous article is a private individual, malice need not be proved by the plaintiff. The law explicitly presumes its existence (malice in law) from the defamatory character of the assailed statement.

10. ID.; ID.; ID.; DEFAMATORY ALLEGATION; GOOD INTENTION AND JUSTIFIABLE MOTIVES ARE DEFENSES FOR A DEFAMATORY IMPUTATION EVEN IF IT BE TRUE.— Art. 354 of the RPC provides that good intention and justifiable motives are defenses for a defamatory imputation even if it be true. Batuigas was able to firmly establish his defenses of good faith and good motive when he testified that, after he received several letters of complaint against Domingo, he came up with the said columns because he found the complaints on the shenanigans by Domingo at the DTI to be of public interest. Batuigas' defense was reinforced by the records bereft of any showing that the prosecution offered evidence to support a conclusion that Batuigas had written the articles with the sole purpose of injuring the reputation of Domingo.

11. ID.; ID.; ID.; WORDS WHICH ARE MERELY INSULTING ARE NOT ACTIONABLE AS LIBEL OR SLANDER PER SE, AND MERE WORDS OF GENERAL ABUSE HOWEVER VEXATIOUS, WHETHER WRITTEN OR SPOKEN, DO NOT CONSTITUTE BASES FOR AN ACTION FOR DEFAMATION IN THE ABSENCE OF AN ALLEGATION FOR SPECIAL DAMAGES.— For sure, the

words "lousy performance" and "mismanagement" had caused hurt or embarrassment to Domingo and even to his family and friends, but it must be emphasized that hurt or embarrassment even if real, is not automatically equivalent to defamation; words which are merely insulting are not actionable as libel or slander per se, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute bases for an action for defamation in the absence of an allegation for special damages. If a writer in the course of temperate and legitimate criticism falls into error as to some detail, or draws an incorrect inference from the facts before him, and thus goes beyond the limits of strict truth, such inaccuracies will not cause judgment to go against him, if the jury are satisfied, after reading the whole publication, that it was written honestly, fairly, and with regard to what truth and justice require. Domingo must remember that one of the costs associated with participation in public affairs is an attendant loss of privacy.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioners.
Jose C. Llames for private respondent.
Office of the Solicitor General for public respondent.

D E C I S I O N

MARTIRES, *J.*:

Through their petition for review under Rule 45 of the Rules of Court, petitioners plead that the Court nullify and set aside the 30 March 2005 decision[1] and 25 October 2005 resolution[2] of the Court of Appeals (*CA*), Eighteenth Division in CA-G.R. CR. No. 19089 affirming the joint decision[3] of the Regional

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[1] *Rollo*, pp. 41-47; Penned by Associate Justice Pampio A. Abarintos, and concurred in by Associate Justices Mercedes Gozo-Dadole and Ramon M. Bato, Jr.

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

[3] Records (Civil Case No. 91-02-23), pp. 230-256.

Trial Court, Branch 6, Tacloban City, in Civil Case No. 91-02-23 and Criminal Case No. 91-03-159.

THE FACTS

Petitioner Ruther D. Batuigas (*Batuigas*) was a writer of the widely circulated tabloid *Tempo*, published by the Manila Bulletin Publishing Corporation (*Manila Bulletin*).

On 20 December 1990, Batuigas wrote an article in his Bull's Eye column in Tempo titled "*Crucial task for JoeCon's successor.*" The article dealt with the letter-complaint of the Waray employees of the Department of Trade and Industry (*DTI*), Region VIII on the "[m]ismanagement, low moral[e], improper decorum, gross inefficiency, nepotism, etc." in the office. One of the public officials complained of was petitioner Regional Director Victor Domingo (*Domingo*) who was accused of dereliction of official duties, among others.[4] The "JoeCon" referred to was the outgoing DTI Secretary, Jose Concepcion.

On 4 January 1991, Batuigas wrote in his column titled "*A challenge to Sec. Garrucho*" about the alleged "lousy performance of Regional Director R.D. Domingo in DTI Region 8," among others.[5] Peter Garrucho was the newly appointed DTI Secretary who took over from Jose Concepcion.

Offended by these two articles, Domingo filed, on 18 January 1991, a complaint for libel against Batuigas before the Provincial Prosecutor of Palo, Leyte.[6]

On 7 February 1991, Domingo likewise filed a complaint for Damages before the Regional Trial Court (RTC) of Palo, Leyte, against Batuigas and the Manila Bulletin. The complaint, docketed as Civil Case No. 91-02-23, was raffled to the RTC, Branch 6, Palo, Leyte.[7]

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[4] *Id.*; Exhibit "A-1".

[5] *Id.*; Exhibit "B-1".

[6] Records (Criminal Case No. 91-03-159) pp. 14-21.

[7] Records (Civil Case No. 91-02-23), pp. 1-7.

On 18 March 1991, the Provincial Prosecutor terminated the preliminary investigation with the filing of an Information for Libel[8] against Batuigas, *viz*:

That on or about the 20th day of December 1990, and the 4th day of January 1991, the above-named accused, with malice afterthought and with intent to damage, ruin and discredit the good name and reputation of one VICTOR A. DOMINGO of Tacloban City, Leyte, did then and there willfully, unlawfully and feloniously wr[o]te and publish[ed] in the TEMPO Publication in Manila, the following, to wit:

December 20, 1990

But whoever will succeed JoeCon (Mr. Jose Concepcion, then the Secretary of the Department of Trade and Industry), will inherit a brewing problem at the Eastern Visayas office of the Department of Trade and industry.

Eastern Visayas in Region 8 is made up of two Leyte and three Samar provinces.

In their letter to this corner, the Waray employees of DTI-8 say they are disgusted over how things are being run and handled in the regional office in Tacloban City.

Mismanagement, low morale, improper decorum, gross inefficiency, nepotism, etc.

"These complaints, they say, were brought last year to the attention of DTI Makati, Civil Service Commission and Ombudsman.

Wala raw nangyari sa reklamo nila.

Kaya kami lumapit sa inyo, Gg. Batuigas, dahil nagbibigay ng resulta ang kolum ninyo," his letter said.

To JoeCon's successor, here are the specifics:

Regional Director V. Domingo is accused of dereliction of official duties.

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[8] Records (Criminal Case No. 91-03-159), pp. 1-4.

PECS are allegedly mismanaged, the Kalakalan program not given any direction and non-implementation of the rules on product standards.

The complainants charge that Director Domingo is more interested in night[-]clubbing the female members of his staff.

He also brings out the staff to seminars and conferences because he enjoys the pleasure of their company and his being out of his region, they aver.

A provincial director has organized his staff composed of clan members. Only his house pets were not included.

A couple are in the same office holding sensitive positions.

P. Caludac, a division chief, has hired an aunt to assume a vital post.

On the pretext that they are on fieldwork, time cards of ass-kissers are punched to the detriment of those loyal to the public service.

And these spoiled brats are led by no less than Director Domingo's secretary.

This corner is also told that the director's personal secretary is more often seen in the city hotels and beauty parlors than in her office.

The civil status of the media specialist is officially recorded as 'single' although her three children were sired by different fathers.

And Director Domingo has full knowledge of such immorality.

The Leyte provincial director has neglected to perform his functions causing a downfall in business.

This outright neglect is detrimental to DTI and the region's progress.

These national employees should be commended for bringing into the open this garbage that has piled in their own backyard.

To JoeCon's successor, the chopping board is ready.

All you need is a Muslim kris.

Palakulin mo, Pare ko!

January 4, 1991 issue:

Newly appointed Secretary of the Department of Trade and Industry Peter Garrucho has a difficult job ahead of him.

He is like sailing in turbulent waters.

If he fails the exception (sic) of the public, it is not only his name at stake, but of Tita Cory, too.

He must perform something extraordinary to surpass what JoeCon did at DTI.

One problem that he should give priority [to] is the lousy performance of Regional Director (sic) Domingo in DTI Region 8.

There is a serious breakdown of morale of DTI employees in that region because of Domingo's mismanagement.

After we exposed the alleged shenanigans of Domingo and his minions in our Dec. 20 column, the guy reportedly went on the air over PR TV 12 and radio station DYXL (sic) in Tacloban City and announced that he would sue this columnist with a 'multi-million pesos' libel [case].

But why should Domingo threaten us with libel suits instead of presenting his side is something that we can't understand.

We have volumes of documents against you, Mr. Domingo, furnished us by your people there at DTI Region 8.

Maybe you should answer them point by point instead of issuing threats against us.

Ms. Lilia Bautista, DTI Undersecretary for personnel and administration should know all the charges against you by this time.

Your people there have been sending her documented complaints long time ago, before I exposed your kalokohan in my Dec. 20 column.

You will be reading more about them soon.

Abangan!"

thereby injuring the good name, integrity and honor of said Victor A. Domingo and causing and exposing him to public hatred, ridicule and contempt.[9]

The Information, docketed as Criminal Case No. 91-03-159, was raffled to the RTC, Branch 6, Palo, Leyte. The criminal case was subsequently consolidated with Civil Case No. 91-02-23.

When called to the witness stand, Domingo, then the DTI Director for Region VIII, denied the allegations against him which were contained in the 20 December 1990 and 4 January 1991 articles of Batuigas.[10] He claimed that he felt like he had been assassinated because of these articles, while his family members were emotionally upset and traumatized.[11]

To support his claim that the allegations against him were not true, Domingo presented the following: (a) his sworn statement[12] for the filing of a libel case against Batuigas;[13] (b) the Joint Affidavit[14] of all the employees of the DTI Provincial Office denying that they had sent a letter of complaint to Batuigas as mentioned in the 20 December 1990 article and as to the allegations contained therein;[15] (c) the 8 January 1991 letter[16] of Civil Service Commission (*CSC*) Chairman Patricia Sto. Tomas (*Chairman Sto. Tomas*) to Batuigas in response to the 20 December 1990 article on the alleged "mismanagement, low morale, gross inefficiency and nepotism" pervading at the DTI Region VIII;[17] (d) the CSC

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[9] *Id.*

[10] TSN, 13 September 1991, pp. 5-7.

[11] *Id.* at 7.

[12] Records (Civil Case No. 91-02-23), pp. 10-16; Exhibit "C".

[13] TSN, 13 September 1991, p. 8.

[14] Records (Civil Case No. 91-02-23), pp. 22-24; Exhibit "D".

[15] TSN, 13 September 1991, pp. 8-9.

[16] Records (Civil Case No. 91-02-23), pp.17-18; Exhibit "E".

[17] TSN, 13 September 1991, pp. 9-10.

Indorsement[18] of Region VIII Director Eliseo Gatchalian relative to the findings and recommendations on the complaint of R. De Paz and company;[19] (e) the 7 November 1990 letter[20] of Victoria E. Valeriano (Valeriano) to the CSC Regional Director with reference to her investigation on the complaint of R. De Paz and company against him, among others, and which contained Valeriano's recommendation that the complaint be dismissed and be considered closed and terminated[21]; (f) the CSC Region VIII Report of Investigation[22] where the complaint of immorality against him and Jacqueline G. Aguiles was dismissed;[23] (g) his draft letter[24] to Batuigas protesting the inaccuracies and the ill motivation of the 20 December 1990 column but which letter he no longer sent to Batuigas;[25] (h) the 28 September 1989 letter[26] of the DTI Director of Legal Affairs transmitting the 7 August 1989 resolution of the Office of the Ombudsman in OSP-88-02282 dismissing the complaint of Arturo Salvacion against him, among others;[27] (i) the 7 August 1989 resolution[28] of the Office of the Ombudsman in OSP-88-02282;[29] (j) the 21 August 1989 memorandum[30] of the Office of the Ombudsman on the complaint against him by Jose Amable;[31] (k) the 14 January

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[18] Records (Civil Case No. 91-02-23), p.123; Exhibit "F".

[19] TSN, 13 September 1991, p. 10.

[20] Records (Civil Case No. 91-02-23), p. 124; Exhibit "F-2".

[21] TSN, 13 September 1991, pp. 10-11.

[22] Records (Civil Case No. 91-02-23), pp. 126-128; Exhibit "G".

[23] TSN, 7 November 1991, pp. 3-4.

[24] Records (Civil Case No. 91-02-23), pp.129-131; Exhibit "H".

[25] TSN, 7 November 1991, pp. 4-5.

[26] Records (Civil Case No. 91-02-23) p.132; Exhibit "I".

[27] TSN, 7 November 1991, pp. 5-6.

[28] Records (Civil Case No. 91-02-23) pp. 133-134; Exhibit "J".

[29] TSN, 7 November 1991, p. 6.

[30] Records (Civil Case No. 91-02-23) pp. 135-136; Exhibit "K".

[31] TSN, 7 November 1991, p. 7.

1991 resolution[32] of the Regional Development Council expressing its support and confidence in him;[33] (l) the 4 January 1991 resolution[34] of the Leyte Private Media, Inc. where he was commended for being a clean public official and a model family man;[35] (m) the respective affidavits of DTI Assistant Secretary Jose Mari S. Yu[36] and DTI Director Zafrullah G. Masahud[37] vouching for his integrity and morality;[38] (n) the DTI certification[39] of Amando T. Alvis stating that the DTI Region VIII has no employee by the name of R. de Paz or Meillin dela Cruz either in the past or at present; (o) the resolution[40] of Provincial Prosecutor Joventino P. Isidro on the libel complaint he filed against Batuigas;[41] and, (p) the affidavit[42] of the DTI Region VIII employees denying the statements of Batuigas in his column.[43]

Domingo stated that his friends who knew him well knew that the articles were fabrications; those who did not know him that well would think him guilty of these charges, some of whom made hurtful comments. He quantified the mental anguish, sleepless nights, and wounded feelings that he suffered as a result of the false and malicious charges against him by Batuigas in the amount of ₱2 million. He asked that he be paid ₱1 million and ₱500,000.00 for moral and exemplary damages, respectively.

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[32] Records (Civil Case No. 91-02-23) p. 137; Exhibit "L".

[33] TSN, 7 November 1991, p. 8.

[34] Records (Civil Case No. 91-02-23) p. 138; Exhibit "L-1".

[35] TSN, 7 November 1991, p. 8.

[36] Records (Civil Case No. 91-02-23) p. 139; Exhibit "L-2".

[37] *Id.* at 140-141; Exhibit "L-3".

[38] TSN, 7 November 1991, p. 9.

[39] Records (Civil Case No. 92-03-23) p. 142; Exhibit "M".

[40] *Id.* at 143-147; Exhibit "N" and "N-1".

[41] TSN, 7 November 1991, pp. 10-12.

[42] Records (Civil Case No. 91-02-23) pp. 19-22; Exhibit "O".

[43] TSN, 8 November 1991, pp. 3-4.

He claimed to have paid ₱10,000.00 as filing fee for his complaint against Batuigas and that he agreed to pay his lawyer ₱200.00 per appearance.[44]

Domingo claimed that after his exoneration by the CSC no other charges were filed against him before any court or body. On the complaint of immorality, similar charges were filed against him but these were also dismissed.[45]

Atty. Imelda Nartea,[46] a resident of Tacloban; Gilene Sta. Maria Advincula,[47] an employee of the DTI Region VIII during the time that Domingo was the Regional Director; and Jose Nicolasora,[48] a businessman from Tacloban, testified to deny the allegations against Domingo.

Batuigas took the witness stand for his defense. As the chief reporter and a columnist of Tempo, he described his work as an exposé, a product of investigative work. He claimed that he exposes anomalies and other shenanigans in the government and even of private individuals in the hope that corruption in the government might be minimized. As a result of his exposés, he was able to cause the dismissal of some officials in the government, although cases were also filed against him by officials of the government. At the time he testified, he had not been convicted in any of the cases filed against him.[49]

He stated that he met Domingo for the first time during the previous hearing of the cases. He only came to know of Domingo when he received several letters of complaint against the Regional Director. He presumed that the copies of the complaints were those filed against Domingo before the CSC and the Office of the Ombudsman. Thus, he wrote the questioned articles because

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

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

[46] TSN, 3 August 1992, pp. 2-10.

[47] TSN, 8 October 1992, pp. 3-17.

[48] *Id.* at 18-24.

[49] TSN, 9 February 1993, pp. 13-16.

he found the complaints to be of public interest as these involved the shenanigans committed by Domingo in his office. He no longer had copies of the complaints claiming he lost these when he left the Manila Bulletin.[50]

Ruling of the Regional Trial Court

In a joint decision[51] dated 2 December 1994, the RTC resolved Civil Case No. 91-02-23 and Crim. Case No. 91-03-159 as follows:

> Wherefore, finding accused Ruther Batuigas guilty beyond reasonable doubt and principal of the crime of Libel defined by Article 353 in relation to Article 354 of the Revised Penal Code, and penalized under Article 355 of the same Code, hereby imposes upon accused Ruther Batuigas a fine of Six Thousand (₱6,000.00) Pesos with subsidiary imprisonment in case of insolvency.
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> In Civil Case No. 91-02-23, judgment is hereby rendered in favor of the plaintiff and against the defendants:
>
> 1. Ordering defendants Ruther Batuigas and the Manila Bulletin Corporation to solidarily pay plaintiff moral damages in the amount of One Million (₱1,000,000.00) Pesos;
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> 2. Ordering the same defendants to solidarily pay the same plaintiff the sum of Five Hundred Thousand (₱500,000.00) Pesos exemplary damages;
>
> 3. Ordering the same defendants to solidarily pay the same plaintiff the sum of Two Hundred Thousand (₱200,000.00) Pesos attorney's fees; litigation expenses in the sum of Ten Thousand (₱10,000.00) Pesos; and
>
> 4. Ordering the same defendants to solidarily pay the costs of this suit.[52]

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[50] *Id.* at 17-18 and 21.

[51] Records (Civil Case No. 91-02-23), pp. 230-256.

[52] *Id.* at 255-256.

Ruling of the Court of Appeals

Batuigas and the Manila Bulletin raised the decision of the RTC via an appeal, docketed as CA-G.R. CR. No. 19089, to the CA, Cebu City. On 30 March 2005, the CA Eighteenth Division[53] rendered its decision the dispositive portion of which reads as follows:

> **WHEREFORE**, in view of all the foregoing, the joint decision rendered by the Regional Trial Court, Branch 6, Tacloban City in criminal case no. 91-03159 for libel and in civil case no. 91-02-23 for damages is hereby **AFFIRMED *in toto***.
>
> Costs against appellant.[54]

Undeterred, Batuigas and the Manila Bulletin sought a reconsideration of the decision which was denied by the CA in its resolution[55] promulgated on 25 October 2005.

Hence, this petition for review on *certiorari.*

Issues

Batuigas and the Manila Bulletin anchored their unanimous plea for the reversal of the CA's decision and resolution on the following grounds:

I.

WITH ALL DUE RESPECT, THE COURT OF APPEALS GRAVELY ERRED IN ITS DECISION IN DISREGARDING, CONTRARY TO LAW, CONTROLLING JURISPRUDENCE, WHICH WOULD HAVE COMPELLED THE COURT TO CONCLUDE THAT (1) THE ARTICLES IN QUESTION WERE QUALIFIEDLY PRIVILEGED COMMUNICATION; (2) IT WAS INCUMBENT UPON THE PROSECUTION AND PRIVATE RESPONDENT TO PROVE THE FACT OF "ACTUAL MALICE," WHICH BURDEN WAS NOT DISCHARGED BY THE LATTER IN THESE CASES; AND (3)

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[53] *Rollo*, pp. 41-47.

[54] *Id.* at 47.

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

THERE WAS NO "ACTUAL MALICE" IN THE SUBJECT ARTICLES, THEREBY REQUIRING THE DISMISSAL OF THE COMPLAINT *A QUO* AND THE ACQUITTAL OF PETITIONER BATUIGAS.

II.

WITH ALL DUE RESPECT, EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT LIBEL WAS PRESENT IN THIS CASE, THE COURT OF APPEALS AND THE RTC EGREGIOUSLY AND GRAVELY ERRED IN THEIR DECISIONS IN AWARDING UNWARRANTED AND EXCESSIVE MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES TO PRIVATE RESPONDENT VICTOR DOMINGO, CONTRARY TO LAW AND JURISPRUDENCE. ACCORDINGLY, THE AWARD OF MORAL DAMAGES SHOULD CONSIDERABLY BE REDUCED, AND THE AWARD OF EXEMPLARY DAMAGES AND ATTORNEY'S FEES BE DELETED AND SET ASIDE.[56]

THE RULING OF THE COURT

We grant the petition.

The petition under Rule 45 of the Rules of Court

Section 1, Rule 45 of the Rules of Court explicitly provides that a petition for review on certiorari shall raise only questions of law, which must be distinctly set forth.[57] In a case,[58] the Court reiterated its earlier rulings on the distinction between a question of law from a question of fact, as follows:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a

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[56] *Id.* at 13-14.

[57] *Ladines v. People,* G.R. No. 167333, 11 January 2016.

[58] *Tongonan Holdings and Dev't. Corp. v. Atty. Escaño, Jr.*, 672 Phil. 747 (2011).

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.[59]

Under Rule 45, the Court is not required to examine and evaluate all over again the evidence which had already been passed upon by the lower courts. Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored.[60] This becomes even more significant when the factual findings of the lower court had been sustained by the CA. Thus, the rule that factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal.[61] This is the rule in which Domingo finds refuge in opposing the plea of Batuigas and the Manila Bulletin in their quest before the Court to reverse the findings of the RTC and the CA. Domingo asserted that the findings of the RTC had been rendered as conclusive upon this Court because these had been adopted by the CA.[62]

We must be reminded, however, that the general rule that the factual findings of the lower courts are conclusive is not cast in stone since accruing jurisprudence continuously reiterate the exceptions to the limitation of an appeal by certiorari to

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[59] *Id.* at 256 citing *Republic of the Philippines v. Malabanan*, 646 Phil. 631, 637-638 (2010).

[60] *Uyboco v. People,* 749 Phil. 987, 992 (2014).

[61] *Bacalso v. Aca-ac,* G.R. No. 172919, 13 January 2016.

[62] *Rollo*, p. 227.

only questions of law, viz: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the interference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the 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 those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[63]

An evaluation of the records of these cases, however, prods the Court to apply the fourth exception above instead of the general rule. As will be discussed later, the RTC and the CA had misapprehended the facts when these courts concluded that Batuigas was guilty of libel, and that both he and the Manila Bulletin were liable for damages.

The criminal case of Libel

Under our law, criminal libel is defined as a public and malicious imputation of a crime or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.[64] For an imputation to be libelous under Art. 353 of the Revised Penal Code (*RPC*), the following requisites must be present: (a) it must be defamatory; (b) it must be malicious; (c) it must be given publicity; and (d) the victim must be identifiable.[65]

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[63] *Bacalso v. Aca-ac, supra* note 61.

[64] *Guingguing v. Court of Appeals*, 508 Phil. 193, 204 (2005).

[65] *Almendras, Jr. v. Almendras*, 750 Phil. 634, 642 (2015).

An allegation is considered *defamatory* if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt, or which tends to blacken the memory of one who is dead.[66] In determining whether a statement is *defamatory*, the words used are to be construed in their entirety and should be taken in their plain, natural, and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense.[67] Moreover, a charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses or are sufficient to impeach the honesty, virtue or reputation or to hold the person or persons up to public ridicule.[68]

Malice connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive. It is the essence of the crime of libel.[69]

There is *publication* if the material is communicated to a third person. It is not required that the person defamed has read or heard about the libelous remark. What is material is that a third person has read or heard the libelous statement, for "a man's reputation is the estimate in which others hold him, not the good opinion which he has of himself."[70] Simply put, in libel, publication means making the defamatory matter, after

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[66] *Philippine Journalists Inc. (People's Journal) v. Thoenen*, 513 Phil. 607, 618 (2005), citing *Vasquez v. Court of Appeals*, G.R. No. 118971, 15 September 1999.

[67] *Almendras, Jr. v. Almendras*, *supra* note 65 at 643.

[68] *Lopez v. People,* G.R. No. 172203, 658 Phil. 20, 31 (2011).

[69] *Borjal v. Court of Appeals,* 361 Phil. 1, 24 (1999). (citations omitted)

[70] *Philippine Journalists Inc. (People's Journal) v. Thoenen*, *supra* note 66.

it is written, known to someone other than the person against whom it has been written.[71] "The reason for this is that [a] communication of the defamatory matter to the person defamed cannot injure his reputation though it may wound his self-esteem. A man's reputation is not the good opinion he has of himself, but the estimation in which others hold him."[72]

On the other hand, to satisfy the element of *identifiability*, it must be shown that at least a third person or a stranger was able to identify him as the object of the defamatory statement.[73] It is enough if by intrinsic reference the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know the person alluded to; or if the latter is pointed out by extraneous circumstances so that those knowing such person could and did understand that he was the person referred to.[74]

The element of publication is clearly not at issue in this case considering that both articles of Batuigas were published in *Tempo*, a tabloid widely circulated all over the country. As to the elements of identifiability, defamatory allegation, and malice, the Court shall examine the two articles with the following as its guidepost:

> For the purpose of determining the meaning of any publication alleged to be libelous "that construction must be adopted which will give to the matter such a meaning as is natural and obvious in the plain and ordinary sense in which the public would naturally understand what was uttered. The published matter alleged to be libelous must be construed as a whole. In applying these rules to the language of an alleged libel, the court will disregard any subtle or ingenious explanation offered by the publisher on being called to account. The whole question being the effect the publication had upon the minds

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[71] *Buatis, Jr. v. People*, 520 Phil. 149, 160 (2006).

[72] *Alonzo v. Court of Appeals,* 311 Phil. 60, 73 (1995).

[73] *Philippine Journalists Inc. (People's Journal) v. Thoenen*, *supra* note 66.

[74] *Diaz v. People,* 551 Phil. 192, 199-200 (2007).

of the readers, and they not having been assisted by the offered explanation in reading the article, it comes too late to have the effect of removing the sting, if any there be, from the word used in the publication.[75]

a) The 20 December 1990 article

The Court cannot sustain the findings of the RTC and the CA that this article was libelous. Viewed in its entirety, the article withholds the finding that it impeaches the virtue, credit, and reputation of Domingo. The article was but a fair and true report by Batuigas based on the documents received by him and thus exempts him from criminal liability under Art. 354(2) of the RPC, viz:

> Art. 354. *Requirement for publicity.* – Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:
>
> 1. A private communication made by any person to another in the performance of any legal, moral or social duty; and
>
> 2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

Noteworthy, the first sentence on the 20 December 1990 article[76] warns the successor of JoeCon of the brewing problem that he will inherit at the DTI Region VIII office. The immediately following sentences relate that in a letter to Batuigas, the Waray employees of Region VIII made known their disgust on how DTI Region VIII was being run and handled. According

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[75] *Yuchengco v. The Manila Chronicle Publishing Corp.*, 620 Phil. 697, 723 (2009).

[76] Records (Civil Case No. 91-02-23) p. 148; Exhibit "A".

to the Waray employees, the complaints as to the "mismanagement, low morale, improper decorum, gross inefficiency, nepotism" in the office had already been made known to the DTI Makati office, the CSC and the Ombudsman, only that "[*w*]*ala raw nangyari sa reklamo nila.*" The letter further provided that the Waray employees turned instead to Batuigas knowing that his column produces results, i.e., "*Kaya kami lumapit sa inyo Gg. Batuigas dahil nagbibigay ng resulta ang kolum ninyo.*"

As culled by Batuigas from the letter, the succeeding sentences in the article merely enumerated the specifics of the complaints against several employees and officials of the DTI Region VIII, among whom was Domingo, that had been brought to the attention of DTI, CSC, and the Office of the Ombudsman, from which the Waray employees claimed nothing happened.

The article cannot be considered as defamatory because Batuigas had not ascribed to Domingo the commission of a crime, the possession of a vice or defect, or any act or omission, condition, status or circumstance which tends to dishonor or discredit the latter. The article was merely a factual report which, to stress, were based on the letter of the Waray employees reiterating their earlier complaints against Domingo and other co-workers at the DTI Region VIII. "Where the words imputed [are] not defamatory in character, a libel charge will not prosper. Malice is necessarily rendered immaterial."[77]

Parenthetically, it was through the evidence, consisting of public documents,[78] presented by Domingo during the hearing of these cases that it was confirmed that there were indeed complaints filed against him and the other DTI officials before the CSC and the Office of the Ombudsman relative to "mismanagement, low morale, improper decorum, gross inefficiency, nepotism." Although, based on these pieces of

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[77] *Lopez v. People, supra* note 68.

[78] Records (Civil Case No. 17-18, 123, 126-128, 132, 133-134, 135-136, 137 & 138; Exhibits "E", "F", "G", "I", "J", "K", "L" and "L-1".

evidence, the complaints against Domingo had already been dismissed by the CSC and the Office of the Ombudsman, the fact remains that there were actual complaints against him, among others, the particulars of which were those plainly enumerated in the article. True, it was embarrassing that these complaints were disclosed to the public; but equally factual was that these were matters clearly supported by public records.

The CA, however, moored on these statements its resolution that the 20 December 1990 article was libelous, viz:

> These national employees should be commended for bringing into the open this garbage that has piled [up] in their own backyard.
>
> To JoeCon's successor, the chopping board is ready.
>
> All you need is a Muslim kris!
>
> Palakulin mo, Pare ko![79]

The CA held that because of the comments or remarks made by Batuigas, the article would not fall under the exceptions of Art. 354 of the RPC. The CA ruled that the test of the defamatory character was whether or not the words were calculated to induce suspicion, a manner more effective to destroy reputation than false charges directly made, and that the meaning of the writer was even immaterial.[80]

A plain reading of the statements found by the CA as libelous cannot support a ruling that these were disparaging to Domingo or calculated to induce suspicion upon his person. In the statement "[*t*]*hese national employees should be commended for bringing into the open this garbage that has piled [up] in their own backyard,*" Batuigas was merely commending the DTI employees who brought into the open their complaints which had already been made known to the CSC and the Office of the Ombudsman. It was a fair remark directed to the DTI employees and made no reference to Domingo or imputed to him any defamatory allegation.

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[79] Records (Criminal Case No. 91-03-159), p. 3.

[80] *Rollo*, p. 44; CA Decision.

On the last three sentences, Batuigas explained that this was only a figure of speech.[81] The statements were obviously addressed to the new DTI Secretary suggesting that he use a chopping board and a Muslim *kris* to solve the mounting problems at the DTI office. A plain, natural, and ordinary appreciation of the statements fails to validate the finding that these ascribed something deprecating against Domingo. The sentences merely meant that heads should roll at the DTI office but palpably absent were the identities of those persons. Corollary thereto, the article could not have qualified as libelous because it is the well-entrenched rule that statements are not libelous unless they refer to an ascertained or ascertainable person.[82]

b) The 4 January 1991 article

The CA ruled that this article contained statements not lifted from another source, as is true in the 20 December 1990 column, but were the words of Batuigas. According to the CA, the tenor of the article showed that Batuigas had already formed his conclusions that Domingo had committed "*shenanigans*" in his office and that Domingo's "*kalokohan*" were supported by voluminous documents but which were never presented during the hearing of the cases.[83] Apparently, it was because of the words "*shenanigans*" and "*kalokohan*" that the CA found the article libelous.

It must be noted that Batuigas qualified as "*alleged*" the "*shenanigans*" of Domingo as referred to in the 20 December 1990 column. By stating that what he had exposed were "*alleged shenanigans*," Batuigas unmistakably did not confirm the truth as to the specifics of the complaints made against Domingo or form a conclusion that Domingo had actually committed mischiefs or misbehaved in office. Batuigas was merely relying

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[81] TSN, 3 June 1993, p. 9.

[82] *Yuchengco v. The Manila Chronicle Publishing Corp.*, *supra* note 75 at 725.

[83] *Rollo*, p. 45.

on the documents furnished him by the employees of DTI Region VIII thus, his mention that these were "*alleged shenanigans.*" On the other hand, the "*kalokohan"* unmistakably had reference to the "*alleged shenanigans*" mentioned in the early part of the article considering that both alluded to the exposés in the December column. It is for this reason that a finding that the "*kalokohan*" was a conclusion of Batuigas, as with the "alleged shenanigans," cannot be sustained.

However, when Batuigas made statements referring to the "lousy performance" of Domingo and his "mismanagement" resulting in the breakdown of morale of the DTI Region VIII employees, the former was actually impeaching the virtue and reputation of Domingo as DTI Regional Director. At that instance, Batuigas was relaying to his readers his comments about Domingo.

In contrast to the 20 December 1990 article where the statement as to the "mismanagement, low morale, improper decorum, gross inefficiency, nepotism, etc." were merely lifted by Batuigas from the letter of the DTI Region VIII employees, the allegation in the 4 January 1991 article as to the "lousy performance" and "mismanagement" of Domingo amounts to Batuigas' personal remarks about the Regional Director.

Notwithstanding the defamatory imputation in the 4 January 1991 article of Batuigas, Art. 354 of the RPC provides for the instances when its author can be exempted from criminal liability. Evaluated against the exceptions enumerated in Art. 354 of the RPC, it is beyond doubt that the statements of Batuigas as to the "lousy performance" and "mismanagement" of Domingo cannot be considered as either private communication or a report without any comments or remarks. The Court hastens to add, however, that the exceptions in Art. 354 of the RPC are not exclusive since jurisprudence provides for the additional exceptions to the privileged communications, viz: in *Borjal v. Court of Appeals*,[84] where it was held that in view of the constitutional right on the freedoms of speech and of the press,

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[84] *Supra* note 69 at 18.

fair commentaries on matters of public interest are privileged; and in *Guingguing v. Court of Appeals*,[85] where the remarks directed against a public figure were ruled as privileged.[86]

A privileged communication may be classified as either absolutely privileged or qualifiedly privileged.[87] The absolutely privileged communications are those which are not actionable even if the author has acted in bad faith. This classification includes statements made by members of Congress in the discharge of their functions as such, official communications made by public officers in the performance of their duties, and allegations or statements made by the parties or their counsel in their pleadings or motions or during the hearing of judicial proceedings, as well as the answers given by witnesses in reply to questions propounded to them, in the course of said proceedings, provided that said allegations or statements are relevant to the issues, and the answers are responsive or pertinent to the questions propounded to said witnesses.[88]

The qualifiedly privileged communications are those which contain defamatory imputations but which are not actionable unless found to have been made without good intention or justifiable motive, and to which "private communications" and "fair and true report without any comments or remarks" belong.[89] Since the qualifiedly privileged communications are the exceptions to the general rule, these require proof of actual malice in order that a defamatory imputation may be held actionable.[90] But when malice in fact is proven, assertions and

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[85] *Supra* note 64.

[86] See *Co v. Munoz, Jr.,* 722 Phil. 729, 742 (2013).

[87] *Philippine Journalists Inc. (People's Journal) v. Thoenen*, *supra* note 66 at 86 citing *Borjal v. Court of Appeal*s, *supra* note 69 at 18.

[88] *Yuchengco v. The Manila Chronicle Publishing Corp.*, *supra* note 75 at 728 citing *Orfanel v. People*, 141 Phil. 519, 523-524 (1969).

[89] *Borjal v. Court of Appeals, supra* note 69 at 18.

[90] *Yuchengco v. The Manila Chronicle Publishing Corp., supra* note 75 at 727.

proofs that the libelous articles are qualifiedly privileged communications are futile, since being qualifiedly privileged communications merely prevents the presumption of malice from attaching to a defamatory imputation.[91]

The conduct, moral fitness, and ability of a public official to discharge his duties are undoubtedly matters of public interest for he is, after all, legally required to be at all times accountable to the people and is expected to discharge his duties with utmost responsibility, integrity, competence, and loyalty; and to act with patriotism and justice, lead modest lives, and uphold public interest over personal interest.[92] Indeed, as early as 1918, the Court had already laid down a legal teaching[93] recognizing the right to criticize the action and conduct of a public official, viz:

> The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Of course, criticism does not authorize defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born[e] for the common good. Rising superior to any official or set of officials, to the Chief Executive, to the Legislature, to the Judiciary—to any or all the agencies of Government—public opinion should be the constant source of liberty and democracy.

It is for this reason that, when confronted with libel cases involving publications which deal with public officials and the discharge of their official functions, this Court is not confined

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[91] *Id.* at 731.

[92] Republic Act No. 6713, Section 2.

[93] *United States v. Bustos,* 37 Phil. 731, 740-741 (1918), cited in *Jalandoni v. Drilon,* 383 Phil. 855, 870 (2000).

within the wordings of the libel statute; rather, the case should likewise be examined under the constitutional precept of freedom of the press.[94] But if the utterances are false, malicious, or unrelated to a public officer's performance of his duties or irrelevant to matters of public interest involving public figures, the same may give rise to criminal and civil liability.[95] In contrast, where the subject of the libelous article is a private individual, malice need not be proved by the plaintiff. The law explicitly presumes its existence (malice in law) from the defamatory character of the assailed statement.[96]

The statements on the "lousy performance" and "mismanagement" of Domingo are matters of public interest as these relate to his moral conduct, his capacity to lead the DTI Region VIII employees, and to manage and supervise the affairs of the office. These statements undoubtedly make it to the grade of qualifiedly privileged communication and thus, would require actual malice to be actionable. It must be stressed, however, that once it is established that the article is of a privileged character, the onus of proving actual malice rests on the plaintiff who must then convince the court that the offender was prompted by malice or ill will.[97]

In *Disini v. The Secretary of Justice*,[98] the Court explained "actual malice" as follows:

> There is "actual malice" or malice in fact when the offender makes the defamatory statement with the knowledge that it is false or with reckless disregard of whether it was false or not. The reckless disregard standard used here requires a high degree of awareness of probable falsity. There must be sufficient evidence to permit the conclusion that the accused in fact entertained serious doubts as to the truth of

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[94] *Flor v. People,* 494 Phil. 439, 450 (2005).

[95] *Fermin v. People,* 573 Phil. 278, 297 (2008).

[96] *Disini, Jr. v. The Secretary of Justice,* 727 Phil. 28, 113 (2014).

[97] *Vicario v. Court of Appeals,* 367 Phil. 292, 303 (1999).

[98] *Supra* note 96.

the statement he published. Gross or even extreme negligence is not sufficient to establish actual malice.[99] (citations omitted)

Records cannot sustain a finding that Domingo was able to establish that Batuigas had actual malice in writing this article. Batuigas testified that sometime in the latter part of 1990 and until 1991, he received letters of complaint denouncing Domingo.[100] Although Batuigas was not able to present these letters during the hearing of these cases it can be rationally deduced that he was in actual receipt of the complaints against the DTI Region VIII officials and employees because he was able to cite the specifics of the grievances of the Waray employees in his 20 December 1990 article. Presumably, too, the letters that Batuigas received were those complaints that had been dismissed by the CSC and the Office of the Ombudsman, and with the corresponding resolutions evidencing the dismissal of these complaints having been presented by Domingo during the hearing of the cases.

It was evident that the statements as to the "lousy performance" and "mismanagement" of Domingo cannot be regarded to have been written with the knowledge that these were false or in reckless disregard of whether these were false, bearing in mind that Batuigas had documentary evidence to support his statements. Batuigas merely expressed his opinion based on the fact that there were complaints filed against Domingo, among others. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.[101]

Moreover, these statements were but fair commentaries of Batuigas which can be reasonably inferred from the contents of the documents that he had received and which he qualified,

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[99] *Id*. at 112.

[100] TSN, 9 February 1993, p. 17.

[101] *Tulfo v. People,* 587 Phil. 64, 86 (2008), citing *Borjal v. Court of Appeals, supra* note 69 at 20.

in his 20 December 1990 article, to have been brought already to the attention of the DTI, CSC, and the Ombudsman. Jurisprudence defines fair comment as follows:

> To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.[102] (emphasis omitted)

True, the complaints had already been dismissed by the government offices tasked to resolve these, and of which fact Batuigas had not been informed when he wrote the 20 December 1990 and 4 January 1991 articles; but it must be pointed out that even assuming that the contents of the articles were false, mere error, inaccuracy or even falsity alone does not prove actual malice.[103]

In order to constitute malice, ill will must be personal.[104] Domingo testified that he did not personally know Batuigas or had met him before.[105] When Domingo was asked as to the motive of Batuigas in writing the articles putting his (Domingo's) name in a bad light, he explained that the employees he had dismissed during the reorganization could have caused the writing of the articles. Domingo further stated that, likewise, he suspected

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[102] *Id.* at 85-86, citing *Borjal v. Court of Appeals, supra* note 69 at 20.

[103] *Id.* at 84, citing *Borjal v. Court of Appeals, supra* note 69 at 26.

[104] *Vicario v. Court of Appeals*, *supra* note 97 at 301.

[105] TSN, 8 November 1991, p. 9.

a group of loggers in the region he had been very vocal against for the past ten years.[106]

When cross-examined, Domingo reiterated his earlier testimony that he had no dealings with Batuigas, or had not personally met or spoken with him. When further probed, Domingo said that Batuigas could have been (used as) a tool by people who were interested in going after his neck because he had stepped on them in the discharge of his duties. When asked to confirm whether Batuigas had a personal grudge against him, Domingo said: "I do not think he harbors ill will against me."[107]

The absence of personal ill will of Batuigas against Domingo disavows actual malice and buttresses the finding that Batuigas was prompted by a legitimate or plausible motive in writing the articles. It was pointed out that Batuigas characterized his writing akin to an exposé where he revealed anomalies and shenanigans in the government in the hope that corruption might be minimized.[108] Moreover, Batuigas had no reason to doubt that R. de Paz, the sender of the letter containing the complaints against Domingo, did not exist considering that the letter was signed by one claiming to be R. de Paz.[109]

Art. 354 of the RPC provides that good intention and justifiable motives are defenses for a defamatory imputation even if it be true. Batuigas was able to firmly establish his defenses of good faith and good motive when he testified that, after he received several letters of complaint against Domingo, he came up with the said columns because he found the complaints on the shenanigans by Domingo at the DTI to be of public interest.[110] Batuigas' defense was reinforced by the records bereft of any showing that the prosecution offered evidence to support a

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[106] *Id*. at 11.

[107] TSN, 8 June 1992, pp. 5-6.

[108] TSN, 9 February 1993, p. 22.

[109] Records (Civil Case No. 91-02-23) p. 148; Exhibits "R-1".

[110] TSN, 9 February 1993, p.

conclusion that Batuigas had written the articles with the sole purpose of injuring the reputation of Domingo.

In his 16 January 1991 article[111] titled *"The other side of DTI 8 issue,"* Batuigas acknowledged that he might have been used by the detractors of Domingo due to their failure to establish a prima facie case against the Regional Director. In the same article, Batuigas quoted portions of the separate letters sent to him by Zaldy Lim and Lions International Deputy Vice-Governor Prudencio J. Gesta, who both denied the allegations against Domingo. Additionally, Batuigas had written the 16 January 1991 article before Domingo could file criminal and civil cases against him and the Manila Bulletin. These truths evidently refuted malice or ill will by Batuigas against Domingo.

The CA found fault in the failure of Batuigas to check his sources despite the 21 December 2000[112] letter of Domingo denouncing the accusations against him, and the 4 January 1991 letter of Chairman Sto. Tomas absolving Domingo of these accusations. Further to this, the CA ruled that Domingo was not accorded the fair and equal opportunity to have these letters published in order to balance the issue.[113]

Domingo admitted that he had drafted a letter[114] to Batuigas protesting the inaccuracies in the 20 December 1990 article. Unfortunately, Domingo eventually changed his mind and did not send his letter to Batuigas[115] as this could have informed Batuigas that the charges against him (Domingo) had already been dismissed by the CSC and the Office of the Ombudsman; thus, not having known of the dismissal of the complaints against Domingo, Batuigas could not have mentioned it in his 4 January 1991 article. In the same vein, it was implausible that the letter[116]

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[111] Records (Civil Case No. 91-02-23), p. 149; Exhibit "R-1".

[112] Should be 21 December 1990.

[113] *Rollo*, pp. 45-46.

[114] Records (Civil Case No. 91-02-23), pp. 129-131; Exhibit "H".

[115] TSN, 7 November 1991, pp. 4-5.

[116] Records (Civil Case No. 91-02-23) pp. 17-18; Exhibit "E".

of Chairman Sto. Tomas could have been included in the 4 January 1991 Bull's Eye article since the letter was dated only 8 January 1991. Additionally, there was nothing from the records that would prove when Batuigas had received the letter of Chairman Sto. Tomas. Notwithstanding the absence of this proof, Batuigas unmistakably acknowledged the dismissal of the charges against Domingo, the main topic of Chairman Sto. Tomas' letter, when he stated in his 16 January 1991 article: "It is indeed unfortunate that we published the charges against him six weeks after he was cleared by the Civil Service Commission of the same charges."[117]

The failure of Batuigas to counter-check the status of the complaints against Domingo was indeed unfortunate, but such failure cannot be considered as enough reason to hold him liable. While substantiation of the facts supplied is an important reporting standard, still, a reporter may rely on information given by a lone source although it reflects only one side of the story provided the reporter does not entertain a high degree of awareness of its probable falsity.[118] Domingo, who had the burden of proving actual malice, was not able to present proof that Batuigas had entertained awareness as to the probable falsehood of the complaints against him (Domingo). Indeed, on the basis of the documents in Batuigas' possession, which were actually complaints against Domingo, Batuigas wrote his comments on Domingo's "lousy performance" and "mismanagement." The Court thus finds it significant to restate its legal teaching in *Vasquez v. Court of Appeals*,[119] *viz*:

> A rule placing on the accused the burden of showing the truth of allegations of official misconduct and/or good motives and justifiable ends for making such allegations would not only be contrary to Art. 361 of the Revised Penal Code. It would, above all, infringe on the constitutionally guaranteed freedom of expression. Such a rule would deter citizens from performing their duties as members of a self-

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[117] *Id.* at 149; Exhibit "R".

[118] *Villanueva v. Phil. Daily Inquirer,* 605 Phil. 926, 940 (2009).

[119] 373 Phil. 238, 254-255 (1999).

governing community. Without free speech and assembly, discussions of our most abiding concerns as a nation would be stifled. As Justice Brandeis has said, "public discussion is a political duty" and "the greatest menace to freedom is an inert people."[120]

For sure, the words "lousy performance" and "mismanagement" had caused hurt or embarrassment to Domingo and even to his family and friends, but it must be emphasized that hurt or embarrassment even if real, is not automatically equivalent to defamation; words which are merely insulting are not actionable as libel or slander per se, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute bases for an action for defamation in the absence of an allegation for special damages.[121] If a writer in the course of temperate and legitimate criticism falls into error as to some detail, or draws an incorrect inference from the facts before him, and thus goes beyond the limits of strict truth, such inaccuracies will not cause judgment to go against him, if the jury are satisfied, after reading the whole publication, that it was written honestly, fairly, and with regard to what truth and justice require.[122] Domingo must remember that one of the costs associated with participation in public affairs is an attendant loss of privacy.[123]

It may be well for us to keep in mind that the rule on privileged communications in defamation cases developed because "public policy, the welfare of society and the orderly administration of justice" have demanded protection for public opinion.[124] "While the doctrine of privileged communication can be abused, and its abuse can lead to great hardships, to allow libel suits to

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[120] *Id*. at 254-255 cited in *Flor v. People of the Philippines*, *supra* note 94 at 454.

[121] *Lopez v. People, supra* note 68 at 34.

[122] *Flor v. People, supra* note 94 at 453, citing *Newell, Slander and Libel*, p. 253, 4th Edition.

[123] *Villanueva v. Phil. Daily Inquirer, supra* note 117 at 943.

[124] *Santos v. Court of Appeals,* 280 Phil. 120, 128 (1991).

prosper strictly on this account will give rise to even greater hardships. The doctrine itself rests on public policy which looks to the free and unfettered administration of justice. It is as a rule applied liberally."[125] Equally important is the following pronouncement which this Court had consistently reiterated, to wit:

> A newspaper especially one national in reach and coverage, should be free to report on events and developments in which the public has a legitimate interest with minimum fear of being hauled (sic) to court by one group or another on criminal or civil charges for libel, so long as the newspaper respects and keeps within the standards of morality and civility prevailing within the general community.
>
> To avoid the self-censorship that would necessarily accompany strict liability for erroneous statements, rules governing liability for injury to reputation are required to allow an adequate margin of error by protecting some inaccuracies. It is for the same reason that the New York Times doctrine requires that liability for defamation of a public official or public figure may not be imposed in the absence of proof of "actual malice" on the part of the person making the libelous statement. [126]

The civil case for Damages

The Court finds that there can be no civil liability in Civil Case No. 91-02-23 because no libel was committed. The 20 December 1990 article was not libelous because it was only a fair and true report by Batuigas using the documents received by him thus relieving him of criminal liability pursuant to Art. 354 (2) of the RPC. On the one hand, the privileged nature of the 16 January1991 article and the failure of Domingo to discharge his burden of proving actual malice on the part of Batuigas failed to support a finding that there was libel. Clearly, there was no act that exists from which the civil liability may arise.[127]

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[125] *Alcantara v. Ponce,* 545 Phil. 677, 685 (2007).

[126] *Guingguing v. Court of Appeals, et al., supra* note 64 at 223, citing *Borjal, et al. v. Court of Appeals, supra* note 69 at 27.

[127] *Co v. Munoz, Jr., supra* note 86 at 743.

WHEREFORE, premises considered, the 30 March 2005 decision and 25 October 2005 resolution of the Court of Appeals, Eighteenth Division in CA-G.R. CR. No. 19089 are hereby **REVERSED** and **SET ASIDE**. Petitioner Ruther Batuigas is **ACQUITTED** of the charge against him in Criminal Case No. 91-03-159 while the complaint for damages in Civil Case No. 91-02-23 is dismissed.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 193969-193970. July 5, 2017]

KA KUEN CHUA, doing business under the name and style KA KUEN CHUA ARCHITECTURAL, *petitioner, vs.* **COLORITE MARKETING CORPORATION,** *respondent.*

[G.R. Nos. 194027-194028. July 5, 2017]

COLORITE MARKETING CORPORATION, *petitioner, vs.* **KA KUEN CHUA, doing business under the name and style KA KUEN CHUA ARCHITECTURAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* LIMITED

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[*] Designated additional member per Raffle dated 22 March 2017.

TO QUESTIONS OF LAW; EXCEPTION; PRESENT IN CASE AT BAR.— As a general rule, a petition for review on *certiorari* under Rule 45 is limited to questions of law. However, this rule admits of certain exceptions; among them is when the findings of the CA conflict with those of the court *a quo*, as in this case. Thus, a review of the evidence on record is warranted.

2. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; A PARTY CANNOT BE RELIEVED FROM THE EFFECTS OF AN UNWISE OR DISASTROUS CONTRACT, ENTERED INTO WITH ALL THE REQUIRED FORMALITIES AND WITH FULL AWARENESS OF WHAT HE WAS DOING.—** KKCA cannot deny its contractual obligation to ensure that excavation works were properly done. It is settled that the law does not relieve a party from the effects of an unwise, foolish, or disastrous contract, entered into with all the required formalities and with full awareness of what he was doing, and courts have no power to relieve parties from obligations voluntarily assumed, simply because their contracts turned out to be disastrous deals or unwise investments. *Volenti non fit injuria.* The CA was correct when it found that pursuant to paragraph 33 of Addendum #01, and the pertinent provision of Article XIII of the Main Construction Contract, KKCA assumed the responsibility of ensuring that properties adjacent to the project are protected from erosion and settlement.

3. **ID.; ID.; ID.; INTERPRETATION OF CONTRACTS; IF THE TERMS OF A CONTRACT ARE CLEAR AND LEAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATIONS SHALL CONTROL.— [P]aragraph 21 of Addendum #01 included all excavation works within the scope of works of the general contractor, while paragraph 33 of Addendum #01 stipulates that the general contractor shall be responsible for soil protection works, *i.e., provide, erect and maintain all necessary bracing, shoring, planking, etc., as required to protect the adjoining property against settlement and damages, and to make sure that the methodology to be used will protect the adjacent properties against erosion and settlement*.** The provisions of paragraphs 21 and 33 of Addendum #01 are clear and unambiguous x x x. Article 1370 of the Civil Code in part

states that "if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." As worded, paragraph 21 is only concerned with excavation works, and no other. Paragraph 21 provides that all excavation works are within the scope of works of KKCA but it does not oblige KKCA to directly perform the same as it admits the employment of excavation sub-contractors, albeit for the account of Colorite. On the other hand, paragraph 33 explicitly makes soil protection works, and the installation of adequate dewatering equipment and pumps as KKCA's direct contractual obligation. While soil protection works and adequate dewatering system have distinct purposes, they are similar since both are continuing necessities while the foundation and the basement are not yet secured. It was thus logical that both items were placed under the general contractor's direct responsibilities under paragraph 33.

4. **ID.; ID.; ID.; PERFECTION OF CONTRACTS; ENTAILS THAT THE PARTIES AGREE ON EVERY POINT OF A PROPOSITION.—** [I]t is not clear that the parties really agreed on whether Colorite was to contribute Php 700,000.00 or 70% of the restoration cost. The CA's conclusion arose from KKCA's demand of Php 700,000.00 from Colorite. The CA regarded the same as KKCA's acceptance of Colorite's purported offer. KKCA insists that the CA erred in ruling that Colorite is liable only for the amount of Php 700,000.00 and not 70% of the subject restoration cost. Absent any showing that the minds of the parties did meet on an essential term of the purported contract, *i.e.*, whether Colorite should contribute Php 700,000.00 or 70% of the total cost, it appears that no subsequent and definitive agreement or contract was perfected between the parties on this regard. In the case of *Pen v. Julian*, the Court instructed that **the perfection of a contract entails that the parties should agree on every point of a proposition — otherwise, there is no contract at all.**

5. **ID.; ID.; ID.; 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.—** The Court x x x holds that KKCA is under the obligation to secure the quitclaim from the Hontiveros family and to work

for the lifting of the Hold Order. This obligation is deemed written in Article XIII of the construction contract x x x. By express provision of Article 1315 of the Civil Code**, 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.** Without a doubt, Article XIII was stipulated to secure Colorite from any liability arising from third-party claims. Needless to say, the security under contemplation is necessarily anchored on Colorite's interest in the completion of the project. In expressly anticipating the probability of causing damages to adjacent properties, the stipulation comprehends as well as the resolution of legal issues, which may arise incidental to the construction project. The records show that KKCA was remiss in its obligation to secure the quitclaim from the Hontiveros family and work for the lifting of the City Government of Makati's Hold Order.

6. ID.; ID.; ID.; BREACH OF CONTRACT; WHEN THERE IS NO BAD FAITH AND IN THE ABSENCE OF PROOF THAT THE BREACH WAS ATTENDED BY DELIBERATE INTENT, THE SAME CAN ONLY BE REGARDED AS SIMPLE NEGLIGENCE.— The Court cannot find any justification behind KKCA's failure to insure that damages shall not arise as a result of the excavation. KKCA employed soil protection only after erosion had already taken place. Indeed, KKCA's failure to provide sufficient soil protection measures caused the erosion and was the proximate cause which set in motion the chain of events resulting to the project's delay. KKCA represented itself as capable, competent and duly licensed to undertake the project. Thus, it is but reasonable to assume that KKCA knows the importance of soil protection in excavations and the degree of the risks involved in the absence of such protective measures. However, considering that Colorite never imputed bad faith on the part of KKCA, and in the absence of proof that the breach was attended by deliberate intent, the same can only be regarded as simple negligence.

7. ID.; ID.; HUMAN RELATIONS; ABUSE OF RIGHTS; EXISTS WHEN IT BECOMES MANIFEST THAT ONE'S RIGHT IS EXERCISED IN BAD FAITH FOR THE SOLE INTENT OF PREJUDICING ANOTHER.— While all x x x

easily points to the conclusion that KKCA is solely to be blamed for the delay of the project, the Court, however, finds that Colorite is also at fault. x x x Other than KKCA's fault, the delay can likewise be avoided. For one, while KKCA is under contractual obligation to secure the lifting of the Hold Order, there is, however, nothing which prohibits Colorite from doing it. Under Article V, paragraph (b) of the construction contract, Colorite has the right to terminate the contract and carry out the completion of the project in the event that the delay exceeds the maximum allowable number of days of delay. However, Colorite opted to continue to bind KKCA in the contract. While it may be that Colorite is acting within its right, the Court cannot find justification behind the former's inaction. Colorite asserts that it should be awarded compensatory damages for unrealized profit amounting to Php 460,189.00 a month owing to the alleged great demand for leasable residential/commercial units in the area. However, Colorite's inaction weighs against the sincerity of its claim. Certainly, it does not appear to be in keeping with good sense that Colorite, on its part, did not act to secure the lifting of the Hold Order. The law, under Article 19 of the Civil Code, provides that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." Article 19 of the Civil Code prescribes a primordial limitation on all rights by setting certain standards that must be observed in the exercise thereof. Accordingly, when it becomes manifest that one's right is exercised in bad faith for the sole intent of prejudicing another, an abuse of a right exists. However, abuse of a right must, of course, be proven since bad faith cannot be presumed, and nothing was presented here to establish the same.

8. **ID.; ID.; OBLIGATIONS AND CONTRACTS; DAMAGES; THE INJURED PARTY IS OBLIGATED TO UNDERTAKE MEASURES THAT WILL ALLEVIATE AND NOT AGGRAVATE HIS CONDITION AFTER THE INFLICTION OF THE INJURY, AND HAS THE BURDEN OF EXPLAINING WHY HE COULD NOT DO SO.—** The Court finds that in continuing to bind KKCA in the contract, Colorite was not impelled by good intentions. Article 2203 of the Civil Code x x x clearly obligates the injured party to undertake measures that will alleviate and not aggravate his

condition after the infliction of the injury, and places upon him the burden of explaining why he could not do so. x x x Verily, common human experience dictates that under similar circumstances, anybody in the predicament of Colorite would have opted to exercise its right to terminate the contract the moment it became apparent that the contractor would not lift a finger to finish the project. Colorite should have pursued the completion of the project by another contractor to minimize injury upon itself, without prejudice, however, to the prosecution of its cause of action against KKCA.

9. ID.; ID.; ID.; EXEMPLARY DAMAGES; IN CONTRACTS AND QUASI-CONTRACTS, THE AWARD OF EXEMPLARY DAMAGES CONNOTES THAT THE DEFENDANT ACTED IN WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE, OR MALEVOLENT MANNER.— Since KKCA cannot be regarded to be in bad faith, the Court is left with no basis for awarding exemplary damages in favor of Colorite. In contracts and quasi-contracts, the award of exemplary damages connotes that the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. As the case provides no basis consistent with any of the grounds provided under Article 2208 of the Civil Code for awarding attorney's fees and litigation cost, they cannot be awarded.

10. ID.; ID.; ID.; LOSS OF EARNINGS; ASSUMES THE NATURE OF ACTUAL OR COMPENSATORY DAMAGES AND SUCH FORM OF DAMAGES CAN ONLY BE AWARDED UPON PROOF OF THE VALUE OF THE LOSS SUFFERED, OR THAT OF PROFITS WHICH FAILED TO BE OBTAINED.— Anent Colorite's claim for compensation for lost earnings, the Court agrees with the tribunals below that it cannot be awarded for want of sufficient basis. It assumes the nature of actual or compensatory damages, and such form of damages can only be awarded upon proof of the value of the loss suffered, or that of profits which failed to be obtained. As propounded by the CA, "[t]he only basis relied upon by Colorite in claiming this item is the allegation that the subject property could have been rented at Php 460,189.00 a month. There is, however, no showing that actual lease agreements exist so as to make the loss of rentals factual and not speculative."

11. ID.; ID.; ID.; LIQUIDATED DAMAGES; FUNCTIONS; THE PARTIES TO A CONTRACT ARE ALLOWED TO STIPULATE ON LIQUIDATED DAMAGES TO BE PAID IN CASE OF BREACH.— Under Article V of the construction contract, payment of liquidated damages was expressly stipulated in case of delay x x x. Further, the fact of KKCA's delay in the performance of its obligation is well established. Nevertheless, it is also true that the delay would not have been that long had Colorite opted to exercise its right to take over the project. Article 2226 of the Civil Code allows the parties to a contract to stipulate on liquidated damages to be paid in case of breach. It is attached to an obligation in order to insure performance and has a double function: (1) to provide for liquidated damages; and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach. As a general rule, contracts constitute the law between the parties, and they are bound by its stipulations. For as long as they are not contrary to law, morals, good customs, public order or public policy, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient. By definition, liquidated damages are a penalty, meant to impress upon defaulting obligors the graver consequences of their own culpability. Liquidated damages must necessarily make non-compliance *more cumbersome* than compliance. Otherwise, contracts might as well make no threat of a penalty at all.

12. ID.; ID.; ID.; ID.; IDENTICAL TO PENALTY IN SO FAR AS LEGAL RESULTS ARE CONCERNED, AND THE INJURED PARTY NEED NOT PROVE THE DAMAGES SUFFERED BY HIM.— [T]he fact that Article V, paragraph (a) of the construction contract provides that the stipulated liquidated damages was not meant to penalize the contractor for the delay, but in order to compensate the owner for the loss it may suffer brought about by the delay is inconsequential; it does not operate to remove the stipulation's character as a penal clause. Neither does it require that the loss suffered be proved. "Liquidated damages are identical to penalty, so far as legal results are concerned. In either case, the injured party need not prove the damages suffered by him."

13. ID.; ID.; ID.; ID.; SHALL BE EQUITABLY REDUCED IF THEY ARE INIQUITOUS OR UNCONSCIONABLE.— Applying the stipulated daily rate, the totality of recoverable

liquidated damages shall amount to more than a staggering Php 43,800,000.00, which sum even surpasses the total contract price. This cannot be decreed without running afoul of the spirit and express letters of the law. Under Article 2227 of the Civil Code, "[l]iquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable." Moreover, the fact that KKCA was not able to perform substantial amount of work on the project is immaterial because it is also expressly provided under Article 1229 of the Civil Code that, "[e]ven if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable."

14. ID.; ID.; ID.; RECIPROCAL CONTRACTS; THE DOCTRINE OF STRAINED RELATIONS AND THE POLICY AGAINST INVOLUNTARY SERVITUDE ONLY APPLY TO SITUATIONS WHERE ONE IS IN THE SERVICE OF ANOTHER, RESPECTIVELY, BY VIRTUE OF AN EMPLOYMENT CONTRACT OR BY FORCE OR COMPULSION, AND DO NOT APPLY TO RECIPROCAL CONTRACTS.— Both the doctrine of strained relations and the policy against involuntary servitude are concepts, which only apply to situations where one is in the service of another, respectively, by virtue of an employment contract or by force or compulsion. They cannot apply in reciprocal contracts such as contracts for a piece of work, lest we run afoul with the principle of autonomy and obligatory nature of contracts evenly guaranteed under Article III, Section 10 of the Constitution. If KKCA truly believes that it has lawful basis to withdraw from the contract and/or be released therefrom, it should have filed an action for rescission. The Court agrees that KKCA should finish the project. The contract subsists, and by all legal measure, the parties should comply with their contractual obligations. x x x As the contract continues to be in effect, every stipulation contained therein should, in principle, be held as controlling. Thus, the contract price should remain per agreement of the parties. This has to be for there is nothing in the contract which provides that any of its provisions will only be effective within the stipulated period of completion. In fact, the contract even contemplated the possibility of delay, and as stipulated, it was without prejudice to the effectivity of the escalation clause. Owing to the length of time that the project

was delayed, the Court agrees that the original contract price will not suffice anymore to cover the cost of completing the project. However, the Court cannot adjust the contract price because it has no authority to rewrite contracts even to foster equity.

15. ID.; ID.; ID.; BREACH OF CONTRACT; ONE INJURED BY A BREACH OF CONTRACT, OR BY A WRONGFUL OR NEGLIGENT ACT OR OMISSION SHALL HAVE A FAIR AND JUST COMPENSATION COMMENSURATE TO THE LOSS SUSTAINED AS A CONSEQUENCE OF THE DEFENDANT'S ACT.— KKCA breached its obligation in failing to provide sufficient soil protection measures, and this was the proximate cause of the delay. In a number of cases, the Court maintained that it is fundamental in the law on damages that the one injured by a breach of contract, or by a wrongful or negligent act or omission shall have a fair and just compensation commensurate to the loss sustained as a consequence of the defendant's act. In building contracts, it has been held that the measure of damages for breach is the amount expended by the owner in completing the project and in correcting defects. Hence, the increase in the amount necessary to finish the project, over and above the contract price, should be charged against KKCA as imposable damages. By legal definition, such damages are in the nature of actual or compensatory damages. True, in order to legally award actual damages, the same must be duly proven. x x x Here, the additional amount for the completion of the project remains unquantifiable. Nevertheless, on principle, it can be awarded because said amount is a necessary incident in the completion of the project. Verily, considering the length of time that the project was delayed, the fact of increase in the construction cost above the contract price is beyond proof, and the utilization of said amount is an absolute certainty as long as Colorite remains intent on seeing the project through.

APPEARANCES OF COUNSEL

RV Cabatcan Law Office for Colorite Marketing Corp.
Somera Penano & Associates for Ka Kuen Chua.

D E C I S I O N

REYES, *J.*:

These are consolidated petitions for review on *certiorari* assailing the Decision[1] dated July 28, 2009 and Resolution[2] dated October 4, 2010 of the Court of Appeals (CA) in CA-G.R. SP Nos. 103892 and 103899, which affirmed with modifications the Final Award[3] of the Construction Industry Arbitration Commission (CIAC) dated May 27, 2008 in CIAC Case No. 32-2007.

The Facts

On November 15, 2003, Colorite Marketing Corporation (Colorite) and Architect Ka Kuen Tan Chua (Chua), doing business under the name and style "Ka Kuen Chua Architectural" (KKCA), signed a construction contract whereby the latter undertook to build a four-storey residential/commercial building for the former on a parcel of land located at St. Paul Road, corner Estrella Avenue, Makati City.[4]

The parties agreed to a full contract price of Thirty-Three Million Pesos (Php 33,000,000.00), subject, among others, to the following stipulations: a) the project will commence in seven days from the time KKCA received a notice to proceed from Colorite, and will be completed within 365 days reckoned from the seventh day after the release of the down payment;[5] b) in the event that the project is not completed on time, the amount

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[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Rosmari D. Carandang and Ramon M. Bato, Jr. concurring; *rollo* (G.R. Nos. 193969-70), pp. 69-110; *rollo* (G.R. Nos. 194027-28), pp. 45-86.

[2] *Rollo* (G.R. Nos. 193969-70) pp. 111-113; *rollo* (G.R. Nos. 194027-28), pp. 87-89.

[3] *Rollo* (G.R. Nos. 193969-70), pp. 631-654.

[4] *Id*. at 70, 642-643.

[5] *Rollo* (G.R. Nos. 194027-28), p. 107.

of Php 10,000.00 for each calendar day of delay shall be paid by KKCA to Colorite;[6] c) only a maximum of 20% of slippage, or 73 calendar days of delay, is allowed, and Colorite has the right to terminate the contract if the delay exceeded the maximum number of days allowed;[7] and d) Colorite has the right to take over and complete the construction of the project, and all costs incurred thereby will be deducted from the amount due to KKCA.[8]

In addition to the main construction contract, the parties also agreed on complementary provisions embodied in Addendum #01[9] and Addendum #02.[10]

Thereafter, Colorite issued the *Notice to Proceed,* and paid the agreed down payment in the amount of Php 6,600,000.00 corresponding to 20% of the contract price.[11]

To undertake the excavation work, Colorite engaged the services of WE Construction Company (WCC).[12] On January 10, 2004, full-blast excavation work began.[13] However, on January 17, 2004, the excavation resulted in erosion, which caused damage to the adjacent property owned by the Hontiveros family. This prompted the latter to file a formal complaint before the City Government of Makati. In view of this development, a Hold Order was issued by the Building Officials of Makati City dated January 22, 2004 directing KKCA to *stop immediately all its excavation activities in the premises, and to immediately restore the eroded portion of the adjacent property.* The incident resulted in the delay of the project because the Hontiveros family refused to sign a waiver that was required

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[6] *Id.* at 108.

[7] *Id.*

[8] *Id.*

[9] *Rollo* (G.R. Nos. 193969-70), pp. 192-194.

[10] *Id.* at 195.

[11] *Id.* at 70.

[12] *Id.* at 646.

[13] *Id.* at 633.

for the lifting of the Hold Order unless their property was restored.[14]

The restoration of the Hontiveros property was completed in October 2005.[15] Notwithstanding this development, the Hontiveros family's quitclaim remained forthcoming. As a consequence, the Hold Order remained effective and the construction suspended.

After 878 days of delay, Colorite demanded from KKCA to pay damages pursuant to the contract. KKCA refused contending that: (a) the agreed completion period was suspended when the City Government of Makati issued the Hold Order; and (b) Colorite failed to pay the costs of soil protection, as well as the 70% of the restoration cost of the Hontiveros property, which allegedly formed part of the agreement.[16]

The dispute impelled Colorite to file the instant claim before the CIAC.[17] According to Colorite, reckoning from the date the down payment was made less the seven-day interval before KKCA commenced its work, and the 73 calendar days allowed slippage, the project should have been completed on March 5, 2005.[18] Hence, from March 6, 2005 up to the commencement of the action on July 31, 2007, the project was already delayed for 878 days. This renders KKCA liable to Colorite for payment of liquidated damages in the amount of Eight Million, Seven Hundred Eighty Thousand Pesos (Php 8,780,000.00), plus Ten Thousand Pesos (Php 10,000.00) per additional day of delay until the project is completed.[19]

In addition to its claim for liquidated damages, Colorite also asserted that upon its completion, the building will

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[14] *Id*.; *rollo* (G.R. Nos. 194027-28), pp. 46-47.

[15] *Rollo* (G.R. Nos. 193969-70), pp. 257-258.

[16] *Rollo* (G.R. Nos. 194027-28), p. 47.

[17] *Rollo* (G.R. Nos. 193969-70), pp. 795-803.

[18] *Id*. at 798.

[19] *Id*.

have a total leasable area of 1,320.12 square meters. Computed at a minimum monthly rental of Php 350.00 per sq m, the building should generate a total of Php 460,189.00 lease income per month.[20]

Accordingly, Colorite prayed for the following: (a) liquidated damages in the amount of Php 8,780,000.00; (b) loss of rental earnings in the amount of Php 13,345,481.00; (c) Php 500,000.00 attorney's fees; and, (d) litigation expenses in the amount of Php 300,000.00.[21]

In his Answer,[22] Chua asserted the following:

a) He is capable[,] competent and duly licensed to undertake the project in accordance with the plans and specifications but [his liability cannot] extend to the excavation works[,] which were not undertaken by KKCA but by a subcontractor;

b) His obligation to complete the construction of [Colorite's] residential/commercial building in 365 days reckoned from the seventh day after release of the downpayment was suspended by the stoppage of the excavation by the Makati City Building Officer[,] and by [Colorite's] failure to pay the cost of soil protection and the balance of its 70% share in the costs of restoration work of the Hontiveros property[,] which not only delayed the construction and increased its costs but rendered the performance of the contract extremely difficult;

c) On January 10, 2004, full blast excavation work in the construction project was beg[u]n by [WCC]. On January 17, 2004, substantial soil erosion occurred and caused damages to the adjacent Hontiveros property and [on] January 27, 2004, the Makati City Building Office ordered the suspension of the excavation which lasted up to the present despite [diligent] effort on the part of [KKCA] to lift the suspension order and repair the damage to the Hontiveros property. On February 28, 2004[,] another erosion occurred causing further damage to the Hontiveros property;

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[20] *Id.* at 798-799.

[21] *Id.* at 639, 800-801.

[22] *Id.* at 402-421.

d) [Colorite] agreed to share 70% in the restoration cost of the Hontiveros property [but] the remaining 30% was [KKCA's] share; as proof of [Colorite's] commitment to the new agreement[,] it paid Php150,000.00 for the boring test, but [Colorite] reneged on its undertaking to share in the restoration costs of the Hontiveros property thereby compelling [KKCA] to advance [the] costs[,] which claimant was duly notified [of] and billed[.] [H]owever, the latter refused further payment and instead offered the amount of Php800,000.00 as its donation not by way of sharing;

e) [KKCA] denied the claim of [Colorite] for rental income loss in the sum of Php13,345,481.00 as without basis and purely speculative; [KKCA] further denied [Colorite's] claim for liquidated damages in the sum of Php8,780,000.00 because the period of construction was deemed suspended with the suspension of the excavation by [Colorite's] failure to pay its share in the soil protection and restoration costs of the Hontiveros property; [and]

f) On its counterclaims[,] [KKCA] claimed for soil protection installed in the sum of Php1,324,340.64, soil protection for the unexcavated portion in the sum of Php3,583,872.00, design fee in the sum of Php2,310,000.00, ECC permit in the sum of Php50,000.00, balance of 70% share in the restoration of Hontiveros property in the sum of Php1,777,011.00; cost of maintaining the project site in the sum of Php2,047,269.00, moral damages for Php500,000.00, exemplary damages for Php500,000.00 and attorney's fees for Php500,000.00.[23]

Ruling of the CIAC

On May 27, 2008, the CIAC rendered its Final Award.[24] It ruled as follows:

On the basis of the evidence submitted by the parties the Arbitral Tribunal finds and so holds:

[COLORITE]:

1. [Colorite] is entitled to its claim for liquidated damages but only for 50% thereof (Php8,780,000.00) or for the sum of

[23] *Id.* at 632-633.

[24] *Id.* at 631-654.

Php4,390,000.00 because it is equally responsible for the delay; [and]

2. [Colorite] is not entitled to recover its other claims for loss of rental earnings, attorney's fees and litigation expenses.

[KKCA]:

1. [KKCA] is entitled to his claim for soil protection works but only for the sum of Php552,840.60 but cannot recover his claim for soil protection works for the unexcavated portion;

2. [KKCA] is entitled to recover [its] claim for design fee in the sum of Php2,310,000.00;

3. [KKCA] is not entitled to [its] claim for recovery of ECC permit fee inasmuch as there is evidence [that] it was paid by [Colorite];

4. [KKCA] is entitled to [its] claim for restoration costs but only for the sum of Php523,579.20, which is 50% of [its] proven total claim of Php1,047,157.40;

5. [KKCA] is entitled to [its] claim for recovery of the costs of maintaining the project site but only for the sum of Php313,684.32[,] which is 50% of [its] total proven costs of Php627,368.64, inasmuch as the costs are part of the restoration costs of the Hontiveros property;

6. [KKCA] is not entitled to [its] claim for moral and exemplary damages and for attorney's fees; [and]

7. The parties shall bear their respective arbitration costs.[25]

Not satisfied with the CIAC award, both parties filed their respective petitions for review before the CA.

Ruling of the CA

On July 28, 2009, the CA promulgated the assailed Decision[26] affirming with modifications the Final Award of CIAC. The *fallo* of the CA decision reads:

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[25] *Id.* at 652-653.

[26] *Id.* at 69-110; *rollo* (G.R. Nos. 194027-28), pp. 45-86.

WHEREFORE, in view of the foregoing, the instant **PETITION** is partially **GRANTED**. The assailed Final Award dated May 27, 2008 of the [CIAC] in CIAC Case No. 32-2007 is **AFFIRMED** with **MODIFICATIONS**.

Accordingly, the assailed Award is hereby **AFFIRMED** with respect to the following:

FOR COLORITE:

1. Colorite is entitled to its claim for liquidated damages but only for 50% of Php8,780,000.00 or for the sum of Php4,390,000.00.

2. Colorite is not entitled to loss of rental earnings, attorney's fees and litigation/arbitration expenses.

FOR KKCA:

1. KKCA is entitled to its claim for soil protection works but only in the amount of Php552,840.60.

2. KKCA is entitled to its claim for design fee in the amount of Php2,310,000.00.

3. KKCA is not entitled to its claim for increase in the price of construction materials, moral and exemplary damages, attorney's fees and litigation/arbitration costs.

In addition, the Final Award is **MODIFIED** with respect to the following:

FOR COLORITE:

1. Colorite is hereby ordered to pay KKCA the amount of Php550,000.00 (Php700,000.00 less ₱150,000.00 which it already advanced) as part of its share in the restoration costs of the Hontiveros property;

2. Colorite is ordered to share 50% in the total maintenance costs (Php2,047,268.75) or a total amount of Php1,023,634.30.

3. Colorite is ordered to reimburse KKCA the amount paid by the latter for the ECC permit in the amount of Php50,000.00.

4. In satisfying Colorite's obligations, the necessary deductions should be made from its down payment of Php6,600,000.00 as may be appropriate.

FOR KKCA:

1. KKCA is directed to finish the subject construction project subject to the necessary adjustments in the contract price;

2. KKCA is enjoined to secure the quitclaim from the Hontiveros family and the lift order from the city government of Makati in order for the construction project to proceed.

SO ORDERED.[27]

According to the CA, the construction contract shows that Colorite was indeed liable for the payment of the design fee, it being not really included in the summary of the bid proposal, which itemized all the works that KKCA proposed to perform.[28] On the other hand, soil protection and excavation works were deemed included in the KKCA's scope of work; hence, expenses for said items should be deemed as necessarily contained in the agreed contract cost and no separate computation and payment for the same is necessary.[29] Nevertheless, the CA adjudged that KKCA is entitled to its claim for soil protection works in the amount proved by the evidence presented, and the same shall be deducted from the total down payment already made.[30]

As further found by the CA, the original construction contract categorically states that Colorite shall be held free from any liability arising from damages to third parties; thereupon, only KKCA should be made to bear the costs of the restoration of the Hontiveros property.[31] However, the CA maintained that

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[27] *Rollo* (G.R. Nos. 193969-70), pp. 108-109; *rollo* (G.R. Nos. 194027-28), pp. 84-85.

[28] *Rollo* (G.R. Nos. 193969-70), p. 99; *rollo* (G.R. Nos. 194027-28), p. 75.

[29] *Rollo* (G.R. Nos. 193969-70), pp. 80-81; *rollo* (G.R. Nos. 194027-28), pp. 56-57.

[30] *Rollo* (G.R. Nos. 193969-70), pp. 82-83; *rollo* (G.R. Nos. 194027-28), pp. 58-59.

[31] *Rollo* (G.R. Nos. 193969-70), p. 85; *rollo* (G.R. Nos. 194027-28), p. 61.

said stipulation was deemed superseded when the parties agreed that Colorite will share in the cost of restoration of the Hontiveros property (*restoration agreement*). Due to this fact, and because of Colorite's contributory negligence owing to its failure to deliver the share it promised amounting to Php700,000.00, it is partly to blame for the protracted delay of the project.[32] Accordingly, Colorite was adjudged as only entitled to 50% of the liquidated damages it is claiming or Php4,390,000.00.[33] For the same reason, Colorite was also held liable to 50% of the total maintenance cost amounting to Php2,047,268.75.[34]

The CA ruled that the parties were both at fault, but were not in bad faith. Consequently, neither party is entitled to moral damages, exemplary damages, arbitration costs and attorney's fees.[35]

Anent the Environment Compliance Certificate (ECC) Fee, the CA ruled that Colorite should reimburse KKCA, because payment for the same was advanced by the latter in the name of the former.[36]

Dissatisfied, both parties filed their respective motions for reconsideration. However, both motions were denied by the CA per Resolution[37] dated October 4, 2010.

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[32] *Rollo* (G.R. Nos. 193969-70), pp. 85-90; *rollo* (G.R. Nos. 194027-28), pp. 61-66.

[33] *Rollo* (G.R. Nos. 193969-70), pp. 104-105; *rollo* (G.R. Nos. 194027-28), pp. 80-81.

[34] *Rollo* (G.R. Nos. 193969-70), p. 96; *rollo* (G.R. Nos. 194027-28), p. 72.

[35] *Rollo* (G.R. Nos. 193969-70), pp. 105-108; *rollo* (G.R. Nos. 194027-28), pp. 81-84.

[36] *Rollo* (G.R. Nos. 193969-70), pp. 99-100; *rollo* (G.R. Nos. 194027-28), pp. 75-76.

[37] *Rollo* (G.R. Nos. 193969-70), pp. 111-113; *rollo* (G.R. Nos. 194027-28), pp. 87-89.

The parties filed before the Court their respective petitions[38] under Rule 45 of the Rules of Court. Since the instant petitions assail the same CA decision, both petitions were consolidated per Resolution[39] dated December 15, 2010.

According to Colorite, the CA erred in:

a) not awarding Colorite full liquidated damages and in ordering the adjustment of the contract price;

b) ruling that Colorite is not entitled to loss of rentals and attorney's fees;

c) ruling that Colorite is liable to share in the restoration costs of the Hontiveros property and maintenance costs of the project;

d) ruling that Colorite is liable to pay the costs of design fee and ECC permit; and

e) ruling that KKCA is entitled to its claim for soil protection works.[40]

For its part, KKCA asserts that the CA erred in:

a) finding that excavation and soil protection works are included in KKCA's responsibilities and should be deemed included in the Contractor's Scope of Work indicated in the contract;

b) directing KKCA to finish the subject construction project;

c) ruling that KKCA is enjoined to secure the quitclaim from the Hontiveros family, and the lift order from the City Government of Makati so that the construction project can proceed;

d) awarding Colorite liquidated damages in the amount of Php 4,390,000.00;

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[38] *Rollo* (G.R. Nos. 193969-70), pp. 10-67; *rollo* (G.R. Nos. 194027-28), pp. 11-43.

[39] *Rollo* (G.R. Nos. 194027-28), pp. 123-124.

[40] *Id.* at 31.

e) ruling that Colorite is liable only for the amount of Php 700,000.00 and not 70% of the costs for the restoration of the Hontiveros property;

f) ruling that KKCA was only able to prove the amount of Php 552,840.64 as cost for soil protection works;

g) ruling that Colorite is liable only for 50% of the cost of maintaining the project site; and

h) not holding Colorite liable for moral damages, exemplary damages, attorney's fees, arbitration fees, and other costs of suit.[41]

Ruling of the Court

As a general rule, a petition for review on *certiorari* under Rule 45 is limited to questions of law. However, this rule admits of certain exceptions; among them is when the findings of the CA conflict with those of the court *a quo*,[42] as in this case. Thus, a review of the evidence on record is warranted.

The instant controversy arose from the delay in the completion of the construction project.

According to the CIAC, the issuance of the Hold Order was the immediate cause of the delay.[43] However, there is no denying that said Hold Order would not have been issued if not for the complaint instituted by the Hontiveros family after their property was damaged by the erosion. Thus, it is material to determine what caused the erosion, and who should be blamed therefore.

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[41] *Rollo* (G.R. Nos. 193969-70), pp. 38-39.

[42] *Geraldine Michelle B. Fallarme and Andrea Martinez-Gacos v. San Juan de Dios Educational Foundation, Inc., Chona M. Hernandez, Valeriano Alejandro III, Sister Conception Gabatino, D.C., and Sister Josefina Quiachon, D.C.*, G.R. Nos. 190015 & 190019, September 14, 2016; *Da Jose, et al. v. Angeles, et al.*, 720 Phil. 451, 462 (2013); *Sampaguita Auto Transport Corp. v. NLRC, et al.*, 702 Phil. 701, 709 (2013).

[43] *Rollo* (G.R. Nos. 193969-70), p. 645.

The records further show that the restoration of the Hontiveros property was already completed in October 2005. In spite of this, the construction remained suspended. The instant case was instituted on July 31, 2007, or 24 months from the time the Hontiveros property was restored.

There are two principal questions to be resolved herein, to wit: (a) what factor or factors contributed to the project's prolonged delay?; and (b) what are the parties' respective participation, if any, in the delay?

Moreover, the resolution of this case also rests upon an examination of the parties' contractual relationship embodied in the main construction contract, Addendum #01 and Addendum #02, and the alleged agreement entered into by the parties where Colorite will contribute Php 700,000.00 in the restoration of the Hontiveros property.

KKCA is at fault for the erosion, which damaged the Hontiveros property

The CIAC found that the parties are both to blame for the erosion, which damaged the Hontiveros property; hence, they should equally share the restoration cost of the same and bear the consequences of the project's delay.[44]

According to the CIAC:

> The actual cause of the delay is the failure by the parties to realize and admit that they are both to blame for the erosion the excavation had caused to the adjacent Hontiveros property and therefore are to share equally the expenses of restoring said property.
>
> The excavation was done by [WCC] that was engaged by [Colorite] and it was done without the correct and adequate soil protection for which reason it caused erosion to the adjacent Hontiveros property. [Colorite] assumed responsibility for the defective excavation of its contractor when it did not hold [WCC] accountable and was present

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[44] *Id.*

in the various meetings with [KKCA], the Hontiveros family[,] and Makati Building Official regarding the restoration of the Hontiveros property and it is estopped to deny it. Estoppel precludes one from denying or asserting by his own deed or representative any contrary to that established as the truth in the legal contemplation (**R-11 Builders Inc. v. CIAC G.R. No. 152545 & 165687, Nov. 15, 2007**). But [KKCA] is equally to blame because erosion occurred on January 20, 2007[45] (sic) after full blast excavation started on January 17, 2007[46] (sic) after excavation was added to its scope of work on December 15, 2003 (Exh. R-11), which placed under its supervision the excavation works of the sub-contractor. x x x.[47] (Emphasis in the original)

On the basis of estoppel, the CIAC concluded that Colorite was also at fault considering that it attended the various meetings regarding the restoration of the Hontiveros property; and it did not attribute any fault on WCC. To this, the Court cannot agree.

Colorite was present in the various meetings with KKCA, the Hontiveros family, and Makati building official regarding the restoration of the Hontiveros property. However, such fact, by itself, should not be taken against Colorite. As the owner of a project involving a substantial amount of financial investment, it is but normal for Colorite to show extraordinary interest in the resolution of an issue that posed a problem to the project's completion. Colorite's mere presence in the meetings does not amount to conduct and/or representation that it has, in fact, assumed an obligation. The principle of estoppel was, thus, erroneously applied.

Secondly, the CIAC maintained that WCC was at fault for the defective excavation. According to the CIAC:

In the construction industry[,] soil protection is part of excavation works inasmuch as it is necessary in order to prevent erosion. The sub-contractor, [WCC], the company contracted by

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[45] Should be January 17, 2004; *id*. at 633.

[46] Should be January 10, 2004; *id*.

[47] *Id*. at 645-646.

[Colorite] to do the excavation work for the basement and foundation of the building before the contract and Addendum #01 were signed by the parties, is duty bound to provide correct and adequate soil protection to avoid erosion. [Colorite] failed to establish that its sub-contractor did soil protection work and if it did[,] it was [not] adequate or properly done. On the contrary, what happened was that after its initial full blast excavation works[,] the wall of the excavated basement adjacent [to] the Hontiveros property collapsed.[48]

The CIAC concluded that by not holding WCC accountable, Colorite, thereby, condoned its actions and assumed its liabilities. As such, WCC's liability in the resulting damage to the Hontiveros property should be borne by Colorite. To this, the Court once again disagrees. For one, WCC was not an employee of Colorite within the contemplation of Article 2180,[49] in relation

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[48] *Id*. at 647.

[49] 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.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

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.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

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.

to Article 2176,[50] of the Civil Code as to make the latter liable for the damages caused by the former. Further, the fact that it was Colorite, which contracted WCC to do the excavation works, is of no moment. It is beyond dispute that the parties expressly agreed that all excavation works are included in KKCA's scope of work, as the general contractor of the project. Paragraph 21 of Addendum #01 is clear on this point. It reads:

21. **All excavation works as required for, should be included on the scope of works of the Contractor**. Disregard Pre-Bid Minutes Item II-G at Page 3.

NOTE: Corresponding cost to be paid to the contractor based on sub-contractor's cost.[51] (Emphasis ours)

In view of the said stipulation, WCC was placed under KKCA's supervision and control.

Notably, in its Answer to Colorite's Complaint before the CIAC, KKCA never asserted that WCC should be blamed for the erosion. Although KKCA intimated that *substantial soil erosion occurred on January 17, 2004 after WCC commenced with the full blast excavation on January 10, 2004,*[52] the said statement only redounds against WCC's liability and negates KKCA's assertion that *there were already erosions prior to the commencement of its undertaking*.[53] Note that KKCA commenced performance of its undertakings on December 22, 2003, or seven days after the signing of the contract on December 15, 2003. Therefore, by January 10, 2004, KKCA was already in full control of the project for 19 days. Within such period, KKCA should have already installed, or was in

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[50] 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.

[51] *Rollo* (G.R. Nos. 193969-70), p. 193.

[52] *Id*. at 633.

[53] *Id*. at 334.

the process of installing soil protection measures to ensure safe excavation pursuant to its contractual obligation under paragraph 33 of Addendum #01.

Luis T. Reyes, KKCA's consultant[54] tasked to supervise the excavation, testified that no soil protection measure was installed prior to the erosion. It was only after the erosion took place that KKCA installed remedial measures to avert aggravation but to no avail. Hence, the services of soil protection specialists, *Pearl and Jade*, were called upon. Thus:

Archt. L. T. Reyes (Respondent):
Actually[,] we have performed the remedial measures on that. We have installed the warmest and plastering, so that we can contain the erosion.

Atty. B. G. Fajardo (Arbitrator):
Yeah[,] before this warmest, this remedial measure was done[,] there were prior erosions. There were a remedial measure because erosion took place, is that correct?

Archt. L. T. Reyes (Respondent):
Yes. There is an erosion, there [were] erosion[s].

Atty. B. G. Fajardo (Arbitrator):
That's why precisely, after you did a remedial measures after the erosion took place in January 2004, is that correct?

Archt. L. T. Reyes (Respondent):
2004?

Atty. B. G. Fajardo (Arbitrator):
Yes.

Archt. L. T. Reyes (Respondent):
Yes, sir.

Atty. B. G. Fajardo (Arbitrator):
Then of course after you made a remedial measure[,] you [were] continuous[ly] supervising the excavation, is that correct?

Archt. L. T. Reyes (Respondent):
Excuse me[,] sir.

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[54] *Id*. at 194.

Atty. B. G. Fajardo (Arbitrator):
You just follow me, in January, okay, you took over this revision of the excavation work. Now during the work, excavation works [which] you supervise[d] because of the addendum[,] there was an erosion in January 2004, is that correct?

Archt. L. T. Reyes (Respondent):
Yes[,] sir.

Atty. B. G. Fajardo (Arbitrator):
After the erosion, you did the remedial measures?

Archt. L. T. Reyes (Respondent):
Yes[,] sir.

Atty. B. G. Fajardo (Arbitrator):
Okay. Now…

Archt. L. T. Reyes (Respondent):
They do continuously…

Atty. B. G. Fajardo (Arbitrator):
Just answer me, just answer then go ahead. You did the remedial measures, okay. Then the excavation works continued then there was another erosion. So you abide again [by] the remedial measures, that's my point. In other words, you perform[ed] duties attendant to your work as contractor in the excavation works in the basement.

Archt. L. T. Reyes (Respondent):
Excuse me, sir. We do remedial measure continuously not only when there is erosion. We continuously put a (unintelligible) and subsequently during that time[,] we consulted a foundation specialist which [is] Pearl and Jade. We do not attack the problem when there is a problem. We attack it before the problem occurs.

Atty. B. G. Fajardo (Arbitrator):
Yeah, that is correct. That should be the ideal thing. **But you did the remedial measures in January after the erosion took place in January, is that correct?**

Archt. L. T. Reyes (Respondent):
Yes.

Atty. B. G. Fajardo (Arbitrator):
Okay. That's true, **you did the remedial measures because [erosion] already took place. And it[']s good that you continued**

making a remedial measure, but the fact is there was a prior erosion before you did the remedial measures. And you continued [with] this[.] [D]espite your remedial measure[,] another erosion took place in February 2004, is that correct?

Archt. L. T. Reyes (Respondent):
It's correct.[55] (Emphasis ours)

As found by the CIAC:

[E]rosion occurred on January 20, 2007[56] (sic) after full blast excavation started on January 17, 2007[57] (sic) after excavation was added to its scope of work on December 15, 2003 (Exh. R-11) which placed under its supervision the excavation works of the sub-contractor. Plainly, when [KKCA] accepted excavation as an additional work to the scope of the contract[,] it became part of its contractual obligations under the contract. x x x [KKCA] showed [it] felt answerable for the erosion when it voluntarily took measures to contain the erosion after it happened. (Affidavit of Luis T. Reyes) [KKCA] did not have the competence to do soil protection itself or supervise its being done by the sub-contractor and hid this deficiency, consequently, failing to address the problem immediately until the erosion took place. The soil protection it did immediately after the initial erosion was not adequate as further erosion was evident which compelled [KKCA] to engage the services of a foundation specialist, Pearl and Jade[,] in order to improve the soil protection methodology. (Affidavit of Luis T. Reyes) x x x.[58]

In its petition before the Court, KKCA imputes negligence on the part of WCC,[59] but fails to specifically mention how. Nothing was asserted to point out how the erosion occurred due to WCC's action or inaction.

In any event, pursuant to paragraph 21 of Addendum #01, any fault or negligence committed by WCC after KKCA

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[55] *Id*. at 278-281.

[56] Should be January 17, 2004; *id*. at 633.

[57] Should be January 10, 2004; *id*.

[58] *Id*. at 646.

[59] *Id*. at 50.

commenced performance of its undertakings per contract provisions should be attributed to the latter.[60]

Attempting to be relieved from liability, KKCA pointed out that: (a) it was Colorite which selected WCC to do the excavation works; (b) WCC's services was engaged before the construction contract was signed; and (c) WCC already started with excavation works on November 19, 2003.[61] KKCA cannot now claim that it was unaware of the foregoing circumstances before it signed the contract. In the proceedings before the CIAC, Chua categorically admitted that when he signed the contract, he already knew that excavation was going on in the area.[62] In spite of such knowledge, he freely and voluntarily signed and assented to the Addendum. Thus:

Atty. B. G. Fajardo (Arbitrator):

x x x. **Now when you sign[ed] the addendum, you sign[ed] it freely, without duress, is that correct?** You signed it without duress[,] you signed it freely?

Archt. K. K. Chua (respondent):

Yes.[63]

x x x x x x x x x

Atty. B. G. Fajardo (Arbitrator):

No, **but you know when you sign[ed] the contract on December 15, 2003, you already knew that there were excavations there**.

Archt. K. K. Chua (Respondent):

Yes, we do sir.[64] (Emphasis ours)

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[60] *Id*. at 193.

[61] *Id*. at 42

[62] *Id*. at 335.

[63] *Id*. at 274.

[64] *Id*. at 335.

Indeed, KKCA cannot deny its contractual obligation to ensure that excavation works were properly done. It is settled that the law does not relieve a party from the effects of an unwise, foolish, or disastrous contract, entered into with all the required formalities and with full awareness of what he was doing, and courts have no power to relieve parties from obligations voluntarily assumed, simply because their contracts turned out to be disastrous deals or unwise investments. *Volenti non fit injuria*.[65]

The CA was correct when it found that pursuant to paragraph 33 of Addendum #01, and the pertinent provision of Article XIII of the Main Construction Contract, KKCA assumed the responsibility of ensuring that properties adjacent to the project are protected from erosion and settlement.[66] Said contractual provisions read:

Paragraph 33 of Addendum #01 states:

> 33. The Contractor to provide, erect and maintain all necessary bracing, shoring, planking, etc.[,] as required to protect the adjoining property against settlement and damages. Adequate dewatering equipments (sic) and pumps to be provided. The Contractor has the prerogative to choose what type of methodology that he would use for the project but he [has] to make sure that [it] will protect the adjacent properties against erosion and settlement.[67]

Article XIII of the Main Construction Contract:

> The OWNER shall be held free and harmless from any liability arising from claims of third parties arising from the construction such as[,] but not limited to wages, pay, compensation for injury or death to laborers, SSS premiums, adjoining property settlement, etc.[,] all of which shall be for the account of the CONTRACTOR.[68]

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[65] *Sanchez v. The Hon. CA*, 345 Phil. 155, 190-191 (1997).

[66] *Rollo* (G.R. Nos. 194027-28), p. 53.

[67] *Rollo* (G.R. Nos. 193969-70), p. 194.

[68] *Rollo* (G.R. Nos. 194027-28), p. 111.

The factors which delayed the project's completion

From the date the Notice to Proceed was issued, less the seven-day interval before KKCA commenced its work and the 73-calendar days allowed slippage, the project should have been finished on March 5, 2005. The restoration of the Hontiveros property was completed in October 2005. Yet, to date, the construction remained suspended.

According to KKCA, the delay of the project was not only due to the Hold Order issued by the City Government of Makati. It claims that the discontinuance of the project was also due to Colorite's failure to pay for soil protection cost and the balance of its 70% share in the restoration cost of the Hontiveros property.[69]

While the CIAC agreed with KKCA that soil protection work should be for the account of Colorite, the said tribunal failed to consider the parties' agreement that Colorite would share in the restoration of the Hontiveros property as found by the CA.[70]

Soil protection is within the contractor's scope of work; hence, deemed included in the contract price

In claiming that it is entitled to be reimbursed for the cost spent for soil protection, KKCA firmly argued that excavation and soil protection works were not part of its responsibilities.[71] KKCA pointed out that: (a) Colorite hired WCC to do excavation works; (b) Addendum #01 was not included during the discussion on the contents of the Construction Contract; and (c) KKCA's Summary of Bid Proposal states that excavation works shall not form part of its scope of work.[72] The pertinent part of the

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[69] *Rollo* (G.R. Nos. 193969-70), pp. 632-633.

[70] *Id*. at 647.

[71] *Id*. at 40.

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

Summary of Bid Proposal reads:

"*We (or I) make this proposal with full knowledge of the kind, quantity, and quality of the Articles and services required and if the proposal is accepted,* ***undersigned*** *(KKCA)* ***agrees to enter into formal agreement and mobilize and start after the excavation work by the other contractor***."[73] (Emphasis ours)

The Court cannot sanction KKCA's stance. What is material is that KKCA agreed to the stipulations contained in Addendum #01, which, among others, placed excavation and soil protection works within its scope of undertakings. Neither does it matter that the stipulations in Addendum #01 and Addendum #02 were not included in the discussion on the contents of the main Construction Contract as long as the concerned party was not deprived of ample time to study them. In any event, it was established that KKCA's consent to the provisions of Addendum #01 and Addendum #02 was not vitiated.

Anent the stated provision of the Summary Bid Proposal, it was rendered ineffective when KKCA unqualifiedly agreed to the provisions of Addendum #01.

At the onset of their contractual relationship, Colorite engaged KKCA to render architectural services. Eventually, Colorite approved a project scheme submitted by KKCA proposing a four-storey residential building. However, Colorite also requested KKCA to conduct and supervise the bidding process for the project.

On September 24, 2003, the pre-bid conference was held.[74] In the Minutes[75] of the said conference, the matter on how excavation and soil protection works shall be performed was discussed under item II, paragraph (g)[76] thereof. Accordingly, the totality of excavation work was divided into

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[73] *Id*. at 42.

[74] *Id*. at 14.

[75] *Id*. at 166-170.

[76] *Id*. at 168.

two levels, each with corresponding soil protection measure. The first level covers the depth, which extends from the natural grade-line down to the basement level, and which was to be undertaken by an excavation sub-contractor. On the other hand, the second level covering the depth beginning from the basement level down to the required column foundation height and other trimming works are to be done by the General Contractor. Item II, paragraph (g) of the pre-bid conference minutes of meeting reads:

> g) KKCA advised all the Bidders that excavation works from the natural grade line up to the Basement level shall be done by separate Excavation Contractor. However, excavation works from the Basement level up to the required column foundation height and other trimming works shall be included under the Contract of the General Contractor.
>
> Furthermore, all safety requirements needed during the General excavation works shall be included under the Contract of the Excavation Contractor. However, any safety requirements needed during the excavation works of the column footing foundation shall be included under the Contract of the General Contractor.[77]

In spite of the presence of interested bidders, Colorite decided to secure the services of KKCA as the project's general contractor.[78] KKCA agreed, and was asked to submit a formal *Summary of Bid Proposal*.[79] As pointed out above, and pursuant to item II, paragraph (g) of the pre-bid conference minutes of meeting, the summary of bid proposal pertinently stated that KKCA shall **mobilize and start after the excavation works are performed by the excavation sub-contractor.**

However, when the parties met on December 15, 2003 for the signing of the contract, Colorite presented Addendum #01 and Addendum #02. As already discussed, paragraph 21 of Addendum #01 included all excavation works within the scope of works of the general contractor, while

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[77] *Id*.

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

[79] *Id*. at 172-183.

paragraph 33 of Addendum #01 stipulates that the general contractor shall be responsible for soil protection works, *i.e., provide, erect and maintain all necessary bracing, shoring, planking, etc., as required to protect the adjoining property against settlement and damages, and to make sure that the methodology to be used will protect the adjacent properties against erosion and settlement.*

The provisions of paragraphs 21 and 33 of Addendum #01 are clear and unambiguous:

> 21. All excavation works as required for, should be included on the scope of works of the Contractor. Disregard Pre-Bid Minutes Item II-G at Page 3.
>
> **NOTE**: Corresponding cost to be paid to the contractor based on sub-contractor's cost.[80]
>
> 33. The Contractor to provide, erect and maintain all necessary bracing, shoring, planking, etc. as required to protect the adjoining property against settlement and damages. Adequate dewatering equipments (sic) and pumps to be provided. The Contractor has the prerogative to choose what type of methodology that he would use for the project but he have (sic) to make sure that they will protect the adjacent properties against erosion and settlement.[81]

Article 1370 of the Civil Code in part states that "if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."

As worded, paragraph 21 is only concerned with excavation works, and no other. Paragraph 21 provides that all excavation works are within the scope of works of KKCA but it does not oblige KKCA to directly perform the same as it admits the employment of excavation sub-contractors, albeit for the account of Colorite. On the other hand, paragraph 33 explicitly makes soil protection works, and the installation of adequate dewatering

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[80] *Id*. at 193.

[81] *Id*. at 194.

equipment and pumps as KKCA's direct contractual obligation. While soil protection works and adequate dewatering system have distinct purposes, they are similar since both are continuing necessities while the foundation and the basement are not yet secured. It was thus logical that both items were placed under the general contractor's direct responsibilities under paragraph 33.

In *Rizal Commercial Banking Corporation v. Teodoro G. Bernardino*,[82] the Court is emphatic that:

> The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from terms which he voluntarily consented to, or impose on him those which he did not.[83] (Emphasis in the original deleted)

There was no agreement that Colorite has to share in the restoration of the Hontiveros property.

The CA stated that the parties agreed for Colorite to contribute Php 700,000.00 in the restoration of the Hontiveros property. The CA also held that the provision in the main contract which states that "*the owner shall be held free and harmless from any liability arising from claims of third parties arising from the construction*"[84] was effectively superseded thereby.

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[82] G.R. No. 183947, September 21, 2016.

[83] *Id.*, citing *Bautista v. CA*, 379 Phil. 386, 399 (2000).

[84] *Rollo* (G.R. Nos. 194027-28), p. 111.

Thus, owing to Colorite's failure to deliver the said amount, the CA ruled that Colorite was partly to be blamed for the delay of the project. Accordingly, Colorite was adjudged as only entitled to 50% of the liquidated damages it is claiming. For the same reason, Colorite was also held liable of 50% of the total maintenance cost.

According to the CA:

> It can thus be seen that despite its earlier commitment to contribute ₱700,000.00 for restoration costs, Colorite failed to pay the said amount. This Court holds that while Colorite cannot be held accountable for 70% of the restoration costs **in the absence of a clear agreement to this effect,** it should nonetheless be directed to fulfill its obligation to pay ₱700,000.00. x x x.
>
> x x x [A]**lthough their contract states that KKCA should be held liable for expenses pertaining to such damage, the subsequent acts of the parties, specifically Colorite's undertaking to contribute ₱700,000.00 to the restoration costs, effectively superseded the said terms of the contract, and should now be made the governing law between the parties**. Article 1159 of the Civil Code supports this conclusion, when it provides that "(o)bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." Moreover, Article 1315 of the same Code provides that "(c)ontracts are 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." When Colorite thus bound itself to share in the restoration cost by paying ₱700,000.00, this effectively became the contract between the parties with regard to this matter**. While at first, there appeared to be a confusion as to the exact amount because KKCA was insisting on a 70-30 sharing, it has been established that KKCA also eventually demanded ₱700,000.00 from Colorite, thereby showing that at that point, there was already an agreement as to the amount that should be delivered by Colorite.** It may be said, therefore, that a binding agreement has been perfected between the parties insofar as the restoration cost is concerned, and they should be bound by it regardless of who should be blamed, if any for the erosion. x x x.
>
> x x x x x x x x x

x x x We are convinced that the parties' incapability to perform what was incumbent upon them was not attended by bad faith. **On the part of Colorite, its failure to advance P700,000.00 as part of its share in the restoration cost was due to a breakdown in the negotiation process which occurred when KKCA was insisting on a 70-30 sharing**. Although We maintain that Colorite was still at fault when it failed to give the promised P700,000.00 when KKCA was already demanding the same, it cannot be said that such refusal was tainted by bad faith. **Instead, it was more a case of a breakdown in the negotiation process, or a deadlock which the parties were not able to overcome due to their adherence to their respective positions**. x x x.[85] (Emphasis ours)

As can be deduced from the foregoing, it is not clear that the parties really agreed on whether Colorite was to contribute Php 700,000.00 or 70% of the restoration cost. The CA's conclusion arose from KKCA's demand of Php 700,000.00 from Colorite. The CA regarded the same as KKCA's acceptance of Colorite's purported offer.

KKCA insists that the CA erred in ruling that Colorite is liable only for the amount of Php 700,000.00 and not 70% of the subject restoration cost.[86]

Absent any showing that the minds of the parties did meet on an essential term of the purported contract, *i.e.*, whether Colorite should contribute Php 700,000.00 or 70% of the total cost, it appears that no subsequent and definitive agreement or contract was perfected between the parties on this regard. In the case of *Pen v. Julian*,[87] the Court instructed that **the perfection of a contract entails that the parties should agree on every point of a proposition — otherwise, there is no contract at all.**[88]

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[85] *Id.* at 64-66, 82.

[86] *Rollo* (G.R. Nos. 193969-70), pp. 39, 57.

[87] G.R. No. 160408, January 11, 2016, 778 SCRA 56.

[88] *Id.* at 67-68, citing *Moreno, Jr. v. Private Management Office*, 537 Phil. 280, 288 (2006).

As found by the CIAC, aside from the bare assertions of Chua, no other evidence was offered to sufficiently prove that an agreement to share in the restoration cost of the Hontiveros property was perfected between the parties. Thus:

> The Arbitral Tribunal is not convinced that there was an agreement by the parties on the sharing of expenses for the restoration of the Hontiveros property. [Colorite] denied there was such an agreement (during the ocular inspection of Project Site) and the alleged written agreement presented by [KKCA] was not signed by the parties. (Exh. R-19) [KKCA] mentioned several names whose presence supposedly witnessed [Colorite's] agreeing to the 70%-30% sharing in the restoration expenses but failed to present any at the hearing in order to support his contention. (Affidavit of Ka Kuen Tan Chua, Item 37)[89]

KKCA is under obligation to secure the quitclaim of the Hontiveros family and the lifting of the Hold Order issued by the City Government of Makati

There are other factors which hinder the continuation of the project; to wit: (a) the need to secure the Hontiveros family's quitclaim; and (b) the lifting of the Hold Order issued by the City Government of Makati. Verily, without the quitclaim from the Hontiveros, the Hold Order will not be lifted. With the Hold Order still in effect, no amount of settlement between the parties can push the project to proceed.

According to the CA, as it is KKCA's obligation to complete the project, then it should also be tasked to perform whatever is necessary for the purpose, and this includes securing the Hontiveros family's quitclaim and the lifting of the City Government of Makati's Hold Order.[90] For its part, however, KKCA is adamant in its position that excavation and soil

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[89] *Rollo* (G.R. Nos. 193969-70), p. 647.

[90] *Rollo* (G.R. Nos. 194027-28), p. 80.

protection works are not its responsibilities; hence, the lifting of the Hold Order should not be assigned to it.[91]

The Court now holds that KKCA is under the obligation to secure the quitclaim from the Hontiveros family and to work for the lifting of the Hold Order. This obligation is deemed written in Article XIII of the construction contract, which reads:

> **The owner shall be held free and harmless from any liability arising from claims of third parties** arising from the construction such as but not limited to wages, pay, compensation for injury or death to laborers, SSS premiums, adjoining property settlement, etc. all of which shall be for the account of the CONTRACTOR.[92] (Emphasis ours)

By express provision of Article 1315 of the Civil Code, **the parties are bound not only to the fulfilment 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**.

Without a doubt, Article XIII was stipulated to secure Colorite from any liability arising from third-party claims. Needless to say, the security under contemplation is necessarily anchored on Colorite's interest in the completion of the project. In expressly anticipating the probability of causing damages to adjacent properties, the stipulation comprehends as well as the resolution of legal issues, which may arise incidental to the construction project.

The records show that KKCA was remiss in its obligation to secure the quitclaim from the Hontiveros family and work for the lifting of the City Government of Makati's Hold Order. In spite of the fact that the Hontiveros property has already been restored, it appears that KKCA did not bother to secure the needed quitclaim or even a certificate of completion from the

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[91] *Rollo* (G.R. Nos. 193969-70), pp. 47-49.

[92] *Rollo* (G.R. Nos. 194027-28), p. 111.

contractor of the subject rehabilitation. This can be gleaned from the following excerpt of the CIAC hearing:

Atty. A. H. Habitan (Counsel-Claimant):
So, you see now that the Hontiveros property, the damage portion was finally restored…

Archt. K. K. Chua (Respondent):
Yes sir.

Atty. A. H. Habitan (Counsel-Claimant):
When was that, the date of completion of restoration?

Archt. K. K. Chua (Respondent):
The target date of completion as stated here is sometime of October 2005.

Atty. A. H. Habitan (Counsel-Claimant):
2005, and you were able to accomplish it within the target date.

Archt. K. K. Chua (Respondent):
They did the JSV Group.

Atty. A. H. Habitan (Counsel-Claimant):
And also the contractor which is the JSV Contract Services was fully paid by you?

Archt. K. K. Chua (Respondent):
Yes sir.

Atty. A. H. Habitan (Counsel-Claimant):
Now at the time you handle the full payment, did you not require them to issue you a certification of the completion of the Hontiveros property?

Archt. K. K. Chua (Respondent):
We did follow [them up] for that.

x x x x x x x x x

Atty. A. H. Habitan (Counsel-Claimant):
How about from Hontiveros, did you not try also to get a certification of completion of the restoration or what you claim as [quit]claim?

Archt. K. K. Chua (Respondent):
No, because the ETCOR, the construction manager appointed by them and the City Hall committed to do so.

x x x x x x x x x

Atty. A. H. Habitan (Counsel-Claimant):

x x x After so many follow ups and you were not given [a certification/quitclaim] did you not consult a lawyer what legal action could be done against this three entities, ETCOR, JSV Contract Services and Hontiveros family.

Archt. K. K. Chua (Respondent):

No, I did not.

Atty. A. H. Habitan (Counsel-Claimant):

Did it not occur to your mind that this certifications or [quit]claim could be a basis for you to present it to the Building Official so that the Hold Order will be entirely lifted?

Archt. K. K. Chua (Respondent):

During that time it's more in my mind the obligation with the owner which is [to] settle their share. Because of that.

Atty. B. G. Fajardo (Arbitrator):

You did not answer my question. My question is, if you give the certification either from ETCOR, from JSV Contract Services, or from the Hontiveros family that the restoration of the damaged portion of their property was completed, you can present this to the building officials so that the hold order will be lifted.

Archt. K. K. Chua (Respondent):

We did follow up regularly at their office and sometime through phone, that [quit]claim you are saying.

x x x x x x x x x

Atty. A. H. Habitan (Counsel-Claimant):

Did [it] not occur to your mind that you ultimately will be liable to the owner for not completing the project within this five times (sic)?

Archt. K. K. Chua (Respondent):

No I don't think so because of their…is the negligence of the Hontiveros and the ETCOR. It's not my negligence.

x x x x x x x x x

Atty. A. H. Habitan (Counsel-Claimant):

You did not consult your lawyer what action, legal action should be…

Archt. K. K. Chua (Respondent):
I did not.

Atty. A. H. Habitan (Counsel-Claimant):
You did not?

Archt. K. K. Chua (Respondent):
I did not.[93]

It also appears that even if Colorite took it upon itself to secure the quitclaim, and work for the lifting of the Hold Order, there was no guarantee that the project will be continued. As shown by the following, KKCA was adamant on its position that unless Colorite delivers the amount corresponding to 70% of the restoration cost of the Hontiveros property, the project will not continue. Thus:

Atty. M. Somera (Counsel-Respondent):
Archt. Chua, you said that there was no [quit]claim or you were not been able to secure the [quit]claim…

Archt. K. K. Chua (Respondent):
Yes ma'am.

Atty. M. Somera (Counsel-Respondent):
Have you secure the [quit]claim would you have to continue the project?

Archt. K. K. Chua (Respondent):
I would have, and…

Atty. M. Somera (Counsel-Respondent):
When you have secure the [quit]claim, you have to continue the construction.

Archt. K. K. Chua (Respondent):
If I will be settled with the sharing of the 70-30.

x x x x x x x x x

Atty. M. Somera (Counsel-Respondent):
If you were able to secure that [quit]claim but you were not paid, would you still have to continue with the project?

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[93] *Rollo* (G.R. Nos. 193969-70), pp. 257-262.

Archt. K. K. Chua (Respondent):
I won't.

Atty. M. Somera (Counsel-Respondent):
Why not?

Archt. K. K. Chua (Respondent):
Because that's part of our agreement the 70-30, I have shoulder[ed] so much expenses. It's so hard to bear with that, and owner has [breached] its contract, and its obligation and its commitment.[94]

KKCA is guilty of negligence

The Court cannot find any justification behind KKCA's failure to insure that damages shall not arise as a result of the excavation. KKCA employed soil protection only after erosion had already taken place. Indeed, KKCA's failure to provide sufficient soil protection measures caused the erosion and was the proximate cause which set in motion the chain of events resulting to the project's delay.

KKCA represented itself as capable, competent and duly licensed to undertake the project. Thus, it is but reasonable to assume that KKCA knows the importance of soil protection in excavations and the degree of the risks involved in the absence of such protective measures. However, considering that Colorite never imputed bad faith on the part of KKCA, and in the absence of proof that the breach was attended by deliberate intent, the same can only be regarded as simple negligence.[95]

Colorite is equally at fault for the protracted delay of the project

While all the foregoing easily points to the conclusion that KKCA is solely to be blamed for the delay of the project, the Court, however, finds that Colorite is also at fault. From the moment it became apparent that KKCA paid no heed to Colorite's demand to complete the project, the latter also began contributing to its delay.

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[94] *Id.* at 269-271.

[95] *See* Tolentino, A., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. IV, p. 111.

Despite KKCA's firm stance, the project need not actually be delayed for too long. Other than KKCA's fault, the delay can likewise be avoided. For one, while KKCA is under contractual obligation to secure the lifting of the Hold Order, there is, however, nothing which prohibits Colorite from doing it.

Under Article V, paragraph (b)[96] of the construction contract, Colorite has the right to terminate the contract and carry out the completion of the project in the event that the delay exceeds the maximum allowable number of days of delay. However, Colorite opted to continue to bind KKCA in the contract.

While it may be that Colorite is acting within its right, the Court cannot find justification behind the former's inaction. Colorite asserts that it should be awarded compensatory damages for unrealized profit amounting to Php 460,189.00 a month owing to the alleged great demand for leasable residential/ commercial units in the area. However, Colorite's inaction weighs against the sincerity of its claim. Certainly, it does not appear to be in keeping with good sense that Colorite, on its part, did not act to secure the lifting of the Hold Order.

The law, under Article 19 of the Civil Code, provides that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

Article 19 of the Civil Code prescribes a primordial limitation on all rights by setting certain standards that must be observed in the exercise thereof. Accordingly, when it becomes manifest that one's right is exercised in bad faith for the sole intent of prejudicing another, an abuse of a right exists.[97] However, abuse of a right must, of course, be proven since bad faith cannot be presumed, and nothing was presented here to establish the same.

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[96] *Rollo* (G.R. Nos. 194027-28), p. 108.

[97] *Diaz v. Encanto,* G.R. No. 171303, January 20, 2016, 781 SCRA 231, 245.

The Court finds that in continuing to bind KKCA in the contract, Colorite was not impelled by good intentions. Article 2203 of the Civil Code is explicit that:

> The party suffering loss or injury must exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission in question.

This codal rule clearly obligates the injured party to undertake measures that will alleviate and not ag-gravate his condition after the infliction of the injury, and places upon him the burden of explaining why he could not do so.[98]

Thus, in the case of *Lasam v. Smith,*[99] the Court held that it was correct to fix the recoverable damages to Php 1,254.10, and not to charge the defendant with the full expense of medical treatment amounting to Php 7,832.80 considering that it was plaintiff's refusal to submit to an operation, which spawned the ensuing series of infections and which required constant and expensive treatment for several years.

Verily, common human experience dictates that under similar circumstances, anybody in the predicament of Colorite would have opted to exercise its right to terminate the contract the moment it became apparent that the contractor would not lift a finger to finish the project. Colorite should have pursued the completion of the project by another contractor to minimize injury upon itself, without prejudice, however, to the prosecution of its cause of action against KKCA.

On claims of Damages

Colorite prays that KKCA be directed to pay exemplary damages, attorney's fees, compensation for lost earnings, litigation expenses, and liquidated damages. For its part, KKCA prays that Colorite be adjudged liable for moral damages for

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[98] *Velasco v. Manila Electric Company, et al.*, 148-B Phil. 204, 218-219 (1971).

[99] 45 Phil. 657 (1924).

the latter's bad faith in deliberately causing delay in the project and refusal to cooperate, attorney's fees, exemplary damages, arbitration fees and cost of suit.[100]

Since KKCA cannot be regarded to be in bad faith, the Court is left with no basis for awarding exemplary damages in favor of Colorite. In contracts and quasi-contracts, the award of exemplary damages connotes that the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[101] As the case provides no basis consistent with any of the grounds provided under Article 2208[102] of the Civil Code for awarding attorney's fees and litigation cost, they cannot be awarded.

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[100] *Rollo* (G.R. Nos. 193969-70), pp. 62-64.

[101] CIVIL CODE OF THE PHILIPPINES, Article 2232.

[102] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

The same evenly applies to KKCA's claim. While the Court does not find sense in Colorite's failure to exercise its right to terminate its contract with KKCA, it, however, does not equate to a finding of bad faith. At any rate, KKCA did not impute bad faith against Colorite upon this issue. KKCA imputed bad faith against Colorite for insisting that excavation and soil protection works are its responsibilities, and for refusing to comply with the alleged sharing agreement in the restoration of the Hontiveros property. Since the Court does not subscribe to KKCA's assertions, its claim for moral damages proved to be without any basis.

Anent Colorite's claim for compensation for lost earnings, the Court agrees with the tribunals below that it cannot be awarded for want of sufficient basis. It assumes the nature of actual or compensatory damages, and such form of damages can only be awarded upon proof of the value of the loss suffered, or that of profits which failed to be obtained.[103] As propounded by the CA, "[t]he only basis relied upon by Colorite in claiming this item is the allegation that the subject property could have been rented at Php 460,189.00 a month. There is, however, no showing that actual lease agreements exist so as to make the loss of rentals factual and not speculative."[104]

Respecting Colorite's claim for liquidated damages, the Court does not find any reason to deny them.

Under Article V[105] of the construction contract, payment of liquidated damages was expressly stipulated in case of delay, *viz.*:

> A. Time being of the essence of this Agreement and the CONTRACTOR'S acknowledgment that the OWNER will

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[103] CIVIL CODE OF THE PHILIPPINES, Articles 2199 and 2200; *Kabisig Real Wealth Dev., Inc. and Fernando C. Tio v. Young Builders Corp.*, G.R. No. 212375, January 25, 2017.

[104] *Rollo* (G.R. Nos. 194027-28), p. 72.

[105] *Id*. at 108.

> suffer loss by the delay or failure of the CONTRACTOR to have the work completed in all parts within the time stipulated in Article IV, **the CONTRACTOR hereby expressly covenants and agree to pay the OWNER liquidated damages in the amount of TEN THOUSAND PESOS (₱10,000.00) for each calendar day of delay (Sundays, and legal holidays included) until final completion and acceptance** by the OWNER, **the said payment to be made as liquidated damages, and not by way of penalty."**[106] (Emphasis ours)

Further, the fact of KKCA's delay in the performance of its obligation is well established. Nevertheless, it is also true that the delay would not have been that long had Colorite opted to exercise its right to take over the project.

Article 2226[107] of the Civil Code allows the parties to a contract to stipulate on liquidated damages to be paid in case of breach. It is attached to an obligation in order to insure performance and has a double function: (1) to provide for liquidated damages; and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach. As a general rule, contracts constitute the law between the parties, and they are bound by its stipulations. For as long as they are not contrary to law, morals, good customs, public order or public policy, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient.[108]

By definition, liquidated damages are a penalty, meant to impress upon defaulting obligors the graver consequences of their own culpability. Liquidated damages must necessarily make

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[106] *Id*.

[107] Article 2226. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

[108] *ACS Development & Property Managers, Inc. v. Montaire Realty and Development Corporation,* G.R. No. 195552, April 18, 2016, citing *Philippine Charter Insurance Corporation v. Petroleum Distributors & Services Corporation*, 686 Phil. 154, 164-165 (2012).

non-compliance *more cumbersome* than compliance. Otherwise, contracts might as well make no threat of a penalty at all.[109]

Thus, the fact that Article V, paragraph (a) of the construction contract provides that the stipulated liquidated damages was not meant to penalize the contractor for the delay, but in order to compensate the owner for the loss it may suffer brought about by the delay is inconsequential; it does not operate to remove the stipulation's character as a penal clause.[110] Neither does it require that the loss suffered be proved. "Liquidated damages are identical to penalty, so far as legal results are concerned. In either case, the injured party need not prove the damages suffered by him."[111]

Reckoning from March 6, 2005, as the first day of delay up to this writing, the project has been delayed for more than 12 years. Under Article V, paragraph (d), the contract allows justifiable cause or reason for delay, such as the occurrence of *coup d'etat*, general strike, typhoon, earthquake, shortage of lubricant or diesel fuel, or other civil disturbances that will directly affect the performance schedule. However, upon the occurrence of a justifiable cause, the contractor is required to submit a written request for time extension; otherwise, the original schedule shall stand. Whether or not the damaging and rehabilitation of the Hontiveros property would constitute, or would be accepted by the parties as justifiable cause or reason for delay has become inconsequential since no written request for time extension was submitted.

Applying the stipulated daily rate, the totality of recoverable liquidated damages shall amount to more than a staggering

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[109] *Philippine Economic Zone Authority v. PILHINO Sales Corporation*, G.R. No. 185765, September 28, 2016.

[110] See *H.L. Carlos Construction, Inc. v. Marina Properties Corp.,* 466 Phil. 182 (2004).

[111] Tolentino, A., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V, p. 662.

Php 43,800,000.00,[112] which sum even surpasses the total contract price. This cannot be decreed without running afoul of the spirit and express letters of the law. Under Article 2227 of the Civil Code, "[l]iquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable." Moreover, the fact that KKCA was not able to perform substantial amount of work on the project is immaterial because it is also expressly provided under Article 1229 of the Civil Code that, "[e]ven if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable."

In view of the foregoing, and considering Colorite's own inaction which contributed to the delay of the project, the Court deems that the amount of liquidated damages, which can be equitably awarded to Colorite should be that corresponding to the period beginning on March 6, 2005 to October 2005, *the date when the rehabilitation of the Hontiveros property was completed* – plus, a period of six months covering October 31, 2005 to April 30, 2006 *representing the sufficient time within which Colorite should have determined whether the project should continue under the original construction contract, or whether the contract should be terminated and the project taken over*. The period within which the project shall be completed by another contractor in the event that the original contract was terminated shall not be considered in the computation of the period of delay pursuant to the Court's ruling in *WERR Corporation International v. Highlands Prime Inc.*[113] Accordingly, the amount of liquidated damages shall be Php 4,210,000.00 corresponding to the total of 421 days beginning March 6, 2005 up to April 30, 2006.

Moreover, as the parties have been locked in a prolonged legal battle since July 2007, equity demands that no interest shall be awarded on said amount prior to the finality of this

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[112] Amount of liquidated damages for 12 years at the rate of Php 10,000.00 per day.

[113] G.R. No. 187543 and G.R. No. 187580, February 8, 2017.

Decision — lest the intention of the law, as expressed in Articles 2227 and 1229 of the Civil Code, be defeated.

KKCA is ordered to finish the project. The parties are to share in the increase in the construction cost over and above the contract price.

The CA and the CIAC agree that: (a) KKCA should see the project to its completion; (b) the escalation clause[114] of the construction contract should apply only during and within the contract period; and (c) for the purpose of completing the project, it is but proper that necessary adjustments in the contract price be made to accommodate increase in the prices of materials after the contract period. However, while the CIAC contends that the parties should evenly shoulder the necessary price adjustment on a fifty-fifty basis, the CA's decision is silent on this point.

For its part, KKCA asserts that it should be released from the obligation of completing the project because the working relationship between the parties has become so strained; hence, the construction project is best to be performed by another contractor.[115] KKCA also argues that to compel it to finish the project is violative of the constitutional guarantee against involuntary servitude.[116]

The Court cannot sanction KKCA's argument. Both the doctrine of strained relations and the policy against involuntary servitude are concepts, which only apply to situations where

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[114] Article X – Escalation Clause

It is agreed that the contract price is already fixed and will not be subjected to escalation in case of increase in the cost of taxes, licenses, permit, fees, materials, including labor escalation. Labor escalation if mandated by law should be shouldered by the CONTRACTOR.

NOTE: If the value of 1US$ reaches Php 58.00, then the OWNER will provide cash advances to the CONTRACTOR to be mutually agreed upon; *rollo* (G.R. Nos. 194027-28), p. 111.

[115] *Rollo* (G.R. Nos. 193969-70), p. 45.

[116] *Id*. at 46.

one is in the service of another, respectively, by virtue of an employment contract or by force or compulsion. They cannot apply in reciprocal contracts such as contracts for a piece of work, lest we run afoul with the principle of autonomy and obligatory nature of contracts evenly guaranteed under Article III, Section 10[117] of the Constitution. If KKCA truly believes that it has lawful basis to withdraw from the contract and/or be released therefrom, it should have filed an action for rescission.

The Court agrees that KKCA should finish the project. The contract subsists, and by all legal measure, the parties should comply with their contractual obligations. For the same reason, the Court does not share the disquisition of the tribunals below that the escalation clause of the contract should apply only during and "within the contract period," and that for the purpose of completing the project, necessary adjustments in the contract price must be made to accommodate increase in the cost of materials and/or labor "after the contract period."

As the contract continues to be in effect, every stipulation contained therein should, in principle, be held as controlling. Thus, the contract price should remain per agreement of the parties. This has to be for there is nothing in the contract which provides that any of its provisions will only be effective within the stipulated period of completion. In fact, the contract even contemplated the possibility of delay, and as stipulated, it was without prejudice to the effectivity of the escalation clause.

Owing to the length of time that the project was delayed, the Court agrees that the original contract price will not suffice anymore to cover the cost of completing the project. However, the Court cannot adjust the contract price because it has no authority to rewrite contracts even to foster equity.

KKCA breached its obligation in failing to provide sufficient soil protection measures, and this was the proximate cause of the delay. In a number of cases, the Court maintained that it

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[117] Section 10. No law impairing the obligation of contracts shall be passed.

is fundamental in the law on damages that the one injured by a breach of contract, or by a wrongful or negligent act or omission shall have a fair and just compensation commensurate to the loss sustained as a consequence of the defendant's act.[118]

In building contracts, it has been held that the measure of damages for breach is the amount expended by the owner in completing the project and in correcting defects.[119] Hence, the increase in the amount necessary to finish the project, over and above the contract price, should be charged against KKCA as imposable damages. By legal definition, such damages are in the nature of actual or compensatory damages.

True, in order to legally award actual damages, the same must be duly proven.[120] In a number of cases,[121] the Court emphasized that except in those cases where the law authorizes the imposition of punitive or exemplary damages, a party claiming damages must establish by competent evidence the amount of such damages.

Here, the additional amount for the completion of the project remains unquantifiable. Nevertheless, on principle, it can be awarded because said amount is a necessary incident in the completion of the project. Verily, considering the length of time that the project was delayed, the fact of increase in the

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[118] *Alvarez v. People of the Philippines*, 692 Phil. 89 (2012); *Llorente, Jr. v. Sandiganbayan*, 350 Phil. 820, 838 (1998); Nolledo, *Civil Code of the Philippines*, 10th ed., Vol. V, p. 927; and Gonzales-Decano, *Notes on Torts and Damages*, 1992 ed., pp. 141 and 144.

[119] *Marker v. Garcia*, 5 Phil. 557, 559 (1906); *See* also Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V, p. 642.

[120] Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

[121] *Choa Tek Hee v. Philippine Publishing Co.*, 34 Phil. 447 (1916); *Algarra v. Sandejas*, 27 Phil. 284 (1914); *Marker v. Garcia*, *supra* note 119.

construction cost above the contract price is beyond proof, and the utilization of said amount is an absolute certainty as long as Colorite remains intent on seeing the project through.

Quite similar to the issue at hand, in the case of *Baylen Corporation v. CA,*[122] the Court awarded actual damages in the amount of Php 603,160.00 representing the increase in construction cost. Said amount was adjudged in consideration of the commissioner's report and not because it was proven as the amount of actual loss. Indeed, there was no way of proving the actual amount of increase in construction cost, for as in this case, the project in said case was yet to be completed.

However, considering that Colorite is also to be blamed for the delay of the project, it would be unjust to rule that KKCA should shoulder the entire amount as it will be tantamount to unjust enrichment on the part of Colorite. Thus, the parties should commonly share the amount of the increase in construction cost.

However, as previously discussed, Colorite's fault or inaction was determined to have begun on May 1, 2006. Hence, Colorite cannot be regarded as at fault for the first year of delay.

Under the circumstances, the Court deems that a sharing of the increase in the construction cost at the ratio of 40% for Colorite and 60% for KKCA is equitable.

On the basis of the same reasoning, the amount spent for maintenance cost up to April 30, 2006 shall be for the sole account of KKCA. Maintenance cost spent from May 1, 2006 onward shall be equally shared by the parties.

Respecting the issues on whether Colorite is liable for the payment of Design Fee and ECC Permit, the Court agrees with the findings of the tribunals below. Accordingly, the Court sees no reason to disturb the same. In addition thereto, however, said liabilities shall earn legal interest at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid.

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[122] 240 Phil. 461 (1987).

WHEREFORE, the Decision and Resolution of the Court of Appeals, dated July 28, 2009 and October 4, 2010, respectively, in CA-G.R. SP Nos. 103892 and 103899, are **AFFIRMED** with **MODIFICATIONS.**

The Decision of the Court of Appeals dated July 28, 2009 is **AFFIRMED** with respect to the following:

1. Colorite is not entitled to loss of rental earnings, attorney's fees and litigation/arbitration expenses;
2. KKCA is not entitled to its claim for moral and exemplary damages, attorney's fees and litigation/arbitration costs; and
3. KKCA is enjoined to secure the quitclaim from the Hontiveros family and lift the Hold Order from the City Government of Makati in order for the construction project to proceed.

The assailed decision is **MODIFIED,** as follows:

1. Colorite is not liable to share in the restoration cost of the Hontiveros property;
2. Colorite is entitled to its claim for liquidated damages in the total amount of Php 4,210,000.00, plus legal interest at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid;
3. Colorite is ordered to reimburse KKCA the amount paid by KKCA for the Environment Compliance Certificate permit in the amount of Php 50,000.00, plus six percent (6%) interest *per annum* from finality of this Decision until fully paid;
4. KKCA is entitled to its claim for design fee in the amount of Php 2,310,000.00, plus six percent (6%) interest *per annum* from finality of this Decision until fully paid;
5. KKCA is not entitled to its claim for soil protection works;
6. KKCA to shoulder the amount spent for maintenance costs up to April 30, 2006. The amount spent for maintenance cost from May 1, 2006 onward shall be equally shared by the parties; and

7. KKCA is directed to finish the subject construction project. The increase in the cost of construction, or such amount pertaining to the difference between what it will actually cost to finish the project and the contract price shall be shared by the parties: 40% of which shall be shouldered by Colorite, and 60% for the account of KKCA.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Tijam, JJ.,* concur.

THIRD DIVISION

[G.R. No. 202308. July 5, 2017]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **JUMELITO T. DALMACIO,** *respondent.*

[G.R. No. 202357. July 5, 2017]

JUMELITO T. DALMACIO, *petitioner, vs.* **PHILIPPINE NATIONAL BANK and/or MS. CYNTHIA JAVIER**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES, IF SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE GENERALLY ACCORDED RESPECT AND FINALITY.— [F]actual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the LA and, if supported by substantial evidence, are accorded respect and even finality by this Court. Thus, absent a showing of an error of law committed by the court or tribunal below, or of a whimsical

or capricious exercise of judgment, or a demonstrable lack of basis for its conclusions, this Court may not disturb its factual findings.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; REDUNDANCY; EXISTS WHEN THE SERVICE CAPABILITY OF THE WORKFORCE IS IN EXCESS OF WHAT IS REASONABLY NEEDED TO MEET THE DEMANDS OF THE BUSINESS ENTERPRISE.— One of the authorized causes for the dismissal of an employee is redundancy. It exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A position is redundant when it is superfluous, and superfluity of a position or positions could be the result of a number of factors, such as the overhiring of workers, a decrease in the volume of business or the dropping of a particular line or service previously manufactured or undertaken by the enterprise. Time and again, it has been ruled that an employer has no legal obligation to keep more employees than are necessary for the operation of its business.

3. ID.; ID.; ID.; ID.; ID.; WHEN VALID.— For the implementation of a redundancy program to be valid, x x x the employer must comply with the following requisites: (1) written notice served on both the employees and the Department of Labor and Employment (DOLE) at least one month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one month pay for every year of service; (3) ***good faith in abolishing the redundant positions*****;** and (4) ***fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished*****,** taking into consideration such factors as (a) preferred status; (b) efficiency; and (c) seniority, among others.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; QUITCLAIM; RECOGNIZED AS VALID WHEN THE PERSON MAKING THE WAIVER HAS DONE SO VOLUNTARILY, WITH A FULL UNDERSTANDING THEREOF, AND THE CONSIDERATION FOR THE QUITCLAIM IS CREDIBLE AND REASONABLE.— Generally, deeds of release, waiver or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality

of their dismissal since quitclaims are looked upon with disfavor and are frowned upon as contrary to public policy. Where, however, the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking.

5. ID.; ID.; ID.; ID.; REQUISITES FOR VALIDITY.— The requisites for a valid quitclaim are: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.

6. LABOR AND SOCIAL LEGISLATION; RETIREMENT LAWS; LIBERALLY CONSTRUED AND ADMINISTERED IN FAVOR OF THE PERSONS INTENDED TO BE BENEFITED, AND ALL DOUBTS ARE RESOLVED IN FAVOR OF THE RETIREE TO ACHIEVE THEIR HUMANITARIAN PURPOSE.— Dalmacio is entitled to his GSIS Gratuity Pay. Contrary to PNB's assertion, giving Dalmacio what is due him under the law is not unjust enrichment. The inflexible rule in our jurisdiction is that social legislation must be liberally construed in favor of the beneficiaries. Retirement laws, in particular, are liberally construed in favor of the retiree because their objective is to provide for the retiree's sustenance and, hopefully, even comfort, when he no longer has the capability to earn a livelihood. The liberal approach aims to achieve the humanitarian purposes of the law in order that efficiency, security, and well-being of government employees may be enhanced. Indeed, retirement laws are liberally construed and administered in favor of the persons intended to be benefited, and all doubts are resolved in favor of the retiree to achieve their humanitarian purpose.

APPEARANCES OF COUNSEL

PNB Office of the Legal Counsel for Philippine National Bank.

D E C I S I O N

TIJAM, *J.*:

Assailed in these consolidated Petitions for Review on *Certiorari* is the Decision[1] dated September 21, 2011 of the Court of Appeals (CA), in CA-G.R. SP. No. 115493. The CA Decision affirmed in part the National Labor Relations Commission's (NLRC) March 30, 2010 Resolution,[2] which in turn affirmed the Labor Arbiter's (LA) June 30, 2009 Decision[3] finding that the Philippine National Bank (PNB) effected a valid redundancy program.

The case stemmed from a complaint for illegal dismissal, underpayment of separation pay and retirement benefits, illegal deduction, nonpayment of provident fund with prayer for damages and attorney's fees filed by Jumelito T. Dalmacio (Dalmacio) and Emma R. Martinez (Martinez)[4] as a result of their separation from PNB way back September 15, 2005 due to PNB's implemention of its redundancy program. Dalmacio and Martinez were hired as utility worker and communication equipment operator, respectively, by the National Service Corporation, a subsidiary of PNB. Years later, Dalmacio became an Information Technology (IT) officer of PNB, while Martinez became a Junior IT Field Analyst.

In her June 30, 2009 Decision,[5] LA Romelita N. Rioflorido ruled that PNB complied with the law and jurisprudence in terminating the services of the complainants on the ground of redundancy.

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[1] Penned by Associate Justice Edwin D. Sorongon, and concurred in by Associate Justices Ramon M. Bato, Jr. and Jane Aurora C. Lantion; *rollo* (G.R. No. 202357), pp. 24-35.

[2] *Id*. at 134-142.

[3] *Id*. at 113-120.

[4] Position Paper for Complainants; *id*. at 48.

[5] WHEREFORE, premises considered, the complaints filed by Jumelito T. Dalmacio and Emma R. Martinez are dismissed for lack of merit. The complaint filed by Arlentino Real is dismissed without prejudice. *Supra* at note 3.

On appeal, the NLRC, in its March 30, 2010 Resolution,[6] affirmed the LA's Decision, and ruled that there is no showing of bad faith on PNB's part in undertaking the redundancy program.

Dalmacio and Martinez's Motion for Reconsideration having been denied by the NLRC, Dalmacio filed a Petition for *Certiorari* with the CA.

In its September 21, 2011 Decision,[7] the CA affirmed in part the March 30, 2010 Resolution of the NLRC, and ruled, among others, that, "principles of justice and fair play call for the modification of the separation package already received by herein petitioner. x x x the subtraction of the GSIS Gratuity Pay is inappropriate, therefore the same should be returned to the petitioner."

Aggrieved, both parties appealed the Decision of the CA.

In his appeal,[8] Dalmacio argues that: the CA erred in (1) upholding the validity of PNB's redundancy program; (2) failing to rule that PNB's computation of his separation pay is erroneous; and, (3) ruling that the Deed of Quitclaim and Release which he signed militates against his reinstatement.

For its part, PNB argues that:[9] (1) The CA erred in the exercise of its equity jurisdiction despite the clear and limited scope of its jurisdiction in a special civil action of *certiorari*; and, (2)

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[6] WHEREFORE, premises considered, the decision of [sic] Labor Arbiter is hereby AFFIRMED. *Supra* at note 2.

[7] WHEREFORE, the instant petition is PARTLY GRANTED. Accordingly, the Court AFFIRMS IN PART the assailed resolution of the National Labor Relations Commission dated March 30, 2010 with respect to the legality of the termination of the herein petitioner as well as the Deed of Quitclaim executed in his favor but this Court directs private respondent PNB to return to him with dispatch the GSIS Gratuity Pay deducted from his separation pay. *Supra* at note 1.

[8] Petition for Review under Rule 45 dated August 9, 2012. *Rollo* (G.R. No. 202357), pp. 8-22.

[9] Petition for Review (under Rule 45 of the Rules of Civil Procedure) dated August 9, 2012. *Rollo* (G.R. No. 202308), pp. 103-146.

it was baseless for the CA to order the return to Dalmacio of his GSIS Gratuity Pay.

Both Petitions are denied.

Essentially, the issues to be resolved in this case are: (1) Whether or not PNB validly implemented its redundancy program; and, (2) Whether or not the CA correctly ordered PNB to return Dalmacio's GSIS Gratuity Pay.

This Court resolves only questions of law; it does not try facts or examine testimonial or documentary evidence on record.[10] We may have at times opted for the relaxation of the application of procedural rules, but we have resorted to this option only under exceptional circumstances.[11] This Court, however, finds no justification to warrant the application of any exception to the general rule in this case.

It bears stressing that the LA, the NLRC, and the CA, all ruled that PNB validly effected its redundancy program. The CA held that:

[A]s aptly found by the labor tribunals, the redundancy program was an exercise of a sound business judgment which We ought to respect and is beyond the ambit of Our review powers absent any showing

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[10] *Cabling v. Dangcalan,* G.R. No. 187696, June 15, 2016.

[11] In certain exceptional cases, however, the Court may be urged to probe and resolve factual issues, *viz.*: (a) When the findings are grounded entirely on speculation, surmises, or conjectures; (b) When the inference made is manifestly mistaken, absurd, or impossible; (c) When there is grave abuse of discretion; (d) When the judgment is based on a misapprehension of facts; (e) When the findings of facts are conflicting; (f) 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; (g) When the CA's findings are contrary to those by the trial court; (h) When the findings are conclusions without citation of specific evidence on which they are based; (i) 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; (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. *De Vera, et al. v. Spouses Santiago, Sr., et al.*, G.R. No. 179457, June 22, 2015.

that it is violative of the Labor Code provisions or the general principles of fair play and justice.[12]

Such being the case, factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the LA and, if supported by substantial evidence, are accorded respect and even finality by this Court.[13] Thus, absent a showing of an error of law committed by the court or tribunal below, or of a whimsical or capricious exercise of judgment, or a demonstrable lack of basis for its conclusions, this Court may not disturb its factual findings.

However, at the risk of being repetitive, We make short shrift of Dalmacio's insistence that PNB's redundancy program was not valid. We cannot subscribe to his claim that PNB did not apply fair and reasonable criteria in concluding that Dalmacio's position had become redundant.

One of the authorized causes[14] for the dismissal of an employee is redundancy.[15] It exists when the service capability of the

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[12] *Rollo* (G.R. No. 202357), p. 32.

[13] *Cabigting v. San Miguel Foods, Inc.*, G.R. No. 167706, November 5, 2009.

[14] Article 283, Labor Code. *Closure of establishment and reduction of personnel*. – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, ***redundancy***, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to ***at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher***. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Emphasis supplied)

[15] *Dole Philippines, Inc., et al. v. National Labor Relations Commission, et al.*, G.R. No. 120009, September 13, 2001.

workforce is in excess of what is reasonably needed to meet the demands of the business enterprise.[16] A position is redundant when it is superfluous, and superfluity of a position or positions could be the result of a number of factors, such as the overhiring of workers, a decrease in the volume of business or the dropping of a particular line or service previously manufactured or undertaken by the enterprise.[17] Time and again, it has been ruled that an employer has no legal obligation to keep more employees than are necessary for the operation of its business.[18] For the implementation of a redundancy program to be valid, however, the employer must comply with the following requisites: (1) written notice served on both the employees and the Department of Labor and Employment (DOLE) at least one month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one month pay for every year of service; (3) ***good faith in abolishing the redundant positions***; and (4) ***fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished***,[19] taking into consideration such factors as (a) preferred status; (b) efficiency; and (c) seniority, among others.[20]

In the case at bar, PNB was upfront with its employees about its plan to implement its redundancy program. The LA correctly observed that:

> [I]t is undisputed that the outsourcing of the service and maintenance of the Bank's computer hardware and equipment to Technopaq, Inc. was devised and/or implemented after consultation with the affected

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[16] *Soriano, Jr. v. National Labor Relations Commission, et al.*, G.R. No. 165594, April 23, 2007.

[17] *Morales v. Metropolitan Bank and Trust Company,* G.R. No. 182475, November 21, 2012.

[18] *Id*.

[19] *Lambert Pawnbrokers and Jewelry Corporation, et al. v. Binamira,* G.R. No. 170464, 12 July 2010. (Emphasis supplied)

[20] *Lopez Sugar Corp. v. Franco, et al.*, G.R. No. 148195, May 16, 2005.

employees in the presence of their union officers between July 29 and August 5, 2005.[21]

This was echoed by the NLRC, thus:

> Respondents were able to show substantial proof that it underwent redundancy program and that complainants herein voluntarily accepted the Special Redundancy Package offered by respondent bank to its employees. In fact, they were officially notified of the management's decision to terminate their employment as early as August 15, 2005 x x x; and Complainants and their union officers were even consulted of the respondent's decision to terminate its employees on [the] ground of redundancy between July 29 and August 5, 2005. Complainants agreed and accepted the decision. x x x.[22]

Even the CA intoned that:

> Even after he ceased working with private respondent PNB, petitioner was not left jobless as he readily accepted a job offer with Technopaq who employed him for three years. Only after he ceased working with Technopaq that he conveniently filed a case for illegal dismissal against PNB claiming other monetary benefits allegedly due him and after receiving substantial amount of separation pay. Hence this Court suspects the timing and intention of petitioner in filing the complaint for illegal dismissal.[23]

Likewise, PNB's redundancy program was neither unfair nor unreasonable considering that it was within the ambit of its management prerogative. As the CA observed:

> PNB's action is within the ambit of "management prerogative" to upgrade and enhance the computer system of the bank. Petitioner, being an IT officer whose job is to maintain the computer system of PNB, his position has become patently redundant upon PNB's engagement of the contract service with Technopaq. x x x he was appositely informed of PNB's move to contract the services of Technopaq and as a result thereof, there were positions that were declared redundant including that of herein petitioner. x x x PNB

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[21] *Rollo* (G.R. No. 202357), p. 118.

[22] *Id*. at 139.

[23] *Id*. at 31.

conducted series of meetings with herein petitioner and other affected employees to purposely look for placement of the displaced employees to other positions suited for them. Finding no other alternative, PNB was constrained to terminate herein petitioner who thereafter posed no objection thereto, consented to and willingly received the hefty separation pay given to him. Moreover, records have it that PNB faithfully complied with the legal procedures provided under Article 283 of the Labor Code as evidenced by the individual notices of termination served and received by the petitioner as well as the Establishment Termination Report filed by PNB with the Department of Labor. x x x.[24]

These factual findings evidently rule out Dalmacio's claim that PNB's redundancy program was unfair and unreasonable and that PNB acted in bad faith in the implementation of the same.

Likewise, records show that PNB complied with the procedural requirements. PNB served Dalmacio and Martinez Notices of Termination dated August 15, 2005, informing them that their termination due to redundancy shall be effective September 15, 2005. PNB also filed an Establishment Termination Report dated August 16, 2005 with the Regional Office of the DOLE, in order to report complainants' termination.

Contrary to Dalmacio's claim, the CA did not err in ruling that the Deed of Quitclaim and Release he signed militates against his reinstatement.

Generally, deeds of release, waiver or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal since quitclaims are looked upon with disfavor and are frowned upon as contrary to public policy.[25] Where, however, the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and

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[24] *Id*.

[25] *Soriano, Jr. v. NLRC and PLDT, Inc.*, G.R. No. 165594, April 23, 2007.

reasonable, the transaction must be recognized as being a valid and binding undertaking.[26]

The requisites for a valid quitclaim are: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.[27]

Not having sufficiently proved that he was forced to sign said Deed of Quitclaim and Release, Dalmacio cannot expediently argue that quitclaims are looked upon with disfavor and considered ineffective to bar claims for the full measure of a worker's legal rights. Indeed, it cannot even be said that Dalmacio did not fully understand the consequences of signing the Deed of Quitclaim and Release. He is not an illiterate person who needs special protection. He held a responsible position at PNB as an IT officer. It is thus safe to say that he understood the contents of the Deed of Quitclaim and Release. There is also no showing that the execution thereof was tainted with deceit or coercion. Although he claims that he was "forced to sign"[28] the quitclaim, he nonetheless signed it. In doing so, Dalmacio was compelled by his own personal circumstances, not by an act attributable to PNB.

Having settled the foregoing, this Court shall now address the issue on Dalmacio's GSIS Gratuity Pay.

A cursory reading of PNB's computation as regards Dalmacio's separation package appearing in its Petition would clearly show that, indeed, his GSIS Gratuity Pay has been deducted from his separation pay. This should not be countenanced.

As correctly pointed out by the CA:

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[26] *Id.*

[27] *Id.*

[28] *Rollo* (G.R. No. 202357), p. 19.

[U]nder the GSIS law, a government employee is required to take off a small part of his income and remit the same to the GSIS as his monthly contributions. Considering such mandatory deductions, it is but fitting that such gratuity pay is deemed separate and distinct from his separation package and should not be deducted therefrom. x x x.[29]

Clearly, Dalmacio is entitled to his GSIS Gratuity Pay. Contrary to PNB's assertion, giving Dalmacio what is due him under the law is not unjust enrichment.[30]

The inflexible rule in our jurisdiction is that social legislation must be liberally construed in favor of the beneficiaries.[31] Retirement laws, in particular, are liberally construed in favor of the retiree because their objective is to provide for the retiree's sustenance and, hopefully, even comfort, when he no longer has the capability to earn a livelihood.[32] The liberal approach aims to achieve the humanitarian purposes of the law in order that efficiency, security, and well-being of government employees may be enhanced.[33] Indeed, retirement laws are liberally construed and administered in favor of the persons intended to be benefited, and all doubts are resolved in favor of the retiree to achieve their humanitarian purpose.[34]

WHEREFORE, the petitions are **DENIED.** The September 21, 2011 Decision of the Court of Appeals in CA-G.R. SP. No. 115493, is **AFFIRMED *in toto*.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Jardeleza, JJ.,* concur.

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[29] *Rollo* (G.R. No. 202308), p. 19.

[30] *GSIS v. De Leon*, G.R. No. 186560, November 17, 2010.

[31] *Id*.

[32] *Id*.

[33] *Id*.

[34] *Id*.

THIRD DIVISION

[G.R. No. 210129. July 5, 2017]

S/SGT. CORNELIO PAMAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PROPER REMEDY TO QUESTION A VERDICT OF ACQUITTAL WHETHER AT THE TRIAL COURT OR AT THE APPELLATE LEVEL.— [A] petition for *certiorari* is the proper remedy to assail the RTC's Decision dated July 12, 2011, which acquitted x x x [Paman] of the offense charged. A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. x x x While *certiorari* may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice. In this case, the OSG was able to clearly establish that the RTC blatantly and gravely abused its authority when it ruled that no liability can be attached to Paman solely based on its finding that it was Arambala who caused the collision. Tersely put, the RTC, in acquitting Paman of the offense charged, completely disregarded the evidence on record.

2. ID.; CRIMINAL PROCEDURE; JUDGMENTS; A JUDGMENT OF ACQUITTAL IS FINAL AND UNAPPEALABLE; EXCEPTIONS.— [I]n our jurisdiction, the Court adheres to the finality-of-acquittal doctrine, *i.e.*, a judgment of acquittal is final and unappealable. The rule barring an appeal from a judgment of acquittal is, however, not absolute. The following are the recognized exceptions thereto: (i) when the prosecution is denied due process of law; and (ii) when the trial court commits grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing a criminal case by granting the accused's demurrer to evidence.

3. MERCANTILE LAW; TRANSPORTATION LAW; REPUBLIC ACT NO. 4136, AS AMENDED (THE LAND

TRANSPORTATION AND TRAFFIC CODE); RESTRICTIONS ON OVERTAKING AND PASSING; A DRIVER ABANDONING HIS PROPER LANE FOR THE PURPOSE OF OVERTAKING ANOTHER VEHICLE IN AN ORDINARY SITUATION HAS THE DUTY TO SEE TO IT THAT THE ROAD IS CLEAR AND HE SHOULD NOT PROCEED IF HE CANNOT DO SO IN SAFETY.— Paman's act of driving on the wrong side of the road, in an attempt to overtake the motorcycle driven by Arambala, and suddenly crossing the path which is being traversed by the latter, is sheer negligence. It is a settled rule that a driver abandoning his proper lane for the purpose of overtaking another vehicle in an ordinary situation has the duty to see to it that the road is clear and he should not proceed if he cannot do so in safety. If, after attempting to pass, the driver of the overtaking vehicle finds that he cannot make the passage in safety, the latter must slacken his speed so as to avoid the danger of a collision, even bringing his car to a stop if necessary. This rule is consistent with Section 4l(a) of Republic Act No. 4136, as amended, otherwise known as the Land Transportation and Traffic Code x x x.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; QUASI-DELICTS; UNLESS THERE IS PROOF TO THE CONTRARY, A PERSON DRIVING A VEHICLE IS PRESUMED NEGLIGENT IF, AT THE TIME OF THE MISHAP, HE WAS VIOLATING ANY TRAFFIC REGULATION.— Under Article 2185 of the Civil Code, unless there is proof to the contrary, a person driving a vehicle is presumed negligent if, at the time of the mishap, he was violating any traffic regulation. Here, Paman was violating a traffic regulation, *i.e.*, driving on the wrong side of the road, at the time of the collision. He is thus presumed to be negligent at the time of the incident, which presumption he failed to overcome. For failing to observe the duty of diligence and care imposed on drivers of vehicles abandoning their lane, Paman, as correctly held by the CA, must be held liable.

5. CRIMINAL LAW; REVISED PENAL CODE; CRIMINAL NEGLIGENCE; IMPRUDENCE AND NEGLIGENCE; RECKLESS IMPRUDENCE RESULTING IN SERIOUS PHYSICAL INJURIES; PENALTY IN CASE AT BAR.— [P]ursuant to Article 365 of the RPC, Paman should be sentenced

to suffer the penalty of *arresto mayor* in its minimum and medium periods or from one (1) month and one (1) day to four (4) months. Since the maximum term of imprisonment in this case, *i.e.*, four (4) months, does not exceed one (1) year, the provisions of the Indeterminate Sentence Law find no application and Paman should be meted a straight penalty taken from *arresto mayor* in its minimum and medium periods. In view of the lack of any mitigating or aggravating circumstances in this case, Paman should be made to suffer the straight penalty of imprisonment of two (2) months and one (1) day of *arresto mayor*.

APPEARANCES OF COUNSEL

Quicoy Marin & Quicoy-Marin Law Office for petitioner.
Office of the Solicitor General for respondent.

RESOLUTION

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated July 4, 2013 and Resolution[3] dated October 30, 2013 issued by the Court of Appeals (CA) in CA-G.R. SP No. 04542.

On October 14, 2004, at about 1:20 p.m., Ursicio Arambala (Arambala) was on board a motorcycle traversing Roxas Street, Pagadian City towards the direction of the Southern Mindanao Colleges Main Campus. When he was nearing the intersection of Roxas and Broca Streets in Pagadian City, a multicab driven by S/Sgt. Cornelio Paman (Paman), a military personnel, crossed his path and collided with his motorcycle. Arambala was thrown from his motorcycle thus hitting his head on the road pavement. Ernilda Salabit, who was then standing beside the road, saw

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[1] *Rollo*, pp. 8-28.

[2] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras concurring; *id*. at 36-43.

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

Arambala being thrown away after the collision; she went to Arambala and hailed a tricycle and rushed him to the hospital.[4]

A Computed Tomography Scan report shows that Arambala suffered hematoma at the cerebral portion of his brain. After his confinement at the Mercy Community Hospital on October 15, 2004, Arambala was again admitted on October 24, 2004 at the Zamboanga del Sur Provincial Hospital due to erratic blood pressure and slurring speech caused by the hematoma.[5]

On February 21, 2005, an Information for the crime of reckless imprudence resulting in serious physical injuries, docketed as Criminal Case No. 14034, was filed with the Municipal Trial Court in Cities (MTCC) of Pagadian City against Paman. Paman pleaded not guilty to the offense charged.[6]

After due proceedings, the MTCC, on February 11, 2010, rendered a Judgment finding Paman guilty beyond reasonable doubt of reckless imprudence resulting in serious physical injuries, *viz.*:

> WHEREFORE, [PAMAN], after having been proven guilty beyond reasonable doubt for the crime charged against him in the instant case, the Court hereby CONVICTS [Paman] and after applying the Indeterminate Sentence Law, hereby imposes and sentences him to an imprisonment of ONE (1) MONTH AND ONE (1) DAY TO FOUR (4) MONTHS OF ARRESTO MAYOR IN ITS MINIMUM AND MEDIUM PERIODS, the same [to be] served by the accused at the Pagadian City Jail at Lenienza, Pagadian City.
>
> With costs against the accused.[7]

On appeal, however, the Regional Trial Court (RTC) of San Miguel, Zamboanga del Sur, Branch 29 in its Decision[8] dated July 12, 2011, reversed and set aside the MTCC's Decision dated February 11, 2010, to wit:

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[4] *Id*. at 36-37.

[5] *Id*. at 37.

[6] *Id*.

[7] *Id*. at 37-38.

[8] Rendered by Presiding Judge Edilberto G. Absin; *id*. at 29-32.

WHEREFORE, the foregoing premises considered, the MTCC's judgment of conviction is hereby REVERSED. Consequently, [Paman] is ACQUITTED.

SO ORDERED.[9]

In acquitting Paman of the offense charged, the RTC pointed out that Arambala was the cause of the collision since he already saw the multicab driven by Paman ahead of time; that he had the opportunity to take precaution to avoid the accident, but he failed to do so.[10] The City Prosecutor filed a motion for reconsideration, but it was denied by the RTC in its Order[11] dated August 16, 2011.

The People of the Philippines, through the Office of the Solicitor General (OSG), then filed a petition for *certiorari* with the CA against RTC Presiding Judge Edilberto G. Absin (Judge Absin) and Paman. The OSG claims that Judge Absin committed grave abuse of discretion in ruling that it was Arambala who was at fault and in finding that the prosecution's evidence was insufficient to convict Paman of the offense charged beyond reasonable doubt.

On July 4, 2013, the CA rendered the herein assailed Decision,[12] the decretal portion of which reads:

WHEREFORE, the Petition is GRANTED. The Decision of the [RTC], Branch 29, San Miguel, Zamboanga del Sur, is hereby SET ASIDE, and another one is rendered holding [PAMAN] guilty beyond reasonable doubt of reckless imprudence resulting in serious physical injuries, and sentencing him to suffer an indeterminate penalty of one (1) month and one (1) day of *arresto mayor*, as minimum, to 2 years and 4 months of *prision correccional*, as maximum.

SO ORDERED.[13]

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[9] *Id.* at 32.

[10] *Id.* at 29-30.

[11] *Id.* at 33.

[12] *Id.* at 36-43.

[13] *Id.* at 42.

Paman sought a reconsideration of the Decision dated July 4, 2013, but it was denied by the CA in its Resolution[14] dated October 30, 2013.

In this petition for review on *certiorari*, Paman insists that Judge Absin did not commit any abuse of discretion in acquitting him of the offense charged. He claims that a petition for *certiorari* is not the proper remedy to assail the RTC's Decision dated July 12, 2011. He likewise maintains that the prosecution's evidence was insufficient to establish his guilt of the offense charged beyond reasonable doubt. He essentially alleges that the collision was the fault of Arambala. He points out that the RTC correctly observed that Arambala, based on his testimony, applied the brakes on his motorcycle when he saw the multicab; that he should have accelerated his speed instead of hitting the brakes to avoid the collision.

Ruling of the Court

The petition is denied.

Contrary to Paman's assertion, a petition for *certiorari* is the proper remedy to assail the RTC's Decision dated July 12, 2011, which acquitted him of the offense charged. A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. Indeed, in our jurisdiction, the Court adheres to the finality-of-acquittal doctrine, *i.e.*, a judgment of acquittal is final and unappealable.[15] The rule barring an appeal from a judgment of acquittal is, however, not absolute. The following are the recognized exceptions thereto: (i) when the prosecution is denied due process of law; and (ii) when the trial court commits grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing a criminal case by granting the accused's demurrer to evidence.[16]

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

[15] See *Castro v. People*, 581 Phil. 639 (2008); *People v. Uy*, 508 Phil. 637, 648 (2005); *Yuchengco v. Court of Appeals*, 427 Phil. 11, 20 (2002).

[16] *People v. Sandiganbayan (1st Div.), et al.*, 637 Phil. 147, 158 (2010).

While *certiorari* may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[17] In this case, the OSG was able to clearly establish that the RTC blatantly and gravely abused its authority when it ruled that no liability can be attached to Paman solely based on its finding that it was Arambala who caused the collision. Tersely put, the RTC, in acquitting Paman of the offense charged, completely disregarded the evidence on record.

A perusal of the records of this case clearly shows that it was Paman who was at fault since he was driving at the wrong side of the road when the collision happened. On this point, the CA's observation is *apropos*, thus:

> After going over the records of the case, this Court is unable to sustain the findings of fact and conclusion reached by the RTC. The assailed Decision noted that at the time private complainant Arambala was hit by S/Sgt. Paman's multicab, he was proceeding to SMC Main to log in for his attendance. Public respondent, as a consequence, concluded that Arambala may have been in a hurry so he had to over speed. Also, public respondent correlated the presence of skid marks that Arambala was driving fast.
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> However, the evidence indubitably shows that before the collision, Arambala's motorcycle was cruising along its rightful lane when S/Sgt. Paman's multicab suddenly crossed his (Arambala) path coming from his left side along Broca Street using the wrong lane to cross the said intersection. The accident would not have happened had S/Sgt. Paman, the multicab driver, stayed on his lane and did not overtake the vehicle of the private complainant Arambala. x x x.[18] (Citations omitted)

Even the position of the multicab driven by Paman after the incident supports the conclusion that Paman was indeed on the wrong side of the road, which eventually caused it to collide with Arambala's motorcycle. The MTCC thus correctly noted that:

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[17] See *People v. Hon. Asis, et al.*, 643 Phil. 462, 471 (2010).

[18] *Rollo*, p. 40.

Upon perusal and careful scrutiny of the sketch which was prepared by the said witness, the Court even found out that the vehicle of [Paman] after the incident was parked at the wrong side of the road which goes to show that the testimony of [Arambala] as well as that of his witness Ernilda Salabit was more plausible that [Paman] in this case was indeed cruising on the wrong side of the road when the accident happened. xxx

x x x x x x x x x

In the instant case, to the mind of the Court, the proximate cause is the act of [Paman] in driving and using the wrong lane of Broca Street in order to cross the intersection of Roxas Street was employed recklessly by [Paman] in order to overtake the vehicle of [Arambala] which was already crossing and x x x at the middle portion of the intersection. Thus, it was the reckless act of [Paman] which caused the incident from which reason that, had it not been for the bumping incident caused by [Paman], [Arambala] could not have suffered the injuries that he had sustained, and the motorcycle involved would not have also incurred damages. Therefore, taking into further consideration the point of impact or the point of collision between the two (2) motor vehicles in the instant case, the Court is inclined towards the evidence presented by the prosecution and has determined the culpability of [Paman] in the instant case.[19]

Paman's act of driving on the wrong side of the road, in an attempt to overtake the motorcycle driven by Arambala, and suddenly crossing the path which is being traversed by the latter, is sheer negligence. It is a settled rule that a driver abandoning his proper lane for the purpose of overtaking another vehicle in an ordinary situation has the duty to see to it that the road is clear and he should not proceed if he cannot do so in safety. If, after attempting to pass, the driver of the overtaking vehicle finds that he cannot make the passage in safety, the latter must slacken his speed so as to avoid the danger of a collision, even bringing his car to a stop if necessary.[20] This rule is consistent

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[19] *Id.* at 41.

[20] See *Engada v. Court of Appeals*, 452 Phil. 587, 595-596 (2003), citing *Mallari, Sr. v. CA*, 381 Phil. 153, 160-161 (2000) and *Batangas Laguna Tayabas Bus Company v. Intermediate Appellate Court*, 249 Phil. 380, 384 (1988).

with Section 41(a) of Republic Act No. 4136, as amended, otherwise known as the Land Transportation and Traffic Code, which provides:

> Sec. 41. *Restrictions on overtaking and passing*. (a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking or passing another vehicle proceeding in the same direction, unless such left side is clearly visible, and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.

Under Article 2185 of the Civil Code, unless there is proof to the contrary, a person driving a vehicle is presumed negligent if, at the time of the mishap, he was violating any traffic regulation. Here, Paman was violating a traffic regulation, *i.e.*, driving on the wrong side of the road, at the time of the collision. He is thus presumed to be negligent at the time of the incident, which presumption he failed to overcome. For failing to observe the duty of diligence and care imposed on drivers of vehicles abandoning their lane, Paman, as correctly held by the CA, must be held liable.

Nevertheless, there is a need to modify the penalty imposed by the CA. Article 365 of the Revised Penal Code (RPC), in part, provides that:

> Article 365. *Imprudence and negligence*. – Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period; **if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed**; if it would have constituted a light felony, the penalty of *arresto menor* in its maximum period shall be imposed.
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> x x x x x x x x x (Emphasis ours)

Less grave felonies are those which the law punishes with penalties which in their maximum period are correctional.[21] Correctional penalties include *prision correccional*, *arresto*

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[21] REVISED PENAL CODE, Article 9, paragraph (2).

mayor, suspension, and *destierro*.[22] The MTCC considered the physical injuries suffered by Arambala as serious since he required medical attendance for more than a period of 30 days.[23] Under Article 263(4) of the RPC, the penalty for serious physical injuries, when the injuries inflicted caused incapacity for more than 30 days, is *arresto mayor* in its maximum period to *prision correccional* in its minimum period; the maximum period of the foregoing penalty – *prision correccional* in its minimum period – is merely a correctional penalty and, thus, should be considered a less grave felony.

Accordingly, pursuant to Article 365 of the RPC, Paman should be sentenced to suffer the penalty of *arresto mayor* in its minimum and medium periods or from one (1) month and one (1) day to four (4) months. Since the maximum term of imprisonment in this case, *i.e.,* four (4) months, does not exceed one (1) year, the provisions of the Indeterminate Sentence Law find no application and Paman should be meted a straight penalty taken from *arresto mayor* in its minimum and medium periods. In view of the lack of any mitigating or aggravating circumstances in this case, Paman should be made to suffer the straight penalty of imprisonment of two (2) months and one (1) day of *arresto mayor*.

WHEREFORE, in view of the foregoing disquisitions, the petition for review on *certiorari* is hereby **DENIED.** The Decision dated July 4, 2013 and Resolution dated October 30, 2013 issued by the Court of Appeals in CA-G.R. SP No. 04542 are **AFFIRMED with MODIFICATION** in that petitioner S/Sgt. Cornelio Paman is hereby sentenced to suffer the penalty of imprisonment of two (2) months and one (1) day of *arresto mayor*.

SO ORDERED.

Carpio,[*] *Velasco, Jr.* (*Chairperson*), *Bersamin,* and *Tijam, JJ.,* concur.

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[22] REVISED PENAL CODE, Article 25.

[23] *Rollo*, p. 62.

[*] Designated additional Member per Raffle dated December 10, 2014 *vice* Associate Justice Francis H. Jardeleza.

THIRD DIVISION

[G.R. No. 212641. July 5, 2017]

ANGELICA A. FAJARDO, *petitioner, vs.* **MARIO J. CORRAL**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; QUESTIONS OF FACT MAY NOT BE RAISED THEREIN BECAUSE THE SUPREME COURT IS NOT A TRIER OF FACTS.— [Q]uestions of fact may not be raised by *certiorari* under Rule 45 because We are not a trier of facts. As a rule, factual findings of the Ombudsman and the CA are conclusive and binding in the absence of grave abuse of discretion. We find no reason to deviate from the factual findings of both the Ombudsman and the CA.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, A FINDING OF GUILT IN AN ADMINISTRATIVE CASE SHOULD BE SUSTAINED; SUBSTANTIAL EVIDENCE, DEFINED.— A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the [petitioner] has committed acts stated in the complaint or formal charge. Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently.

3. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY, DEFINED; SERIOUS DISHONESTY, WHEN PRESENT.— Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. Under CSC Resolution No. 06-0538, dishonesty may be classified as serious, less serious or simple. In this case, Fajardo was charged with *serious dishonesty*, which necessarily entails the presence of any one of the following circumstances: "(1) the dishonest act caused serious damage

and grave prejudice to the Government; (2) the respondent gravely abused his authority in order to commit the dishonest act; (3) **where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption;** (4) The dishonest act exhibits moral depravity on the part of respondent; (5) The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (6) The dishonest act was committed several times or in various occasions; (7) The dishonest act involves a Civil Service examination irrregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; and (8) Other analogous circumstances."

4. ID.; ID.; ID.; GRAVE MISCONDUCT; CORRUPTION; CONSISTS IN THE OFFICIAL OR EMPLOYEE'S ACT OF UNLAWFULLY USING HIS POSITION TO GAIN BENEFIT FOR ONE'S SELF.— Grave misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or to disregard established rules. Corruption, as an element of grave misconduct, consists in the official or employee's act of unlawfully or wrongfully using his position to gain benefit for one's self. x x x Grave misconduct was committed when Fajardo failed to keep and account for cash and cash items in her custody. It must be noted that she was issued a vault by the PCSO and was bonded by the Bureau of Treasury for her to effectively carry out her duties and responsibilities. Yet, investigation conducted by the PCSO reveals that she failed to perform such duties when such funds on her account were reported missing. Her corrupt intention was evident on her failure to explain such missing funds despite reasonable opportunity to do the same.

5. ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE; DEALS WITH A DEMEANOR OF A PUBLIC OFFICER WHICH TARNISHED THE IMAGE AND INTEGRITY OF HER PUBLIC OFFICE.— [C]onduct prejudicial to the best interest of service deals with a demeanor of a public officer which "tarnished the image

and integrity of his/her public office." x x x [C]onduct prejudicial to the best interest of service was committed because the acts of Fajardo tarnished the image of PCSO, as the principal government agency for raising and providing funds for health programs, medical assistance and services, and charities of national character, considering that aside from the shortage of funds, unpaid winning tickets dated 2004 were also found in Fajardo's possession when she should have liquidated and replenished the same. The CA correctly held that the public would lose their trust to PCSO because of the reported misappropriation of funds, which are allotted as prizes.

6. ID.; ID.; ID.; SERIOUS DISHONESTY; DULY ESTABLISHED IN CASE AT BAR.— Fajardo's acts constitute serious dishonesty for her dishonest act deals with money on her account; and that her failure to account for the shortage showed an intent to commit material gain, graft and corruption. Evidence of misappropriation of the missing funds is not required because the existence of shortage of funds and the failure to satisfactorily explain the same would suffice.

APPEARANCES OF COUNSEL

Richard O. Palpal-Latoc for petitioner.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which seeks to annul and set aside the Decision[1] dated September 16, 2013 and Resolution[2] dated May 9, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 121180.

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[1] Penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Isaias P. Dicdican and Michael P. Elbinias; *rollo*, pp. 39-59.

[2] *Id*. at 91-92.

Respondent Mario J. Corral (Corral), Officer-in-Charge (OIC) Manager of the Treasury Department of the Philippine Charity Sweepstakes Office (PCSO), filed a Complaint-Affidavit docketed as OMB-C-A-09-0355-G against petitioner Angelica Fajardo (Fajardo) for Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of Service before the Office of the Ombudsman (Ombudsman).[3]

Fajardo was designated as OIC, Division Chief III, Prize Payment (Teller) Division of the Treasury Department of the PCSO. Her duties included instituting procedures in actual payment of prizes, conducting periodic check-up, actual counting of paid winning tickets, and requisitioning of cash for distribution to paying tellers. She was also authorized to draw cash advance of PhP 3,000,000.00 (PhP 2,000,000.00 for payment of sweepstakes and lotto low-tier prizes, and PhP 1,000,000.00 for the PCSO-POSC Scratch IT Project).[4] For such accountability, Fajardo was bonded with the Bureau of Treasury for PhP 1,500,000.00. In line with her duties, she was issued a vault, which she alone has access to as she held its key and knew the combination to open the same, to keep the money and documents in her custody.[5]

On November 13, 2008, a team from the PCSO Internal Audit Department (IAD) conducted a spot audit on Fajardo's cash and cash items. The team discovered that Fajardo had a shortage of PhP 218,461.00.[6] After such audit, Fajardo did not report for work, so said team of auditors sealed her vault on November 17, 2008 and her steel cabinet on November 28, 2008.[7]

Corral required Fajardo to report for work, to explain her shortage during the audit, and to be physically present in the

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[3] *Id*. at 40.

[4] *Id*. at 40 and 102.

[5] *Id*. at 40.

[6] Cash Examination Count Sheet; *id*. at 127.

[7] *Id*. at 40-41.

opening of her vault. Fajardo requested an additional five working days within which to report back to work, but she failed to do the same despite the lapse of such extended period.[8]

On January 8, 2009, another cash count was conducted, upon recommendation of the Commission on Audit (COA). Said audit was held in the presence of Fajardo and representatives from IAD and COA. During the said cash count, it was discovered that cash worth PhP 1,621,476.00 and checks worth PhP 37,513.00 were missing. As such, Fajardo had a total shortage of PhP 1,877,450.00. It was also discovered that there were undetermined number of paid winning sweepstakes tickets amounting to PhP 1,024,870.00 dating back from 2004, which were not processed for liquidation/replenishment.[9]

Five days thereafter or on January 13, 2009, a letter was issued to Fajardo, which ordered her to immediately produce the missing funds and to explain such shortage. However, Fajardo failed to account and to produce the missing funds, and to give a reasonable excuse for such shortage.[10]

In a Letter dated January 27, 2009, Fajardo admitted her mistake. She offered to settle her accountability by waiving all her rights to bonuses and monetary benefits for 2008 and paying PhP 300,000.00. In her letter, Fajardo did not question the regularity of the conduct of spot audits.[11]

In her Counter-Affidavit, Fajardo denied that spot audits were conducted; and if so, such were done contrary to established rules. Hence, the results could not be the basis of any action against her. She maintained that the team of auditors excluded the vale sheets and other cash items, and that she was not given the opportunity to rule, balance, and close her books before the conduct of the cash count. Fajardo also claimed that she

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[8] *Id.* at 44.

[9] *Id.* at 42 and 44.

[10] *Id.* at 41.

[11] *Id.* at 44.

was forced to sign Certifications and Demands (Cash Examination Count Sheet), containing her alleged shortage, on two different occasions.[12]

THE OMBUDSMAN RULING

In a Decision[13] dated September 1, 2010, the Ombudsman found Fajardo guilty of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of Service. The *fallo* thereof reads:

> WHEREFORE, finding substantial evidence of guilt for Serious Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, respondent ANGELICA A. FAJARDO is hereby meted the penalty of DISMISSAL from the service, with all its accessory penalties.
>
> Pursuant to Section 7, Administrative Order No. 17 of the Office of the Ombudsman and the Ombudsman Memorandum Circular No. 01, Series of 2006, the Chairman of the Philippine Charity Sweepstakes Office is hereby directed to implement this Decision and to submit promptly a Compliance Report within five (5) days from receipt indicating the OMB case number: OMB-C-A-09-0355-G, entitled "Mario J. Corral vs. Angelica A. Fajardo" to this Office, thru the Central Records Division, 2nd Floor, Ombudsman Building, Agham Road, Government Center, North Triangle, Diliman, 1128, Quezon City.
>
> Compliance is respectfully enjoined consistent with Sec. 3(e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act) and Section 15(3) of R.A. No. 6770 (Ombudsman Act of 1989).
>
> SO ORDERED.[14]

Fajardo filed a motion for reconsideration, which was denied in an Order[15] dated March 16, 2011.

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

[13] Reviewed by Acting Director Medwin S. Dizon, recommended by Acting Assistant Ombudsman Mary Susan S. Guillermo and approved by Ombudsman Ma. Merceditas N. Gutierrez; *id.* at 128-141.

[14] *Id.* at 139-140.

[15] *Id.* at 164-172.

Aggrieved, Fajardo filed a Petition for Review before the CA.

THE CA RULING

In a Decision[16] dated September 16, 2013, the CA dismissed said petition and affirmed the ruling of the Ombudsman. The dispositive portion reads:

> **ACCORDINGLY**, the Petition for Review is **DISMISSED**. The Decision dated 1 September 2010, and the Order dated 16 March 2011, of the Office of the Ombudsman, are **AFFIRMED**.
>
> **SO ORDERED**.[17]

Fajardo filed a Motion for Reconsideration, which was denied by the CA in a Resolution[18] dated May 9, 2014.

Hence, this petition.

ISSUE

> WHETHER OR NOT FAJARDO IS GUILTY OF SERIOUS DISHONESTY, GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE.

OUR RULING

Fajardo avers that there was no substantial evidence to support the pronouncement of her administrative liability.

We do not agree.

At the outset, it must be emphasized that questions of fact may not be raised by *certiorari* under Rule 45 because We are not a trier of facts. As a rule, factual findings of the Ombudsman

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[16] *Supra* at note 1.

[17] *Rollo*, p. 59.

[18] *Supra* at note 2.

and the CA are conclusive and binding in the absence of grave abuse of discretion.[19]

We find no reason to deviate from the factual findings of both the Ombudsman and the CA.

A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the [petitioner] has committed acts stated in the complaint or formal charge.[20] Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently.[21]

In the case at bar, it is established that Fajardo, entrusted with the funds of PCSO, failed to account for cash and cash items in the amount of PhP 1,877,450.00 and paid winning sweepstakes tickets in the amount of PhP 1,024,870.00. When she was asked to expound on such shortage, she offered no satisfactory explanation for the same.

The evidence presented were the two Certifications and Demands (Cash and Examination Count Sheet) which were signed by Fajardo, stating the shortage of funds on her account. It is undisputed that Fajardo offered no explanation for such shortage of funds when demand was made and admitted her accountability in a Letter dated January 27, 2009.

Fajardo reasoned that her act of signing the Certifications was no proof of admission of the shortage, but a mere acknowledgement that a demand was made upon her to produce cash. Such argument, which was copied entirely from the case of *Rueda, Jr. v. Sandiganbayan*[22] without proper citation, is

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[19] *Fajardo v. Office of the Ombudsman, et al.*, G.R. No. 173268, August 23, 2012.

[20] *Office of the Ombudsman v. Santos*, G.R. No. 166116, March 31, 2006.

[21] *Advincula v. Dicen*, G.R. No. 162403, May 16, 2005.

[22] G.R. No. 129064, November 29, 2000.

flimsy. While the act of signing such certifications is not tantamount to admission of its contents, still, the fact remains that there was shortage of funds on Fajardo's account and that she failed to explain the reasons for the same despite reasonable opportunity.

To Our mind, the facts established and the evidence presented support the finding of Fajardo's guilt.

Fajardo was charged with serious dishonesty, grave misconduct and conduct prejudicial to the best interest of service.

Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.[23] Under CSC Resolution No. 06-0538, dishonesty may be classified as serious, less serious or simple. In this case, Fajardo was charged with *serious dishonesty*, which necessarily entails the presence of any one of the following circumstances:

(1) the dishonest act caused serious damage and grave prejudice to the Government;

(2) the respondent gravely abused his authority in order to commit the dishonest act;

(3) **where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption**;

(4) The dishonest act exhibits moral depravity on the part of respondent;

(5) The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;

(6) The dishonest act was committed several times or in various occasions;

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[23] *Alfornon v. Delos Santos, et al.*, G.R. No. 203657, July 11, 2016.

(7) The dishonest act involves a Civil Service examination irrregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; and

(8) Other analogous circumstances.[24] (Emphasis supplied)

Grave misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or to disregard established rules.[25] Corruption, as an element of grave misconduct, consists in the official or employee's act of unlawfully or wrongfully using his position to gain benefit for one's self.[26] Lastly, **conduct prejudicial to the best interest of service** deals with a demeanor of a public officer which "tarnished the image and integrity of his/her public office".[27]

Clearly, Fajardo's acts constitute serious dishonesty for her dishonest act deals with money on her account; and that her failure to account for the shortage showed an intent to commit material gain, graft and corruption. Evidence of misappropriation of the missing funds is not required because the existence of shortage of funds and the failure to satisfactorily explain the same would suffice.[28]

Grave misconduct was committed when Fajardo failed to keep and account for cash and cash items in her custody. It must be noted that she was issued a vault by the PCSO and was bonded by the Bureau of Treasury for her to effectively carry out her duties and responsibilities. Yet, investigation conducted by the PCSO reveals that she failed to perform such

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[24] CSC Resolution No. 06-0538, Section 3.

[25] *Office of the Ombudsman v. Apolonio*, G.R. No. 165132, March 7, 2012.

[26] *Seville v. Commission on Audit*, G.R. No. 177657, November 20, 2012.

[27] *Largo v. Court of Appeals, et al.*, G.R. No. 177244, November 20, 2007.

[28] *Belleza v. Commission on Audit*, G.R. No. 133490, February 27, 2002.

duties when such funds on her account were reported missing. Her corrupt intention was evident on her failure to explain such missing funds despite reasonable opportunity to do the same.

Lastly, conduct prejudicial to the best interest of service was committed because the acts of Fajardo tarnished the image of PCSO, as the principal government agency for raising and providing funds for health programs, medical assistance and services, and charities of national character,[29] considering that aside from the shortage of funds, unpaid winning tickets dated 2004 were also found in Fajardo's possession when she should have liquidated and replenished the same. The CA correctly held that the public would lose their trust to PCSO because of the reported misappropriation of funds, which are allotted as prizes.[30]

WHEREFORE, the instant petition is **DENIED.** Accordingly, the Decision dated September 16, 2013 and Resolution dated May 9, 2014 of the Court of Appeals in CA-G.R. SP No. 121180 are **AFFIRMED *in toto*.**

Petitioner Angelica A. Fajardo is **DISMISSED FROM SERVICE**, with all its accessory penalties.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Jardeleza, JJ.,* concur.

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[29] Republic Act No. 1169, AN ACT PROVIDING FOR CHARITY SWEEPSTAKES, HORSE RACES, AND LOTTERIES. Approved June 18, 1954.

[30] *Rollo*, p. 55.

THIRD DIVISION

[G.R. No. 213922. July 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMMEL DIPUTADO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE ELEMENTS OF THE CRIME AND THE EVIDENCE OF THE *CORPUS DELICTI* MUST BE ESTABLISHED BEYOND REASONABLE DOUBT.— In a successful prosecution for illegal sale of dangerous drugs, like *shabu*, the following elements must be established: (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 therefor. What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. It is however not enough that the prosecution merely establish the elements of the crime of illegal sale of dangerous drugs. It is well-settled that in the prosecution of cases involving the illegal sale or illegal possession of dangerous drugs, the evidence of the *corpus delicti* which is the dangerous drug itself, must be independently established beyond reasonable doubt.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; THE IDENTITY AND INTEGRITY OF THE *CORPUS DELICTI* MUST DEFINITELY BE SHOWN TO HAVE BEEN PRESERVED BECAUSE OF THE ILLEGAL DRUG'S UNIQUE CHARACTERISTIC THAT RENDERS IT INDISTINCT, NOT READILY IDENTIFIABLE, AND EASILY OPEN TO TAMPERING, ALTERATION OR SUBSTITUTION.— The duty of the prosecution is not merely to present in evidence the seized illegal drugs. It is essential that the illegal drugs seized from the suspect is the very same substance offered in evidence in court as the identity of the drug must be established with the same unwavering exactitude

as that required to make a finding of guilt. The identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. 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. Thus, Section 21 of R.A. No 9165 provides for the procedure that ensures that what was confiscated is the one presented in court x x x. This rule was elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 x x x.

3. **ID.; ID.; ID.; CHAIN OF CUSTODY; DEFINED.—** Chain of Custody is 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 and the presentation in court for identification and 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.

4. **ID.; ID.; ID.; ID.; MARKING, DEFINED; IT IS VITAL THAT THE SEIZED CONTRABAND BE IMMEDIATELY MARKED BECAUSE THE SUCCEEDING HANDLERS OF THE SPECIMENS WILL USE THE MARKINGS AS REFERENCE.—** 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. It is vital that the seized contraband be immediately marked because 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.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT BE INVOKED IF THERE ARE LAPSES IN THE CHAIN OF CUSTODY AND IT WILL NEVER BE STRONGER THAN THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED.— The presumption of regularity in the performance of official duties in favor of the police officers will not save the prosecution's case, given the foregoing lapses and gaps in the chain of custody. The presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance, the presumption of regularity will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused.

6. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; THE BURDEN LIES WITH THE PROSECUTION TO OVERCOME THE PRESUMPTION OF INNOCENCE BY PRESENTING PROOF BEYOND REASONABLE DOUBT.— It is well-settled that an accused-appellant shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies with the prosecution to overcome this presumption of innocence by presenting proof beyond reasonable doubt. The prosecution must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required evidence, the defense does not even need to present evidence in its own behalf; the presumption prevails and the accused-appellant should be acquitted.

APPEARANCES OF COUNSEL

Jun Eric C. Cabardo for accused-appellant.
Office of the Solicitor General for plaintiff-appellee.

D E C I S I O N

TIJAM, *J.*:

Challenged in this appeal is the Decision[1] dated December 16, 2010 of the Court of Appeals (CA) in CA-G.R. CEB-CR-HC No. 00968, which affirmed the Decision[2] dated September 2, 2008 of the Regional Trial Court (RTC) of Iloilo City, Branch 36, in Criminal Case No. 06-62342 finding Rommel Diputado (accused-appellant) guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The accusatory portion of the Information reads as follows:

> That on or about the 7th day of March 2006, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and criminally sell, distribute and deliver to a PNP poseur buyer one (1) heat-sealed transparent plastic packet containing 3.957 grams of methamphetamine hydrochloride (shabu), a dangerous drug, in consideration of twenty-four thousand pesos, without the authority to sell and distribute the same; that four (4) pieces of twenty-peso marked bills with Serial Numbers DV076150, DV811721, KW270225 and DT923404 which form part of the buy-bust money were recovered from the possession of the herein accused.
>
> CONTRARY TO LAW.[3]

Upon arraignment, accused-appellant pleaded not guilty to the charge. Thereafter, trial ensued.

The pertinent facts, as narrated by the RTC, are as follows:

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[1] Penned by Associate Justice Agnes Reyes-Carpio, concurred in by Associate Justices Edgardo L. Delos Santos and Eduardo B. Peralta, Jr., *rollo*, pp. 4-11.

[2] Penned by Judge Victor E. Gelvezon, CA *rollo*, pp. 16-33.

[3] Records, p. 1.

A. Version of the Prosecution

On February 27, 2006, an asset of to [sic] the Office of the Regional Special Anti-Crime Task Force (RSAC-TF) of the Philippine National Police, Region 6 went to their Office and gave an information to P/Sr. Insp. Gallardo that a certain Rommel Dipuitado [sic] (the herein accused who was identified in Court), who was in the Watch List of said Task Force, is engaged in selling drugs in Brgy. San Vicente, Jaro, Iloilo City. Upon receipt of said information, Inspector Gallardo instructed PO1 Ronald Estares and PO1 Ygan, both members of said Task Force, to conduct surveillance and test buy on the accused. Accordingly, PO1 Estares and PO1 Ygan together with the asset, who gave the information, conducted a test buy on the accused on March 3, 2006 in Brgy. San Jose, Molo, Iloilo City. During the test buy, they were able to purchase suspected shabu from the accused worth ₱500.00 and when they returned to their Office, P/Sr. Inspector Gallardo instructed them to conduct a buy-bust operation. Thus, on the morning of March 7, 2006, P/Sr. Inspector Gallardo conducted a briefing wherein PO1 Estares was designated to be the poseur-buyer with PO1 Lord Ambrocio as his buddy who will give a support. Also, during the briefing, P/Sr. Inspector Gallardo gave to PO1 Estares a buy-bust money amounting to ₱24,000.00 consisting of five Twenty Peso bills, four of which were authenticated at the Iloilo City Prosecution Office, and the others were fake money in different denominations. Moreover, PO1 Estares and PO1 Ambrocio were informed that the buy-bust operation will be conducted at around 1:00 o'clock in the afternoon in Brgy. San Vicente, Jaro, Iloilo City where they will meet their asset who was used during the test-buy and that the group of P/Sr. Inspector Gallardo will also serve as back-up.

Then, at around 10:00 o'clock in the morning of the same day, PO1 Estares and Ambrocio proceeded to Brgy. San Vicente, Jaro, Iloilo City and upon arrival thereat, they positioned themselves at a billiard hall and an eatery where they waited for their asset. After about one and a half hour[s], the asset arrived at the area and said asset informed PO1 Estares to wait for the accused. By 12:45 noontime, the accused arrived and as such, PO1 Estares transacted with accused at the corner of the street for the purchase of shabu worth ₱24,000.00. During the transaction, the accused told PO1 Estares and PO1 Ambrocio to just wait and then said accused left the place. After a while, the accused arrived and alighted from a taxi, approached PO1 Estares and PO1 Ambrocio and then he asked for the money.

Accordingly, PO1 Estares handed to the accused their buy-bust money which accused placed inside his pocket and then, he handed to PO1 Estares a big sachet containing white crystalline substance. At that point, PO1 Estares and PO1 Ambrocio introduced themselves as police officers and they immediately frisked the accused which resulted to the recovery of the buy-bust money by PO1 Estares. Thereafter, the group of P/Sr. Inspector Gallardo, who was "miss called" [sic] by PO1 Ambrocio, arrived at the scene of the incident and they brought the accused to the house of the barangay captain about 100 meters away together with the item subject of the buy-bust.

At the house of the barangay captain, the subject item and the buy-bust money were recorded/listed by PO2 Lucilo Mayores in a document which was signed by the barangay kagawads and media representative. After the recording, the items were gathered by PO1 Estares who brought them to their Office where he marked the plastic sachet with white crystalline substance with RDM, the initial of the accused. Then, PO1 Estares turned over the listed items to PO1 Alfredo Tilano, the Exhibit Custodian of RSAC-TF. Thereafter, the items were brought to the Iloilo City Prosecution Office where they were inventoried before Prosecutor Elvas and in the presence of a barangay kagawad and media representative who also signed the document relative thereto. After the inventory, the plastic sachet with white crystalline substance was submitted to the PNP Crime Laboratory for examination.

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B. Version of the Defense

At around 1:00 o'clock on the afternoon of March 7, 2005(sic) after accused has taken lunch in his house in Brgy. North San Jose, Molo, Iloilo City, he rode in a taxi in order to go to Brgy. Tabuc-Suba, Jaro, Iloilo City as he was requested by a friend to butcher a pig. Unfortunately, on the way to his friend and while passing Brgy. San Vicente, Jaro, the taxi ridden by accused was blocked by three persons, one of whom went to the door of the taxi and greeted the accused. Then, said person brought the accused at the back of the taxi and after a while, said accused was brought by the persons to the house of the Barangay Captain of Brgy. San Vicente, about one hundred meters away. At the house of the Barangay Captain, accused was surprised when the three persons presented money and shabu to the Barangay Captain and he was directed to point at the said items. Initially, he refused to point at the items but eventually he pointed

at the items and at that point, he was photographed with the use of a cellphone. Thereafter, accused was brought to the Hall of Justice.[4]

On September 2, 2008, the RTC found[5] the accused-appellant guilty beyond reasonable doubt for illegal selling of dangerous drugs, to wit:

> WHEREFORE, judgment is hereby rendered finding accused Rommel Diputado y Montefolka GUILTY beyond reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay the fine of Five Hundred Thousand (₱500,000.00) Pesos.
>
> The plastic sachet of shabu (Exhibit "H-1") and its container subject of the criminal case is [sic] confiscated in favor of the government and the OIC Branch Clerk of Court is directed to turn over said item to the Philippine Drug Enforcement Agency, Region 6 for proper disposition pursuant to existing rules and regulations.
>
> On the other hand, the five (5) pieces of Twenty Peso bills (Exhibits "I" to "I-4") including the fake money amounting to ₱23,900.00 (Exhibit "I-5") is ordered to be returned to the Regional Special Anti-Crime Task Force of the Philippine National Police.
>
> SO ORDERED.[6]

The CA, in its Decision[7] dated December 16, 2010, affirmed *in toto* the ruling of the RTC, thus:

> **WHEREFORE**, in view of all the foregoing considerations, the September 2, 2008 Decision of the Regional Trial Court, Branch 36, Iloilo City and its Order dated October 30, 2008, is hereby **AFFIRMED**.
>
> **SO ORDERED**.[8]

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[4] CA *rollo*, pp. 18-22.

[5] See Decision dated September 2, 2008, *supra* note 2.

[6] CA *rollo*, pp. 32-33.

[7] *Supra* note 1.

[8] *Rollo*, p. 11.

Hence, this appeal with accused-appellant raising the following issue in his Supplemental Brief:[9]

WHETHER OR NOT THE TRIAL COURT AND THE COURT OF APPEALS BOTH ERRED IN FINDING THAT THE EVIDENCE OF THE PROSECUTION WAS SUFFICIENT TO CONVICT THE ACCUSED OF THE ALLEGED SALE OF METHAMPHETAMINE HYDROCHLORIDE, IN VIOLATION OF SECTION 5 OF R.A. [NO.] 9165.[10]

Accused-appellant claims that the seized illegal drug was not marked immediately after his arrest at the scene of the crime, neither was it marked at the house of the barangay captain where the seized illegal drug and the buy-bust money were allegedly initially recorded/listed by PO1 Lucilo Mayores (PO1 Mayores). The seized illegal drug was only marked at the office of the Regional Special Anti-Crime Task Force (RSAC-TF) by PO1 Ronald Estares (PO1 Estares) with the initial "RDM." Accused-appellant further argues that there was no evidence on record that photographs were taken during the inventory of the seized items. Another break in the chain of custody, according to the accused-appellant, was the failure of the prosecution to present PO3 Allen Holleza (PO3 Holleza), the person who allegedly received the Request for Laboratory Examination.[11] The non-presentation of PO3 Holleza was fatal to the prosecution's case considering that there is an additional marking, *i.e.*, "RGE", on the plastic sachet which was not mentioned in any document presented by the prosecution nor was it explained by PO1 Estares, PO1 Mayores and PO1 Alfredo Tilano (PO1 Tilano). Thus, the procedural lapses or the gaps in the chain of custody of the illegal drug and the failure of the police officers to offer a justifiable reason for their non-compliance with the requirements of Section 21 of R.A. No. 9165, create a reasonable doubt as to the integrity and evidentiary value of the seized illegal drug.

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[9] *Id*. at 28-49.

[10] *Id*. at 28.

[11] Records, p. 131.

The appeal is meritorious.

At the outset, appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned.[12] After a careful review and scrutiny of the records, We hold that the prosecution failed to preserve the integrity and evidentiary value of the seized dangerous drugs. As such, the acquittal of the accused-appellant comes in a matter of course.

In a successful prosecution for illegal sale of dangerous drugs, like *shabu*, the following elements must be established: (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 therefor. What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*.[13] It is however not enough that the prosecution merely establish the elements of the crime of illegal sale of dangerous drugs. It is well-settled that in the prosecution of cases involving the illegal sale or illegal possession of dangerous drugs, the evidence of the *corpus delicti* which is the dangerous drug itself, must be independently established beyond reasonable doubt.[14]

The duty of the prosecution is not merely to present in evidence the seized illegal drugs. It is essential that the illegal drugs seized from the suspect is the very same substance offered in evidence in court as the identity of the drug must be established with the same unwavering exactitude as that required to make

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[12] *People of the Philippines v. Ramil Doria Dahil and Rommel Castro y Carlos*, G.R. No. 212196, January 12, 2015.

[13] *People of the Philippines v. Glenn Salvadoy y Bal Verde*, G.R. No. 190621, February 10, 2014.

[14] *People of the Philippines v. Joselito Beran y Zapanta @ "Jose,"* G.R. No. 203028, January 15, 2014.

a finding of guilt.[15] The identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[16]

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.[17] Thus, Section 21 of R.A. No. 9165 provides for the procedure that ensures that what was confiscated is the one presented in court, to wit:

> 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 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

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[15] *People of the Philippines v. Vivian Bulotano y Amante*, G.R. No. 190177, June 11, 2014.

[16] *Lito Lopez v. People of the Philippines*, G.R. No. 188653, January 29, 2014.

[17] *Id.*

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;

This rule was elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, to wit:

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 arrest; *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.

Chain of Custody is 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 and the presentation in court for identification and destruction.[18] 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.

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. It is vital that the seized contraband be immediately marked because 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.[19]

In the present case, PO1 Estares testified that he did not mark the seized item immediately after the arrest of the accused-appellant at the place where the latter was arrested.[20] It is also undisputed that PO1 Estares did not mark the seized item in the house of the barangay captain, 100 meters away from the place of the arrest, where the initial listing/recording of the seized item and the buy-bust money was conducted. According to PO1 Estares, the seized item was only marked with the initials "RDM" at the office of the RSAC-TF. Thus:

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[18] *People of the Philippines v. Sonny Sabdula y Amanda*, G.R. No. 184758, April 21, 2014.

[19] *Supra* note 11.

[20] TSN, March 14, 2007, p. 40.

PROS. GUADALOPE:
After Rommel Diputado handed to you this sachet containing white crystalline substance what did you do?

WITNESS:
We immediately introduced ourselves as police officers.

PROS. GUADALOPE:
After introducing yourselves what did you do to Rommel Diputado?

WITNESS:
As standard operating procedure we immediately frisked him and after we frisked him we recovered the buy-bust money.

PROS. GUADALOPE:
Who recovered?

WITNESS:
I was the one who recovered.

PROS. GUADALOPE:
Thereafter, what did you do to Rommel Diputado?

WITNESS:
We informed him of his constitutional rights.

PROS. GUADALOPE:
Before informing him of his constitutional rights, for what reason did you frisk him?

WITNESS
For selling of illegal drugs, sir.

PROS. GUADALOPE:
After you informed him of his constitutional rights what happened next?

WITNESS:
Our troupes situated nearby responded to us.

x x x x x x x x x

PROS. GUADALOPE:
When Police Officer Gallardo and the other members responded what happened next?

WITNESS:
The subject was brought to the house of the barangay captain.

COURT:
How about the items which you bought?

WITNESS:
I brought it with me.

COURT:
Yes but what did you do with that?

WITNESS:
I just handled it sir, going to the house of the barangay captain.

PROS. GUADALOPE:
How far is this house of the barangay captain from that place of the incident where you arrested Diputado?

WITNESS:
More or less 100 meters sir.

PROS. GUADALOPE:
And at the house of this barangay captain what happened there?

WITNESS:
A receipt of confiscated items was prepared there.

x x x x x x x x x

PROS. GUADALOPE:
After that where did you proceed?

WITNESS:
We proceeded to the office at Camp Martin Delgado.

PROS. GUADALOPE:
And who was carrying the items subject of the listing there?

WITNESS:
I was the one, sir.

PROS. GUADALOPE:
And at the office what transpired, there if you can recall?

WITNESS:
I indorsed the items to our property custodian and I marked it.

PROS. GUADALOPE:
What marking did you place on the item, if you can recall?

WITNESS:
I placed RDM, initial of Rommel Diputado.[21]

Hence, in the initial step of the chain of custody, a gap already occurred. The seized item was not marked immediately at the place where accused-appellant was arrested. Neither was it marked in the house of the barangay captain where the seized item and the buy-bust money were recorded and listed by PO1 Mayores. The seized item was marked only after the recording/ listing and only at the RSAC-TF. Therefore, the integrity and evidentiary value of the seized item was already compromised. The prosecution was not able to establish an unbroken chain of custody. From the time of the seizure of the dangerous drug up to the time that the same was brought to the office of the RSAC-TF, alteration, substitution or contamination of the seized item could have happened. In fact, the Receipt of Confiscated or Seized Articles[22] does not mention any markings on the seized item. Even the Complaint-Affidavit[23] executed by PO1 Estares and PO1 Ambrocio did not mention any markings on the seized item.

There are cases when the chain of custody is relaxed such as when the marking of the seized item 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. Even if We relax the application of the marking requirement in this case, the same will not suffice to sustain the conviction of accused-appellant.[24] In this instance, there is nothing in the testimony of PO1 Estares that he marked the seized item in the presence of accused-appellant. Further, PO1 Estares did not even make any effort to proffer any justification as to why he failed to mark the seized item at the place of the arrest or even in the house of the barangay captain.

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[21] *Id*. at 19-26.

[22] Records, p. 129.

[23] *Id*. at 134-135.

[24] *Supra* note. 11.

We observe that while PO1 Estares testified that he placed the marking "RDM" at the RSAC-TF prior to the inventory conducted by the Iloilo Prosecution Office, the Inventory of Confiscated or Seized Articles,[25] however, does not show any markings on the seized item. Then, suddenly the marking "RDM" only appeared in the Request for Laboratory Examination.[26] These incidents put into doubt as to when the marking of the seized item had taken place.

Another circumstance which rendered the *corpus delicti* doubtful is the sudden appearance of the marking "RGE." The said marking was not apparent in any document nor was it explained in the testimonies of PO1 Estares, PO1 Mayores and PO1 Tilano. Forensic Chemist Rea Villavicencio (FC Villavicencio) testified that:

PROS. GUADALOPE:
Madam Witness, the Chemistry Report which is also marked as Exhibit 'E', the specimen described therein as one small heat sealed transparent plastic bag with markings. What do you mean by this 'with markings,' Madam Witness?

WITNESS:
The markings I have observed when the specimen was submitted for examination which is RDM, RGE and an initial.

x x x x x x x x x

COURT:
What you received, what markings does it have?

WITNESS:
The same markings RDM and there was also a marking of RGE.

COURT:
You said, you verified awhile ago the one that you received from the request, is that correct?

WITNESS:
Yes, your Honor.

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[25] Records, p. 130.

[26] *Id*. at 131.

COURT:
And did you notice anything wrong with that, in the markings?

WITNESS:
The additional RGE but the RDM is placed or inscribed on the plastic bag which made me conclude that it was the same specimen.[27]

The prosecution failed to elaborate on the additional marking of "RGE" on the seized item. Neither did the prosecution make an effort to clarify the same. Who could have placed the additional marking? Is there another person who handled the seized item which the prosecution failed to identify or failed to present? These are the doubts that linger in Our minds. PO3 Holleza, who allegedly received the Request for Laboratory Examination from PO1 Estares, was the only one who can shed light on the said marking. Sadly, the prosecution failed to present him. As such, another break in the chain of custody occurred. The prosecution failed in its duty to ensure that the seized item from accused-appellant was the same item marked and subjected to examination and ultimately presented in court.

The presumption of regularity in the performance of official duties in favor of the police officers will not save the prosecution's case, given the foregoing lapses and gaps in the chain of custody. The presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance, the presumption of regularity will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused.[28]

It is well-settled that an accused-appellant shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies with the prosecution to overcome this presumption of innocence by presenting proof beyond reasonable

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[27] TSN, August 11, 2006, pp. 16-18.

[28] *People of the Philippines v. Larry Mendoza y Estrada*, G.R. No. 192432, June 23, 2014.

doubt. The prosecution must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required evidence, the defense does not even need to present evidence in its own behalf; the presumption prevails and the accused-appellant should be acquitted.[29]

Since the prosecution was not able to establish an unbroken chain of custody, reasonable doubt exists as to the guilt of the accused-appellant. Thus, We are constrained to acquit accused-appellant on the ground of reasonable doubt.

WHEREFORE, the instant appeal is **GRANTED**. The December 16, 2010 Decision of the Court of Appeals in CA-G.R. CEB-CR-HC No. 00968 is **REVERSED AND SET ASIDE**. The accused-appellant Rommel Diputado *y* Montefolka is hereby **ACQUITTED** of the charge of violation of Section 5, Article II of Republic Act No. 9165. Accused-appellant is ordered immediately **RELEASED** from custody, unless he is being held for another lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five (5) days from receipt of this Decision.

SO ORDERED.

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

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[29] *Supra* note 16.

[*] Designated Additional Member per Raffle dated February 20, 2017 *vice* Associate Justice Francis H. Jardeleza.

THIRD DIVISION

[G.R. No. 215029. July 5, 2017]

SUMMIT ONE CONDOMINIUM CORPORATION, *petitioner, vs.* **POLLUTION ADJUDICATION BOARD AND ENVIRONMENTAL MANAGEMENT BUREAU–NATIONAL CAPITAL REGION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY CERTIORARI; SHALL RAISE ONLY QUESTIONS OF LAW BECAUSE THE SUPREME COURT IS NOT A TRIER OF FACTS AND DOES NOT NORMALLY UNDERTAKE THE RE-EXAMINATION OF THE EVIDENCE PRESENTED BY THE CONTENDING PARTIES DURING THE TRIAL OF THE CASE.— This appeal by *certiorari* is being taken under Rule 45, whose Section 1 expressly requires that the petition shall raise only questions of law which must be distinctly set forth. Yet, the SOCC hereby raises a question of fact which resolution is decisive in this case. That issue of fact concerns whether or not the CA committed error in affirming SOCC's non-compliance with the DENR Effluent Standards and in imposing fines thereon. For this reason, the Court is constrained to deny due course to the petition for review. It is a settled rule that in the exercise of the Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case. This Court relies on the findings of fact of the CA or of the trial court, and accepts such findings as conclusive and binding unless any of the exceptions laid down by jurisprudence obtains in the factual setting of the case. However, none of these exceptions apply herein.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ARE GENERALLY ACCORDED GREAT RESPECT, IF NOT FINALITY, BY THE COURTS BY REASON OF THEIR SPECIAL KNOWLEDGE AND EXPERTISE OVER MATTERS FALLING UNDER THEIR

JURISDICTION.— [T]he courts generally accord great respect, if not finality, to factual findings of administrative agencies because of their special knowledge and expertise over matters falling under their jurisdiction. x x x Indeed, by reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies, like respondents PAB and EMB-NCR, are in a better position to pass judgment thereon, and their findings of fact are generally accorded great respect, if not finality, by the courts. Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant. It is not the task of the appellate court or this Court to once again weigh the evidence submitted before and passed upon by the administrative body and to substitute its own judgment regarding the sufficiency of the evidence. Since SOCC failed to show that the PAB and EMB-NCR have acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, this Court cannot entertain the instant petition questioning their rulings.

3. **POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 9275 (THE PHILIPPINE CLEAR WATER ACT OF 2004); IMPOSITION OF FINE AS PENALTY FOR NON-COMPLIANCE WITH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES EFFLUENT STANDARDS, WARRANTED IN CASE AT BAR.—** We cannot subscribe to SOCC's claim that the CA erred in affirming the arbitrary fines imposed by respondents PAB and EMB-NCR. Records clearly show that SOCC admitted its failure to comply with the DENR's rules with respect to the Effluent Standards. In its petition, SOCC pleaded for the mitigation of fines by the mere fact that it exerted its effort in good faith in complying with the Effluent Standards by hiring Milestone to conduct the monthly examination. It even went further in informing this Court that "it has an on-going project wherein it is currently in the process of installing a state-of-the-art sewage treatment plant – the Hitachi STP-MBR", and would, among other things, "allow SOCC to recycle 80% of the water in effluent for use for drinking." Indeed, these statements indicate that SOCC was aware that it failed to comply with the DENR Effluent Standards test during the March 11, 2010 inspection conducted by EMB-NCR. At that juncture, it

was incumbent on PAB to impose a penalty on SOCC, *i.e.*, a fine in the amount of PhP 2,790,000.

4. ID.; ID.; ID.; THE PROTECTION OF THE ENVIRONMENT IS THE DUTY NOT ONLY OF GOVERNMENT AGENCIES TASKED TO OVERSEE ENVIRONMENTAL PRESERVATION AND RESTORATION BUT OF THE ENTIRE CITIZENRY.— The protection of the environment, like the bodies of water which are within the Metropolis, is the duty and responsibility, not only of government agencies tasked to oversee environmental preservation and restoration, but, more importantly, of the entire citizenry, including manufacturing plants and industrial plants including domestic, commercial and recreational facilities. PAB dealt with the barrage of pollution threats pouring out from the SOCC's sewerage within its vicinity when it conducted an inspection of the wastewater samples, thus, giving teeth to the policy of R.A. No. 9275 which is to pursue a policy of economic growth in a manner consistent with the protection, preservation and revival of the quality of our fresh, brackish and marine waters. The least that SOCC could do is to be more responsible, more familiar and more responsive to the call of environmental conservation.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the May 29, 2014 Decision[1] of the Court of Appeals (CA), in CA-G.R. SP No. 132046, which dismissed the Petition for Review[2] filed on October 2, 2013

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Elihu A. Ybañez and Carmelita S. Manahan concurring; *rollo*, pp. 32-37.

[2] *Id*. at 321-340.

and affirmed the Orders dated September 20, 2012[3] and July 12, 2013[4] both issued by respondent Pollution Adjudication Board (PAB), which imposed a fine of PhP 2,790,000 on petitioner Summit One Condominium Corporation (SOCC) for its alleged violation of Republic Act (R.A.) No. 9275,[5] otherwise known as the Philippine Clear Water Act of 2004.

The facts are as follows:

R.A. No. 9275 was enacted pursuant to the State's policy of pursuing economic growth in a manner consistent with the protection, preservation and revival of the quality of fresh, brackish and marine waters.[6] Towards this end, the Department of Environment and Natural Resources (DENR) requires owners and operators of facilities that discharge regulated effluents[7] to secure a permit to discharge. This permit is the legal authorization granted by the DENR to discharge wastewater into a particular body of water.[8]

On March 11, 2010, respondent Environmental Management Bureau (EMB) — National Capital Region (NCR) conducted an inspection of the wastewater samples gathered from the sewage treatment facility of SOCC. The authorized inspection was through a "grab sample" taken from SOCC's sewage treatment plant (STP) for the purpose of monitoring SOCC's compliance with R.A. No. 9275 and as a necessary consequence of its

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[3] Issued by Presiding Officer Undersecretary Demetrio L. Ignacio, Jr.; *id*. at 299-301.

[4] *Id*. at 317-319.

[5] AN ACT PROVIDING FOR A COMPREHENSIVE WATER QUALITY MANAGEMENT AND FOR OTHER PURPOSES. Approved on March 22, 2004.

[6] R.A. No. 9275, Chapter 1, Article 1, Section 2.

[7] R.A. No. 9275, Chapter 1, Article 2, Section 4(m). *Effluent* – means discharges from known source which is passed into a body of water or land, or wastewater flowing out of a manufacturing plant, industrial plant including domestic, commercial and recreational facilities.

[8] R.A. No. 9275, Chapter 2, Article 2, Section 14.

application for wastewater "Discharge Permit." The laboratory analysis yielded that the SOCC's wastewater failed to comply with the DENR Effluent Standards set by the Revised Effluent Regulations of 1990 on four (4) parameters, namely, color, biological oxygen demand (BOD 5 mg/L), Suspended Solids mg/L, and Total Coliform (MPN/100m/L).

On May 12, 2010, the EMB-NCR, through Engr. Roberto D. Sheen, OIC, Regional Director, sent a Notice of Violation[9] to SOCC, directing the latter to appear in a technical conference to be held on May 25, 2010 to thresh out the issue on the laboratory results. During the conference, SOCC agreed to introduce bio-remediation[10] measures and enzyme addition to lower the concentration of bacteria in its sewage water. Subsequently, SOCC hired Milestone Water Industries, Inc. (Milestone) to conduct an independent analysis of its wastewater. The results of the laboratory analysis for the months of March, April, and May 2010 revealed that the sewage water of SOCC passed the Effluent Standards.[11]

On December 15, 2010, EMB-NCR conducted another inspection on SOCC's STP. The results of the physical-chemical analysis disclosed that the wastewater of SOCC passed the Effluent Standards.

In its September 20, 2012 Order,[12] the PAB adopted the recommendation of the Committee on Fines penalizing SOCC for its initial failure to comply with the Effluent Standard. A fine was imposed on SOCC in the amount of PhP 2,790,000. SOCC moved for reconsideration[13] but failed to obtain favorable relief as this was denied by the PAB in its July 12, 2013 Order.[14]

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[9] *Rollo*, p. 76.

[10] *Id.* at 78.

[11] *Id.* at 74.

[12] *Id.* at 299-301.

[13] *Id.* at 303-314.

[14] *Id.* at 317-319.

On October 2, 2013, SOCC appealed[15] the PAB's September 20, 2012 and July 12, 2013 Orders with the CA, which the latter denied in its May 29, 2014 Decision.[16] Its June 26, 2014 Motion for Reconsideration[17] having been denied in the October 13, 2014 Resolution,[18] SOCC filed the instant petition.

Petitioner contends that the CA erred when (1) it affirmed the PAB's reliance on the results of EMB-NCR's test results based on a "grab sample"; (2) it ignored the fact that EMB-NCR failed to timely conduct a "compliance test" after it was informed that SOCC successfully implemented "bio-remediation measure"; (3) it ignored EMB-NCR's failure to timely furnish SOCC of the results of the test within five (5) days from the release of the laboratory analysis; (4) it rejected the findings of Milestone because it was not an accredited laboratory; and (5) it affirmed the amount of fines imposed on SOCC, which is a violation of PAB's own rules, considering that it is arbitrary, amounting to a violation of its right to due process.

Petitioner likewise contends that its efforts to comply with DENR's Effluent Standards "should mitigate" the fines imposed upon it. In order to comply therewith, petitioner even engaged the services of Milestone to conduct monthly examinations of its wastewater as early as July 2009. Petitioner further contends that assuming EMB-NCR's test is valid, SOCC should only be liable for the following period: March 11, 2010 until March 17, 2010, or a total of seven days. This is so, considering that the subsequent test conducted by Milestone in March 17, 2010 showed that SOCC complied with the Effluent Standards.

In their Comment, PAB and EMB-NCR, through the OSG, aver that the issues raised by petitioner, *i.e.*, *the CA erred in affirming PAB's twin Orders, inclusive of the imposition of fines*, are factual issues which are not the proper subjects of a petition for review under Rule 45.

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[15] *Id.* at 321-340.

[16] *Id.* at 32-37.

[17] *Id.* at 370-381.

[18] *Id.* at 39-40.

The Appeal is bereft of merit.

This appeal by *certiorari* is being taken under Rule 45, whose Section 1 expressly requires that the petition shall raise only questions of law which must be distinctly set forth. Yet, the SOCC hereby raises a question of fact which resolution is decisive in this case. That issue of fact concerns whether or not the CA committed error in affirming SOCC's non-compliance with the DENR Effluent Standards and in imposing fines thereon. For this reason, the Court is constrained to deny due course to the petition for review.

It is a settled rule that in the exercise of the Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case.[19] This Court relies on the findings of fact of the CA or of the trial court, and accepts such findings as conclusive and binding unless any of the exceptions[20] laid down by jurisprudence obtains in the factual setting of the case. However, none of these exceptions apply herein.

Likewise, it is worth stressing that the courts generally accord great respect, if not finality, to factual findings of administrative

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[19] *Special People, Inc. Foundation, represented by its Chairman, Roberto P. Cericos v. Canda, et al.*, G.R. No. 160932, January 14, 2013.

[20] (1) When the factual findings of the appellate court and the trial court are contradictory; (2) when the findings of the trial court are grounded entirely on speculation, surmises or conjectures; (3) when the lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (6) when there is a misappreciation of facts; (7) when the findings of fact are themselves conflicting; and (8) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record. *Federal Builders, Inc. v. Foundation Specialists, Inc.*, G.R. No. 194507, September 8, 2014.

agencies because of their special knowledge and expertise over matters falling under their jurisdiction.[21]

Here, the PAB, which is vested under Section 19 of Executive Order 192 or the order Providing For The Reorganization Of The Department Of Environment, Energy And Natural Resources; Renaming It As The Department Of Environment And Natural Resources And For Other Purposes,[22] with the specific power to adjudicate pollution cases in general; and, EMB-NCR, which serves as the Secretariat of the PAB,[23] found that SOCC failed to comply with the DENR Effluent Standards that caused pollution to the waters. It also found that SOCC's reliance on Milestone's water analysis showing its subsequent compliance with the DENR Effluent Standards cannot be given credence considering that Milestone is not a DENR-accredited laboratory. The CA accorded great weight to these findings and We find no justification to deviate therefrom.

Indeed, by reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies, like respondents PAB and EMB-NCR, are in a better position to pass judgment thereon, and their findings of fact are generally accorded great respect, if not finality, by the courts. Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant.[24] It is not the task of the appellate court or this Court to once again weigh the evidence

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[21] *Spouses Mauricio M. Tabino And Leonila Dela Cruz-Tabino v. Lazaro M. Tabino*, G.R. No. 196219, July 30, 2014.

[22] PROVIDING FOR THE REORGANIZATION OF THE DEPARTMENT OF ENVIRONMENT, ENERGY AND NATURAL RESOURCES; RENAMING IT AS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND FOR OTHER PURPOSES. Approved on June 10, 1987.

[23] *Pacific Steam Laundry, Inc. v. Laguna Lake Development Authority*, G.R. No. 165299, December 18, 2009.

[24] *Paraiso-Aban v. Commission on Audit*, G.R. No. 217948, January 12, 2016.

submitted before and passed upon by the administrative body and to substitute its own judgment regarding the sufficiency of the evidence.[25] Since SOCC failed to show that the PAB and EMB-NCR have acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, this Court cannot entertain the instant petition questioning their rulings.[26]

We cannot subscribe to SOCC's claim that the CA erred in affirming the arbitrary fines imposed by respondents PAB and EMB-NCR.

Records clearly show that SOCC admitted its failure to comply with the DENR's rules with respect to the Effluent Standards. In its petition, SOCC pleaded for the mitigation of fines by the mere fact that it exerted its effort in good faith in complying with the Effluent Standards by hiring Milestone to conduct the monthly examination. It even went further in informing this Court that "it has an on-going project wherein it is currently in the process of installing a state-of-the-art sewage treatment plant – the Hitachi STP-MBR", and would, among other things, "allow SOCC to recycle 80% of the water in effluent for use for drinking." Indeed, these statements indicate that SOCC was aware that it failed to comply with the DENR Effluent Standards test during the March 11, 2010 inspection conducted by EMB-NCR. At that juncture, it was incumbent on PAB to impose a penalty on SOCC, *i.e.*, a fine in the amount of PhP 2,790,000.

That SOCC subsequently complied with the DENR Effluent Standards in the months of March, April, and May 2010 is of no moment when We consider these established facts: *first*, Milestone is a "non-DENR-accredited or non-DENR-recognized environmental laboratory"; and *second*, its non-compliance with the DENR Effluent Standards, as revealed by the March 11, 2010 inspection resulted in the pollution of bodies of water. As correctly pointed out by the PAB and EMB-NCR, thus:

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[25] *Id.*

[26] *Id.*

It is undeniable, however, that petitioner nonetheless initially failed to comply with the Effluent Standards in violation of the Revised Effluent Regulations. x x x.

x x x x x x x x x

Rule 27.5 of the Implementing Rules and Regulations of the Philippine Clean Water Act of 2004 states that the continuation of the violation for which a daily fine shall be imposed shall not be construed to be a continuation of the discharge or pollutive activity ***but the continuation of the existence of the pollution***.

x x x x x x x x x

The submission of Self-Monitoring Reports (SMR) based on findings and certifications of Milestone, a non-DENR-Accredited or non-DENR-recognized environmental laboratory entity, is inconsequential as it cannot be considered compliance at all. Accordingly, the EMB-NCR cannot be expected to act on it. Moreover, when petitioner's SMR was not acted upon for a long period of time, it should have prompted petitioner to inquire upon its SMR before the EMB-NCR, which petitioner miserably failed to do.[27] (Emphasis ours)

Prescinding from the above disquisition, this Court is of the view that the CA did not err when it affirmed the PAB's September 20, 2012 and July 12, 2013 Orders.

A final note. The protection of the environment, like the bodies of water which are within the Metropolis, is the duty and responsibility, not only of government agencies tasked to oversee environmental preservation and restoration, but, more importantly, of the entire citizenry, including manufacturing plants and industrial plants including domestic, commercial and recreational facilities. PAB dealt with the barrage of pollution threats pouring out from the SOCC's sewerage within its vicinity when it conducted an inspection of the wastewater samples, thus, giving teeth to the policy of R.A. No. 9275 which is to pursue a policy of economic growth in a manner consistent with the protection, preservation and revival of the quality of

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[27] *Rollo*, pp. 393, 400-401.

our fresh, brackish and marine waters. The least that SOCC could do is to be more responsible, more familiar and more responsive to the call of environmental conservation.

WHEREFORE, the petition is **DENIED**. The May 29, 2014 Decision of the Court of Appeals in CA-G.R. SP No. 132046, which dismissed the Petition for Review filed on October 2, 2013 and affirmed the Orders dated September 20, 2012 and July 12, 2013 both issued by the Pollution Adjudication Board, which imposed a fine of PhP 2,790,000 on Summit One Condominium Corporation for its alleged violation of Republic Act No. 9275, otherwise known as the Philippine Clear Water Act of 2004, is hereby **AFFIRMED** *in toto*.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 215874. July 5, 2017]

ARLO ALUMINUM, INC., *petitioner, vs.* **VICENTE M. PIÑON, JR., IN BEHALF OF VIC EDWARD PIÑON,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; QUITCLAIMS; REQUIREMENTS FOR VALIDITY.— To be valid, a deed of release, waiver or quitclaim

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[*] Designated Additional Member per Raffle dated June 28, 2017 *vice* Associate Justice Francis H. Jardeleza.

must meet the following requirements: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is sufficient and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

2. ID.; ID.; ID.; ID.; MAY BE INVALIDATED WHEN OBTAINED FROM AN UNSUSPECTING OR GULLIBLE PERSON OR WHEN THE SETTLEMENT IS UNCONSCIONABLE ON ITS FACE.— Courts have stepped in to invalidate questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person, or where the agreement or settlement was unconscionable on its face. A quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. Moreover, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of the settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is sufficient and reasonable, the transaction must be recognized as a valid and binding undertaking.

3. ID.; ID.; ID.; ID.; WHEN DECLARED INVALID, THE RECIPIENT MUST RETURN OR OFFSET THE COMPENSATION RECEIVED.— When a quitclaim is declared invalid for one reason or another, the recipient thereto must return or offset the compensation received. x x x In the case at bench, even if the deed of release, waiver or quitclaim signed by Vicente is declared invalid, it does not negate the fact that he already received ₱150,000.00 in consideration thereof. The said amount must either be returned or deducted from the total monetary award determined by the LA. To recap, the LA computed the monetary award in favor of Vic Edward at ₱145,276.22. Evidently, the said amount is adequately covered by the consideration in the quitclaim. Thus, Arlo Aluminum and Eton Properties have nothing more to pay as far as the

labor claims are concerned. The Court cannot sanction the ruling of the CA that despite receiving the ₱150,000.00 from the quitclaim, which clearly covers the salary and benefits that Vic Edward is entitled to, Arlo Aluminum must still pay the amount of ₱145,276.22 as a monetary award. This will amount to double compensation considering that said monetary award was already covered by the quitclaim. Hence, the Court is of the view that Arlo Aluminum already satisfied its liabilities to Vic Edward insofar as his unpaid wages and other labor benefits are concerned.

4. LABOR AND SOCIAL LEGISLATION; LABOR CODE; JURISDICTION OF LABOR ARBITERS; LIMITED TO HEARING CLAIMS ARISING FROM EMPLOYER-EMPLOYEE RELATIONSHIP.— The jurisdiction of the LA is limited to hearing claims in connection with an existing employer-employee relationship. Article 224 of the Labor Code provides that the LA, in his or her original jurisdiction, and the NLRC, in its appellate jurisdiction, may determine issues involving claims arising from employer-employee relations. Manifestly, the LA has no authority to decide issues not arising from the employment contract of Vic Edward. If Vicente would want to pursue other legal actions against Arlo Aluminum, Eton Properties, and EMP Glazing due to the tragedy that occurred, he must do so in the courts which has jurisdiction over the subject matter.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Remegio D. Saladero, Jr. for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the February 11, 2014 Decision[1] and the December

[1] *Rollo,* pp. 398-410.

15, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 127611. The appellate court affirmed the June 29, 2012 Decision[3] of the National Labor Relations Commission *(NLRC)* in NLRC LAC Case No. 02-000602-12, which, in turn, modified the November 22, 2011 Decision[4] of the Labor Arbiter *(LA)* in NLRC-NCR Case No. 05-06913-11, a case for monetary claims.

The Antecedents:

Petitioner Arlo Aluminum, Inc. *(Arlo Aluminum)* is a duly registered corporation engaged in the business of fabrication and supply of aluminum moldings. In 2009, it was contracted by Eton Properties Philippines, Inc. *(Eton Properties)* to supply and install aluminum and glass glazing works for its Eton Residences Greenbelt condominium project at Legaspi St., Legaspi Village, Makati City *(Eton Residence Project)*. Pursuant thereto, Arlo Aluminum engaged the services of E.M. Piñon Glazing *(EMP Glazing)*, through subcontracting, and among the latter's employees was Vic Edward Piñon *(Vic Edward)*, son of respondent Vicente Piñon, Jr. *(Vicente)*.

On January 27, 2011, eleven (11) employees of EMP Glazing, including Vic Edward, were aboard a *gondola,* which was used to install glass and aluminum along the perimeter of the building, when it crashed from the thirty-second (32nd) floor of the Eton Residence Project. Ten (10) of the employees, including Vic Edward, died in the incident.

The families of the victims were extended financial assistance in the amount of ₱150,000.00 by Eton Properties and Arlo Aluminum. The funeral and burial expenses and the SSS contributions pertaining to Vic Edward were also paid. In return, the families signed a Deed of Release, Waiver and Quitclaim,[5] dated February 3, 2011, the pertinent provisions read:

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

[3] Penned by Presiding Commissioner Joseph Gerard E. Mabilog, with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves E. Vivar-De Castro, concurring; *id*. at 344-345.

[4] Penned by Labor Arbiter Catalino R. Laderas; *id*. at 302-313.

[5] *Id*. at 109-110.

AKO, si VICENTE M. PIÑON, Pilipino, may sapat na gulang, at naninirahan at may pahatirang sulat sa Bana Comp., Magsaysay Avenue, San Bartolome, Novaliches, Quezon City, matapos manumpa nang sang-ayon sa ipinag-uutos ng batas ay malaya at kusang-loob na nagsasalaysay:

Ako ay ang Ama at ang legal na tagapagmana at naatasan ng iba pang tagapagmana ni VIC EDWARD PIÑON. Kaugnay sa kaniyang pagiging empleyado ng E.M. Pinon at pagkasawi sa aksidente noong Enero 27, 2011 sa Eton Residences Project Site **tinatanggap ko [ng] buong lugod ang halagang Isandaan at Limampung Libong Piso (₱150,000.00)** bilang tulong pinansyal at kabayaran sa lahat ng benepisyong itinakda ng batas para sa akin at kay VIC EDWARD PIÑON;

DAHILAN DITO AT ALANG-ALANG SA NASABING HALAGA:

1. Pinalalaya at pinapawalang sala ko ang E.M. Pinon pati na rin ang Eton Properties Philippines, Inc., Arlo Aluminum Company, Inc., C.E. Consrtuction Corporation, Jose Aliling Construction Management, Inc. at iba pang Contractors at Sub-Contractors, gayundin ang mga may-ari, tagapamahala, kinatawan at kahalili ng mga ito tungkol sa ano mang pananagutan at/o paghahabol na maaaring mayroon ako laban sa kanila kaugnay ng pagkasawi ni VIC EDWARD PIÑON sa aksidente noon Enero 27, 2011 sa Eton Residences Project Site.

2. Ipinangangako at ipinababatid ko na rin na hindi ako maghahabol laban sa E.M. Pinon pati na rin sa Eton Properties Philippines, Inc., Arlo Aluminum Company, Inc., C.E. Consrtuction Corporation, Jose Aliling Construction Management, Inc. at iba pang Contractors at Sub-Contractors, may-ari, tagapagmahala, kinatawan ng mga ito, ng ano pa mang halaga or reklamo na may kaugnayan sa aksidente noong Enero 27, 2011 sa Eton Residence Project Site.

3. Sumasang-ayon ako at nagpapahayag na sa halagang nabanggit sa itaas at aking natanggap, **bahagi na ang lahat ng sahod at mga benepisyong tinatakda ng batas, polisiya at kaugalian, at kaugnay sa paglilingkod ni VIC EDWARD PIÑON sa E.M. Pinon**, ang halagang nabanggit sa itaas nito ay kumakatawan sa buong kabayaran ng anumang dapat matanggap niya.[6] x x x [Emphases supplied; Boldface omitted in the original]

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[6] *Id*. at 109.

On May 3, 2011, Vicente filed a complaint in behalf of his deceased son, Vic Edward, before the LA for underpayment of wages, overtime pay, 13th month pay, non-payment of holiday pay, holiday premium, rest day premium, service incentive leave pay, separation pay, night shift differential, and claims for damages and death benefits. He asserted that starting 2009, Vic Edward's salary was ₱280.00, still below the minimum wage rate, and that he was not paid his service incentive leave pay and 13th month pay.

Vicente added that during the wake of his son, the representatives of Eton Properties and Arlo Aluminum extended financial assistance in the amount of ₱150,000.00. Believing that this was only by way of financial assistance and nothing more, he accepted the same and signed the deed of release, waiver and quitclaim. Vicente eventually learned that the amount paid as salaries to his deceased son was not in accordance with law. Hence, he filed the subject suit.

Position of Arlo Aluminum

For its part, Arlo Aluminum countered that on January 27, 2011, the date of the accident, an on-site labor standards and occupational safety and health standards inspection was conducted by the Department of Labor and Employment-National Capital Region *(DOLE-NCR).* The inspection case was docketed as Case No. NCR-TSSD-1101-RI-004 SPL. Several hearings were conducted therein and were attended by Eton Properties, C.E. Construction and Arlo Aluminum. It was found therein that Vic Edward was not an employee of Eton Properties.

Arlo Aluminum averred that on March 18, 2011, DOLE-NCR informed Eton Properties of its findings regarding some contractors that have yet to settle their obligations with their employees. Arlo Aluminum and EMP Glazing, who were responsible for hiring Vic Edward, were not among those identified by DOLE-NCR. Hence, they should be absolved from liability.

Arlo Aluminum added that on February 3, 2011, upon the receipt of the amount of ₱150,000.00, Vicente executed a valid

deed of release, waiver and quitclaim in its favor, which was witnessed by his wife, Edna Piñon, and Vilma Piñon. It argued that the claim of Vicente had been satisfied.

The LA Ruling

In its November 22, 2011 Decision,[7] the LA ruled in favor of Arlo Aluminum. It found that Edward had an employer-employee relationship with EMP Glazing only and the latter was merely hired by Arlo Aluminum as its subcontractor. Nevertheless, the LA stated that it was not proven by EMP Glazing that it paid Vic Edward his correct wages and labor standard benefits because the payrolls were not presented. Thus, Vicente was awarded Vic Edward's underpaid wages, service incentive leave pay, and 13th month pay.

On the other hand, the LA opined that the claim of non-payment of overtime pay, holiday pay, premium for holiday, and rest day must be denied for lack of factual basis because Vicente did not present proof on the actual overtime services rendered and work performed by Vic Edward on a holiday or rest day. It also denied the other monetary claims of Vicente because these were unsubstantiated. The dispositive portion reads:

> WHEREFORE, premised on the foregoing considerations, judgment is hereby rendered declaring respondent EDUARDO PINION/E.M. PINION/EMP GLAZING, jointly and severally liable to pay complainant, *viz:*
>
> 1. Salary differentials, unpaid service incentive leave pay and 13th month pay of VIC EDWARD PIÑON's subject to the prescriptive period mandated by Article 291 of the Labor Code.
>
> The complaint against ETON PROPERTIES, INC./LUCIO TAN, CE CONSTRUCTION CORPORATION, JOSE ALILING CONSTRUCTION/DANILO IGNACIO and ARLO ALUMINUM, INC., are hereby DISMISSED for lack of merit.

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[7] *Id*. at 302-313.

The Computation Unit is hereby directed to compute the complainant's monetary award subject to the three (3) year prescriptive period which form part of this decision.

Other claims are DISMISSED for lack of merit.

SO ORDERED.[8]

Aggrieved, Vicente elevated an appeal to the NLRC.

The NLRC Ruling

In its June 29, 2012 Decision,[9] the NLRC *modified* the LA ruling. It upheld the computation of the LA that Vicente must be paid salary differential, service incentive leave pay and 13th month pay in the total amount of ₱145,276.22.[10] Further, the NLRC stated that although EMP Glazing was an independent contractor, it did not completely absolve Arlo Aluminum and Eton Properties from all liabilities. It underscored that under Article 106 of the Labor Code, as amended, in the event that the subcontractor fails to pay the wages of its employees, the employer shall be jointly and severally liable to said employees to the extent of the work performed under the contract.

Accordingly, the NLRC concluded that because Eton Properties was the principal employer, Arlo Aluminum was the contractor, and EMP Glazing was the subcontractor, they should all be solidarily liable for the unpaid wages and benefits of Vic Edwards. The *fallo* states:

WHEREFORE, premises considered, the decision of the Labor Arbiter dated November 29, 2011 is hereby MODIFIED. Respondents Piñon, Arlo Aluminum, and Eton, are jointly and severally ordered to pay complainant the award in the appealed decision.

SO ORDERED.[11]

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[8] *Id*. at 312-313.

[9] *Id*. at 344-354.

[10] *Id*. at 351.

[11] *Id*. at 354.

Arlo Aluminum filed a motion for reconsideration but it was denied by the NLRC in its resolution, dated September 19, 2012.

Undaunted, Arlo Aluminum filed a petition for *certiorari* before the CA.

The CA Ruling

In its assailed decision, dated February 11, 2014, the CA *affirmed* the ruling of the NLRC. It held that the deed of release, waiver and quitclaim was invalid because it was signed only a week after the death of Vic Edward. The CA opined that Eton Properties and Arlo Aluminum took advantage of Vicente's overwrought state when it offered the financial assistance. It was invalid also because it covered all the claims that Vicente might have against Eton Properties and Arlo Aluminum.

The CA added that EMP Glazing was a labor-only contractor because Arlo Aluminum failed to show that the former had sufficient capital and investments to conduct its undertaking. It also held that Arlo Aluminum remained to be in control of the project because it still coordinated with the project managers and it monitored the utilization of materials by EMP Glazing. Thus, the appellate court concluded that it was proper to hold Eton Properties, Arlo Aluminum, and EMP Glazing jointly and severally liable to pay Vic Edward's unpaid wages and benefits. The CA disposed the case in this wise:

> **WHEREFORE**, in view of the foregoing, the Petition for Certiorari is **DISMISSED**. The Decision, dated June 29, 2012, and Resolution, dated September 19, 2012, rendered by respondent National Labor Relations Commission (NLRC) in NLRC LAC Case No. 02-000602-12, are **AFFIRMED**.
>
> **SO ORDERED**.[12]

Arlo Aluminum moved for reconsideration but its motion was denied by the CA in its assailed resolution, dated December 15, 2014.

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[12] *Id*. at 410.

Hence, this petition.

ISSUES

I

THE DECISION OF THE COURT OF APPEALS TO DISREGARD AND NULLIFY THE RELEASE WAIVER AND QUITCLAIM IS CONTRARY TO LAW AND PREVAILING JURISPRUDENCE.

II

THE COURT OF APPEALS SHOULD HAVE DIRECTED THE HEIRS OF VIC EDWARD PIÑON TO RETURN THE AMOUNT OF ₱150,000.00 OR DEDUCTED THE SAID AMOUNT FROM THE JUDGMENT AWARD WHEN IT INVALIDATED THE QUITCLAIM IN ACCORDANCE WITH PREVAILING CASE LAW.

III.

THE COURT OF APPEALS SHOULD NOT HAVE DECIDED FACTS WHICH WERE NOT BROUGHT BEFORE IT FOR REVIEW BY THE PETITIONER AND ARE NOT MATERIAL AND RELEVANT TO THE PRESENT CASE.[13]

Arlo Aluminum argued that the deed of release, waiver and quitclaim was valid; that the said quitclaim clearly showed that it was a settlement and satisfaction of any and all labor claims relating to the salaries and benefits that Vic Edward could have been entitled to under relevant labor laws during his lifetime; that the monetary award of ₱145,276.22, representing salary differentials and unpaid benefits, was sufficiently covered by the financial assistance of ₱150,000.00 voluntarily received by Vicente; that the quitclaim could not be nullified because it had a sufficient consideration of ₱150,000.00; and that aside from the financial assistance, Arlo Aluminum and Eton Properties provided funeral and burial assistance and paid the SSS contributions of Vic Edward.

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

Arlo Aluminum further contended that even if the quitclaim was declared invalid, the ₱150,000.00 should have been returned to Arlo Aluminum and Eton Properties, or it should have offset their liabilities in the amount of ₱145,276.22; that it had not been criminally or civilly declared liable for the incident; and that the CA should not have discussed matters not raised as issues in its petition for *certiorari,* like ruling that EMP Glazing was a labor-only contractor.

In his Comment,[14] Vicente countered that Arlo Aluminum failed to prove that Vic Edward was paid with his proper wages; that EMP Glazing was a mere labor-only contractor because it did not have substantial capital or investment; that even if EMP Glazing was not a labor-only contractor, Arlo Aluminum and Eton Properties were still liable for non-payment of wages; that the deed of release, waiver and quitclaim was invalid because Vicente was made to sign the same when he was still weak and feeble from the tragedy; that the consideration therein was insufficient to cover all the liabilities of Arlo Aluminum to Vic Edward; and that the quitclaim could not bar him from filing the complaint for underpayment of wages.

The Court's Ruling

The petition is meritorious.

The present case involves the validity of a release, waiver and quitclaim and the sufficiency of the consideration paid to the heirs of the laborer.

Not all quitclaims are invalid; a valid quitclaim has sufficient consideration

To be valid, a deed of release, waiver or quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is sufficient and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or

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[14] *Id.* at 460-470.

good customs, or prejudicial to a third person with a right recognized by law. Courts have stepped in to invalidate questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person, or where the agreement or settlement was unconscionable on its face. A quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. Moreover, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim.[15]

It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of the settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is sufficient and reasonable, the transaction must be recognized as a valid and binding undertaking.[16]

In *Goodrich Manufacturing Corp. v. Ativo*,[17] the Court held that the quitclaims were valid because the contents thereof were simple, clear and unequivocal; that the business was closed due to legitimate reasons; and that the consideration given under the quitclaims did not appear to be grossly inadequate vis-à-vis what the employees should have received in full. It was underscored therein that the total monetary awards computed by the LA were even lesser than the amounts already received by the employees in the quitclaim. Thus, due to the sufficient consideration, the validity of the quitclaim was upheld.

Likewise, in *Jiao v. National Labor Relations Commission,*[18] the quitclaim was declared valid because there were no allegations

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[15] *City Government of Makati v. Odeña,* 716 Phil. 284, 319 (2013).

[16] *Zuellig Pharma Corp. v. Sibal,* 714 Phil. 33, 54 (2013).

[17] 625 Phil. 102 (2010).

[18] 686 Phil. 171(2012).

of fraud or deceit employed; no force or duress was exerted against the employees to sign the quitclaims; and the consideration was reasonable as it was based on the amount required by law. The Court observed that the compensation of separation pay equivalent to one and a half month salary for every year of service was a sufficient consideration under labor laws.

In this case, the Court is of the view that the deed of release, waiver and quitclaim signed by Vicente was valid.

First, the consideration given to Vicente in the amount of ₱150,000.00 was reasonable and sufficient to cover the labor claims. It must be noted that the present case involves underpayment of wages and non-payment of benefits by Arlo Aluminum and Eton Properties and it was concluded by the LA that Vicente was entitled to the amount of ₱145,276.22. The said amount was determined by the LA — the body mandated by the rules to determine the proper computation of judgment awards to the employees.[19] *A fortiori,* the said monetary award was affirmed by the NLRC in its decision.[20] Evidently, the consideration given in the quitclaim sufficiently covers the liability of Arlo Aluminum and Eton Properties to Vicente for the labor claims. Thus, it cannot be said that the quitclaim had insufficient consideration.

Moreover, it was expressly provided in the quitclaim that the consideration received by Vicente in the quitclaim was for the purpose of compensating the unpaid salaries and benefits

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[19] 2011 NLRC Rules of Procedure, Rule XI, Section 5. Pre-Execution Conference. – Within two (2) working days from receipt of a motion for the issuance of a writ of execution which shall be accompanied by a **computation of a judgment award**, if necessary, the Commission or the Labor Arbiter may schedule a pre-execution conference to thresh out matters relevant to execution including the **final computation of monetary award.** The preexecution conference shall not exceed fifteen (15) calendar days from the initial schedule, unless the parties agreed to an extension. [Emphasis supplied]

[20] *Rollo,* p. 351.

of Vic Edward. Indeed, it was unequivocally stated therein that the consideration was "*bahagi na ang lahat ng sahod at mga benepisyong tinatakda ng batas, polisiya at kaugalian, at kaugnay sa paglilingkod ni VIC EDWARD PIÑON.*"[21] Thus, insofar as the labor claims of Vicente is concerned, the compensation given by Arlo Aluminum and Eton Properties was satisfactory. Likewise, the LA, the NLRC and the CA uniformly found that the ₱150,000.00 was accepted and received by Vicente.

Second, Arlo Aluminum did not procure the quitclaim with fraud or deceit. Neither was there proof that it employed force or duress to compel Vicente to sign the quitclaim. Aside from giving the sufficient consideration under labor laws, it provided benefits such as funeral and death benefits, and it also paid for the SSS contributions of Vic Edward.[22] The mere fact that the said quitclaim was signed during the wake of Vic Edward does not conclusively show that Arlo Aluminum and Eton Properties took advantage of Vicente's weak state.

Even if Vicente accepted the compensation due to dire economic needs, the quitclaim cannot be invalidated on that ground alone. "Dire necessity" may be an acceptable ground to annul quitclaims if the consideration is unconscionably low and the employee was tricked into accepting it. It, however, does not justify the annulment of a quitclaim when it is not shown that the employee had been forced to execute it.[23] To reiterate, the amount of ₱150,000.00 is a sufficient consideration for Vicente's labor claims as computed by the LA and affirmed by the NLRC.

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[21] *Id*. at 89.

[22] *Id*. at 203-208.

[23] *Coats Manila Bay, Inc. v. Ortega,* 598 Phil. 768, 780 (2009).

Even if the quitclaim is invalid, the consideration paid must be returned or must off-set the labor obligations of Arlo Aluminum and Eton Properties

When a quitclaim is declared invalid for one reason or another, the recipient thereto must return or offset the compensation received. The case of *Emco Plywood Corporation v. Abelgas*[24] involves the validity of the deed of release or quitclaim signed by the retrenched employees. In that case, it was ruled that the employer failed to discharge its burden in proving that the quitclaims were valid. Nevertheless, the Court ruled that the amounts already received by the employees pursuant to the quitclaim should be deducted from their respective monetary awards, to wit:

> As a rule, deeds of release or quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel. **The amounts already received by the present respondents as consideration for signing the Quitclaims should, however, be deducted from their respective monetary awards**.[25] [Emphasis supplied]

Similarly, in *Rondina v. Court of Appeals,*[26] the Court declared that the quitclaim signed by the employees were invalid because there was a gross disparity between the consideration received therein and the proper amount of award computed by the voluntary arbitrator. Nevertheless, it was adjudged that the amounts already received by the employee under the invalid quitclaim must be subtracted from the monetary award to be received by the employee.[27]

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[24] 471 Phil. 460 (2004).

[25] *Id*. at 484.

[26] 610 Phil. 27 (2009).

[27] *Id*. at 40.

In the case at bench, even if the deed of release, waiver or quitclaim signed by Vicente is declared invalid, it does not negate the fact that he already received ₱150,000.00 in consideration thereof. The said amount must either be returned or deducted from the total monetary award determined by the LA. To recap, the LA computed the monetary award in favor of Vic Edward at ₱145,276.22. Evidently, the said amount is adequately covered by the consideration in the quitclaim. Thus, Arlo Aluminum and Eton Properties have nothing more to pay as far as the labor claims are concerned.

The Court cannot sanction the ruling of the CA that despite receiving the ₱150,000.00 from the quitclaim, which clearly covers the salary and benefits that Vic Edward is entitled to, Arlo Aluminum must still pay the amount of ₱145,276.22 as a monetary award. This will amount to double compensation considering that said monetary award was already covered by the quitclaim. Hence, the Court is of the view that Arlo Aluminum already satisfied its liabilities to Vic Edward insofar as his unpaid wages and other labor benefits are concerned.

The other claims of Vicente against Arlo Aluminum and Eton Properties must be threshed out in another forum

The jurisdiction of the LA is limited to hearing claims in connection with an existing employer-employee relationship.[28]

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[28] ART. 224 (as renumbered). JURISDICTION OF LABOR ARBITERS AND THE COMMISSION. — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving workers, whether agricultural or non-agricultural:

(1) Unfair labor practice cases;
(2) Termination disputes;
(3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other **terms and conditions of employment;**

Article 224 of the Labor Code provides that the LA, in his or her original jurisdiction, and the NLRC, in its appellate jurisdiction, may determine issues involving claims arising from employer-employee relations.[29]

Manifestly, the LA has no authority to decide issues not arising from the employment contract of Vic Edward. If Vicente would want to pursue other legal actions against Arlo Aluminum, Eton Properties, and EMP Glazing due to the tragedy that occurred, he must do so in the courts which has jurisdiction over the subject matter.

WHEREFORE, the petition is **GRANTED.** The Complaint, dated May 3, 2011, of Vicente Piñon, Jr. before the Labor Arbiter docketed as NLRC-NCR Case No. 05-06913-11, is **DISMISSED** for lack of merit.

SO ORDERED.

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

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(4) Claims for actual, moral, exemplary and other forms of damages arising from the **employer-employee relations;**
(5) Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and
(6) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00), regardless of whether accompanied with a claim for reinstatement. x x x. [Emphases supplied]

[29] *Milan v. National Labor Relations Commission,* G.R. No. 202961, February 4, 2015, 750 SCRA 1, 17.

THIRD DIVISION

[G.R. No. 218205. July 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCIAL D. PULGO**, *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS THEREON ARE GENERALLY GIVEN RESPECT ON APPEAL.—** It is jurisprudentially settled that when the credibility of the eyewitness is at issue, due deference and respect shall be given to the findings of the trial court, its calibration of the testimonies, its assessment of the probative weight thereof, and its conclusions anchored on said findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case. This is so because the trial court has the unique opportunity to observe the demeanor, conduct and attitude of witnesses under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Hence, it is a settled rule that appellate courts will not overturn the factual findings of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance that would affect the result of the case. The foregoing rule finds an even more stringent application where the findings of the RTC are sustained by the CA.

2. **ID.; ID.; ID.; NOT IMPAIRED BY INCONSISTENCIES ON MINOR DETAILS IF THERE IS CONSISTENCY IN RELATING THE PRINCIPAL OCCURRENCE AND POSITIVE IDENTIFICATION OF THE ASSAILANT.—** Accused-appellant x x x argues that Aurelio's testimony cannot be given credence because it allegedly suffers from a glaring inconsistency. Accused-appellant asserts that while Aurelio initially testified that he saw accused-appellant stab the right side of the victim's body, he later demonstrated, while under

cross-examination, that it was the left side of the victim's body that was stabbed by accused-appellant. x x x The inconsistency cited by accused-appellant refers to a minor detail which will not impinge on the integrity of Aurelio's testimony in its material whole. As this Court consistently held, inconsistencies on minor details do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailant. Such inconsistencies reinforce rather than weaken credibility. What is vital is that Aurelio was unwavering and consistent in identifying accused-appellant as Romeo's assailant.

3. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS; DULY ESTABLISHED IN CASE AT BAR.— To convict an accused for murder, the following must be established: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of any of the qualifying circumstances under Article 248 of the Revised Penal Code; and (4) the killing neither constitutes parricide nor infanticide. The prosecution's evidence has established beyond reasonable doubt that accused-appellant killed Romeo. Furthermore, there is no dispute that the killing constitutes neither parricide nor infanticide. And contrary to accused-appellant's contention, the killing was qualified by treachery.

4. ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELEMENTS.— There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime without risk to himself arising from the defense which the offended party might make. To establish treachery, two elements must concur: (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means of attack employed. These elements have been established in this case.

5. ID.; ID.; ID.; ID.; WHAT IS DECISIVE IS THAT THE EXECUTION OF THE ATTACK MADE IT IMPOSSIBLE FOR THE VICTIM TO DEFEND HIMSELF OR TO RETALIATE.— The essence of treachery is the unexpected and sudden attack on the victim which renders the latter unable and unprepared to defend himself by reason of the suddenness and severity of the attack. This criterion applies, whether the

attack is frontal or 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. In fact, treachery may still be appreciated even when the victim was forewarned of the danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. The suddenness of accused-appellant's attack and the circumstances under which it was committed made it impossible for the unsuspecting Romeo to put up a defense, ensuring accused-appellant's execution of the crime without risk to himself. There is, thus, no doubt that treachery attended the killing.

6. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION, AND IT IS GIVEN LESS PROBATIVE WEIGHT WHEN IT IS CORROBORATED BY RELATIVES.—** [P]ositive identification prevails over *alibi* since the latter can easily be fabricated and is inherently unreliable. We have likewise consistently assigned less probative weight to a defense of *alibi* when it is corroborated by relatives since we have established in jurisprudence that, in order for corroboration to be credible, the same must be offered preferably by disinterested witnesses. Evidently, Violeta and Rosvil cannot be considered as disinterested witnesses. Being accused-appellant's relatives, their testimonies are rendered suspect because the former's relationship to them makes it likely that they would freely perjure themselves for his sake. The defense of *alibi* may not prosper if it is established mainly by accused-appellant himself and his relatives, and not by credible persons.

7. **ID.; ID.; ID.; TO PROSPER AS A DEFENSE, THE REQUIREMENTS OF TIME AND PLACE MUST BE STRICTLY MET.—** [F]or the defense of *alibi* to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. These requirements of time and place must be strictly met. The RTC took judicial notice that Moalboal, Cebu is only three (3) hours away from Lorega, Cebu City where the crime took place. Thus, it was not physically impossible for accused-appellant to have left for Moalboal on July 21, 2007 and to return to Lorega Street on the same day and commit the crime.

8. ID.; ID.; DENIAL; TO MERIT CREDIBILITY, IT MUST BE BUTTRESSED BY STRONG EVIDENCE OF NON-CULPABILITY.— [P]ositive identification also prevails over accused-appellant's unsubstantiated denial. Denial is an intrinsically weak defense. To merit credibility, it must be buttressed by strong evidence of non-culpability. If unsubstantiated by clear and convincing evidence, it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

This is an appeal from the Decision[1] dated October 28, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01494, which affirmed accused-appellant Marcial D. Pulgo's conviction for Murder as rendered by the Regional Trial Court (RTC) of Cebu City, Branch 18, in its Judgment[2] dated February 20, 2012 in Criminal Case No. CBU-82443.

The Antecedents

In an Information dated October 24, 2007, accused-appellant was charged with murder committed as follows:

That on or about the 21st day of July 2007 at about 5:00 in the afternoon, at Barangay Lorega, San Miguel, Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously

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[1] Penned by Associate Justice Renato C. Francisco, concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino; *rollo*, pp. 4-13.

[2] Penned by Presiding Judge Gilbert P. Moises; CA *rollo*, pp. 33-38.

attack and stab one ROMEO S. LAMBO, with the use of a bladed weapon, hitting the latter on his abdomen, which caused his death thereafter.[3]

When arraigned, accused-appellant entered a plea of not guilty. After the pre-trial conference, trial on the merits ensued.

According to the prosecution, at around 5:00 p.m. on July 21, 2007, Aurelio Sindangan (Aurelio) was standing at Lorega, San Miguel, Cebu City, when his cousin, Romeo Lambo (Romeo), approached him, asking to be accompanied to a certain place. As he stood side by side with Romeo, accused-appellant suddenly pulled out a knife and stabbed Romeo on his side. Shocked by the sudden turn of events, Aurelio was not able to make any move. Romeo managed to run away but accused-appellant chased him. Aurelio himself chased accused-appellant, throwing an empty bottle at him but failing to hit him. After the incident, Aurelio went home without knowing where accused-appellant went. Summoned by a neighbor to verify whether it was her husband who had been stabbed by a certain Shalou, Romeo's wife, Rosalia Lambo, rushed outside and found Shalou standing on the street. She immediately proceeded to the hospital where her husband had been brought and where he eventually expired.[4]

Accused-appellant denied any involvement in the stabbing. He claimed that he was with his mother, Violeta Pulgo (Violeta), in Moalboal, Cebu at about 4:00 p.m. of July 21, 2007, to buy a goat from his aunt for their fiesta, and at around 5:30 p.m., he was surprised to receive a call from his brother, Rosvil Pulgo (Rosvil) in Lorega, informing him that Romeo had been stabbed and that he was the prime suspect. His *alibi* was corroborated in its material points by Violeta and Rosvil.[5] He stayed in Moalboal for about a year before returning in Lorega to clear his name. He was, however, arrested upon reaching Lorega.[6]

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[3] *Rollo*, p. 5.

[4] *Id*. at 5, 7-9; CA *rollo*, pp. 33-34.

[5] *Id*. at 6; *id*. at 34-35.

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

Giving credence to Aurelio's testimony and positive identification of accused-appellant as the assailant, the RTC rendered its Judgment[7] dated February 20, 2012, the dispositive portion of which reads:

WHEREFORE, on the basis of all the foregoing consideration, judgment is rendered finding accused Marcial Pulgo GUILTY of the crime of Murder by treachery penalized under Article 248[8] of the Revised Penal Code and hereby sentences him to *reclusion perpetua* with all its accessory penalties.

He is likewise directed to pay the heirs of the victim Romeo Lambo the amount of Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages.

SO ORDERED.[9]

Dissatisfied with the RTC's Judgment, accused-appellant elevated the case to the CA.

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[7] *Id*. at 33-38.

[8] Art. 248. *Murder.* – Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[9] CA *rollo*, p. 38.

On October 28, 2014, the CA rendered the assailed Decision[10] affirming the RTC's Judgment with modification in the award of damages. The dispositive portion of the Decision reads:

> **WHEREFORE**, in view of the foregoing, the appeal is hereby **DENIED**. The Decision dated February 20, 2012, of the Regional Trial Court, 7th Judicial Region, Branch 18, Cebu City, in Criminal Case No. CBU-82443, finding accused-appellant Marcial D. Pulgo guilty beyond reasonable doubt of the crime of Murder is **AFFIRMED with MODIFICATION** in that the heirs of Romeo Lambo are entitled to the award of **Php75,000.00** as civil indemnity, moral damages increased to **Php75,000.00**, **Php30,000.00** as exemplary damages and **Php25,000.00** as temperate damages.
>
> All damages shall be subject to interest at the legal rate of 6% *per annum* from the date of finality of this Decision until fully paid.
>
> **SO ORDERED**.[11]

The Court's Ruling

The appeal has no merit.

We sustain the RTC's assessment of the credibility of the prosecution's eyewitness, as affirmed by the CA.

It is jurisprudentially settled that when the credibility of the eyewitness is at issue, due deference and respect shall be given to the findings of the trial court, its calibration of the testimonies, its assessment of the probative weight thereof, and its conclusions anchored on said findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case.[12] This is so because the trial court has the unique opportunity to observe the demeanor, conduct and attitude of witnesses under grueling examination.[13] These are the most

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[10] *Rollo*, 4-13.

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

[12] *People of the Philippines v. Roque Dayaday*, G.R. 213224, January 16, 2017; *People v. Angelio,* G.R. No. 197540, February 27, 2012.

[13] *People v. Dayaday, supra* note 12; *People v. Diu, et al.,* G.R. No. 201449, April 3, 2013, citing *People v. Maxion,* G.R. No. 135145, July 19, 2001.

significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe.[14] Hence, it is a settled rule that appellate courts will not overturn the factual findings of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance that would affect the result of the case. The foregoing rule finds an even more stringent application where the findings of the RTC are sustained by the CA.[15]

Under oath, eyewitness Aurelio positively and unequivocally identified accused-appellant as Romeo's assailant. As the CA found, Aurelio was candid, unambiguous and categorical in declaring that while he was with Romeo, he saw accused-appellant suddenly pull out a knife and immediately stab the victim, *viz.*:

Direct examination

x x x x x x x x x

FISCAL MACABAYA

Q: Mr. Witness, on July 21, 2007 at around 5:00 o'clock in the afternoon, do you still recall where were you? [sic]

A: I was standing at Lorega, San Miguel, Cebu City.

Q: While standing at said place, what happened next?

A: I was approached by my cousin.

Q: What is the name of your cousin?

A: Romeo Lambo.

Q: Why did he approach you?

A: He requested me to accompany him to a certain place.

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[14] *People v. Diu, et al., supra* note 13, citing *People v. Maxion, supra* note 13.

[15] *People v. Dayaday, supra* note 12.

Q: What place Mr. Witness?

A: He did not mention the place, sir but he just invited me to go with him to a certain place.

Q: While with your cousin Romeo Lambo, what happened next?

A: We met Marcial Pulgo, sir.

Q: Then what happened next?

A: Marcial Pulgo pulled something and immediately stabbed.

Q: Who was the person that was stabbed by Marcial Pulgo?

A: It was Romeo Lambo.

Q: What instrument did he use in stabbing the victim?

A: Somewhat Rambo knife, sir.

Q: How did he stab the victim?

A: He just suddenly stabbed the victim, sir.

Q: Was the victim hit?

A: Yes.

Q: Which part of the body?

A: On his side, sir.

Q: Then after Marcial Pulgo stabbed the victim what happened next?

A: I did nothing, sir because the incident was so sudden.

Q: What happened to the victim?

A: After Marcial Pulgo stabbed the victim, the victim runway [sic] and then Marcial Pulgo chased the victim and then myself chased Marcial Pulgo and throw an empty bottle and then Marcial Pulgo turned left.

Q: Why did you throw Marcial Pulgo with the bottle? [sic]

A: That was my immediate reaction in order that my cousin would not be stabbed again.

Q: Were you able to hit Marcial Pulgo?

A: He was not hit, sir.

Q: Why?

A: He was not hit because he was able to turn left.

x x x x x x x x x

Q: You mentioned that Marcial Pulgo stabbed the victim herein, if you will be able to see Marcial Pulgo will you be able to identify him?

A: Yes, sir.

Q: Kindly look around and please tell the Honorable Court if he is present in the courtroom now?

A: He is around.

Q: Can you pinpoint to this person?

A: Yes.

Q: Kindly step down from that witness stand and kindly point to him?

A: Yes.

INTERPRETER:

The Witness step [sic] down from the witness stand and approach [sic] the accused row and pointed to a person who stood up and identified himself as Marcial Pulgo.[16] (Emphasis ours)

Accused-appellant, however, argues that Aurelio's testimony cannot be given credence because it allegedly suffers from a glaring inconsistency. Accused-appellant asserts that while Aurelio initially testified that he saw accused-appellant stab the right side of the victim's body, he later demonstrated, while under cross-examination, that it was the left side of the victim's body that was stabbed by accused-appellant.[17]

The argument is unavailing. The inconsistency cited by accused-appellant refers to a minor detail which will not impinge on the integrity of Aurelio's testimony in its material whole.[18]

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[16] *Rollo*, pp. 7-9.

[17] *Id.* at 9; CA *rollo*, pp. 28-29.

[18] *See People v. Aguila,* G.R. No. 171017, December 6, 2006.

As this Court consistently held, inconsistencies on minor details do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailant.[19] Such inconsistencies reinforce rather than weaken credibility.[20] What is vital is that Aurelio was unwavering and consistent in identifying accused-appellant as Romeo's assailant.[21]

Thus, in *People v. Galvez*,[22] this Court held:

> It may be noted that while Danilo Julia and Loreto Palad testified that Romen Castro had been stabbed on the right side of his back, the autopsy report stated that the stab wound was located at the left lumbar area of the victim. This single lapse on a minor detail cannot, however, undermine the credibility of these prosecution witnesses. Inconsistencies in the testimonies of prosecution witnesses are not an uncommon event, and acquittals have resulted in cases where the inconsistencies and self-contradictions dealt with material points as to altogether erode the witnesses' credibility. But when such inconsistencies are minor in character, not only do they not detract from the credibility of the witnesses but they in fact enhance it for they erase any suggestion of a rehearsed testimony.
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> x x x Their mistake concerning the location of the stab wound does not mean that they did not actually see the stabbing incident. Such mistake may be attributed more to the fickleness of human memory than to any attempt of the prosecution witnesses to perjure themselves.[23]

Furthermore, there is no evidence to show any dubious or improper motive on Aurelio's part to falsely testify against accused-appellant.[24] It is settled that where there is nothing to

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[19] *People v. Alfon,* G.R. No. 126028, March 14, 2003.

[20] *Id.*

[21] See *People v. Dumayan,* G.R. No. 116280, May 21, 2001; *People v. Alfon, supra* note 19 and *People v. Aguila, supra* note 18.

[22] G.R. No. 136790, March 26, 2001.

[23] *Id.*

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

indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[25]

To convict an accused for murder, the following must be established: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of any of the qualifying circumstances under Article 248 of the Revised Penal Code; and (4) the killing neither constitutes parricide nor infanticide.[26]

The prosecution's evidence has established beyond reasonable doubt that accused-appellant killed Romeo. Furthermore, there is no dispute that the killing constitutes neither parricide nor infanticide. And contrary to accused-appellant's contention, the killing was qualified by treachery.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime without risk to himself arising from the defense which the offended party might make. To establish treachery, two elements must concur: (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means of attack employed.[27] These elements have been established in this case.

Romeo had approached Aurelio in Lorega to ask to be accompanied to a certain place, and they were standing side by side when accused-appellant approached them and suddenly pulled out a knife and stabbed Romeo. Clearly, neither Aurelio nor Romeo was aware of the impending assault from accused-appellant. Both Aurelio and Romeo were also unarmed. This made them all the more vulnerable and defenseless in the face

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[25] *People v. Aquino,* G.R. No. 201092, January 15, 2014; *People v. Dadao, et al.,* G.R. No. 201860, January 22, 2014.

[26] *People v. Aquino, supra* note 25.

[27] *People v. Angelio, supra* note 12; *People v. Casela,* G.R. No. 173243, March 23, 2007.

of accused-appellant's sudden attack. In fact, having been stabbed by accused-appellant, Romeo was unable to retaliate and had to run away from accused-appellant to escape any further assault, but accused-appellant still gave chase. Aurelio also testified that because of the suddenness of accused-appellant's attack, he was unable to make any move to defend his cousin the moment the latter was stabbed.

The foregoing circumstances are manifestly indicative of the presence of the conditions under which treachery may be appreciated, *i.e.*, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and that said means of execution was deliberately or consciously adopted.[28]

We cannot accept accused-appellant's argument that treachery is absent because Aurelio never imputed any deceitful attack from behind.

The essence of treachery is the unexpected and sudden attack on the victim which renders the latter unable and unprepared to defend himself by reason of the suddenness and severity of the attack. This criterion applies, whether the attack is frontal or 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.[29] In fact, treachery may still be appreciated even when the victim was forewarned of the danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[30]

The suddenness of accused-appellant's attack and the circumstances under which it was committed made it impossible for the unsuspecting Romeo to put up a defense, ensuring accused-appellant's execution of the crime without risk to himself. There is, thus, no doubt that treachery attended the killing.

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[28] *People v. Casela, supra* note 27.

[29] *People v. Alfon, supra* note 19.

[30] *People v. Pidoy*, G.R. No. 146696, July 3, 2003.

Our ruling in *People v. Casela*[31] finds application, *viz.*:

> Treachery attended the stabbing of Rain because he was unarmed and the attack on him was swift and sudden. He had no means and there was no time for him to defend himself. The prosecution was able to establish that appellant[‘]s attack on the victim was without any slightest provocation on the latter[’]s part and that it was sudden and unexpected. This is a clear case of treachery. There being treachery, appellant[’]s conviction for murder is in order.
>
> The essence of treachery is the sudden and unexpected attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor. In this case, treachery was already present when appellant and Insigne, armed each with a bolo, approached the victim and suddenly stabbed him. Rain did not have the faintest idea that he was vulnerable to an attack, considering that he was boarding his bicycle, oblivious of the sinister intent of appellant and Insigne. The fact that the victim was facing his malefactors at the time of the latter[’]s attack did not erase its treacherous nature. Even if the assault were frontal, there was treachery if it was so sudden and unexpected that the victim had no time to prepare for his defense. Even more, the fact that appellant and Insigne chased the victim to inflict more stabbing blows after the latter had already been gravely wounded clearly exhibits the treacherous nature of the killing of the victim.[32]

Clearly, therefore, all the elements for a conviction for murder have been shown to exist.

Against Aurelio’s categorical and consistent testimony pointing to accused-appellant as Romeo’s assailant, accused-appellant puts forward the defenses of *alibi* and denial. He presented the testimonies of his mother, Violeta, and his brother, Rosvil, to corroborate his claim that he was in a different place (Moalboal, Cebu) when the stabbing took place.

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[31] *Supra* note 27.

[32] *Id*.

It is jurisprudentially settled, however, that positive identification prevails over *alibi* since the latter can easily be fabricated and is inherently unreliable.[33] We have likewise consistently assigned less probative weight to a defense of *alibi* when it is corroborated by relatives since we have established in jurisprudence that, in order for corroboration to be credible, the same must be offered preferably by disinterested witnesses.[34]

Evidently, Violeta and Rosvil cannot be considered as disinterested witnesses. Being accused-appellant's relatives, their testimonies are rendered suspect because the former's relationship to them makes it likely that they would freely perjure themselves for his sake.[35] The defense of *alibi* may not prosper if it is established mainly by accused-appellant himself and his relatives, and not by credible persons.[36]

Furthermore, we have held that for the defense of *alibi* to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. These requirements of time and place must be strictly met.[37]

The RTC took judicial notice that Moalboal, Cebu is only three (3) hours away from Lorega, Cebu City where the crime took place.[38] Thus, it was not physically impossible for accused-appellant to have left for Moalboal on July 21, 2007 and to return to Lorega Street on the same day and commit the crime.

In *People v. Aquino*,[39] the Court held that:

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[33] *People v. Aquino, supra* note 25; *People v. Dadao, supra* note 25.

[34] *People v. Aquino, supra* note 25; *People v. Baroquillo, et al.*, G.R. No. 184960, August 24, 2011.

[35] *People v. Nelmida, et al.,* G.R. No. 184500, September 11, 2012.

[36] *Id.*

[37] *People v. Aquino, supra* note 25.

[38] CA *rollo*, p. 37.

[39] *Supra* note 25.

Appellant failed to establish by clear and convincing evidence that it was physically impossible for him to be at San Jose Del Monte City, Bulacan when Jesus was murdered. His own testimony revealed that the distance between the *locus delicti* and Dasmariñas City, Cavite is only a four to five hour regular commute. Thus, it would not be physically impossible for him to make the round trip between those two points from dusk till dawn of September 5-6, 2002 and still have more than enough time to participate in the events surrounding the murder of Jesus.[40]

In the face of Aurelio's positive identification of accused-appellant as Romeo's attacker, untainted by any ill or improper motive, accused-appellant's defense of *alibi* cannot prosper. Such positive identification also prevails over accused-appellant's unsubstantiated denial.[41]

Denial is an intrinsically weak defense.[42] To merit credibility, it must be buttressed by strong evidence of non-culpability. If unsubstantiated by clear and convincing evidence, it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters.[43]

Under Article 248 of the Revised Penal Code, the penalty for murder is *reclusion perpetua* to death. There being no other aggravating circumstance other than the qualifying circumstance of treachery, the CA correctly affirmed the RTC's imposition of *reclusion perpetua*, the lower of the two indivisible penalties.[44]

In line with prevailing jurisprudence,[45] we increase the exemplary damages awarded to Romeo's heirs from PhP 30,000 to PhP 75,000, and the temperate damages from PhP 25,000 to PhP 50,000. Furthermore, the interest imposed by the CA shall be applied to all damages as well as the civil indemnity.

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[40] *Id*.

[41] *People v. Calara,* G.R. No. 197039, June 5, 2013.

[42] *Id*.

[43] *People v. Calara, supra* note 41; *People v. Alfon, supra* note 19.

[44] *People v. Gunda,* G.R. No. 195525, February 5, 2014.

[45] *People v. Jugueta,* G.R. No. 202124, April 5, 2016.

WHEREFORE, the Decision dated October 28, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 01494 is hereby **AFFIRMED with the following MODIFICATIONS:** [a] exemplary damages are increased to PhP 75,000, while temperate damages are increased to PhP 50,000, and [b] the civil indemnity and all damages payable by accused-appellant are subject to interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

SO ORDERED.

Sereno,[*] *C.J., Velasco, Jr.* (*Chairperson*), *Bersamin,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 218910. July 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LUTHER SABADO, SATURNINO SABADO *y* LOMBOY AND HOSPICIO HARUTA *y* MARTINEZ,** *accused,* **LUTHER SABADO *y* PANGANGAAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; THEFT; ELEMENTS; THEFT, WHEN CONSIDERED QUALIFIED.— In *Miranda v. People*, the Court ruled that: "The elements of the crime of theft are as follows: (1) that

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[*] Designated additional Member per Raffle dated March 15, 2017 *vice* Associate Justice Francis H. Jardeleza.

there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things. Theft becomes qualified when any of the following circumstances under Article 310 is present: (1) the theft is committed by a domestic servant; (2) *the theft is committed with grave abuse of confidence*; (3) the property stolen is either a motor vehicle, mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance."

2. ID.; ID.; ID.; ID.; DULY ESTABLISHED IN CASE AT BAR.— The elements x x x were all alleged and proved. *First*, there was a taking of personal property consisting of pieces of jewelry, *i.e.* two men's rings and one necklace with pendant. *Second*, said pieces of jewelry belong to the Pawnshop. *Third*, the taking of said pieces of jewelry was with intent to gain. Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain. *Fourth*, the taking was obviously without the consent of the Pawnshop; and, *Fifth*, the taking was accomplished without the use of violence against or intimidation of persons or force upon things.

3. ID.; ID.; ID.; BECOMES QUALIFIED WHEN COMMITTED WITH GRAVE ABUSE OF CONFIDENCE; GRAVE ABUSE OF CONFIDENCE, DEFINED.— Theft here became qualified because it was *committed with grave abuse of confidence*. Grave abuse of confidence, as an element of theft, must be the result of the relation by reason of dependence, guardianship, or vigilance, between the accused-appellant and the offended party that might create a high degree of confidence between them which the accused-appellant abused. Accused-appellant, as established by the prosecution, is an employee of the Pawnshop. Accused-appellant could not have committed the crime had he not been holding the position of the trusted

employee which gave him not only sole access to the Pawnshop's vault but also control of the premises. x x x The management of Diamond Pawnshop clearly had reposed its trust and confidence in the accused-appellant, and it was this trust and confidence which he exploited to enrich himself to the damage and prejudice of his employer.

4. **ID.; ID.; CONSPIRACY; EXISTS WHEN TWO OR MORE PERSONS COME TO AN AGREEMENT CONCERNING THE COMMISSION OF A FELONY AND DECIDE TO COMMIT IT.—** [C]onspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Here, conspiracy is inferred from the conduct of accused-appellant and the other accused before, during, and after the commission of the crime. In particular, accused--appellant's act of ushering in one of his co-accused inside the pawnshop already constitutes an overt act of his coordination with and actual participation in the common purpose or design to commit the felony.

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; THE FACTS FOUND BY THE TRIAL COURT, AS AFFIRMED BY THE COURT OF APPEALS, ARE AS A GENERAL RULE, CONCLUSIVE UPON THE SUPREME COURT IN THE ABSENCE OF ANY SHOWING OF GRAVE ABUSE OF DISCRETION.—** We find no cogent reason to disturb the findings of the RTC which were affirmed by the CA as they are fully supported by the evidence on record. Time and again, the Court has held that the facts found by the RTC, as affirmed *in toto* by the CA, are as a general rule, conclusive upon this Court in the absence of any showing of grave abuse of discretion. In this case, none of the exceptions to the general rule on conclusiveness of said findings of facts are applicable. The Court gives weight and respect to the RTC's findings in criminal prosecution because the latter is in a better position to decide the question, having heard the witnesses in person and observed their deportment and manner of testifying during the trial.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

Accused-appellant Luther Sabado *y* Pangangaan assails in this appeal the Decision[1] dated January 13, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05984, which affirmed the Decision[2] dated September 25, 2012 of the Regional Trial Court (RTC) of Imus, Cavite, Branch 20, in Criminal Case No. 3638-07 convicting accused-appellant of the crime of Qualified Theft committed against his employer, Diamond Pawnshop, Dasmariñas, Cavite branch.

The Facts

The Information charging accused-appellant and two other accused of Qualified Theft reads as follows:

> That on or about the 13th day of September 2006, in the Municipality of Dasmariñas, Province of Cavite, a place within the jurisdiction of this Honorable Court, the above-named accused, LUTHER P. SABADO, while employed at Diamond Pawnshop, with intent to gain and grave abuse of trust and confidence reposed on him, and in conspiracy with accused SATURNINO L. SABADO and HOSPICIO M. HARUTA who are non-employees of the said pawnshop, did then and there, willfully, unlawfully and feloniously take, steal and carry away an assortment of jewelry and cellular phones worth FIVE HUNDRED THOUSAND PESOS (₱500,000.00) Philippine Currency, belonging to said Diamond Pawnshop without the owner's knowledge or consent, to his damage and prejudice.
>
> CONTRARY TO LAW.[3]

Accused-appellant pleaded not guilty to the charge while his co-accused remained at large.

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[1] Penned by Associate Justice Victoria Isabel A. Paredes, concurred in by Associate Justices Magdangal M. De Leon and Jane Aurora C. Lantion; *rollo*, pp. 2-11.

[2] Penned by Presiding Judge Fernando L. Felicen; CA *rollo*, pp. 34-38.

[3] *Id*. at 34.

Roger Alama (Alama) testified that, on September 13, 2006, at around 12:15 p.m., while he was at Luzviminda 2, Dasmariñas, Cavite doing a regular task as collector of payments from the stall owners thereat, he saw accused-appellant coming out of the pawnshop, as well as two unidentified men standing near the pawnshop. He saw accused-appellant unlock the steel gate and called one of the men who entered the pawnshop. The other unidentified man, who seemed to be a lookout, stayed outside and was leaning against the glass window of the pawnshop. Thereafter, the man who went with the accused-appellant inside the pawnshop came out carrying a small bag and immediately left the place. Shortly thereafter, accused-appellant also came out, tied up and with a packing tape plastered to his mouth. When the tape was removed, accused-appellant declared that he was robbed inside the pawnshop by the two unidentified men.

Corroborating witness Gina Brogada (Brogada), the auditor and appraiser of Diamond Pawnshop, confirmed that the pawnshop was robbed, and after the inventory, she found out that there were missing items valued at PhP 582,200.00.

Meanwhile, Police Chief Inspector Dominador Arevalo (PCI Arevalo) and PO1 Efren Recare (PO1 Recare) testified that, on September 20, 2006, SPO1 Antonio Valdez and SPO2 Mario Sanchez arrested the accused-appellant and his co-accused. During the arrest, accused-appellant and his co-accused were in possession of the following: (1) 18-K yellow gold necklace with anchor pendant; (2) 18-K yellow gold men's ring with horseshoe design; and (3) 14-K yellow gold ring with scale design. These items were turned over to the Dasmariñas Municipal Police Station. During a press briefing called for the purpose, accused-appellant and his co-accused were presented to PCI Arevalo, who was then the Chief of the Theft and Robbery Section of the Manila Police District. The photographs of the accused were also published in a newspaper.

Meanwhile, when the said pieces of jewelry were showed to Brogada, the latter positively identified the two men's ring and one necklace with pendant as those that were stolen from the pawnshop.

For his defense, accused-appellant alleged that on September 13, 2006, at around 12:00 noon, he was working alone in the pawnshop. When he was about to go out and opened the gate, a dark-skinned person wearing a hat blocked his way. He was then held at gunpoint to go inside the pawnshop. As they were inside, another person carrying a bag came in. The man with the gun ordered him to open the vault and threatened to kill him. After he opened the vault, his hands and feet were tied and his mouth was covered with a tape. Then the two unidentified men took all the contents of the vault and fled.

Accused-appellant also claimed that he was admitted back to work after the robbery incident. He was even instructed by the owner of the pawnshop to conduct an inventory of the contents of the vault and to make a cartographic sketch of the robbers. But after five or six days, he was invited to the police station for some questioning and, thereafter, a criminal information was filed against him.

After trial, the RTC found accused-appellant guilty of the crime of Qualified Theft, thus:

> In the case at bar, the amount stolen is Five Hundred Thousand Pesos (Php 500,000.00). Pursuant *to the r*uling in Astudillo, the *proper penalty is r*eclusion perpetua.
>
> WHEREFORE, premises considered, this Court finds accused Luther Sabado **GUILTY** of the crime of Qualified Theft under the Revised Penal Code and he is hereby sentenced to suffer the penalty of *reclusion perpetua.* Accused is likewise ordered to pay the amount of Php 500,000.00 to private complainant Diamond Pawnshop.
>
> Let the instant case against Saturnino Sabado y Lomboy and Hospicio Haruta y Martinez, both of whom are still at-large, be sent to the ARCHIVES until such time that they are apprehended and the Court acquires jurisdiction over their persons.
>
> **SO ORDERED.**[4]

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[4] *Id*. at 38.

On appeal, the CA affirmed accused-appellant's conviction as follows:

WHEREFORE, premises considered, the Appeal is **DISMISSED**. The assailed Decision dated September 25, 2012, issued by the Regional Trial Court, Branch 20, Imus, Cavite, in Criminal Case No. 3638-07 is **AFFIRMED.**

SO ORDERED.[5]

Hence, this appeal.

The Issue

Whether or not the guilt of accused-appellant for the crime charged has been proven beyond reasonable doubt.

The Court's Ruling

The appeal lacks merit.

In *Miranda v. People*,[6] the Court ruled that:

The elements of the crime of theft are as follows: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things. Theft becomes qualified when any of the following circumstances under Article 310 is present: (1) the theft is committed by a domestic servant; (2) *the theft is committed with grave abuse of confidence*; (3) the property stolen is either a motor vehicle, mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.[7]

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[5] *Rollo*, p. 10.

[6] G.R. No. 176298, January 25, 2012.

[7] *Id*.

The elements aforementioned were all alleged and proved. *First,* there was a taking of personal property consisting of pieces of jewelry, *i.e.* two men's rings and one necklace with pendant. *Second,* said pieces of jewelry belong to the Pawnshop. *Third,* the taking of said pieces of jewelry was with intent to gain. Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain. *Fourth,* the taking was obviously without the consent of the Pawnshop; and, *Fifth,* the taking was accomplished without the use of violence against or intimidation of persons or force upon things.[8]

Theft here became qualified because it was *committed with grave abuse of confidence*. Grave abuse of confidence, as an element of theft, must be the result of the relation by reason of dependence, guardianship, or vigilance, between the accused-appellant and the offended party that might create a high degree of confidence between them which the accused-appellant abused.[9] Accused-appellant, as established by the prosecution, is an employee of the Pawnshop. Accused-appellant could not have committed the crime had he not been holding the position of the trusted employee which gave him not only sole access to the Pawnshop's vault but also control of the premises. The relevant portion of the RTC's disquisition reads:

> Based on the extant records[,] it appears that accused Luther Sabado was a trusted employee of Diamond Pawnshop. In fact, the following circumstances show the trust and confidence reposed on him by the shop owners, to wit: he manages the shop alone; he has the keys to the locks of the shop; and he has access to the vault and knows the combination of the same. x x x.[10]

The management of Diamond Pawnshop clearly had reposed its trust and confidence in the accused-appellant, and it was

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[8] *Ringor v. People,* G.R. No. 198904, December 11, 2013.

[9] *People v. Cahilig,* G.R. No. 199208, July 30, 2014.

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

this trust and confidence which he exploited to enrich himself to the damage and prejudice of his employer.

We view with disfavor accused-appellant's plea of acquittal on the ground that there exists no evidence which linked him directly to or showed his participation in the robbery. He underscores in particular that nobody witnessed what transpired inside the pawnshop during the incident, hence, he must be excused from any criminal liability. This contention is unmeritorious because even if it was not shown that he personally took away the pieces of jewelry, his overt act of opening the steel gate, facilitating the entry of one of his co-accused inside the pawnshop, and opening of the vault despite his avowal that the vault was controlled by a time delay mechanism, showed his complicity in the commission of the crime charged.

The CA correctly appreciated conspiracy between accused-appellant and the other accused. It has already been settled that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[11] Here, conspiracy is inferred from the conduct of accused-appellant and the other accused before, during, and after the commission of the crime. In particular, accused-appellant's act of ushering in one of his co-accused inside the pawnshop already constitutes an overt act of his coordination with and actual participation in the common purpose or design to commit the felony.

Accordingly, We find no cogent reason to disturb the findings of the RTC which were affirmed by the CA as they are fully supported by the evidence on record. Time and again, the Court has held that the facts found by the RTC, as affirmed *in toto* by the CA, are as a general rule, conclusive upon this Court in the absence of any showing of grave abuse of discretion. In this case, none of the exceptions to the general rule on conclusiveness of said findings of facts are applicable. The Court gives weight and respect to the RTC's findings in criminal

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[11] *People v. Romero, et al.,* G.R. No. 145166, October 8, 2003.

prosecution because the latter is in a better position to decide the question, having heard the witnesses in person and observed their deportment and manner of testifying during the trial.

Absent any showing that the RTC and the CA have overlooked substantial facts and circumstances, which, if considered, would change the result of the case, this Court gives deference to their appreciation of the facts and of the credibility of witnesses.

WHEREFORE, the instant appeal is **DISMISSED.** The Decision dated January 13, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05984, finding accused-appellant Luther Sabado *y* Pangangaan **GUILTY** of the crime of Qualified Theft is **AFFIRMED.**

SO ORDERED.

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

SPECIAL SECOND DIVISION

[G.R. No. 220383. July 5, 2017]

SONEDCO WORKERS FREE LABOR UNION (SWOFLU)/ RENATO YUDE, MARIANITO REGINO, MANUEL YUMAGUE, FRANCISCO DACUDAG, RUDY ABABAO, DOMINIC SORNITO, SERGIO CAJUYONG, ROMULO LABONETE, GENEROSO GRANADA, EMILIO AGUS, ARNOLD CAYAO, BEN GENEVE, VICTOR MAQUE, RICARDO GOMEZ, RODOLFO GAWAN, JIMMY SULLIVAN, FEDERICO SUMUGAT, JR., ROMULO AVENTURA,

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[*] Designated additional Member per Raffle dated March 15, 2017 *vice* Associate Justice Francis H. Jardeleza.

JR., JURRY MAGALLANES, HERNAN EPISTOLA, JR., ROBERTO BELARTE, EDMON MONTALVO, TEODORO MAGUAD, DOMINGO TABABA, MAXIMO SALE, CYRUS DIONILLO, LEONARDO JUNSAY, JR., DANILO SAMILLION, MARIANITO BOCATEJA, JUANITO GEBUSION, RICARDO MAYO, RAUL ALIMON, ARNEL ARNAIZ, REBENCY BASOY, JIMMY VICTORIO BERNALDE, RICARDO BOCOL, JR., JOB CALAMBA, WOLFRANDO CALAMBA, RODOLFO CASISID, JR., EDGARDO DELA PENA, ALLAN DIONILLO, EDMUNDO EBIDO, JOSE ELEPTICO, JR., MARCELINO FLORES, HERNANDO FUENTEBILLA, SAUL HITALIA, JOSELITO JAGODILLA, NONITO JAYME, ADJIE JUANILLO, JEROLD JUDILLA, EDILBERTO NACIONAL, SANDY NAVALES, FELIPE NICOLASORA, JOSE PAMALO-AN, ISMAEL PEREZ, JR., ERNESTO RANDO, JR., PHILIP REPULLO, VICENTE RUIZ, JR., JOHN SUMUGAT, CARLO SUSANA, ROMEO TALAPIERO, JR., FERNANDO TRIENTA, FINDY VILLACRUZ, JOEL VILLANUEVA, and JERRY MONTELIBANO, *petitioners, vs.* **UNIVERSAL ROBINA CORPORATION, SUGAR DIVISION-SOUTHERN NEGROS DEVELOPMENT CORPORATION (SONEDCO)**, *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; UNFAIR LABOR PRACTICE; A WAGE INCREASE GRANTED BY THE EMPLOYER TO ITS EMPLOYEES TO INDUCE THEM TO WAIVE THEIR COLLECTIVE BARGAINING RIGHTS, A CASE OF.— The wage increase was integrated in the salary of those who signed the waivers. When the affiants waived their rights, respondent rewarded them with a ₱32.00/day wage increase that continues to this day. The respondent company granted this benefit to its employees to induce them to waive their

collective bargaining rights. This Court has declared this an unfair labor practice. Accordingly, it is illegal to continue denying the petitioners the wage increase that was granted to employees who signed the waivers. To rule otherwise will perpetuate the discrimination against petitioners. All the consequences of the unfair labor practice must be addressed. The grant of the ₱32.00/day wage increase is not an additional benefit outside the Collective Bargaining Agreement of 2009. By granting this increase to petitioners, this Court is eliminating the discrimination against them, which was a result of respondent's unfair labor practice.

APPEARANCES OF COUNSEL

Manlapao & Manlapao Law Office for petitioners.
Reyes-Beltran Flores & Ballicud Law Offices for respondent.

R E S O L U T I O N

LEONEN, *J.*:

Generally, a wage increase not included in the Collective Bargaining Agreement is not demandable. However, if it was withheld by the employer as part of its unfair labor practice against the union members, this benefit should be granted.

Before this Court is a Motion for Partial Reconsideration[1] filed by Southern Negros Development Corporation (SONEDCO) Workers Free Labor Union. The concerned SONEDCO Workers Free Labor Union members are asking that the wage increase given to their fellow employees be awarded to them as well. Their co-workers of the same rank are allegedly earning ₱32.00/day more than they are receiving.[2]

This case arose from an unfair labor practice complaint filed by SONEDCO Workers Free Labor Union against its employer,

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[1] *Rollo*, pp. 327-337.

[2] *Id*. at 328.

Universal Robina Corporation, Sugar Division-Southern Negros Development Corporation (URC-SONEDCO).[3]

In 2007, while there was no Collective Bargaining Agreement in effect, URC-SONEDCO offered, among other benefits, a ₱16.00/day wage increase to their employees. To receive the benefits, employees had to sign a waiver that said: "In the event that a subsequent [Collective Bargaining Agreement] is negotiated between Management and Union, the new [Collective Bargaining Agreement] shall only be effective [on] January 1, 2008."[4] Realizing that the waiver was an unfair labor practice, some members of SONEDCO Workers Free Labor Union refused to sign.[5]

URC-SONEDCO offered the same arrangement in 2008. It extended an additional ₱16.00/day wage increase to employees who would agree that any Collective Bargaining Agreement negotiated for that year would only be effective on January 1, 2009.[6] Several members of SONEDCO Workers Free Labor Union again refused to waive their rights. Consequently, they did not receive the wage increase which already amounted to a total of ₱32.00/day, beginning 2009.[7]

On July 2, 2009, SONEDCO Workers Free Labor Union and its members who refused to sign the 2007 and 2008 waivers filed a complaint for unfair labor practices against URC-SONEDCO. They argued that the requirement of a waiver prior to the release of the wage increase constituted interference to the employees' right to self-organization, collective bargaining, and concerted action. They asked that they be granted a ₱16.00/day wage increase for 2007 and an additional ₱16.00/day wage increase for 2008.[8] SONEDCO Workers Free Labor Union

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[3] *Id*. at 18.

[4] *Id*. at 186.

[5] *Id*. at 65.

[6] *Rollo,* pp. 64 and 25.

[7] *Rollo*, p. 33.

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

also demanded a continuing wage increase of ₱32.00/day "from January 1, 2009 onwards."[9]

Both the National Labor Relations Commission and the Court of Appeals found URC-SONEDCO not guilty of unfair labor practice.[10] Nonetheless, they ordered URC-SONEDCO to give petitioners the same benefits their co-workers received in 2007 and 2008. However, SONEDCO Workers Free Labor Union's claim for the 2009 wage increase was denied. Since a new Collective Bargaining Agreement was already in effect by 2009, this Collective Bargaining Agreement governed the relationship between the management and the union.[11] The Court of Appeals ruled:

> As there was no provision in the existing CBA regarding wage increase of [₱]16.00 per day, the [National Labor Relations Commission] was correct in ruling that it cannot further impose private respondents to pay petitioners the subject wage increase for the year 2009 and onwards.[12]

On October 5, 2016, this Court found URC-SONEDCO guilty of unfair labor practice for failing to bargain with SONEDCO Workers Free Labor Union in good faith.[13] URC-SONEDCO restricted SONEDCO Workers Free Labor Union's bargaining power when it asked the rank-and-file employees to sign a waiver foregoing Collective Bargaining Agreement negotiations in exchange for wage increases.[14] Thus, this Court ordered URC-SONEDCO to grant the union members the 2007 and 2008 wage

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[9] *Rollo*, p. 36.

[10] *Id*. at 65 and 67-68.

[11] *Id*. at 69.

[12] *Id*.

[13] *SONEDCO Workers Free Labor Union v. Universal Robina Corporation, Sugar Division – Southern Negros Development Corporation*, G.R. No. 220383, October 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/220383.pdf> [Per *J*. Leonen, Second Division].

[14] *Id*. at 4.

increases. Nevertheless, this Court denied the claim for the 2009 wage increase and ruled that if SONEDCO Workers Free Labor Union wished to continue receiving the additional wage after 2008, the proper recourse was to include it in the 2009 Collective Bargaining Agreement.[15]

On December 27, 2016, URC-SONEDCO filed a Motion for Reconsideration[16] assailing this Court's October 5, 2016 Decision. Since respondent merely reiterated the same arguments it raised in the Comment, the motion was denied.

On February 20, 2017 petitioners, who are members of SONEDCO Workers Free Labor Union, filed a Motion for Partial Reconsideration.[17] Petitioners aver that the ₱16.00 wage increases granted in 2007 and 2008 were integrated in the salary of the employees who signed the waiver. Thus, since the start of 2009, employees who signed the waiver have been receiving ₱32.00/day more than petitioners.

Respondent URC-SONEDCO filed a Comment/Opposition[18] to Petitioners' Motion for Partial Reconsideration on March 2, 2017. It was filed prior to this Court's March 6, 2017 Resolution,[19] which required such comment.

Respondent argues that this issue has already been ruled upon. Since the 2009 wage increase was not included in the 2009 Collective Bargaining Agreement, it cannot be demanded.[20]

The sole issue for resolution is whether a ₱32.00/day wage increase beginning January 1, 2009 to present should be awarded to petitioners.

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[15] *Id*. at 16.

[16] *Rollo*, pp. 315-326.

[17] *Id*. at 327-337.

[18] *Id*. at 358-363.

[19] *Id*. at 357.

[20] *Id*. at 358-359.

In their Motion for Partial Reconsideration, petitioners ask for four (4) awards: 1) a ₱16.00/day wage increase for 2007; 2) another ₱16.00/day wage increase for 2008; 3) the 2009 wage increase, which is a "continuing wage increase,"[21] of ₱32.00/day from January 1, 2009 to present, and 4) attorney's fees.[22]

The Court already granted the wage increases for 2007 and 2008 in its October 5, 2016 Decision:[23]

> **WHEREFORE**, the Petition is **GRANTED**. The Decision of the Court of Appeals dated January 30, 2015 and the Resolution dated July 27, 2015 in CA-G.R. SP No. 05950 are **SET ASIDE**. Respondent Universal Robina Corporation Sugar Division - Southern Negros Development Corporation is **GUILTY** of unfair labor practice and is **ORDERED** to pay each of the petitioners the wage increase of ₱16.00 for the years 2007 and 2008; and to pay SONEDCO Workers Free Labor Union moral damages in the amount of ₱100,000.00; and exemplary damages in the amount of ₱200,000.00.
>
> **SO ORDERED.**[24] (Emphasis supplied)

Thus, the only wage increase in issue here is the continuing wage increase of ₱32.00/day starting 2009.

Generally, the Collective Bargaining Agreement controls the relationship between the parties. Any benefit not included in it is not demandable.[25]

However, in light of the peculiar circumstances in this case, the requested wage increase should be granted.

According to petitioners, the "₱32.00/day [wage increase] was integrated to the wage[s] of those who signed the waivers so that they are receiving the wage increase of ₱32.00/day up

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[21] *Id*. at 329. The 2009 wage increase is referred to as a "continuing wage increase."

[22] *Id*. at 332-333.

[23] *Id*. at 298-314.

[24] *Id*. at 313.

[25] *Id*.

to now."[26] To prove this allegation, petitioners have attached a joint affidavit[27] dated January 18, 2017 signed by 26 URC-SONEDCO employees. According to the affiants, they signed the 2007 and 2008 waivers and are, thus, currently receiving ₱32.00/day more than petitioners.[28]

The wage increase was integrated in the salary of those who signed the waivers. When the affiants waived their rights, respondent rewarded them with a ₱32.00/day wage increase that continues to this day. The respondent company granted this benefit to its employees to induce them to waive their collective bargaining rights. This Court has declared this an unfair labor practice. Accordingly, it is illegal to continue denying the petitioners the wage increase that was granted to employees who signed the waivers. To rule otherwise will perpetuate the discrimination against petitioners. All the consequences of the unfair labor practice must be addressed.

The grant of the ₱32.00/day wage increase is not an additional benefit outside the Collective Bargaining Agreement of 2009. By granting this increase to petitioners, this Court is eliminating the discrimination against them, which was a result of respondent's unfair labor practice.

Considering that exemplary damages were imposed, this Court also deems it proper to grant attorney's fees.[29]

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[26] *Id*. at 328.

[27] *Id*. at 352-355.

[28] *Id*. at 352.

[29] CIVIL CODE, Art. 2208 provides:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

WHEREFORE, the Motion for Partial Reconsideration is **GRANTED**. The dispositive portion of the October 5, 2016 Decision in G.R. No. 220383 is **MODIFIED** as follows:

Respondent Universal Robina Corporation, Sugar Division - Southern Negros Development Corporation is **ORDERED** to:

1. pay the wage increase of ₱16.00/day in the year 2007 and another wage increase of ₱16.00/day in the year 2008 to the following petitioners: (1) Renato Yude, (2) Marianito Regino, (3) Manuel Yumague, (4) Francisco Dacudag, (5) Rudy Ababao, (6) Dominic Sornito, (7) Sergio Cajuyong, (8) Romulo Labonete, (9) Generoso Granada, (10) Emilio Agus, (11) Arnold Cayao, (12) Ben Geneve, (13) Victor Maque, (14) Ricardo Gomez, (15) Rodolfo Gawan, (16) Jimmy Sullivan, (17) Federico Sumugat, Jr., (18) Romulo Aventura, Jr., (19) Jurry Magallanes, (20) Hernan Epistola, Jr., (21) Roberto Belarte, (22) Edmon Montalvo, (23) Teodoro Maguad, (24) Domingo Tababa, (25) Maximo Sale, (26) Cyrus Dionillo, (27) Leonardo Junsay, Jr., (28) Danilo Samillion, (29) Marianito Bocateja, (30) Juanito Gebusion, and (31) Ricardo Mayo;

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(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

2. pay the wage increase of ₱16.00/day in the year 2008 to the following petitioners: (1) Raul Alimon, (2) Rebency Basoy, (3) Ricardo Bocol, Jr., (4) Wolfrando Calamba, (5) Edgardo Dela Pena, (6) Edmundo Ebido, (7) Marcelino Flores, (8) Saul Hitalia, (9) Nonito Jayme, (10) Jerold Judilla, (11) Sandy Navales, (12) Jose Pamalo-an, (13) Ernesto Rando, Jr., (14) Vicente Ruiz, Jr., (15) Carlo Susana, (16) Fernando Trienta, (17) Joel Villanueva, (18) Arnel Arnaiz, (19) Jimmy Victorio Bernalde, (20) Job Calamba, (21) Rodolfo Casisid, Jr., (22) Allan Dionillo, (23) Jose Eleptico, Jr., (24) Hernando Fuentebilla, (25) Joselito Jagodilla, (26) Adjie Juanillo, (27) Edilberto Nacional, (28) Felipe Nicolasora, (29) Ismael Perez, Jr., (30) Philip Repullo, (31) John Sumugat, (32) Romeo Talapiero, Jr., (33) Findy Villacruz and (34) Jerry Montelibano;

3. incorporate the wage increase of ₱32.00/day to the wage of all the individual petitioners from January 1, 2009 to present;

4. pay SONEDCO Workers Free Labor Union moral damages in the amount of ₱100,000.00;

5. pay SONEDCO Workers Free Labor Union exemplary damages in the amount of ₱200,000.00; and

6. pay SONEDCO Workers Free Labor Union ten percent (10%) of the total award as attorney's fees.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 220889. July 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARLON BELMONTE *y* SUMAGIT, MARVIN BELMONTE *y* SUMAGIT, ENRILE GABAY *y* DELA TORRE *a.k.a* "PUNO", and NOEL BAAC *y* BERGULA**, *accused,* **MARLON BELMONTE *y* SUMAGIT**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH RAPE; CONTEMPLATES A SITUATION WHERE THE ORIGINAL INTENT OF THE ACCUSED WAS TO TAKE, WITH INTENT TO GAIN, PERSONAL PROPERTY BELONGING TO ANOTHER AND RAPE IS COMMITTED ON THE OCCASION THEREOF OR AN ACCOMPANYING CRIME.— The crime of Robbery with Rape is penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of Republic Act No. 7659. Robbery with Rape is a special complex crime under Article 294 of the RPC. It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.

2. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL; CANNOT PREVAIL OVER A CATEGORICAL, CONSISTENT, AND POSITIVE IDENTIFICATION OF THE ACCUSED, ABSENT ANY SHOWING OF ILL MOTIVE ON THE PART OF THE WITNESS.— Evidence to be believed, must proceed not only from the mouth of a credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind. Here, the prosecution witnesses' positive identification of the accused-appellant as one of the malefactors in the robbery that took place on September 1, 2007 defeats accused-appellant's lone defense of *alibi.* Absent any showing of ill motive on the part of the witnesses, a categorical, consistent, and positive identification of the accused-appellant shall prevail over the

latter's *alibi* and denial. Unless substantiated by clear and convincing proof, *alibi* and denial are negative, self-serving and undeserving of any weight in law.

3. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH RAPE; ONCE CONSPIRACY IS ESTABLISHED BETWEEN SEVERAL ACCUSED IN THE COMMISSION OF THE CRIME OF ROBBERY, THEY WOULD ALL BE EQUALLY CULPABLE FOR THE RAPE COMMITTED BY ANYONE OF THEM ON THE OCCASION OF THE ROBBERY, UNLESS ANYONE OF THEM PROVES THAT HE ENDEAVORED TO PREVENT THE OTHERS FROM COMMITTING RAPE.— The evidence further show that, on the occasion of the robbery, AAA was raped. The RTC and the CA are correct in their appreciation that the original intent of the accused-appellant and his cohorts was to take, with intent to gain, the personal effects of their victims. Rape was committed on the occasion thereof or as an accompanying crime. Accused-appellant was implicated because he was positively identified as Noel's companion inside the room where AAA and Rhea were soundly sleeping. x x x While the evidence directly points to Noel as AAA's rapist, accused- appellant did not prevent him from committing the lustful act despite an opportunity to do so. x x x [O]nce conspiracy is established between several accused in the commission of the crime of robbery, as in the present case, they would all be equally culpable for the rape committed by anyone of them on the occasion of the robbery, *unless anyone of them proves that he endeavored to prevent the others from committing rape*. The immediately preceding condition is absent in this case. The factual finding of the trial court as affirmed by the CA is already irreversible holding that while accused-appellant did not rape AAA, he, however, did not endeavor to stop Noel despite an opportunity.

4. ID.; ID.; ID.; THE IMPOSABLE PENALTY IN CASE AT BAR IS DEATH BUT IT IS REDUCED TO *RECLUSION PERPETUA* BY REASON OF REPUBLIC ACT NO. 9346, AND THE CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES ARE INCREASED TO Php100,000.00 EACH PURSUANT TO PREVAILING JURISPRUDENCE.— [T]he imposable penalty against accused-appellant is death. However, by reason of R.A. No. 9346, x x x the penalty was reduced to *reclusion perpetua.* In

view hereof, the CA's award of civil indemnity in the amount of PhP 75,000, moral damages in the amount of PhP 75,000, and exemplary damages in the amount of PhP 30,000 to AAA, must be modified pursuant to the guidelines laid down in *People v. Jugueta* x x x. Accordingly, accused-appellant shall pay AAA civil indemnity of PhP 100,000, moral damages of PhP 100,000, and exemplary damages of PhP 100,000.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

Accused-appellant Marlon Belmonte *y* Sumagit assails the Decision[1] dated April 22, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05774, affirming his conviction for Robbery with Rape in Criminal Case No. 135982-H.

The Facts

Accused-appellant and his co-accused, namely, Marvin Belmonte (Marvin), Enrile Gabay (Enrile), and Noel Baac (Noel) were charged with Robbery with Rape in an Information dated September 3, 2007 that reads:

The Prosecution, through the undersigned Public Prosecutor, charges Marlon Belmonte *y* Sumagit, Marvin Belmonte *y* Sumagit and Enrile Gabay *y* Dela Torre @ "Puno" with the crime of robbery with rape, committed as follows:

> On or about September 1, 2007, in Pasig City and within the jurisdiction of this Honorable Court, the above accused, armed with a gun, conspiring and confederating together with one Noel Baac who is still at-large and all of them mutually

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[1] Penned by Associate Justice Fernanda Lampas Peralta, concurred in by Associate Justices Francisco P. Acosta and Myra V. Garcia-Fernandez; *rollo*, pp. 2-35.

helping and aiding one another, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take, steal, and divest from complainants the following, to wit:

x x x x x x x x x

x x x [A]nd on the occasion thereof said Noel Baac, by means of force, threats and intimidation and with the use of a gun, willfully, unlawfully, and feloniously, have carnal knowledge with AAA,[2] against her will and consent, which is aggravated by the circumstances of nighttime and dwelling, to the damage and prejudice of the said victim.

Contrary to law.[3]

The trial of the case proceeded against the accused-appellant, his cohorts, Marvin and Enrile, who all pleaded not guilty to the crime charged. However, Noel remained at large.[4]

The prosecution evidence established that, in the evening of August 31, 2007, Hiroshi Emmanuel Zorilla (Hiroshi) celebrated his 17th birthday with his friends in the house of his aunt Teodora and uncle Robert Dela Cruz in Pasig City. When it was already 12:00 midnight, Jolly Pantaleon (Jolly), one of Hiroshi's friends who was present at the celebration, left the group to buy some beer from a nearby store. At the store, Jolly met Enrile, who asked him if he could join them in the drinking spree at Hiroshi's place. Enrile then helped Jolly carry the half case of beer and joined in the drinking spree at Hiroshi's house.[5]

At around 2:00 a.m. of September 1, 2007, Jolly left the group and was followed by Enrile, but the latter soon returned

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[2] 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.

[3] CA *rollo*, pp. 13-14.

[4] *Id*. at 20.

[5] *Id*. at 20-21.

to the party and was accompanied by accused-appellant and his brother Marvin, and Noel. Armed with guns and a knife,[6] the three men approached and suddenly boxed Enrile, then tied the hands of all the persons inside the house and ordered them to lie down on the floor as they took their personal belongings.

Meanwhile, the maids of spouses Teodora and Robert, namely, AAA and Rhea Brioso, were awakened inside their quarters by the presence of two men, later identified as accused-appellant and Noel. Upon Noel's order, AAA was left inside the room. Noel immediately locked the door, and at gunpoint, ordered AAA to remove her pants. He told AAA to lie down, then he inserted his penis into her vagina.[7]

Thereafter, Noel and Marvin entered the room of spouses Teodora and Robert through the window. Teodora was awakened and was surprised, hence, she shouted which prompted Robert to get up from bed. At gunpoint, Noel and Marvin ordered the spouses to lie on the bed while they searched the room; then they took away some pieces of jewelry, laptop, ATM card, cash amounting to PhP 6,700 and 23 pieces of Yen.[8] Teodora recognized the faces of Noel and Marvin since the room was illuminated by light coming from a lamp shade.

For his part, Enrile, testified that, at around 1:00 a.m. of September 1, 2007, he and other bystanders were in front of a bakery store, about four streets away from Hiroshi's house when Jolly arrived to buy one and a half cases of beer. He helped Jolly carry the cases of beer upon the latter's request, and when they arrived at Hiroshi's house, he was asked to join in the drinking session. Thereafter, some men entered the house and suddenly ordered them to lie down on the floor and tied their hands. The men took away his jewelry and cellular phone.[9]

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[6] *Id*. pp. 21-22.

[7] *Id*. at 22.

[8] *Id*. at 23.

[9] *Rollo*, p. 6.

Accused-appellant and Marvin, on the other hand, proffered *alibi* and claimed that they were sleeping in their house when the alleged crime was committed.[10]

After trial, the RTC convicted accused-appellant, Marvin, and Enrile of the crime of Robbery with Rape, thus:

> **WHEREFORE,** the Court finds accused Marlon Belmonte y Sumagit, Marvin Belmonte y Sumagit, and Enrile Gabay y Dela Torre a.k.a. "Puno" guilty beyond reasonable doubt of the crime of Robbery with Rape and hereby sentences each of them to suffer the penalty of *reclusion perpetua*. The accused are also ordered to jointly and severally pay Hiroshi Emmanuel L. Zorilla the amount of ₱23,000.00, as actual damages; Spouses Teodora and Robert Dela Cruz, the amount of ₱132,150.00, as actual damages; and [AAA], the amount of ₱50,000.00, as civil indemnity and ₱50,000.00, as moral damages.
>
> **SO ORDERED**.[11]

On appeal, the CA modified the trial court's decision as follows:

> **WHEREFORE**, the appealed Decision dated June 6, 2012 is modified as follows:
>
> (1) Accused-appellant Enrile Gabay y Dela Torre is acquitted on ground of reasonable doubt. Unless detained for some other lawful reasons, accused-appellant Enrile Gabay y Dela Torre is hereby ordered released immediately.
>
> (2) Accused-appellant Marvin Belmonte is hereby found guilty beyond reasonable doubt of the crime of simple robbery and is sentenced to suffer the penalty of imprisonment at 4 years and 2 months of *prision correccional* medium, as the minimum period, to 10 years of *prision mayor* maximum, as the maximum period. As ordered by the trial court, accused-appellant Marvin Belmonte and accused-appellant Marlon Belmonte should jointly and severally pay actual damages to Hiroshi Emmanuel Zorilla in the amount of Php23,000.00, and to spouses Teodora and Robert Dela Cruz in the amount of Php132,150.00.

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[10] *Id*.

[11] CA *rollo,* p. 57.

(3) The conviction of accused-appellant Marlon Belmonte for robbery with rape is affirmed. He is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is also ordered to pay AAA Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php30,000.00 as exemplary damages, plus interest at the rate of six percent (6%) per annum on all damages awarded from the date of finality of judgment.

SO ORDERED.[12]

Only accused-appellant appealed to this Court for review.

The Issue

Whether or not accused-appellant's guilt was proven beyond reasonable doubt.

The Court's Ruling

The appeal lacks merit.

The crime of Robbery with Rape is penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of Republic Act No. 7659. Robbery with Rape is a special complex crime under Article 294 of the RPC. It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.[13]

In *People v. Tamayo*,[14] the Court ruled that:

For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed by reason or on the occasion of a robbery and not the other way around. This special complex crime under Article 294 of the RPC contemplates a situation where the original intent of the accused was to take, with intent to

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[12] *Rollo*, pp. 33-34.

[13] *People v. Tamayo,* G.R. No. 137586, July 30, 2002.

[14] G.R. No. 137586, July 30, 2002.

gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.[15]

There is no basis to disturb the findings of the trial court as affirmed by the CA respecting accused-appellant's criminal culpability. The prosecution's evidence established with certainty that accused-appellant, together with his brother Marvin, and co-accused Noel, have intruded the house of spouses Teodora and Robert on the occasion of Hiroshi's birthday celebration thereat. They aided each other in divesting the guests of Hiroshi of their personal belongings through violence and intimidation. The evidence disclosed that they were armed with guns and knife, and they tied the hands of their victims and threatened them with harm if they disobeyed their orders. Noel and Marvin, on the same occasion, entered the room of spouses Teodora and Robert through the window and succeeded in taking away from their possession some pieces of jewelry, laptop, ATM card, and cash.

It behooves Us to rule that the testimonies of prosecution witnesses, Teodora and Hiroshi, as to the foregoing, are sufficient and credible to sustain the conviction of accused-appellant. Evidence to be believed, must proceed not only from the mouth of a credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind.[16] Here, the prosecution witnesses' positive identification of the accused-appellant as one of the malefactors in the robbery that took place on September 1, 2007 defeats accused-appellant's lone defense of *alibi*. Absent any showing of ill motive on the part of the witnesses, a categorical, consistent, and positive identification of the accused-appellant shall prevail over the latter's *alibi* and denial. Unless substantiated by clear and convincing proof, *alibi* and denial are negative, self-serving and undeserving of any weight in law.[17]

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[15] *Id.*

[16] *People v. Cantila, Jr.,* G.R. No. 139458, December 27, 2002.

[17] *People v. Catuiran, et al.,* G.R. No. 134761, October 17, 2000.

The evidence further show that, on the occasion of the robbery, AAA was raped. The RTC and the CA are correct in their appreciation that the original intent of the accused-appellant and his cohorts was to take, with intent to gain, the personal effects of their victims. Rape was committed on the occasion thereof or as an accompanying crime. Accused-appellant was implicated because he was positively identified as Noel's companion inside the room where AAA and Rhea were soundly sleeping. The CA, affirming the RTC's finding ruled, *viz.*:

> The trial court correctly convicted accused-appellant Marlon Belmonte of the special complex crime of robbery with rape **even if he did not rape AAA, as accused-appellant Marlon Belmonte had the opportunity but did not endeavor to stop accused Noel Baac from raping AAA.** x x x The accused's failure to prevent his co-accused from committing rape despite an opportunity to do so made him liable for the rape committed. x x x.[18] (Emphasis and underscoring ours)

While the evidence directly points to Noel as AAA's rapist, accused-appellant did not prevent him from committing the lustful act despite an opportunity to do so.

Pertinently, in *People v. Verceles, et al.*,[19] We held:

> In the course of the robbery, one of them, particularly Mamerto Soriano, succumbed to lustful desires and raped [the victim] while accused-appellants just stood outside the door and did nothing to prevent Mamerto Soriano. We have previously ruled that once conspiracy is established between two accused in the commission of the crime of robbery, they would be both equally culpable for the rape committed by one of them on the occasion of the robbery, unless any of them proves that he endeavored to prevent the other from committing the rape. **The rule in this jurisdiction is that whenever a rape is committed as a consequence, or on the occasion of a robbery, all those who took part therein are liable as principals of the crime of robbery with rape, although not all of them took part in the rape.** (Emphasis ours)

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[18] *Rollo*, p. 32.

[19] G.R. No. 130650, September 10, 2002.

As stated above, once conspiracy is established between several accused in the commission of the crime of robbery, as in the present case, they would all be equally culpable for the rape committed by anyone of them on the occasion of the robbery, *unless anyone of them proves that he endeavored to prevent the others from committing rape.*[20] The immediately preceding condition is absent in this case. The factual finding of the trial court as affirmed by the CA is already irreversible holding that while accused-appellant did not rape AAA, he, however, did not endeavor to stop Noel despite an opportunity.

The fact that AAA was raped cannot be over-emphasized. The CA made the following categorical findings:

> AAA's testimony was straightforward, candid and consistent on material points detailing the bestial act of accused Noel Baac in ravishing her. Besides, her statement was corroborated by the medical certificate dated September 7, 2007 finding AAA's genitals to have suffered from deep fresh laceration. No young and decent woman in her right mind especially of tender age as that of AAA who is 18 years old would concoct a story of defloration, allow the 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.[21]

On the face of the evidence against him, accused-appellant's defense consisting merely of his bare allegation that he and his brother Marvin were at their house when the crime was committed does not persuade Us to rule in his favor. By their own admission, they live at 97 Eastbank Road, Kapitbahayan, Floodway, Sta. Lucia, Pasig City. It was easy for them to negotiate the distance between their house and the victims' house. Their place of residence and the place where the crime was committed are both situated in Barangay Sta. Lucia, and the distance could be negotiated within 15 minutes.

Ergo, his conviction is sustained.

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[20] *People v. Evangelio,* G.R. No. 181902, August 31, 2011.

[21] *Rollo*, p. 25.

The CA correctly noted that *the imposable penalty upon accused-appellant should have been death considering that the aggravating circumstance of dwelling was alleged in the Information and proven. However, with the passage of R.A. No. 9346*[22] *prohibiting the imposition of the death penalty, the trial court correctly reduced the penalty of death to reclusion perpetua, without eligibility for parole.*[23]

Clearly, the imposable penalty against accused-appellant is death. However, by reason of R.A. No. 9346 as stated above, the penalty was reduced to *reclusion perpetua.* In view hereof, the CA's award of civil indemnity in the amount of PhP 75,000, moral damages in the amount of PhP 75,000, and exemplary damages in the amount of PhP 30,000 to AAA, must be modified pursuant to the guidelines laid down in *People v. Jugueta,*[24] to wit:

> II. For Simple Rape/Qualified Rape:
>
> 1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346 :
>
> a. Civil indemnity – PhP 100,000.00
> b. Moral damages – PhP 100,000.00
> c. Exemplary damages – PhP 100,000.00

Accordingly, accused-appellant shall pay AAA civil indemnity of PhP 100,000, moral damages of PhP 100,000, and exemplary damages of PhP 100,000.

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

x x x x x x x x x

Section 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

x x x x x x x x x

[23] *Rollo*, p. 32.

[24] G.R. No. 202124, April 5, 2016.

The CA's order directed against accused-appellant to pay, jointly and severally with Marvin Belmonte, actual damages to Hiroshi and spouses Teodora and Robert must stand. The CA on the matter held that:

> The trial court correctly awarded actual damages suffered by Hiroshi Emmanuel L. Zorilla and spouses Teodora and Robert Dela Cruz in the amounts of ₱23,000.00 and ₱132,150.00, respectively, **as they are duly supported by receipts.**[25] (Emphasis ours)

Truly, actual damages to be compensable must be proven by clear evidence, as in this case.

WHEREFORE, the instant appeal is **DISMISSED.** The Decision of the Court of Appeals in CA-G.R. CR-HC No. 05774 dated April 22, 2014, finding accused-appellant Marlon Belmonte **GUILTY** of the crime of Robbery with Rape is **AFFIRMED with MODIFICATION** in that the accused-appellant is **ORDERED** to pay AAA civil indemnity of PhP 100,000, moral damages of PhP 100,000, and exemplary damages of PhP 100,000. Interest at the rate of six percent (6%) *per annum* is imposed on all the damages awarded in this case from date of finality of this Decision until fully paid. The rest of the assailed CA Decision **STANDS.**

SO ORDERED.

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

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[25] *Rollo*, p. 32.

[*] Designated additional Member per Raffle dated March 15, 2017 *vice* Associate Justice Francis H. Jardeleza.

THIRD DIVISION

[G.R. No. 220926. July 5, 2017]

LUIS JUAN L. VIRATA and UEM-MARA PHILIPPINES CORPORATION (now known as CAVITEX INFRASTRUCTURE CORPORATION), *petitioners, vs.* **ALEJANDRO NG WEE, WESTMONT INVESTMENT CORP., ANTHONY T. REYES, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, MARIZA SANTOS-TAN, and MANUEL ESTRELLA,** *respondents.*

[G.R. No. 221058. July 5, 2017]

WESTMONT INVESTMENT, CORPORATION, *petitioner, vs.* **ALEJANDRO NG WEE,** *respondent.*

[G.R. No. 221109. July 5, 2017]

MANUEL ESTRELLA, *petitioner, vs.* **ALEJANDRO NG WEE,** *respondent.*

[G.R. No. 221135. July 5, 2017]

SIMEON CUA, VICENTE CUALOPING, and HENRY CUALOPING, *petitioners, vs.* **ALEJANDRO NG WEE,** *respondent.*

[G.R. No. 221218. July 5, 2017]

ANTHONY T. REYES, *petitioner, vs.* **ALEJANDRO NG WEE, LUIS JUAN VIRATA, UEM-MARA PHILIPPINES CORP., WESTMONT INVESTMENT CORP., MARIZA SANTOS-TAN, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, and MANUEL ESTRELLA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; PARTIES; EVERY ACTION MUST BE PROSECUTED OR DEFENDED IN THE NAME OF THE REAL PARTY IN INTEREST; REAL PARTY IN INTEREST, DEFINED.—** As a general rule, every action must be prosecuted or defended in the name of the real party in interest. Section 2, Rule 3 of the Rules of Court defines a real party in interest as "*the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit*." In this case, it is worth recalling that the procedural issue on whether or not Ng Wee is the real party in interest had already been resolved by this Court in G.R. No. 162928. There, the Court found neither abuse of discretion on the part of the RTC nor reversible error on the CA when they ruled that Ng Wee had the legal personality to file the Complaint to recover his investments. The resolutions by the CA and this Court sustaining the October 4, 2001 Order had already attained finality and could no longer be modified. Concomitantly, the parties are barred from re-raising the issues settled therein, pursuant to the *law of the case* doctrine.

2. **ID.; ID.; JUDGMENTS; LAW OF THE CASE DOCTRINE; WHATEVER IS 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 THE LEGAL RULE OR DECISION WAS PREDICATED CONTINUE TO BE THE FACTS OF THE CASE BEFORE THE COURT; RATIONALE.—** The *law of the case* doctrine applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court for further proceedings; the question settled by the appellate court becomes the *law of the case* at the lower court and in any subsequent appeal. It means that whatever is 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 the legal rule or decision was predicated continue to be the facts of the case before the court. It is

inconsequential that the issue raised in G.R. No. 162928 pertained to the alleged grave abuse of discretion committed by the RTC in denying the motions to dismiss, and not to the merits of the motions to dismiss *per se*. For as the Court has elucidated in *Banco de Oro-EPCI, Inc. v. Tansipek*: x x x **there is no substantial distinction between an appeal and a Petition for *Certiorari* when it comes to the application of the Doctrine of the Law of the Case**. The doctrine is founded on the policy of ending litigation. The doctrine is necessary to enable the appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal. We are then constrained to abide by Our prior ruling in G.R. No. 162928 that Ng Wee is a real party in interest in this case.

3. ID.; ID.; CIVIL ACTIONS; CAUSE OF ACTION; WHEN THE AFFIRMATIVE DEFENSE OF DISMISSAL IS GROUNDED ON THE FAILURE TO STATE A CAUSE OF ACTION, A RULING THEREON SHOULD BE BASED ON THE FACTS ALLEGED IN THE COMPLAINT.— [W]hen the affirmative defense of dismissal is grounded on the failure to state a cause of action, a ruling thereon should be based on the facts alleged in the complaint. Otherwise stated, whether or not Ng Wee successfully stated a cause of action requires hypothetically admitting and scrutinizing the allegations in his Complaint. x x x. The RTC is correct in its observation that there is sufficient allegation that Ng Wee is the actual injured party in the failed investment. As the alleged owner of the funds placed under the names of Robert Tabada Tan, Elizabeth Ng Wee, Alex Lim Tan and Angel Archangel in Wincorp, Ng Wee lost ₱213,290,410.36 from Power Merge's default and non-payment of its obligations under the credit facility extended by the investment house. This controverts petitioners' claim that Ng Wee is not the real party in interest herein.

4. ID.; ID.; ID.; ID.; PRESENT; RESPONDENT NG WEE'S OWNERSHIP OVER THE INVESTED FUNDS ESTABLISHED BY PREPONDERANT EVIDENCE.— [W]incorp employees Ruben Tobias and Gilda Lucena testified that they were instructed by Ng Wee to rename several of his investments under the Power Merge Account to the names of Alex Lim Tan and Robert Tabada Tan. Effectively, Ruben Tobias

and Gilda Lucena corroborated the claim of Ng Wee that the investments in Power Merge that were recorded under those names are actually respondent Ng Wee's. From the foregoing evidence on record, it can no longer be gainsaid that Ng Wee is the real party in interest in the present case. The allegation in his Complaint that he is the actual owner of the ₱213,290,410.36 infused in Power Merge under the names of Robert Tabada Tan, Elizabeth Ng Wee, Alex Lim Tan and Angel Archangel has been established by preponderant evidence, and, more significantly, has already become the law of the case. The procedural issue raised by petitioners therefore lacks merit.

5. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN, AS THE APPELLATE COURT'S FINDINGS OF FACT BEING CONCLUSIVE, THE JURISDICTION OF THE SUPREME COURT IN APPEALED CASES IS LIMITED TO REVIEWING AND REVISING THE ERRORS OF LAW; EXCEPTIONS NOT PRESENT.— Axiomatic in this jurisdiction is that, as a general rule, only questions of law may be raised in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. The appellate court's findings of fact being conclusive, the jurisdiction of this Court in appealed cases is limited to reviewing and revising the errors of law. As We have emphatically declared in a long line of cases, "*it is not the function of the Supreme Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed by the lower court*." Enumerated in *Medina v. Mayor Asistio, Jr.* are the recognized exceptions to the general rule. But insofar as Wincorp is concerned, it failed to establish that any of these exceptions obtain in the present case. Thus, the Court sustains the finding of the trial court, as affirmed by the CA, that Wincorp is liable to Ng Wee for perpetrating an elaborate scheme to defraud its investors.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; FRAUD; DEEMED TO COMPRISE ANYTHING CALCULATED TO DECEIVE, INCLUDING ALL ACTS AND OMISSIONS AND CONCEALMENT INVOLVING A BREACH OF LEGAL OR EQUITABLE DUTY, TRUST, OR CONFIDENCE JUSTLY REPOSED, RESULTING IN DAMAGE TO ANOTHER, OR BY WHICH

AN UNDUE AND UNCONSCIENTIOUS ADVANTAGE IS TAKEN OF ANOTHER.— Jurisprudence defines "fraud" as the voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission. In its general sense, fraud is deemed to comprise anything calculated to deceive, including all acts and omissions and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. Fraud is also described as embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.

7. ID.; ID.; ID.; ID.; DELIBERATE AND INTENTIONAL EVASION OF THE NORMAL FULFILLMENT OF OBLIGATION; WHERE ONE STATES THAT THE FUTURE PROFITS OR INCOME OF AN ENTERPRISE SHALL BE A CERTAIN SUM, BUT HE ACTUALLY KNOWS THAT THERE WILL BE NONE, OR THAT THEY WILL BE SUBSTANTIALLY LESS THAN HE REPRESENTS, THE STATEMENTS CONSTITUTE AN ACTIONABLE FRAUD WHERE THE HEARER BELIEVES HIM AND RELIES ON THE STATEMENT TO HIS INJURY.— Under Article 1170 of the New Civil Code, those who in the performance of their obligations are guilty of fraud are liable for damages. The fraud referred to in this Article is the deliberate and intentional evasion of the normal fulfillment of obligation. Clearly, this provision is applicable in the case at bar. It is beyond quibble that Wincorp foisted insidious machinations upon Ng Wee in order to inveigle the latter into investing a significant amount of his wealth into a mere empty shell of a corporation. And instead of guarding the investments of its clients, Wincorp executed Side Agreements that virtually exonerated Power Merge of liability to them; Side Agreements that the investors could not have been aware of, let alone authorize. The summation of Wincorp's actuations establishes the presence of actionable fraud, for which the company can be held liable. In *Joson vs. People*, the Court upheld the ruling that where one states that the future profits or income of an

enterprise shall be a certain sum, but he actually knows that there will be none, or that they will be substantially less than he represents, the statements constitute an actionable fraud where the hearer believes him and relies on the statement to his injury. Just as in *Joson*, it is abundantly clear in the present case that the profits which Wincorp promised to the investors would not be realized by virtue of the Side Agreements. The investors were kept in the dark as regards the existence of these documents, and were instead presented with Confirmation Advices from Wincorp to give the transactions a semblance of legitimacy, and to convince, if not deceive, the investors to roll over their investments or to part with their money some more.

8. ID.; ID.; ID.; ID.; ID.; RESPONDENT-WESTMONT INVESTMENT CORPORATION (WINCORP) IS GUILTY OF FRAUD WHEN IT FAILED TO DISCLOSE TO THE INVESTORS THE EXISTENCE AND EXECUTION OF THE SIDE AGREEMENTS DISCHARGING POWER MERGE FROM LIABILITY.— Between Wincorp and Power Merge, it is Wincorp, as the assignor of the portions of credit, that is under obligation to disclose to the investors the existence and execution of the Side Agreements. Failure to do so, x x x only goes to show that the target of Wincorp's fraud is not any particular individual, but the public at large. On the other hand, it was not Power Merge's positive legal duty to forewarn the investors of its discharge since the company did not deal with them directly. Power Merge and Virata were agnostic as to the source of funds since they relied on their underlying agreement with Wincorp that they would not be liable for the Promissory Notes issued. As far as it was concerned, Power Merge was merely laying the groundwork prescribed by Wincorp towards fulfilling its obligations under the Waiver and Quitclaim. Virata was not impelled by any Machiavellian mentality when he signed the Side Agreements in Power Merge's behalf. Therefore, only Wincorp can be held liable for fraud.

9. COMMERCIAL LAW; CORPORATIONS; THE INVESTMENT HOUSE LAW (PRESIDENTIAL DECREE 129); POWERS OF AN INVESTMENT HOUSE; EVEN AS A FINANCIAL INTERMEDIARY, INVESTMENT HOUSES ARE NOT ALLOWED TO ENGAGE IN QUASI-BANKING FUNCTIONS, UNLESS AUTHORIZED BY THE MONETARY BOARD THROUGH THE ISSUANCE OF A

CERTIFICATE OF AUTHORITY.— An investment house is an enterprise that engages in the underwriting of securities of other corporations. Securities underwriting, in turn, refers to the process by which underwriters raise capital investments on behalf of the corporation issuing the securities. Thus, aside from performing the regular powers of a corporation under the Corporation Code, a duly licensed investment house is granted additional powers under Sec. 7 of Presidential Decree No. (PD) 129. Conspicuously absent in the enumerated additional powers of an investment house, however, is the authority to perform quasi-banking functions. Even as a financial intermediary, investment houses are not allowed to engage in quasi-banking functions, unless authorized by the Monetary Board through the issuance of a Certificate of Authority.

10. ID.; ID.; ID.; THE OMNIBUS RULES AND REGULATIONS FOR INVESTMENT HOUSES AND UNIVERSAL BANKS REGISTERED AS UNDERWRITERS; "*QUASI-BANKING FUNCTION,*" DEFINED; OFFERING THE "*SANS RECOURSE*" TRANSACTIONS DOES NOT QUALIFY AS THE PERFORMANCE OF A QUASI-BANKING FUNCTION.— The Omnibus Rules and Regulations for Investment Houses and Universal Banks Registered as Underwriters defines "*quasi-banking function*" as the function of "***borrowing funds for the borrower's own account from 20 or more persons or corporate lenders at any one time, through the issuance, endorsement or acceptance of debt instruments of any kind*** *other than deposits which may include but need not be limited to acceptances, promissory notes, participations, certificates of assignment or similar instruments* ***with recourse****, trust certificates or of repurchase agreements for purposes of relending or purchasing of receivables and other obligations*." Given the definition, it would appear on paper that offering the "*sans recourse*" transactions does not qualify as the performance of a quasi-banking function specifically because it is "*sans recourse*" against Wincorp.

11. ID.; ID.; ID.; THE ACT OF ADVANCING THE PAYMENT OF INTERESTS WHEN THE CORPORATE BORROWER IS UNABLE TO PAY DESPITE THE BORROWING BEING BRANDED AS WITHOUT RECOURSE, RENDERED IT TO BE WITH RECOURSE.— [T]he Court affirms the appellate court's

finding that the true nature of the "*sans recourse*" transactions contradicts Wincorp's averment. A perusal of the records would show that Wincorp engaged in practices that rendered the transactions to be "*with recourse*" and, consequently, within the ambit of quasi-banking rules. x x x. [W]incorp's act of advancing the payment of interests when the corporate borrower is unable to pay despite the borrowing being branded as without recourse, rendered it to be *with* recourse. Coupled with the above-circumstances, offering the "*sans recourse*" transactions should then be categorized as an exercise of a quasi-banking function. The transactions were merely being denominated as "*sans recourse*" by Wincorp to circumvent the license requirement under the law. The alleged "*sans recourse*" nature of the transactions cannot then be used by Wincorp as a shield against liability to Ng Wee.

12. ID.; ID.; ID.; INVESTMENT CONTRACT; DEFINED; SECURITIES, SUCH AS INVESTMENT CONTRACTS, ARE NOT TO BE SOLD OR OFFERED FOR SALE OR DISTRIBUTION WITHOUT DUE REGISTRATION, AND PROVIDED THAT INFORMATION ON THE SECURITIES SHALL BE MADE AVAILABLE TO PROSPECTIVE PURCHASERS.— There is more to the "*sans recourse*" transactions than meets the eye, so much so that the operations of Wincorp cannot be oversimplified as mere brokering of loans. As discovered by the SEC in PED Case No. 20-2378, and as ruled by the CA, Wincorp was, in reality, selling to the public securities, *i.e.*, shares in the Power Merge credit in the form of investment contracts. Securities are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. As a general rule, securities are not to be sold or offered for sale or distribution without due registration, and provided that information on the securities shall be made available to prospective purchasers. Included in the list of securities that require registration prior to offer, sale, or distribution are investment contracts. An investment contract refers to a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others. It is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.

13. ID.; ID.; ID.; ID.; HOWEY TEST; ELEMENTS OF AN INVESTMENT CONTRACT; PRESENT.— In this jurisdiction, the Court employs the *Howey* test, named after the landmark case of *Securities and Exchange Commission v. W.J. Howey Co.*, to determine whether or not the security being offered takes the form of an investment contract. The case served as the foundation for the domestic definition of the said security. Under the *Howey* test, the following must concur for an investment contract to exist: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others. Indubitably, all of the elements are present in the extant case.

14. ID.; ID.; ID.; ID.; AN INVESTMENT HOUSE WHICH SELLS SECURITIES IN THE FORM OF MANAGEMENT CONTRACTS IS UNDER LEGAL OBLIGATION TO COMPLY WITH THE STATUTORY REGISTRATION AND DISCLOSURE REQUIREMENTS, AS THE LICENSE REQUIREMENT TO OPERATE AS AN INVESTMENT HOUSE IS SEPARATE AND DISTINCT FROM THE REGISTRATION REQUIREMENT FOR THE SECURITIES WHICH THE INVESTMENT HOUSES ARE OFFERING.— Wincorp cannot hide behind its license to operate as an investment house when it offered the "*sans recourse*" transactions to the public. x x x. Their license to perform investment house functions does not excuse them from complying with the security registration requirements under the law. For clarity, the license requirement to operate as an investment house is separate and distinct from the registration requirement for the securities they are offering, if any. In dealing in securities, Wincorp was under legal obligation to comply with the statutory registration and disclosure requirements. Under BP 178, otherwise known as the *Revised Securities Act*, which was still in force at the time material in this case, investment contracts are securities, and their sale, transactions that are not exempt from these requirements. As such, adherence to Sections 4 and 8 of BP 178 must be strictly observed.

15. ID.; ID.; ID.; RESPONDENT WINCORP IS LIABLE AS A VENDOR IN BAD FAITH AND FOR BREACH OF WARRANTY.— Aside from its liability arising from its

fraudulent transactions, Wincorp is also liable to Ng Wee for breach of warranty. It cannot be emphasized enough that Wincorp is not the mere agent that it claims to be; its operations ought not be reduced to the mere matching of investors with corporate borrowers. Instead, it must be borne in mind that it not only performed the functions of a financial intermediary duly registered and licensed to perform the powers of an investment house, it is also engaged in the selling of securities, albeit in violation of various commercial laws. And just as in any other contracts of sale, the vendor of securities is likewise bound by certain warranties, including those contained in Article 1628 of the New Civil Code on assignment of credits, to wit: **Article 1628.** The vendor in good faith shall be responsible for the **existence and legality of the credit at the time of the sale**, x x x. x x x **The vendor in bad faith shall always be answerable** for the payment of all expenses, and for damages. That the securities sold to Ng Wee turned out to be "*with recourse*," not "*sans recourse*" as advertised, does not remove it from the coverage of the above article. In fact, such circumstance would even classify Wincorp as a vendor in bad faith, within the contemplation of the last paragraph of the provision. But other than the fraudulent designation of the transaction as "*sans recourse*," Wincorp's bad faith was also brought to the fore by the execution of the Side Agreements, which cast serious suspicion over, if it did not effectively annul, the existence and legality of the credits assigned to Ng Wee under the numerous Confirmation Advices in the name of his trustees.

16. CIVIL LAW; THE CIVIL CODE OF THE PHILIPPINES; OBLIGATIONS AND CONTRACTS; AGENCY; AN AGENT MUST CARRY OUT THE PURPOSE OF THE AGENCY WITHIN THE BOUNDS OF HIS AUTHORITY, THOUGH HE MAY PERFORM ACTS IN A MANNER MORE ADVANTAGEOUS TO THE PRINCIPAL THAN THAT SPECIFIED BY HIM, IN NO CASE SHALL THE AGENT CARRY OUT THE AGENCY IF ITS EXECUTION WOULD MANIFESTLY RESULT IN DAMAGE TO THE PRINCIPAL.— Through the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. As the basis of agency is representation, there must be, on the part of the principal, an actual intention

to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it. Absent such mutual intent, there is generally no agency. There is no dearth of statutory provisions in the New Civil Code that aim to preserve the fiduciary character of the relationship between principal and agent. Of the established rules under the code, one cannot be more basic than the obligation of the agent to carry out the purpose of the agency within the bounds of his authority. Though he may perform acts in a manner more advantageous to the principal than that specified by him, in no case shall the agent carry out the agency if its execution would manifestly result in damage to the principal.

17. ID.; ID.; ID.; ID.; ID.; A GRATUITOUS WAIVER OF OBLIGATION REQUIRES A SPECIAL POWER OF ATTORNEY FOR ITS ACCOMPLISHMENT; RESPONDENT WINCORP EXCEEDED ITS AUTHORITY WHEN IT ABSOLVED POWER MERGE FROM THE LATTER'S INDEBTEDNESS TO ITS LENDERS.— [T]he SPAs executed by Ng Wee constituted Wincorp as agent relative to the borrowings of Power Merge, allegedly without risk of liability on the part of Wincorp. However, the SPAs, as couched, do not specifically include a provision empowering Wincorp to excuse Power Merge from repaying the amounts it had drawn from its credit line via the Side Agreements. They merely authorize Wincorp *"to agree, deliver, sign, execute loan documents"* relative to the borrowing of a corporate borrower. Otherwise stated, Wincorp had no authority to absolve Power Merge from the latter's indebtedness to its lenders. Doing so therefore violated the express terms of the SPAs that limited Wincorp's authority to contracting the loan. In no way can the execution of the Side Agreements be considered as part and parcel of Wincorp's authority since it was not mentioned with specificity in the SPAs. As far as the investors are concerned, the Side Agreements amounted to a gratuitous waiver of Power Merge's obligation, which authority is required under the law to be contained in an SPA for its accomplishment.

18. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; ACCOMMODATION PARTY; REQUISITES.— On its face, the documentary evidence on record reveals that Power

Merge actually received the proceeds from the Credit Line Agreement. But even if We assume for the sake of argument that Power Merge, through Virata, is as a mere accommodation party under the Promissory Notes, liability would still attach to them in favor of the holder of the instrument for value. In *Gonzales v. Philippine Commercial and International Bank*, the Court held that an accommodation party lends his name to enable the accommodated party to obtain credit or to raise money; he receives no part of the consideration for the instrument but assumes liability to the other party or parties thereto. Prescinding from the foregoing, an accommodation party is one who meets all the following three requisites, *viz*: (1) he must be a party to the instrument, signing as maker, drawer, acceptor, or indorser; (2) he must not receive value therefor; and (3) he must sign for the purpose of lending his name or credit to some other person.

19. ID.; ID.; ID.; LIABILITY OF ACCOMMODATION PARTY; THE ACCOMMODATION PARTY *CUM* SURETY IN A NEGOTIABLE INSTRUMENT IS DEEMED AN ORIGINAL PROMISOR AND DEBTOR FROM THE BEGINNING; HE IS CONSIDERED IN LAW AS THE SAME PARTY AS THE DEBTOR IN RELATION TO WHATEVER IS ADJUDGED TOUCHING THE OBLIGATION OF THE LATTER SINCE THEIR LIABILITIES ARE SO INTERWOVEN AS TO BE INSEPARABLE.— *In gratia argumenti* that the x x x elements are established facts herein, liability will still attach to the accommodation parties pursuant to Sec. 29 of the Negotiable Instruments Law. x x x. The basis for the liability under Section 29 is the underlying relation between the accommodated party and the accommodation party, which is one of principal and surety. In a contract of surety, a person binds himself solidarily liable with the principal debtor of an obligation. But though a suretyship agreement is, in essence, accessory or collateral to a valid principal obligation, the surety's liability to the creditor is immediate, primary, and absolute. He is directly and equally bound with the principal. In a similar fashion, the accommodation party *cum* surety in a negotiable instrument is deemed an original promisor and debtor from the beginning; he is considered in law as the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter since their liabilities are so interwoven as to be inseparable. It

is beyond cavil then that Power Merge and Virata can be held liable for the amounts stated in the Promissory Notes. Consequently, they are also liable for the assignment to Ng Wee of portions thereof as embodied in the Confirmation Advices.

20. CIVIL LAW; THE CIVIL CODE OF THE PHILIPPINES; OBLIGATIONS AND CONTRACTS; CONTRACTS; PRINCIPLE OF RELATIVITY OF CONTRACTS; CONTRACTS TAKE EFFECT ONLY BETWEEN THE PARTIES, THEIR ASSIGNS AND HEIRS; RATIONALE.— Virata and Power Merge cannot invoke the Side Agreements as bases for its alleged exemption from liability to Ng Wee, simply because the latter was not privy to the covenants. Ng Wee cannot be charged with knowing the existence of the Side Agreements, let alone ratify the same. The basic principle of relativity of contracts is that, as a general rule, contracts take effect only between the parties, their assigns and heirs. The sound reason for the exclusion of non-parties to an agreement is the absence of a *vinculum* or juridical tie which is the efficient cause for the establishment of an obligation. [N]g Wee does not fall under any of the classes that are deemed privy as far as the Side Agreements are concerned. At most, he only authorized Wincorp, through the SPAs, to "*agree, deliver, sign, [and] execute loan documents*" relative to the borrowing of Power Merge. This authority does not extend to excusing Power Merge from paying its obligations under the Promissory Notes that it issued for the benefit of the investors. Thus, even if we were to assume that the execution of the Side Agreements was with the imprimatur of the Wincorp board of directors, Power Merge would still have been able to determine, based on a cursory reading of the SPAs, that Wincorp's acquiescence to the Side Agreements is an *ultra vires* act insofar as its principals, Ng Wee included, are concerned.

21. COMMERCIAL LAW; CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION; THE SEPARATE PERSONALITY OF THE CORPORATION MAY BE DISREGARDED OR THE VEIL OF CORPORATE FICTION PIERCED WHEN THE NOTION OF SEPARATE JURIDICAL PERSONALITY IS USED TO DEFEAT PUBLIC CONVENIENCE, JUSTIFY WRONG, PROTECT

FRAUD OR DEFEND CRIME, AS A DEVICE TO DEFEAT THE LABOR LAWS, OR WHEN THE CORPORATION IS MERELY AN ADJUNCT, A BUSINESS CONDUIT OR AN ALTER EGO OF ANOTHER CORPORATION.— *Concept Builders, Inc. v. NLRC* instructs that as a fundamental principle of corporation law, a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. Thus, authorities discuss that when the notion of separate juridical personality is used (1) to defeat public convenience, justify wrong, protect fraud or defend crime; (2) as a device to defeat the labor laws; or (3) when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced.

22. ID.; ID.; ID.; ALTER-EGO THEORY; THREE-PRONGED TEST; APPLIED.— The circumstances of Power Merge clearly present an alter ego case that warrants the piercing of the corporate veil. To elucidate, case law lays down a three-pronged test to determine the application of the alter-ego theory, namely: (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiffs legal right; and (3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of. In the present case, Virata not only owned majority of the Power Merge shares; he exercised complete control thereof. He is not only the company president, he also owns 374,996 out of 375,000 of its subscribed capital stock. Meanwhile, the remainder was left for the nominal incorporators of the business. The reported address of petitioner Virata and the principal office of Power Merge are even one and the same. The clearest indication of all: Power Merge never operated to perform its business functions, but for the benefit of Virata.

Specifically, it was merely created to fulfill his obligations under the Waiver and Quitclaim, the same obligations for his release from liability arising from Hottick's default and non-payment.

23. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ESSENTIAL ELEMENTS; NO CAUSE OF ACTION AGAINST RESPONDENT UEM-MARA.— UEM-MARA is an entity distinct and separate from Power Merge, and it was not established that it was guilty in perpetrating fraud against the investors. It was a non-party to the "*sans recourse*" transactions, the Credit Line Agreement, the Side Agreements, the Promissory Notes, the Confirmation Advices, and to the other transactions that involved Wincorp, Power Merge, and Ng Wee. There is then no reason to involve UEM-MARA in the fray. Otherwise stated, respondent Ng Wee has no cause of action against UEM-MARA. UEM-MARA should not have been impleaded in this case. A cause of action is the act or omission by which a party violates a right of another. The essential elements of a cause of action are (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief. The third requisite is severely lacking in this case.

24. COMMERCIAL LAW; CORPORATIONS; A CORPORATION IS INVESTED BY LAW WITH A PERSONALITY SEPARATE AND DISTINCT FROM THAT OF THE PERSONS COMPOSING IT AS WELL AS FROM THAT OF ANY OTHER LEGAL ENTITY TO WHICH IT MAY BE RELATED; THUS, OBLIGATIONS INCURRED BY THE CORPORATION, ACTING THROUGH ITS DIRECTORS, OFFICERS AND EMPLOYEES, ARE ITS SOLE LIABILITIES, AND SAID PERSONALITIES ARE GENERALLY NOT HELD PERSONALLY LIABLE THEREON; EXCEPTIONS.— [B]asic is the rule that a corporation is invested by law with a personality separate and distinct from that of the persons composing it as well as from that of any other legal entity to

which it may be related. Following this, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities, and said personalities are generally not held personally liable thereon. By way of exception, a corporate director, a trustee or an officer, may be held solidarily liable with the corporation under Sec. 31 of the Corporation Code which reads: **Section 31**. *Liability of directors, trustees or officers*. – **Directors or trustees** who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. **When a director, trustee or officer** attempts to acquire or acquire, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

25. ID.; ID.; ID.; FIDUCIARY DUTY OF THE BOARD OF DIRECTORS; THE BOARD OF DIRECTORS, BEING STEWARDS OF THE COMPANY, IS PRIMARILY CHARGED WITH PROTECTING THE ASSETS OF THE CORPORATION IN BEHALF OF ITS STAKEHOLDERS.— The board of directors is expected to be more than mere rubber stamps of the corporation and its subordinate departments. It wields all corporate powers bestowed by the Corporation Code, including the control over its properties and the conduct of its business. Being stewards of the company, the board is primarily charged with protecting the assets of the corporation in behalf of its stakeholders. Cua and the Cualopings failed to observe this fiduciary duty when they assented to extending a credit line facility to Power Merge. In PED Case No. 20-2378, the SEC discovered that Power Merge is actually Wincorp's largest borrower at about 30% of the total borrowings. It was then incumbent upon the board of directors to have been more circumspect in approving its credit line facility, and should have made an independent evaluation of Power Merge's application before agreeing to expose it to a ₱2,500,000,000.00

risk. Had it fulfilled its fiduciary duty, the obvious warning signs would have cautioned it from approving the loan in haste.

26. ID.; ID.; ID.; ID.; THE FIDUCIARY DUTY OF A COMPANY DIRECTOR CANNOT BE SEPARATED FROM THE POSITION HE OCCUPIES ON THE TRIFLING ARGUMENT THAT NO MONETARY BENEFIT WAS BEING DERIVED THEREFROM, AS THE GRATUITOUS PERFORMANCE OF HIS DUTIES AND FUNCTIONS IS NOT SUFFICIENT JUSTIFICATION TO DO A POOR JOB AT STEERING THE COMPANY AWAY FROM FORESEEABLE PITFALLS AND PERILS.— Neither can petitioner Estrella be permitted to raise the defense that he is a mere nominee of John Anthony Espiritu, the then chairman of the Wincorp board of directors. It is of no moment that he only had one nominal share in the corporation, which he did not even pay for, just as it is inconsequential whether or not Estrella had been receiving compensation or honoraria for attending the meetings of the board. The practice of installing undiscerning directors cannot be tolerated, let alone allowed to perpetuate. This must be curbed by holding accountable those who fraudulently and negligently perform their duties as corporate directors, regardless of the accident by which they acquired their respective positions. In this case, the fact remains that petitioner Estrella accepted the directorship in the Wincorp board, along with the obligations attached to the position, without question or qualification. The fiduciary duty of a company director cannot conveniently be separated from the position he occupies on the trifling argument that no monetary benefit was being derived therefrom. The gratuitous performance of his duties and functions is not sufficient justification to do a poor job at steering the company away from foreseeable pitfalls and perils. The careless management of corporate affairs, in itself, amounts to a betrayal of the trust reposed by the corporate investors, clients, and stakeholders, regardless of whether or not the board or its individual members are being paid. The RTC and the CA, therefore, correctly disregarded the defense of Estrella that he is a mere nominee.

27. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; PENALTY INTEREST; INIQUITOUS AND UNCONSCIONABLE INTEREST RATES SHALL BE STRUCK DOWN; IMPOSITION OF THREE PERCENT

(3%) ADDITIONAL MONTHLY PENALTY INTEREST NULLIFIED FOR BEING EXORBITANT.— The freedom to contact is not absolute. And one of the more general restrictions thereon is enshrined in Article 1306 of the Civil Code which precludes the contracting parties from establishing stipulations, clauses, terms, and conditions that are contrary to law, morals, good customs, public order, and public policy. In this jurisdiction, the Court has never shied away from striking down iniquitous and unconscionable interest rates for failing to meet this standard. We see no reason to depart from the practice in this case. That said, the Court herein refuses to impose the three percent (3%) additional monthly penalty interest, and instead affirms the trial and appellate court's nullification of the same. Such exorbitant interest rate is void for being contrary to morals, if not against the law. Being a void stipulation, the monthly penalty interest is deemed inexistent from the beginning. In its stead, the imposition of legal interest pursuant to *Nacar* is deemed sufficient.

28. ID.; ID.; ID.; LIQUIDATED DAMAGES; THE COURT HAS THE RIGHT TO TEMPER LIQUIDATED DAMAGES IF THEY ARE UNCONSCIONABLE; AMOUNT OF LIQUIDATED DAMAGES REDUCED TO TEN PERCENT (10%).— Anent the twenty percent (20%) liquidated damages, the Court sees the need to reduce the amount. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof. Although it can conclusively be deduced from the contracts that the parties intended to impose such additional charges, the Court nevertheless, by express provision in Article 2227 of the New Civil Code, has the right to temper them if they are unconscionable. Considering that the base amount of the indebtedness in this case is by itself already staggering, imposing an additional twenty percent (20%) interest against the persons liable would prove to be too cumbersome. The Court therefore sees the need to reduce the amount to only ten percent (10%) of the total maturity value of Ng Wee's investment in Power Merge.

29. ID.; ID.; ID.; ATTORNEY'S FEES; THE ATTORNEY'S FEES AND EXPENSES OF LITIGATION MUST BE REASONABLE; STIPULATED RATE OF ATTORNEY'S FEES REDUCED TO FIVE PERCENT (5%) OF THE

TOTAL AMOUNT DUE.— The same downward modification is in order as regards the award of attorney's fees. Although Ng Wee finds justification for the entitlement to the award under Article 2208 of the New Civil Code, the same provision mandates that "*in all cases, the attorney's fees and expenses of litigation must be reasonable*." Just as We have reduced the rate for liquidated damages, the Court likewise tempers the stipulated rate of attorney's fees to five percent (5%) of the total amount due on Ng Wee's investment.

30. ID.; ID.; ID.; MORAL DAMAGES AND INTEREST; MORAL DAMAGES ARE NEVER MEANT TO ENRICH THE CLAIMANT; AWARD OF MORAL DAMAGES IN THE REDUCED AMOUNT OF ₱100,000.00, UPHELD; ADDITIONAL SIX PERCENT (6%) INTEREST PER ANNUM OF THE TOTAL MONETARY AWARDS GRANTED.— [T]he Court sees no cogent reason to disturb the RTC's award of moral damages in favor of Ng Wee in the amount of ₱100,000.00, as affirmed by the appellate court. x x x. Ng Wee's claim for moral damages in the amount of ₱5,000,000.00 is indeed too excessive, even with the principal amount in mind. To reiterate, moral damages were never meant to enrich the claimant. The court therefore upholds the RTC and the CA's grant of the reduced amount of ₱100,000.00. Finally, the judgment of liability shall earn additional six percent (6%) interest reckoned from finality, also pursuant to the *Nacar* ruling.

APPEARANCES OF COUNSEL

Cadiz Tabayoyong & Partners for Alejandro Ng Wee.

Reyno Tiu Domingo Santos for Westmont Investment Corp.

Ronald Mark C. Lleno for Luis Juan Virata & UEM-Mara Phils. Corp.

Yorac Sarmiento Arroyo Chua Coronel & Reyes Law Firm for Manuel A. Estrella.

Santos Paruñgao Aquino & Santos for Simeon Cua, Vicente Cualoping & Henry Cualoping.

Abelardo B. Albis, Jr. for Mariza Santos-Tan.

Poblador Bautista & Reyes for Anthony Reyes.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

For resolution is the consolidated petitions assailing the September 30, 2014 Decision[1] and October 14, 2015 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV. No. 97817.[3] Said rulings affirmed the trial court judgment declaring petitioners solidarily liable to Alejandro Ng Wee (Ng Wee) in the amount of ₱213,290,410.36, plus interests and damages.

The Facts

Ng Wee was a valued client of Westmont Bank. Sometime in 1998, he was enticed by the bank manager to make money placements with Westmont Investment Corporation (Wincorp), a domestic corporation organized and licensed to operate as an investment house, and one of the bank's affiliates.[4] Offered to him were *"sans recourse"* transactions with the following mechanics as summarized by the CA:

> x x x A corporate borrower who needs financial assistance or funding to run its business or to serve as working capital is screened by Wincorp. Once it qualifies as an accredited borrower, Wincorp enters into a Credit Line Agreement for a specific amount with the corporation which the latter can draw upon in a series of availments over a period of time. The agreement stipulates that Wincorp shall extend a credit facility on "best effort" basis and that every drawdown

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[1] *Rollo* (G.R. No. 220926), pp. 67-142. Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Hakim S. Abdulwahid and Romeo F. Barza.

[2] *Id*. at 144-152.

[3] Entitled "*Alejandro Ng Wee (plaintiff-appellee) vs. Luis Juan Virata, UEM-MARA Philippines Corporation, Westmont Investment Corporation, Anthony Reyes, Mariza Santos-Tan, Simeon Cua, Vicente Cualoping, Henry Cualoping, and Manuel Estrella (defendants-appellants)*."

[4] *Rollo* (G.R. No. 220926), p. 69.

by the accredited borrower shall be evidenced by a promissory note executed in favor of Wincorp and/or the investor/s who has/have agreed to extend the credit facility. Wincorp then scouts for investors willing to provide the funds needed by the accredited borrower. The investor is matched with the accredited borrower. An investor who provides the fund is issued a Confirmation Advice which indicates the amount of his investment, the due date, the term, the yield, the maturity and the name of the borrower.[5]

Lured by representations that the *"sans recourse"* transactions are safe, stable, high-yielding, and involve little to no risk, Ng Wee, sometime in 1998, placed investments thereon under accounts in his own name, or in those of his trustees: Angel Archangel, Elizabeth Ng Wee, Roberto Tabada Tan, and Alex Lim Tan.[6] In exchange, Wincorp issued Ng Wee and his trustees Confirmation Advices informing them of the identity of the borrower with whom they were matched, and the terms under which the said borrower would repay them. The contents of a Confirmation Advice are typically as follows:

This is to confirm that pursuant to your authority, we have acted in your behalf and/or for your benefit, risk or account without recourse or liability, real or contingent, to Westmont Investment Corporation in respect of the loan granted to the Borrower named and under the terms specified hereunder

Borrower: _____

Amount	Rate: %	Term:	Value Date:	Due Date:
Yield:	Tax:	Maturity Value:		Instrument:
Payment on Value Date			TO No.	

For your convenience but without any obligation on our part, we may act as your collecting and paying agent for this transaction. Kindly note that your receipt hereof is an indication of your conformity to the foregoing terms and conditions of the transaction.[7]

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[5] *Id*.

[6] *Id*.

[7] *Id*. at 482.

Special Power of Attorneys (SPAs) are also prepared for the signature of the lender investor. The SPAs uniformly provide:

> The undersigned, whose personal circumstances are stated hereunder, hereby, by these presents, appoints, names and constitutes Westmont Investment Corporation (Wincorp), a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at 7th Floor, Westmont Bank Building, 411 Quintin Paredes Street, Binondo, Manila, as the Attorney-in-Fact of the undersigned:
>
> To agree, deliver, sign, execute loan documents relative to the borrowing of: _____ ("The Borrower") to whom the undersigned, thru Wincorp, agreed to lend the principal sum of PESOS _____
>
> HEREBY GIVING AND GRANTING unto said Attorney-in-Fact power and authority to do and perform all and every act and thing whatsoever requisite or necessary to be done in and about the premises, HEREBY RATIFYING AND CONFIRMING all that said Attorney-in-Fact shall lawfully do or cause to be done by virtue of these presents.[8]

Ng Wee's initial investments were matched with Hottick Holdings Corporation (Hottick), one of Wincorp's accredited borrowers, the majority shares of which was owned by a Malaysian national by the name of Tan Sri Halim Saad (Halim Saad). Halim Saad was then the controlling shareowner of UEM-MARA, which has substantial interests in the Manila Cavite Express Tollway Project (Cavitex).[9]

Hottick was extended a credit facility[10] with a maximum drawdown of ₱1,500,908,026.87 in consideration of the following securities it issued in favor of Wincorp: (1) a Suretyship Agreement[11] executed by herein petitioner Luis Juan Virata (Virata); (2) a Suretyship Agreement[12] executed by YBHG Tan

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[8] *Id*. at 830.

[9] *Id*. at 156.

[10] *Id*. at 228.

[11] *Id*. at 237.

[12] *Id*. at 242.

Sri Halim Saad; and (3) a Third Party Real Estate Mortgage[13] executed by National Steel Corporation (NSC).

Hottick fully availed of the loan facility extended by Wincorp, but it defaulted in paying its outstanding obligations when the Asian financial crisis struck. As a result, Wincorp filed a collection suit against Hottick, Halim Saad, and NSC for the repayment of the loan and related costs.[14] A Writ of Preliminary Attachment was then issued against Halim Saad's properties, which included the assets of UEM-MARA Philippines Corporation (UEM-MARA).[15] Virata was not impleaded as a party defendant in the case.

To induce the parties to settle, petitioner Virata offered to guarantee the full payment of the loan. The guarantee was embodied in the July 27, 1999 Memorandum of Agreement[16] between him and Wincorp. Virata was then able to broker a compromise between Wincorp and Halim Saad that paved the way for the execution of a Settlement Agreement[17] dated July 28, 1999. In the Settlement Agreement, Halim Saad agreed to pay USD1,000,000.00 to Wincorp in satisfaction of any and all claims the latter may have against the former under the Surety Agreement that secured Hottick's loan. As a result, Wincorp dropped Halim Saad from the case and the Writ of Preliminary Attachment over the assets of UEM-MARA was dissolved.[18]

Thereafter, Wincorp executed a Waiver and Quitclaim[19] dated December 1, 1999 in favor of Virata, releasing the latter from any obligation arising from the Memorandum of Agreement,

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[13] *Id*. at 246.

[14] *Id*. at 665.

[15] *Id*. at 70.

[16] *Id*. at 423.

[17] *Id*. at 434.

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

[19] *Id*. at 481.

except for his obligation to transfer forty percent (40%) equity of UEM Development Philippines, Inc. (UPDI) and forty percent (40%) of UPDI's interest in the tollway project to Wincorp. Apparently, the Memorandum of Agreement is a mere accommodation that is not meant to give rise to any legal obligation in Wincorp's favor as against Virata, other than the stipulated equity transfer.

Alarmed by the news of Hottick's default and financial distress, Ng Wee confronted Wincorp and inquired about the status of his investments. Wincorp assured him that the losses from the Hottick account will be absorbed by the company and that his investments would be transferred instead to a new borrower account. In view of these representations, Ng Wee continued making money placements, rolling over his previous investments in Hottick and even increased his stakes in the new borrower account – Power Merge Corporation (Power Merge).[20]

Incorporated on August 4, 1997, Power Merge[21] is a domestic corporation, the primary purpose of which is to *"invest in, purchase, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of real or personal property of every kind and description."*[22] Petitioner Virata is the majority stockholder of the corporation, owning 374,996 out of its 375,000 subscribed capital stock.[23]

In a special meeting of Wincorp's board of directors held on February 9, 1999, the investment house resolved to file the collection case against Halim Saad and Hottick,[24] and, on even date, approved Power Merge's application for a credit line, extending a credit facility to the latter in the maximum amount

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[20] *Id.* at 71.

[21] Also referred to as *"Powermerge."*

[22] *Rollo* (G.R. No. 220926), p. 647.

[23] *Id.* at 648.

[24] *Id.* at 1015.

of ₱1,300,000,000.00.[25] Based on the minutes of the special meeting,[26] board chairman John Anthony B. Espiritu, Wincorp President Antonio T. Ong (Ong), Mariza Santos-Tan (Santos-Tan), Manuel N. Tankiansee (Tankiansee),[27] and petitioners Manuel A. Estrella (Estrella), Simeon Cua, Henry T. Cualoping, and Vicente Cualoping (Cua and the Cualopings) were allegedly in attendance. Thus, on February 15, 1999, Wincorp President Ong and Vice-President for Operations petitioner Anthony Reyes (Reyes) executed a Credit Line Agreement[28] in favor of Power Merge with petitioner Virata's conformity.

Barely a month later, on March 11, 1999, Wincorp, through another board meeting allegedly attended by the same personalities, increased Power Merge's maximum credit limit to ₱2,500,000,000.00.[29] Accordingly, an Amendment to the Credit Line Agreement[30] (Amendment) was executed on March 15, 1999 by the same representatives of the two parties.

Power Merge made a total of six (6) drawdowns from the amended Credit Line Agreement in the aggregate amount of ₱2,183,755,253.11.[31] Following protocol, Power Merge issued Promissory Notes in favor of Wincorp, either for itself or as agent for or on behalf of certain investors, for each drawdown. The Promissory Notes issued can be summarized thusly:[32]

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[25] *Id.* at 1013.

[26] *Id.* at 1011.

[27] Also referred to as "*Tan Kian See*."

[28] *Rollo* (G.R. No. 220926), p. 385.

[29] *Id.* at 1018.

[30] *Id.* at 395.

[31] *Id.* at 73.

[32] *Id.* at 411-422.

Promissory Note No.	Availment Date	Maturity Date	Principal
1411	February 12, 1999	February 12, 2000	₱8,618,877.35
1537	February 10, 1999	February 10, 2000	₱1,124,781,081.10
1538	March 12, 1999	March 11, 2000	₱215,660.99
1539	March 12, 1999	March 11, 2000	₱671,402,608.61
1540	March 17, 1999	March 16, 2000	₱378,381,629.15
1541	March 22, 1999	March 21, 2000	₱355,395.91
Total			**₱2,183,755,253.11**

And pertinently, the template for the Promissory Notes read:

PROMISSORY NOTE

For value received, I/We _____, hereby promise to pay WESTMONT INVESTMENT CORPORATION (*WINCORP*), either for itself or as agent for and on behalf of certain INVESTORS who have placed/invested funds with *WINCORP* the principal sum of _____ (_____), Philippine Currency, on _____ with interest rate of _____ percent (__%) per annum, or equivalently the Maturity Amount of _____ PESOS (_____) Philippine Currency.

Demand and Dishonor Waived: In case of default in the payment of this Promissory Note, an additional interest on the Maturity Amount at the rate of three percent (3%) per month shall accrue from the date immediately following the Maturity Date hereof until the same is fully paid. In addition, I/We shall be liable to pay liquidated damages in the amount equivalent to twenty percent (20%) of the Maturity amount.

If this Note is placed in the hands of an attorney for collection, or if payment herein is collected by suit or through other legal proceedings, I/We promise to pay WINCORP a sum equal to twenty-five (25%) of the total amount due and payable as and for attorney's fees and cost of collection.[33]

After receiving the promissory notes from Power Merge, Wincorp, in turn, issued Confirmation Advices to Ng Wee and

[33] *Id.* at 411.

his trustees, as well as to the other investors who were matched with Power Merge. A summary of the said Confirmation Advices reveals that out of the ₱2,183,755,253.11 drawn by Power Merge, the aggregate amount of ₱213,290,410.36 was sourced from Ng Wee's money placements under the names of his trustees:[34]

Serial No.	Name	Principal Amount of Placement	Due Date	Maturity Value
90029	Angel Archangel	1,559,927.96	3/27/2000	1,584,496.83
90821	Robert Tabada Tan	2,300,000.00	3/22/2000	2,336,225.00
90823	Robert Tabada Tan	11,937,401.91	3/23/2000	12,125,415.99
90825	Robert Tabada Tan	2,722,325.59	3/23/2000	2,765,202.22
90827	Robert Tabada Tan	1,857,896.78	3/22/2000	1,885,765.23
90832	Robert Tabada Tan	17,908,989.04	3/29/2000	18,191,055.62
90834	Robert Tabada Tan	2,263,514.95	3/30/2009	2,299,165.31
90835	Robert Tabada Tan	1,970,590.89	3/30/2000	2,001,627.70
90839	Alex Lim Tan	406,825.00	3/24/2000	412,164.58
90844	Alex Lim Tan	1,835,610.44	4/3/2000	1,866,662.85
90860	Alex Lim Tan	2,144,975.50	3/31/2000	2,170,715.21
90861	Alex Lim Tan	8,649,113.51	3/31/2000	8,752,902.87
90864	Alex Lim Tan	2,051,965.81	4/3/2000	2,078,128.37
90866	Alex Lim Tan	8,749,275.96	4/4/2000	8,860,829.23
90869	Alex Lim Tan	4,175,382.61	4/4/2000	4,228,618.74
91319	Elizabeth Ng Wee	1,000,000.00	4/7/2000	1,012,000.00
91337	Robert Tabada Tan	1,587,553.58	4/7/2000	1,606,604.22
91654	Robert Tabada Tan	322,117.07	4/11/2000	326,224.06
91712	Elizabeth Ng Wee	1,610,325.19	4/2/2000	1,630,856.84
91713	Robert Tabada Tan	11,615,297.69	4/12/2000	11,763,392.74
91735	Robert Tabada Tan	28,877,638.89	4/12/2000	29,245,828.79
92673	Elizabeth Ng Wee	1,301,666.89	4/4/2000	1,318,263.14

[34] *Id.* at 482-499.

92761	Elizabeth Ng Wee	2,415,487.78	4/12/2000	2,446,285.25
92804	Robert Tabada Tan	10,635,489.17	3/23/2000	10,691,325.49
92805	Robert Tabada Tan	8,439,180.56	4/12/2000	8,546,780.11
92900	Robert Tabada Tan	652,571.11	4/13/2000	660,891.39
92965	Robert Tabada Tan	39,028,875.33	4/14/2000	39,497,221.83
92980	Robert Tabada Tan	6,799,438.05	4/14/2000	6,881,031.31
93001	Robert Tabada Tan	5,000,000.00	4/14/2000	5,060,000.00
93062	Robert Tabada Tan	1,536,373.70	4/17/2000	1,555,962.46
93073	Robert Tabada Tan	3,447,004.47	4/17/2000	3,490,953.78
93075	Robert Tabada Tan	12,000,000.00	4/17/2000	12,153,000.00
93619	Alex Lim Tan	508,683.02	4/26/2000	515,741.00
93625	Alex Lim Tan	1,933,335.42	4/26/2000	1,960,160.45
93795	Alex Lim Tan	351,157.75	4/28/2000	356,161.75
93308	Elizabeth Ng Wee	1,000,000.00	4/19/2000	1,012,750.00
Total		**210,595,991.62**		**213,290,410.36**

Unknown to Ng Wee, however, was that on the very same dates the Credit Line Agreement and its subsequent Amendment were entered into by Wincorp and Power Merge, additional contracts (Side Agreements) were likewise executed by the two corporations absolving Power Merge of liability as regards the Promissory Notes it issued. Pertinently, the Side Agreement dated February 15, 1999 reads:

WHEREAS, Powermerge has entered into the Credit Line Agreement with Wincorp as an accommodation in order to allow Wincorp to hold Powermerge paper instead of the obligations of Hottick which are right now held by Wincorp.

x x x x x x x x x

1. Powermerge hereby agrees to execute promissory notes in the aggregate principal sum of ₱1,200,000,000.00 in favor of Wincorp and in exchange therefore, Wincorp hereby assigns, transfers, and conveys to Powermerge all of its rights, titles and interests by way of a sub-participation over the promissory notes and other obligations executed by Hottick

in favor of Wincorp; Provided however **that the only obligation of Powermerge to Wincorp shall be to return and deliver to Wincorp all the rights, title and interests conveyed by Wincorp hereby to Powermerge over the Hottick obligations. Powermerge shall have no obligation to pay under its promissory notes executed in favor of Wincorp** but shall be obligated merely to return whatever [it] may have received from Wincorp pursuant to this agreement.

x x x x x x x x x

3. Wincorp confirms and agrees that this accommodation being entered into by the parties is **not intended to create a payment obligation on the part of Powermerge**.[35] (emphasis added)

Save for the amount, identical provisions were included in the March 15, 1999 Side Agreement.[36] By virtue of these contracts, Wincorp was able to assign its rights to the uncollected Hottick obligations and hold Power Merge papers instead.[37] However, this also meant that if Power Merge subsequently defaults in the payment of its obligations, it would refuse, as it did in fact refuse, payment to its investors.

Despite repeated demands,[38] Ng Wee was not able to collect Power Merge's outstanding obligation under the Confirmation Advices in the amount of ₱213,290,410.36. This prompted Ng Wee, on October 19, 2000, to institute a Complaint for Sum of Money with Damages with prayer for the issuance of a Writ of Preliminary Attachment (Complaint),[39] docketed as Civil Case

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[35] *Id*. at 392.

[36] *Id*. at 405.

[37] *Id*. at 73.

[38] *Id*. at 896-903.

[39] *Id*. at 193.

Entitled "*Alejandro Ng Wee vs. Luis Juan L. Virata, Power Merge Corporation, UEM Development Phils., Inc., UEM-MARA Philippines Corporation, United Engineers (Malaysia) Berhad, Majlis Amanah Rakyat,*

No. 00-99006 before the Regional Trial Court (RTC), Branch 39 of Manila (RTC). Of the seventeen (17) named defendants therein, only Virata, Power Merge, UPDI, UEM-MARA, Wincorp, Ong, Reyes, Cua, Tankiansee, Santos-Tan, Vicente and Henry Cualoping, and Estrella were duly served with summons.[40]

In his Complaint, Ng Wee claimed that he fell prey to the intricate scheme of fraud and deceit that was hatched by Wincorp and Power Merge. As he later discovered, Power Merge's default was inevitable from the very start since it only had subscribed capital in the amount of ₱37,500,000.00, of which only ₱9,375,000.00 is actually paid up. He then attributed gross negligence, if not fraud and bad faith, on the part of Wincorp and its directors for approving Power Merge's credit line application and its subsequent increase to the amount of ₱2,500,000,000.00 despite its glaring inability to pay.

Wincorp officers Ong and Reyes were likewise impleaded for signing the Side Agreements that would allow Power Merge to avoid paying its obligations to the investors. Ng Wee also sought to pierce the separate juridical personality of Power Merge since Virata owns almost all of the company's stocks. It was further alleged that Virata acquired interest in UEM-MARA using the funds swindled from the Wincorp investors.

As an annex to the Complaint, Ng Wee cited the May 5, 2000 Cease and Desist Order[41] issued by the Prosecution and Enforcement Department of the Securities and Exchange Commission (SEC) in PED Case No. 20-2378[42] after its routine audit of the operations of the investment house. Data gathered

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RenongBerhad, Westmont Investment Corporation, Antonio T. Ong, Anthony T. Reyes, Simeon S. Cua, Manuel N. Tan Kian See, Mariza Santos-Tan, Vicente T. Cualoping, Hentry T. Cualoping, Manuel A. Estrella, and John Anthony B. Espiritu."

[40] *Rollo* (G.R. No. 220926), pp. 153-154.

[41] *Id*. at 508.

[42] Entitled "*In the Matter of Westmont Investment Corporation.*"

by the SEC showed that, as of December 31, 1999, Wincorp has sourced funds from 2,200 individuals with an average of ₱7,000,000,000.00 worth of commercial papers per month.[43] In its subsequent October 27, 2000 Resolution,[44] the SEC found that the Confirmation Advices that Wincorp had been issuing to its investors takes the form of a security that ought to have been registered before being offered to the public,[45] and that the investment house had also been advancing the payment of interest to the investors to cover up its borrowers' insolvency.[46]

The defendants moved for the dismissal of the case for failure to state a cause of action, among other reasons, moored on the fact that the investments were not recorded in the name of Ng Wee. These motions, however, were denied by the RTC on October 4, 2001, which denial was elevated by way of *certiorari* to the CA, only for the trial court ruling to be affirmed on August 21, 2003. The issue eventually made its way to this Court and was docketed as G.R. No. 162928. The Court however, found no reversible error on the part of the CA when the appellate court sustained the denial of the motions to dismiss.[47]

In their respective Answers, the Wincorp and Power Merge camps presented opposing defenses.[48]

Wincorp admitted that it brokered Power Merge Promissory Notes to investors through *"sans recourse"* transactions. It contended, however, that its only role was to match an investor with corporate borrowers and, hence, assumed no liability for the monies that Ng Wee loaned to Power Merge. As proof thereof, Wincorp brought to the attention of the RTC the language of the SPAs executed by the investors.

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[43] *Rollo* (G.R. No. 220926), p. 508.

[44] *Id.* at 1030.

[45] *Id.* at 1041.

[46] *Id.* at 509-510.

[47] *Id.* at 77.

[48] *Id.* at 167-171.

"Sans recourse" transactions, Wincorp added, are perfectly legal under Presidential Decree No. 129 (PD 129), otherwise known as the *Investment Houses Law*, and forms part of the brokering functions of an investment house. As a duly licensed investment house, it was authorized to offer the *"sans recourse"* transactions to the public, even without a license to perform quasi-banking functions.

For their part, the Wincorp directors argued that they can only be held liable under Section 31 of *Batas Pambansa Blg.* (BP) 68,[49] the Corporation Code, if they assented to a patently unlawful act, or are guilty of either gross negligence or bad faith in directing the affairs of the corporation. They explained that the provision is inapplicable since the approval of Power Merge's credit line application was done in good faith and that they merely relied on the vetting done by the various departments of the company. Additionally, Estrella and Tankiansee argued that they were not present during the special meetings when Power Merge's credit line application was approved and even objected against the same when they came to know of such fact.

Reyes meanwhile asseverated that the first paragraph of Sec. 31 cannot find application to his case since he is not a director of Wincorp, but its officer. It is his argument that he can only be held liable under the second paragraph of the provision if

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[49] **Section 31.** *Liability of directors, trustees or officers.*– Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquire, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

he is guilty of conflict of interest, which he is not. He likewise claimed that he was duly authorized to sign the side Credit Line Agreements and Side Agreements on behalf of Wincorp.

The Wincorp camp reiterated that Ng Wee's Complaint failed to state a cause of action because the money placements were not registered under his name. It was their postulation then that the alleged trustees should have instituted the case in their own names.

On the other hand, petitioners Virata and UEM-MARA harped on the underlying arrangement between Hottick, Power Merge, and Wincorp. Under the framework, Hottick will issue Promissory Notes to Wincorp, which will then transfer the same to Power Merge. In exchange for the transfer, Power Merge will issue its own Promissory Notes to Wincorp. That way, Wincorp will be holding Power Merge papers, instead of Hottick.

To implement this arrangement, Wincorp and Power Merge entered into a Credit Line Agreement with the understanding that Power Merge and Virata's only obligation thereunder would be to collect payments on the Hottick papers. The Credit Line Agreement and the issuance of the promissory notes, according to Virata, were mere accommodations to help Wincorp enforce the outstanding obligations of Hottick. It was then contrary to their agreement for Wincorp to have offered the Power Merge papers to investors since it was allegedly agreed upon that Power Merge would incur no liability to pay the promissory notes it issued Wincorp.

Ruling of the Trial Court

On July 8, 2011, the RTC rendered a Decision[50] in Civil Case No. 00-99006 in favor of Ng Wee. The *fallo* of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff, ordering the defendants Luis L. Virata, UEM-

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[50] *Rollo* (G.R. No. 220926), p. 153. Penned by Presiding Judge Noli C. Diaz.

MARA Philippines Corporation, Westmont Investment Corporation (Wincorp), Antonio T. Ong, Anthony T. Reyes, Simeon Cua, Vicente and Henry Cualoping, Mariza Santos-Tan, and Manuel Estrella to jointly and severally pay plaintiff as follows:

1. The sum of Two Hundred Thirteen Million Two Hundred Ninety Thousand Four Hundred Ten and 36/100 Pesos (₱213,290,410.36), which is the maturity amount of plaintiff's investment with legal interest at the rate of twelve (12%) percent per annum from the date of filing of the complaint until fully paid;

2. Liquidated damages equivalent to twenty percent (20%) of the maturity amount, and attorney's fees equivalent to 25% of the total amount due plus legal interest at the rate of twelve (12%) percent per annum from the date of filing of the complaint until fully paid;

3. ₱100,000.00 as moral damages.

4. The complaint against defendant Tankiansee is dismissed for lack of merit.

Defendants' counterclaim (sic) are dismissed for lack of merit, while the crossclaims filed by defendants against each other are likewise dismissed, there being no evidence to support the same.

Cost against the defendants, except defendant Tankiansee.

SO ORDERED.[51]

Disposing first the procedural issue, the RTC reminded the parties that whether or not Ng Wee had legal standing had already been settled when the defendants' motions to dismiss were denied with finality. They are then precluded from re-raising the issue in their memoranda.[52]

On the merits, the trial court explained that there was no dispute on the factual circumstances of the case and that, based on these facts, Wincorp and Power Merge colluded, if not connived, to defraud Ng Wee of his investments. The RTC

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[51] *Id*. at 191-192.

[52] *Id*. at 171-172.

ratiocinated that the *"sans recourse"* transactions were used to conceal Wincorp's direct borrowing; that Wincorp negated its acts and practices under the *"sans recourse"* transactions when it advanced the accrued interest due to the investors to conceal the fact that their borrowers have already defaulted in their obligations; that Wincorp is a vendor in bad faith since it knew that the Power Merge notes were uncollectible from the beginning by virtue of the Side Agreements; and that, in any event, Wincorp violated its fiduciary responsibilities as the investors' agent. The RTC held Power Merge equally guilty because Wincorp could not have perpetrated the fraud without its indispensable participation as a conduit for the scheme.[53]

The RTC likewise ruled that Ng Wee presented sufficient evidence against the individual directors and officers for them to be held liable for fraud and/or bad faith under Sec. 31 of the Corporation Code, except for Tankiansee. The claim against Tankiansee was dropped since his immigration records established that he could not have participated in the special meetings of the Wincorp directors, having been out of the country during the material dates. Moreover, he filed a civil and criminal case against Wincorp, negating any charge of conspiracy.[54]

The RTC further found compelling need to pierce through the separate juridical personality of Power Merge since Virata exercised complete control thereof, owning 374,996 out of 375,000 of its subscribed capital stock. Similarly, the separate juridical personality of UEM-MARA was pierced to reach the illegal proceeds of the funds sourced from the defrauded investors.[55]

The motions for reconsideration from the afore-quoted ruling were denied on September 9, 2011.[56] Separate appeals were then lodged by the following parties: (1) Wincorp, (2) Santos-

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[53] *Id*. at 172-183.

[54] *Id*. at 183-187.

[55] *Id*. at 1887-190.

[56] *Id*. at 1508-1527.

Tan, (3) Cua and the Cualopings, (4) Virata and UEM-MARA Philippines Corp., (5) Reyes; and (6) Estrella. In due time, the appellants and appellees filed their respective briefs.[57]

Ruling of the Court of Appeals

On September 30, 2014, the CA promulgated the challenged ruling substantially affirming the findings of the trial court, *viz*:

> **WHEREFORE,** the appeal is **DISMISSED**. The Decision dated July 8, 2011 and Order dated September 9, 2011 issued by the Regional Trial Court of Manila, Branch 39 in Civil Case No. 00-99006 are **AFFIRMED with the modification** in that defendants-appellants are jointly and severally liable to pay an interest of twelve percent (12%) per annum of the total monetary awards, computed from the date of the filing of the complaint until June 30, 2013 and six percent (6%) per annum from July 1, 2013 until their full satisfaction.
>
> **SO ORDERED.**[58]

Preliminarily, the CA upheld the finding of the RTC that Ng Wee is a real party in interest and that the Complaint stated a cause of action despite the money placements being made under the name of Ng Wee's trustees.[59]

The CA likewise found that Wincorp and Power Merge perpetrated an elaborate scheme of fraud to inveigle Ng Wee into investing funds. Ng Wee would not have placed his investments in the "*sans recourse*" transactions had he not been deceived into believing that Power Merge is financially capable of paying the returns on his investments. In sync with the RTC, the CA found that Wincorp misrepresented Power Merge's financial capacity when it accredited Power Merge as a corporate borrower and granted it a ₱2,500,000,000.00 credit facility despite the telling signs that the latter would not be able to

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[57] *Id*. at 80-95.

[58] *Id*. at 130.

[59] *Id*. at 96-104.

perform its obligations, to wit: (1) Power Merge had only been in existence for two years when it was granted the credit facility; (2) Power Merge was thinly capitalized with only ₱37,500,000.00 subscribed capital; (3) Power Merge was not an on-going concern since it never secured the necessary permits and licenses to conduct business, it never engaged in any lucrative business, and it did not file the necessary reports with the SEC; and (4) No security was demanded by Wincorp or was furnished by Power Merge in relation to the latter's drawdowns.[60]

The intent of Wincorp to deceive became even more manifest when it entered into the Side Agreements with Power Merge. The Side Agreements rendered worthless Power Merge's Promissory Notes that Wincorp offered to Ng Wee and the other investors. Meanwhile, the "*sans recourse*" nature of the transactions prevented the investors from recovering their investments from the investment house.[61]

Because of the foregoing fraudulent acts, Wincorp was held liable to Ng Wee as a vendor of security in bad faith, and for acting beyond the scope of its authority as Ng Wee's agent when it knowingly purchased worthless securities for him and his co-investors.[62]

The CA likewise did not find merit in Power Merge's defense that it was a mere accommodation party. Power Merge's participation was indispensable in deceiving Ng Wee into placing more investments and amounted to actionable fraud. Its conduct that led to this conclusion include: (1) setting up the Power Merge borrower account; (2) the laborious execution of Credit Line Agreement, Side Agreements, and promissory notes; (3) allowing Wincorp to sell worthless Power Merge papers/notes; and (4) receiving valuable consideration through its drawdowns.[63]

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[60] *Id*. at 110.

[61] *Id*. at 112.

[62] *Id*. at 113-115.

[63] *Id*. at 116-117.

Anent the liability of the directors, the appellate court sustained the trial court's application of the doctrine on the piercing of the corporate veil, and also held that under Sec. 31 of the Corporation Code, corporate officers can be held liable for having assented to patently unlawful corporate acts, and for having acted in gross negligence and/or bad faith in management.[64]

Here, the CA ratiocinated that the perpetrated investment scheme constituted *estafa* under either Art. 315(1)(b) or Art. 315(2)(a) of the Revised Penal Code[65] due to Wincorp's violation of its fiduciary relation with Ng Wee, and its employment of fraud or deceit to the latter's damage and prejudice. Moreover, Wincorp violated various commercial laws when it offered the "*sans recourse*" transactions. For though denominated as "*sans recourse*," Wincorp's actuations reveal that the transactions are actually *with* recourse since Wincorp virtually borrowed from itself, for itself. Assenting to these patently unlawful acts, according to the CA, exposed the corporate directors and officers to liability.

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[64] *Id.* at 117-127.

[65] **Article 315.** *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1. With unfaithfulness or abuse of confidence, namely:

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(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

Gross negligence can also be attributed to the Wincorp directors when they approved Power Merge's credit line application and the subsequent increase of its credit limit to ₱2,500,000,000.00 despite Power Merge's evident weak financial structure and poor capitalization, so the CA ruled.

The elaborate scheme of deceit and fraud, and the corresponding liability therefrom, is then imputable to the directors of Wincorp. Meanwhile, Reyes and Virata cannot escape liability since they signed the Side Agreements that rendered the Power Merge papers worthless.

The CA also did not find compelling reason to depart from the RTC's conclusion as regards UEM-MARA's liability. The appellate court saw the need to reach the illegal proceeds of funds sourced from the defrauded investors.

Lastly, the CA held that the appellants are jointly and severally liable pursuant to Art. 1170 of the New Civil Code.[66]

The motions for reconsideration from the September 30, 2014 Decision were denied on October 14, 2015 in the following wise:

WHEREFORE, finding no rationally persuasive reasons which would warrant a modification much less, a reversal of our Decision dated September 30, 2014, all the Motions for Reconsideration filed by the defendants-appellants are **DENIED**. The Notice of Change of Name filed by Defendant Manuel Estrella, is hereby **NOTED**.

SO ORDERED.[67]

Grounds for the Petitions

Aside from Santos-Tan, defendants-appellants *a quo* appealed the September 30, 2014 Decision and October 14, 2015 Resolution of the CA *via* the instant recourses.

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[66] **Article 1170.** Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

[67] *Rollo* (G.R. No. 220926), p. 150.

G.R. No. 220926: Petition for Review on Certiorari of Luis Juan L. Virata and UEM-MARA

In their Petition for Review on Certiorari,[68] Virata and UEM-MARA claim that there is no basis in implicating them in the scheme to defraud Ng Wee and the other investors since there was no privity of contract between them; petitioners never interacted with Ng Wee. This is allegedly consistent with the CA finding that Wincorp engaged in direct borrowing with its investors. Thus, petitioners argue that Ng Wee cannot subsequently claim that his funds were lent to Power Merge. Ng Wee likewise allegedly failed to prove that Power Merge derived pecuniary benefits from the investment transactions.

Petitioners add that the Confirmation Advices were issued by Wincorp alone. Wincorp had the sole discretion of selecting which corporate borrower to match with whom. Power Merge, Virata, and UEM-MARA therefore had no control over the matter. Thus, applying the doctrine of *res inter alios acta alteri nocere non debet,* third parties like petitioners may not be prejudiced by the act, declaration, or omission of Wincorp.

The propriety of piercing the corporate veil is also challenged by petitioners. They argue that Virata's ownership of almost

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[68] *Id*. at 18. The issues are:

I.

THE COURT OF APPEALS DECIDED CONTRARY TO LAW WHEN IT FOUND PETITIONERS LIABLE TO RESPONDENT NG WEE DESPITE THE ABSENCE OF ANY PRIVITY OF CONTRACT BETWEEN THEM

II.

THE COURT OF APPEALS DECIDED CONTRARY TO LAW IN RULING THAT THE DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION APPLIES TO THIS CASE AND THAT PETITIONER VIRATA, AS DIRECTOR OF POWER MERGE, SHOULD BE PERSONALLY LIABLE TO RESPONDENT NG WEE

III.

THE COURT OF APPEALS DECIDED CONTRARY TO LAW IN RULING THAT UEM-MARA IS LIABLE TO RESPONDENT NG WEE

all of the shares of Power Merge does not automatically justify the application of the doctrine, absent fraud. And according to petitioners, there was no evidence of fraud, bad faith, or gross negligence on the part of Virata in the case at bar. It is the postulation that Virata could not be held liable for acts done in his official capacity, including the execution of the Credit Line Agreement and the Side Agreements, which allegedly are valid arm's length transactions duly authorized by Power Merge, and that bad faith cannot be presumed from the mere failure of Power Merge to pay its obligations.

Petitioners also see no valid reason to hold UEM-MARA liable since there is no evidence of its participation in the allegedly fraudulent act. There is no proof that the grant of the credit line was for the purpose of acquiring interests in UEM-MARA, or that the funds obtained by Power Merge were the same funds used by Virata to acquire interests therein. Petitioner Virata claims that he made use of a ₱600,000,000.00 credit facility from Metrobank to facilitate the acquisition.

G.R. No. 221058: Petition for Review on Certiorari of Wincorp

In its petition, Wincorp attributes reversible error[69] to the CA when it rendered judgment against the investment house.

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[69] *Rollo* (G.R. No. 221058), p. 25. The issues are:

I.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THE TRANSACTIONS AMONG THE PARTIES HEREIN AS FRAUDULENT

II.

THE HONORABLE COURT OF APPEALS ERRED IN APPRECIATING THE NATURE OF THE MONEY MARKET TRANSACTION AND THE CORRESPONDING DUTIES AND LIABILITIES OF THE PARTIES, AND HOLDING INSTEAD THAT PETITIONER WINCORP IS INVOLVED IN QUASI-BANKING ACTIVITIES

III.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT WINCORP IS LIABLE EVEN IN ITS CAPACITY AS MERE AGENT/ BROKER IN THE LOAN TRANSACTION

It claims that it merely performed its normal function as an investment house by matching and marrying corporate borrowers with investors. The arrangement it entered into was neither an investment contract between it and Ng Wee nor an exercise of quasi-banking function, but the brokerage of a legitimate loan agreement between Ng Wee and Power Merge. Ng Wee expected a fixed interest income at the end of the term of the loan, and not a participation in the success or loss of the borrower corporation.

Wincorp adds that it was clear to Ng Wee that what was involved was a loan agreement, and that Wincorp was merely brokering the transaction. As a mere broker of the transaction, not the beneficiary thereof, Wincorp asserts that it cannot be held liable for the amount borrowed by Power Merge. Wincorp relies on the text of the Confirmation Advices issued to Ng Wee to advance this point.[70]

Based on the language of the Confirmation Advices, Ng Wee knew of and approved the transactions that Wincorp entered into with Power Merge as his agent; that Ng Wee's conformity in the series of Confirmations Advices issued in his favor, and his execution of the corresponding SPAs thereafter, allegedly ratified Wincorp's acts of agency in the execution of the loan agreement; and that Ng Wee had been renewing and rolling over his initial placement, despite knowledge of this setup.

IV.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT WINCORP IS SOLIDARILY LIABLE WITH THE OTHER DEFENDANTS

[70] *Id*. at 20. This is to confirm that pursuant to your authority, **we have acted in your behalf and/or for your benefit, risk or account without recourse or liability, real or contingent, to Westmont Investment Corporation in respect of the loan granted to the Borrower** named and under the terms specified hereunder.

x x x x x x x x x

For your convenience but without any obligation on our part, we may act as your collecting and paying agent for this transaction. Kindly note that your receipt hereof is an indication of your conformity to the foregoing terms and conditions of the transaction. (emphasis added)

Wincorp further denies violating commercial laws since the transactions are *"without recourse,"* in compliance with the Bangko Sentral ng Pilipinas (BSP) rule that only institutions that are granted license to perform quasi-banking functions can engage in transactions *"with recourse."* Moreover, the agreement with Ng Wee to broker a loan, not being a quasi-banking function, is required to be marked as *"without recourse"* under Sec. 4103N.2 of the BSP Manual of Regulations for Non-bank Financial Institutions.

It is also the contention of Wincorp that it is within its discretion whether or not to approve Power Merge's credit line. It was not an *ultra vires* act, and is instead covered by the business judgment rule. The fact that the business strategy turned out to be unfavorable should not so casually be used to impute liability to the corporation absent showing of bad faith or gross negligence.

G.R. No. 221109: Petition for Review of Manuel Estrella

Petitioner Estrella, one of the directors of Wincorp, instituted a separate petition[71] anchored on the ground that he was a mere nominee in Wincorp of his principals, Eduardo Espiritu and Wincorp board chairperson John Anthony Espiritu; that he did

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[71] *Rollo* (G.R. No. 221109), pp. 115-117. The issues are:

I.

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THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE HEREIN PETITIONER [IS] GUILTY OF GROSS NEGLIGENCE AND BAD FAITH IN DIRECTING THE AFFAIRS OF WINCORP

II.

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THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO RULE THAT THE WRIT OF PRELIMINARY ATTACHMENT AGAINST APPELLANT ESTRELLA'S BEL-AIR PROPERTY WAS IRREGULAR AND CONTRARY TO THE REVISED RULES OF PROCEDURE AND SETTLED LEGAL PRINCIPLES

not have any real beneficial interest in Wincorp as his appointment was a mere accommodation to the Espiritus; and that he did not even receive any compensation, salary, *per diem* or benefit of any kind from either the Espiritus or from Wincorp.

As a mere nominee, Estrella is involved solely in setting down company policies and prescribing the general guidelines for the direction of the business and affairs of Wincorp. In the performance of his duties, he relies heavily on the reports, memoranda, and information provided them by management. He contends that he was never involved in the day-to-day management and operations of the company. He then had no knowledge and could not then have approved of the Side Agreements entered into by Ong and petitioner Reyes. The Side Agreements were never presented in any of the meetings Estrella attended, or so he claims.

He also questions the RTC and the CA's reliance on the minutes of the special meetings naming him as one of the directors who approved Power Merge's credit line application and its subsequent amendment. He argues that the minutes have already been discredited when the charges against Tankiansee have been dropped. Estrella reminds the Court that Tankiansee was likewise included in the list of directors in attendance during the February 9, 1999 and March 11, 1999 special meetings, only to be disproved later on by his immigration records that show that he was out of the country during the material dates.

It was admitted that Estrella attended the February 9, 1999 special meeting, but claims that he already left before the *"other matters"* in the agenda, which included Power Merge's application, were discussed. He denies attending the March 11, 1999 special meeting since he accompanied his wife that day to the hospital for her cancer treatment. To substantiate these defenses, he brings to the Court's attention the fact that he did not sign, as he refused to sign, the minutes of the February 9, 1999 and March 11, 1999 special meetings.

G.R. No. 221135: Petition for Review on Certiorari of Simeon Cua, Henry Cualoping, and Vicente Cualoping

For their defense[72] against civil liability in this case, petitioners Cua and the Cualopings claim that Ng Wee failed to prove that

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[72] *Rollo* (G.R. No. 221135), pp. 113-128. The issues are:

I.

THE COURT OF APPEAL'S 30 SEPTEMBER 2014 DECISION AND 26 OCTOBER 2015 RESOLUTION OUGHT TO BE ANNULLED AND SET ASIDE, FOR BEING CONTRARY TO SEC.31. OF THE CORPORATION CODE AS WELL AS TO THE DOCTRINE IN *CARAG VS. NATIONAL LABOR RELATIONS COMMISSION*, 520 SCRA 28(2007), *VDA. DE ROXAS VS. ROXAS-CRUZ*, G.R. NO. 182378, MARCH 6, 2013, *HEIRS OF FE TAN UY VS. INTERNATIONAL EXCHANGE BANK*, G.R. NO. 166282, FEBRUARY 13, 2013, AND OTHER CASES, HOLDING THAT BEFORE THE CORPORATE VEIL MAY BE PIERCED, AND THE SEPARATE PERSONALITY MAY BE DISREGARDED SO THAT LIABILITIES ARE ATTACHED TO INDIVIDUAL CORPORATE DIRECTORS/OFFICERS, THERE MUST BE CLEAR AND CONVINCING EVIDENCE OF ANY WRONGDOING COMMITTED BY SAID CORPORATE DIRECTOR/ OFFICER AND THAT SUCH ILL-MOTIVE OR BAD FAITH CANNOT BE PRESUMED.

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(A)

PETITIONERS SHOULD NOT BE HELD JOINTLY AND SOLIDARILY LIABLE WITH THE OTHER DEFENDANTS IN CIVIL CASE NO.00-99006 FOR ANY OF RESPONDENT'S CLAIMS. NO CLEAR AND CONVINCING EVIDENCE EXIST THAT PETITIONERS SIMEON CUA, HENRY CUALOPING, AND VICENTE CUALOPING ASSENTED TO THE PATENTLY UNLAWFUL ACTS OF THE CORPORATION WINCORP WHICH IS REQUIRED TO HOLD DIRECTORS LIABLE FOR CORPORATE ACTS UNDER SECTION 31 OF THE CORPORATION CODE AND APPLICABLE JURISPRUDENCE.

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(B) NO CLEAR AND CONVINCING EVIDENCE EXIST THAT PETITIONERS SIMEON CUA, HENRY CUALOPING, AND VICENTE CUALOPING WERE GUILTY OF GROSS NEGLIGENCE OR BAD FAITH

they acted in bad faith or were grossly negligent in managing the affairs of Wincorp, which is required for directors to be held liable under Sec. 31 of the Corporation Code. They argued that the extent of their participation in the alleged fraudulent scheme was limited to acting favorably on the executive committee's recommendations regarding Power Merge's credit line application and its subsequent amendment. Mere approval of Power Merge's applications, however, cannot be equated with bad faith, for the directors relied on the vetting by the departments responsible for doing so. They point out that Power Merge's applications underwent scrutiny by the credit committee and executive committee prior to their approval. The approval cannot then be considered as unlawful, and neither bad faith nor gross negligence can be attributed to the directors. Rather, it was performed in the legitimate pursuit of Wincorp's business as a duly-licensed investment house.

Moreover, petitioners deny any knowledge and participation in the execution of the Side Agreements with Power Merge, and claim that the execution was performed by Wincorp President Ong and petitioner Reyes without proper authorization from the board and, hence, *ultra vires.* They add that they could not have defrauded Ng Wee since they had no knowledge that the latter was matched with Power Merge.

IN DIRECTING THE AFFAIRS OF THE CORPORATION WINCORP WHICH IS REQUIRED TO HOLD DIRECTORS LIABLE UNDER SECTION 31 OF THE CORPORATION CODE AND APPLICABLE JURISPRUDENCE.

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II.

PETITIONERS SIMEON CUA, VICENTE CUALOPING, AND HENRY CUALOPING SHOULD BE ABSOLVED FROM LIABILITY IN THIS CASE.

G.R. No. 221218: Petition for Review on Certiorari of Anthony Reyes

Finally, the grounds[73] invoked by petitioner Reyes to support his petition centered on the argument that he had no hand in the approval of the credit line application or its increase since he is not a director of Wincorp. He was merely the Vice-President

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[73] *Rollo* (G.R. No. 221218), pp. 13-14. The issues are:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN RULING THAT PETITIONER REYES WAS A DIRECTOR OF WINCORP. PETITIONER REYES SIMPLY WAS NOT, AND HAD NEVER BEEN, A DIRECTOR OF RESPONDENT WINCORP.

II.

THE COURT OF APPEALS RULED IN A MANNER NOT IN ACCORD WITH THIS HONORABLE COURT'S APPLICABLE DECISIONS WHEN IT HELD PETITIONER REYES PERSONALLY LIABLE TO RESPONDENT NG WEE SIMPLY FOR BEING RESPONDENT WINCORP'S SIGNATORY IN THE SUBJECT TRANSACTIONS BETWEEN RESPONDENTS WINCORP AND POWER MERGE. PETITIONER REYES ACTED IN GOOD FAITH AND WITHIN THE SCOPE OF HIS AUTHORITY AS A CORPORATE OFFICER OF RESPONDENT WINCORP.

III.

THE COURT OF APPEALS RULED IN A MANNER NOT IN ACCORD WITH THIS HONORABLE COURT'S APPLICABLE DECISIONS WHEN IT HELD PETITIONER REYES SOLIDARILY LIABLE WITH THE OTHER RESPONDENTS FOR LIQUIDATED AND MORAL DAMAGES AND ATTORNEY'S FEES TO RESPONDENT NG WEE. THE PROVISION ON LIQUIDATED DAMAGES CANNOT APPLY TO PETITIONER REYES, AS HE WAS NOT A PARTY TO THE AGREEMENT. SIMILARLY, HE CANNOT BE HELD LIABLE FOR MORAL DAMAGES WHEN IT WAS NOT ESTABLISHED THAT HE ACTED IN BAD FAITH.

IV.

PETITIONER REYES' CROSS-CLAIMS SHOULD HAVE BEEN GRANTED, INASMUCH AS THE COURT OF APPEALS FOUND COLLUSION BETWEEN RESPONDENTS WINCORP AND VIRATA, AND HELD THEM LIABLE TO RESPONDENT NG WEE

for Operations of Wincorp, duly authorized as the investment house's signatory for and to all its documents, transactions and accounts. Thus, he alleges that he was under obligation to sign the Credit Line Agreement, its Amendment, and the Side Agreements in favor of Power Merge after the latter's application was approved by Wincorp's board of directors.

Furthermore, he argues that Sec. 31 of the Corporation Code is inapplicable since he is neither a director nor trustee of Wincorp, as required by the provision. And assuming without conceding its applicability, he claims that he cannot be held solidarily liable since he signed the agreements on behalf of the company in good faith.

The issue of whether or not Ng Wee is a real party in interest was again raised as an issue in Reyes' petition.

The Comments

Comments of Wincorp

In G.R. No. 220926, filed by petitioners Virata and UEM-MARA, Wincorp admitted in its Comment[74] that the execution of the Side Agreements is highly irregular, but argues that only Ong and Reyes should be held liable therefor since they acted beyond the scope of their authority. Wincorp claims that the execution of the Side Agreements releasing Power Merge from its obligations are *ultra vires* acts of the corporate officers, for which the investment house cannot be held liable.

This argument was further amplified in its Comment[75] in G.R. No. 221218, filed by Reyes, wherein Wincorp reiterated that the actions of the two officers (Ong and Reyes) in executing the Side Agreements, and thereby discharging Virata and Power Merge from their obligations, was outside the scope of their authority and was not approved its board of directors.

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[74] *Rollo* (G.R. No. 220926), pp. 5045-5051.

[75] *Rollo* (G.R. No. 221218), pp. 1035-1040.

Accordingly, their actions could not legitimately be considered as actions of Wincorp.

Comment of Virata, UEM-MARA

Petitioners Virata and UEM-MARA argued in their Comment[76] in G.R. No. 221218, the only petition where they are impleaded as respondents, that petitioner Reyes' cross-claim has no factual and legal basis. Aside from Reyes' general averments that Wincorp and Power Merge connived and colluded to defraud the investors, he did not cite any specific basis for holding Virata and UEM-MARA liable to him.

Comment of Ng Wee

Respondent Ng Wee filed his Comment[77] on the consolidated petitions but merely refuted petitioner Reyes' claims. Ng Wee emphasized that Reyes did not assail the findings of the CA that the transactions between Wincorp and Power Merge were impressed with fraud. Moreover, Reyes' indispensable participation in the fraud, especially his signing of the Side Agreements, rendered him liable to respondent Ng Wee. His signatures to the Side Agreements meant that he adhered to its contents, including the release of Power Merge from its obligations under the Promissory Notes.

Meanwhile, petitioners Reyes, Estrella, Cua, and the Cualopings did not file their respective comments[78] despite due notice.[79]

The Issues

Succinctly stated, the issues raised in the consolidated petitions boil down to the following:

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[76] *Id.* at 935-951.

[77] *Id.* at 1043-1106.

[78] Cua, Vicente and Henry Cualoping, and Estrella are respondents in G.R. No. 221218, and in G.R. No. 220926 along with Reyes.

[79] *Rollo* (G.R. No. 221218), p. 901; *Rollo* (G.R. No. 220926), p. 5042.

1. Whether or not the case was prosecuted in the name of the real party in interest;
2. Whether or not Ng Wee was able to establish his cause/s of action against Wincorp and Power Merge;
3. Whether or not it is proper to pierce the veil of corporate fiction under the circumstances of the case;
4. Whether or not the counterclaims and cross-claims of the parties should prosper; and
5. Whether or not the award of damages to Ng Wee is proper.

The Court now resolves these issues *in seriatim*.

The Court's Ruling

I.

Ng Wee is the Real Party in Interest

Petitioners present legal issues on both procedure and substance. Resolving first the procedural aspect of the case, the Court rules that Ng Wee is a real party in interest, contrary to the petitioners' claim.

Law of the Case doctrine bars the re-litigation of a settled issue

As a general rule, every action must be prosecuted or defended in the name of the real party in interest.[80] Section 2, Rule 3 of the Rules of Court defines a real party in interest as *"the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."*

In this case, it is worth recalling that the procedural issue on whether or not Ng Wee is the real party in interest had already been resolved by this Court in G.R. No. 162928. There, the Court found neither abuse of discretion on the part of the RTC

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[80] RULES OF COURT, Rule 3, Section 2.

nor reversible error on the CA when they ruled that Ng Wee had the legal personality to file the Complaint to recover his investments. The resolutions by the CA and this Court sustaining the October 4, 2001 Order had already attained finality and could no longer be modified. Concomitantly, the parties are barred from re-raising the issues settled therein, pursuant to the *law of the case* doctrine.

The *law of the case* doctrine applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court for further proceedings; the question settled by the appellate court becomes the *law of the case* at the lower court and in any subsequent appeal. It means that whatever is 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 the legal rule or decision was predicated continue to be the facts of the case before the court.[81]

It is inconsequential that the issue raised in G.R. No. 162928 pertained to the alleged grave abuse of discretion committed by the RTC in denying the motions to dismiss, and not to the merits of the motions to dismiss *per se*. For as the Court has elucidated in *Banco de Oro-EPCI, Inc. v. Tansipek*:

x x x **there is no substantial distinction between an appeal and a Petition for *Certiorari* when it comes to the application of the Doctrine of the Law of the Case**. The doctrine is founded on the policy of ending litigation. The doctrine is necessary to enable the appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal.[82] (emphasis added)

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[81] *Vios v. Pantangco, Jr.*, G.R. No. 163103, February 6, 2009, 578 SCRA 129, 143.

[82] G.R. No. 181235, July 22, 2009, 593 SCRA 456, 466-467.

We are then constrained to abide by Our prior ruling in G.R. No. 162928 that Ng Wee is a real party in interest in this case.

Ng Wee successfully stated a cause of action based on a hypothetical admission of the allegations in his complaint

To be sure, hornbook doctrine is that when the affirmative defense of dismissal is grounded on the failure to state a cause of action, a ruling thereon should be based on the facts alleged in the complaint.[83] Otherwise stated, whether or not Ng Wee successfully stated a cause of action requires hypothetically admitting and scrutinizing the allegations in his Complaint. A reproduction of its pertinent contents is hence apropos:

x x x x x x x x x

2.5 Relying on said representations, [Ng Wee] placed substantial amounts of money in his own name and in the names of others with defendant Wincorp on several occasions. Some of the outstanding placements of [Ng Wee] with defendant Wincorp, which were loaned to defendant Virata/Power Merge, are in the names of Robert Tabada Tan, Elizabeth Ng Wee, Alex Lim Tan and Angel Archangel who hold said placements in trust for [Ng Wee].[84]

As aptly noted by the trial court in its October 4, 2001 Order denying the motions to dismiss:

In the Complaint, [Ng Wee] has clearly averred that he placed some of his money placements in the names of other persons and that said persons held the said money placements in trust for him (paragraph 2.5 of the complaint). With such allegation of ownership of the funds, [Ng Wee] is clearly the real party in interest as he stands to be benefited or injured by the judgment in the instant case. (Section 2, Rule 3, Rules of Court)

x x x x x x x x x

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[83] *Clidoro vs. Jalmanzar*, G.R. No. 176598, July 9, 2014, 729 SCRA 350.

[84] *Rollo* (G.R. No. 220926), p. 197.

Hence, this Court cannot grant the dismissal of the Complaint on this ground, since the allegations in the Complaint show, on the contrary, that [Ng Wee] is the real party in interest.[85] (words in brackets added)

The RTC is correct in its observation that there is sufficient allegation that Ng Wee is the actual injured party in the failed investment. As the alleged owner of the funds placed under the names of Robert Tabada Tan, Elizabeth Ng Wee, Alex Lim Tan and Angel Archangel in Wincorp, Ng Wee lost ₱213,290,410.36 from Power Merge's default and non-payment of its obligations under the credit facility extended by the investment house. This controverts petitioners' claim that Ng Wee is not the real party in interest herein.

Testimonial evidence on record established Ng Wee's ownership over the invested funds; Ng Wee does not lack cause of action

Even the evidence on record would belie petitioners' claim that Ng Wee is not the real party in interest. Elizabeth Ng Wee, Alex Lim Tan and Angel Archangel were straightforward in their testimonies that the funds invested in Power Merge belonged to Ng Wee, albeit recorded under their names. They likewise executed documents denominated as *"Declaration of Trust"* wherein they categorically stated that they merely held the funds in trust for Ng Wee, the beneficial owner.

Angel Archangel admitted the trust relation in the following manner:

Q: What can you say about the money placement in Wincorp?

A: It is not my money, sir.

Q: And whose money is it, Madam Witness?

A: Alejandro Ng Wee.

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[85] *Id.* at 97-98.

Q: And what is your participation insofar as that money placement is concerned?

A: None, sir.[86]

Elizabeth Ng Wee, meanwhile, testified in the following wise:

Q: Now you said you transacted with this Gilda because you were instructed by your brother to transact with her?

A: Yes, sir.

Q: And why did you follow his instruction?

A: It is his money.

Q: Which one?

A: Those placements, sir.

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Q: And why are these money placements under your name, Madam Witness, if these are his money?

A: He requested me to handle this money on behalf of him, sir.

Q: And you earlier identified five (5) confirmation advices, what relation do these confirmation advices have to the confirmation which you have identified and said that you surrendered to your brother?

A: They are the same, sir.

Q: I see. Why did you surrender them to your brother?

A: Simply because they are not my money, sir. Those are his, so it is up to him to do something about what will happen.

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Q: I am holding before me a document introduced by the lawyer of your brother previously marked as Exhibit "JJJ" entitled Declaration of Trust, kindly go over the document.

A: Okay.

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[86] TSN, August 17, 2005, pp. 14-33, as cited in the September 30, 2014 Court of Appeals Decision in CA-G.R. CV. No. 97817, pp. 34-35; *id*. at 100-101.

Q: There is a signature at the bottom portion of the document, whose signature is that?

A: That is my signature, sir.[87]

And when Alex Lim Tan took the witness stand:

x x x x x x x x x

A: He [referring to Alejandro Ng Wee] called me up and he requested me if he can use my name in placing his money with Westmont for money placement.

Q: You mentioned Westmont. What is that Westmont?

A: Westmont Investment Corporation, sir.

Q: And what was your response, if any, to the request of Plaintiff?

A: I agreed.

Q: And what happened next after you agreed?

A: He let me sign the documents specifically the Confirmation Advices, sir.

x x x x x x x x x

Q: And what did you do after he sent these Confirmation Advices to you?

A: I signed it, sir.

Q: And after signing these documents, what else did you do if any?

A: I returned them to Mr. Wee, Sir.

Q: And why did you return these documents to him?

A: Because he owns it, sir.

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[87] TSN, August 24, 2005, pp. 40-52, as cited in the September 30, 2014 Court of Appeals Decision in CA-G.R. CV. No. 97817, pp. 35-36; *id.* at 101-102.

Q: Apart from the Confirmation Advices that you identified today, did you sign any other document in connection with the investment represented by these Confirmation Advices?

A: There was, sir.

Q: Can you tell us what was that document, Mr. Witness?

A: The Declaration of Trust, Sir.[88]

Finally, Wincorp employees Ruben Tobias and Gilda Lucena testified[89] that they were instructed by Ng Wee to rename several of his investments under the Power Merge Account to the names of Alex Lim Tan and Robert Tabada Tan. Effectively, Ruben Tobias and Gilda Lucena corroborated the claim of Ng Wee that the investments in Power Merge that were recorded under those names are actually respondent Ng Wee's.

From the foregoing evidence on record, it can no longer be gainsaid that Ng Wee is the real party in interest in the present case. The allegation in his Complaint that he is the actual owner of the ₱213,290,410.36 infused in Power Merge under the names of Robert Tabada Tan, Elizabeth Ng Wee, Alex Lim Tan and Angel Archangel has been established by preponderant evidence, and, more significantly, has already become the law of the case. The procedural issue raised by petitioners therefore lacks merit.

II.

Liability of the Corporations to Ng Wee

With the procedural issue disposed, the Court will now proceed to ascertain the liability of the parties to Ng Wee, beginning with the major players in this controversy. On this point, worthy of note is that none of the petitioners disputed the fact that Ng

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[88] TSN, September 7, 2005, pp. 7-32, as cited in the September 30, 2014 Court of Appeals Decision in CA-G.R. CV. No. 97817, pp. 36-37; *id*. at 102-103.

[89] TSN, July 13, 2005 and January 18, 2006, as cited in the September 30, 2014 Court of Appeals Decision in CA-G.R. CV. No. 97817, p. 37; *id*. at 103.

Wee is entitled to recover the amount that he has invested. What they only required, which they also invoked as the ground for their motions to dismiss, is that Ng Wee prove that the amounts invested actually belonged to him. Thus, having established that Ng Wee is the real party in interest and that he is the beneficial owner of the investments under the names of Robert Tabada Tan, Elizabeth Ng Wee, Alex Lim Tan and Angel Archangel, his entitlement to recover the ₱213,290,410.36 becomes indubitable. The only question that remains now is: from whom can Ng Wee recover the ₱213,290,410.36 investment? To this, petitioners would pose clashing claims, which prompts this Court to elucidate on their respective exposures to civil liability.

Only Wincorp is liable to Ng Wee for fraud; Power Merge is liable based on contract

a. That Wincorp defrauded Ng Wee is a finding of fact that is conclusive on this Court

Axiomatic in this jurisdiction is that, as a general rule, only questions of law may be raised in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.[90] The appellate court's findings of fact being conclusive, the jurisdiction of this Court in appealed cases is limited to reviewing and revising the errors of law.[91] As We have emphatically declared in a long line of cases, *"it is not the function of the Supreme Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed by the lower court."*[92]

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[90] RULES OF COURT, Rule 45, Sec.1.

[91] *Far Eastern Surety and Insurance Co., Inc. v. People*, G.R. No. 170618, November 20, 2013, 710 SCRA 358.

[92] *Dihiansan v. Court of Appeals,* No. L-49539, September 14, 1987, 153 SCRA 712, 716.

Enumerated in *Medina v. Mayor Asistio, Jr.*[93] are the recognized exceptions to the general rule.[94] But insofar as Wincorp is concerned, it failed to establish that any of these exceptions obtain in the present case. Thus, the Court sustains the finding of the trial court, as affirmed by the CA, that Wincorp is liable to Ng Wee for perpetrating an elaborate scheme to defraud its investors. As held by the CA:

> [Ng Wee] would not have placed funds or invested [in] the *"sans recourse"* transactions under the Power Merge borrower account had he not been deceived into believing that Power Merge is financially capable of paying the returns of his investments/money placements. Wincorp accredited Power Merge as a borrower, given it a credit line in the maximum amount of ₱2,500,000,000.00, Philippine Currency, allowed it to make drawdowns up to ₱2,183,755,253.11, Philippine Currency, matched it with [Ng Wee's] investments/ money placements to the extent of ₱213,290,410.36, Philippine Currency, notwithstanding telling signs which immediately cast doubt on its ability to perform its obligations under the Credit Line Agreements, Promissory Notes and [Confirmation Advices], to wit: (1) Power Merge had only been in existence as a corporation for barely two (2) years when it was accredited as borrower by Wincorp; (2) Power Merge is a thinly capitalized corporation with only ₱37,500,000.00 subscribed capital stock; (3) Power Merge is not an on-going concern because (a) Despite the fact that Power Merge's principal place of business is at 151 Paseo de Roxas St., Makati City, it has neither

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[93] G. R. No. 75450, November 8, 1990, 191 SCRA 218.

[94] *Id.* at 223-224:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

registered nor conducted any business at Makati City as evident from the Certification dated January 3, 2006 issued by the Business Permits Office of Makati City; (b) it is not engaged in any lucrative business to finance its operation; Despite the fact that its primary purpose is to "invest in, purchase, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real or personal property of every kind and description…," no proof was adduced to show that it was carrying out or has carried out this mandate in accordance with the law; (c) From the time of its incorporation until the revocation of its Certificate of Incorporation on March 15, 2004, Power Merge has failed to file annual reports required by the SEC such as General Information Sheets and Financial Statements; (4) No security whatsoever was demanded by Wincorp or furnished by Power Merge in relation to its credit line and drawdowns. Indeed, no person in his proper frame of mind would venture to lend hundreds of millions of pesos to a business entity having such a financial setup. x x x

x x x x x x x x x

The intent to defraud and deceive [Ng Wee] of his investments/money placements was manifest from the very start. Wincorp and Power Merge entered into a Credit Line Agreement on February 15, 1999 and an Amendment to Credit Line Agreement on March 15, 1999. It is interesting to note that they simultaneously executed two Side Agreements which are peculiar because: (1) The dates of execution of the two Side Agreements coincide with the dates of execution of the credit agreements; (2) [The] two Side Agreements were executed by the same exact parties: Antonio Ong and Anthony Reyes for and on behalf of Wincorp and [Virata] and Augusto Geluz for and on behalf of Power Merge; (3) The Credit Line Agreement dated February 15, 1999 and the First Side Agreement dated February 15, 1999 were both acknowledged before notary public, Atty. Fina De La Cuesta-Tantuico while the Amendment to Credit Line Agreement dated March 15, 1999 and the Second Side Agreement dated March 15, 1999 were both acknowledged before notary public, Atty. Eric R.G. Espiritu; (4) The two Side Agreements have the same exact provisions as the two credit agreements insofar as it purports to extend a credit line and increase the credit line of Power Merge but the two Side Agreements relieve Power Merge from any liability arising from the execution of the agreements and promissory notes.[95]

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[95] *Rollo* (G.R. No. 220926), pp. 110-113.

Jurisprudence defines "fraud" as the voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission. In its general sense, fraud is deemed to comprise anything calculated to deceive, including all acts and omissions and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. Fraud is also described as embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.[96]

Under Article 1170 of the New Civil Code, those who in the performance of their obligations are guilty of fraud are liable for damages. The fraud referred to in this Article is the deliberate and intentional evasion of the normal fulfillment of obligation.[97] Clearly, this provision is applicable in the case at bar. It is beyond quibble that Wincorp foisted insidious machinations upon Ng Wee in order to inveigle the latter into investing a significant amount of his wealth into a mere empty shell of a corporation. And instead of guarding the investments of its clients, Wincorp executed Side Agreements that virtually exonerated Power Merge of liability to them; Side Agreements that the investors could not have been aware of, let alone authorize.

The summation of Wincorp's actuations establishes the presence of actionable fraud, for which the company can be held liable. In *Joson vs. People*, the Court upheld the ruling that where one states that the future profits or income of an enterprise shall be a certain sum, but he actually knows that

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[96] *Republic v. Estate of Alfonso Lim, Sr.*, G.R. No. 164800, July 22, 2009, 593 SCRA 404, 417-418.

[97] *Legaspi Oil Co., Inc. v. Court of Appeals*, G.R. No. 96505, July 1, 1993, 224 SCRA 213.

there will be none, or that they will be substantially less than he represents, the statements constitute an actionable fraud where the hearer believes him and relies on the statement to his injury.[98]

Just as in *Joson*, it is abundantly clear in the present case that the profits which Wincorp promised to the investors would not be realized by virtue of the Side Agreements. The investors were kept in the dark as regards the existence of these documents, and were instead presented with Confirmation Advices from Wincorp to give the transactions a semblance of legitimacy, and to convince, if not deceive, the investors to roll over their investments or to part with their money some more.

b. Power Merge is not guilty of fraud, but is liable under contract nonetheless

The story, however, is different for Power Merge. The circumstances of this case points to the conclusion that Power Merge and Virata were not active parties in defrauding Ng Wee. Instead, the company was used as a mere conduit in order for Wincorp to be able to conceal its act of directly borrowing funds for its own account. This is made evident by one highly peculiar detail – the date of the Power Merge's drawdowns.

It must be remembered that the special meeting of Wincorp's board of directors was conducted on February 9 and March 11 of 1999, while the Credit Line Agreement and its Amendment were entered into on February 15 and March 15 of 1999, respectively. But as indicated in Power Merge's schedule of drawdowns,[99] Wincorp already released to Power Merge the sum of ₱1,133,399,958.45 as of February 12, 1999, before the Credit Line Agreement was executed. And as of March 12, 1999, prior to the Amendment, ₱1,805,018,228.05 had already been released to Power Merge.

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[98] G.R. No. 178836, July 23, 2008, 559 SCRA 649, 657-658.

[99] *Rollo* (G.R. No. 220926), pp. 411-412.

The fact that the proceeds were released to Power Merge before the signing of the Credit Line Agreement and the Amendment thereto lends credence to Virata's claim that Wincorp did not intend for Power Merge to be strictly bound by the terms of the credit facility; and that there had already been an understanding between the parties on what their respective obligations will be, although this agreement had not yet been reduced into writing. The underlying transaction would later on be revealed in black and white through the Side Agreements, the tenor of which amounted to Wincorp's intentional cancellation of Power Merge and Virata's obligation under their Promissory Notes.[100] In exchange, Virata and Power Merge assumed the obligation to transfer equity shares in UPDI and the tollway project in favor of Wincorp. An arm's length transaction has indeed taken place, substituting Virata and Power Merge's obligations under the Promissory Notes, in pursuance of the Memorandum of Agreement and Waiver and Quitclaim executed by Virata and Wincorp. Thus, as far as Wincorp, Power Merge, and Virata are concerned, the Promissory Notes had already been discharged.

It was the understanding of the two companies that the Promissory Notes would not be passed on to the hands of third persons and that, in any event, Wincorp guaranteed Virata that he and Power Merge would not be held liable thereon. Driven by the desire to completely settle his obligation as a surety under the Hottick account, Virata took the deal and relied in good faith that Wincorp's officials would honor their gentleman's agreement. But as events unfolded, it turned out that Wincorp was in evident bad faith when it subsequently assigned credits pertaining to portions of the loan and the corresponding interests in the Promissory Notes to the investors in the form of Confirmation Advices when it knew fully well of Power Merge's discharge from liability.

Between Wincorp and Power Merge, it is Wincorp, as the assignor of the portions of credit, that is under obligation to disclose to the investors the existence and execution of the Side

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[100] See NEGOTIABLE INSTRUMENTS LAW, Section 119(c).

Agreements. Failure to do so, to Our mind, only goes to show that the target of Wincorp's fraud is not any particular individual, but the public at large. On the other hand, it was not Power Merge's positive legal duty to forewarn the investors of its discharge since the company did not deal with them directly. Power Merge and Virata were agnostic as to the source of funds since they relied on their underlying agreement with Wincorp that they would not be liable for the Promissory Notes issued.

As far as it was concerned, Power Merge was merely laying the groundwork prescribed by Wincorp towards fulfilling its obligations under the Waiver and Quitclaim. Virata was not impelled by any Machiavellian mentality when he signed the Side Agreements in Power Merge's behalf. Therefore, only Wincorp can be held liable for fraud. Nevertheless, as will later on be discussed, Power Merge and Virata can still be held liable under their contracts, but not for fraud.

The "sans recourse" transactions cannot exempt Wincorp from liability for having been offered in violation of commercial laws

Wincorp attempts to evade liability by hiding behind the *"sans recourse"* nature of the transactions with Ng Wee. It argues that as a mere agent or broker that matches an investor with a borrower, it cannot be held liable for the invested amount in case of an unsuccessful or failed match. As evidenced by the Confirmation Advices and SPAs signed by the investors, Wincorp is merely tasked to deliver the amount to be loaned to the borrower, and does not guarantee its borrowers' financial capacity.

The argument deserves scant consideration.

a. The "sans recourse" transactions are deemed "with recourse"

An investment house is an enterprise that engages in the underwriting of securities of other corporations.[101] Securities

[101] PRESIDENTIAL DECREE NO. 129, Section 2.

underwriting, in turn, refers to the process by which underwriters raise capital investments on behalf of the corporation issuing the securities. Thus, aside from performing the regular powers of a corporation under the Corporation Code, a duly licensed investment house is granted additional powers under Sec. 7[102] of Presidential Decree No. (PD) 129.

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[102] **Section 7.** ***Powers.*** In addition to the powers granted to corporations in general, an Investment House is authorized to do the following:

1. Arrange to distribute on a guaranteed basis securities of other corporations and of the Government or its instrumentalities;
2. Participate in a syndicate undertaking to purchase and sell, distribute or arrange to distribute on a guaranteed basis securities of other corporations and of the Government or its instrumentalities;
3. Arrange to distribute or participate in a syndicate undertaking to purchase and sell on a best-efforts basis securities of other corporations and of the Government or its instrumentalities;
4. Participate as soliciting dealer or selling group member in tender offers, block sales, or exchange offering or securities; deal in options, rights or warrants relating to securities and such other powers which a dealer may exercise under the Securities Act;
5. Promote, sponsor, or otherwise assist and implement ventures, projects and programs that contribute to the economy's development;
6. Act as financial consultant, investment adviser, or broker;
7. Act as portfolio manager, and/or financial agent, but not as trustee of a trust fund or trust property;
8. Encourage companies to go public, and initiate and/or promote, whenever warranted, the formation, merger, consolidation, reorganization, or recapitalization of productive enterprises, by providing assistance or participation in the form of debt or equity financing or through the extension of financial or technical advice or service;
9. Undertake or contract for researches, studies and surveys on such matters as business and economic conditions of various countries, the structure of financial markets, the institutional arrangements for mobilizing investments;
10. Acquire, own, hold, lease or obtain an interest in real and/or personal property as may be necessary or appropriate to carry on its objectives and purposes;
11. Design pension, profit-sharing and other employee benefits plans; and
12. Such other activities or business ventures as are directly or indirectly related to the dealing in securities and other commercial papers, unless otherwise governed or prohibited by special laws, in which case the special law shall apply.

Conspicuously absent in the enumerated additional powers of an investment house, however, is the authority to perform quasi-banking functions. Even as a financial intermediary, investment houses are not allowed to engage in quasi-banking functions, unless authorized by the Monetary Board through the issuance of a Certificate of Authority.[103]

The Omnibus Rules and Regulations for Investment Houses and Universal Banks Registered as Underwriters defines *"quasi-banking function"* as the function of *"**borrowing funds for the borrower's own account from 20 or more persons or corporate lenders at any one time, through the issuance, endorsement or acceptance of debt instruments of any kind** other than deposits which may include but need not be limited to acceptances, promissory notes, participations, certificates of assignment or similar instruments **with recourse**, trust certificates or of repurchase agreements for purposes of relending or purchasing of receivables and other obligations."*[104]

Given the definition, it would appear on paper that offering the *"sans recourse"* transactions does not qualify as the performance of a quasi-banking function specifically because it is *"sans recourse"* against Wincorp. As provided under S4101Q.3 of the Manual of Regulations for Non-Bank Financial Institutions:

S4101Q.3. Transactions **not** considered quasi-banking. The following shall not constitute quasi-banking:

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a. **The mere buying and selling without recourse of instruments** mentioned in Sec.4101Q: Provided that:

(1) The institution selling without recourse shall indicate or stamp in conspicuous print on the instrument/s, as well as on the confirmation of sale (COS), the phrase without recourse or sans recourse and the following statement:

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[103] PD 129, Sec. 12.

[104] *Id*., Sec. 2(K)

(name of financial intermediary)
assumes no liability for the payment
directly or indirectly, of the instrument

(2) In the absence of the phrase without recourse or sans recourse and without the above-required accompanying statement, the instrument so issued, endorsed or accepted shall automatically be considered as falling within the purview of the rules on quasi-banking. (emphasis added)

However, the Court affirms the appellate court's finding that the true nature of the *"sans recourse"* transactions contradicts Wincorp's averment. A perusal of the records would show that Wincorp engaged in practices that rendered the transactions to be *"with recourse"* and, consequently, within the ambit of quasi-banking rules.

First, Wincorp did not act as a mere financial intermediary between Ng Wee and Power Merge, but effectively obtained the funds for its own account. To borrow funds for one's own account should not only be taken in its literal meaning to the effect that Wincorp and its beneficial owners literally borrowed the funds invested by Ng Wee. Rather, it should be interpreted in this case while bearing in mind Wincorp's end goal — to assign its rights to the uncollected, if not worthless, Hottick obligations and hold more valuable Power Merge papers in their stead. Without enticing the investors to put up capital for Power Merge, Wincorp would not have been able to facilitate the exchange. Thus, with Power Merge as a conduit, Wincorp's borrowings from its investors redounded to its benefit. This is bolstered by Wincorp's act of executing the Side Agreements releasing Power Merge from its obligation to pay under its Promissory Notes, exposing itself to liability to pay the same.

Second, in PED Case No. 20-2378, the Prosecution and Enforcement Department of the SEC found that as of December 31, 1999, Wincorp has sourced funds from 2,200 individuals with an average of ₱7,000,000,000.00 worth of commercial papers per month. This figure unquestionably exceeds the *"20 or more persons or corporate lenders"* threshold.

***Third*,** the Confirmation Advices that are marked *"sans recourse"* are actually *"with recourse."* On this point, a reproduction of the succeeding paragraphs of S4101Q.3 of the Manual of Regulations for Non-Bank Financial Institutions is in order:

x x x x x x x x x

Provided further, that **any of the following practices or practices similar and/or tantamount thereto in connection with a without recourse transaction rendered such transaction as with recourse and within the purview of the rules on quasi-banking.**

x x x x x x x x x

(iii) **Payment with the funds of the financial intermediary which assigned, sold or transferred the debt instrument without recourse**, unless the financial intermediary can show that the issuer has with the said financial intermediary funds corresponding to the amount of the obligation. (emphasis added)

From the above provision, Wincorp's act of advancing the payment of interests when the corporate borrower is unable to pay despite the borrowing being branded as without recourse, rendered it to be *with* recourse. Coupled with the above-circumstances, offering the *"sans recourse"* transactions should then be categorized as an exercise of a quasi-banking function. The transactions were merely being denominated as *"sans recourse"* by Wincorp to circumvent the license requirement under the law. The alleged *"sans recourse"* nature of the transactions cannot then be used by Wincorp as a shield against liability to Ng Wee.

b. Wincorp engaged in the sale of unregistered securities

There is more to the *"sans recourse"* transactions than meets the eye, so much so that the operations of Wincorp cannot be oversimplified as mere brokering of loans. As discovered by the SEC in PED Case No. 20-2378, and as ruled by the CA, Wincorp was, in reality, selling to the public securities, *i.e.*, shares in the Power Merge credit in the form of investment contracts.

Securities are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character.[105] As a general rule, securities are not to be sold or offered for sale or distribution without due registration, and provided that information on the securities shall be made available to prospective purchasers.[106]

Included in the list of securities that require registration prior to offer, sale, or distribution are investment contracts.[107] An investment contract refers to a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.[108] It is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.[109]

In this jurisdiction, the Court employs the *Howey* test, named after the landmark case of *Securities and Exchange Commission v. W.J. Howey Co.*,[110] to determine whether or not the security being offered takes the form of an investment contract. The case served as the foundation for the domestic definition of the said security.

Under the *Howey* test, the following must concur for an investment contract to exist: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common

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[105] REPUBLIC ACT NO. 8799, Section 3; see also BATAS PAMBANSA BLG. 178, Section 2(a).

[106] REPUBLIC ACT NO. 8799, Sec. 8; see also BATAS PAMBANSA BLG. 178, Sec. 4.

[107] REPUBLIC ACT NO. 8799, Sec. 3.1(b); see also BATAS PAMBANSA BLG. 178, Sec. 2.

[108] *Power Homes Unlimited Corporation v. Securities and Exchange Commission,* G.R. No. 164182, February 26, 2008, 546 SCRA 567, 575-576.

[109] *Securities and Exchange Commission v. Santos,* G.R. No. 195542, March 19, 2014, 719 SCRA 514.

[110] 328 US 293 (1946).

enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others. Indubitably, all of the elements are present in the extant case.

First, Wincorp offered what it purported to be *"sans recourse"* transactions wherein the investment house would allegedly match investors with pre-screened corporate borrowers in need of financial assistance.

Second, Ng Wee invested the aggregate amount of ₱213,290,410.36 in the *"sans recourse"* transactions through his trustees, as embodied in the Confirmation Advices.

Third, prior to being matched with a corporate borrower, all the monies infused by the investors are pooled in an account maintained by Wincorp.[111] This ensures that there are enough funds to meet large drawdowns by single borrowers.

Fourth, the investors were induced to invest by Wincorp with promises of high yield. In Ng Wee's case, his Confirmation Advices reveal that his funds were supposed to earn 13.5% at their respective maturity dates.

Fifth, the profitability of the enterprise depended largely on whether or not Wincorp, on best effort basis, would be able to match the investors with their approved corporate borrowers.

Apparent then is that the factual milieu of the case at bar sufficiently satisfies the *Howey* test. The *"sans recourse"* transactions are, in actuality, investment contracts wherein investors pool their resources to meet the financial needs of a borrowing company. This does not stray far from the illustration given by former Associate Justice Roberto A. Abad in *Securities and Exchange Commission v. Prosperity.com, Inc*., to wit:

> An example that comes to mind would be the long-term commercial papers that large companies, like San Miguel Corporation (SMC), offer to the public for raising funds that it needs for expansion. When an investor buys these papers or securities, he invests his money, together with others, in SMC with an expectation of profits arising

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[111] *Rollo* (G.R. No. 220296), p. 1040.

from the efforts of those who manage and operate that company. SMC has to register these commercial papers with the SEC before offering them to investors.[112]

Likewise, in SEC Admin Case No. 09-07-88 entitled *In Re: D 1st Cell Pawnshop, Inc.,*[113] the SEC ruled that by soliciting investments from ₱50,000.00 up to ₱300,000.00 and promising a return of four percent (4%) per month, D 1st Cell Pawnshop offered investment contracts to the public.

No error can then be attributed to the CA when it designated the *"sans recourse"* transactions as investment contracts. No fault can also be ascribed to the appellate court in finding that Wincorp virtually purchased and resold securities, and not just brokered a loan. The most telling circumstance that negate Wincorp's claim of mere brokerage, as mentioned earlier, is the fact that it paid for the interest payments due from the corporate borrowers that defaulted. This effectively estopped Wincorp from denying liability from its investors in this case.

Wincorp cannot hide behind its license to operate as an investment house when it offered the *"sans recourse*" transactions to the public. For though investment houses are authorized to do the following:[114]

x x x x x x x x x

6. Act as financial consultant, investment adviser, or broker;
7. Act as porfolio manager, and/or financial agent xxx;
8. Encourage companies to go public, and initiate and/or promote, whenever warranted, the formation, merger, consolidation, reorganization, or recapitalization of productive enterprises, by providing assistance or participation in the form of debt or equity financing or through the extension of financial or technical advice or service;

x x x x x x x x x

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[112] G.R. No. 164197, January 25, 2012, 664 SCRA 28, 32.

[113] Dated July 8, 2010.

[114] PRESIDENTIAL DECREE NO. 129, Sec. 7.

their license to perform investment house functions does not excuse them from complying with the security registration requirements under the law. For clarity, the license requirement to operate as an investment houses is separate and distinct from the registration requirement for the securities they are offering, if any.

In dealing in securities, Wincorp was under legal obligation to comply with the statutory registration and disclosure requirements. Under BP 178, otherwise known as the *Revised Securities Act*, which was still in force at the time material in this case, investment contracts are securities, and their sale, transactions that are not exempt from these requirements.[115] As such, adherence to Sections 4 and 8 of BP 178 must be strictly observed, to wit:

Section 4. Requirement of registration of securities. — (a) No securities, except of a class exempt under any of the provisions of Section five hereof or unless sold in any transaction exempt under any of the provisions of Section six hereof, shall be sold or offered for sale or distribution to the public within the Philippines unless such securities shall have been registered and permitted to be sold as hereinafter provided.

x x x x x x x x x

Section. 8. Procedure for registration. — (a) All securities required to be registered under subsection (a) of Section four of this Act shall be registered through the filing by the issuer or **by any dealer or underwriter interested in the sale thereof,** in the office of the Commission, of a sworn registration statement with respect to such securities, containing or having attached thereto, the following:

x x x x x x x x x

(8) A statement of the capitalization of the issuer and of all companies controlling, controlled by or commonly controlled with the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up; the number and classes of shares in which such capital stock is divided; par value thereof, or if it has no par value, the stated or assigned value thereof;

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[115] BATAS PAMBANSA BLG. 178, Secs. 5 and 6.

a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof.

x x x x x x x x x

(14) The specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts and the sources thereof.

x x x x x x x x x

(27) A balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable with intangible items segregated, including any loan to or from any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. x x x All the liabilities of the issuer, including surplus of the issuer, showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. x x x

(28) A profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year xxx Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with statement of the basis upon which credit is computed. Such statement shall also differentiate between recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent certified public accountant.

x x x x x x x x x

(30) A copy of any agreement or agreements or, if identical agreements are used, the forms thereof made with any underwriter, including all

contracts and agreements referred to in subparagraph (19) hereof. (emphasis added)

In the guise of merely brokering loans between an investor and a corporate borrower, that it is not in the business of selling securities, Wincorp conveniently failed to disclose to the investors the necessary information under Section 8 of BP 178. To the mind of the Court, offering the *"sans recourse"* transactions without compliance therewith constitutes fraudulent transactions within the contemplation of Section 29 of the law.[116]

Non-disclosure of the capitalization details and the financial statements of the issuer Power Merge under Secs. 8(8), (27), and (28) resulted in the failure of the investors to pay heed to the red flags that the enterprise was doomed to fail: (1) the fact that it only had an outstanding capital stock of ₱37,500,000.00, of which the total actually paid is only ₱9,375,000.00; (2) that it has not been complying with the reportorial requirements, including the submission of financial statements to the SEC; (3) and that Power Merge is not an ongoing concern since it does not engage in any legitimate business. In addition, non-compliance with Section 8(14) and (30) prevented the investors from discovering the true intent behind the approval of the Power Merge credit line application and the underlying transactions behind its issuance of Promissory Notes.

Clearly then, because Wincorp had been successful in its scheme of passing off the *"sans recourse"* transactions as mere brokering of loans, it managed to circumvent the registration and disclosure requirements under BP 178, and managed to

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[116] Section 29. *Fraudulent transactions.* – (a) It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities –

(1) To employ any device, scheme, or artifice to defraud, or

(2) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) To engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

commit fraud in a massive scale against its investors to the latter's damage and prejudice, for which Wincorp ought to be held liable.

c. Wincorp is liable as a vendor in bad faith and for breach of warranty

Aside from its liability arising from its fraudulent transactions, Wincorp is also liable to Ng Wee for breach of warranty. It cannot be emphasized enough that Wincorp is not the mere agent that it claims to be; its operations ought not be reduced to the mere matching of investors with corporate borrowers. Instead, it must be borne in mind that it not only performed the functions of a financial intermediary duly registered and licensed to perform the powers of an investment house, it is also engaged in the selling of securities, albeit in violation of various commercial laws. And just as in any other contracts of sale, the vendor of securities is likewise bound by certain warranties, including those contained in Article 1628 of the New Civil Code on assignment of credits, to wit:

Article 1628. The vendor in good faith shall be responsible for the **existence and legality of the credit at the time of the sale**, unless it should have been sold as doubtful; but not for the solvency of the debtor, unless it has been so expressly stipulated or unless the insolvency was prior to the sale and of common knowledge.

x x x x x x x x x

The vendor in bad faith shall always be answerable for the payment of all expenses, and **for damages**. (emphasis added)

That the securities sold to Ng Wee turned out to be *"with recourse,"* not *"sans recourse"* as advertised, does not remove it from the coverage of the above article. In fact, such circumstance would even classify Wincorp as a vendor in bad faith, within the contemplation of the last paragraph of the provision. But other than the fraudulent designation of the transaction as "*sans recourse*," Wincorp's bad faith was also brought to the fore by the execution of the Side Agreements, which cast serious suspicion over, if it did not effectively annul,

the existence and legality of the credits assigned to Ng Wee under the numerous Confirmation Advices in the name of his trustees.

Anent the claim that Wincorp allegedly did not warrant the capacity of Power Merge to pay its obligations, the CA had this much to say:

> [Petitioners] argue that the financial capacity of Power Merge has always been a matter of public record. We are not persuaded. The material misrepresentations have been made by Wincorp to [Ng Wee], to the effect that Power Merge was structurally sound and financially able to undertake a series of loan transactions. Even if Power Merge's financial integrity is veritable from the articles of incorporation or other public records, it does not follow that the elaborate scheme of fraud and deceit would be beyond commission when precisely there are bending representations that Power Merge would be able to meet its obligations. Moreover, [petitioners'] argument assumes that there is a legal obligation on the part of [Ng Wee] to undertake investigation of Power Merge before agreeing to the matching of his investments with the accredited borrower. There is no such obligation. It is unfair to expect a person to procure every available public record concerning an applicant for funds to satisfy himself of the latter's financial standing. A least that is not the way an average person takes care of his concerns. **In addition, no amount of investigation could have revealed that the Power Merge papers are rendered worthless and noncollectable (sic) [be]cause of the Side Agreements entered into by Wincorp and Power Merge.**
>
> Wincorp's attempt to shift the blame on [Ng Wee] deserves no credence. Since the transaction involve[s] a considerable sum of money, Wincorp presupposes that [Ng Wee] would have taken great pains to scrutinize and understand all the documents affecting his investment/money placement. It also presumes that [Ng Wee] was fully aware of the contents and meaning of the [Confirmation Advices] and [Special Power of Attorneys] he signed. He took a calculated risk. As such, he should be estopped from claiming that he suffered damage and prejudice.
>
> The argument is specious. As ruled in *People of the Philippines v. Priscilla Balasa*:
>
> -x x x x x x x x x-

The fact that the buyer makes an independent investigation or inspection has been held not to preclude him from relying on the representation made by the seller where the seller has superior knowledge and the falsity of such representation would not be apparent from such examination or inspection, and, *a fortiori*, **where the efforts of a buyer to learn the true profits or income of a business or property are thwarted by some device of the seller, such efforts have been held not to preclude a recovery**. It has often been held that the buyer of a business or property is entitled to rely on the seller's statements concerning its profits, income or rents. The rule — that **where a speaker has knowingly and deliberately made a statement concerning a fact the falsity of which is not apparent to the hearer, and has thus accomplished a fraudulent result, he cannot defend against the fraud by proving that the victim was negligent in failing to discover the falsity of the statement** — is said to be peculiarly applicable where the owner of the property or a business intentionally makes a false statement concerning its rents, profits or income.

Applying the foregoing to this case, assuming that [Ng Wee] made an investigation, that should not preclude him from relying on the representations of Wincorp because: **(1) It is an investment house which is presumed to conduct an investigation of its borrowers before it matches the same to its investors.** As testified to by its employees, Wincorp has an Investigation Credit Committee and Executive Committee which screen, investigate and accredit borrowers before they are submitted for approval of the board of directors; **(2) It did not only materially misrepresent the financial incapacity of Power Merge to pay, it also failed to disclose that the instruments executed by Power Merge in connection with the investments/ money placements of [Ng Wee] are worthless in view of the Side Agreements executed by the parties.**[117] (emphasis added)

Verily, the same acts of misrepresentations that constituted fraud in Wincorp's transactions with Ng Wee are the very same acts that amounted to bad faith on its part as vendor of securities. Inescapably, liability attaches because of Wincorp's dishonest dealings.

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[117] *Rollo* (G.R. No. 220926), pp. 111-112; citations omitted.

d. Even as an agent, Wincorp can still be held liable

The argument that Wincorp is a mere agent that could not be held liable for Power Merge's unpaid loan is equally unavailing. For even if the Court were to accede to the argument and undercut the significance of Wincorp's participation from vendor of securities to purely attorney-in-fact, the investment house would still not be immune. Agency, in Wincorp's case, is not a veritable defense.

Through the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.[118] As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it. Absent such mutual intent, there is generally no agency.[119]

There is no dearth of statutory provisions in the New Civil Code that aim to preserve the fiduciary character of the relationship between principal and agent. Of the established rules under the code, one cannot be more basic than the obligation of the agent to carry out the purpose of the agency within the bounds of his authority.[120] Though he may perform acts in a manner more advantageous to the principal than that specified by him,[121] in no case shall the agent carry out the agency if

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[118] NEW CIVIL CODE, Article 1868.

[119] *Tuazon v. Heirs of Bartolome Ramos*, G.R. No. 156262, July 14, 2005, 463 SCRA 408, 414-415.

[120] NEW CIVIL CODE, Article 1881: The agent must act within the scope of his authority. He may do such acts as may be conducive to the accomplishment of the purpose of the agency.

[121] NEW CIVIL CODE, Article 1882: The limits of the agent's authority shall not be considered exceeded should it have been performed in a manner more advantageous to the principal than that specified by him.

its execution would manifestly result or damage to the principal.[122]

In the instant case, the SPAs executed by Ng Wee constituted Wincorp as agent relative to the borrowings of Power Merge, allegedly without risk of liability on the part of Wincorp. However, the SPAs, as couched, do not specifically include a provision empowering Wincorp to excuse Power Merge from repaying the amounts it had drawn from its credit line *via* the Side Agreements. They merely authorize Wincorp *"to agree, deliver, sign, execute loan documents"* relative to the borrowing of a corporate borrower. Otherwise stated, Wincorp had no authority to absolve Power Merge from the latter's indebtedness to its lenders. Doing so therefore violated the express terms of the SPAs that limited Wincorp's authority to contracting the loan.

In no way can the execution of the Side Agreements be considered as part and parcel of Wincorp's authority since it was not mentioned with specificity in the SPAs. As far as the investors are concerned, the Side Agreements amounted to a gratuitous waiver of Power Merge's obligation, which authority is required under the law to be contained in an SPA for its accomplishment.[123]

Finally, the benefit from the Side Agreements, if any, redounded instead to the agent itself, Wincorp, which was able to hold Power Merge papers that are more valuable than the outstanding Hottick obligations that it exchanged. In discharging its duties as an alleged agent, Wincorp then elected to put primacy over its own interest than that of its principal, in clear

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[122] NEW CIVIL CODE, Article 1888: An agent shall not carry out an agency if its execution would manifestly result in loss or damage to the principal.

[123] NEW CIVIL CODE, Article 1878: Special powers of attorney are necessary in the following cases:

x x x x x x x x x

(4) To waive any obligation gratuitously;

x x x x x x x x x

contravention of the law.[124] And when Wincorp thereafter concealed from the investors the existence of the Side Agreements, the company became liable for fraud even as an agent.[125]

Power Merge is liable to Ng Wee under its Promissory Notes

a. Virata is liable for the Promissory Notes even as an accommodation party

A promissory note is a specie of negotiable instruments. Under Section 60 of the Negotiable Instruments Law, the maker of a promissory note engages that he will pay it according to its tenor. In this case, the Promissory Notes executed by Virata in behalf of Power Merge are couched in the following wise:

PROMISSORY NOTE

For value received, I/We _____, hereby promise to pay WESTMONT INVESTMENT CORPORATION (*WINCORP*), **either for itself or as agent for and on behalf of certain INVESTORS** who have placed/invested funds with *WINCORP* the principal sum of _____ (_____), Philippine Currency, on _____ with interest rate of _____ percent (__%) per annum, or equivalently the Maturity Amount of _____ PESOS (_____) Philippine Currency. (emphasis added)

It is crystal clear that Power Merge, through Virata, obligated itself to pay Wincorp and those who invested through it the values stated in the Promissory Notes. The validity and due execution of the Promissory Notes were not even contested.

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[124] NEW CIVIL CODE, Article 1889: The agent shall be liable for damages if, there being a conflict between his interests and those of the principal, he should prefer his own.

[125] NEW CIVIL CODE, Article 1909: The agent is responsible not only for fraud, but also for negligence, which shall be judged with more or less rigor by the courts, according to whether the agency was or was not for a compensation.

Instead, Virata postulates that he merely executed the Promissory Notes on behalf of Power Merge as an accommodation for Wincorp, and that neither he nor Power Merge received any pecuniary benefit from the credit facility. He thus claims that he and Power Merge cannot be held liable for the Promissory Notes that were executed.

The argument is specious.

On its face, the documentary evidence on record reveals that Power Merge actually received the proceeds from the Credit Line Agreement. But even if We assume for the sake of argument that Power Merge, through Virata, is as a mere accommodation party under the Promissory Notes, liability would still attach to them in favor of the holder of the instrument for value.

In *Gonzales v. Philippine Commercial and International Bank*,[126] the Court held that an accommodation party lends his name to enable the accommodated party to obtain credit or to raise money; he receives no part of the consideration for the instrument but assumes liability to the other party or parties thereto. Prescinding from the foregoing, an accommodation party is one who meets all the following three requisites, *viz*: (1) he must be a party to the instrument, signing as maker, drawer, acceptor, or indorser; (2) he must not receive value therefor; and (3) he must sign for the purpose of lending his name or credit to some other person.[127]

The first element, that Power Merge, through Virata, executed the Promissory Notes as maker cannot be disputed. Meanwhile, petitioners would have the Court hypothetically admit that they did not receive the proceeds from the drawdowns, in satisfaction of the second requisite. And lastly, this was allegedly done for the purpose of lending its name to conceal Wincorp's direct borrowing from its clients.

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[126] G.R. No. 180257, February 23, 2011, 644 SCRA 180, 192.

[127] *Bautista v. Auto Plus Traders, Incorporated*, G.R. No. 166405, August 6, 2008, 561 SCRA 223, 230.

In gratia argumenti that the above elements are established facts herein, liability will still attach to the accommodation parties pursuant to Sec. 29 of the Negotiable Instruments Law. The provision states:

> **Sec. 29. Liability of accommodation party.** – An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person**. Such a person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of taking the instrument, knew him to be only an accommodation party**. (emphasis added)

The basis for the liability under Section 29 is the underlying relation between the accommodated party and the accommodation party, which is one of principal and surety.[128] In a contract of surety, a person binds himself solidarily liable with the principal debtor of an obligation.[129] But though a suretyship agreement is, in essence, accessory or collateral to a valid principal obligation, the surety's liability to the creditor is immediate, primary, and absolute. He is directly and equally bound with the principal.[130]

In a similar fashion, the accommodation party *cum* surety in a negotiable instrument is deemed an original promisor and debtor from the beginning; he is considered in law as the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter since their liabilities are so interwoven as to be inseparable.[131] It is beyond cavil then that Power Merge and Virata can be held liable for the amounts stated in the Promissory Notes. Consequently, they are also liable for the assignment to Ng Wee of portions thereof as embodied in the Confirmation Advices.

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[128] *Aglibot v. Santia,* G.R. No. 185945, December 5, 2012, 687 SCRA 283, 297-298.

[129] NEW CIVIL CODE, Article 2047.

[130] *Ang v. Associated Bank*, G.R. No. 146511, September 5, 2007, 532 SCRA 244.

[131] *Id*. at 273-274.

b. The Side Agreements do not bind third parties thereto

Virata and Power Merge cannot invoke the Side Agreements as bases for its alleged exemption from liability to Ng Wee, simply because the latter was not privy to the covenants. Ng Wee cannot be charged with knowing the existence of the Side Agreements, let alone ratify the same.

The basic principle of relativity of contracts is that, as a general rule, contracts take effect only between the parties, their assigns and heirs.[132] The sound reason for the exclusion of non-parties to an agreement is the absence of a *vinculum* or juridical tie which is the efficient cause for the establishment of an obligation.[133]

Needless to state, Ng Wee does not fall under any of the classes that are deemed privy as far as the Side Agreements are concerned. At most, he only authorized Wincorp, through the SPAs, to *"agree, deliver, sign, [and] execute loan documents"* relative to the borrowing of Power Merge. This authority does not extend to excusing Power Merge from paying its obligations under the Promissory Notes that it issued for the benefit of the investors. Thus, even if we were to assume that the execution of the Side Agreements was with the imprimatur of the Wincorp board of directors, Power Merge would still have been able to determine, based on a cursory reading of the SPAs, that Wincorp's acquiescence to the Side Agreements is an *ultra vires* act insofar as its principals, Ng Wee included, are concerned.

c. Power Merge cannot escape liability to Ng Wee under the Credit Line Agreement

That Power Merge did not directly transact with Ng Wee and the other investors does not exonerate it from civil liability,

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[132] NEW CIVIL CODE, Article 1311.

[133] *Doña Adela Export International, Inc. v. Trade and Investment Development Corporation (TIDCORP),* G.R. No. 201931, February 11, 2015, 750 SCRA 429, 448.

for its liability also finds basis on the language of the Credit Line Agreement.

To recall, Power Merge obtained a ₱2,500,000,000.00 credit facility from Wincorp, as one of the latter's corporate borrowers. Under the terms of the credit facility, Power Merge obligated itself to issue Promissory Notes in favor of Wincorp, for itself *"or on behalf of certain investors"* for each of its drawdowns. The Credit Line Agreement pertinently provides:

CREDIT LINE AGREEMENT

x x x x x x x x x

WHEREAS, the BORROWER has applied for financial accommodation/credit line from WINCORP.

WHEREAS, WINCORP by itself or on behalf of certain investors, have agreed to extend the financial accommodation/ credit line sought by the BORROWER under the terms and conditions hereunder provided.

NOW, WHEREFORE, for and in consideration of the foregoing premises, the parties hereto agreed as follows:

1. GRANT OF CREDIT FACILITY. WINCORP, **either by itself or on behalf of certain investors**, shall extend to the BORROWER a credit facility, on best efforts basis, in the amount of up to but not exceeding the equivalent sum of ONE BILLION TWO HUNDRED MILLION PESOS (₱1,200,000,000.00), Philippine Currency, upon terms and conditions embodied in this Agreement.

x x x x x x x x x

3. PROMISSORY NOTE. Subject to the availability of funds, the BORROWER may avail all or any portion of this credit facility under the terms and conditions hereunder agreed upon, and the **BORROWER shall execute in favor of WINCORP and/or the investors who have agreed to extend the credit facility to the BORROWER a Promissory Note corresponding to each drawdown to evidence its indebtedness.**

4. INTEREST RATE. **The BORROWER agrees to pay WINCORP, either by itself or on behalf of its investors,**

> **interest on the principal** amount of each availment at the rate prevailing on the date of such availment as agreed upon in the corresponding Promissory Note/s. [134] (underscoring supplied, emphasis added)

Virata and Power Merge cannot then deny knowledge that the amounts that were drawn against the credit facility may not necessarily be from Wincorp's own coffers, but may potentially be from the monies pooled by its clients, even though their identities were at that time anonymous to Power Merge. As can be gleaned, Power Merge was informed through the plain text of the Credit Line Agreement that Wincorp may indorse portions of the investment, and the corresponding interest in the Promissory Notes, to its willing clients and act on the latter's behalf. It then matters not that Power Merge and Virata never personally dealt with Ng Wee for given the setup; Ng Wee became privy to the Credit Line Agreement when he was assigned his shares in the investment, and when he expressed his conformity therewith through the Confirmation Advices.

Furthermore, it cannot escape the attention of the Court that this is not the first time for Virata to transact with Wincorp. To refresh, Virata executed a Surety Agreement to answer Hottick's drawdowns from its own credit facility with Wincorp. He is then familiar with the nature of Wincorp's primary functions, whether as a mere financial intermediary or dealer in securities as in this case, rather than its true creditor. Power Merge and Virata cannot then feign ignorance that the money they have been receiving are from the clients that Wincorp attracted to invest.

III.
Piercing the Corporate Veil

Indubitably, Wincorp and Power Merge are liable to Ng Wee for fraud and under contract, respectively. The thrust of majority of the petitioners, however, is that they cannot be held liable

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[134] *Rollo* (G.R. No. 220926), pp. 385-386.

for the business judgments of the corporations they are part of given the latter's separate juridical personalities.

G.R. No. 220926: The liabilities of Luis Juan L. Virata and UEM-MARA

a. Virata is liable for the obligations of Power Merge

Petitioner Virata reiterates his claim that piercing the corporate veil of Power Merge for the sole reason that he owns majority of its shares is improper. He adds that the Credit Line Agreements and Side Agreements were valid arm's length transactions, and that their executions were in the performance of his official capacity, which he cannot be made personally liable for in the absence of fraud, bad faith, or gross negligence on his part.

The Court rejects these arguments.

C*oncept Builders, Inc. v. NLRC* instructs that as a fundamental principle of corporation law, a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. Thus, authorities discuss that when the notion of separate juridical personality is used (1) to defeat public convenience, justify wrong, protect fraud or defend crime; (2) as a device to defeat the labor laws; or (3) when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced.[135]

The circumstances of Power Merge clearly present an alter ego case that warrants the piercing of the corporate veil.

To elucidate, case law lays down a three-pronged test to determine the application of the alter-ego theory, namely:

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[135] G.R. No. 108734, May 29, 1996, 257 SCRA 149, 157-158.

> (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
>
> (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and
>
> (3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of.[136]

In the present case, Virata not only owned majority of the Power Merge shares; he exercised complete control thereof. He is not only the company president, he also owns 374,996 out of 375,000 of its subscribed capital stock. Meanwhile, the remainder was left for the nominal incorporators of the business. The reported address of petitioner Virata and the principal office of Power Merge are even one and the same.[137] The clearest indication of all: Power Merge never operated to perform its business functions, but for the benefit of Virata. Specifically, it was merely created to fulfill his obligations under the Waiver and Quitclaim, the same obligations for his release from liability arising from Hottick's default and non-payment.

Virata would later on use his control over the Power Merge corporation in order to fulfill his obligation under the Waiver and Quitclaim. Impelled by the desire to settle the outstanding obligations of Hottick under the terms of the settlement agreement, Virata effectively allowed Power Merge to be used as Wincorp's pawn in avoiding its legal duty to pay the investors under the failed investment scheme. Pursuant to the alter ego doctrine, petitioner Virata should then be made liable for his and Power Merge's obligations.

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[136] *Id.* at 159.

[137] *Rollo* (G.R. No. 220926), p. 4 & p. 647.

b. UEM-MARA cannot be held liable

There is, however, merit in the argument that UEM-MARA cannot be held liable to respondent Ng Wee. The RTC and the CA held that the corporation ought to be held solidarily liable with the other petitioners *"in order that justice can reach the illegal proceeds from the defrauded investments of [Ng Wee] under the Power Merge account."*[138] According to the trial court, Virata laundered the proceeds of the Power Merge borrowings and stashed them in UEM-MARA to prevent detection and discovery and hence, UEM-MARA should likewise be held solidarily liable.

We disagree.

UEM-MARA is an entity distinct and separate from Power Merge, and it was not established that it was guilty in perpetrating fraud against the investors. It was a non-party to the *"sans recourse"* transactions, the Credit Line Agreement, the Side Agreements, the Promissory Notes, the Confirmation Advices, and to the other transactions that involved Wincorp, Power Merge, and Ng Wee. There is then no reason to involve UEM-MARA in the fray. Otherwise stated, respondent Ng Wee has no cause of action against UEM-MARA. UEM-MARA should not have been impleaded in this case.

A cause of action is the act or omission by which a party violates a right of another.[139] The essential elements of a cause of action are (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.[140]

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[138] *Id*. at 189.

[139] RULES OF COURT, Rule 2, Sec. 2.

[140] *Soloil, Inc. v. Philippine Coconut Authority*, G.R. No. 174806, August 11, 2010, 628 SCRA 185, 190.

The third requisite is severely lacking in this case. Respondent Ng Wee cannot point to a specific wrong committed by UEM-MARA against him in relation to his investments in Wincorp, other than being the object of Wincorp's desires. He merely alleged that the proceeds of the Power Merge loan was used by Virata in order to acquire interests in UEM-MARA, but this does not, however, constitute a valid cause of action against the company even if we were to assume the allegation to be true. It would indeed be a giant leap in logic to say that being Wincorp's objective automatically makes UEM-MARA a party to the fraud. UEM-Mara's involvement in this case is merely incidental, not direct.

G.R No. 221218: The liability of Anthony Reyes

To restate, basic is the rule that a corporation is invested by law with a personality separate and distinct from that of the persons composing it as well as from that of any other legal entity to which it may be related. Following this, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities, and said personalities are generally not held personally liable thereon.[141]

By way of exception, a corporate director, a trustee or an officer, may be held solidarily liable with the corporation under Sec. 31 of the Corporation Code which reads:

Section 31. *Liability of directors, trustees or officers.*— **Directors or trustees** who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

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[141] *Heirs of Fe Tan Uy vs. International Exchange Bank,* G.R. No. 166282, February 13, 2013, 690 SCRA 519.

When a director, trustee or officer attempts to acquire or acquire, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation. (emphasis added)

Petitioner Reyes relies on the black letter law in his bid for absolution. He claims that he is not a director of Wincorp, but its Vice-President for Operations. Thus, he can only be held liable under the second paragraph of the provision. As can be read, officers are only precluded from acquiring or attempting to acquire any interest in conflict with that of the company he is serving. There being no allegation of him being guilty of conflict of interest, Reyes argues that he cannot be held liable under the provision.

The argument is bereft of merit.

Ascribing liability to a corporate director, trustee, or officer by invoking Sec. 31 of the Corporation Code is distinct from the remedial concept of piercing the corporate veil. While Sec. 31 expressly lays down specific instances wherein the mentioned personalities can be held liable in their personal capacities, the doctrine of piercing the corporate veil, on the other hand, is an equitable remedy resorted to only when the corporate fiction is used, among others, to defeat public convenience, justify wrong, protect fraud or defend a crime.[142]

Applying the doctrine, petitioner cannot escape liability by claiming that he was merely performing his function as Vice-President for Operations and was duly authorized to sign the Side Agreements in Wincorp's behalf. The Credit Line Agreement is patently contradictory if not irreconcilable with the Side Agreements, which he executed on the same day as the representative for Wincorp. The execution of the Side

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[142] *Sanchez v. Republic,* G.R. No. 172885, October 9, 2009, 603 SCRA 229.

Agreements was the precursor to the fraud. Taken with Wincorp's subsequent offer to its clients of the *"sans recourse"* transactions allegedly secured by the Promissory Notes, it is a clear indicia of fraud for which Reyes must be held accountable.

G.R. No. 221135: The liabilities of Cua and the Cualopings

On the other hand, the liabilities of Cua and the Cualopings are more straightforward. They admit of approving the Credit Line Agreement and its subsequent Amendment during the special meetings of the Wincorp board of directors, but interpose the defense that they did so because the screening committee found the application to be above board. They deny knowledge of the Side Agreements and of Power Merge's inability to pay.

We are not persuaded.

Cua and the Cualopings cannot effectively distance themselves from liability by raising the defenses they did. As ratiocinated by the CA:

> Such submission creates a loophole, especially in this age of compartmentalization, that would create a nearly fool-proof scheme whereby well-organized enterprises can evade liability for financial fraud. Behind the veil of compartmentalized departments, such enterprise could induce the investing public to invest in a corporation which is financially unable to pay with promises of definite returns on investment. If we follow the reasoning of defendants-appellants, we allow the masterminds and profiteers from the scheme to take the money and run without fear of liability from law simply because the defrauded investor would be hard-pressed to identify or pinpoint from among the various departments of a corporation which directly enticed him to part with his money.[143]

Petitioners Cua and the Cualopings bewail that the above-quoted statement is overarching, sweeping, and bereft of legal or factual basis. But as per the records, the totality of circumstances in this case proves that they are either complicit

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[143] *Rollo*, p. 120.

to the fraud, or at the very least guilty of gross negligence, as regards the "*sans recourse"* transactions from the Power Merge account.

The board of directors is expected to be more than mere rubber stamps of the corporation and its subordinate departments. It wields all corporate powers bestowed by the Corporation Code, including the control over its properties and the conduct of its business.[144] Being stewards of the company, the board is primarily charged with protecting the assets of the corporation in behalf of its stakeholders.

Cua and the Cualopings failed to observe this fiduciary duty when they assented to extending a credit line facility to Power Merge. In PED Case No. 20-2378, the SEC discovered that Power Merge is actually Wincorp's largest borrower at about 30% of the total borrowings.[145] It was then incumbent upon the

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[144] BATAS PAMBANSA BLG. 68, Section 23:

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

[145] *Rollo* (G.R. No. 220926), p. 1046:

Borrower	**Amount in ₱**
ACL DEVELOPMENT CORPORATION	547,767,109.56
AZKCON CONSTRUCTION	93,656,152.60
CHEVY CHASE	56,978,251.17
EBECAP HOLDINGS	801,394,335.75
EBECOM HOLDINGS	52,211,422.98
EBEDEV, INC.	464,483,827.47
GLOBAL EQUITIES	11,033,800.70
GOLDEN ERA HOLDINGS, INC.	256,402,882.46
LUIS JUAN L. VIRATA	2,003,004.51
MONTEVERDE HOLDINGS, INC.	138,395,178.36

board of directors to have been more circumspect in approving its credit line facility, and should have made an independent evaluation of Power Merge's application before agreeing to expose it to a ₱2,500,000,00.00 risk.

Had it fulfilled its fiduciary duty, the obvious warning signs would have cautioned it from approving the loan in haste. To recapitulate: (1) Power Merge has only been in existence for two years when it was granted a credit facility; (2) Power Merge was thinly capitalized with only ₱37,500,000.00 subscribed capital; (3) Power Merge was not an ongoing concern since it never secured the necessary permits and licenses to conduct business, it never engaged in any lucrative business, and it did not file the necessary reports with the SEC; and (4) no security other than its Promissory Notes was demanded by Wincorp or was furnished by Power Merge in relation to the latter's drawdowns.

It cannot also be ignored that prior to Power Merge's application for a credit facility, its controller Virata had already transacted with Wincorp. A perusal of his records with the company would have revealed that he was a surety for the Hottick obligations that were still unpaid at that time. This means that at the time the Credit Line Agreement was executed on February

PEARLBANK SECURITIES, INC.	464,829,187.32
PHILMEDIA POST	856,785.18
POWER MERGE CORPORATION	2,500,000,000.00
STA. LUCIA REALTY & DEVELOPMENT, INC.	718,039,235.09
STRAIGHTLINE INTERNATIONAL	132,806,766.18
SUN-O-TELECOM	40,000,000.00
THING ON DEVELOPMENT	183,221,246.80
TIME EXPONENTS	1,200,000.00
UNIOIL RESOURCES A& HOLDINGS CO.	40,927,260.92
WETMONT MAMBURAO BEACH RESORT	14,913,454.79
WINCORP SECURITIES	1,500,000.00
ZIPPORAH REALTY HOLDINGS	289,795,316.86
TOTAL	**₱6,812,415,218.70**

15, 1999, Virata still had direct obligations to Wincorp under the Hottick account. But instead of impleading him in the collection suit against Hottick, Wincorp's board of directors effectively released Virata from liability, and, ironically, granted him a credit facility in the amount of ₱1,300,000,000.00 on the very same day.

This only goes to show that even if Cua and the Cualopings are not guilty of fraud, they would nevertheless still be liable for gross negligence[146] in managing the affairs of the company, to the prejudice of its clients and stakeholders. Under such circumstances, it becomes immaterial whether or not they approved of the Side Agreements or authorized Reyes to sign the same since this could have all been avoided if they were vigilant enough to disapprove the Power Merge credit application. Neither can the business judgment rule[147] apply herein for it is elementary in corporation law that the doctrine admits of exceptions: bad faith being one of them, gross negligence, another.[148] The CA then correctly held petitioners Cua and the Cualopings liable to respondent Ng Wee in their personal capacity.

G.R. No. 221109: The liability of Manuel Estrella

To refresh, Estrella echoes the defense of Tankiansee, who was exempted from liability by the trial court. He claims that just like Tankiansee, he was not present during Wincorp's special board meetings where Power Merge's credit line was approved

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[146] Gross negligence is characterized by want of even slight care, 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 consequences insofar as other persons may be affected. See *LBC Express-Metro Manila, Inc. v. Mateo*, G.R. No. 168215, June 9, 2009, 589 SCRA 33.

[147] Under the "business judgment rule," the courts are barred from intruding into the business judgments of the corporation, when the same are made in good faith.

[148] *Republic Telecommunications Holdings, Inc. v. Court of Appeals,* G.R. No. 135074, January 29, 1999, 302 SCRA 403.

and subsequently amended. Both also claimed that they protested and opposed the board's actions. But despite the parallels in their defenses, the trial court was unconvinced that Estrella should be released from liability. Estrella appealed to the CA, but the adverse ruling was sustained.

We agree with the findings of the courts *a quo*.

The minutes of the February 9, 1999 and March 11, 1999 Wincorp Special Board Meetings were considered as damning evidence against Estrella, just as they were for Cua and the Cualopings. Although they were said to be unreliable insofar as Tankiansee is concerned, the trial court rightly distinguished between the circumstances of Estrella and Tankiansee to justify holding Estrella liable.

For perspective, Tankiansee was exempted from liability upon establishing that it was physically impossible for him to have participated in the said meetings since his immigration records clearly show that he was outside the country during those specific dates. In contrast, no similar evidence of impossibility was ever offered by Estrella to support his position that he and Tankiansee are similarly situated.

Estrella submitted his departure records proving that he had left the country in July 1999 and returned only in February of 2000. Be that as it may, this is undoubtedly insufficient to establish his defense that he was not present during the February 9, 1999 and March 11, 1999 board meetings. Instead, the minutes clearly state that Estrella was present during the meetings when the body approved the grant of a credit line facility to Power Merge. Estrella would even admit being present during the February 9, 1999 meeting, but attempted to evade responsibility by claiming that he left the meeting before the "other matters," including Power Merge's application, could have been discussed.

Unfortunately, no concrete evidence was ever offered to confirm Estrella's alibi. In both special meetings scheduled, Estrella averred that he accompanied his wife to a hospital for her cancer screening and for dialogues on possible treatments. However, this claim was never corroborated by any evidence coming from the hospital or from his wife's physicians. Aside

from his mere say-so, no other credible evidence was presented to substantiate his claim. Thus, the Court is not inclined to lend credence to Estrella's self-serving denials.

Neither can petitioner Estrella be permitted to raise the defense that he is a mere nominee of John Anthony Espiritu, the then chairman of the Wincorp board of directors. It is of no moment that he only had one nominal share in the corporation, which he did not even pay for, just as it is inconsequential whether or not Estrella had been receiving compensation or honoraria for attending the meetings of the board.

The practice of installing undiscerning directors cannot be tolerated, let alone allowed to perpetuate. This must be curbed by holding accountable those who fraudulently and negligently perform their duties as corporate directors, regardless of the accident by which they acquired their respective positions.

In this case, the fact remains that petitioner Estrella accepted the directorship in the Wincorp board, along with the obligations attached to the position, without question or qualification. The fiduciary duty of a company director cannot conveniently be separated from the position he occupies on the trifling argument that no monetary benefit was being derived therefrom. The gratuitous performance of his duties and functions is not sufficient justification to do a poor job at steering the company away from foreseeable pitfalls and perils. The careless management of corporate affairs, in itself, amounts to a betrayal of the trust reposed by the corporate investors, clients, and stakeholders, regardless of whether or not the board or its individual members are being paid. The RTC and the CA, therefore, correctly disregarded the defense of Estrella that he is a mere nominee.

IV.

Effect of the Side Agreements

Effect of the Side Agreements on the solidary liability of the petitioners

The courts *a quo* dismissed all counterclaims and cross-claims lodged by petitioners against Ng Wee and each other. However,

the Court finds reason to grant the cross-claim of Virata that he be reimbursed by his co-parties of the amount that he and UEM-MARA may be adjudged to be liable for.[149]

The reinstatement and grant of the cross-claim is anchored on the stipulation under the Side Agreements. Worthy of note is that neither the RTC nor the CA nullified the contract, despite their acerbic language towards the same. They merely held that the agreements cannot be used as protection against liability for repayment to the investors, without more. The Side Agreements even served as basis for the courts *a quo* to declare that the confirmation advices being issued to the investors were worthless and uncollectible credit instruments, and to label the *"sans recourse"* transactions as without any economically-valuable object.

As such, the Side Agreements remain to be binding and enforceable on the parties thereto: Wincorp, Virata, and Power Merge. We give credence to the argument of Virata that, as per the language of the Side Agreements themselves, what transpired was an arm's length transaction, wherein in exchange for Wincorp assuming liability for Power Merge's drawdowns and promissory notes, Power Merge obligated itself *"to return and deliver to Wincorp all the rights, title and interests conveyed by Wincorp hereby to [Power Merge] over the Hottick obligations."* It appears then that there is ample consideration for the release.

Indeed, the Court must not only look at the *"sans recourse"* transactions in isolation, but also consider the underlying transactions and ascertain the true intention of the contracting parties. On this score, a narration on the relationship between Hottick, Wincorp, and Power Merge bears reiteration:

On February 21, 1997, Hottick, through a credit facility, borrowed money from Wincorp in the amount of ₱1,500,908,026.00, as evidenced by a Promissory Note issued by Hottick in favor of the investment hosue, and guaranteed by Halim Saad and petitioner Virata. When the Asian financial

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[149] *Rollo* (G.R. No. 220926), p. 536.

crisis struck, Hottick experienced financial distress and was unable to pay its obligations. This prompted Wincorp to file a collection case against Hottick and Halim Saad.

Virata was not impleaded in the collection suit, and he would turn out to be instrumental in brokering a settlement agreement between Wincorp and Hottick. But in exchange for his exclusion in the proceedings, he executed a Memorandum of Agreement under which he assumes the obligation to transfer forty percent (40%) of UPDI's outstanding shares and forty percent (40%) of UPDI's interest in the tollway project to Wincorp, among others. It would be clarified in the December 1, 1999 Waiver and Quitclaim, however, that the equity transfers would be Virata's only obligation under the Memorandum of Agreement. Said Waiver and Quitclaim provides:

> This is to confirm that notwithstanding the terms of the Memorandum of Agreement dated July 27, 1999 between our company and yourself, our company hereby irrevocably and unconditionally releases, waives and agrees to forever hold you, your heirs and assigns free and harmless from and against any claim, obligation or liability arising out of or in connection with the Memorandum of Agreement; provided, however, that your undertaking to cause the assignment, transfer and delivery to our company of at least forty percent (40%) of the equity of UEM Development Philippines, Inc. ("UPDI") and at least forty percent (40%) of the interest/share of UPDI in the Manila Cavite Express Tollway Project (the "Project") shall have been fully complied with. **We hereby reiterate that, except for your aforesaid obligation to assign, transfer and deliver to our company at least forty (40%) of UPDI's outstanding shares and at least forty percent (40%) of UPDI's interest/share in the Project, the Memorandum of Agreement is a mere accommodation on your part and does not give rise to any legal rights or consequences in our company's favour as against yourself, your heirs or assigns.**[150] (emphasis added)

As can be gleaned, the significant portions of the Waiver and Quitclaim mirror the content of the Side Agreements. But based on the peculiar transactions between the players herein, the similarity does not end with the content, but extends to the

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[150] *Rollo* (G.R. No. 220926), p. 481.

intent. Reproducing the salient provisions of the Side Agreements:

> WHEREAS, Powermerge has entered into the Credit Line Agreement with Wincorp as an accommodation in order to allow Wincorp to hold Powermerge paper instead of the obligations of Hottick which are right now held by Wincorp.
>
> x x x x x x x x x
>
> 1. Powermerge hereby agrees to execute promissory notes in the aggregate principal sum of ₱1,200,000,000.00 in favor of Wincorp and in exchange therefore, Wincorp hereby assigns, transfers, and conveys to Powermerge all of its rights, titles and interest by way of a sub-participation over the promissory notes and other obligations executed by Hottick in favor of Wincorp; Provided however **that the only obligation of Powermerge to Wincorp shall be to return and deliver to Wincorp all the rights, title and interests conveyed by Wincorp hereby to Powermerge over the Hottick obligations. Powermerge shall have no obligation to pay under its promissory notes executed in favor of Wincorp** but shall be obligated merely to return whatever may have received from Wincorp pursuant to this agreement.
>
> x x x x x x x x x
>
> 3. Wincorp confirms and agrees that **this accommodation** being entered into by the parties is **not intended to create a payment obligation on the part of Powermerge**.[151] (emphasis added)

The above documents, besides the non-suit against Virata, readily convey that the parties did not intend to create a payment obligation on the part of Power Merge; the latter was merely used as a conduit by Wincorp for the acquisition of equity shares. They also confirm that Power Merge was just a mere accommodation party to the issuance of the Promissory Notes that Wincorp sold to its clients, consistent with the findings of the courts *a quo* that Wincorp borrowed the funds for its own

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[151] *Id*. at 392.

account. Though these circumstances do not exculpate Power Merge and Virata from paying a holder for value under the negotiable instruments they issued, they nevertheless entitle Power Merge and Virata, as surety, to indemnification by way of reimbursement from Wincorp and its liable directors and officers, the main debtors, for any amount stated in the note that petitioners Virata and Power Merge would be compelled to defray, pursuant to Art. 2066 of the New Civil Code.[152]

V.

Award of Damages

Beyond doubt, Ng Wee is entitled to recover the investments he infused in Wincorp. This was never the central issue in this case. Other than raising Ng Wee's alleged failure to state a cause of action in his complaint, none of the petitioners questioned his right to be compensated for the losses he suffered in the fraudulent investment scheme. Having ascertained the extent of the liabilities of the petitioners, the Court will now determine the amount to be awarded to Ng Wee.

The trial and appellate court correctly held that Ng Wee should first be recompensed for the maturity amount of the investments he made in Power Merge through Wincorp, which totalled ₱213,290,410.36. Pursuant to our ruling in the seminal case of *Nacar v. Gallery Frames*,[153] the amount shall earn interest at twelve percent (12%) per annum from the date of filing of the

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[152] Article 2066**.** The guarantor who pays for a debtor must be indemnified by the latter.

The indemnity comprises:

(1) The total amount of the debt;

(2) The legal interests thereon from the time the payment was made known to the debtor, even though it did not earn interest for the creditor;

(3) The expenses incurred by the guarantor after having notified the debtor that payment had been demanded of him;

(4) Damages, if they are due.

[153] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

Complaint on October 19, 2000 until June 30, 2013, and six percent (6%) from July 1, 2013 until full satisfaction.

Moreover, the Credit Line Agreement provides for a stipulation of three percent (3%) additional monthly interest as penalty, twenty percent (20%) interest of the entire amount due as liquidated damages, and twenty-five percent (25%) of the entire amount due as attorney's fees. These additional rates of interest are likewise reflected in the promissory notes issued by Power Merge for which the liable petitioners can be held responsible. However, unlike the trial court and the CA, the Court finds that these contractual stipulations cannot fully be imposed.

The freedom to contract is not absolute. And one of the more general restrictions thereon is enshrined in Article 1306 of the Civil Code which precludes the contracting parties from establishing stipulations, clauses, terms, and conditions that are contrary to law, morals, good customs, public order, and public policy. In this jurisdiction, the Court has never shied away from striking down iniquitous and unconscionable interest rates for failing to meet this standard.[154] We see no reason to depart from the practice in this case.

That said, the Court herein refuses to impose the three percent (3%) additional monthly penalty interest, and instead affirms the trial and appellate court's nullification of the same. Such exorbitant interest rate is void for being contrary to morals, if not against the law.[155] Being a void stipulation, the monthly penalty interest is deemed inexistent from the beginning.[156] In its stead, the imposition of legal interest pursuant to *Nacar* is deemed sufficient.

Anent the twenty percent (20%) liquidated damages, the Court sees the need to reduce the amount. Liquidated damages are

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[154] *Silos v. Philippine National Bank*, G.R. No. 181045, July 2, 2014, 728 SCRA 617.

[155] *Chua v. Timan*, G.R. No. 170452, August 13, 2008, 562 SCRA 146.

[156] *Castro v. Tan,* G.R. No. 168940, November 24, 2009, 605 SCRA 231.

those agreed upon by the parties to a contract, to be paid in case of breach thereof.[157] Although it can conclusively be deduced from the contracts that the parties intended to impose such additional charges, the Court nevertheless, by express provision in Article 2227 of the New Civil Code, has the right to temper them if they are unconscionable.[158] Considering that the base amount of the indebtedness in this case is by itself already staggering, imposing an additional twenty percent (20%) interest against the persons liable would prove to be too cumbersome. The Court therefore sees the need to reduce the amount to only ten percent (10%) of the total maturity value of Ng Wee's investment in Power Merge.

The same downward modification is in order as regards the award of attorney's fees. Although Ng Wee finds justification for the entitlement to the award under Article 2208 of the New Civil Code,[159] the same provision mandates that *"in all cases, the attorney's fees and expenses of litigation must be reasonable."* Just as We have reduced the rate for liquidated damages, the Court likewise tempers the stipulated rate of attorney's fees to five percent (5%) of the total amount due on Ng Wee's investment.

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[157] Article 2226, New Civil Code.

[158] Article 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

[159] Article 2208**.** In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(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;

x x x x x x x x x

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

x x x x x x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

Finally, the Court sees no cogent reason to disturb the RTC's award of moral damages in favor of Ng Wee in the amount of ₱100,000.00, as affirmed by the appellate court. Discussed in the following wise in *Philippine Savings Bank v. Sps. Mañalac, Jr.* is the concept of moral damages:

> Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused. Although incapable of pecuniary estimation, the amount must somehow be proportional to and in approximation of the suffering inflicted. **Moral damages are not punitive in nature and were never intended to enrich the claimant at the expense of the defendant.** There is no hard-and-fast rule in determining what would be a fair and reasonable amount of moral damages, since each case must be governed by its own peculiar facts. **Trial courts are given discretion in determining the amount, with the limitation that it should not be palpably and scandalously excessive.** Indeed, it must be commensurate to the loss or injury suffered. [160] (emphasis added)

Ng Wee's claim for moral damages in the amount of ₱5,000,000.00 is indeed too excessive, even with the principal amount in mind. To reiterate, moral damages were never meant to enrich the claimant. The court therefore upholds the RTC and the CA's grant of the reduced amount of ₱100,000.00.

Finally, the judgment of liability shall earn additional six percent (6%) interest reckoned from finality, also pursuant to the *Nacar* ruling.

WHEREFORE, premises considered, the Court resolves:

1. To **PARTIALLY GRANT** the Petition for Review on Certiorari of Luis Juan L. Virata and UEM-MARA, docketed as G.R. No. 220926;
2. To **DENY** the Petition for Review on Certiorari of Westmont Investment Corporation, docketed as G.R. No. 221058;

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[160] G.R. No. 145441, April 26, 2005, 457 SCRA 203, 221.

3. To **DENY** the Petition for Review of Manuel Estrella, docketed as G.R. No. 221109;

4. To **DENY** the Petition for Review on Certiorari of Simeon Cua, Henry Cualoping, and Vicente Cualoping, docketed as G.R No. 221135; and

5. To **DENY** the Petition for Review on Certiorari of Anthony Reyes, docketed as G.R. No. 221218.

The September 30, 2014 Decision and October 14, 2015 Resolution of the Court of Appeals in CA-G.R. CV. No. 97817 affirming the July 8, 2011, Decision of the Regional Trial Court, Branch 39 of Manila is hereby **AFFIRMED** with **MODIFICATION**. As modified, the dispositive portion of the trial court Decision in Civil Case No. 00-99006 shall read:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff, ordering the defendants Luis L. Virata, Westmont Investment Corporation (Wincorp), Antonio T. Ong, Anthony T. Reyes, Simeon Cua, Vicente and Henry Cualoping, Mariza Santos-Tan, and Manuel Estrella to jointly and severally pay plaintiff as follows:

1. The sum of Two Hundred Thirteen Million Two Hundred Ninety Thousand Four Hundred Ten and 36/100 Pesos (₱213,290,410.36), which is the maturity amount of plaintiff's investment with legal interest at the rate of twelve (12%) percent per annum from the date of filing of the complaint on October 19, 2000 until June 30, 2013 and six percent (6%) from July 1, 2013 until fully paid;

2. Liquidated damages equivalent to ten percent (10%) of the maturity amount, and attorney's fees equivalent to five percent (5%) of the total amount due plus legal interest at the rate of twelve (12%) percent per annum from the date of filing of the complaint until June 30, 2013 and six percent (6%) from July 1, 2013 until fully paid;

3. ₱100,000.00 as moral damages.

4. Additional interest of six percent (6%) per annum of the total monetary awards, computed from finality of judgment until full satisfaction.

5. The complaint against defendants Manuel Tankiansee and UEM-MARA Philippines Corporation is dismissed for lack of merit.

The cross claim of Luis Juan L. Virata is hereby GRANTED. Westmont Investment Corporation (Wincorp), Antonio T. Ong, Anthony T. Reyes, Simeon Cua, Vicente and Henry Cualoping, Mariza Santos-Tan, and Manuel Estrella are hereby ordered jointly and severally liable to pay and reimburse Luis Juan L. Virata for any payment or contribution he (Luis Juan L. Virata) may make or be compelled to make to satisfy the amount due to plaintiff Alejandro Ng Wee. All other counterclaims against Alejandro Ng Wee and cross-claims by the defendants as against each other are dismissed for lack of merit.

Cost against the defendants, except defendants Manuel Tankiansee and UEM-MARA Philippines Corporation.

SO ORDERED.

Bersamin, Reyes, Jardeleza, and *Tijam, JJ.,* concur.

THIRD DIVISION

[G.R. No. 223138. July 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICKY PRIMAVERA *y* REMODO**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.— [F]or a successful prosecution of rape, the following elements must be proved beyond reasonable doubt, to wit: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished: (a) through the use of force and intimidation, or (b) when the victim is deprived of

reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S CONCLUSION THEREON IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT, AND AT TIMES EVEN FINALITY.— Due to its intimate nature, rape is usually a crime bereft of witnesses, and more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. For this matter, this Court has always adhered to the rule that unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case, the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality. This rule is even more stringently applied if the appellate court has concurred with the trial court.

3. ID.; ID.; ID.; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH.— Time and again, this Court held that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. What is merely required in establishing rape through testimonial evidence is that the victim be categorical, straightforward, spontaneous and frank in her statements about the incident of rape.

4. CRIMINAL LAW; REVISED PENAL CODE; RAPE; MAY BE COMMITTED EVEN IN PLACES WHERE PEOPLE CONGREGATE, IN PARKS, ALONG THE ROADSIDE, WITHIN SCHOOL PREMISES, INSIDE A HOUSE WHERE THERE ARE OTHER OCCUPANTS, AND EVEN IN THE SAME ROOM WHERE OTHER MEMBERS OF THE FAMILY ARE ALSO SLEEPING.— [T]he close proximity of relatives at the scene of the rape does not negate

the commission of the crime, contrary to the accused-appellant's argument. It has always been held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place.

5. ID.; ID.; ID.; NOT NEGATED BY THE ABSENCE OF LACERATIONS OR INJURIES IN THE VICTIM'S SEXUAL ORGAN.— This Court has consistently ruled that the presence of lacerations or injuries in the victim's sexual organ is not necessary to prove the crime of rape and its absence does not negate the fact of rape. In fact, a medical report is not indispensable in a prosecution of rape. What is essential is that AAA's testimony meets the test of credibility, and that is sufficient to convict the accused-appellant. Besides, Dr. Odiamar, whose expertise and competence to testify on the matter was admitted by the defense, explained that the opening or the orifice of the hymen may be small or big. The orifice of AAA's hymen was found to be 3.0 cm in diameter, or a little more than one inch. With this diameter, according to the doctor, the penetration or entrance of a fully erect Filipino penis can be allowed without producing laceration or without producing injury to the hymen. It is thus possible that rape be consummated while the hymen remains intact.

6. REMEDIAL LAW; EVIDENCE; ALIBI; WHEN TO PROSPER AS A DEFENSE.— For the defense of *alibi* to prosper, the accused-appellant must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission. Clearly, that is not the case herein.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *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. 06306, sustaining the conviction of Ricky Primavera *y* Remodo (accused-appellant) for the crime of Rape, held by the Regional Trial Court (RTC), in San Jose, Camarines Sur, Branch 58, in its Decision[2] dated June 5, 2013 in Criminal Case No. T-2949.

The Facts

Accused-appellant was charged with rape in an Information, the accusatory portion of which reads as follows:

"That on or about 2:00 o'clock in the morning of November 17, 2005, in barangay Sta. Maria, Lagonoy, Camarines Sur, Philippines and within the jurisdiction of [the] Honorable Court, the said accused, with intent to lie, by means of force, intimidation and influence, did then and there willfully, unlawfully and feloniously lie and succeeded in having carnal knowledge with one AAA,[3] a minor, 16 years old, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[4]

Upon arraignment, accused-appellant pleaded not guilty to the charge. Pre-trial, and thereafter, trial ensued.

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[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Fernanda Lampas Peralta and Ramon Paul L. Hernando concurring; *rollo*, pp. 2-27.

[2] Penned by Presiding Judge Ma. Angela Acompañado-Arroyo; CA *rollo*, pp. 46-57.

[3] 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).

[4] *Rollo*, p. 3.

During trial, the prosecution presented the following witnesses, to wit: AAA; BBB, AAA's mother; Lagonoy, Camarines Sur Municipal Health Officer Dr. Ramon Odiamar (Dr. Odiamar); and National Bureau of Investigation (NBI) Regional Office, Naga City Special Investigator Rogelio G. Intia (Intia).

AAA testified that around 2:00 a.m. of November 17, 2005, she was sleeping alone in their living room while BBB and her siblings were sleeping in their store adjacent to their living room. She was suddenly awakened by the voice of accused-appellant, who was their neighbor, telling her not to make any noise, otherwise he will kill her with a gun. Accused-appellant also told AAA that he has been wanting her and her elder sister but the latter already got married. He also told AAA that he will bring her to hell. He recognized accused-appellant as the latter turned on a flashlight as he wanted to see her face. AAA tried to reach for the xylophone and flat iron beside her to hit him with the same but the accused-appellant was able to stop her and instead, strangled her with the cord of the flat iron.[5]

Accused-appellant then proceeded to kiss her breasts and bite her nipples. He also managed to take off his and AAA's shorts/pants and underwears, open AAA's legs, insert his penis into AAA's vagina, and make push and pull movements. Thereafter, accused-appellant played with AAA's breast and vagina.[6] After the sexual abuse, accused-appellant pulled AAA's hair, made her sit on a chair, and threatened to kill her, BBB, and her siblings if she tells anyone about the incident.[7]

That morning, AAA went to school and told her cousin about the abuse. When she got home that day, she saw accused-appellant talking to BBB, asking if she found a cap in their house. Upon hearing this, AAA went to their living room where accused-appellant raped her and found the cap that accused-appellant was looking for and kept the same.[8]

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

[6] *Id*.

[7] *Id*.

[8] *Id*.

That evening, AAA's grandmother came to their house and told BBB that AAA was raped. Apparently, her cousin told her grandmother about it. BBB then confronted AAA and the latter confessed that accused-appellant indeed raped her. They immediately proceeded to the municipal police station to report the incident. The family, however, decided to file the case directly with the NBI. AAA was then subjected to a medical examination.[9]

AAA's testimony was corroborated by BBB's testimony on material points, to wit: AAA's age at the time of the incident; that accused-appellant asked her about his lost cap that morning; that AAA's grandmother told her about the abuse; and that she brought AAA to the police station and NBI to report the incident and file a complaint.

Dr. Odiamar testified to interpret the report prepared and issued by Dr. Raoul Alcantara of the NBI as regards AAA's medical examination. No injury was found on AAA's genital. AAA's hymen was found to be intact. AAA's hymenal orifice was found to be 3.0 centimeters in diameter, which allows complete penetration of an average-sized adult Filipino male organ in full erection without producing hymenal injury.[10]

For its part, the defense presented the testimonies of the accused-appellant, Ronnie Capuz (Capuz) and Virgilio Rebuya (Rebuya).

The accused-appellant denied the accusation against him. He testified that he has known AAA for a long time as he and AAA's parents were close to each other. He further testified that AAA had once requested him to teach her how to drive a motorcycle to which he acceded. She also asked him one time to fetch her from an outing. BBB also used to borrow money from him but the last time she did, she asked for PhP 10,000 and he was not able to lend her because he also needed money at that time. Because of this, BBB got mad and threatened him

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

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

that he will "find what he is looking for." According to the accused-appellant, this is the reason why he was charged with rape. He also interposed an *alibi*, saying that at the time of the alleged incident, he was at home sleeping with his children.[11]

Capuz testified that on the night of November 16, 2005 until about 5:00 a.m. of the following day, he was at the billiard hall in front of AAA's house. He averred that he saw accused-appellant pass by at around 7:30 p.m. to collect *jueteng* bets. He never saw accused-appellant thereafter.[12]

Rebuya testified that he frequently saw accused-appellant and AAA riding the former's motorcycle. He also saw AAA and BBB frequent accused-appellant's house and when he asked the accused-appellant about it, the latter responded that BBB borrows money from him. Rebuya further testified as to the proximity of accused-appellant's house to that of AAA's.[13]

The RTC Ruling

On June 5, 2013, the RTC, giving more weight to AAA's positive testimony than accused-appellant's *alibi* and denial, found the latter guilty beyond reasonable doubt of the crime of rape, thus:

> WHEREFORE, all the foregoing considered, accused Ricky Primavera is hereby found GUILTY BEYOND REASONABLE DOUBT of the felony of RAPE defined and penalized under Article[s] 266-A and 266-B of the Revised Penal Code as amended by RA 8353 and he is hereby sentenced to suffer the penalty of Reclusion Perpetua. He is likewise ordered to pay the private complainant (AAA) the amount of Php 50,000.00 as moral damages and Php 50,000.00 as civil indemnity.
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> SO ORDERED.[14]

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[11] *Id*. at 8.

[12] *Id*. at 9.

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

[14] CA *rollo*, pp. 56-57.

The CA Ruling

The CA upheld the conviction but modified the monetary awards as follows:

> **WHEREFORE**, in view of the foregoing premises, the instant appeal is hereby **DENIED**. The Decision dated June 5, 2013 of the Regional Trial Court of San Jose, Camarines Sur, Branch 58 is hereby **AFFIRMED with MODIFICATION**, that is, accused-appellant Ricky Primavera y Remodo is found **GUILTY** beyond reasonable doubt of the crime of Rape defined and penalized under Article[s] 266-A and 266-B of the Revised Penal Code as amended by RA 8353 and he is hereby sentenced to suffer the penalty of *Reclusion Perpetua*. Accused-appellant is **ORDERED** to pay the victim AAA the following sums: a) Php75,000.00 as and for civil indemnity; b) Php75,000.00 as and for moral damages; c) Php30,000.00 as and for exemplary damages as provided by the Civil Code in line with recent jurisprudence plus legal interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.
>
> **SO ORDERED**.[15]

Hence, this appeal.

Both parties manifested that they will no longer file supplemental briefs since the same will just be a rehash of arguments already reflected in their respective briefs filed before the CA.

The Issue

Basically, the pivotal issue to be resolved by this Court is whether the prosecution was able to prove beyond reasonable doubt that accused-appellant is guilty of the crime of rape.

This Court's Ruling

The Court affirms the conviction of accused-appellant with modifications only as regards the monetary awards.

Articles 266-A and 266-B of the Revised Penal Code (RPC), as amended, provide:

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[15] *Rollo*, pp. 26-27.

ART. 266-A. *Rape; When and How Committed.* – Rape is Committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;
b) When the offended party is deprived of reason or otherwise unconscious;
c) By means of fraudulent machination or grave abuse of authority; and
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

ART. 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

Thus, for a successful prosecution of rape, the following elements must be proved beyond reasonable doubt, to wit: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished: (a) through the use of force and intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[16]

The RTC and the CA found that the prosecution successfully proved beyond reasonable doubt all the elements of the crime of rape and accused-appellant's guilt.

The accused-appellant, however, faults the trial court for relying upon AAA's testimony in ruling for his conviction. Accused-appellant points out the impossibility of consummating rape considering the proximity between the room of AAA's mother and siblings and the living room, where AAA was allegedly raped. Accused-appellant also insists on his *alibi* that he was home, sleeping with his children, at the time that

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[16] *People v. Ocdol, et al.*, G.R. No. 200645, August 20, 2014.

the rape allegedly occurred. The accused-appellant further points out the fact that no extragenital physical injury nor hymenal laceration was found on AAA, arguing thus that such fact *albeit* not an element of the crime, negates rape and casts reasonable doubt on the accused-appellant's guilt.

Essentially, thus, the appeal boils down to the credibility of AAA's testimony.

Due to its intimate nature, rape is usually a crime bereft of witnesses, and more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration.[17] For this matter, this Court has always adhered to the rule that unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case, the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality.[18] This rule is even more stringently applied if the appellate court has concurred with the trial court.[19]

In *People v. Sapigao, Jr.*,[20] this Court explained the rationale for the above-mentioned principle, *viz.*:

> It is well-settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record

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[17] *Id*.

[18] *People v. Ballacillo*, G.R. No. 201106, August 3, 2016.

[19] *People v. Barcella*, G.R. No. 208760, April 23, 2014.

[20] G.R. No. 178485, September 4, 2009.

so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court.[21]

After a careful review of this case, We find no cogent reason to depart from the findings of the RTC, as affirmed by the CA, including the calibration of AAA's credibility. We do not find any reason to cast aspersion on AAA's naivety and honesty to view her clear and straightforward testimony as to her horrifying experience in accused-appellant's hands with incredulity. She categorically testified that accused-appellant forced himself upon her, inserted his penis in her vagina, and threatened her not to tell anyone about it.

Time and again, this Court held that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. What is merely required in establishing rape through testimonial evidence is that the victim be categorical, straightforward, spontaneous and frank in her statements about the incident of rape.[22]

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[21] *Id*.

[22] *People v. Ballacillo*, *supra* note 18.

Accused-appellant's imputation of ill motive against BBB must be ignored. Motives such as resentment, hatred, or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.[23] More so in this case, where the improper motive is imputed against the victim's mother. Indeed, accused-appellant's allegation that the case was filed against him because BBB got mad at him for not lending her money is too flimsy and insignificant for BBB's daughter to falsely accuse him of such a serious crime and to publicly disclose that she had been raped. It is also highly inconceivable for BBB to allow her daughter to undergo such humiliation and anxiety solely for recrimination.

Also, the close proximity of relatives at the scene of the rape does not negate the commission of the crime, contrary to the accused-appellant's argument. It has always been held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping.[24] It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place.

Accused-appellant also harps on the medical report, arguing that the absence of extragenital physical injury and hymenal laceration belies the accusation of rape. This Court has consistently ruled that the presence of lacerations or injuries in the victim's sexual organ is not necessary to prove the crime of rape and its absence does not negate the fact of rape.[25] In fact, a medical report is not indispensable in a prosecution of rape.[26] What is essential is that AAA's testimony meets the

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[23] *People v. Abat,* G.R. No. 202704, April 2, 2014.

[24] *People v. Cabral*, G.R. No. 179946, December 23, 2009.

[25] *People v. Sarcia*, G.R. No. 169641, September 10, 2009.

[26] *Id*.

test of credibility, and that is sufficient to convict the accused-appellant.[27] Besides, Dr. Odiamar, whose expertise and competence to testify on the matter was admitted by the defense, explained that the opening or the orifice of the hymen may be small or big.[28] The orifice of AAA's hymen was found to be 3.0 cm in diameter, or a little more than one inch.[29] With this diameter, according to the doctor, the penetration or entrance of a fully erect Filipino penis can be allowed without producing laceration or without producing injury to the hymen. It is thus possible that rape be consummated while the hymen remains intact.[30]

Pitted against AAA's clear, categorical, and straightforward testimony, accused-appellant's *alibi* and denial cannot prevail. This Court has never favorably looked upon the defenses of *alibi* and denial, which constitute self-serving negative evidence that cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.[31] Accused-appellant's *alibi* was unsupported. The testimonies of the defense witnesses did not, in any way, corroborate the accused-appellant's *alibi* and denial. At most, Capuz merely testified that he did not see accused-appellant in the area at the time of the incident nor did he notice any unusual incident therein. Rebuya, on the other hand, even exacerbated accused-appellant's *alibi* when he testified that accused-appellant's house is near AAA's house and it would only take five minutes to get there by walking. For the defense of *alibi* to prosper, the accused-appellant must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime

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[27] *Id.*

[28] CA *rollo*, pp. 50-51.

[29] *Id.*

[30] *Id.*; *People v. Valdez*, G.R. Nos. 133194-95 and 141539, January 29, 2004.

[31] *People v. Abat*, *supra* note 23.

or at its immediate vicinity at the time of its commission.[32] Clearly, that is not the case herein.

In all, having properly alleged in the Information and proven during trial that AAA was 16 years old at the time she was raped and that the same was perpetrated through force and intimidation by accused-appellant, the RTC, as affirmed by the CA, properly imposed the penalty of *reclusion perpetua* in accordance with Arts. 266-A, paragraph 1(a) and 266-B of the RPC, above-quoted.

While sustaining, however, the awards of civil indemnity and moral damages in the amount of PhP 75,000 each, as well as the interest imposed upon all the monetary awards, We find it proper to increase the exemplary damages from PhP 30,000 to PhP 75,000 pursuant to the prevailing jurisprudence on the matter.[33]

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. Accordingly, the Decision dated March 13, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 06306 is hereby **AFFIRMED with MODIFICATION**, thus, accused-appellant Ricky Primavera *y* Remodo is found **GUILTY** beyond reasonable doubt of the crime of Rape as defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, and is therefore sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the victim the amounts of PhP 75,000 for civil indemnity, PhP 75,000 for moral damages, and **PhP 75,000 for exemplary damages**. An interest at the rate of six percent (6%) *per annum* is imposed on all the monetary awards from the date of finality of this Decision until fully paid.

SO ORDERED.

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

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[32] *People v. Piosang*, G.R. No. 200329, June 5, 2013.

[33] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

[*] Designated Additional Member per Raffle dated March 15, 2017 *vice* Associate Justice Francis H. Jardeleza.

THIRD DIVISION

[G.R. No. 223513. July 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEX AMAR *y* MONTANO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE THROUGH FORCE, THREAT OR INTIMIDATION; ELEMENTS.—** Article 266-A of the Revised Penal Code (RPC) defines the crime of Rape x x x. [T]he elements of rape (under paragraph 1, subparagraph a) are as follows: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force, (threat) or intimidation.

2. **ID.; ID.; ID.; IN RAPE COMMITTED BY A CLOSE KIN, IT IS NOT NECESSARY THAT ACTUAL FORCE OR INTIMIDATION BE EMPLOYED, FOR MORAL INFLUENCE OR ASCENDANCY TAKES THE PLACE OF VIOLENCE OR INTIMIDATION.—** The RTC and the CA were one in finding that accused-appellant had carnal knowledge of AAA against the latter's will through force and intimidation. Notably, in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ENTITLED TO GREAT WEIGHT AND RESPECT.—** The factual findings of the trial court, especially when affirmed by the CA, are entitled to great weight and respect, if not conclusiveness, since the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions of the events that made up the occurrences constituting the ingredients of the

offense charged. After a careful review of the evidence and testimony proffered by the Prosecution, the Court opines that the trial court and the CA were not mistaken in their assessment of the credibility of AAA's testimony. The accused-appellant failed to show that both tribunals overlooked a material fact that otherwise would change the outcome of the case or misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses. Thus, this Court will not disturb on appeal the RTC's findings of fact as affirmed by the CA, but must fully accept the same.

4. **ID.; ID.; ID.; IN RAPE, THE ACCUSED MAY BE CONVICTED SOLELY ON THE BASIS OF THE TESTIMONY OF THE VICTIM THAT IS CREDIBLE, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS.—** [I]n a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing and consistent with human nature and the normal course of things. Contrary to accused-appellant's assertion, AAA's testimony regarding her ordeal on April 13, 2009 was credible, as she delivered it in a straightforward and convincing manner that is worthy of belief.

5. **ID.; ID.; ID.; DIFFERENT PEOPLE REACT DIFFERENTLY TO A GIVEN SITUATION INVOLVING A STARTLING OCCURRENCE.—** The harrowing incident experienced by AAA in the hands of her own father would negate any reasonable standard form of reaction on a rape victim. Time and again, this Court has recognized that different people react differently to a given situation involving a startling occurrence. The workings of the human mind placed under emotional stress are unpredictable, and people react differently — some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.

6. **ID.; ID.; DENIAL AND ALIBI; NATURE.—** [D]enial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law, as in this case. Likewise, *alibi* is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut. Here,

accused-appellant's *alibi* cannot prevail over the positive identification of his own daughter who had no improper motive to testify falsely.

7. CRIMINAL LAW; REVISED PENAL CODE; RAPE; QUALIFYING CIRCUMSTANCE OF MINORITY AND RELATIONSHIP; APPRECIATED IN CASE AT BAR; PENALTY.— Under Article 266-B of the RPC, the death penalty shall be imposed when the victim of rape is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. Indeed, the moral ascendancy and influence the father has over his child supplants the element of violence or intimidation. The death penalty cannot, however, be imposed in view of Republic Act No. 9346. In lieu of the death penalty, the penalty of *reclusion perpetua* without eligibility for parole shall be imposed. In this case, both the trial court and CA found that the prosecution proved beyond reasonable doubt the qualifying circumstances of minority and relationship, *i.e., the offender, accused-appellant, is the parent of the minor victim, AAA*. This Court sees no reason to depart from the findings of the lower courts.

8. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; MUST BE INCREASED TO Php100,000.00 EACH IN CASE AT BAR PURSUANT TO PREVAILING JURISPRUDENCE.— [T]his Court modifies the appellate court's award of damages and increases it as follows: Php 100,000.00 as civil indemnity, Php 100,000.00 as moral damages, and Php 100,000.00 as exemplary damages, pursuant to prevailing jurisprudence. To conform to Our pronouncement in *People v. Jugueta*, the civil indemnity and moral damages awarded must be increased from Php 75,000.00 to Php 100,000.00 each. We further increase the payment of exemplary damages from Php 30,000.00 to Php 100,000.00 in accordance with Article 2230 of the Civil Code, in view of the qualifying circumstance of relationship, as well as accused-appellant's moral corruption, perversity, and wickedness in ravishing his own daughter. The imposition of exemplary damages is further warranted to deter others from committing similar acts or for correction for the public good.

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

TIJAM, *J.*:

In this appeal, accused-appellant Alex Amar *y* Montano assails the February 27, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06579, which affirmed with modification, the December 3, 2013 Decision[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 124, in Criminal Case No. 81116, finding him guilty beyond reasonable doubt of the crime of Rape.

The antecedent facts are as follows:

The accusatory portion of the April 14, 2009 Information[3] charging accused-appellant of the crime of Rape, reads as follows:

That on or about the 13th day of April 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, being the biological father of AAA,[4] minor, 16 years old, with lewd design, by means of force, threats and intimidation employed upon the person of AAA, did then and there

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[1] Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr.; *rollo*, pp. 2-12.

[2] Penned by Presiding Judge Glenda K. Cabello-Marin; CA *rollo*, pp. 21-34.

[3] As mentioned in the Appellee's Brief; *id*. at 87.

[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 their 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. 04-10-11-SC dated 19 October 2004. (*People of the Philippines v. Eladio B. Lumaho Alias "Attumpang*," G.R. No. 208716, September 24, 2014.)

willfully, unlawfully and feloniously, lie and had carnal knowledge of said minor against her will and without her consent.

CONTRARY TO LAW.[5]

During arraignment, accused-appellant pleaded not guilty to the charge. Thereafter, trial ensued.

On April 13, 2009, at 1:00 a.m., the victim, AAA, was sleeping alone in her room when she was roused from her sleep when she felt somebody holding her breast, who turned out to be accused-appellant, her own father. Accused-appellant then proceeded to undress AAA. He removed his shorts, positioned himself on top of AAA, inserted his penis into her vagina and had sex with her. Thereafter, accused-appellant ejaculated on a towel and left the room.

The incident was not the first time that the accused-appellant had carnal knowledge of AAA. Records show that the molestation started when AAA was in Grade 6, and was repeated ten (10) times in a month. After being silent for some time, on April 11, 2009,[6] AAA narrated her ordeal to her aunt, DDD. The following day, CCC, the accused-appellant's eldest daughter, likewise confided to DDD that accused-appellant was sexually molesting her.

Later, at noontime of April 13, 2009, AAA recounted to DDD the latest sexual attack of the accused-appellant on her in the early morning of the same day. On even date,[7] DDD revealed to BBB, AAA's mother what AAA went through in the hands of her father. Upon learning of the incident, BBB, together with AAA and CCC, lodged a complaint for sexual molestation against the accused-appellant, with the Barangay Women and Children's Desk (BWCD). Accused-appellant was held at the Barangay hall then turned over to the police for investigation.

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[5] CA *rollo*, p. 21.

[6] As mentioned in the RTC's December 13, 2013 Decision, *id*. at 23.

[7] *Id*.

Subsequently, AAA was brought to the hospital and was examined by Dr. Bonnie Chua. Her medical report revealed that her *labia majora* was coapted; her *labia minora* suffered abrasions; and that her hymen was lacerated.

For his part, accused-appellant denied the accusation against him. He countered that on the date of the alleged incident, he was actually asleep as he went to bed early on the night of April 12, 2009 since he had to wake up early for his work the following day. He claimed that on April 13, 2009, he reported for work in the morning only. He arrived from work on the same day, at around 3 o'clock in the afternoon. When his wife came home, he was surprised that she was with some police officers. He was immediately handcuffed and brought to the police station where he was mauled by the police.

On December 3, 2013, the RTC rendered its Decision,[8] convicting accused-appellant of the crime of Rape, sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay damages. The dispositive portion of the Decision reads as follows:

> WHEREFORE, the Court finds the accused ALEX AMAR Y MONTANO, guilty beyond reasonable doubt of the crime of rape. Accordingly, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without the possibility of parole.
>
> Further, the accused is hereby adjudged civilly liable to AAA. Accordingly, he is hereby ordered to pay said private complainant: a) Php 75,000.00 as civil indemnity; b) Php 75,000.00 as moral damages; and c) Php 25,000.00 as exemplary damages.
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> SO ORDERED.[9]

On appeal, the CA rendered its February 27, 2015 Decision,[10] affirming with modification the RTC's Decision, the dispositive portion of which reads as follows:

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

[9] *Id*. at 33-34.

[10] *Rollo*, 2-12.

WHEREFORE, the instant appeal is **DISMISSED**. The Decision promulgated on December 3, 2013 of the Regional Trial Court of Caloocan City, Branch 124, in Criminal Case No. 81116 is **AFFIRMED with MODIFICATION**, increasing the award of exemplary damages from Php25,000.00 to Php30,000.00 and imposing interest upon the amounts of indemnity and damages awarded at the rate of 6% per annum to be computed from the date of the finality of this judgment until fully paid.

SO ORDERED.[11]

On April 20, 2015, accused-appellant appealed the CA's Decision before this Court *via* Section 13(c) of Rule 124, as amended by A.M. No. 00-5-03-SC with the CA.

In this Court's September 19, 2016 Resolution,[12] We noted the Office of the Solicitor General's (OSG) Manifestation[13] stating that it will no longer file a supplemental brief; and, the accused-appellant's Manifestation[14] stating that he is dispensing with his supplemental brief, and thus, adopting his appellant's brief with the CA.

In his appeal, accused-appellant banks on the court *a quo's* error in disregarding his version. Aside from invoking the defense of denial and alibi, he insists that AAA's failure to immediately report the rape incident is not the normal behavior of a minor girl who had been previously sexually assaulted. He claims that AAA's testimony was not credible.

The OSG, on the other hand, maintains that the prosecution proved all the elements of the offense beyond reasonable doubt and that accused-appellant's defenses of denial and alibi were not proved by clear and convincing evidence.

The appeal is bereft of merit.

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[11] *Id*. at 12.

[12] *Id*. at 29.

[13] *Id*. at 20.

[14] *Id*. at 25.

Article 266-A of the Revised Penal Code (RPC) defines the crime of Rape, *viz.*:

ART. 266-A. *Rape, When and How Committed.* – Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation[.]

x x x x x x x x x

From the above-quoted provision of law, the elements of rape (under paragraph 1, subparagraph a) are as follows: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force, (threat) or intimidation.

The RTC and the CA were one in finding that accused-appellant had carnal knowledge of AAA against the latter's will through force and intimidation. Notably, in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[15]

We defer to the factual findings of the RTC and CA.

The factual findings of the trial court, especially when affirmed by the CA, are entitled to great weight and respect, if not conclusiveness, since the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions of the events that made up the occurrences constituting the ingredients of the offense charged.[16]

After a careful review of the evidence and testimony proffered by the Prosecution, the Court opines that the trial court and the

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[15] *People v. Sixto Padua y Felomina*, G.R. No. 192821, March 21, 2011.

[16] *People v. Deligero*, G.R. No. 189280, April 17, 2013.

CA were not mistaken in their assessment of the credibility of AAA's testimony. The accused-appellant failed to show that both tribunals overlooked a material fact that otherwise would change the outcome of the case or misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses.[17] Thus, this Court will not disturb on appeal the RTC's findings of fact as affirmed by the CA, but must fully accept the same.

It is jurisprudentially settled that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing and consistent with human nature and the normal course of things.[18]

Contrary to accused-appellant's assertion, AAA's testimony regarding her ordeal on April 13, 2009 was credible, as she delivered it in a straightforward and convincing manner that is worthy of belief. The pertinent portions of her testimony are reproduced below:

Q: When the accused entered your room, what did he do first?
A: He held my private part, sir.

Q: And after that?
A: He undressed me, sir. He removed my shirt and pants.

Q: What was your reaction?
A: I was surprised, sir.

Q: After you were undressed by your father, what happened next?
A: He placed himself on top of me, sir.

Q: Were you lying down at that time?
A: Yes, sir.

Q: On the bed?
A: Yes, sir.

Q: And what did he do next after he lied on top of you?
A: He inserted his private part inside my private part, sir.[19]

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[17] *People v. Ricardo M. Vidaña*, G.R. No. 199210, October 23, 2013.

[18] *People v. Bustamante*, G.R. No. 189836, June 5, 2013.

[19] *Rollo*, p. 7.

It has been previously held that it is against human nature for a young 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 father.[20] That legal dictum finds application in the case at bar since accused-appellant did not allege nor prove any sufficient improper motive on the part of AAA to falsely accuse him of such a serious charge of raping his own flesh and blood.

We make short shrift of accused-appellant's claim that AAA's failure to immediately report the rape incident is not the normal behavior of a minor girl who had been previously sexually assaulted.

The harrowing incident experienced by AAA in the hands of her own father would negate any reasonable standard form of reaction on a rape victim. Time and again, this Court has recognized that different people react differently to a given situation involving a startling occurrence. The workings of the human mind placed under emotional stress are unpredictable, and people react differently – some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.[21]

Accused-appellant's defenses, consisting of mere denial and *alibi*, fail to persuade Us.

[D]enial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law,[22] as in this case. Likewise, *alibi* is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut.[23] Here, accused-appellant's *alibi* cannot prevail over the positive

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[20] *People v. Ricardo M. Vidaña*, G.R. No. 199210, October 23, 2013.

[21] *People v. Aurelio Jastiva*, G.R. No. 199268, February 12, 2014.

[22] *People v. Edmundo Vitero*, G.R. No. 175327, April 3, 2013, citing *People v. Ogarte*, G.R. No. 182690, May 30, 2011, 649 SCRA 395.

[23] *People v. Edmundo Vitero*, *supra* note 22.

identification of his own daughter who had no improper motive to testify falsely.

Penalty and Damages

Under Article 266-B of the RPC, the death penalty shall be imposed when the victim of rape is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.[24] Indeed, the moral ascendancy and influence the father has over his child supplants the element of violence or intimidation.[25] The death penalty cannot, however, be imposed in view of Republic Act No. 9346. In lieu of the death penalty, the penalty of *reclusion perpetua* without eligibility for parole shall be imposed.[26]

In this case, both the trial court and CA found that the prosecution proved beyond reasonable doubt the qualifying circumstances of minority and relationship, *i.e.*, *the offender, accused-appellant*, *is the parent of the minor victim, AAA*.[27] This Court sees no reason to depart from the findings of the lower courts.

Nonetheless, this Court modifies the appellate court's award of damages and increases it as follows: Php 100,000.00 as civil indemnity, Php 100,000.00 as moral damages, and Php 100,000.00 as exemplary damages, pursuant to prevailing jurisprudence.[28]

To conform to Our pronouncement in *People v. Jugueta*,[29] the civil indemnity and moral damages awarded must be increased

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[24] *People v. Oliver A. Buclao*, G.R. No. 208173, June 11, 2014.

[25] *Id.*

[26] *Id.*

[27] *People v. Candellada*, G.R. No. 189293, July 10, 2013.

[28] *People v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

[29] G.R. No. 202124, April 5, 2016.

from Php 75,000.00 to Php 100,000.00 each.[30] We further increase the payment of exemplary damages from Php 30,000.00 to Php l00,000.00 in accordance with Article 2230 of the Civil Code, in view of the qualifying circumstance of relationship, as well as accused-appellant's moral corruption, perversity, and wickedness in ravishing his own daughter.[31] The imposition of exemplary damages is further warranted to deter others from committing similar acts or for correction for the public good.[32]

We uphold the Court of Appeals' pronouncement that the interest at the rate of six percent (6%) *per annum* shall be imposed on all damages awarded from the date of finality of judgment until fully paid.

WHEREFORE, premises considered, the February 27, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06579, which affirmed with modification, the December 3, 2013 Decision of the Regional Trial Court of Caloocan City, Branch 124, in Criminal Case No. 81116, is hereby **AFFIRMED with MODIFICATION** insofar as payment for damages is concerned. Accused-appellant Alex Amar *y* Montano is ordered to pay the private offended party as follows: Php 100,000.00 as civil indemnity, Php 100,000.00 as moral damages, Php 100,000.00 as exemplary damages, pursuant to prevailing jurisprudence. 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 Decision until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Jardeleza, JJ.* concur.

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[30] *People v. Michael Palanay y Minister*, G.R. No. 224583, February 1, 2017.

[31] *Id.*

[32] *Id.*

THIRD DIVISION

[G.R. No. 223678. July 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO GUNSAY *y* TOLENTINO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.— In *People v. Navarro, et al.*, the Court held that: "The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent. Thus, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) such act was accomplished through the use of force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve (12) years of age, or is demented."

2. ID.; ID.; ID.; NO RESPECTER OF TIME OR PLACE AS IT CAN BE COMMITTED IN SMALL, CONFINED PLACES OR IN PLACES WHICH MANY WOULD CONSIDER AS UNLIKELY AND INAPPROPRIATE, OR EVEN IN THE PRESENCE OF OTHER FAMILY MEMBERS.— The defense attempted to discredit AAA's testimony against accused-appellant claiming solely that it was inconsistent with human experience. "*Accused-appellant could not have been so daring to just pull and rape her considering that she had companions, who could easily seek help from their neighbors who live nearby*." The Court, however, is not impressed by his defense. It has time and again been said that rape is no respecter of time or place as it can be committed in small, confined places or in places which many would consider as unlikely and inappropriate, or even in the presence of other family members.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDING OF FACTS IS CONCLUSIVE AND BINDING, IF NOT TAINTED WITH ARBITRARINESS OR OVERSIGHT OF SOME FACT OR CIRCUMSTANCE OF WEIGHT AND INFLUENCE.— [W]hen at issue is the credibility of the victim, We give great

weight to the trial court's assessment. In fact, the trial court's finding of facts is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Our reason is that the trial court had the full opportunity to observe directly the witnesses' deportment and manner of testifying. It is in a better position to properly evaluate testimonial evidence.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; INTERESTS; MAY BE ADJUDICATED IN THE DISCRETION OF THE COURT AS PART OF DAMAGES IN CRIMES AND QUASI-DELICTS.— The award of interest on damages in this case is proper and allowed under Article 2211 of the Civil Code, which states that in crimes and quasi- delicts, interest as a part of the damages may, in proper case, be adjudicated in the discretion of the court.

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

TIJAM, *J.*:

Accused-appellant Alfredo Gunsay *y* Tolentino assails the Decision[1] dated May 20, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC. No. 06325, which affirmed with modification the Judgment dated April 18, 2013 of the Regional Trial Court (RTC) of Urdaneta City, Pangasinan, Branch 49, in Criminal Case No. 13643. Accused-appellant was convicted of Rape and sentenced to suffer the penalty of *reclusion perpetua*. The CA ordered him to pay the private offended party the amounts of PhP 75,000 as civil indemnity, PhP 75,000 as moral damages, and ₱30,000.00 as exemplary damages. Accused-appellant was also ordered to pay legal interest on all damages awarded at the

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[1] Penned by Associate Justice Isaias P. Dicdican, concurred in by Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes; *rollo*, pp. 2-12.

rate of six percent (6%) *per annum* from the date of finality of the decision until the same shall have been fully paid.

The Facts

The Information charging accused-appellant is cited herein, to wit:

> That on or about 8:00 o'clock in the morning of March 21, 2005 at Brgy. Santiago, Binalonan, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with **AAA,**[2] minor, 17 years old, against her will and consent, to her damage and prejudice.
>
> CONTRARY to Art. 266-A, par. 1, in rel. to Art. 266-B, 1st par., as amended by R.A. 8353.[3]

Accused-appellant pleaded not guilty when arraigned. A pre-trial was conducted, and thereafter, trial on the merits ensued.

The prosecution adduced the testimonies of the following: (1) AAA, the private complainant herein; (2) Dr. Brenda M. Tumacder (Dr. Tumacder), the physician from the Department of Pediatrics at the Region 1 Medical Center, Dagupan, Pangasinan, who examined AAA and issued a medico-legal certificate thereto; (3) BBB, the mother of AAA; and (4) PO3 Luzviminda Pablico (PO3 Pablico), a member of the Philippine National Police (PNP) assigned at PNP-Binalonan Police Station, who is the custodian of PNP-Binalonan.

The corroborative testimonies of the prosecution witnesses showed that, on March 21, 2005, at around 8:00 a.m., AAA, who was then 17 years old, together with her neighbor CCC,

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[2] 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.

[3] *Rollo*, p. 3.

went to the field in Barangay Santiago, Binalonan, Pangasinan to get "*saluyot*." On their way home, the two girls met the accused-appellant, who punched AAA on her abdomen and put grass in her mouth, then dragged her to the corn plantation. Accused-appellant held a knife to AAA as he removed her pants and panties, then he inserted his penis into her vagina. Accused-appellant threatened AAA that he will kill her if she will report the incident to anyone. Thereafter, AAA went home and, despite accused-appellant's threat on her, she told the incident to her mother, BBB.

BBB testified that, on March 21, 2005, at around 9:00 a.m., she saw her daughter crying as she was surrounded by a number of people. When she confronted her, AAA confessed that she was forced by a man from Barangay Santiago, Binalonan, Pangasinan to have sexual intercourse with him. BBB reported the incident to Barangay *Kagawad* Mauricio Dispo, who accompanied her and AAA to the Police Station in Binalonan, Pangasinan, where the incident was entered in the police blotter. BBB further testified that she brought AAA to Dr. Tumacder of the Medical Center for physical examination.

Dr. Tumacder testified that AAA sustained fresh hymenal lacerations at 3 o'clock and 6 o'clock positions, hematoma measuring 3x2 centimeters at the right anterior area, abrasion over the uretha and periurethal area, and erythema over the labia minor, right inner area.

The testimony of SPO1 Cipriano Culiao, Jr. (SPO1 Culiao), who investigated the incident was dispensed with upon stipulation by the parties.

PO3 Pablico identified the white face towel, *maong* pants, and blue shirt, which were submitted by AAA to SPO1 Culiao when the rape incident was first reported to him.

For his part, accused-appellant denied having raped AAA on the date, time, and place indicated. According to him, the police officers who testified in court were the ones who came over to his place at Camangaan, Binalonan, Pangasinan and invited him to the police station for questioning with respect to a rape incident.

He said he did not know of any reason for AAA to fabricate a story against him as he never had any prior misunderstanding with her or her family.[4]

After trial, the trial court found the accused-appellant guilty beyond reasonable doubt of the crime of Rape, thus:

> **WHEREFORE,** the Court finds the accused **ALFREDO GUNSAY y TOLENTINO, GUILTY** beyond reasonable doubt of the crime of Rape.
>
> Accordingly, he is sentenced to suffer the penalty of Reclusion Perpetua. All the time during which he is under preventive imprisonment shall be credited in his favor.
>
> Accused is ordered to pay the offended party civil indemnity of Fifty Thousand Pesos (PhP50,000.00) and moral damages of Fifty Thousand Pesos (PhP50,000.00).
>
> Without unnecessary delay, the accused is ordered committed to the Bureau of Corrections, Muntinlupa City for the service of his sentence.
>
> SO ORDERED.[5]

On appeal, the CA affirmed accused-appellant's conviction and penalty of imprisonment of *reclusion perpetua.* The appellate court, however, modified the award of damages against accused-appellant:

> **WHEREFORE,** in view of the foregoing premises, the instant appeal is hereby ordered **DENIED** and, consequently, **DISMISSED.** The appealed Decision rendered by Branch 49 of the Regional Trial Court of the First Judicial Region in Urdaneta City, Pangasinan in Criminal Case No. 13643 which was dated April 18, 2013 is hereby **AFFIRMED** with the **MODIFICATION** that the accused-appellant Alfredo Gunsay y Tolentino is ordered to pay the private offended party "AAA" the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages. He is further ordered to pay legal interest on all damages awarded

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[4] *Id.* at 6.

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

in this case at the rate of six percent (6%) per annum from the date of finality of this decision until the same shall have been fully paid.

SO ORDERED.[6]

Accused-appellant now filed this instant appeal to this Court.

The Issue

Whether or not the guilt of accused-appellant for the crime charged has been proven beyond reasonable doubt.

The Court's Ruling

The appeal lacks merit.

In *People v. Navarro, et al.*,[7] the Court held that:

> The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent. Thus, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) such act was accomplished through the use of force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve (12) years of age, or is demented.[8]

By AAA's own testimony, accused-appellant punched her on the abdomen, pulled her to the cornfield, and placed grass in her mouth. Holding a knife and pointing it to AAA, accused-appellant removed her pants and panty, and succeeded in having sexual intercourse with her. He also threatened AAA not to report to anyone that she was raped.

The Court believes in the testimony of AAA, which was corroborated by the result of the medical examination. As observed by the trial court, "*[t]he physician who attended to her found the following injuries, thus: (+) abrasion over urethra and periurethral area; (+) erythema over perihymenal area; (+)*

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[6] *Rollo,* p. 11.

[7] G.R. No. 137597, October 24, 2003.

[8] *Id*.

erythema over labia minor, right inner area; (+) fresh laceration at 3:00 o'clock position, transaction at 6:00 o'clock position. These injuries are consistent with the commission of rape on the person of the victim."[9]

AAA's credibility is further strengthened by her prompt report of the incident to her mother and authorities, despite the threats made against her life by the accused-appellant. It shows that she did not have the luxury of time to fabricate a rape story.

The defense attempted to discredit AAA's testimony against accused-appellant claiming solely that it was inconsistent with human experience. "*Accused-appellant could not have been so daring to just pull and rape her considering that she had companions, who could easily seek help from their neighbors who live nearby.*"[10] The Court, however, is not impressed by his defense. It has time and again been said that rape is no respecter of time or place as it can be committed in small, confined places or in places which many would consider as unlikely and inappropriate, or even in the presence of other family members.[11]

As We have held, when at issue is the credibility of the victim, We give great weight to the trial court's assessment. In fact, the trial court's finding of facts is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Our reason is that the trial court had the full opportunity to observe directly the witnesses' deportment and manner of testifying. It is in a better position to properly evaluate testimonial evidence.[12]

The trial court, as affirmed by the CA, correctly pointed out that:

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

[10] *Id.* at 98.

[11] *People v. Gopio,* G.R. No. 133925, November 29, 2000.

[12] *People v. Caiñgat*, G.R. No. 137963, February 6, 2002.

Jurisprudence teaches that between categorical testimonies that ring of truth, on one hand, and a bare denial, on the other, the Court has strongly ruled that the former must prevail. Indeed, positive identification of the accused, when categorical and consistent, and without any ill motive on the part of the eyewitness testifying on the matter, prevails, over alibi and denial.[13]

After going over the evidence presented by the prosecution and the defense in this case, the Court finds no reason to overturn the judgment of conviction rendered by the trial court, as affirmed by the CA, as the prosecution sufficiently proved accused-appellant's guilt beyond reasonable doubt. Particularly, the trial court correctly stated, *viz.*:

> Unfortunately, for the prosecution witnesses, the use of any bladed weapon was not specifically alleged in the information and to consider such fact as an aggravating circumstance would violate the right of the accused to be informed of the the nature and cause of accusation against him. **For such reason, the accused may be convicted of simple rape only under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 1 of Republic Act No. 8353.**
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> x x x x x x x x x
>
> The penalty for the crime of rape under Article 266-A in relation to Article 266-B is reclusion perpetua. x x x.[14] (Emphasis ours)

The order of the CA to pay AAA civil indemnity in the modified amount of PhP 75,000.00 and moral damages in the amount of PhP 75,000.00 is in order, thus, it is affirmed, except for the amount of exemplary damages in the amount of PhP 30,000.00. Said amount is increased pursuant to the guidelines laid down in *People v. Jugueta*,[15] to wit:

> II. For Simple Rape/Qualified Rape:
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> x x x x x x x x x

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[13] *People v. Tejaro*, G.R. No. 187744, June 20, 2012.

[14] CA *rollo*, p. 108.

[15] G.R. No. 202124, April 5, 2016.

2.1 Where the penalty imposed *is reclusion perpetua*, other than the above mentioned:

a. Civil indemnity – ₱75,000.00
b. Moral damages – ₱75,000.00
c. Exemplary damages – ₱75,000.00

Accordingly, accused-appellant shall pay exemplary damages to AAA in the increased amount of PhP 75,000.

The award of interest on damages in this case is proper and allowed under Article 2211 of the Civil Code, which states that in crimes and quasi-delicts, interest as a part of the damages may, in proper case, be adjudicated in the discretion of the court.[16]

WHEREFORE, the instant appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 06325 dated May 20, 2015, finding accused-appellant Alfredo Gunsay *y* Tolentino **GUILTY** of the crime of Rape is **AFFIRMED with MODIFICATION** in that the amount of exemplary damages is increased from PhP 30,000 to PhP 75,000. The rest of the assailed CA Decision **STANDS.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Jardeleza, JJ.,* concur.

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[16] *People v. Magallones*, G.R. No. 171731, August 11, 2006.

THIRD DIVISION

[G.R. No. 227894. July 5, 2017]

JOSE S. OCAMPO, *petitioner, vs.* **RICARDO**[1] **S. OCAMPO, SR.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW SHALL BE RAISED THEREIN.—** It is well settled that questions of fact are not reviewable in petitions for review on *certiorari* under Rule 45 of the Rules of Court. Only questions of law distinctly set forth shall be raised in a petition and resolved. Moreover, the factual findings of the lower courts, if supported by substantial evidence, are accorded great respect and even finality by the courts. Except for a few recognized exceptions, this Court will not disturb the factual findings of the trial court.

2. **CIVIL LAW; CIVIL CODE; PRESCRIPTION OF ACTIONS; AN ACTION FOR RECONVEYANCE BASED ON AN IMPLIED TRUST PRESCRIBES IN TEN YEARS BUT IF THE PLAINTIFF REMAINS IN POSSESSION OF THE PROPERTY, THE PRESCRIPTIVE PERIOD TO RECOVER TITLE OF POSSESSION DOES NOT RUN AGAINST HIM.—** Given the falsity of the ESW, it becomes apparent that petitioner obtained the registration through fraud. This wrongful registration gives occasion to the creation of an implied or constructive trust under Article 1456 of the New Civil Code. An action for reconveyance based on an implied trust generally prescribes in ten years. However, if the plaintiff remains in possession of the property, the prescriptive period to recover title of possession does not run against him. In such case, his action is deemed in the nature of a quieting of title, an action that is imprescriptible.

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[1] Petitioner indicated in the caption of the petition that respondent is **Roberto** S. Ocampo, Sr. However, the body of the petition and the assailed Decision show that the correct name of respondent is **Ricardo** S. Ocampo, Sr.

3. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSION; CONCLUSIVELY BINDS THE PARTY MAKING IT AND HE CANNOT THEREAFTER TAKE A POSITION CONTRADICTORY TO OR INCONSISTENT WITH HIS PLEADINGS.— Petitioner's failure to refute respondent's possession of the subject property may be deemed as a judicial admission. A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding. A judicial admission conclusively binds the party making it and he cannot thereafter take a position contradictory to or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted, unless it is shown that the admission was made through palpable mistake or that no such admission was made.

4. CIVIL LAW; CIVIL CODE; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; QUIETING OF TITLE; REQUISITES.— Considering that respondent was in actual possession of the disputed land at the time of the filing of the complaint, the present case may be treated as an action for quieting of title. Quieting of title is a common law remedy for the removal of any cloud, doubt, or uncertainty affecting title to real property. In *Heirs of Delfin and Maria Tappa v. Heirs of Jose Bacud*, this Court reiterated the requisites for an action for quieting of title: x x x "we reiterate the rule that for an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. x x x A cloud on a title exists when (1) there is an instrument (deed, or contract) or record or claim or encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable or extinguished (or terminated) or barred by extinctive prescription; and (4) x x x may be prejudicial to the title." Since it was already established that respondent's signature on the ESW, which was the basis of petitioner's title over the property, was forged, then it is only necessary for the cloud on respondent's title to be removed.

5. REMEDIAL LAW; ACTIONS; LACHES, DEFINED; THE CLAIM OF LACHES IS NEGATED BY THE FILING OF DIFFERENT CASES AT DIFFERENT TIMES IN CASE AT BAR.— Jurisprudence has defined laches as the failure or neglect, for an unreasonable and unexplained length of time, to do that which—by the exercise of due diligence—could or should have been done earlier. It is the negligence or omission to assert a right within a reasonable period, warranting the presumption that the party entitled to assert it has either abandoned or declined to assert it. Based on the facts presented before us, it appears that respondent did not sleep on his rights, as claimed by petitioner. It is undeniable that respondent had filed several cases to assert his rights over the property. x x x To Our mind, the filing of these cases at different times negates the claim of laches. Time and again, this Court has ruled that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.

APPEARANCES OF COUNSEL

UP Office Of Legal Aid for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Pending before the Court is a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[2] dated June 28, 2016 and the Resolution[3] dated October 20, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 99908. The CA affirmed the Decision[4] dated

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[2] *Rollo*, pp. 28-41. Penned by Associate Justice Melchor Q.C. Sadang and concurred in by Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier.

[3] *Id*. at 43.

[4] *Id*. at 133-141. Rendered by Pairing Judge Armando A. Yanga.

September 30, 2011 of the Regional Trial Court (RTC) of Manila, Branch 55, in Civil Case No. 92-61716, which ordered the partition of the subject property and the annulment and cancellation of petitioner's title over the same.

The Facts

Petitioner Jose S. Ocampo and respondent Ricardo S. Ocampo are full-blooded brothers being sons of the late Basilio Ocampo and Juliana Sunglao.[5]

The present case arose from a complaint filed by respondent against petitioner for partition and annulment of Transfer Certificate of Title (TCT) No. 102822 ("Subject Property").[6]

In the complaint, respondent alleged that he and petitioner are co-owners of the Subject Property, which was a conjugal property left by their parents, consisting of a 150-square meter lot and the improvements thereon located at 2227 Romblon Street, G. Tuazon, Sampaloc, Manila. The Subject Property was originally registered in their parents' names under TCT No. 36869.[7]

Respondent claimed that petitioner and his wife, Andrea Mejia Ocampo, conspired in falsifying his signature on a notarized Extra-Judicial Settlement with Waiver ("ESW") dated September 1970, and effecting the transfer of the property in the name of petitioner under TCT No. 102822, which was issued on November 24, 1970. Based on a finding by the National Bureau of Investigation (NBI) that respondent's signature was forged, an Information was filed against petitioner, the notary public, and two others. Respondent requested for partition of the property, but petitioner refused to do so and secretly mortgaged the property for ₱200,000.00.[8]

Petitioner and his wife moved for the dismissal of the complaint, but it was denied by the trial court. Thereafter, they filed their

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[5] *Id*. at 5.

[6] *Id*. at 28.

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

[8] *Id*. at 29.

Answer with Motion for Preliminary Hearing on the Affirmative Defense of prescription.[9]

Based on their Answer, petitioner and his wife claimed that their parents executed a Deed of Donation *Propter Nuptias* of the Subject Property in their favor as they were getting married, with a promise on their part to demolish the old house and replace it with a new two-storey house, which they did. To build the new house, they obtained a ₱10,000.00 loan from the Development Bank of the Philippines (DBP), with petitioner and his parents as borrowers.[10]

Petitioner further alleged that his parents gave respondent several properties outside Metro Manila, which respondent eventually lost. Petitioner and his wife then allowed respondent to stay at the second floor of the house. Petitioner was able to pay the DBP loan through a loan secured from the Social Security System (SSS) with the consent of his father. He claimed that on September 30, 1970, their father executed the ESW and secured respondent's signature. By virtue of the ESW, petitioner was able to have TCT No. 36869 cancelled and have TCT No. 102822 issued in favor of himself and his wife.[11]

Finally, petitioner argued that TCT No. 102822 became indefeasible one year after its issuance on November 24, 1971, and that the action to annul TCT No. 102822 had prescribed since it was filed only on June 29, 1992, or 21 years and 7 months from the issuance of the title. He further claimed that the action to annul the ESW is a collateral attack on the title, and the rule on non-prescription against a co-owner does not apply since he and his wife had become exclusive owners of the Subject Property.[12]

In an Order dated January 21, 1994, the trial court dismissed the complaint on the ground of prescription. Respondent filed

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[9] *Id*.

[10] *Id*. at 29-30.

[11] *Id*. at 30.

[12] *Id*.

a Motion for Reconsideration and other supplemental pleadings, but they were denied by the trial court. Respondent thus elevated the matter to the CA, which declared the RTC's January 21, 1994 Order null and void. Petitioner filed a motion for extension of time to file a petition for review on certiorari before this Court, but the same was denied in a minute resolution.[13]

Thereafter, respondent filed a motion for writ of execution before the RTC. However, the motion was denied on the ground that there is nothing to execute since the setting aside of the RTC Order dated January 21, 1994 calls for the case to be tried on the merits. Thus, the RTC set the case for pre-trial.[14]

Meanwhile, petitioner filed a Motion for Leave to File Amended Answer which was granted by the RTC. In the Amended Answer, petitioner alleged that after their mother passed away in 1965, the ₱3,000.00 balance of the DBP loan was paid through an SSS loan. Petitioner alleged that in consideration of the loan, respondent and their father waived their rights to the property under the ESW. Petitioner further claimed that on November 19, 1970, their father executed a Deed of Absolute Sale, where he sold his interest in the Subject Property for ₱9,000.00 in favor of petitioner.[15]

Pre-trial ensued and the case was twice referred to mediation, but the parties refused to mediate. Thus, trial proceeded.[16]

Respondent presented three witnesses, as follows: 1) himself, 2) his wife, Francisca Elera Ocampo, and 3) Rhoda B. Flores, the Officer-in-Charge of the Questioned Documents Division of the NBI.[17] On the other hand, petitioner presented himself as the only witness for the defense.[18]

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

[14] *Id*. at 31.

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

[16] *Id*. at 32.

[17] *Id*. at 133.

[18] *Id*. at 136.

Ruling of the Regional Trial Court

In a Decision dated September 30, 2011, the RTC ruled in favor of respondent, to wit:

> WHEREFORE, premises considered, judgment is hereby rendered IN FAVOR OF THE PLAINTIFF, RICARDO S. OCAMPO and AGAINST the defendant JOSE S. OCAMPO, as follows:
>
> 1. ORDERING the property located at 2227 Romblon St. G. Tuazon, Sampaloc, Manila, including the improvements found therein to be partitioned between the plaintiff and the defendant, each having a share of one-half in the property;
> 2. ORDERING that TCT No. 102822 of the Registry of Deeds of the City of Manila be ANNULLED;
> 3. ORDERING the Registry of Deeds of the City of Manila to CANCEL Transfer Certificate of Title No. 102822, issued in the name of defendant, the same being null and void;
> 4. ORDERING the defendant to pay the costs of the suit.
>
> SO ORDERED.[19]

Petitioner's motion for reconsideration was denied in an Order dated May 21, 2012. Thus, he filed a Notice of Appeal, which was granted in the Order dated July 10, 2012.[20]

Ruling of the Court of Appeals

In the assailed Decision dated June 20, 2016, the CA affirmed the findings of the RTC, the dispositive portion of which reads:

> **WHEREFORE**, the appeal is **DENIED**. The September 30, 2011 Decision of the Regional Trial Court, Branch 55, Manila in Civil Case No. 92-61716 is **AFFIRMED.**

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

[20] *Id*. at 32.

SO ORDERED.[21]

In dismissing the petition, the CA found that respondent was able to prove that his signature on the ESW is not genuine, based on his and his wife's testimony, as well as the NBI report. According to the CA, this finding of forgery was also supported by petitioner's own admission on cross-examination that he was not present when the ESW was executed. Based on the evidence presented, the preponderance of evidence weighed in favor of respondent and against petitioner.

As to petitioner's argument that the action is a collateral and not a direct attack on the title, the CA found it unmeritorious and ruled that the action precisely assails the validity of petitioner's title on the ground that it is based on a forged document, and it is also an action for reconveyance. Thus, the CA ruled that the action to annul the ESW is imprescriptible since it is a void or inexistent contract. With this, the CA affirmed the RTC Decision.

Petitioner filed a Motion for Reconsideration before the CA, but the same was denied in the assailed Resolution[22] dated October 20, 2016.

Hence, this petition.

The Petition

Petitioner argues that the CA committed a reversible error in dismissing the appeal and in affirming the RTC Decision. Petitioner claims that the ESW, being a notarized document, enjoys a prima facie presumption of authenticity and due execution. He claims that there was no clear and convincing evidence to overcome this presumption.

Even assuming that the ESW is void or inexistent, petitioner argues that the action filed by respondent is barred by the doctrine of estoppel by laches. The ESW was executed and notarized

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[21] *Id.* at 40.

[22] *Id.* at 43.

on September 30, 1970. However, it was only on July 1, 1992 that respondent filed the present case for partition and annulment of title, claiming that the ESW was forged. Thus, petitioner argues that there was an unreasonable delay on respondent's part to assert his rights and pursue his claims against petitioner.

In compliance with the Court's Resolution dated February 1, 2017, respondent filed his Comment dated April 20, 2017. Respondent prayed for the dismissal of the petition, arguing that the issues raised therein have already been exhaustively and judiciously passed upon by the CA and the trial court. He argues that the CA was correct in declaring that the action was not barred by laches since the ESW is a void or inexistent contract which makes an action declaring it imprescriptible.

The Issue

Petitioner raises the following grounds in support of his petition:

1. The CA erred in finding that the preponderance of evidence lies in favour of the view that the signature of the respondent is not genuine.
2. The CA erred in sustaining that the ESW is a void or inexistent contract.
3. The CA erred in ruling that the action to declare the nullity of the ESW is not barred by laches.

Essentially, the principal issue in this case is whether or not the CA committed reversible error in upholding the RTC's findings.

The Court's Ruling

The petition is without merit.

The petition raises questions of fact

It is well settled that questions of fact are not reviewable in petitions for review on certiorari under Rule 45 of the Rules of Court. Only questions of law distinctly set forth shall be raised in a petition and resolved. Moreover, the factual findings of

the lower courts, if supported by substantial evidence, are accorded great respect and even finality by the courts. Except for a few recognized exceptions, this Court will not disturb the factual findings of the trial court.[23] This Court sees no reason to overturn the factual findings of the trial court, as affirmed by the CA, as the records show that preponderant evidence established the falsity of the ESW and the fraudulent registration of the subject property in petitioner's name.

Prescription has not set in

We find it proper to delve into the more important issue to be resolved, that is, whether the action for annulment of title and partition has already prescribed. It must be pointed out that the issue of prescription had already been raised by petitioner in his Motion to Dismiss[24] dated August 5, 1992. This motion was granted by the trial court in its Order[25] dated January 21, 1994. However, respondent appealed this Order with the Court of Appeals in CA-G.R. CV No. 45121. The CA then rendered a Decision[26] dated March 30, 2001, nullifying the order of dismissal of the trial court. The CA essentially ruled that the case for partition and annulment of title did not prescribe. The CA Decision was eventually affirmed by the Second Division of this Court in G.R. No. 149287 by virtue of a minute Resolution[27] dated September 5, 2001, which became final and executory and was entered into the Book of Entries of Judgments on October 16, 2001.

Accordingly, the resolution in G.R. No. 149287 should have written *finis* to the issue of prescription. Nonetheless, to finally put to rest this bothersome issue, it behooves this Court to

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[23] *Virtucio v. Alegarbes*, G.R. No. 187451, August 29, 2012, 679 SCRA 412.

[24] *Rollo*, pp. 73-75.

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

[26] *Id*. at 83-96.

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

further elucidate why the respondent's action and right of partition is not barred by prescription. The CA explained that prescription is inapplicable. While the appellate court's observation is proper, it is inadequate as it fails to sufficiently explain why the rule on the imprescriptibility and indefeasibility of Torrens titles do not apply.

In the recent case of *Pontigon v. Sanchez*, We explained thus:

> Under the Torrens System as enshrined in P.D. No. 1529, the decree of registration and the certificate of title issued become incontrovertible upon the expiration of one (1) year from the date of entry of the decree of registration, without prejudice to an action for damages against the applicant or any person responsible for the fraud. However, actions for reconveyance based on implied trusts may be allowed beyond the one-year period. As elucidated in Walstrom v. Mapa, Jr.:
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> > [N]otwithstanding the irrevocability of the Torrens title already issued in the name of another person, he can still be compelled under the law to reconvey the subject property to the rightful owner. The property registered is deemed to be held in trust for the real owner by the person in whose name it is registered. After all, the Torrens system was not designed to shield and protect one who had committed fraud or misrepresentation and thus holds title in bad faith. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property, in this case the title thereof, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner, or to one with a better right. This is what reconveyance is all about. Yet, **the right to seek reconveyance based on an implied or constructive trust is not absolute nor is it imprescriptible**. An action for reconveyance based on an implied or constructive trust must perforce prescribe in **ten years** from the issuance of the Torrens title over the property. (Emphasis supplied)

Thus, an action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten (10) years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property.

By way of additional exception, the Court, in a catena of cases, has permitted the filing of an action for reconveyance despite the lapse of more than ten (10) years from the issuance of title. **The common denominator of these cases is that the plaintiffs therein were in actual possession of the disputed land, converting the action from reconveyance of property into one for quieting of title.** Imprescriptibility is accorded to cases for quieting of title since the plaintiff has the right to wait until his possession is disturbed or his title is questioned before initiating an action to vindicate his right.[28] (Emphasis supplied; citations omitted)

Given the falsity of the ESW, it becomes apparent that petitioner obtained the registration through fraud. This wrongful registration gives occasion to the creation of an implied or constructive trust under Article 1456 of the New Civil Code.[29] An action for reconveyance based on an implied trust generally prescribes in ten years. However, if the plaintiff remains in possession of the property, the prescriptive period to recover title of possession does not run against him. In such case, his action is deemed in the nature of a quieting of title, an action that is imprescriptible.[30]

In the case before us, the certificate of title over the subject property was issued on November 24, 1970. Yet, the complaint for partition and annulment of the title was only filed on July 1, 1992, more than twenty (20) years since the assailed title was issued. Respondent's complaint before the RTC would have been barred by prescription. However, based on respondent's submission before the trial court, both petitioner and respondent were residing at the subject property at the time the complaint was filed. The complaint[31] states:

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[28] G.R. No. 221513, December 5, 2016.

[29] Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

[30] *Aniceto Uy v. Court of Appeals, Mindanao Station, Cagayan de Oro City, Carmencita Naval-Sai, rep. by her Attorney-in-fact Rodolfo Florentino*, G.R. No. 173186, September 16, 2015.

[31] *Rollo*, pp. 68-72.

1) That Plaintiff is of legal age, married, Filipino and presently residing at 2227 Romblon St., G. Tuazon, Sampaloc, Manila; while defendant is likewise of legal age, married, Filipino and residing at 2227 Romblon St., G. Tuazon, Sampaloc, Manila, where he may be served with summons and other processes of this Honorable Court;[32]

This was unqualifiedly admitted by petitioner in his Amended Answer and no denial was interposed therefrom.[33] Petitioner's failure to refute respondent's possession of the subject property may be deemed as a judicial admission. A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding.[34] A judicial admission conclusively binds the party making it and he cannot thereafter take a position contradictory to or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted, unless it is shown that the admission was made through palpable mistake or that no such admission was made.[35]

Considering that respondent was in actual possession of the disputed land at the time of the filing of the complaint, the present case may be treated as an action for quieting of title.

Quieting of title is a common law remedy for the removal of any cloud, doubt, or uncertainty affecting title to real property.[36] In *Heirs of Delfin and Maria Tappa v. Heirs of Jose Bacud*,[37] this Court reiterated the requisites for an action for quieting of title:

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[32] *Id*. at 68.

[33] *Id*. at 123.

[34] *Adolfo v. Adolfo*, G.R. No. 201427, March 18, 2015, 753 SCRA 580, citing 2 Regalado, *Remedial Law Compendium* 656 (9th rev ed.).

[35] *Extraordinary Development Corporation v. Samson-Bico*, G.R. No. 191090, October 13, 2014, 738 SCRA 147, 164.

[36] *Quintos v. Nicolas,* G.R. No. 210252, June 16, 2014, 726 SCRA 482, 493.

[37] G.R. No. 187633, April 4, 2016, 788 SCRA 13, 25-30.

The action filed by Spouses Tappa was one for quieting of title and recovery of possession. In *Baricuatro, Jr. v. Court of Appeals,* an action for quieting of title is essentially a common law remedy grounded on equity, to wit:

> x x x Originating in equity jurisprudence, its purpose is to secure "...an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever afterward free from any danger of hostile claim." In an action for quieting of title, the competent court is tasked to determine the respective rights of the complainant and other claimants, "...not only to place *things in their proper place,* to make the one who has no rights to said immovable *respect and not disturb* the other, but also for the *benefit of both,* so that he who has the right would see every *cloud of doubt over* the property dissipated, and he could afterwards without fear *introduce the improvements* he may desire, to *use,* and even to *abuse* the property as he deems best. x x x." (Emphasis in the original.)

In our jurisdiction, the remedy is governed by Article 476 and 477 of the Civil Code, which state:

Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

Art. 477. The plaintiff must have legal or equitable title to, or interest in the real property which is the subject-matter of the action. He need not be in possession of said property.

From the foregoing provisions, we reiterate the rule that for an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

x x x x x x x x x

A cloud on a title exists when (1) there is an instrument (deed, or contract) or record or claim or encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable or extinguished (or terminated) or barred by extinctive prescription; and (4) and may be prejudicial to the title.

Since it was already established that respondent's signature on the ESW, which was the basis of petitioner's title over the property, was forged, then it is only necessary for the cloud on respondent's title to be removed. Thus, the trial court's order to cancel TCT No. 102822 and uphold the parties' co-ownership was proper.

The present action is not barred by laches

We also find no merit in petitioner's argument that the case is barred by laches.

Jurisprudence has defined laches as the failure or neglect, for an unreasonable and unexplained length of time, to do that which—by the exercise of due diligence—could or should have been done earlier. It is the negligence or omission to assert a right within a reasonable period, warranting the presumption that the party entitled to assert it has either abandoned or declined to assert it.[38]

Based on the facts presented before us, it appears that respondent did not sleep on his rights, as claimed by petitioner. It is undeniable that respondent had filed several cases to assert his rights over the property. Aside from the present complaint, respondent also filed, on separate occasions, three criminal complaints for: 1) falsification of public document, 2) estafa through falsification of public documents, and 3) forgery, all against herein petitioner. To Our mind, the filing of these cases at different times negates the claim of laches. Time and again, this Court has ruled that courts, under the principle of equity,

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[38] *Quintos v. Nicolas*, *supra* note 36, at 502.

will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.[39]

IN VIEW OF THE FOREGOING, the petition is **DENIED**. The Decision dated September 30, 2011 of the Regional Trial Court, Branch 55, Manila in Civil Case No. 92-61716, as affirmed by the Court of Appeals in its Decision dated June 28, 2016 in CA-G.R. CV No. 99908, is hereby **AFFIRMED.**

The Regional Trial Court shall proceed with the partition of the subject lot with dispatch.

SO ORDERED.

Bersamin, Reyes, Jardeleza, and *Tijam JJ.,* concur.

THIRD DIVISION

[G.R. No. 204617. July 10, 2017]

ESPERANZA BERBOSO, *petitioner, vs.* **VICTORIA CABRAL**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIMITED TO QUESTIONS OF LAW, AND THE FACTUAL FINDINGS OF THE LOWER COURTS ARE CONCLUSIVE ON THE COURT EXCEPT WHERE THE TRIBUNALS BELOW CONFLICT IN THEIR FACTUAL FINDINGS AND WHEN THE JUDGMENT IS BASED ON A MISAPPREHENSION OF FACTS.— At the outset, a

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[39] *Raymundo Coderias v. Estate of Juan Cidoco*, G.R. No. 180476, June 26, 2013, 699 SCRA 684, 698.

Rule 45 petition is limited to questions of law, and the factual findings of the lower courts are, as a rule, conclusive on this Court. Despite this Rule 45 requirement, however, Our pronouncements have likewise recognized exceptions, such as the situation obtaining here — where the tribunals below conflict in their factual findings and when the judgment is based on a misapprehension of facts.

2. ID.; ID.; PLEADINGS AND PRACTICES; FORUM-SHOPPING; ELEMENTS OF *LITIS PENDENTIA* MUST CONCUR; *RES JUDICATA*; ELEMENTS; NO IDENTITY OF CAUSES OF ACTION IN CASE AT BAR.— In *Daswani v. Banco de Oro Universal Bank, et al.*, the Court elucidated that: In determining whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* concur, namely: a) there is identity of parties, or at least such parties who represent the same interests in both actions; b) there is identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and, c) that the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. Meanwhile, in *Club Filipino Inc., et al. v. Bautista, et al.*, the Court enumerated, to wit: The elements of *res judicata* are: 1) the judgment sought to bar the new action must be final; 2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; 3) the disposition of the case must be a judgment on the merits; and 4) there must be as between the first and second action, identity of parties, subject matter and causes of action. In the case at bar, the first petition for cancellation of EP Nos. 445829 and 445830 was based on the validity of its issuance in favor of Alejandro, while the second petition was based on the alleged violation of the prohibition on the sale of the subject land. As such, there is no, as between the first petition and the second petition, identity of causes of action. Therefore, the final decision in G.R. No. 135317 does not constitute as *res judicata* on the second petition.

3. ID.; EVIDENCE; BURDEN OF PROOF; EACH PARTY MUST PROVE HIS AFFIRMATIVE ALLEGATION, AND THE PARTY WHO ALLEGES AN AFFIRMATIVE FACT HAS THE BURDEN OF PROVING IT BECAUSE MERE

ALLEGATION OF THE FACT IS NOT EVIDENCE OF IT.— It is a basic rule of evidence that each party must prove his affirmative allegation. The party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it. Verily, the party who asserts, not he who denies, must prove. Respondent alleged that petitioner sold a portion of the subject land to Fernando as evidenced by the *Kasunduan* dated December 17, 1994. As such, respondent bears the burden of proving that there is indeed a sale between petitioner and Fernando, rather than petitioner to prove that there is no sale.

4. ID.; ID.; ADMISSIBILITY; BEST EVIDENCE RULE; THE HIGHEST AVAILABLE DEGREE OF PROOF MUST BE PRODUCED; FOR DOCUMENTARY EVIDENCE, THE CONTENTS OF A DOCUMENT ARE BEST PROVED BY THE PRODUCTION OF THE DOCUMENT ITSELF TO THE EXCLUSION OF SECONDARY OR SUBSTITUTIONARY EVIDENCE; EXCEPTIONS.— Examination of the records will show that the *Kasunduan* dated December 17, 1994 is a mere photocopy; as such, the same cannot be admitted to prove the contents thereof. The best evidence rule requires that the highest available degree of proof must be produced. For documentary evidence, the contents of a document are best proved by the production of the document itself to the exclusion of secondary or substitutionary evidence. Rule 130, Section 3 of the Rules of Court states that: Sec. 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.

5. ID.; ID.; ID.; DOCUMENTARY EVIDENCE; SECONDARY EVIDENCE WHEN MAY BE PRESENTED; OFFEROR OF THE SECONDARY EVIDENCE MUST SATISFACTORILY PROVE THE EXECUTION OR EXISTENCE OF THE ORIGINAL, THE LOSS AND DESTRUCTION OF THE ORIGINAL OR ITS NON-PRODUCTION IN COURT, AND THE UNAVAILABILITY OF THE ORIGINAL IS NOT DUE TO BAD FAITH ON THE PART OF THE PROPONENT/OFFEROR.— Rule 130, Section 5 of the Rules of Court provides the rules when secondary evidence may be presented, thus: Sec. 5. *When original document is unavailable*. – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. Accordingly, the offeror of the secondary evidence is burdened to satisfactorily prove the predicates thereof, namely: (1) the execution or existence of the original; (2) the loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent/offeror. Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence. Nowhere in the records will show that the respondent proved that the original of the *Kasunduan* dated December 17, 1994 exists. Respondent even failed to explain why she merely presented a photocopy of the *Kasunduan*. Respondent likewise failed to prove the contents of the *Kasunduan* in some authentic document, nor presented Fernando, a party to the said *Kasunduan* or any witness for that matter. As such, respondent failed to prove the due execution and existence of the *Kasunduan*. Therefore, a photocopy of the *Kasunduan* cannot be admitted to prove that there is indeed a sale between petitioner and Fernando.

6. ID.; ID.; ID.; ID.; PROOF OF PRIVATE DOCUMENT; THE DUE EXECUTION AND AUTHENTICITY OF A PRIVATE DOCUMENT MUST BE PROVED FIRST BEFORE THE SAME CAN BE ADMITTED AS EVIDENCE; EXCEPTIONS; A PRIVATE DOCUMENT WHICH IS NOT AUTHENTICATED IS A MERE PHOTOCOPY, AND THE SAME IS CONSIDERED HEARSAY EVIDENCE AND

CANNOT BE ADMITTED AS EVIDENCE AGAINST A PARTY.— [T]he *Kasunduan* is merely a private document since the same was not notarized before a notary public. Rule 132, Section 20 of the Rules of Court states that a private document, before the same can be admitted as evidence, must first be authenticated, to wit: Sec. 20. *Proof of private document*.– Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) By anyone who saw the document executed or written; or (b) By evidence of the genuineness of the signature or handwriting of the maker. Any other private document need only be identified as that which it is claimed to be. In *Otero v. Tan*, the Court held that: The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine. Here, the *Kasunduan* is not authenticated by the respondent. No one attested to the genuineness and due execution of the document. Fernando was not presented nor did he submit an affidavit to confirm and authenticate the document or its contents. Neither was the requirement of authentication excused under the above-cited instances. Since the *Kasunduan* dated December 17, 1994 was not authenticated and was a mere photocopy, the same is considered hearsay evidence and cannot be admitted as evidence against the petitioner. The CA, therefore erred when it considered the *Kasunduan* as evidence against the petitioner.

7. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); PROSCRIBES A COLLATERAL ATTACK TO A CERTIFICATE OF TITLE, AS A TORRENS TITLE CANNOT BE ALTERED, MODIFIED OR CANCELLED EXCEPT IN A DIRECT PROCEEDING IN ACCORDANCE WITH LAW; DIRECT AND COLLATERAL ATTACK, DISTINGUISHED.— Section 48 of P.D. No. 1529 or the Property Registration Decree proscribes a collateral attack to a certificate of title and allows only a direct attack thereof. A Torrens title cannot be altered, modified or cancelled except in a direct proceeding in accordance

with law. When the Court says direct attack, it means that the object of an action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceeding is nevertheless made as an incident thereof.

8. ID.; ID.; ID.; ID.; CERTIFICATES OF TITLE ISSUED PURSUANT TO EMANCIPATION PATENTS ACQUIRE THE SAME PROTECTION ACCORDED TO OTHER TITLES, AND BECOME INDEFEASIBLE AND INCONTROVERTIBLE UPON THE EXPIRATION OF ONE YEAR FROM THE DATE OF THE ISSUANCE OF THE ORDER FOR THE ISSUANCE OF THE PATENT, UNLESS IT IS NULLIFIED BY A COURT OF COMPETENT JURISDICTION IN A DIRECT PROCEEDING FOR CANCELLATION OF TITLE.— In *Bumagat, et al. v. Arribay*, the Court reiterated the rule that: Certificates of title issued pursuant to emancipation patents acquire the same protection accorded to other titles, and become indefeasible and incontrovertible upon the expiration of one year from the date of the issuance of the order for the issuance of the patent. Lands so titled may no longer be the subject matter of a cadastral proceeding; nor can they be decreed to other individuals. The rule in this jurisdiction, regarding public land patents and the character of the certificate of title that may be issued by virtue thereof, is that where land is granted by the government to a private individual, the corresponding patent therefor is recorded, and the certificate of title is issued to the grantee; thereafter, the land is automatically brought within the operation of the Land Registration Act. As such, upon expiration of one year from its issuance, the certificate of title shall become irrevocable and indefeasible like a certificate issued in a registration proceeding. Therefore, TCT Nos. 263885(M) and 263886(M) issued in favor of petitioner and her children as heirs of Alejandro are indefeasible and binding upon the whole world unless it is nullified by a court of competent jurisdiction in a direct proceeding for cancellation of title. Thus, We find that the petition to cancel EP Nos. 445829 and 445830 is a collateral attack to the validity of TCT Nos. 263885(M) and 263886(M); as such, the same should not be allowed. Therefore, in view of the fact that respondent was not able to

sufficiently prove that petitioner sold the subject land to Fernando and that the petition to cancel EP Nos. 445829 and 445830 is a collateral attack to the validity of TCT Nos. 263885(M) and 263886(M), We hold that the CA erred in reversing the decision of the DARAB.

APPEARANCES OF COUNSEL

Herminio L. Ruiz for petitioner.
Lauron Delos Reyes & Partners for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari* filed by petitioner Esperanza Berboso assailing the Decision[1] dated May 7, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 100831, which reversed and set aside the Decision[2] dated August 30, 2006 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 12283, dismissing the case filed by respondent Victoria Cabral for cancellation of emancipation patents (EP).

The pertinent facts of the case are as follows:

The subject matter of this case is a parcel of land located in Barangay Saluysoy, Municipality of Meycauyan, Bulacan containing an area of 23,426 square meters (subject land). The subject land was awarded to Alejandro Berboso (Alejandro) by the Department of Agrarian Reform (DAR) on September 11, 1981 pursuant to Presidential Decree (P.D.) No. 27[3] by virtue

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[1] Penned by Associate Justice Rodil V. Zalameda, concurred in by Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro; *rollo*, pp. 65-81.

[2] *Id*. at 124-128.

[3] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR.

of a Certificate of Land Transfer (CLT) No. 0-056450. The same was duly registered with the Register of Deeds of Meycauyan, Bulacan.

On July 27, 1987, CLT No. 0-056450 was replaced by EP No. 445829 covering 22,426 sq m and EP No. 445830 covering the remaining 1,000 sq m.

On November 17, 1992, after Alejandro had fully complied with all the requirements for the final grant of title, the Register of Deeds of Meycauyan, Bulacan issued Transfer Certificate of Title (TCT) No. EP-046 and TCT No. EP-047 in the name of Alejandro. TCT Nos. EP-046 and EP-047 thereby cancelled EP Nos. 445829 and 445830.

On September 8, 1993, respondent filed with the DAR Provincial Agrarian Reform Adjudication Board (PARAB) her first petition to cancel EP Nos. 445829 and 445830.

Meanwhile, Alejandro died in 1994. After his death, his heirs settled his estate and executed an Extra-Judicial Settlement of Estate. Thus, on April 15, 1996, TCT Nos. EP-046 and EP-047 were cancelled and TCT Nos. 263885(M) and 263886(M) were issued in the name of the heirs of Alejandro, namely, Esperanza Vda. De Berboso, Juan Berboso, Benita Berboso Gonzales, Adelina Berboso Villegas and Rolando Berboso.

The PARAB rendered a decision in favor of Alejandro and accordingly affirmed the validity of the EP Nos. 445829 and 445830. Respondent's appeal to the DARAB was denied. Respondent elevated the case to the CA via a Petition for Review docketed as CA-G.R. SP No. 44666. The CA in its Decision[4] dated April 21, 1998, affirmed the decisions of the PARAB and the DARAB.

Respondent assailed the CA decision to this Court, but on December 9, 1998 Resolution,[5] this Court dismissed the

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[4] *Rollo*, pp. 101-110.

[5] Court Third Division Resolution in G.R. No. 35317 entitled *Victoria Cabral v. Adjudication Board Department of Agrarian Reform and Spouses Alejandro and Esperanza Berboso*; *id*. at 111.

respondent's petition. Pending the resolution of the motion for reconsideration (MR) filed by the respondent, the latter filed on February 26, 1999, her second petition for the cancellation of the said EP Nos. 445829 and 445830 before the PARAB docketed as DARAB Case No. R-03-02-8506'99. Respondent claimed that petitioner sold a portion of the subject land to a certain Rosa Fernando (Fernando) within the prohibitory period under the existing rules and regulations of the DAR and prayed again for the cancellation of EP Nos. 445829 and 445830 awarded to Alejandro. Petitioner specifically denied the allegation of respondent that she sold a portion of the subject land to Fernando.

On March 17, 1999, this Court, in its Resolution[6] denied with finality the MR filed by respondent.

Then, on December 20, 2000, the PARAB issued its Decision,[7] in connection with the second petition of respondent, granting respondent's petition and ordered as follows:

> WHEREFORE, judgment is hereby rendered in favor of the [respondent] and against [petitioner] and order is hereby issued:
>
> 1. ORDERING [petitioner] and other persons actingin her behalf to vacate the landholdings in question, subject of this present litigation;
>
> 2. ORDERING the cancellation of Emancipation Patent Nos. 445829 and 445830;
>
> 3. DIRECTING the DAR officers and personnel concerned to re-allocate the subject landholdings in favor of qualified farmer-beneficiaries in accordance with its existing DAR laws, rules and regulations on the matter.
>
> No pronouncement as to costs.
>
> SO ORDERED.[8]

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[6] *Id*. at 112.

[7] *Id*. at 118-122.

[8] *Id*. at 122.

Petitioner appealed the PARAB's decision to the DARAB, which the latter granted in its Decision[9] dated August 30, 2006 in DARAB Case No. 12283, thus:

WHEREFORE, premises considered, the Decision of the Honorable Adjudicator a quo dated December 20, 2000 is hereby **SET ASIDE**. **A NEW JUDGMENT** is hereby rendered **DISMISSING** the petition filed by petitioner-appellee for lack of merit.

SO ORDERED.[10]

Respondent herein appealed the DARAB's decision to the CA docketed as CA-G.R. SP No. 100831. The CA in its Decision[11] dated May 7, 2012, reversed the DARAB and reinstated the PARAB's decision, to wit:

WHEREFORE, foregoing premises considered, the Petition for Review is **GRANTED** and the assailed 30 August 2006 Decision and the Resolution dated 21 June 2007 of the DARAB is [sic] **REVERSED** and **SET ASIDE**. Accordingly, the 20 December 2000 Decision of the Provincial Adjudicator is **REINSTATED**.

SO ORDERED.[12]

Aggrieved, petitioner brought the present Petition for Review on *Certiorari* raising the following issues, *viz.*:

I. DOES THE PROVINCIAL ADJUDICATOR HAVE JURISDICTION TO ACT ON A SECOND PETITION FOR CANCELLATION OF AN EMANCIPATION PATENT WHICH HAS ALREADY BEEN CANCELLED, FILED AFTER THE DEATH OF THE ORIGINAL GRANTEE/ BENEFICIARY OF THE SAID EMANCIPATION PATENT[,] AND LONG REPLACED BY A CERTIFICATE OF TITLE ISSUED IN THE NAME OF THE PETITIONER AND HER CHILDREN WHO WERE NOT EVEN

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[9] *Id*. at 124-128.

[10] *Id*. at 128.

[11] *Id*. at 65-81.

[12] *Id*. at 81.

IMPLEADED IN THE SAID PETITION AND WHEREIN THE PARTIES HAVE NO TENANCY RELATIONSHIP WHATSOEVER;

II. CAN THE RESPONDENT QUESTION THE VALIDITY OF THE TORRENS TITLE ISSUED TO THE PETITIONER AND TO HER CHILDREN BEFORE THE PROVINCIAL ADJUDICATOR WITHOUT VIOLATING THE EXPRESS PROVISION OF SECTION 48 OF PRESIDENTIAL DECREE NO. 1529 WHICH EXPRESSLY PROVIDES THAT A CERTIFICATE OF TITLE SHALL NOT BE SUBJECT TO COLLATERAL ATTACK, IT CANNOT BE ALTERED, MODIFIED, OR CANCELLED EXCEPT IN A DIRECT PROCEEDING IN ACCORDANCE WITH LAW AND DOES THE PROVINCIAL ADJUDICATOR HAVE ANY JURISDICTION TO ISSUE AN ORDER WHICH WOULD AFFECT THE RIGHTS, OWNERSHIP, INTEREST AND POSSESSION OF THE REGISTERED OWNER OF A CERTIFICATE OF TITLE WHO WERE NOT EVEN IMPLEADED IN THE PETITION;

III. WHEN WILL THE TEN YEARS PROHIBITORY PERIOD PROVIDED FOR IN SECTION 24 OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (R.A. NO. 6657) COMMENCE, IS IT FROM THE DATE THE LAND WAS AWARDED TO THE BENEFICIARY, OR WILL IT COMMENCE TO RUN ONLY FROM THE DATE THE CLOA OR EMANCIPATION PATENT WAS ISSUED TO THE BENEFICIARY?

IV. UNDER THE RULE OF EVIDENCE, WHICH WEIGHT [sic] MORE, A FINAL DECISION RENDERED BY A COMPETENT COURT OR THE FINDINGS AND OPINION OF THE PROVINCIAL ADJUDICATOR BASE [sic] ON UNVERIFIED AND UNIDENTIFIED PRIVATE DOCUMENTS WHOSE ORIGINAL COPY WERE NOT EVEN PRESENTED[;]

V. DOES FORUM SHOPPING AND THE PRINCIPLE OF RES JUDICATA APPLIES [sic] IN THIS SECOND PETITION FOR CANCELLATION OF EMANCIPATION PATENT FILED BY THE RESPONDENT[.][13]

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

Ultimately, the issues to be resolved in this case are: 1) whether the principle of *res judicata* and forum shopping apply in this case, such that the second petition for cancellation of EP Nos. 445829 and 445830 was barred by Our decision in G.R. No. 135317 dismissing respondent's first petition; 2) whether the petitioner sold the subject land to a certain Fernando in violation of the prohibition to transfer under the provisions of P.D. No. 27; and 3) whether the petition for cancellation of EP Nos. 445829 and 445830 constitute as a collateral attack to the certificate of title issued in favor of Alejandro.

The Court's Ruling

At the outset, a Rule 45 petition is limited to questions of law, and the factual findings of the lower courts are, as a rule, conclusive on this Court. Despite this Rule 45 requirement, however, Our pronouncements have likewise recognized exceptions,[14] such as the situation obtaining here – where the tribunals below conflict in their factual findings and when the judgment is based on a misapprehension of facts.[15]

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[14] In *Prudential Bank (now Bank of the Philippine Islands) v. Rapanot, et al.,* G.R. No. 191636, January 16, 2017, We held that as a general rule, only questions of law may be raised in petitions filed under Rule 45. However, there are recognized exceptions to this general rule, namely:

> (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) **when the judgment is based on a misapprehension of facts**; (5) **when the findings of facts are conflicting**; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[15] *Heirs of Buensuceso, et al. v. Perez, et al.*, G.R. No. 173926, March 6, 2013.

I

The principle of *res judicata* and forum shopping does not apply in the present case.

Petitioner alleges that the respondent in filing the second petition for cancellation of EP Nos. 445829 and 445830 raised issues which have been already resolved by this Court in the first petition. The second petition involves the same subject land, same parties, same cause of action and same reliefs prayed for. The respondent filed the second petition while the MR in G.R. No. 135317 was still pending for resolution before this Court. As such, respondent was guilty of forum shopping. Further, petitioner claims that the elements of *litis pendentia* were clearly present in this case. In the first petition, the validity of EP Nos. 445829 and 445830 was affirmed by this Court in G.R. 135317; as such, the same constitutes *res judicata* to the second petition.

We are not persuaded.

In *Daswani v. Banco de Oro Universal Bank, et al.*,[16] the Court elucidated that:

> In determining whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* concur, namely: a) there is identity of parties, or at least such parties who represent the same interests in both actions; b) there is identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and, c) that the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[17]

Meanwhile, in *Club Filipino Inc., et al. v. Bautista, et al.*,[18] the Court enumerated, to wit:

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[16] G.R. No. 190983, July 29, 2015.

[17] *Id.*

[18] G.R. No. 168406, January 14, 2015.

The elements of *res judicata* are: 1) the judgment sought to bar the new action must be final; 2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; 3) the disposition of the case must be a judgment on the merits; and 4) there must be as between the first and second action, identity of parties, subject matter and causes of action.[19]

In the case at bar, the first petition for cancellation of EP Nos. 445829 and 445830 was based on the validity of its issuance in favor of Alejandro, while the second petition was based on the alleged violation of the prohibition on the sale of the subject land. As such, there is no, as between the first petition and the second petition, identity of causes of action. Therefore, the final decision in G.R. No. 135317 does not constitute as *res judicata* on the second petition.

II

Respondent was not able to prove that petitioner violated the prohibition on the sale of the subject land.

It is a basic rule of evidence that each party must prove his affirmative allegation.[20] The party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it. Verily, the party who asserts, not he who denies, must prove.[21]

Respondent alleged that petitioner sold a portion of the subject land to Fernando as evidenced by the *Kasunduan*[22] dated December 17, 1994. As such, respondent bears the burden of proving that there is indeed a sale between petitioner and Fernando, rather than petitioner to prove that there is no sale.

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[19] *Id*.

[20] *Reyes v. Glaucoma Research Foundation, Inc., et al.*, G.R. No. 189255, June 17, 2015.

[21] *Far East Bank & Trust Company v. Chante*, G.R. No. 170598, October 9, 2013.

[22] *Rollo*, p. 148.

Examination of the records will show that the *Kasunduan* dated December 17, 1994 is a mere photocopy; as such, the same cannot be admitted to prove the contents thereof. The best evidence rule requires that the highest available degree of proof must be produced. For documentary evidence, the contents of a document are best proved by the production of the document itself to the exclusion of secondary or substitutionary evidence.[23]

Rule 130, Section 3 of the Rules of Court states that:

> Sec. 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.

Rule 130, Section 5 of the Rules of Court provides the rules when secondary evidence may be presented, thus:

> Sec. 5. *When original document is unavailable*. — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

Accordingly, the offeror of the secondary evidence is burdened to satisfactorily prove the predicates thereof, namely: (1) the

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[23] *Dantis v. Maghinang, Jr.*, G.R. No. 191696, April 10, 2013.

execution or existence of the original; (2) the loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent/offeror. Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence.[24]

Nowhere in the records will show that the respondent proved that the original of the *Kasunduan* dated December 17, 1994 exists. Respondent even failed to explain why she merely presented a photocopy of the *Kasunduan*. Respondent likewise failed to prove the contents of the *Kasunduan* in some authentic document, nor presented Fernando, a party to the said *Kasunduan* or any witness for that matter. As such, respondent failed to prove the due execution and existence of the *Kasunduan*. Therefore, a photocopy of the *Kasunduan* cannot be admitted to prove that there is indeed a sale between petitioner and Fernando.

Further, the *Kasunduan* is merely a private document since the same was not notarized before a notary public.

Rule 132, Section 20 of the Rules of Court states that a private document, before the same can be admitted as evidence, must first be authenticated, to wit:

> Sec. 20. *Proof of private document*. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as that which it is claimed to be.

In *Otero v. Tan*,[25] the Court held that:

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[24] *Id*.

[25] G.R. No. 200134, August 15, 2012.

The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.[26]

Here, the *Kasunduan* is not authenticated by the respondent. No one attested to the genuineness and due execution of the document. Fernando was not presented nor did he submit an affidavit to confirm and authenticate the document or its contents. Neither was the requirement of authentication excused under the above-cited instances.

Since the *Kasunduan* dated December 17, 1994 was not authenticated and was a mere photocopy, the same is considered hearsay evidence and cannot be admitted as evidence against the petitioner. The CA, therefore erred when it considered the *Kasunduan* as evidence against the petitioner.

III

The petition for cancellation of EP Nos. 445829 and 445830 constitutes as a collateral attack to the validity of the certificate of title issued in favor of petitioner and her children. Therefore, the same should be dismissed.

Section 48 of P.D. No. 1529 or the Property Registration Decree proscribes a collateral attack to a certificate of title and allows only a direct attack thereof.[27] A Torrens title cannot be altered, modified or cancelled except in a direct proceeding in accordance with law. When the Court says direct attack, it means that the object of an action is to annul or set aside

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[26] *Id*.

[27] *Firaza, Sr. v. Spouses Ugay*, G.R. No. 165838, April 3, 2013.

such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceeding is nevertheless made as an incident thereof.[28]

In *Bumagat, et al. v. Arribay*,[29] the Court reiterated the rule that:

> Certificates of title issued pursuant to emancipation patents acquire the same protection accorded to other titles, and become indefeasible and incontrovertible upon the expiration of one year from the date of the issuance of the order for the issuance of the patent. Lands so titled may no longer be the subject matter of a cadastral proceeding; nor can they be decreed to other individuals. The rule in this jurisdiction, regarding public land patents and the character of the certificate of title that may be issued by virtue thereof, is that where land is granted by the government to a private individual, the corresponding patent therefor is recorded, and the certificate of title is issued to the grantee; thereafter, the land is automatically brought within the operation of the Land Registration Act.[30]

As such, upon expiration of one year from its issuance, the certificate of title shall become irrevocable and indefeasible like a certificate issued in a registration proceeding.[31] Therefore, TCT Nos. 263885(M) and 263886(M) issued in favor of petitioner and her children as heirs of Alejandro are indefeasible and binding upon the whole world unless it is nullified by a court of competent jurisdiction in a direct proceeding for cancellation of title.[32] Thus, We find that the petition to cancel EP Nos. 445829 and 445830 is a collateral attack to the validity of TCT Nos. 263885(M) and 263886(M); as such, the same should not be allowed.

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[28] *Hortizuela, represented by Jovier Tagufa v. Tagufa, et al.*, G.R. No. 205867, February 23, 2015.

[29] G.R. No. 194818, June 9, 2014.

[30] *Id*.

[31] *Id*.

[32] *Cagatao v. Almonte, et al.*, G.R. No. 174004, October 9, 2013.

Therefore, in view of the fact that respondent was not able to sufficiently prove that petitioner sold the subject land to Fernando and that the petition to cancel EP Nos. 445829 and 445830 is a collateral attack to the validity of TCT Nos. 263885(M) and 263886(M), We hold that the CA erred in reversing the decision of the DARAB.

WHEREFORE, the foregoing considered, the petition is **GRANTED**. The Decision dated May 7, 2012 of the Court of Appeals in CA-G.R. SP No. 100831 is **REVERSED and SET ASIDE.** The Decision dated August 30, 2006 of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 12283 dismissing the case filed by respondent Victoria Cabral is **REINSTATED.**

SO ORDERED.

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

Jardeleza, J., on official leave.

SECOND DIVISION

[G.R. No. 212616. July 10, 2017]

DISTRIBUTION & CONTROL PRODUCTS, INC./ VINCENT M. TIAMSIC, *petitioners, vs.* **JEFFREY E. SANTOS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; AN EMPLOYER

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[*] Designated Fifth Member of the Third Division per Special Order No. 2461 dated July 10, 2017 *vice* retired Associate Justice Bienvenido L. Reyes.

SHALL NOT DISMISS AN EMPLOYEE EXCEPT FOR A JUST OR AUTHORIZED CAUSE AND ONLY AFTER DUE PROCESS IS OBSERVED; SUBSTANTIAL AND PROCEDURAL DUE PROCESS RIGHTS OF DISMISSED EMPLOYEE, DISTINGUISHED.— Our Constitution, statutes and jurisprudence uniformly guarantee to every employee or worker tenurial security. What this means is that an employer shall not dismiss an employee except for a just or authorized cause and only after due process is observed. In the case of *Brown Madonna Press, Inc. v. Casa*, this Court held: In determining whether an employee's dismissal had been legal, the inquiry focuses on whether the dismissal violated his right to substantial and procedural due process. An employee's right not to be dismissed without just or authorized cause as provided by law, is covered by his right to substantial due process. Compliance with procedure provided in the Labor Code, on the other hand, constitutes the procedural due process right of an employee. The violation of either the substantial due process right or the procedural due process right of an employee produces different results. Termination without a just or authorized cause renders the dismissal invalid, and entitles the employee to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement. An employee's removal for just or authorized cause but without complying with the proper procedure, on the other hand, does not invalidate the dismissal. It obligates the erring employer to pay nominal damages to the employee, as penalty for not complying with the procedural requirements of due process. Thus, two separate inquiries must be made in resolving illegal dismissal cases: **first,** whether the dismissal had been made in accordance with the procedure set in the Labor Code; and **second**, whether the dismissal had been for just or authorized cause. As to substantive due process, this Court, in *Agusan Del Norte Electric Cooperative, Inc., et al. v. Cagampang, et al*., held that: In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause; failure to do so would necessarily mean that the dismissal was illegal. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the

employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.

2. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; IN ORDER TO SUCCESSFULLY INVOKE LOSS OF TRUST AND CONFIDENCE AS GROUND FOR DISMISSAL, THE EMPLOYER MUST NOT ONLY SHOW THAT THE EMPLOYEE CONCERNED HOLDS A POSITION OF TRUST AND CONFIDENCE BUT MUST ALSO ESTABLISH THE EXISTENCE OF AN ACT JUSTIFYING THE LOSS OF TRUST AND CONFIDENCE.— Loss of trust and confidence is a just cause for dismissal under Article 282(c) of the Labor Code, which provides that an employer may terminate an employment for "[f]raud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." However, in order for the employer to properly invoke this ground, the employer must satisfy two conditions. *First*, the employer must show that the employee concerned holds a position of trust and confidence. Jurisprudence provides for two classes of positions of trust. The first class consists of managerial employees, or those who, by the nature of their position, are entrusted with confidential and delicate matters and from whom greater fidelity to duty is correspondingly expected. The second class includes "cashiers, auditors, property custodians, or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property." *Second*, the employer must establish the existence of an act justifying the loss of trust and confidence. To be a valid cause for dismissal, the act that betrays the employer's trust must be real, *i.e.*, founded on clearly established facts, and the employee's breach of the trust must be willful, *i.e.*, it was done intentionally, knowingly and purposely, without justifiable excuse. Moreover, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.

3. ID.; ID.; ID.; ID.; ALTHOUGH PROOF BEYOND REASONABLE DOUBT IS NOT NEEDED TO JUSTIFY THE LOSS AS LONG AS THE EMPLOYER HAS REASONABLE GROUND TO BELIEVE THAT THE EMPLOYEE IS RESPONSIBLE FOR THE MISCONDUCT AND HIS PARTICIPATION THEREIN RENDERS HIM UNWORTHY OF THE TRUST AND CONFIDENCE DEMANDED OF HIS POSITION, THE RIGHT OF AN EMPLOYER TO DISMISS EMPLOYEES ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE, HOWEVER, MUST NOT BE EXERCISED ARBITRARILY AND WITHOUT JUST CAUSE.— [P]roof beyond reasonable doubt is not needed to justify the loss as long as the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position. Nonetheless, the right of an employer to dismiss employees on the ground of loss of trust and confidence, however, must not be exercised arbitrarily and without just cause. Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal. Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature and the loss must be founded on clearly established facts sufficient to warrant the employee's separation from work. Thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FINDINGS OF FACT OF *QUASI*-JUDICIAL AGENCIES ARE ACCORDED GREAT RESPECT, EVEN FINALITY, BY THE COURT. — [T]he LA, NLRC and the CA are unanimous in their findings that petitioners were not able to discharge their burden of proving that their termination of respondent's employment was for a just and valid cause. This is a question of fact and it is settled that findings of fact of *quasi*-judicial agencies are accorded great respect, even finality, by this Court. This proceeds from the general rule that this Court is not a

trier of facts, as questions of fact are contextually for the labor tribunals to resolve, and only errors of law are generally reviewed in petitions for review on *certiorari* criticizing the decisions of the CA.

5. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS; TWIN-REQUIREMENTS OF NOTICE AND HEARING; NOT COMPLIED WITH IN CASE AT BAR.— As to whether or not respondent was afforded procedural due process, the settled rule is that in termination proceedings of employees, procedural 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 omission 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. xxx. In the instant case, the LA, the NLRC and the CA again uniformly ruled that respondent was dismissed sans procedural due process. The only notice given by petitioners to respondent was the notice of his 30-day preventive suspension and, as found by the LA, nothing therein indicated that he was required nor was given the opportunity to explain his side, considering that he was being implicated in the theft of the subject circuit breakers and other electrical products. It is true that petitioners conducted their own investigation but the same was made without the participation of respondent. As to the required notice of termination, petitioners allege that they did not terminate respondent from his employment and that it was the latter who actually decided to abandon his job. However, the LA**,** the NLRC and the CA again unanimously found that petitioners failed to substantiate their allegation and the Court finds no cogent reason to depart from such finding.

6. ID.; ID.; ID.; PROCEDURAL DUE PROCESS IN TERMINATING AN EMPLOYEE, GUIDELINES.— In *Unilever Philippines, Inc. v. Rivera*, this Court laid down the guidelines on how to comply with procedural due process in terminating an employee, to wit: (1) The **first written notice**

to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees. (2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement. (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

APPEARANCES OF COUNSEL

Nitorreda Nasser & Layusa for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated November 22, 2013 and May 20, 2014, respectively, in CA-G.R. SP No. 125911. The questioned CA Decision affirmed the May 16, 2012 Decision[3] and June 25, 2012 Resolution[4] of the National Labor Relations Commission (*NLRC*) which, in turn affirmed, with modification the January 30, 2012 Decision[5] of the Labor Arbiter (*LA*), which found herein respondent illegally dismissed and ordered his reinstatement and payment of his full backwages.

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

Herein petitioner is a domestic corporation engaged in the business of selling and distributing electrical products and equipment with petitioner Vincent M. Tiamsic as its president. Respondent, on the other hand, was employed as petitioners' company driver.

On July 25, 2011, herein respondent filed against herein petitioners a complaint for constructive illegal dismissal and payment of separation pay. In his Position Paper[6], respondent contended that: he started working as petitioners' company driver on April 5, 2005; on December 16, 2010, he received a notice informing him that he was being placed under preventive

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[1] Penned by Associate Justice Jose C. Reyes, Jr., with the concurrence of Associate Justices Mario V. Lopez and Socorro B. Inting, Annex "A" to Petition, *rollo* pp. 26-34.

[2] Annex "B" to Petition; *id.* at 35-37.

[3] *Rollo,* pp. 79-87.

[4] *Id*. at 98-100.

[5] *Id*. at 61-66.

[6] *Id*. at 111-118.

suspension for a period of thirty (30) days beginning December 17, 2010 because he was one of the employees suspected of having participated in the unlawful taking of circuit breakers and electrical products of petitioners; a criminal complaint was filed against him and several other persons with the Prosecutor's Office of Mandaluyong City; he immediately inquired from petitioner company's Human Resources Department as to the exact reason why he was suspended because he was never given the opportunity to explain his side before he was suspended but the said Department did not give him any concrete explanation; and after the lapse of his 30-day suspension he was no longer allowed to return to work without any justification for such disallowance.

On their part, petitioners claimed in their Position Paper[7] that: they employed respondent as their company driver whose job included the delivery of items purchased by customers, receipt documentation and recording of previously purchased products which were returned by customers and coordination with the company warehouseman and the accounting department concerning all items which are subject of delivery and receipt by the company; on February 19, 2010, petitioner corporation, through its hired auditors, conducted a physical stock inventory of all materials stored in the company's warehouse and in its office building; after such inventory, it was found out that a number of electrical materials and products with an estimated value of ₱457,394.35, were missing; a subsequent inventory on April 24, 2010 likewise revealed that a 2000-ampere circuit breaker worth ₱106,341.75 was also missing, as well as thirty-seven (37) pieces of 40-ampere circuit breakers which had a total value of ₱39,940.04; herein respondent and the company warehouseman were the only persons who had complete access to the company warehouse as they were entrusted with the handling of all products from the company's suppliers; considering the size and weight of the missing items, they can only be carried by no less than two (2) persons; petitioners demanded an explanation from respondent and the

[7] *Id*. at 103-110.

warehouseman, but they failed to make an account as to how these products had gone missing from the warehouse and office building; as such, petitioners filed a criminal complaint for qualified theft and, thereafter, they suspended herein respondent; and after the lapse of his suspension, respondent no longer returned to work.

On January 30, 2012, the LA handling the case rendered his Decision finding respondent to be illegally terminated from his employment, thus, ordering his reinstatement and payment of his full backwages amounting to ₱297,916.67. The LA held that herein petitioners had the burden of proving that respondent's dismissal was valid and their failure to discharge this burden only means that the dismissal was not justified and, therefore, illegal.

Petitioners filed an appeal with the NLRC.

On May 16, 2012, the NLRC promulgated its Decision dismissing petitioners' appeal and affirming, with modification, the decision of the LA. In addition to the payment of backwages, the NLRC ordered petitioners to pay respondent separation pay equivalent to one (1) month for every year of service, instead of reinstatement.

Petitioners filed a Motion for Reconsideration but the NLRC denied it in its Resolution dated June 25, 2012.

Aggrieved, petitioners filed a petition for *certiorari* with the CA.

On November 22, 2013, the CA rendered its assailed Decision denying the *certiorari* petition and affirming the questioned NLRC Decision and Resolution.

Petitioners filed a Motion for Reconsideration, but it was likewise denied in the CA Resolution of May 20, 2014.

Hence, the present petition for review on *certiorari* anchored on the following issues:

WHETHER OR NOT THE COURT OF APPEALS INTRUDED INTO THE RIGHT OF THE EMPLOYER TO DISMISS AN

EMPLOYEE WHOSE CONTINUED EMPLOYMENT IS INIMICAL TO THE EMPLOYER'S INTEREST; [AND]

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECIDING THE INSTANT CASE NOT IN ACCORD WITH THE HONORABLE SUPREME COURT DECISIONS, i.e., WHERE DISMISSED EMPLOYEE FOR VALID GROUND SHOULD BE PAID ONLY NOMINAL DAMAGES, IF THE TWO-NOTICE RULE IS NOT COMPLIED WITH.[8]

The petition lacks merit.

Our Constitution, statutes and jurisprudence uniformly guarantee to every employee or worker tenurial security.[9] What this means is that an employer shall not dismiss an employee except for a just or authorized cause and only after due process is observed.[10]

In the case of *Brown Madonna Press, Inc. v. Casas,*[11] this Court held:

> In determining whether an employee's dismissal had been legal, the inquiry focuses on whether the dismissal violated his right to substantial and procedural due process. An employee's right not to be dismissed without just or authorized cause as provided by law, is covered by his right to substantial due process. Compliance with procedure provided in the Labor Code, on the other hand, constitutes the procedural due process right of an employee.
>
> The violation of either the substantial due process right or the procedural due process right of an employee produces different results. Termination without a just or authorized cause renders the dismissal invalid, and entitles the employee to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

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[8] *Rollo*, p. 18.

[9] *Baguio Central University v. Gallente*, 722 Phil. 494, 504 (2013).

[10] *Id*.

[11] G.R. No. 200898, June 15, 2015, 757 SCRA 525.

An employee's removal for just or authorized cause but without complying with the proper procedure, on the other hand, does not invalidate the dismissal. It obligates the erring employer to pay nominal damages to the employee, as penalty for not complying with the procedural requirements of due process.

Thus, two separate inquiries must be made in resolving illegal dismissal cases: **first**, whether the dismissal had been made in accordance with the procedure set in the Labor Code; and **second**, whether the dismissal had been for just or authorized cause.[12]

As to substantive due process, this Court, in *Agusan Del Norte Electric Cooperative, Inc., et al. v. Cagampang, et al.,*[13] held that:

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause; failure to do so would necessarily mean that the dismissal was illegal. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[14]

In the instant case, petitioners contend that their termination of respondent's employment was based on their loss of trust and confidence in him.

Loss of trust and confidence is a just cause for dismissal under Article 282(c) of the Labor Code, which provides that an employer may terminate an employment for "[f]raud or willful

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[12] *Brown Madonna Press, Inc. v. Casas, supra,* at 541-542.

[13] 589 Phil. 306 (2008).

[14] *Agusan del Norte Electric Cooperative, Inc., et al. v. Cagampang, et al., supra,* at 313, citing *Philippine Long Distance Company, Inc. v. Tiamson*, 511 Phil. 384, 394-395 (2005).

breach by the employee of the trust reposed in him by his employer or duly authorized representative."

However, in order for the employer to properly invoke this ground, the employer must satisfy two conditions.

First, the employer must show that the employee concerned holds a position of trust and confidence.[15] Jurisprudence provides for two classes of positions of trust.[16] The first class consists of managerial employees, or those who by the nature of their position, are entrusted with confidential and delicate matters and from whom greater fidelity to duty is correspondingly expected.[17] The second class includes "cashiers, auditors, property custodians, or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property."[18]

Second, the employer must establish the existence of an act justifying the loss of trust and confidence.[19] To be a valid cause for dismissal, the act that betrays the employer's trust must be real, *i.e.,* founded on clearly established facts, and the employee's breach of the trust must be willful, *i.e.,* it was done intentionally, knowingly and purposely, without justifiable excuse.[20] Moreover, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.[21]

Stated differently, proof beyond reasonable doubt is not needed to justify the loss as long as the employer has reasonable ground

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[15] *Baguio Central University v. Gallente*, *supra* note 9, at 505.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 505-506.

[21] *Lima Land, Inc., et al. v. Cuevas*, 635 Phil. 36, 48-49 (2010).

to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position.[22] Nonetheless, the right of an employer to dismiss employees on the ground of loss of trust and confidence, however, must not be exercised arbitrarily and without just cause.[23] Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal.[24] Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature and the loss must be founded on clearly established facts sufficient to warrant the employee's separation from work.[25] Thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed.[26]

Applied to the present case, the LA, NLRC and the CA are unanimous in their finding that petitioners were not able to discharge their burden of proving that their termination of respondent's employment was for a just and valid cause. This is a question of fact and it is settled that findings of fact of *quasi*-judicial agencies are accorded great respect, even finality, by this Court.[27] This proceeds from the general rule that this Court is not a trier of facts, as questions of fact are contextually for the labor tribunals to resolve, and only errors of law are generally reviewed in petitions for review on *certiorari* criticizing the decisions of the CA.[28]

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[22] *Manarpiis v. Texan Philippines, Inc., et al.,* 752 Phil. 305, 322 (2015).

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Lima Land, Inc., et al. v. Cuevas, supra* note 21, at 54.

[27] *South Cotabato Communications Corporation, et al. v. Secretary of Labor and Employment*, G.R. No. 217575, June 15, 2016.

[28] *Id*.

It is true that respondent may indeed be considered as one who occupies a position of trust and confidence as he is one of those who were entrusted with the handling of a significant amount or portion of petitioners' products for sale. However, even a quick perusal of the records at hand would show that petitioners failed to present substantial evidence to support their allegations that respondent had, in any way, participated in the theft of the company's stolen items and that after his preventive suspension he no longer reported for work. In other words, petitioners were not able to establish the existence of an act justifying their alleged loss of trust and confidence in respondent.

As to whether or not respondent was afforded procedural due process, the settled rule is that in termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing.[29] 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.[30] 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.[31]

In *Unilever Philippines, Inc. v. Rivera,*[32] this Court laid down the guidelines on how to comply with procedural due process in terminating an employee, to wit:

(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

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[29] *New Puerto Commercial, et al. v. Lopez, et al.*, 639 Phil. 437, 445 (2010).

[30] *Id*.

[31] *Id*.

[32] 710 Phil. 124 (2013).

opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[33]

In the instant case, the LA, the NLRC and the CA again uniformly ruled that respondent was dismissed sans procedural due process. The only notice given by petitioners to respondent was the notice of his 30-day preventive suspension and, as found by the LA, nothing therein indicated that he was required nor was given the opportunity to explain his side, considering that

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[33] *Unilever Philippines, Inc. v. Rivera, supra,* at 136-137, citing *King of Kings Transport, Inc. v. Mamac,* 553 Phil. 108, 115-116 (2007). (Emphasis in the original)

he was being implicated in the theft of the subject circuit breakers and other electrical products. It is true that petitioners conducted their own investigation but the same was made without the participation of respondent.

As to the required notice of termination, petitioners allege that they did not terminate respondent from his employment and that it was the latter who actually decided to abandon his job. However, the LA, the NLRC and the CA again unanimously found that petitioners failed to substantiate their allegation and the Court finds no cogent reason to depart from such finding.

WHEREFORE, the instant petition for review on *certiorari* is **DENIED**. The Decision and Resolution of the Court of Appeals, dated November 22, 2013 and May 20, 2014, respectively, in CA-G.R. SP No. 125911, are **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 217982. July 10, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLLY DIZON *y* TAGULAYLAY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ARTICLE 266-A OF THE REVISED PENAL CODE; RAPE THROUGH SEXUAL INTERCOURSE AND RAPE BY SEXUAL ASSAULT, DISTINGUISHED.— In *People v. Marmol*, we explained the two classifications of rape punished in Article 266-A in this manner: Rape can be committed either through sexual intercourse or sexual assault. Rape under paragraph 1

of [Article 266-A] is rape through sexual intercourse; often denominated as "organ rape" or "penile rape," carnal knowledge is its central element and must be proven beyond reasonable doubt. It must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. x x x. Rape under paragraph 2 of Article 266-A is commonly known as rape by sexual assault. Under any of the attendant circumstances mentioned in paragraph 1, the perpetrator commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called "instrument or object rape," also "gender-free rape."

2. ID.; ID.; ID.; RAPE THROUGH SEXUAL INTERCOURSE; ELEMENTS; PRESENT.— For a charge of rape through sexual intercourse to prosper, the prosecution must prove the following elements: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, by means of fraudulent machination or grave abuse of authority, or when she was under 12 years of age or was demented. Sexual intercourse with a girl below 12 years of age is statutory rape. In this case, the Court agrees with the findings of the RTC and the Court of Appeals that Dizon committed the crime of rape by sexual assault against AAA by inserting his finger into her anus. We likewise sustain the findings of the lower courts that Dizon committed the crime of rape through sexual intercourse against AAA when he had carnal knowledge of her.

3. ID.; ID.; ID.; RAPE BY SEXUAL ASSAULT; ELEMENTS.— As to the charge of rape by sexual assault, the same contemplates either of the following situations: (1) a male offender inserts his penis into the mouth or anal orifice of another person, whether a man or a woman, under any of the attendant circumstances in paragraph 1 of Article 266-A; or (2) a male or female offender inserts any instrument or object into the genital or anal orifice of another person, whether a man or a woman, under any of the attendant circumstances in paragraph 1 of Article 266-A.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS, ESPECIALLY ITS ASSESSMENT OF THE CREDIBILITY OF WITNESSES, ARE ACCORDED

GREAT WEIGHT AND RESPECT AND BINDING UPON THE COURT, PARTICULARLY WHEN AFFIRMED BY THE COURT OF APPEALS.— The RTC unequivocally ruled that the testimonies of AAA, BBB, and CCC clearly passed the test of credibility. On the other hand, the trial court paid no heed to Dizon's denial as the same failed to overcome the testimonies of AAA, BBB, and CCC. The appellate court, in turn, upheld the trial court's assessment of the aforesaid testimonies. We have carefully reviewed the records of this case and we found no cogent reason to overturn the lower courts' appraisal of the said witnesses' testimonies. We reiterate that: 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 Court of Appeals. 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. x x x.

5. **ID.; ID.; ID.; WHEN THE VICTIM IS OF TENDER AGE AND IMMATURE, COURTS ARE INCLINED TO GIVE CREDIT TO HER ACCOUNT OF WHAT TRANSPIRED, CONSIDERING NOT ONLY HER RELATIVE VULNERABILITY BUT ALSO THE SHAME TO WHICH SHE WOULD BE EXPOSED IF THE MATTER TO WHICH SHE TESTIFIED IS NOT TRUE.—** Jurisprudence likewise teaches that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the victim is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity.

6. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; PENALTY OF *RECLUSION PERPETUA*, IMPOSED; AWARD OF DAMAGES, MODIFIED.—** The Court affirms

the penalties imposed by the RTC and the Court of Appeals but modifies the award of damages. The lower courts should have awarded separate damages for each of the crimes for which Dizon's guilt had been established. Thus, for the crime of statutory rape under **Criminal Case No. 15925**, the trial court correctly imposed the penalty of *reclusion perpetua*. As for the award of damages, Dizon is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages in line with current jurisprudence.

7. ID.; ID.; RAPE BY SEXUAL ASSAULT; PROPER IMPOSABLE PENALTY; AWARD OF DAMAGES, MODIFIED.— For the crime of rape by sexual assault under **Criminal Case No. 15924**, the trial court properly imposed the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. This is in accordance with our ruling in *Ricalde v. People* and *People v. Chingh*. x x x. As to the award of damages, Dizon is ordered to pay AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

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

LEONARDO-DE CASTRO, *J.*:

Accused-appellant Rolly Dizon *y* Tagulaylay assails his conviction for one count of statutory rape under Article 266-A, paragraph 1(d) and one count of rape through sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code, as amended. The Regional Trial Court (RTC) of Tagum City, Davao Del Norte, Branch 2, adjudged Dizon guilty of said crimes in a Judgment[1] dated April 10, 2012 in Criminal Case Nos.

[1] CA *rollo*, pp. 43-49; penned by Judge Ma. Susana T. Baua.

15924 and 15925. The Court of Appeals affirmed the conviction in a Decision[2] dated November 14, 2014 in CA-G.R. CR HC No. 01020-MIN.

Dizon was charged with rape through sexual assault and statutory rape in two separate informations, respectively docketed as Criminal Case Nos. 15924 and 15925 before the RTC of Tagum City, Davao Del Norte. Said crimes were alleged to have been committed against AAA[3] as follows:

Criminal Case No. 15924

That on or about January 19, 2008, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously commit rape by sexual assault by means of inserting his finger into the anus of [AAA], eight-year-old minor, against her will.[4]

Criminal Case No. 15925

That on or about January 19, 2008, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force,

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[2] *Rollo*, pp. 3-9; penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Edgardo A. Camello and Pablito A. Perez concurring.

[3] The real name of the private complainant, those of her immediate family members, and the other minor individuals who are involved in this case are withheld per Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), and A.M. No. 04-10-11-SC effective 15 November 2004 (Rule on Violence Against Women and Their Children). See *People v. Cabalquinto*, 533 Phil. 703 (2006).

Thus, the private offended party is referred to as **AAA**. The initials **BBB** refers to the younger sister of the private offended party, whereas **CCC** refers to the private offended party's 12-year-old neighbor who testified for the prosecution. The initials **DDD** refers to another neighbor of the private offended party. The initials **XXX** denotes the place where the crimes were committed.

[4] Records, p. 3.

violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], an eight (8)-year-old minor, against her will.[5]

Upon arraignment, Dizon pleaded not guilty to the charges.[6]

The Court of Appeals succinctly summarized the pertinent factual allegations of the prosecution as follows:

Version of the Prosecution

On January 19, 2008, while 8-year-old AAA was playing with her 6-year-old sister BBB near the billiard hall owned by their neighbor, accused-appellant Rolly Dizon y Tagulaylay (Dizon) called both kids. Dizon then instructed BBB to look for a neighbor named DDD; thus BBB left AAA with Dizon. After which, Dizon brought AAA to a grassy area where he forcibly laid her down, removed her skirt and underwear, and took off his short pants and underwear. Dizon then thrust his penis to AAA's vagina causing her pain until she started to bleed. Dizon then used the skirt of AAA to wipe the blood. Dizon also inserted his finger inside the anus of AAA. He told AAA not to tell anyone otherwise he will send her to jail.

All of these acts of Dizon were witnessed by BBB, who hid behind the banana plants.

A neighbor, who saw AAA bleeding, alerted AAA's family. They then brought AAA to a hospital where a medical report disclosed that AAA suffered "perinal (sic) laceration secondary to sexual abuse; disclosure of sexual abuse, genital findings, conclusive of sexual abuse." AAA had to undergo wound exploration and repair of perinal (sic) laceration as a result of the act.

During the police investigation, AAA pointed to Dizon as the culprit.[7] (Citations omitted.)

The prosecution likewise presented the following evidence: (1) the Certificate of Live Birth[8] of AAA; (2) the Medico-Legal

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[5] *Id*. at 11.

[6] *Id*. at 28.

[7] *Rollo*, pp. 4-5.

[8] Records, p. 112; Exhibit A.

Certificate[9] issued by Dr. Aileen D. Marcilla of the Davao Regional Hospital; (3) the blood-stained skirt[10] of AAA; and (4) the receipt[11] of medical expenses of AAA.

The appellate court outlined the defense's factual allegations in this wise:

Version of the Defense

At around 3:00 o'clock of the afternoon of January 19, 2008, Dizon's live-in partner sent him a text message telling him to follow her at her mother's house at [XXX], Tagum City since she had no money to pay for her fare back home. After securing the money, Dizon went to his live-in partner. Both stayed at the house of his live-in partner's mother. While there, a neighbor informed them of the alleged rape incident. Later on, three (3) policemen in uniform and a barangay tanod arrived. They brought Dizon and eventually detained him at the police station.

On January 21, 2008, the police officers brought Dizon to the Davao Regional Hospital for the identification of AAA. During the first confrontation, AAA shook her head – indicating that Dizon was not the author of the alleged rape. After a while, the police officers again made Dizon face AAA; this time AAA nodded when asked if Dizon was the perpetrator.[12] (Citations omitted.)

The defense did not offer any documentary evidence.

In its **Judgment dated April 10, 2012**, the RTC found Dizon guilty of the crimes charged. The trial court decreed:

WHEREFORE, premises considered, accused **ROLLY DIZON *y* Tagulaylay** is hereby found **GUILTY** as charged by proof beyond reasonable doubt and is hereby sentenced:

1) For Rape under paragraph 1(d), Article 266-A, to suffer the penalty of ***Reclusion Perpetua***; and

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[9] *Id*. at 113; Exhibit B.

[10] Exhibit C.

[11] Records, p. 114; Exhibit D.

[12] *Rollo*, p. 6.

2) For Rape through Sexual Assault under paragraph 2, Article 266-A, to suffer the indeterminate penalty **of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.**

3) Said accused is likewise ordered to pay [AAA] the sum of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱50,000.00 as exemplary damages.[13]

The RTC gave more credence to the testimonial evidence adduced by the prosecution and disregarded Dizon's uncorroborated defenses of denial and alibi.

The trial court found straightforward, convincing, and unequivocal the testimonies of AAA, BBB, and CCC that Dizon sexually violated AAA in the afternoon of January 19, 2008. The RTC held that the prosecution established that AAA was only eight years old at the time of the incident. Not only did Dizon penetrate her through her female organ but he also did so with the use of his finger through her anal orifice.

Anent the legality of Dizon's arrest without a warrant, the trial court agreed with his protestations that the same was irregular given that he was not in the act of doing anything criminal when the police took him into custody. However, the trial court ruled that Dizon can no longer invoke this issue as he failed to raise the same before he was arraigned.

On appeal,[14] the Court of Appeals rendered its assailed **Decision dated November 14, 2014** that affirmed *in toto* the above ruling of the trial court.

Dizon filed the instant appeal, whereby he reiterated the arguments he invoked before the appellate court.[15] The parties no longer filed their respective supplemental briefs.[16]

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[13] CA *rollo*, p. 49.

[14] Records, p. 135.

[15] *Rollo*, pp. 10-12.

[16] *Id.* at 20-26.

The Court finds no merit in Dizon's appeal.

In the Revised Penal Code, as amended, rape is committed as follows:

ART. 266-A. *Rape, When and How Committed*. — Rape is committed —

1. By a man who shall have **carnal knowledge of a woman** under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority; and

d. When **the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit **an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person**.

Article 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

x x x x x x x x x

Reclusion temporal shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphasis supplied.)

In *People v. Marmol*,[17] we explained the two classifications of rape punished in the above-quoted provisions in this manner:

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[17] G.R. No. 217379, November 23, 2016.

> Rape can be committed either through sexual intercourse or sexual assault. Rape under paragraph 1 of [Article 266-A] is rape through sexual intercourse; often denominated as "organ rape" or "penile rape," carnal knowledge is its central element and must be proven beyond reasonable doubt. It must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. x x x
>
> Rape under paragraph 2 of Article 266-A is commonly known as rape by sexual assault. Under any of the attendant circumstances mentioned in paragraph 1, the perpetrator commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called "instrument or object rape," also "gender-free rape." (Citations omitted.)

For a charge of rape through sexual intercourse to prosper, the prosecution must prove the following elements: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, by means of fraudulent machination or grave abuse of authority, or when she was under 12 years of age or was demented. Sexual intercourse with a girl below 12 years of age is statutory rape.[18]

As to the charge of rape by sexual assault, the same contemplates either of the following situations: (1) a male offender inserts his penis into the mouth or anal orifice of another person, whether a man or a woman, under any of the attendant circumstances in paragraph 1 of Article 266-A; or (2) a male or female offender inserts any instrument or object into the genital or anal orifice of another person, whether a man or a woman, under any of the attendant circumstances in paragraph 1 of Article 266-A.[19]

In this case, the Court agrees with the findings of the RTC and the Court of Appeals that Dizon committed the crime of

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[18] *People v. Trayco*, 612 Phil. 1140, 1152 (2009).

[19] *People v. Espera*, 718 Phil. 680, 692 (2013).

rape by sexual assault against AAA by inserting his finger into her anus. We likewise sustain the findings of the lower courts that Dizon committed the crime of rape through sexual intercourse against AAA when he had carnal knowledge of her.

When AAA testified during the trial of the case, she positively identified Dizon as the person who abused her. AAA narrated that in the afternoon of January 19, 2008, she and her younger sister, BBB, were playing near a billiard hall close to a store in their barangay when Dizon called her. Dizon asked them to look for DDD, a friend of AAA. Dizon directed BBB to look for DDD and AAA was left alone with him. Dizon then led her to a grassy area, undressed her and himself, and succeeded in thrusting his penis into her vagina and inserting his finger into her anus.[20]

BBB also identified Dizon in court and testified that she witnessed the aforesaid incidents as she was able to follow Dizon and AAA to the same grassy area while she hid behind banana plants.[21]

CCC, a 12-year-old neighbor of AAA, testified that in the afternoon of January 19, 2008, he was inside the store watching television when he saw Dizon talk to AAA and BBB. Dizon asked the girls if they had seen DDD and they replied that they had not. Dizon then accompanied the two girls to look for DDD. When Dizon was later apprehended by the police officers, CCC was asked to identify him at the *purok*. CCC told the authorities that he saw Dizon bring along AAA and BBB. CCC also identified Dizon in court.[22]

In an effort to exculpate himself of the charges against him, Dizon could only muster a denial of the accusations leveled upon him. He testified that in the early afternoon of January 19, 2008, he was in another barangay in Tagum City when he

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[20] TSN, April 29, 2008, pp. 6-11.

[21] *Id*. at 55-57.

[22] TSN, June 2, 2008, pp. 4-7.

was asked by his common-law wife to go to her residence in XXX. Dizon arrived in XXX at around 5:00 p.m. At around 8:00 p.m., a neighbor of theirs informed them of the rape incident. At 9:00 p.m., three police officers and a *barangay tanod* arrived and he was eventually brought to the police station for investigation. Dizon claimed that AAA, BBB, and CCC lied in their testimonies against him.[23]

The RTC unequivocally ruled that the testimonies of AAA, BBB, and CCC clearly passed the test of credibility. On the other hand, the trial court paid no heed to Dizon's denial as the same failed to overcome the testimonies of AAA, BBB, and CCC. The appellate court, in turn, upheld the trial court's assessment of the aforesaid testimonies.

We have carefully reviewed the records of this case and we found no cogent reason to overturn the lower courts' appraisal of the said witnesses' testimonies. We reiterate that:

> 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 Court of Appeals. 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. x x x.[24] (Citations omitted.)

Jurisprudence likewise teaches that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the victim is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter

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[23] TSN, October 10, 2011, pp. 4-17.

[24] *People v. Leonardo*, 638 Phil. 161, 189 (2010).

to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity.[25]

The testimony of AAA that she was sexually abused was also buttressed by the Medico-Legal Certificate issued by the Davao Regional Hospital. The findings thereon indicated the presence of "PERINEAL LACERATION SECONDARY TO SEXUAL ABUSE; DISCLOSURE OF SEXUAL ABUSE, GENITAL FINDINGS CONCLUSIVE OF SEXUAL ABUSE."[26] The fact that AAA was only eight years old when the rape incident occurred on January 19, 2008 was established by her birth certificate, which stated that she was born on January 7, 2000.[27]

All told, the evidence adduced by the prosecution sufficiently proved the above-mentioned elements of the crimes charged.

The Court affirms the penalties imposed by the RTC and the Court of Appeals but modifies the award of damages. The lower courts should have awarded separate damages for each of the crimes for which Dizon's guilt had been established.

Thus, for the crime of statutory rape under **Criminal Case No. 15925**, the trial court correctly imposed the penalty of *reclusion perpetua*. As for the award of damages, Dizon is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages in line with current jurisprudence.[28]

For the crime of rape by sexual assault under **Criminal Case No. 15924**, the trial court properly imposed the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*,

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[25] *People v. Garcia*, 695 Phil. 576, 588-589 (2012).

[26] Records, p. 113.

[27] *Id*. at 112.

[28] See *People v. Manson*, G.R. No. 215341, November 28, 2016.

as maximum. This is in accordance with our ruling in *Ricalde v. People*[29] and *People v. Chingh*.[30]

In *Chingh*, the Court affirmed the judgment of the Court of Appeals, which found the accused-appellant guilty of committing statutory rape and rape by sexual assault against a 10-year-old child under Article 266-A of the Revised Penal Code, as amended. We, however, modified the penalty as follows:

> As to the proper penalty, We affirm the CA's imposition of *Reclusion Perpetua* for rape under paragraph 1(d), Article 266-A. However, We modify the penalty for Rape Through Sexual Assault.
>
> It is undisputed that at the time of the commission of the sexual abuse, VVV was ten (10) years old. This calls for the application of [Republic Act] No. 7610, or "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," which defines sexual abuse of children and prescribes the penalty therefor in Section 5(b), Article III, to wit:
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> > SEC. 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
> >
> > The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
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> > x x x x x x x x x
> >
> > (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the

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[29] G.R. No. 211002, January 21, 2015, 747 SCRA 542.

[30] 661 Phil. 208 (2011).

victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

Paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one — through coercion, intimidation or influence — engages in sexual intercourse or lascivious conduct with a child.

Corollarilly, Section 2(h) of the rules and regulations of [Republic Act] No. 7610 defines "Lascivious conduct" as:

> [T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.[31]

Applying the provisions of Republic Act No. 7610, the Court determined the proper imposable penalty in this wise:

In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under paragraph 2, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is *prision mayor*, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5(b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period.

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Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty

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[31] *Id.* at 220-222.

(20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

Hence, Armando should be meted the indeterminate sentence of **twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum**.[32] (Emphasis supplied; citations omitted.)

As to the award of damages, Dizon is ordered to pay AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.[33]

WHEREFORE, the Court **AFFIRMS with MODIFICATIONS** the Decision dated November 14, 2014 of the Court of Appeals in CA-G.R. CR HC No. 01020-MIN. Accused-appellant Rolly Dizon *y* Tagulaylay is hereby sentenced as follows:

1. In Criminal Case No. 15925, the accused-appellant is found **GUILTY** beyond reasonable doubt of one count of statutory rape and is sentenced to suffer the penalty of *reclusion perpetua*. The accused-appellant is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, plus legal interest on all damages awarded at the rate of 6% per annum from the date of finality of this Decision.

2. In Criminal Case No. 15924, the accused-appellant is found **GUILTY** beyond reasonable doubt of one count of rape by sexual assault and is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. The accused-appellant is ordered to pay AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages,

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[32] *Id*. at 222-223.

[33] *Id*. at 223.

and ₱30,000.00 as exemplary damages, plus legal interest on all damages awarded at the rate of 6% per annum from the date of finality of this Decision.

Costs against the accused-appellant.

SO ORDERED.

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

Del Castillo, J., on leave.

THIRD DIVISION

[G.R. No. 218250. July 10, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GIO COSGAFA *y* CLAMOCHA, JIMMY SARCEDA *y* AGANG, and ALLAN VIVO *y* APLACADOR**, *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FINDINGS OF THE REGIONAL TRIAL COURT (RTC), WHEN AFFIRMED BY THE COURT OF APPEALS (CA), ARE GENERALLY BINDING AND CONCLUSIVE UPON THE COURT.— At the outset, let it be stated that absent any showing that the lower court overlooked circumstances which would overturn the final outcome of the case, due respect must be made to its assessment and factual findings. Such findings of the RTC, when affirmed by the CA, are generally binding and conclusive upon this Court.

2. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— Now for the charge of murder to prosper, the prosecution must prove that (1) a person is killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing is not parricide or infanticide.

3. ID.; ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; WHEN SELF-DEFENSE IS PLEADED, THE ACCUSED THEREBY ADMITS BEING THE AUTHOR OF THE DEATH OF THE VICTIM, THAT IT BECOMES INCUMBENT UPON HIM TO PROVE THE JUSTIFYING CIRCUMSTANCE TO THE SATISFACTION OF THE COURT.— [T]he fact that accused-appellants were the ones responsible for the victim's death was also established. Gio and Jimmy, in fact, admitted in open court that they stabbed the victim, which resulted to the latter's death, albeit they interposed self-defense to justify the killing. Jurisprudence is to the effect that when self-defense is pleaded, the accused thereby admits being the author of the death of the victim, that it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court. The accused must discharge the burden of proving his affirmative allegation with certainty by relying on the strength of his own evidence, not on the weakness of that of the prosecution, considering that the prosecution's evidence, even if weak, cannot be disbelieved in view of the admission of the killing.

4. ID.; ID.; ID.; ID.; ELEMENTS; NOT PRESENT.— It bears stressing that self-defense, like *alibi*, is an inherently weak defense for it is easy to fabricate. Thus, it must be proven by satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. The following elements must thus be proved by clear and convincing evidence, to wit: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself. After a careful review of this case, the Court is satisfied that the RTC, as affirmed by the CA, correctly ruled that the above-enumerated elements are not present in this case.

5. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; NO JUSTIFIED KILLING IN DEFENSE OF ONESELF ABSENT UNLAWFUL AGGRESSION; THE TEST FOR THE PRESENCE OF UNLAWFUL AGGRESSION UNDER THE CIRCUMSTANCES IS WHETHER THE AGGRESSION FROM THE VICTIM PUT IN REAL PERIL THE LIFE OR PERSONAL SAFETY OF THE PERSON DEFENDING HIMSELF.— The first elements – unlawful

aggression on the part of the victim – is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. Case law is replete with discussions on what unlawful aggression is contemplated by the law on this matter. Basically, this Court has ruled that there is unlawful aggression when the peril to one's life, limb, or right is either actual or imminent. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be imagined or an imaginary threat.

6. ID.; ID.; ID.; ID.; ID.; ACCUSED-APPELLANTS' SELF-SERVING ASSERTION THAT THE VICTIM WAS THE AGGRESSOR CANNOT PREVAIL OVER THE POSITIVE AND CONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES, FOUND CREDIBLE BY THE RTC AND THE CA, AS TO WHAT ACTUALLY TRANSPIRED.— [A]ccused-appellants' self-serving assertion that the victim was the aggressor when the latter, without provocation on their part, chased them and held Jimmy's shirt and kicked him until he fell on the ground, cannot prevail over the positive and consistent testimonies of the prosecution witnesses, found credible by the RTC and the CA, as to what actually transpired. The prosecution witnesses clearly and categorically testified that the victim, alone and unarmed, went to the accused-appellants merely to confront them on why Gio boxed his companion.

7. ID.; ID.; ID.; ID.; THE SEVERITY, LOCATION, AND THE NUMBER OF WOUNDS AND INJURIES SUFFERED BY THE VICTIM BELIE THE ACCUSED-APPELLANTS' CLAIM OF SELF-DEFENSE, AS THE SAID EVIDENCE IS INDICATIVE OF A SERIOUS INTENT TO INFLICT HARM ON THE PART OF THE ACCUSED-APPELLANTS FOR PURPOSES OF RETALIATION AND NOT MERELY FOR THE PURPOSE OF DEFENDING THEMSELVES FROM AN IMMINENT PERIL TO LIFE.— Even if the defense's version of the story would be believed, the CA correctly observed that the alleged attack coming from the victim, where the latter chased them and grabbed and kicked Jimmy, is not the kind of attack that would put the person of the accused-appellants in peril. Indeed, despite the victim's bigger physical

built, the fact Gio, who was armed with an ice pick, already came to Jimmy's rescue, who notably was also armed with a *Batangas* knife and who had already hit the victim with a tree branch, indicates that the threat from the supposed aggression already ceased to exist. More so, when Gio already stabbed the victim with the ice pick causing the latter to fall on the ground, there was no more aggression to prevent or repel. It, thus, became unnecessary for the accused-appellants to continue to inflict injuries and/or to stab the fallen victim, which caused his death. Moreover, the perceived threat to their lives due to the victim's bigger built and alleged knowledge of martial arts, is merely based on accused-appellants' speculation and imagination, not proven to be real nor imminent. More importantly, as clearly shown by the evidence on record, the severity, location, and the number of wounds and injuries suffered by the victim belie the accused-appellants' claim of self-defense. On the contrary, this evidence is indicative of a serious intent to inflict harm on the part of the accused-appellants for purposes of retaliation and not merely for the purpose of defending themselves from an imminent peril to life.

8. ID.; ID.; ID.; ID.; RETALIATION DISTINGUISHED FROM SELF-DEFENSE.— Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him; while in self-defense, the aggression still existed when the aggressor was injured by the accused.

9. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.— As to Allan, despite the statement made by his co-accused that he had no participation in the killing, We are one with the RTC and the CA in finding that his participation in the crime was established by the prosecution. This is through credible and sufficient circumstantial evidence that led to the inescapable conclusion that Allan indeed participated in the killing of the victim. Section 4, Rule 133 of the Rules of Court states that 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. In this case, We do not find any cogent reason

to deviate from the findings of fact made by the RTC, as affirmed by the CA, *viz.*: (1) Allan was with Gio and Jimmy before and during the incident; (2) prosecution witnesses identified him as one of the assailants; (3) he fled immediately after the incident; and (4) the police intercepted him near a creek and a *Batangas* knife was found in his possession. These circumstances constitute an unbroken chain, which constrain Us to conclude that Allan, with his co-accused, participated in the killing of the victim.

10. ID.; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST; DECLARED VALID WHERE THE ARRESTING OFFICERS HAD PERSONAL KNOWLEDGE OF THE FACTS INDICATING THAT THE PERSONS TO BE PURSUED AND ARRESTED ARE RESPONSIBLE FOR THE CRIME THAT HAD JUST BEEN COMMITTED; THUS, THE WEAPON SEIZED FROM THE ACCUSED IS ADMISSIBLE IN EVIDENCE, THE SAME HAVING BEEN RECOVERED FROM HIM INCIDENT TO A LAWFUL ARREST.— As can be gleaned from the factual backdrop of this case, the arrest of Allan and his co-accused resulted from a hot pursuit, immediately conducted by the police officers in the area upon learning, through a report from Barangay *Tanod* Cabug-os, and investigating about the incident that just occurred. Thus, the arresting officers had personal knowledge of the facts indicating that the persons to be pursued and arrested are responsible for the crime that had just been committed. Indeed, the arresting officers had probable cause to pursue the accused-appellants based on the information from witnesses in the area that they gathered from their immediate investigation. This is in accord with Section 5(b) of Rule 113 of the Revised Rules of Criminal Procedure on valid warrantless arrest. It is, Thus, readily apparent that the knife seized from Allan is admissible in evidence, the same having been recovered from him incident to a lawful arrest, contrary to the defense's argument. Deduced from the foregoing, therefore, Allan's participation in the killing of the victim cannot be doubted.

11. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; PRESENT WHEN THE ATTACKERS COOPERATED IN SUCH A WAY AS TO SECURE ADVANTAGE OF THEIR COMBINED STRENGTH TO PERPETRATE THE CRIME

WITH IMPUNITY.— Anent the qualifying circumstance of abuse of superior strength, We find that the same is clearly present in this case. Abuse of superior strength is present when the attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity. Such qualifying circumstance was perpetrated by the accused-appellants when they took turns to stab and maul the victim, who was alone and unarmed. Indeed, they purposely used such excessive force out of proportion considering that they consistently averred that they feared the victim's bigger built and his knowledge of martial arts.

12. ID.; ID.; MURDER; IMPOSABLE PROPER PENALTY.— As to the penalty, the RTC and the CA correctly sentenced the accused-appellants to suffer the penalty of *reclusion perpetua,* there being no aggravating or mitigating circumstances that attended the commission of the crime.

13. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANTS.—For the award of damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. In this case, the civil indemnity amounting to PhP75,000 and temperate damages, in lieu of actual damages, amounting to PhP50,000 awarded are proper, hence, We sustain the same. Pursuant to, however, to prevailing jurisprudence, We increase the award of moral damages from PhP50,000 to PhP75,000. In addition, the award of exemplary damages is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying, as in this case. Thus, We find it proper to award PhP75,000 exemplary damages in accordance with prevailing jurisprudence. While We find the grant of attorney's fees proper due to the award of exemplary damages, We,however, find no basis on the award of PhP50,000 litigation expenses. We, thus, delete the same. The imposition of an interest at the rate of six percent (6%) *per annum* on all the monetary awards from the date of finality of this judgment until fully paid was likewise proper.

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

TIJAM, *J.*:

This is an appeal from the Decision[1] dated December 12, 2014 of the Court of Appeals (CA) of Cebu City, in CA-G.R. CR-H.C. No. 00418, sustaining the accused-appellants' conviction for the crime of murder by the Regional Trial Court (RTC) of Tagbilaran City, Branch 2, in its Decision[2] dated May 28, 2006 in Criminal Case No. 12230.

Factual and Procedural Antecedents

Accused-appellants Gio Cosgafa *y* Clamocha (Gio), Jimmy Sarceda *y* Agang (Jimmy), and Allan Vivo *y* Aplacador (Allan) were charged with murder in an Information dated April 28, 2004 as follows:

> That on or about the 26th day of October 2002 in the municipality of Tubigon, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with intent to kill, treachery and abuse of superior strength, by suddenly attacking the victim Nathaniel Asombrado, Sr. without affording the latter an opportunity to defend himself with the use of Batangas knives and icepick, hitting him on the different parts of his body, arms and head, thus inflicting upon the latter mortal wounds which caused his instantaneous death; to the damage and prejudice of the heirs of the said victim in the amount to be proved during the trial.

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[1] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob concurring; *rollo*, pp. 4-23.

[2] Penned by Presiding Judge Baudilio K. Dosdos, CA *rollo*, pp. 83-91.

Acts committed contrary to the provisions of Article 248(1) of the Revised Penal Code, as amended by Republic Act 7659.[3]

Upon arraignment on May 28, 2004, accused-appellants pleaded not guilty. Pre-trial and, thereafter, trial ensued.

The prosecution presented the following witnesses, to wit: (1) Ronald Manatad (Ronald); (2) Panfilo Baura (Panfilo); (3) Rosbill Manatad (Rossbill); (4) Police Officer 3 Vincent Russam Mascariñas (PO3 Mascariñas); (5) Dra. Adoracion L. Torregosa (Dra. Torregosa); (6) Ruben Asombrado (Ruben); and (7) Senior Police Officer 1 Joel Sabang (SPO1 Sabang).[4]

At around 6:30 p.m. of October 25, 2002, brothers Ronald and Rosbill, Panfilo, a certain Joseph Mantahinay (Joseph) and Joseph Bryan Mendez (Bryan) were at the victim's house for the *fiesta*. After dinner, they finished half a gallon of *Bahalina*, an aged native coco-wine. At around 1:00 a.m. the following day, the group decided to go to the disco held at a nearby school.[5]

On their way thereto, the group stopped by a *sari-sari* store owned by a retired police officer Pedrito Lapiz (Lapiz) to talk to a certain person who called the victim. While waiting, Rosbill, Joseph, and Panfilo proceeded to the bridge, about seven meters away, and sat on the railings. When they got there, accused-appellants were already sitting on the railings across them. Suddenly, Gio approached Rosbill and tried to box him but he did not connect. Rosbill, Joseph, and Panfilo then ran back to where they left the rest of the group and told them what happened.[6]

Upon learning what happened, the victim proceeded to the bridge to confront Gio. When he got there, accused-appellants took turns in holding and stabbing the victim. When the victim

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[3] *Rollo*, p. 5.

[4] *Id*. at 6.

[5] *Id*.

[6] *Id*.

fell on the ground, the accused-appellants ran away. Seeing that the accused-appellants had deadly weapons and they had none, the victim's group failed to come to his rescue.[7]

The victim was then brought to the hospital but was declared dead therein. Dra. Torregosa, Municipal Health Officer of Tubigon, Bohol, examined the victim's body and found that the victim sustained nine stab wounds, four incised wounds, and one contusion, succumbing thus to "Hypovolemia due to severe intra-abdominal hemorrhage, secondary to multiple stab wounds, abdomen, and chest" as reflected in the Post Mortem Findings.[8]

During Dra. Torregosa's testimony in court, she declared that wounds 1 to 6, which were circular in shape and one centimeter in diameter, could have been inflicted by a sharp pointed instrument like an ice pick; wounds 7 and 8 located at the hypochondriac region, which could have been inflicted by a sharp pointed weapon such as a *Batangas* knife, were deeply penetrating and pierced the liver; also, wounds 9 to 13 could have been inflicted by a *Batangas* knife; while the contusion, wound 14, on the victim's forehead could have been inflicted by a fist or any hard object such as the handle of a screwdriver.[9]

PO3 Mascariñas and SPO1 Sabang testified that while posted as security in the school where the disco was being held, around 2:30 a.m. of October 26, 2002, they responded to a report by Barangay *Tanod* Nicandro Cabug-os (Barangay *Tanod* Cabug-os) about a stabbing incident nearby. The victim was already brought to the hospital when they arrived at the crime scene. Upon inquiry around the area, they learned from Lapiz that accused-appellants were the ones responsible for the crime. They immediately conducted a hot pursuit, which resulted to the accused-appellants' arrest.[10]

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[7] *Id.* at 7.

[8] *Id.*

[9] *Id.*

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

At the police station, accused-appellants admitted that they were the ones who stabbed the victim. Jimmy even led the police officers to his house to surrender the *Batangas* knife that he used on the victim. It was wrapped in a white shirt with brownish blood-like stains when recovered. A *Batangas* knife was also recovered from Allan upon arrest. An unidentified person also handed to the police officers an ice pick (screwdriver with sharpened tip) found at the crime scene.[11]

Ruben, the victim's brother, testified as to the expenses incurred due to the victim's death, to wit: (1) PhP 20,000 for the embalming per O.R. No. 3036; (2) PhP 15,000 for the novena of the dead; (3) burial expenses such as PhP 5,000 for the coffin and PhP 3,000 for the tomb; (4) PhP 13,000 attorney's fees for the preliminary investigation; (5) PhP 18,000 for court hearings in the RTC; (6) PhP 6,000 as miscellaneous expenses and food for the witnesses; (7) PhP 13,500 for Tagbilaran City hearings, amounting to PhP 93,500 altogether. An amount of PhP 1 Million was also claimed for moral damages.[12]

Only the accused-appellants testified for the defense.

Gio and Jimmy admitted in open court that they stabbed the victim but interposed self-defense. They, however, averred that Allan had no participation in killing the victim.[13]

Gio admitted that he used the screwdriver/ice pick, while Jimmy admitted that he used the *Batangas* knife in stabbing the victim.[14]

All three accused-appellants admitted that past 12 midnight of October 26, 2002, they were in the alleged area for the *fiesta*. They dined and consumed drinks in several houses. On their way home, they stopped at the bridge to wait for Gio and a certain Vito Babad to exchange pants when the victim's group

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[11] *Id*. at 8.

[12] *Id*.

[13] *Id*. at 9.

[14] *Id*.

arrived and sat on the opposite railings fronting Jimmy and Allan. Jimmy averred that one person from the victim's group stood up and asked them "What are you looking *Bay*?". Jimmy responded that they were just waiting for their companion. The victim's group then approached accused-appellants' group, which prompted Jimmy to push and box Rosbill although the latter did not get hit.[15]

The victim's group then ran back to where the rest of their group were. On the other hand, accused-appellants' group ran towards the disco place when suddenly, they found the victim running after them. According to the accused-appellants, the victim was bigger and taller in built than them. When the victim gained upon them, he held Jimmy's shirt and kicked him, causing Jimmy to fall down. Jimmy then was able to get a hold of a tree branch and hit the victim with it. Gio then came to Jimmy's rescue and fought with the victim. According to Gio, however, he was no match to the victim as the latter was not only bigger and taller than him but also trained in martial arts. Hence, they were forced to stab the victim to defend themselves. At that moment, Gio and Jimmy did not notice where Allan went. When the victim finally fell on the ground, Gio and Jimmy ran towards the creek.[16]

RTC Ruling

The RTC found the accused-appellants guilty beyond reasonable doubt of murder, rejecting Gio and Jimmy's uncorroborated claim of self-defense, as well as their claim that Allan had no participation in the perpetration of the crime. The trial court appreciated the qualifying circumstance of superiority in number in killing the victim, who was unarmed and alone, with the use of deadly weapons. Thus:

WHEREFORE, IN THE LIGHT OF THE FOREGOING, the Court finds accused Gio Cosgafa y Clamocha, Jimmy Sarceda y Agang,

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

[16] *Id*.

and Allan Vivo y Aplacador, guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 (1) of the Revised Penal Code, as amended by R.A. 7659, as embraced in the foregoing Information and hereby sentences each of the said accused to suffer the penalty of RECLUSION PERPETUA, with the accessory penalties of the law, to indemnify the heirs of Nathaniel Asombrado, Sr., the sum of Php 50,000.00 funeral expenses and litigation expenses in the sum of Php 40,000.00 and attorney's fees in the amount of Php 10,000.00 and to pay the costs.

The three accused who are detention prisoners are hereby credited in full of the period of their preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended.

SO ORDERED.[17]

CA Ruling

The CA sustained the conviction of the accused-appellants. It rejected Gio and Jimmy's claim of self-defense and found that the prosecution evidence was sufficient to prove Allan's participation in the crime. The appellate court, however, modified the civil liability awarded to the heirs of the victim. It added awards for civil indemnity, moral damages, and temperate damages. The said court also found it proper to award temperate damages, in lieu of the actual damages, considering that some pecuniary expenses were definitely incurred by the victim's family albeit not proven. Lastly, it imposed an interest rate of six percent (6%) *per annum* for all the monetary awards from the date of finality of the decision until the same are fully paid. It disposed, thus:

WHEREFORE, premises considered, the Decision dated January 24, 2013 [sic] of the Regional Trial Court, Branch 35 of Iloilo City [sic] in Criminal Case No. 48928 [sic] is hereby **AFFIRMED with MODIFICATION** that appellants Gio Cosgafa y Clamocha, Jimmy Sarceda y Agang and Allan Vivo y Aplacador are jointly and severally **ORDERED** to pay the following:

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[17] CA *rollo*, p. 91.

(1) Php75,000.00 as civil indemnity;
(2) Php50,000.00 as moral damages;
(3) Php50,000.00 as temperate damages;
(4) Php40,000.00 as litigation expenses;
(5) Php10,000.00 as attorney's fees.

Appellants are further **ORDERED** to pay the heirs interest on all damages *(sic)* awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment. No pronouncement as to costs.

SO ORDERED.[18]

Hence, this appeal.

The Court gave the parties the opportunity to file their supplemental briefs but both parties manifested that they no longer intend to file the same, having already discussed all of their arguments in their respective briefs before the CA.[19]

Issues

(1) May Gio and Jimmy properly invoke self-defense?
(2) Was Allan's participation in the crime sufficiently proven?
(3) Does the circumstance of abuse of superior strength exist?

This Court's Ruling

Gio and Jimmy basically assert that they cannot be adjudged criminally liable for the resulting death of the victim as they only stabbed the latter in self-defense. Allan, on the other hand, faults the trial court for convicting him of the crime charged despite the categorical statement of his co-accused that he had no participation in the criminal act. Accused-appellants also argue that abuse of superior strength cannot be appreciated to qualify the killing to murder as there is no gross disparity of forces to speak of since it was admitted that the victim was bigger and taller in size compared to the accused-appellants.

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

[19] *Id*. at 32-35, 37-40.

We find no merit in the instant appeal.

At the outset, let it be stated that absent any showing that the lower court overlooked circumstances which would overturn the final outcome of the case, due respect must be made to its assessment and factual findings. Such findings of the RTC, when affirmed by the CA, are generally binding and conclusive upon this Court.[20]

Now for the charge of murder to prosper, the prosecution must prove that (1) a person is killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing is not parricide or infanticide.[21]

First. The fact of victim's death is undisputed.

Second. The fact that accused-appellants were the ones responsible for the victim's death was also established. Gio and Jimmy, in fact, admitted in open court that they stabbed the victim, which resulted to the latter's death, albeit they interposed self-defense to justify the killing. Jurisprudence is to the effect that when self-defense is pleaded, the accused thereby admits being the author of the death of the victim, that it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court.[22] The accused must discharge the burden of proving his affirmative allegation with certainty by relying on the strength of his own evidence, not on the weakness of that of the prosecution, considering that the prosecution's evidence, even if weak, cannot be disbelieved in view of the admission of the killing.[23]

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[20] *People v. Roman*, G.R. No. 198110, July 31, 2013.

[21] *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010.

[22] *People v. Roman*, *supra* note 20, citing *People v. Del Castillo,* G.R. No. 169084, January 18, 2012.

[23] *Id.*

It bears stressing that self-defense, like *alibi*, is an inherently weak defense for it is easy to fabricate.[24] Thus, it must be proven by satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it.[25] The following elements must thus be proved by clear and convincing evidence, to wit: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.[26]

After a careful review of this case, the Court is satisfied that the RTC, as affirmed by the CA, correctly ruled that the above-enumerated elements are not present in this case.

The first element – unlawful aggression on the part of the victim – is the primordial element of the justifying circumstance of self-defense.[27] Without unlawful aggression, there can be no justified killing in defense of oneself.[28] Case law is replete with discussions on what unlawful aggression is contemplated by the law on this matter. Basically, this Court has ruled that there is unlawful aggression when the peril to one's life, limb, or right is either actual or imminent.[29] The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be imagined or an imaginary threat.[30]

In this case, accused-appellants' self-serving assertion that the victim was the aggressor when the latter, without provocation

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[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *People v. Casas*, G.R. No. 212565, February 25, 2015.

[28] *People v. Roman*, *supra* note 20, citing *People v. Nugas*, G.R. No. 172606, November 23, 2011.

[29] *Id*.

[30] *Id*.

on their part, chased them and held Jimmy's shirt and kicked him until he fell on the ground, cannot prevail over the positive and consistent testimonies of the prosecution witnesses, found credible by the RTC and the CA, as to what actually transpired. The prosecution witnesses clearly and categorically testified that the victim, alone and unarmed, went to the accused-appellants merely to confront them on why Gio boxed his companion.

Even if the defense's version of the story would be believed, the CA correctly observed that the alleged attack coming from the victim, where the latter chased them and grabbed and kicked Jimmy, is not the kind of attack that would put the person of the accused-appellants in peril. Indeed, despite the victim's bigger physical built, the fact that Gio, who was armed with an ice pick, already came to Jimmy's rescue, who notably was also armed with a *Batangas* knife and who had already hit the victim with a tree branch, indicates that the threat from the supposed aggression already ceased to exist. More so, when Gio already stabbed the victim with the ice pick causing the latter to fall on the ground, there was no more aggression to prevent or repel. It, thus, became unnecessary for the accused-appellants to continue to inflict injuries and/or to stab the fallen victim, which caused his death.

Moreover, the perceived threat to their lives due to the victim's bigger built and alleged knowledge of martial arts, is merely based on accused-appellants' speculation and imagination, not proven to be real nor imminent.

More importantly, as clearly shown by the evidence on record, the severity, location, and the number of wounds and injuries suffered by the victim belie the accused-appellants' claim of self-defense. On the contrary, this evidence is indicative of a serious intent to inflict harm on the part of the accused-appellants for purposes of retaliation and not merely for the purpose of defending themselves from an imminent peril to life.

Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him; while in self-defense, the

aggression still existed when the aggressor was injured by the accused.[31]

From the foregoing, Gio and Jimmy's self-defense plea necessarily fails.

As to Allan, despite the statement made by his co-accused that he had no participation in the killing, We are one with the RTC and the CA in finding that his participation in the crime was established by the prosecution. This is through credible and sufficient circumstantial evidence that led to the inescapable conclusion that Allan indeed participated in the killing of the victim.

Section 4, Rule 133 of the Rules of Court states that 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.[32] In this case, We do not find any cogent reason to deviate from the findings of fact made by the RTC, as affirmed by the CA, *viz.*: (1) Allan was with Gio and Jimmy before and during the incident; (2) prosecution witnesses identified him as one of the assailants; (3) he fled immediately after the incident; and (4) the police intercepted him near a creek and a *Batangas* knife was found in his possession. These circumstances constitute an unbroken chain, which constrain Us to conclude that Allan, with his co-accused, participated in the killing of the victim.

Notably, he did not deny any of these facts during his testimony. Instead, Allan imputes error on the part of the trial court in upholding the admissibility of the knife recovered from him despite its being a product of an invalid search considering that the police officers had no personal knowledge that he was one of the perpetrators of the crime when he was arrested without warrant. We do not agree.

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[31] *People v. Gamez*, G.R. No. 202847, October 23, 2013.

[32] *People v. Galo, et al.*, G.R. No. 187497, October 12, 2011.

As can be gleaned from the factual backdrop of this case, the arrest of Allan and his co-accused resulted from a hot pursuit, immediately conducted by the police officers in the area upon learning, through a report from Barangay *Tanod* Cabug-os, and investigating about the incident that just occurred. Thus, the arresting officers had personal knowledge of the facts indicating that the persons to be pursued and arrested are responsible for the crime that had just been committed. Indeed, the arresting officers had probable cause to pursue the accused-appellants based on the information from witnesses in the area that they gathered from their immediate investigation. This is in accord with Section 5(b) of Rule 113 of the Revised Rules of Criminal Procedure on valid warrantless arrest.[33] It is, thus, readily apparent that the knife seized from Allan is admissible in evidence, the same having been recovered from him incidental to a lawful arrest, contrary to the defense's argument.

Deduced from the foregoing, therefore, Allan's participation in the killing of the victim cannot be doubted.

Third. Anent the qualifying circumstance of abuse of superior strength, We find that the same is clearly present in this case. Abuse of superior strength is present when the attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity.[34] Such qualifying circumstance was perpetrated by the accused-appellants when they took turns to stab and maul the victim, who was alone and unarmed. Indeed, they purposely used such excessive force out of proportion[35] considering that they consistently averred

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[33] Sec. 5. *Arrest without warrant; when lawful*.– A peace officer or a private person may, without a warrant, arrest a person;

x x x x x x x x x

(b) When an offense has 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;

x x x x x x x x x.

[34] *People v. Arbalate, et al.*, G.R. No. 183457, September 17, 2009.

[35] *Fantastico, et al. v. Malicse, Sr., et al.*, G.R. No. 190912, January 12, 2015.

that they feared the victim's bigger built and his knowledge of martial arts.

As to the penalty, the RTC and the CA correctly sentenced the accused-appellants to suffer the penalty of *reclusion perpetua*, there being no aggravating or mitigating circumstances that attended the commission of the crime.

For the award of damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[36]

In this case, the civil indemnity amounting to PhP75,000 and temperate damages, in lieu of actual damages, amounting to PhP50,000 awarded are proper, hence, We sustain the same. Pursuant, however, to prevailing jurisprudence, We increase the award of moral damages from PhP50,000 to PhP75,000.[37]

In addition, the award of exemplary damages is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying, as in this case.[38] Thus, We find it proper to award PhP75,000 exemplary damages in accordance with prevailing jurisprudence.[39]

While We find the grant of attorney's fees proper due to the award of exemplary damages,[40] We, however, find no basis on the award of PhP50,000 litigation expenses. We, thus, delete the same.

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[36] *People v. Gutierrez*, G.R. No. 188602, February 4, 2010.

[37] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

[38] *People v. Gutierrez, supra* note 36.

[39] *People v. Jugueta, supra* note 37.

[40] *Mendoza, et al. v. Spouses Gomez*, G.R. No. 160110, June 18, 2014.

The imposition of an interest at the rate of six percent (6%) *per annum* on all the monetary awards from the date of finality of this judgment until fully paid was likewise proper.[41]

WHEREFORE, premises considered, the Decision dated December 12, 2014 of the Court of Appeals of Cebu City, in CA-G.R. CR-H.C. No. 00418 is hereby **AFFIRMED with MODIFICATION**, thus:

> WHEREFORE, premises considered, the Decision dated **May 28, 2006** of the Regional Trial Court, Branch 2 of **Tagbilaran City** in **Criminal Case No. 12230** is hereby AFFIRMED with MODIFICATION that appellants Gio Cosgafa y Clamocha, Jimmy Sarceda y Agang and Allan Vivo y Aplacador are jointly and severally ORDERED to pay the following:
>
> (1) Php75,000 as civil indemnity;
> **(2) Php75,000 as moral damages**;
> **(3) Php75,000 as exemplary damages;**
> (4) Php50,000 as temperate damages;
> (5) Php10,000 as attorney's fees.
>
> Appellants are further ORDERED to pay the heirs interest on **the civil indemnity and all damages** awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment **until fully paid**. No pronouncement as to costs.
>
> SO ORDERED.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Mendoza,*[*] and *Martires,*[**] *JJ.,* concur.

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[41] *Tan, et al. v. OMC Carriers, Inc., et al.*, G.R. No. 190521, January 12, 2011.

[*] Designated additional Member per Raffle dated February 27, 2017 *vice* Associate Justice Francis H. Jardeleza.

[**] Designated Fifth Member of the Third Division per Special Order No. 2461 dated July 10, 2017 *vice* Associate Justice Bienvenido L. Reyes.

FIRST DIVISION

[G.R. No. 220700. July 10, 2017]

OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, *petitioner, vs.* **EUFROCINA CARLOS DIONISIO and WINIFREDO SALCEDO MOLINA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN'S FACTUAL FINDINGS ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT, IF NOT FINALITY BY THE COURTS, BY REASON OF THEIR SPECIAL KNOWLEDGE AND EXPERTISE OVER MATTERS FALLING UNDER THEIR JURISDICTION.— At the outset, it is settled that "findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence" – or "such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming." On this note, it is well to emphasize that the Ombudsman's factual findings are generally accorded great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.

2. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; MISCONDUCT; DEFINED; TO WARRANT DISMISSAL FROM THE SERVICE, THE MISCONDUCT MUST BE GRAVE, SERIOUS, IMPORTANT, WEIGHTY, MOMENTOUS, AND NOT TRIFLING, AND THE SAME 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.— "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." In the instant case, a judicious perusal of the records would readily reveal that the acts of respondents fall under the jurisprudential definition of Grave Misconduct, and not just Simple Misconduct.

3. **ID.; ID.; LOCAL GOVERNMENT CODE OF 1991 (RA 7160); IT IS THE LOCAL GOVERNMENT UNIT WHICH HAS THE AUTHORITY TO LEASE, ENCUMBER, ALIENATE, OR OTHERWISE DISPOSE OF REAL OR PERSONAL PROPERTY HELD BY IT IN ITS PROPRIETARY CAPACITY; VIOLATED.—** The Ombudsman correctly observed that respondents had no authority to lease out a portion of the school premises, it being owned by the Provincial Government of Bulacan. Under Section 18 of RA 7160, otherwise known as the "Local Government Code of 1991," it is the local government unit which has the authority to lease, encumber, alienate, or otherwise dispose of real or personal property held by it in its proprietary capacity. Clearly, respondents violated this provision when they leased the aforesaid area to complainants. In this relation, while the *Sangguniang Panlalawigan ng Bulacan* passed Resolution No. 298-S'13 ratifying the MOA between the complainants and the Teachers' Association, it must nevertheless be pointed out that the same was issued only on December 17, 2013 — more than four (4) years since the MOA was executed and after the Ombudsman already promulgated its August 2, 2013 Order finding respondents guilty of Grave Misconduct. In this light, the Court cannot help but conclude that such ratification was sought as a mere afterthought and was issued after perhaps much lobbying from the respondents. In any case, the issuance of the said resolution does not change the fact that respondents had no authority to enter into the MOA when the same was executed in May 2009.

4. ID.; ID.; GOVERNMENT PROCUREMENT REFORM ACT (RA 9184); ALL GOVERNMENT PROCUREMENT MUST BE DONE THROUGH COMPETITIVE BIDDING; RESORT TO ALTERNATIVE METHODS OF PROCUREMENT NOT JUSTIFIED IN CASE AT BAR.— [E]ven assuming *arguendo* that the money received by respondents was used for the construction of the school canteen and the procurement of educational equipment, they nonetheless failed to comply with the requirements of RA 9184, otherwise known as the "Government Procurement Reform Act." One of the most distinguishing features of RA 9184 is the mandate that all government procurement must be done through competitive bidding. While the law allows for alternative methods of procurement, it has not been shown that respondents were able to justify the resort thereto in the construction of the school canteen and in the purchase of the educational equipment.

5. ID.; ID.; ADMINISTRATIVE CHARGES; CLEAR INTENT TO VIOLATE THE LAW AND/OR FLAGRANT DISREGARD OF ESTABLISHED RULES CONSTITUTE GRAVE MISCONDUCT; RESPONDENTS FOUND LIABLE FOR GRAVE MISCONDUCT.— [R]espondents cannot hide behind the cloak of ignorance or lack of familiarity with the x x x laws and policies. It is a basic legal tenet that ignorance of the law excuses no one from compliance therewith. Besides, Dionisio did not deny that when complainants inquired with her about leasing a portion of the school grounds, she responded that she will study the matter as it might take a long and complicated procedure if they follow the DepEd rules. Also, respondents tried to justify their disregard of the relevant rules by arguing that their actions inured to the benefit of the school and its students. Verily, the foregoing circumstances indicate that respondents knew of existing laws, rules, and regulations pertaining to the lease of public properties, use of public funds, and procurement of government projects, among others; and despite these, they still went ahead with their transactions. By and large, these exhibit respondents' clear intent to violate the law and/or flagrant disregard of established rules, thus, justifying the finding that they are indeed liable for Grave Misconduct.

6. ID.; ID.; ID.; GRAVE MISCONDUCT IS CLASSIFIED AS A GRAVE OFFENSE PUNISHABLE WITH THE SUPREME PENALTY OF DISMISSAL FROM THE

SERVICE EVEN FOR THE FIRST OFFENSE; AS A MATTER OF FAIRNESS AND LAW, DISMISSED GOVERNMENT EMPLOYEES MAY NOT BE DEPRIVED OF THE LEAVE CREDITS WHICH THEY HAVE EARNED PRIOR TO THEIR DISMISSAL.— As to the proper penalty to be imposed on respondents, it is well to note that Section 52 of the Uniform Rules on Administrative Cases in the Civil Service (URACCS) classifies Grave Misconduct as a grave offense punishable with the supreme penalty of Dismissal from the service even for the first offense. In relation thereto, Section 58 (a) of the URACCS provides that "[t]he penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service x x x." It is well to clarify, however, that their accrued leave credits, if any, shall not be forfeited, as it is a standing rule that "despite their dismissal from the service, government employees are entitled to the leave credits that they have earned during the period of their employment. As a matter of fairness and law, they may not be deprived of such remuneration, which they have earned prior to their dismissal."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
De Jesus Manimtim & Associates for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] filed by petitioner Office of the Deputy Ombudsman for Luzon (Ombudsman) are the Decision[2] dated April 7, 2015 and the

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[1] *Rollo*, pp. 14-32.

[2] *Id.* at 39-63. Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Amy C. Lazaro-Javier and Melchor Q.C. Sadang concurring.

Resolution[3] dated September 23, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 135918, which reinstated the Decision[4] dated October 23, 2012 of the Ombudsman in OMB-L-A-10-0538-H finding respondents Eufrocina Carlos Dionisio (Dionisio) and Winifredo Salcedo Molina (Molina; collectively, respondents) guilty of Simple Misconduct only and, accordingly, imposed on them the penalty of three (3) months suspension without pay.

The Facts

The case arose from the Complaint-Affidavit[5] dated July 30, 2010 filed by spouses Editha and Eduardo Ponce (complainants) before the Ombudsman against herein respondents and six (6) others for criminal and administrative violations of Section 3 (e) of Republic Act No. (RA) 3019,[6] or the Anti-Graft and Corrupt Practices Act, Rule X, Section 1 (f) of the Implementing Rules and Regulations (IRR) of RA 6713,[7] or the Code of Conduct and Ethical Standards for Public Officials and Employees, and money laundering.[8]

Complainants averred that they are the owners of *Sariling Atin* Drug Store, while Dionisio and Molina were the School

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[3] *Id*. at 65-66.

[4] *Id*. at 91-106. Penned by Graft Investigation & Prosecution Officer I Ma. Czarina Castro-Altares, with Reviewing GIPO III and Head of Zero Backlog Unit Margie G. Fernandez-Calpatura recommending approval, and Deputy Ombudsman for Luzon Gerard A. Mosquera approving.

[5] *Id*. at 115-125.

[6] Approved on August 17, 1960.

[7] Entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES" approved on February 20, 1989.

[8] *Rollo*, p. 40.

Principal of Barasoain Memorial Elementary School (the school) and President of its Teacher's Association, respectively. In January 2009, upon seeing a drug store near the gate of the school,[9] complainants inquired with Dionisio if they could lease a portion of the school grounds to open a drug store thereon. Dionisio replied that she would study the matter as it might take a long and complicated procedure if they follow the rules of the Department of Education (DepEd). Upon Dionisio's advise, complainants submitted a formal letter[10] offering a monthly rent of ₱10,000.00, or ₱120,000.00 per year. Dionisio purportedly confirmed that she could facilitate the lease agreement, provided that instead of the ₱120,000.00 annual rent, only ₱36,000.00 will be recorded and the same should be in the guise of a donation. Dionisio allegedly did not want the school's Parents-Teachers' Association (PTA) and the Barangay Council to know the exact amount involved, but committed that she and the Teachers' Association will handle the excess money. She also told complainants that she wants an additional ₱24,000.00 in funds per year without the Teacher's Association, the PTA, or the Barangay Council knowing about it.[11]

In March 2009, Dionisio allegedly advanced ₱20,000.00 from the ₱24,000.00 so that she could go to Manila and confirm the legality of the lease with DepEd. She also conveyed to complainants that the monthly rent for five (5) years amounting to ₱600,000.00 should be paid in advance, and that complainants should donate ₱700,000.00 to the Teachers' Association. Thereafter, in May 2009, Dionisio summoned complainants to a meeting where she asked them to add ₱200,000.00 more to the donation to the Teachers' Association. However, considering that they could also spend money for the construction of the drugstore, complainants declined. Complainants also asked for a copy of the Memorandum of Agreement (MOA) so that they could study it but Dionisio allegedly refused, telling them that

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[9] See *id*. at 116.

[10] Dated January 20, 2009. *Id*. at 127.

[11] See *id*. at 40-41 and 115-116.

it would be better for them to see the MOA on the date of signing itself.[12]

On May 24, 2009, complainants went to Dionisio's house where they signed the MOA, at which point they brought to her attention the one-sided nature of the MOA. However, Dionisio assured them that it would not be a problem because she would still be in active service for the term of the MOA. Dionisio also brought up the additional ₱200,000.00 donation which could buy the complainants exclusivity, but complainants emphasized that it would be difficult for them to recoup their investment if they make such additional donation. Dionisio assured them that even without the ₱200,000.00, complainants will still get exclusivity in the sense that they will be the only drug store in that part of the school grounds for the next two (2) to three (3) years to allow them to recover their investment.[13]

Thus, on May 28, 2009, complainants met with Dionisio at Security Bank, Malolos Branch where complainants withdrew ₱1,000,000.00 from their bank account and gave it to Dionisio, together with the ₱280,000.00 which they already had with them. Dionisio then gave them a notarized copy of the MOA[14] bearing the signature of Molina as President of the Teachers' Association.[15]

In June 2009, complainants began the construction of their drug store but barely a month later, Dionisio informed them that the area beside their drug store will be leased to another drug store. Upon complainants' verification, Molina denied receiving the money on the Teachers' Association's behalf. Thus, on August 4, 2009, complainants' counsel sent a letter[16] to Dionisio demanding that she acknowledge receipt of the

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[12] See *id*. at 41 and 117-118.

[13] See *id*. at 41 and 118.

[14] *Id*. at 128-129.

[15] See *id*. at 41-42 and 118-119.

[16] Dated August 4, 2009. *Id*. at 130-131.

₱680,000.00 in donation. On August 10, 2009, Molina made a sudden turn-around and issued a Certification[17] confirming receipt of the ₱680,000.00. This prompted complainants to write a letter[18] to Dr. Rolando Magno (Dr. Magno), the School Superintendent of Malolos City, seeking confirmation of the legality of the lease and the propriety of the donation. Meanwhile, complainants requested from Molina a copy of the Secretary's Certificate of the Teachers' Association authorizing him to sign the MOA.[19] However, what Molina provided was a document.[20] ratifying or confirming his acts, signed by six (6) other members of the Teachers' Association, namely, Joelito D. Teodoro, Corazon V. De Leon, Ferdinand C. Tenorio, Romeo DelaCruz, Nenita Manalo, and Jasmin F. Libiran (co-teachers). Thereafter, Complainant's counsel sent a final letter of demand[21] dated August 14, 2009 to Molina.[22]

On August 27, 2009, complainants met with the DepEd officials in Bulacan where they were informed that the MOA was illegal as it did not have the proper DepEd approval, and that the school could not enter into any commercial pursuits because it is not a registered cooperative. Complainants also later learned that the Teachers' Association is not a legal entity and, hence, could not enter into the MOA.[23] In a Memorandum[24] dated September 1, 2009 (September 1, 2009 Memorandum), Dr. Magno ordered Dionisio to defer the construction of the new drug store beside complainants' and to hold in abeyance the operation of complainants' drug store. Thus, complainants

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[17] Dated August 10, 2009. *Id*. at 132.

[18] Dated August 10, 2009. *Id*. at 133.

[19] See letter dated August 11, 2009; *id*. at 134.

[20] See Ratification/Clarification of the Official Acts of the President of the Association dated August 13, 2009; *id*. at 135.

[21] *Id*. at 137-139.

[22] See *id*. at 42 and 119-120.

[23] See *id*. at 42-43 and 120-121.

[24] *Id*. at 140.

filed a complaint[25] before the Ombudsman accusing respondents and their six (6) co-teachers of violating Section 3 (e) of RA 3019 for causing undue injury to them (complainants) in the discharge of their public duties through manifest bad faith. Complainants also charged respondents of violating Section 12 of RA 6713 and its IRR by soliciting money from complainants, and of money laundering for making it appear that the Teachers' Association received complainants' money when no such legal entity exists.[26]

Pending submission of respondents' counter-affidavit, the Ombudsman issued an Order[27] dated November 19, 2010 directing their preventive suspension. Respondents moved for reconsideration[28] but the same was denied by the Ombudsman in its Order[29] dated August 3, 2011, prompting respondents to file a Verified Petition with Application for Temporary Restraining Order and Injunction[30] with the Regional Trial Court of Malolos, which was, however, denied in an Order[31] dated October 7, 2011 for lack of jurisdiction.[32]

In their Joint Counter-Affidavit[33] dated March 21, 2012, respondents and their co-teachers denied any criminal and administrative liability and maintained that they did not solicit money from the complainants who offered the donation at their own instance. They averred that the donation was made to the school, and that the Teachers' Association merely ratified it, as was customary and regular. Explaining that the school is a

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[25] *Id*. at 115-125.

[26] See *id*. at 121-122.

[27] Not attached to the *rollo*.

[28] Not attached to the *rollo*.

[29] Not attached to the *rollo*.

[30] Not attached to the *rollo*.

[31] Not attached to the *rollo*.

[32] See *rollo*, pp. 43-44 and 95.

[33] *Id*. at 143-175.

public school with a limited budget barely enough to pay for the teachers' salaries, respondents and their co-teachers claimed that they acted in good faith and without any unlawful intent in executing the MOA which, in any case, redounded to the benefit of the school's students. Besides, the acts complained of were not done in their official capacities as teachers but as members of the Teachers' Association which was a non-government organization.[34] In any case, there was no damage to the complainants since respondents and their co-teachers are willing to return complainants' money, albeit in an amortized scheme, and the money had already been used to purchase additional educational materials such as the Audio Visual Device, Digital Light Projectors, computers, televisions, and DVD Players.[35] Respondents and their co-teachers further added that they are mere laymen unfamiliar with the law and whose primary concern was the welfare of their students. As such, the legal maxim that ignorance of the law excuses no one should not apply to them.[36]

The Ombudsman's Ruling

In a Decision[37] dated October 23, 2012, the Ombudsman, *inter alia*, found herein respondents guilty of Simple Misconduct and, accordingly, ordered them suspended from government service without pay for a period of three (3) months.[38]

It found that respondents transgressed an established and definite rule of action when: (*a*) Dionisio opted not to seek authority from the DepEd or from the Provincial Government of Bulacan before allowing the lease; and (*b*) authorized Molina to enter into the MOA on behalf of the Teachers' Association despite the latter's lack of authority and legal personality to

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[34] See *id*. at 152-154, 156-160, and 163-167.

[35] See *id*. at 155.

[36] See *id*. at 44-45 and 163.

[37] *Id*. at 91-106.

[38] See *id*. at 103-104.

do so. In this regard, the Ombudsman pointed out that Dionisio not only allowed the Teachers' Association, particularly Molina, to control and disburse the money received from complainants without any sense of accountability — in violation of the rule that all moneys and property officially received by a public officer in any capacity or upon any occasion must be accounted for as government fund — he also extended to Molina the authority to procure services for the construction of the canteen and acquisition of school equipment which did not go through the procurement process required by law.[39]

With respect to Molina, the Ombudsman observed that he shared a unity of design, intent, and purpose with Dionisio considering that he actively participated in the consultations conducted and agreed to sign the MOA even if he knew that the Teachers' Association had no legal personality or authority to do so. While Molina claimed that the money was spent honestly, he did not present a single official document which would establish where the money was spent, contrary to the provisions of the Government Auditing Code of the Philippines. The Ombudsman also noted that it was not clear why Molina took charge of procuring the services for the construction of the school canteen, as well as the procurement of the school equipment, when he was not part of the Bids and Awards Committee.[40] Accordingly, Molina was found equally liable with Dionisio. With respect to respondents' co-teachers, however, the Ombudsman dismissed the charges against them after observing that they merely signed the Ratification and Confirmation and there was no proof of their actual participation in the questioned transactions.[41]

Upon motion for reconsideration[42] by complainants, the Ombudsman issued an Order[43] dated August 2, 2013 (August

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[39] See *id*. at 99-101.

[40] See *id*. at 101-102.

[41] See *id*. at 102-104.

[42] Dated July 8, 2013. *Id*. at 234-240.

[43] *Id*. at 67-75.

2, 2013 Order) upgrading respondents' liability to Grave Misconduct and, accordingly, meted the penalty of dismissal from the government service, together with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from re-employment in the government service.[44] The Ombudsman ruled that after a careful re-evaluation of the records at hand, there was sufficient evidence to establish corruption and respondents' flagrant disregard of established rules.[45] In this regard, the Ombudsman noted that respondents failed to explain how the ₱600,000.00 in advanced rent and ₱680,000.00 in donation were disbursed for public purposes; thus, creating the presumption that they used the money for personal gain. Moreover, the Ombudsman pointed out that respondents flagrantly disregarded the provisions of the Government Accounting and Auditing Manual of the Philippines and the Government Procurement Act of the Philippines when they failed to issue official receipts acknowledging receipt of the money from complainants, and caused the construction of the canteen and procurement of school equipment without public bidding, respectively.[46] Finally, the Ombudsman opined that their acts of taking undue advantage of their official position and using government property in the commission of the offense aggravated their administrative liability, thus, further justifying the imposition of the penalty of dismissal on them.[47]

Aggrieved, respondents moved for reconsideration,[48] which was, however, denied in an Order[49] dated April 4, 2014. Undaunted, respondents elevated the case to the CA.[50]

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[44] See *id*. at 74.

[45] See *id*. at 69-70.

[46] See *id*. at 70-71.

[47] See *id*. at 71-73.

[48] See motion for reconsideration dated March 13, 2014; *id*. at 242-264.

[49] *Id*. at 76-84.

[50] See petition for review dated July 9, 2014; *id*. at 285-390.

The CA Ruling

In a Decision[51] dated April 7, 2015, the CA granted respondents' appeal and, accordingly, reinstated the Ombudsman's initial ruling finding respondents guilty of simple misconduct only.[52] It held that the element of corruption, which is essential to the offense of grave misconduct, was not established in this case considering that respondents acted in good faith with no material interest, as in fact, they utilized the funds for the construction of the canteen and the purchase of educational materials.[53] According to the CA, there is no evidence that respondents unlawfully used their positions to advance their own interest or procure benefits for themselves.[54] Moreover, respondents never concealed the donation; they even consulted the barangay captain and the president of the PTA about the lease. Further, the construction of the school canteen and the purchase of computers and educational equipment were also visible to the public. Finally, the CA stressed that that the *Sangguniang Panlalawigan* of Bulacan ratified the MOA pursuant to Resolution No. 298-S'13 dated December 17,2013, thus, clothing respondents with the authority to lease an undivided portion of a vacant lot within the school premises.[55]

Dissatisfied, the Ombudsman moved for reconsideration,[56] but the same was denied in a Resolution[57] dated September 23, 2015; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly held respondents administratively liable only for Simple Misconduct.

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[51] *Id*. at 39-63.

[52] See *id*. at 60.

[53] See *id*. at 52-53.

[54] See *id*. at 53-54.

[55] See *id*. at 54-56

[56] See motion for reconsideration dated May 13, 2015; *id*. at 107-114.

[57] *Id*. at 65-66.

The Court's Ruling

The petition is meritorious.

At the outset, it is settled that "findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence"[58] – or "such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming."[59] On this note, it is well to emphasize that the Ombudsman's factual findings are generally accorded great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.[60]

Guided by the foregoing, the Court is convinced that the CA erred in downgrading respondents' liability from Grave Misconduct to Simple Misconduct, as will be explained hereunder.

"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

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[58] *Miro v. Vda. de Erederos*, 721 Phil. 772, 784 (2013).

[59] *Ombudsman v. Dechavez*, 721 Phil. 124, 130 (2013), citing *Orbase v. Ombudsman*, 623 Phil. 764, 779 (2009).

[60] *Miro v. Vda. de Erederos*, *supra* note 58.

flagrant disregard of established rule, must be manifest in the former."[61]

In the instant case, a judicious perusal of the records would readily reveal that the acts of respondents fall under the jurisprudential definition of Grave Misconduct, and not just Simple Misconduct.

First, the Ombudsman correctly observed that respondents had no authority to lease out a portion of the school premises, it being owned by the Provincial Government of Bulacan. Under Section 18[62] of RA 7160, otherwise known as the "Local Government Code of 1991," it is the local government unit which has the authority to lease, encumber, alienate, or otherwise dispose of real or personal property held by it in its proprietary capacity. Clearly, respondents violated this provision when they leased the aforesaid area to complainants.

In this relation, while the *Sangguniang Panlalawigan ng Bulacan* passed Resolution No. 298-S'13 ratifying the MOA

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[61] *Commission on Elections v. Mamalinta*, G.R. No. 226622, March 14, 2017, citing *Office of the Court Administrator v. Viesca*, A.M. No. P-12-3092, April 14, 2015, 755 SCRA 385, 396.

[62] Section 18 of RA 7160 reads:

Section 18. *Power to Generate and Apply Resources*. — Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenues and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a just share in national taxes which shall be automatically and directly released to them without need of any further action; to have an equitable share in the proceeds from the utilization and development of the national wealth and resources within their respective territorial jurisdictions including sharing the same with the inhabitants by way of direct benefits; **to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity** and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise or furtherance of their governmental or proprietary powers and functions and thereby ensure their development into self-reliant communities and active participants in the attainment of national goals. (Emphasis and underscoring supplied)

between the complainants and the Teachers' Association, it must nevertheless be pointed out that the same was issued only on December 17, 2013 – more than four (4) years since the MOA was executed and after the Ombudsman already promulgated its August 2, 2013 Order finding respondents guilty of Grave Misconduct. In this light, the Court cannot help but conclude that such ratification was sought as a mere afterthought and was issued after perhaps much lobbying from the respondents. In any case, the issuance of the said resolution does not change the fact that respondents had no authority to enter into the MOA when the same was executed in May 2009.

In fact, even the DepEd officials themselves found the transaction irregular and beyond the scope of respondents' authority. In the September 1, 2009 Memorandum, Dr. Magno, the Schools Division Superintendent, told Dionisio that she had no legal authority to allow the construction of complainants' drugstore within the school premises and, thus, ordered her to hold in abeyance the operation of complainants' drug store and to stop spending their donation and the advanced rent paid until the proper authorities have given her permission to do so.

Second, respondents failed to abide by the Constitutionally-prescribed principle of accountability of public officers.[63] As correctly observed by the Ombudsman, while respondents claim that the money received from the complainants in connection with the lease were spent for public purposes, they failed to submit official receipts and other documents that would support their claim. In *Pat-og, Sr. v. Civil Service Commission*,[64] the Court emphasized that public school teachers are first and foremost civil servants accountable to the people.[65]

Third, even assuming *arguendo* that the money received by respondents was used for the construction of the school canteen and the procurement of educational equipment, they nonetheless

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[63] See Section 1, Article XI of the 1987 Constitution.

[64] 710 Phil. 501 (2013).

[65] See *id*. at 514.

failed to comply with the requirements of RA 9184,[66] otherwise known as the "Government Procurement Reform Act." One of the most distinguishing features of RA 9184 is the mandate that all government procurement must be done through competitive bidding.[67] While the law allows for alternative methods of procurement,[68] it has not been shown that respondents were able to justify the resort thereto in the construction of the school canteen and in the purchase of the educational equipment.

To be sure, respondents cannot hide behind the cloak of ignorance or lack of familiarity with the foregoing laws and policies. It is a basic legal tenet that ignorance of the law excuses no one from compliance therewith.[69] Besides, Dionisio did not deny that when complainants inquired with her about leasing a portion of the school grounds, she responded that she will study the matter as it might take a long and complicated procedure if they follow the DepEd rules. Also, respondents tried to justify their disregard of the relevant rules by arguing that their actions inured to the benefit of the school and its students. Verily, the foregoing circumstances indicate that respondents knew of existing laws, rules, and regulations pertaining to the lease of public properties, use of public funds, and procurement of government projects, among others; and despite these, they still went ahead with their transactions. By and large, these exhibit respondents' clear intent to violate the law and/or flagrant disregard of established rules, thus, justifying the finding that they are indeed liable for Grave Misconduct.

As to the proper penalty to be imposed on respondents, it is well to note that Section 52 of the Uniform Rules on

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[66] Entitled "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES" approved on January 10, 2003.

[67] See Section 10, Article IV of RA 9184

[68] See Sections 48 to 54, Article XVI of RA 9184.

[69] See Article 3 of the Civil Code of the Philippines.

Administrative Cases in the Civil Service (URACCS)[70] classifies Grave Misconduct as a grave offense punishable with the supreme penalty of Dismissal from the service even for the first offense. In relation thereto, Section 58 (a) of the URACCS provides that "[t]he penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service x x x." It is well to clarify, however, that their accrued leave credits, if any, shall not be forfeited, as it is a standing rule that "despite their dismissal from the service, government employees are entitled to the leave credits that they have earned during the period of their employment. As a matter of fairness and law, they may not be deprived of such remuneration, which they have earned prior to their dismissal."[71]

As a final note, the Court is cognizant of the plight of public schools which almost always suffer from shortage of funds. However, while respondents' intentions may be noble and may have indeed benefited the school, the Court cannot turn a blind eye on respondents' blatant disregard of existing rules and regulations lest the Court sets a dangerous precedent. After all, laws and regulations are in place to regulate society and to protect the people. As such, they must be followed and complied with. In this case, compliance with the applicable rules and regulations gains even more importance considering that what is involved is the accountability of public officers.

WHEREFORE, the petition is **GRANTED**. The Decision dated April 7, 2015 and the Resolution dated September 23, 2015 of the Court of Appeals in CA-G.R. SP No. 135918 are hereby **REVERSED** and **SET ASIDE**. Respondents Eufrocina Carlos Dionisio and Winifredo Salcedo Molina are found **GUILTY** of Grave Misconduct, and are **DISMISSED** from

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[70] At the time of the commission of the administrative offense in 2009, the URACCS was still in effect as the Revised Rules on Administrative Cases in the Civil Service was only promulgated on November 8, 2011.

[71] *Office of the Court Administrator v. Ampong*, 735 Phil. 14, 21-22 (2014), citing *Igoy v. Soriano*, 527 Phil. 322, 327-328 (2006).

government service. Accordingly, their civil service eligibility is **CANCELLED**, and their retirement and other benefits, except accrued leave credits, are **FORFEITED**. Further, they are **PERPETUALLY DISQUALIFIED** from re-employment in the government service.

SO ORDERED.

Sereno, C.J. (*Chairperson*), *Leonardo-de Castro*, and *Caguioa, JJ.*, concur.

Del Castillo, J., on official leave.

FIRST DIVISION

[G.R. No. 223862. July 10, 2017]

HON. MYLYN P. CAYABYAB, in her capacity as the Municipal Mayor of Lubao, Pampanga, and ANGELITO L. DAVID, in his capacity as the Barangay Chairman of Prado Siongco, Lubao, Pampanga, represented by their Attorney-in-Fact, EMMANUEL SANTOS, *petitioners, vs.* **JAIME C. DIMSON, represented by his Attorneys-in-Fact, CARMELA R. DIMSON and IRENE R. DIMSON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; INJUNCTION; REQUISITES TO WARRANT ISSUANCE THEREOF; THE GRANT OR DENIAL OF AN INJUNCTIVE RELIEF IN A PENDING CASE RESTS ON THE SOUND DISCRETION OF THE COURT SINCE THE ASSESSMENT AND EVALUATION OF EVIDENCE TOWARDS THAT END INVOLVE FINDINGS OF FACT LEFT FOR THE CONCLUSIVE DETERMINATION OF THE SAID COURT; HENCE, THE EXERCISE OF

JUDICIAL DISCRETION BY A COURT IN INJUNCTIVE MATTERS MUST NOT BE INTERFERED WITH, EXCEPT WHEN THERE IS GRAVE ABUSE OF DISCRETION.— "A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests." To be entitled to the injunctive writ, the applicant must show that: (*a*) there exists a clear and unmistakable right to be protected; (*b*) this right is directly threatened by an act sought to be enjoined; (*c*) the invasion of the right is material and substantial; and (*d*) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage. The grant or denial of an injunctive relief in a pending case rests on the sound discretion of the court since the assessment and evaluation of evidence towards that end involve findings of fact left for the conclusive determination of the said court. "Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion." The burden is, thus, on the applicant to show that there is meritorious ground for the issuance of a TRO in his favor, since an application for injunctive relief is construed strictly against him. Here, Dimson failed to sufficiently show the presence of the requisites to warrant the issuance of a TRO against the CDO and the Closure Order of Mayor Cayabyab.

2. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; THE ACTS OF PUBLIC OFFICERS ARE PRESUMED TO BE REGULAR AND VALID, UNLESS SUFFICIENTLY SHOWN TO BE OTHERWISE.— [T]here is no showing that Dimson filed any application for renewal of his business permit to operate the subject poultry farm in 2014, apparently due to his failure to secure the necessary barangay clearance which was not issued based on complaints of foul odor being emitted by the said farm. Records show that complaints from neighboring barangays were received by the office of Mayor Cayabyab bewailing the foul odor coming from the said farm, which was confirmed upon ocular inspection conducted by the Health and Sanitation Office of the Municipality of Lubao, Pampanga. Settled is the rule that acts of public officers are presumed to be regular and valid, unless sufficiently shown to be otherwise. In this case, Dimson was unable to refute the finding that foul odor is being emitted by his farm, having failed to present the inspection report of the sanitary officer who

purportedly did not note any such foul smell in the farm. Not having passed the necessary sanitation standard, there was, therefore, a *prima facie* valid reason for the withholding of the required barangay clearance, which is a prerequisite to the renewal of Dimson's business permit to operate.

3. **REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; INJUNCTION; THE POSSIBILITY OF IRREPARABLE DAMAGE WITHOUT PROOF OF AN ACTUAL EXISTING RIGHT IS NOT A GROUND FOR THE ISSUANCE OF AN INJUNCTIVE RELIEF.—** Having failed to apply for and secure the necessary business permit to operate in 2014 on account of his inability to obtain the required barangay clearance due to non-compliance with a requirement standard, Dimson may not legally operate in the Municipality of Lubao, Pampanga, thereby, warranting the issuance by Mayor Cayabyab of the CDO and the Closure Order. Accordingly, no error, much less grave abuse of discretion can be ascribed on the RTC in denying Dimson's application for the issuance of a TRO against the said orders. In the absence of a business permit, Dimson has no clear legal right to resume his operations pending final determination by the RTC of the merits of the main case for *certiorari*, *mandamus*, and prohibition. A clear legal right means one clearly founded in or granted by law or is enforceable as a matter of law, which is not extant in the present case. It is settled that the possibility of irreparable damage without proof of an actual existing right is not a ground for the issuance of an injunctive relief.

4. **ID.; ID.; ID.; ID.; A COURT MAY ISSUE INJUNCTIVE RELIEF AGAINST ACTS OF PUBLIC OFFICERS ONLY WHEN THE APPLICANT HAS MADE OUT A CASE OF INVALIDITY OR IRREGULARITY STRONG ENOUGH TO OVERCOME THE PRESUMPTION OF VALIDITY OR REGULARITY, AND HAS ESTABLISHED A CLEAR LEGAL RIGHT TO THE REMEDY SOUGHT.—** [I]t was grave error for the CA to order the issuance of a TRO against the implementation of the CDO and the Closure Order of Mayor Cayabyab. A court may issue injunctive relief against acts of public officers only when the applicant has made out a case of invalidity or irregularity strong enough to overcome the presumption of validity or regularity, and has established a clear legal right to the remedy sought, which was not shown here.

APPEARANCES OF COUNSEL

Romeo B. Torno for petitioners.
Hipolito Tuazon Villanueva Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated December 18, 2015 and the Resolution[3] dated March 21, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138699, which directed the Regional Trial Court (RTC) of Guagua, Pampanga, Branch 51 to issue a temporary restraining order (TRO) against the Cease and Desist Order[4] (CDO) and the Closure Order[5] of petitioner Mayor Mylyn P. Cayabyab (Mayor Cayabyab) upon posting of a bond to be determined by the RTC.

The Facts

Respondent Jaime C. Dimson (Dimson) is the owner of a poultry farm located in Barangay Prado Siongco, Lubao, Pampanga (subject poultry farm) which had been operating for more than 30 years. In January 2014, he applied for a barangay clearance with the office of petitioner Prado Siongco Barangay Chairman Angelito L. David (Chairman David), preparatory to his application for a business permit, and was informed that the issuance thereof is conditioned on a prior ocular inspection of the subject poultry farm by the Office of the Mayor of Lubao,

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[1] *Rollo*, pp. 3-14.

[2] *Id*. at 25-36. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Edwin D. Sorongon and Henri Jean Paul B. Inting concurring.

[3] *Id*. at 43.

[4] Records, Vol. I, p. 42.

[5] *Id*. at 60.

Pampanga, Mayor Cayabyab. However, despite the conduct of an ocular inspection, Chairman David refused to issue the clearance; hence, no business permit was issued in favor of Dimson.[6]

On April 29, 2014, Dimson received[7] a CDO[8] dated April 28, 2014 from the Office of Mayor Cayabyab, directing him to desist from further conducting any poultry farming on the grounds of: (*a*) lack of a Barangay Business Permit and a Mayor's Permit; (*b*) lack of a pollution control officer; (*c*) foul odor being emitted by the subject poultry farm that offended passing motorists, and for which complaints were filed by those affected; and (*d*) the said poultry farm being situated only five (5) meters away from the national road, in violation of the 500-meter minimum distance requirement under the Code of Sanitation of the Philippines (Sanitation Code).[9]

In his motion for reconsideration,[10] Dimson denied that there was foul odor coming from his poultry farm, at the same time, manifesting that he had already employed a pollution control officer.[11] Said motion was denied by Lubao Acting Mayor Robertito V. Diaz in a letter[12] dated May 20, 2014. Dissatisfied, Dimson filed another motion for reconsideration,[13] contending that the subject poultry farm is not a nuisance *per se* that can be abated by the local government without the intervention of the courts.[14] The motion was denied by Mayor Cayabyab in a

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[6] *Rollo*, p. 26.

[7] *Id*. at 27.

[8] Records, Vol. I, p. 42.

[9] *Id*.

[10] See Motion for Reconsideration with Motion to Lift Cease and Desist Order dated May 5, 2014; *id*. at 43-48.

[11] See *id*. at 44-46. See also *rollo*, p. 27.

[12] Records, Vol. I, pp. 49-52.

[13] See Manifestation with Second Motion for Reconsideration dated June 2, 2014; *id*. at 53-58.

[14] See *id*. at 55. See also *rollo*, p. 27.

letter[15] dated June 13, 2014, which clarified that the CDO was primarily issued on the lack of the requisite Barangay Business Permit and Mayor's Permit. Thereafter, a Closure Order[16] dated June 20, 2014 was issued by Mayor Cayabyab effectively shutting down the subject poultry farm.[17]

The RTC Proceedings

Aggrieved, Dimson filed a Petition for *Certiorari*, *Mandamus*, Prohibition (With Application for Preliminary Mandatory Injunction)[18] and prayed for the issuance of a TRO against Mayor Cayabyab and Chairman David (petitioners) before the RTC of Guagua, Pampanga, docketed as Sp. Civil Case No. G-14-685, which was raffled to Branch 52. He maintained that his poultry farm is not a nuisance *per se* that can be summarily abated; hence, respondents grossly abused their discretion when they withheld his permits, and issued the CDO and Closure Order.[19]

In their defense,[20] respondents averred that: (*a*) the non-issuance of the Barangay Business Permit was based on valid grounds as there were written complaints against the operation of the poultry farm, and a public hearing was conducted thereon; (*b*) the non-issuance of the Mayor's Permit was justified considering the lack of a Barangay Business Permit; (*c*) the issuance of the CDO and Closure Order was justified and in accordance with due process; and (*d*) the poultry farm violated not only the Sanitation Code but also the Comprehensive Land

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[15] Records, Vol. I, p. 59.

[16] *Id.* at 60.

[17] See *rollo*, p. 27.

[18] Dated June 27, 2014. Records, Vol. I, pp. 16-39.

[19] See *id.* at 35-36.

[20] See Answer with Special Affirmative Defense and Counterclaim with Opposition to Issuance of Provisional Remedies dated September 11, 2014; records, Vol. II, pp. 358-365.

Use Plan and Zoning Ordinance requiring poultry farms to be 500 meters away from the major roads and/or highways.[21]

In an Order[22] dated October 2, 2014, the RTC denied Dimson's application for TRO for failure to establish a clear and unmistakable right to the said issuance and to show that he will suffer irreparable injury. Moreover, the RTC opined that the issue of whether or not petitioners have the right to order the closure of the subject farm is best threshed out in the main case. It likewise ruled that the TRO can no longer serve its purpose as the act sought to be restrained was already *fait accompli*, since a notice of closure was already posted on the concrete wall of the subject poultry farm effective September 29, 2014.[23]

Due to the Presiding Judge's voluntary inhibition in the case, the same was re-raffled to Branch 51 of the same RTC.[24]

Dimson filed a motion for reconsideration which was, however, denied in an Order[25] dated December 22, 2014. Unperturbed, Dimson filed a petition for *certiorari*[26] before the CA, seeking to set aside the Orders dated October 2, 2014 and December 22, 2014, docketed as CA-G.R. SP No. 138699.[27]

The CA Ruling

In a Decision[28] dated December 18, 2015, the CA granted the petition, and directed the RTC to issue a TRO against the

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[21] See *id*. at 362.

[22] *Rollo*, pp. 17-21. Issued by Judge Jonel S. Mercado.

[23] See *id*. at 20-21.

[24] *Id*. at 28. See also Order dated October 7, 2014; records, Vol. II, pp. 620-625.

[25] *Rollo*, pp. 22-23. Penned by Presiding Judge Merideth D. Delos Santos-Mailig.

[26] Not attached to the *rollo*.

[27] See *rollo*, p. 25.

[28] *Id*. at 25-36.

implementation of the CDO and the Closure Order of Mayor Cayabyab.[29]

The CA ruled that the RTC gravely abused its discretion in denying Dimson's application for a TRO which was essentially rooted on a determination of whether the subject poultry farm is a nuisance *per se* or a nuisance *per accidens*. Considering that poultry farming is a legitimate business, by its nature alone, the same can only be a nuisance *per accidens* if in the course of its operations, it should become objectionable to such extent that it offends some laws, public policy, or should become a danger to public health and welfare. It may only be abated on the strength of judicial fiat.[30]

Consequently, the CA held that Dimson was able to establish the concurrence of the requisites for the issuance of injunctive relief, to wit: (*a*) he has the right to engage in poultry farming; (*b*) the issuance of the CDO and the closure order would work injustice to him; and (*c*) the issuance of the said orders which amounted to an abatement of his poultry enterprise without the required judicial intervention violates his rights, which cannot be justified under the general welfare clause.[31]

The CA likewise held that the issuance of a TRO cannot be denied on the ground of *fait accompli* since the acts complained of is a continuing prohibition on an otherwise legitimate business. Hence, Dimson could still resume his operations in the meantime, or until a final decision on the merits of the main case is rendered by the RTC, and the status *quo ante* may still be attained, and, thereafter, preserved.[32]

Dissatisfied, petitioners filed a motion for reconsideration,[33] which was, however, denied in a Resolution[34] dated March 21, 2016; hence, the instant petition.

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[29] *Id*. at 35.

[30] See *id*. at 32-33.

[31] *Id*. at 34.

[32] See *id*. at 34-35.

[33] Dated January 5, 2016; *id*. at 37-40.

[34] *Id*. at 43.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in directing the issuance of a TRO against the implementation of the CDO and the Closure Order of Mayor Cayabyab.

The Court's Ruling

The Court grants the petition.

"A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests."[35] To be entitled to the injunctive writ, the applicant must show that: (*a*) there exists a clear and unmistakable right to be protected; (*b*) this right is directly threatened by an act sought to be enjoined; (*c*) the invasion of the right is material and substantial; and (*d*) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage. The grant or denial of an injunctive relief in a pending case rests on the sound discretion of the court since the assessment and evaluation of evidence towards that end involve findings of fact left for the conclusive determination of the said court.[36] "Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion."[37] The burden is, thus, on the applicant to show that there is meritorious ground for the issuance of a TRO in his favor,[38] since an application for injunctive relief is construed strictly against him.[39] Here, Dimson failed to sufficiently show the presence of the requisites to warrant the issuance of a TRO against the CDO and the Closure Order of Mayor Cayabyab.

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[35] *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, 684 Phil. 283, 291-292 (2012).

[36] *Id.* at 292-293.

[37] *Id.* at 293.

[38] *Id.*

[39] See *St. James College of Parañaque v. Equitable PCI Bank*, 641 Phil. 452, 471 (2010).

Preliminarily, it must be clarified that contrary to the CA's ruling,[40] the grant or denial of Dimson's application for TRO was not essentially rooted on a determination of whether the subject poultry farm is a nuisance *per se* or a nuisance *per accidens*, but rather on whether or not there was an ostensible showing of a sufficient justification for the issuance of the CDO and the Closure Order. Corollary is the issue of whether or not there were *prima facie* valid reasons for the withholding of the barangay clearance, which is a prerequisite to the renewal of Dimson's business permit to operate.

A business permit must be secured from the municipal business permits and licensing office in order for the business to legally operate in the locality.[41] While poultry farming is admittedly a legitimate business, it cannot operate without a business permit, which expires on the 31st of December of every year and must be renewed before the end of January of the following year.

In the present case, there is no showing that Dimson filed any application for renewal of his business permit to operate the subject poultry farm in 2014, apparently due to his failure to secure the necessary barangay clearance which was not issued based on complaints of foul odor being emitted by the said farm. Records show that complaints from neighboring barangays were received by the office of Mayor Cayabyab bewailing the foul odor coming from the said farm[42] which was confirmed upon ocular inspection conducted by the Health and Sanitation Office of the Municipality of Lubao, Pampanga.[43] Settled is the rule that acts of public officers are presumed to be regular

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[40] See *rollo*, p. 32.

[41] See Item 3.3 of Department of Interior and Local Government-Department of Trade and Industry (DILG-DTI) Joint Memorandum Circular No. 01, series of 2010, dated August 6, 2010.

[42] See records, Vol. II, pp. 384-387 and 390-411.

[43] See *rollo*, p. 9.

and valid, unless sufficiently shown to be otherwise.[44] In this case, Dimson was unable to refute the finding that foul odor is being emitted by his farm, having failed to present the inspection report of the sanitary officer who purportedly did not note any such foul smell in the farm.[45] Not having passed the necessary sanitation standard, there was, therefore, a *prima facie* valid reason for the withholding of the required barangay clearance, which is a prerequisite to the renewal of Dimson's business permit to operate.

Having failed to apply for and secure the necessary business permit to operate in 2014 on account of his inability to obtain the required barangay clearance due to non-compliance with a requirement standard,[46] Dimson may not legally operate in the Municipality of Lubao, Pampanga, thereby, warranting the issuance by Mayor Cayabyab of the CDO and the Closure Order. Accordingly, no error, much less grave abuse of discretion can be ascribed on the RTC in denying Dimson's application for the issuance of a TRO against the said orders. In the absence of a business permit, Dimson has no clear legal right to resume his operations pending final determination by the RTC of the merits of the main case for *certiorari*, *mandamus*, and prohibition. A clear legal right means one clearly founded in or granted by law or is enforceable as a matter of law, which is not extant in the present case. It is settled that the possibility of irreparable damage without proof of an actual existing right is not a ground for the issuance of an injunctive relief.[47]

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[44] *Secretary Boncodin v. National Power Corp. Employees Consolidated Union (NECU)*, 534 Phil. 741, 759 (2006).

[45] See records, Volume I, p. 33.

[46] Under Item 4.2.2 (1) of DILG-DTI Joint Memorandum Circular No. 01, series of 2010, dated August 6, 2010, inspections to check compliance with all the requirement standards, *i.e.*, zoning and environment ordinances, building and fire safety, health and sanitation regulations, will be undertaken within the year after the issuance of the business permit.

[47] See *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, *supra* note 35, at 293.

In fine, it was grave error for the CA to order the issuance of a TRO against the implementation of the CDO and the Closure Order of Mayor Cayabyab. A court may issue injunctive relief against acts of public officers only when the applicant has made out a case of invalidity or irregularity strong enough to overcome the presumption of validity or regularity, and has established a clear legal right to the remedy sought,[48] which was not shown here.

WHEREFORE, the petition is **GRANTED.** The Decision dated December 18, 2015 and the Resolution dated March 21, 2016 of the Court of Appeals in CA-G.R. SP No. 138699 are hereby **SET ASIDE.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, and *Caguioa, JJ.,* concur.

Del Castillo, J., on official leave.

EN BANC

[A.C. No. 5161. July 11, 2017]

RE: IN THE MATTER OF THE PETITION FOR REINSTATEMENT OF ROLANDO S. TORRES AS A MEMBER OF THE PHILIPPINE BAR.

ROLANDO S. TORRES, *petitioner.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; JUDICIAL CLEMENCY; THE COURT WILL GRANT JUDICIAL CLEMENCY

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[48] See *Secretary Boncodin v. National Power Corp. Employees Consolidated Union (NECU)*, *supra* note 44, at 759-760.

ONLY IF THERE IS A SHOWING THAT IT IS MERITED; PROOF OF REFORMATION AND A SHOWING OF POTENTIAL AND PROMISE ARE INDISPENSABLE; GUIDELINES.— The principle which should hold true for lawyers, being officers of the court, is that judicial clemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts. Thus, the Court will grant it only if there is a showing that it is merited. Proof of reformation and a showing of potential and promise are indispensable. In *Re: The Matter of the Petition for Reinstatement of Rolando S. Torres as a member of the Philippine Bar,* the Court laid down the following guidelines in resolving requests for judicial clemency, to wit: 1. There must be proof of remorse and reformation. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation. 2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reform. 3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself. 4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service. 5. There must be other relevant factors and circumstances that may justify clemency.

2. **ID.; ID.; ID.; A PETITION FOR REINSTATEMENT IN THE ROLLS OF ATTORNEYS SHALL BE DENIED WHERE THE PETITIONER FAILS TO COMPLY WITH THE GUIDELINES FOR THE GRANT OF JUDICIAL CLEMENCY.—** In support of the instant petition for reinstatement, Torres merely rehashed all the several testimonials and endorsements which he had already attached to his previous petitions, in addition to another endorsement, this time coming from the incumbent Secretary of Justice, stating that Torres "is a person of good moral character and a law abiding citizen."

However, these testimonials and endorsements do not prove whatsoever that Torres had already successfully reformed himself subsequent to his disbarment. Neither do they exhibit remorse towards the actions which caused his delisting from the Roll of Attorneys, *i.e.,* the fraudulent acts he committed against his sister-in-law. In this regard, it is noteworthy to point out that since the promulgation of the Court's August 25, 2015 Resolution, there was still no showing that Torres had reconciled or even attempted to reconcile with his sister-in-law so as to show remorse for his previous faults. Moreover, Torres also failed to present any evidence to demonstrate his potential for public service or that he – now being 70 years of age – still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself. In sum, Torres failed to comply with the guidelines for the grant of judicial clemency; hence, the instant petition must necessarily be denied.

APPEARANCES OF COUNSEL

Teofilo N. Pugeda, Jr. for petitioner.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is the Petition[1] dated March 10, 2017 filed by Rolando S. Torres (Torres) who seeks judicial clemency in order to be reinstated in the Roll of Attorneys.

Records show that in a Resolution[2] dated April 14, 2004 in *Ting-Dumali v. Torres*,[3] the Court meted the supreme penalty of disbarment on Torres for "presentation of false testimony; participation in, consent to, and failure to advise against, the forgery of complainant's signature in a purported Deed of Extrajudicial Settlement; and gross misrepresentation in court

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[1] *Rollo*, pp. 492-500.

[2] *Id*. at 241-252.

[3] 471 Phil. 1 (2004).

for the purpose of profiting from such forgery,"[4] thereby committing gross misconduct and violating Canons 1 and 10 the Code of Professional Responsibility. The dispositive portion of the said Resolution reads:

> **IN VIEW OF ALL THE FOREGOING,** we find respondent Atty. Rolando S. Torres guilty of gross misconduct and violation of the lawyer's oath, as well as Canons 1 and 10 of the Code of Professional Responsibility, thereby rendering him unworthy of continuing membership in the legal profession. He is thus ordered **DISBARRED** from the practice of law, and his name is ordered stricken off the Roll of Attorneys, effective immediately.
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> x x x x x x x x x[5]

Aggrieved, Torres twice moved for reconsideration,[6] both of which were denied with finality by the Court,[7] which then stated that "[n]o further pleadings will be entertained."[8] This notwithstanding, Torres: (*a*) filed an *Ex-Parte* Motion to Lift Disbarment[9] dated January 26, 2006 begging for compassion, mercy, and understanding;[10] and (*b*) wrote letters to former Chief Justice Artemio V. Panganiban[11] and former Associate Justice Dante O. Tinga[12] reiterating his pleas for compassion and mercy.

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[4] *Id*. at 4; see also *rollo*, pp. 241-242.

[5] *Id*. at 15; see also *rollo*, p. 251.

[6] See Motion for Reconsideration (Court's *En Banc* Resolution Dated April 14, 2004) dated May 17, 2004 and Motion for Leave to File and to Admit Second Motion for Reconsideration dated September 14, 2004 with attached Second Motion for Reconsideration dated September 13, 2004; *rollo*, pp. 254-281 and 303-326, respectively.

[7] See Resolutions dated June 29, 2004 and November 9, 2004; *id*. at 296 and 345, respectively.

[8] *Id*. at 345.

[9] *Id*. at 346-349.

[10] *Id*. at 348.

[11] Dated August 1, 2006. *Id*. at 366-367.

[12] Dated August 1, 2006. *Id*. at 356-357.

However, these were ordered expunged through the Court's Resolutions dated June 13, 2006[13] and September 5, 2006,[14] considering the previous directive that no further pleadings will be further entertained in this case. Still undaunted, Torres continued to file numerous submissions either seeking his reinstatement to the bar[15] or the reduction of his penalty of disbarment to suspension,[16] all of which were either expunged from the records[17] or denied[18] by the Court.

More than ten (10) years from his disbarment, Torres filed a Petition[19] dated June 11, 2015 seeking judicial clemency from the Court to reinstate him in the Roll of Attorneys.[20] In a Resolution[21] dated August 25, 2015 (August 25, 2015 Resolution), the Court denied the petition, holding that Torres had failed to provide substantial proof that he had reformed himself, especially considering the absence of showing that he had reconciled or attempted to reconcile with his sister-in-law, the original complainant in the disbarment case against him; nor was it demonstrated that he was remorseful over the fraudulent acts he had committed against her.[22]

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[13] *Id*. at 355.

[14] *Id*. at 362.

[15] See letter dated April 28, 2007 addressed to former Chief Justice Reynato S. Puno (*id*. at 376); and Petition for Reinstatement filed on October 30, 2009 (see envelope, *id*. at 386).

[16] See Petition for Reduction of Penalty from Disbarment to Suspension filed on January 14, 2011; *id*. at 389-394.

[17] See Resolutions dated June 12, 2007 and December 8, 2009; *id*. at 383 and 388, respectively.

[18] See Resolution dated February 8, 2011; *id*. at 417.

[19] *Id*. at 437-442.

[20] See *id*. at 441.

[21] *Re: In the Matter of the Petition for Reinstatement of Rolando S. Torres as a Member of the Philippine Bar*, A.C. No. 5161, August 25, 2015, 768 SCRA 149. See also *rollo*, pp. 469-476.

[22] See *id*. at 158-160. See also *rollo*, pp. 473-475.

Despite the foregoing, Torres filed the instant petition, again seeking judicial clemency from the Court to reinstate him in the Roll of Attorneys.

The Court's Ruling

The petition is not meritorious.

The principle which should hold true for lawyers, being officers of the court, is that judicial clemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts. Thus, the Court will grant it only if there is a showing that it is merited. Proof of reformation and a showing of potential and promise are indispensable.[23] In *Re: The Matter of the Petition for Reinstatement of Rolando S. Torres as a member of the Philippine Bar*,[24] the Court laid down the following guidelines in resolving requests for judicial clemency, to wit:

1. There must be proof of remorse and reformation. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.

2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reform.

3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.

4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service.

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[23] *Id*. at 158, citing *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37*, 560 Phil. 1, 5. (2007)

[24] *Id*.

5. There must be other relevant factors and circumstances that may justify clemency.[25]

In support of the instant petition for reinstatement, Torres merely rehashed all the several testimonials and endorsements which he had already attached to his previous petitions, in addition to another endorsement, this time coming from the incumbent Secretary of Justice, stating that Torres "is a person of good moral character and a law abiding citizen."[26] However, these testimonials and endorsements do not prove whatsoever that Torres had already successfully reformed himself subsequent to his disbarment. Neither do they exhibit remorse towards the actions which caused his delisting from the Roll of Attorneys, *i.e.*, the fraudulent acts he committed against his sister-in-law. In this regard, it is noteworthy to point out that since the promulgation of the Court's August 25, 2015 Resolution, there was still no showing that Torres had reconciled or even attempted to reconcile with his sister-in-law so as to show remorse for his previous faults.

Moreover, Torres also failed to present any evidence to demonstrate his potential for public service or that he – now being 70 years of age[27] – still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.

In sum, Torres failed to comply with the guidelines for the grant of judicial clemency; hence, the instant petition must necessarily be denied.

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[25] *Id*. at 157, citing *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37*, *id*. at 5-6.

[26] See Letter dated March 3, 2017 signed by Secretary of Justice Vitaliano N. Aguirre II; *rollo*, p. 562.

[27] See *id*. at 492.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

Del Castillo and *Jardeleza, JJ.,* on official leave.

Mendoza, J., no part.

EN BANC

[A.M. No. 17-03-03-CA. July 11, 2017]

RE: LETTER OF RAFAEL DIMAANO REQUESTING INVESTIGATION OF THE ALLEGED ILLEGAL ACTIVITIES PURPORTEDLY PERPETRATED BY ASSOCIATE JUSTICE JANE AURORA C. LANTION OF THE COURT OF APPEALS, CAGAYAN DE ORO CITY, and a CERTAIN ATTY. DOROTHY S. CAJAYON OF ZAMBOANGA CITY

[IPI No. 17-258-CA-J. July 11, 2017]

RE: UNSWORN COMPLAINT OF ROSA ABDULHARAN AGAINST ASSOCIATE JUSTICE JANE AURORA C. LANTION OF THE COURT OF APPEALS, CAGAYAN DE ORO CITY, and a CERTAIN ATTY. DOROTHY S. CAJAYON OF ZAMBOANGA CITY

SYLLABUS

1. REMEDIAL LAW; ADMINISTRATIVE PROCEEDINGS AGAINST JUDGES AND JUSTICES OF THE COURT OF

APPEALS AND SANDIGANBAYAN; HOW INSTITUTED.— There are three ways by which administrative proceedings against judges and justices of the CA and Sandiganbayan may be instituted: (1) *motu proprio* by the Supreme Court; (2) **upon verified complaint with affidavits of persons having personal knowledge of the facts alleged therein or by documents which may substantiate said allegations**; or (3) upon an anonymous complaint supported by public records of indubitable integrity.

2. ID.; PROCEEDINGS FOR THE DISBARMENT, SUSPENSION, OR DISCIPLINE OF ATTORNEYS; HOW INSTITUTED.— [S]ection 1, Rule 139-B of the Rules of Court provides the manner for which a complaint against a lawyer may be instituted, thus: Section 1. *How instituted*. Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts. The verification of a pleading is made through an affidavit or sworn statement confirming that the affiant has read the pleading whose allegations are true and correct of the affiant's personal knowledge or based on authentic records. The rationale behind the rule is to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. Generally, a pleading need not be verified, unless there is a law or rule specifically requiring the same. A pleading required to be verified but lacks proper verification, is to be treated as an unsigned pleading which produces no legal effect.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE BURDEN OF SUBSTANTIATING THE CHARGES IN AN ADMINISTRATIVE PROCEEDING FALLS ON THE COMPLAINANT, WHO MUST BE ABLE TO PROVE THE ALLEGATIONS IN THE COMPLAINT WITH SUBSTANTIAL EVIDENCE, AS RELIANCE ON MERE

ALLEGATIONS, CONJECTURES AND SUPPOSITIONS WILL LEAVE AN ADMINISTRATIVE COMPLAINT WITH NO LEG TO STAND ON.— In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. It must be stressed that the burden of substantiating the charges in an administrative proceeding falls on the complainant, who must be able to prove the allegations in the complaint with substantial evidence. Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on. In this case, not only are the two handwritten letter-complaints unverified, they are also unsupported by any affidavits or documents which would validate the charges against the respondents. Even if the Court sets aside technicality, the handwritten letters of the complainants are couched in general terms that contain no material, relevant and substantial allegation to support the accusation of continuous and widespread selling of a favorable decision in CA-CDO. The complainants failed to aver specific acts or to present proof to show that Justice Lantion and Atty. Cajayon were in cahoots and involved in the continuous and widespread selling of a favorable decision in CA-CDO. Moreover, the Court notes that these allegations/reports were filed after the lapse of seven (7) years from the time Justice Lantion was transferred to CA-Manila. Indeed, if Justice Lantion and Atty. Cajayon should be disciplined for a grave offense, the evidence against them should be competent and should be derived from direct knowledge.

R E S O L U T I O N

MENDOZA, *J.*:

Before the Court are two *(2)* Letter-Complaints filed by Rosa Abdulharan *(Abdulharan)* and Rafael Dimaano *(Dimaano)* charging Justice Jane Aurora C. Lantion *(Justice Lantion)*, Court of Appeals, Cagayan de Oro City *(CA-CDO)* and Atty. Dorothy Cajayon *(Atty. Cajayon)* with selling a favorable decision.

The Antecedents

In a Letter,[1] dated September 12, 2016, filed before the Office of the President *(OP)*, Abdulharan alleged that Atty. Cajayon was making business out of the sufferings of poor litigants by telling the parties with a pending case before the CA-CDO to prepare money because Justice Lantion was giving a "favorable decision if the price is right."

Another Letter,[2] dated November 14, 2016, was filed before the Department of Justice *(DOJ)* by Dimaano, requesting an investigation on the "consistent and incessant allegation of an existing syndicate of selling a favorable decision" from the CA-CDO purportedly committed by Atty. Cajayon and Justice Lantion.

The OP and the DOJ referred the letters to the Court, thru the Office of the Court Administrator *(OCA),* on December 13, 2016[3] and on January 6, 2017,[4] respectively. They were subsequently docketed as IPI No. 17-258-CA-J and A.M. No. 17-03-03-CA.

In a Resolution,[5] dated April 4, 2017, the Court resolved to consolidate the two (2) cases and require Justice Lantion and Atty. Cajayon to comment thereon.

Comment of Atty. Cajayon

In her Answer/Comment,[6] Atty. Cajayon specifically averred that:

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[1] *Rollo* (IPI No. 17-258-CA-J), p. 4.

[2] *Rollo* (A.M. No. 17-03-03-CA), pp. 4-5.

[3] Letter, dated November 3, 2016, *rollo* (IPI No. 17-258-CA-J), p. 3.

[4] Indorsement, dated January 3, 2017, *rollo* (A.M. No. 17-3-03-CA), p. 3.

[5] *Rollo* (IPI No. 17-258-CA-J), pp. 5-6; *rollo* (A.M. No. 7-03-03-CA), pp. 7-8.

[6] *Rollo* (IPI No. 17-258-CA-J), pp. 7-13.

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6. While the undersigned did not receive a copy of the letters/complaints referred to in A.M. No. 16-12-03-CA and IPI No. 17-248-CA-J, the Honorable Court *en banc* is most respectfully informed that the undersigned does not know complainants Lucena Ofendoreyes, Sylvia Adante, Rosa Abdulhasan, and Rafael Dimaano. She has not, in the course of her 13 years of service as a public prosecutor of Zamboanga City and 16 years as a private lawyer, dealt with the aforementioned complainants.

7. Dealings, whether in consultation with a view to an attorney-client relationship, or in any other capacity, with the aforementioned complainants are likewise nil.

8. The undersigned is engaged in the practice of law primarily in Zamboanga City; however, she has not had the occasion of having any appealed case filed before the division of the Court of Appeals, Cagayan de Oro City where respondent Associate Justice Jane Aurora Lantion sits as a member.

9. There is never an occasion, too, when the undersigned is consulted about an appealed case pending before a division of the same Court of Appeals station where Respondent Associate Justice Lantion sits as a member.

10. The undersigned pleads innocent of the charges of the complainants primarily because she has not in any form or manner associated, been consulted on a matter or related with the complainants and second, even if there be any association, consultation or relation with the said complainants, the undersigned does not and has never proposed to bribe or in any way corrupt a public officer or a magistrate, in order to obtain a favorable resolution of a case. The allegation that the undersigned sells cases to the highest payment that is given is, thus, a blatantly impossible claim.

11. The undersigned, in her 29 years of practice, has taken every step towards maintaining and contributing to the high standard of moral fitness required of the profession; and, ensuring that the respect to our justice system is upheld.

12. The undersigned, in both her professional and personal capacity, has consistently lived a life becoming of an officer

of the law. She has not engaged in illegal gambling, as claimed by complainant Abdulhasan, or in any activity proscribed by law.

13. Associate Justice Lantion is the undersigned's underclasswoman at the College of Law of the Ateneo de Manila University where respondent graduated in 1974. As schoolmates and later as members of the legal profession, Associate Justice Lantion and the undersigned have not associated with each other, professionally or personally. It is thus humbly and respectfully pointed out that the complainants' allegations of systematic practice of corruption and illicit activities being perpetrated with Associate Justice Lantion, or by one in connivance with the other, is implausible.

14. With due respect to the Honorable Court *en banc*, the undersigned is at a loss considering that the alleged letters/complaints of Adante and Ofrendoreyes were not attached to the respective Notices for their complaints; and, as regards the complaints of Dimaano and Abdulhasan, the averments are not substantial enough to afford her a proper and thorough response to each of the alleged wrongdoings imputed to her and Associate Justice Lantion.

15. To the undersigned, the complainants' allegations are only intended to injure the reputation which she has painstakingly built and preserved in her practice of the legal profession.[7]

Comment of Justice Lantion

On her part, Justice Lantion vehemently denied the charges and averred that the allegations were false, malicious and bereft of substance and factual basis. She stressed that the unsworn letters were too sweeping and replete with generalizations and not supported by proof or leads. Justice Lantion averred that she was born in Manila where she grew up. She was assigned only in the CA-CDO for two and a half years from February 2007 to August 2009 and within that short period of time, it was highly improbable for her to gain connections to engage in the nefarious scheme that Abdulharan and Dimaano

[7] *Id*. at 9-11.

maliciously implied. In addition, Justice Lantion asserted that the complaints were questionable as they were filed after the lapse of almost eight (8) years from the time she was transferred to CA-Manila. Finally, she denied knowing Atty. Cajayon, explaining that though she encountered a person by the name of Dorothy Sandalo in law school, she had no personal knowledge if Dorothy Sandalo and Atty. Cajayon are one and the same person. Further, she did not have any personal or professional interaction with Dorothy Sandalo or Atty. Cajayon after law school and up to the present.[8]

The Court finds the letter-complaints bereft of merit.

The Court's Ruling

Section 1, Rule 140 of the Rules of Court provides:

> SECTION 1. *How instituted*. Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the *Sandiganbayan* may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

From the foregoing, there are three ways by which administrative proceedings against judges and justices of the CA and Sandiganbayan may be instituted: (1) *motu proprio* by the Supreme Court; (2) **upon verified complaint with affidavits of persons having personal knowledge of the facts alleged therein or by documents which may substantiate said allegations**; or (3) upon an anonymous complaint supported by public records of indubitable integrity.[9]

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[8] Comment, dated June 9, 2017, *rollo* (IPI No. 17-258-CA-J), pp. 16-22.

[9] *Sinsuat v. Judge Hidalgo*, 583 Phil. 38, 47 (2008).

In the same vein, Section 1, Rule 139-B of the Rules of Court provides the manner for which a complaint against a lawyer may be instituted, thus:

> Section 1. *How instituted.* Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts. [Underscoring supplied]

The verification of a pleading is made through an affidavit or sworn statement confirming that the affiant has read the pleading whose allegations are true and correct of the affiant's personal knowledge or based on authentic records.[10] The rationale behind the rule is to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[11]

Generally, a pleading need not be verified, unless there is a law or rule specifically requiring the same. A pleading required to be verified but lacks proper verification, is to be treated as an unsigned pleading which produces no legal effect.[12]

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[13] It must be stressed that the burden of substantiating the charges in an administrative proceeding falls on the complainant, who must be able to prove the allegations

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[10] *Valmonte v. Alcala*, 581 Phil. 505, 512 (2008).

[11] *Pajuyo v. Court of Appeals*, 474 Phil. 557, 577 (2004).

[12] 1997 Rules of Court, Rule 7, Section 4, as amended by A.M. No. 00-2-10-SC, effective May 1, 2000.

[13] *Complaint of Imelda D. Ramil against Stenographer Evelyn Antonio*, 552 Phil. 92, 100 (2007).

in the complaint with substantial evidence.[14] Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on.[15]

In this case, not only are the two handwritten letter-complaints unverified, they are also unsupported by any affidavits or documents which would validate the charges against the respondents. Even if the Court sets aside technicality, the handwritten letters of the complainants are couched in general terms that contain no material, relevant and substantial allegation to support the accusation of continuous and widespread selling of a favorable decision in CA-CDO. The complainants failed to aver specific acts or to present proof to show that Justice Lantion and Atty. Cajayon were in cahoots and involved in the continuous and widespread selling of a favorable decision in CA-CDO. Moreover, the Court notes that these allegations/ reports were filed after the lapse of seven (7) years from the time Justice Lantion was transferred to CA-Manila. Indeed, if Justice Lantion and Atty. Cajayon should be disciplined for a grave offense, the evidence against them should be competent and should be derived from direct knowledge.[16]

Hence, in the case of *Diomampo v. Judge Alpajora,*[17] the Court held that:

> It must be stressed that any administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are by their nature highly penal, such that the respondent stands to face the sanction of dismissal and/or disbarment. Thus, the Court cannot give credence to charges based on mere suspicion and speculation. As champion – at other times tormentor – of trial and appellate judges, this Court must be unrelenting in weeding the judiciary of unscrupulous judges, but it must also be quick in dismissing administrative complaints which serve no other purpose than to harass them. While it is our duty to investigate and

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[14] *Dayag v. Judge Gonzales*, 526 Phil. 48, 57 (2006).

[15] *Alfonso v. Ignacio*, 487 Phil. 1, 7 (2004).

[16] *Id*.

[17] 483 Phil. 560 (2004).

determine the truth behind every matter in complaints against judges and other court personnel, it is also our duty to see to it that they are protected and exonerated from baseless administrative charges. The Court will not shirk from its responsibility of imposing discipline upon its magistrates, but neither will it hesitate to shield them from unfounded suits that serve to disrupt rather than promote the orderly administration of justice. When the complainant, as in the case at bar, relies on mere conjectures and suppositions and fails to substantiate her claim, the administrative complaint must be dismissed for lack of merit.[18]

WHEREFORE, the complaints against respondents Justice Jane Aurora C. Lantion, Court of Appeals, Cagayan de Oro City and Atty. Dorothy S. Cajayon are hereby **DISMISSED.**

SO ORDERED.

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

Del Castillo and *Jardeleza, JJ.,* on official leave.

EN BANC

[A.M. No. MTJ-15-1854. July 11, 2017]
(Formerly A.M. No. 14-4-50-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **PRESIDING JUDGE BILL D. BUYUCAN and CLERK OF COURT GERARD N. LINDAWAN, both at Municipal Circuit Trial Court, Bagabag-Diadi, Nueva Vizcaya,** *respondents.*

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[18] *Id.* at 565-566.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; CLERKS OF COURTS, CASH CLERKS AND ALL COURT PERSONNEL ENTRUSTED WITH THE COLLECTIONS OF COURT FUNDS ARE REQUIRED TO DEPOSIT IMMEDIATELY WITH AUTHORIZED GOVERNMENT DEPOSITORIES THE VARIOUS FUNDS THEY HAVE COLLECTED, AND THE UNWARRANTED FAILURE TO FULFILL THESE RESPONSIBILITIES DESERVES ADMINISTRATIVE SANCTION; THE FULL PAYMENT OF THE COLLECTION SHORTAGES WILL NOT EXEMPT THE ACCOUNTABLE OFFICER FROM LIABILITY.— The Court, in Circular No. 13-92 and Circular No. 5-93, mandates all clerks of courts to immediately deposit all fiduciary collections, upon receipt thereof, with the Land Bank, as an authorized depository bank. Further, the Court has always reminded clerks of courts, cash clerks and all court personnel entrusted with the collections of court funds to deposit immediately with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody. Also, the failure to deposit these judiciary collections on time deprives the court of the interest that may be earned if the amounts were deposited in a bank. The unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability.

2. ID.; ID.; ID.; ID.; ROLE OF CLERKS OF COURT AND THEIR RESPONSIBILITIES IN THE COLLECTION OF COURT FUNDS, EXPOUNDED.— In the case of *OCA v. Fortaleza,* the Court stressed the role of clerk of courts and their responsibilities in the collection of court funds. Thus: Clerks of court are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. On the other hand, a vital administrative function of a judge is the effective

management of his court and this includes control of the conduct of the courts ministerial officers. It should be brought home to both that the safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the Circulars designed to promote full accountability for government funds.

3. **ID.; ID.; ID.; ID.; THOSE WHO WORK IN THE JUDICIARY, FROM THE HIGHEST OFFICIAL TO THE LOWEST CLERK, MUST ADHERE TO HIGH ETHICAL STANDARDS TO PRESERVE THE COURT'S GOOD NAME AND STANDING, FOR THE COURT WILL NEVER TOLERATE ANY CONDUCT WHICH WOULD VIOLATE THE NORMS OF PUBLIC ACCOUNTABILITY, AND DIMINISH, OR EVEN TEND TO DIMINISH, THE FAITH OF THE PEOPLE IN THE JUDICIARY.—** In the present case, Lindawan committed several irregularities in the administration of court funds. Not only did he incur unexplained cash shortages in the Fiduciary Fund and in the Judiciary Development Fund, he also failed to deposit court collections on time and neglected to submit his monthly financial reports to the OCA. Worst, he collected cash bonds without issuing official receipts, falsified official receipts and lost several booklets of official receipts. Undeniably, Lindawan abused the trust and confidence reposed in him and failed to perform his duty with utmost loyalty and honesty. The Court has said time and again that those who work in the judiciary, from the highest official to the lowest clerk, must adhere to high ethical standards to preserve the court's good name and standing. As officers of the court and agents of the law, they should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence. For the Court will never tolerate any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the judiciary.

4. **ID.; ID.; ID.; ID.; THE FAILURE OF A CLERK OF COURT TO TURN OVER MONEY DEPOSITED WITH HIM AND ADEQUATELY EXPLAIN AND PRESENT EVIDENCE THEREON CONSTITUTED GROSS DISHONESTY, GRAVE MISCONDUCT, AND MALVERSATION OF**

PUBLIC FUNDS, AND THE RESTITUTION OF THE WHOLE AMOUNT WOULD NOT EXCULPATE HIM FROM LIABILITY; PENALTY OF DISMISSAL, PROPER.— In the case of *Report on the Financial Audit Conducted at the MTC of Bani Alaminos and Lingayen in Pangasinan,* the Court held that the failure of a clerk of court to turn over money deposited with him and adequately explain and present evidence thereon constituted gross dishonesty, grave misconduct, and even malversation of public funds, and even the restitution of the whole amount would not exculpate him from liability. Undoubtedly, the ultimate penalty of dismissal would have been imposed upon Lindawan had he not resigned from his post. Thus, in lieu of the dismissal, the Court shall forfeit the retirement benefits that may be due him.

5. LEGAL ETHICS; JUDGES; DUTY THEREOF IS NOT CONFINED TO ADJUDICATORY FUNCTIONS, BUT INCLUDES THE ADMINISTRATIVE REPONSIBILITY OF ORGANIZING AND SUPERVISING THE COURT PERSONNEL TO SECURE A PROMPT AND EFFICIENT DISPATCH OF BUSINESS.— The Court agrees with the OCA that Judge Buyucan should be held administratively liable for simple neglect of duty. Although the custody, submission, and monitoring of monthly reports of collections and deposits were mainly the responsibility of the clerk of court, he is, however, subject to the control and supervision of the Presiding Judge. As the administrative officer who has authority over the office of the clerk of court, Judge Buyucan should be familiar with the different circulars of the Court as his duty is not confined to adjudicatory functions, but includes the administrative responsibility of organizing and supervising the court personnel to secure a prompt and efficient dispatch of business. It is his responsibility to see to it that the clerk of court performs his duties and observes the circulars issued by the Supreme Court. Thus, he should have taken the necessary steps to ensure that the correct procedure in the collections and deposits of court funds were dutifully carried out.

6. ID.; ID.; THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; A JUDGE SHOULD EXERCISE JUDICIAL TEMPERAMENT IN ALL HIS DEALINGS AND MUST MAINTAIN COMPOSURE AND EQUANIMITY AT ALL TIMES; A JUDGE'S

INAPPROPRIATE ACTIONS AND USE OF INTEMPERATE LANGUAGE CONSTITUTE CONDUCT UNBECOMING OF A JUDGE.— [J]udge Buyucan should likewise be held administratively liable for conduct unbecoming of a judge for his inappropriate actions and use of intemperate language. The incident narrated by the audit team was never denied by Judge Buyucan who offered his apologies to the audit team and begged for their understanding and forgiveness for his outburst and rise in temper. The New Code of Judicial Conduct for the Philippine Judiciary requires judges to exemplify propriety at all times in order to preserve public confidence in the judiciary. Judge Buyucan must comport himself irreproachably, not only while in the discharge of official duties but also in his personal behavior every day. He should exercise judicial temperament in all his dealings and must maintain composure and equanimity at all times.

7. ID.; ID.; RESPONDENT JUDGE FOUND GUILTY OF SIMPLE NEGLECT OF DUTY AND CONDUCT UNBECOMING OF A JUDGE; PENALTY OF FINE INCREASED TO TWENTY THOUSAND PESOS.— The OCA recommends that Judge Buyucan be fined in the amount of ₱5,000.00. The Court, however, considers this to be too light considering his violation of the rules. Judge Buyucan is not only guilty of simple neglect of duty but is also liable for conduct unbecoming of a judge for his inappropriate actions and for using intemperate language. Thus, the fine should be increased to Twenty Thousand Pesos (₱20,000.00), with a warning that a repetition of the same or similar act shall be dealt with more severely.

D E C I S I O N

***PER CURIAM*:**

This administrative case stemmed from the Financial Audit conducted on September 10, 2013, by the Financial Monitoring Division *(FMD)*, Court Management Office *(CMO)*, Office of the Court Administrator *(OAS),* in the Municipal Circuit Trial Court of Bagabag-Diadi, Nueva Vizcaya *(MCTC)*.

The Antecedents

The audit was prompted by an anonymous Letter-Complaint[1] from the auditors of the Commission on Audit, Nueva Vizcaya *(COA)*, who audited the cash and accounts of Gerard N. Lindawan *(Lindawan)*, Clerk of Court II, MCTC, for the years 2009 and 2010. Allegedly, Lindawan failed to present four (4) booklets of official receipts with series numbers 7654801-7654850, 7654851-7654900, 7654901-7654950, and 7654951-7655000 despite several requests to submit the same.

Acting thereon, an audit was conducted covering the financial transactions of Pio M. Valdez *(Valdez),* Court Interpreter and Officer-in-Charge of MCTC from January 1, 2007 to January 31, 2008, and Lindawan from February 1, 2008 to August 21, 2013.

The Report[2] of the audit team disclosed the following:

I. For the CASH EXAMINATION CONDUCTED:

At the start of the audit, the team found out that no remittances were made starting August 2012 for the Judiciary Development Fund (JDF) and Special Allowance for the Judiciary Fund (SAJ), and starting May 2011 for the Mediation Fund (MF). Also, official cashbooks were not updated and monthly reports were not submitted starting August 2012.

Proceeding from the cash examination, the team made an inventory of the cash on hand and compared it with the unremitted collections from 1 to 12 September 2013. It disclosed an unremitted cash in the amount of Twelve Thousand Pesos (₱12,000.00) representing the unreceipted cash bond in Criminal Case No. 5903. As evidence, an unsigned Bail Bond Undertaking dated 9 September 2013 was detached from the records of the case.

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[1] *Rollo,* p. 22.

[2] *Id*. at 9-21.

The total unremitted collections are presented below with its corresponding period and the cash on hand, to wit:

Fund	**Period Covered**	**OR Nos.**	**Amount**
FF	Sept 9, 2013	Unreceipted	₱ 12,000.00
SAJF	Sept 1-11, 2013	0249356-0249386	2,500.00
TOTAL			**₱ 14,500.00**

CASH PRESENTED DURING THE CASH COUNT:

	DENOMINATION	**No. of PCS.**	**AMOUNT**	
BILLS	500.00	4	2,000.00	
	100.00	3	300.00	
	50.00	4	200.00	**2,500.00**
BALANCE OF ACCOUNTABILITY/SHORTAGE				**₱12,000.00**

Mr. Lindawan incurred an initial cash shortage of Twelve Thousand Pesos (₱12,000.00) as a result of the cash count conducted. Mr. Lindawan deposited the cash on hand to the respective accounts and restituted the cash shortage on 13 September 2013.

II. For the INVENTORY OF OFFICIAL RECEIPTS:

The inventory of the accountable forms disclosed that four (4) booklets of official receipts were unaccounted/missing. The missing ORs were issued on 6 July 2007 per record of the Property Division, Office of the Court Administrator (OCA). This confirmed that the COA indeed conducted an audit in 2009 and 2010 and their audit findings on the cash and accounts of Mr. Lindawan. When requested to present the missing booklets, Mr. Lindawan blamed the COA auditors that they got the official receipts during the audit and never returned it back. When asked to produce the transmittal of documents received by the COA auditors, Mr. Lindawan cannot provide any proof.

Aside from the missing booklets, forty-two (42) booklets of official receipts used for the JDF and SAJF from April 2011 up to July 2012 were not presented though they were posted in the cashbooks and monthly reports.

The inventory conducted on the official receipts disclosed the following unused OR as of 10 September 2013:

SERIAL NUMBERS	REMARKS/QUANTITY
7654801 - 7654850	**Missing**
7654851 - 7654900	**Missing**
7654901 - 7654950	**Missing**
7654951 - 7655000	**Missing**
6661901 – 6662000	2 booklets
0248901 – 0249000	2 booklets
0249401 – 0249900	10 booklets
0249951 – 0250000	1 booklet
0249387 – 0249400	14 pieces
6661879 – 6661900	22 pieces
0249907 – 0249950	44 pieces
TOTAL	**15 booklets & 80 pieces**

III. For the FIDUCIARY FUND:

After examining and verifying evidential records, the total accountabilities amounted to Nine Hundred Thirty-Nine Thousand Pesos (₱939,000.00), which was partially restituted on 13 September 2013 amounting to ₱80,000.00. Thus, the net shortage amounted to **Eight Hundred Fifty-Nine Thousand Pesos (₱859,000.00)** computed as follows:

Beginning Balance (as of 12/31/06)		₱ 500,710.00
Total Collections (1/1/07 to 8/31/13)		2,989,200.00
Total Collections available for withdrawal		₱ 3,489,910.00
Less: Total Withdrawals (same period)		
Valid Withdrawals	₱2,517,000.00	
Invalid Withdrawals (see Schedule I)	45,000.00	2,562,000.00

Unwithdrawn Fiduciary Fund as of 8/31/13			**₱ 927,910.00**
Balance per LBP Solano Branch, Solano, Nueva Vizcaya SA# 0431-0973-70 as of 8/31/13			₱ 11,778.41
Less: Unwithdrawn Interest as of 8/31/13			
Gross interest earned	₱	35,215.32	
Less: Withholding Tax		7,043.03	
Net Interest Earned	₱	28,172.29	
Less: Withdrawn Interest		5,303.88	22,868.41
Adjusted Bank Balance as of 8/31/13			**₱ (11,090.00)**
Unwithdrawn Fiduciary Fund as of 8/31/13			₱ 927,910.00
Adjusted Bank Balance, LBP SA# 0431-0973-70			(11,090.00)
Balance of Accountabilities/Cash Shortage			**₱ 939,000.00***
Less: Amount deposited on 9/13/13			**80,000.00**
Final Accountabilities			**₱ 859,000.00**

***Breakdown of the Cash Shortage**:

a. Over-withdrawal of Case No. 5542			₱ 15,000.00
b. Over-withdrawal of Case No. 490-11			40,000.00
c. Over-deposit of Case No.5783			(1,000.00)
d. Undeposited Collections:			
Total Undeposited Collections	₱ 1,346,000.00		
Less: Cash on Hand Withdrawals			
Without ORs	₱ 406,000.00		
With ORs	55,000.00	461,000.00	885,000.00
Total			**₱ 939,000.00**

It was observed that the total collections for the month were not deposited in full, thus, said collections did not tally with the corresponding deposits for the month. This is in violation of Circular No. 50-95-Sec. B(4), dated 11 October 1995, xxx

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Initially, the list of withdrawals with lacking documents amounted to ₱149,000.00 but compliances made by Mr. Valdez and Mr. Lindawan on 20 September 2013 and 14 October 2013, respectively, reduced the amount to ₱45,000.00, to wit:

Schedule I
List of Invalid Withdrawals (without court order/acknowledgement receipt)
For the period covered January 1, 2007 to August 31, 2013

Date	OR NO.	CASE NO.	BONDSMAN	AMOUNT	C.O.	A.R.
06/24/13	6661878	490-11	Adriano Dummanao	40,000.00	none	Ok
10/04/12	Unreceipted	5751	Edarlino Adlos	5,000.00	Ok	None
TOTAL				**45,000.00**		

Other findings:

a. Unreceipted collections amounted to ₱802,000.00. The team examined all criminal case folders filed from 1 January 2008 to 31 August 2013 and found out that there were cash bonds posted without official receipts (copies of undertakings were detached from the case folders as proof). Said practice of not issuing official receipts for cash bonds started in September 2009. Also, some bail bond undertakings were not signed by the presiding judge.

b. Undeposited collections amounted to ₱1,346,000.00. Included in this amount are the unreceipted collections totaling to ₱802,000.00.

c. Some official receipts were tampered. Amount/date in the original copy is different from the duplicate copy.

	Amount in Original OR	Amount in Duplicate OR
OR No.		
6661877	₱3,000.00	₱50.00
	Date in Original OR	**Date in Duplicate OR**
6661853	3/18/11	5/20/11

d. Over-withdrawal of collections in the following cases: Criminal Case No. 490-11 amounting to ₱40,000.00, and Criminal Case No. 5542 amounting to ₱15,000.00.

Mr. Lindawan was obviously aware of the over-withdrawal in Criminal Case No. 5542, when in fact he wrote Baclig Law Office, regarding the excess amount given their client. As of date, no refund was made.

e. No legal fees form attached to the case folders. Circular No. 26-97 RE: Legal Fees Form for Lower Courts, dated 5 May 1997, xxx

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f. There is no official cashbook where transactions must be recorded.

g. Interest earned from bank deposits were not withdrawn starting the 2nd quarter of 2008.

What is most glaring is the balance of LBP Savings Account No. 0431-0973-70 amounting to Eleven Thousand Seven Hundred Eight Pesos & 41/100 (₱11,778.41) as of 31 August 2013 and the authorized signatories are Mr. BILL D. BUYUCAN and Mr. GERARD N. LINDAWAN, as certified by Mr. Lorenzo M. Saquing, Department Manager of LBP Solano Branch, Solano, Nueva Vizcaya. Deducting the unwithdrawn interest earned of ₱22,868.41, the effect would be a negative balance of ₱11,090.00.

IV. For the SHERIFF'S TRUST FUND

No collections were reported for this fund.

V. For the JUDICIARY DEVELOPMENT FUND:

Total Collections (1/1/07 to 8/31/13) ₱384,012.98

Less: Total Remittances (same period)	327,120.98
Balance of Accountabilities	**₱ 56,892.00**

The balance of accountability consists of the following:

a.	SAJF collections for the period Oct 3-31, 2008 which were erroneously deposited to the JDF account	₱ (11,201.20)
b.	Net effect of (over)/under remittance from Jan 2009 to July 2012	789.60
c.	Delayed remittances (Aug-Dec 2012 collections deposited on September 11, 2013)	21,893.60
d.	Delayed remittances (Jan-Aug 2013 collections deposited on September 16 & 18, 2013)	45,410.00
	Total	**₱56,892.00**

VI. For the SPECIAL ALLOWANCE FOR THE JUDICIARY FUND:

Total Collections (1/1/07 to 8/31/13)	₱632,532.30
Less: Total Remittances (same period)	549,393.50
Balance of Accountabilities	**₱ 83,138.80**

The balance of accountability includes the following:

a.	SAJF collections for the period Oct 3-31, 2008 which were erroneously deposited to the JDF account	₱11,201.20
b.	Net effect of (over)/under remittance from March 2009 to May 2012	(428.80)
c.	Delayed remittances (Aug-Dec 2012 collections deposited on September 11, 2013)	29,426.40
d.	Delayed remittances (Jan-Aug 2013 collections deposited on September 12, 16 & 18, 2013)	42,940.00
Total		[**₱83,138.80**]

No remittances were made for the JDF and SAJF starting August 2012. Only when the audit team discovered the infraction did Mr. Lindawan deposited his collections from August to December 2012 amounting to ₱21,893.60 for the JDF and ₱29,426.40 for the SAJF on 11 September 2013.

Likewise, collections from January to August 2013 amounting to ₱45,410.00 for the JDF and ₱42,940.00 for the SAJF were deposited only on 12, 16 & 18 September 2013. Mr. Lindawan purposely delayed the deposit of his collections by more than one (1) year and the submission of his monthly reports. Delayed remittance of cash collections constitutes gross neglect of duty. His failure to remit judiciary collections on time deprives the court of interest that may be earned if the amounts were deposited in a bank.

Mr. Lindawan violated Administrative Circular No. 3-2000 (Guidelines in the Allocation of the Legal Fees Collected under Rule 141 of the Rules of Court), as amended by Administrative Circular No. 35-2004 dated 20 August 2004 xxx

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No fund allocations were made for fees collected from January to March 2013. Collections were all reported to the SAJF account. Similarly, no allocations were made for fees collected for June and July 2013, as all were reported to the JDF account.

In sum, the team discovered the following deficiencies and irregularities in these books of accounts:

a. Entries in the cashbooks were not updated;
b. There was an irregularity in the submission of Monthly Reports of Collections and Deposits to the Accounting Division, OCA;
c. Collections were not deposited/remitted on time;
d. Official receipts totaling to more than forty (40) booklets used for the period April 2011 to July 2012 were not presented;

VII. For the MEDIATION FUND:

Total Collections (1/1/07 to 8/31/13)	₱147,000.00
Less: Total Remittances (same period)	136,000.00
Balance of Accountabilities	**₱ 11,000.00**

The amount of ₱11,000.00 pertains to the undeposited collections from 1 May 2011 to 31 August 2013 (a period of 2 years and 3 months), which was deposited only on 16 September 2013. Also, it was observed that Monthly Reports of Collections and Deposits were not submitted starting April 2011.

The team conducted the exit conference on September 14, Saturday in the presence of Judge Buyucan, Mr. Lindawan and Mr. Valdez, and discussed with them the findings of the audit examination. We provided Mr. Lindawan the details of the shortages incurred in the Fiduciary Fund, the delayed remittances in the JDF, SAJF and Mediation Fund and to give him ample time, required him to submit a written explanation on Monday, 16 September 2013. We also informed Judge Buyucan to issue a memorandum, relieving Mr. Lindawan of his duties as accountable officer thereat.

On Monday, Mr. Lindawan was able to submit the deposit slips of the delayed remittances for the JDF, SAJF and Mediation Fund but no amount was restituted for the shortages incurred in the Fiduciary Fund. Also, no explanation was submitted concerning the audit findings.

When the team was about to leave, Judge Buyucan confronted us and in an angry manner, asked us what will happen to Mr. Lindawan in case he was not able to restitute the shortages. It is as if he wanted us to tell him the consequences Mr. Lindawan will face, concerning our findings. As in all our audit engagements, we would say that the team would just make the report and the Court will issue decision/ resolution on the matter. Not satisfied with our answer, he insinuated of letting Mr. Lindawan run away by saying *"Patatakasin ko na lang yan!"* He even mentioned the name of a certain Judge Balut, who was implicated in the shortages in a nearby court but was promoted to a branch in Quezon City. He kept on saying offensive words like *"Putang Ina!"* while banging the table. Then, he looked at our audit findings, called our names and asking what fund we handled, and as if to scare us, shouted *"isang bala lang yan!"* What confused us was why would he be mad at us and not with Mr. Lindawan? When we went back to our hotel, we were told by its owner that Judge Buyucan dropped by the place and had few drinks there during lunchtime. This confirmed the team's observation in that incident.

As of date, this office has not received a memorandum issued by Judge Buyucan relieving Mr. Lindawan as accountable officer thereat.

In view of the foregoing, the team most respectfully recommends that:

1. This report be docketed as a regular administrative matter against Presiding Judge Bill D. Buyucan, MCTC, Bagabag-Diadi, Nueva Vizcaya for conduct unbecoming a Judge, and Clerk of Court Mr. Gerard N. Lindawan, same court, for Gross Dishonesty, resulting to Malversation of Public Funds, Falsification and violation of Court circulars;

2. **Mr. PIO M. VALDEZ,** Court Interpreter and former Officer-in-Charge of the MCTC, Bagabag-Diadi, Nueva Vizcaya, be **CLEARED** from financial accountabilities as of 31 January 2008;

3. **Mr. GERARD N. LINDAWAN**, Clerk of Court be **INDEFINITELY SUSPENDED** pending the outcome of this administrative matter;

4. **Presiding Judge BILL D. BUYUCAN** of the MCTC, Bagabag-Diandi, Nueva Vizcaya, be **DIRECTED** to:

   a. **EXPLAIN** why he should not be administratively dealt with for showing unbecoming conduct and for not safeguarding the judiciary funds;

   b. **EXPLAIN** why as one of the authorized signatories of the Fiduciary Fund account, the balance per bank amounted only to **Eleven Thousand Seven Hundred Seventy Eight Pesos & 41/100 (₱11,778.41)** as of 31 August 2013, thus incurring a net shortage of **Eight Hundred Fifty-Nine Thousand Pesos (₱ 859,000.00)**; and

   c. **DESIGNATE** a reliable and competent Officer-in-Charge to handle the judiciary funds of the court.

5. **Mr. GERARD N. LINDAWAN**, Clerk of Court II, MCTC, Bagabag-Diandi, Nueva Vizcaya, be **DIRECTED** to:

   a. **PAY** and **DEPOSIT** within a non-extendible period of ten (10) days from notice the shortages as of 31 August 2013 found in the **FIDUCIARY FUND** amounting **to Eight Hundred Fifty-Nine Thousand Pesos (₱859,000.00)** and in the **JUDICIARY DEVELOPMENT FUND** amounting to **Seven Hundred Eighty Nine Pesos and 60/100 (₱789.60);**

   b. **FURNISH** the Fiscal Monitoring Division (FMD), court Management Office (CMO), OCA with copies of the

machine validated deposit slips as proof of remittances of the above cash shortages;

c. **PAY** a **FINE** of **Twenty Thousand Pesos (₱ 20,000.00)** for the delay in depositing the judiciary collections;

d. **WITHDRAW** the amount of **TWENTY TWO THOUSAND EIGHT HUNDRED SIXTY-EIGHT PESOS & 41/100 (₱22,868.41)** from the Fiduciary Fund under LBP Savings Account No. **0431-0973-70** representing the unwithdrawn net interest earned as of 31 August 2013, **ISSUE** an official receipt for the General Fund and **REMIT** the same to the Land Bank of the Philippines (LBP) under the account of the Bureau of Treasury;

e. **EXPLAIN** in writing within ten (10) days from receipt of notice the following:

1. why as one of the authorized signatories of the Fiduciary Fund account, the balance per bank amounted only to **Eleven Thousand Seven Hundred Seventy Eight Pesos & 41/100 (₱11,778.41)** as of 31 August 2013, thus incurring a net shortage of **Eight Hundred Fifty-Nine Thousand Pesos (₱859,000.00);**

2. falsification/tampering of official receipts in violation of Section (4) of OCA Circular No. 22-94 dated April 8, 1994 which requires that in filling-up receipts, entries in the original copy should be written with the use of hard indelible pencil or ballpen and that duplicate and triplicate copies should have carbon reproductions in all respects of all entries written on the original (see attached photocopies of official receipts);

	Amount in Original OR	**Amount in Duplicate OR**
OR No.		
6661877	₱3,000.00	₱50.00
	Date in Original OR	**Date in Duplicate OR**
6661853	3/18/11	5/20/11

3. why accountable forms (4 booklets of official receipts) with serial nos. 7654801–7654850, 7654851– 7654900, 7654901-7654950 and 7654951-7655000 were missing;
4. why he failed to deposit the judiciary collections on time, in violation of OCA Circular No. 13-92, OCA Circular No. 50-95 and other existing rules and regulations relative to the handling of judiciary funds;
5. why cash bonds were collected without issuing official receipts which amounted to ₱802,000.00 (see attached schedule);
6. why some bail bond undertakings were not signed by the presiding judge;
7. why undeposited collections amounted to ₱1,346,000.00 (see schedule);
8. why no legal fees form was attached to the case folders in violation of Circular No. 26-97 RE: Legal Fees Form for Lower Courts;
9. why no Monthly Report of Collections and Deposits for the Fiduciary Fund, JDF, SAJF and Mediation Fund was submitted to the Accounting Division, OCA starting August 2012;

f. **SUBMIT** to the Fiscal Monitoring Division, Court Management Office, OCA, the lacking documents (court orders and acknowledgement receipts) of the following withdrawn cash bonds, to validate the withdrawals, to wit:

Schedule I
List of Invalid Withdrawals (without court order/acknowledgement receipt)
For the period covered January 1, 2007 to August 31, 2013

Date	OR NO.	CASE NO.	BONDSMAN	AMOUNT	C.O.	A.R.
06/24/13	6661878	490-11	Adriano Dummanao	40,000.00	none	Ok
10/04/12	Unreceipted	5751	Edarlino Adlos	5,000.00	Ok	None
TOTAL				**45,000.00**		

> **6.** **Mr. JONALSON WILLIAM P. BUMOHYA**, Process Server of the MCTC, Bagabag-Diadi, Nueva Vizcaya, be **DIRECTED** to **STRICTLY ADHERE** to the provisions of Section 10 of the Amended Administrative Circular No. 35-2004, Guidelines in the Allocation of Legal Fees dated August 20, 2004, particularly the procedure in the claim of cash advance and its liquidation in relation to the service of summons, subpoena and other court processes that would be issued relative to the trial of the case.[3]

In its Memorandum,[4] dated April 7, 2014, the OCA adopted *in toto* the recommendation of the audit team and endorsed the same for approval.

In a Resolution,[5] dated July 6, 2015, the Court agreed with the recommendation of the OCA and resolved, among others, to treat the Audit Report as a regular administrative matter against Judge Buyucan and Lindawan. Further, the Court required them to explain the charges against them. It also ordered the indefinite suspension of Lindawan, pending the outcome of the administrative matter, and required him to restitute the amounts of ₱859,000.00 and ₱789.60 representing the shortages in the Fiduciary Fund and the Judiciary Development Fund, respectively; to withdraw the amount of ₱22,868.41 from the Fiduciary Fund representing the unwithdrawn net interest earned; to issue an official receipt to the General Fund and remit it to the Land Bank of the Philippines; and to transmit to the Court thru the FMD-CMO all documents pertaining to his collections and remittances. In the same resolution, the Court cleared Valdez from financial accountabilities as the former officer-in-charge of the MCTC and directed Jonalson William Bumohya *(Bumohya)*, Process Server of the MCTC, to strictly adhere to the rules and circulars issued by the Court, particularly the procedure in the claim of cash advance and its liquidation in relation to the service of summons, subpoena, and other court processes.

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[3] *Id*. at 10-21.

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

[5] *Id*. at 128-132.

In his Compliance and Explanation,[6] Judge Buyucan offered his humble apologies to the audit team and begged for the understanding and forgiveness of its members. He explained that his outburst and rise in temper were not directed at any member of the audit team. He was merely taken aback by the results of the audit and felt betrayed and humiliated by Lindawan's actions. Judge Buyucan denied liability over the shortages incurred by Lindawan. He claimed that as the Presiding Judge, his main function was adjudicative. He further averred that although he had administrative supervision over the court employees and he was a signatory to the documents involving the fiduciary funds, he should not be faulted for affixing his signature on these documents as it was the clerk of court who prepared and signed the same. Thus, he presumed that everything was in order before he affixed his signature. Judge Buyucan further asserted that he came to know of the anomalous transactions of Lindawan only after the audit team had examined the financial transactions of the court and showed him the report. According to him, he was not remiss in reminding his clerk of court to properly record, account and deposit all monetary transactions of the court and that he always gave his assurance that the reports were submitted on time.

On October 26, 2015, Lindawan filed his Motion to Admit Written Explanation and Compliance.[7] He informed the Court that he had restituted the amount of ₱443,000.00 of the cash bonds to the bondsmen leaving a balance of ₱416,000.00; that he had paid and deposited to the Fiduciary Fund the amount of ₱416,000.00 representing the remaining balance of his accountability; that he had withdrawn ₱22,868.41 from the Fiduciary Fund and deposited it to the Bureau of Treasury; that he had deposited the amount of ₱789.60 to the Judiciary Development Fund; and that he had submitted the acknowledgment receipt signed by the bondsmen, as well as all the respective machine validated deposit slips and withdrawal slips, to the FMD-CMO.

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[6] *Id*. at 133-135.

[7] *Id*. at 143-145.

With respect to Official Receipt *(OR)* No. 6661877, Lindawan alleged that one of the employees of the court mistakenly used it for the collection of court clearance. In order to correct the mistake, he used the same for the collection of cash bonds, but he failed to correct the duplicate copy.

As to the missing ORs with serial numbers 7654801-7654850, 7654851-7654900, 7654901-7654950, and 7654951-7655500, Lindawan explained that the COA took them for auditing and returned it to Estrella Soriano *(Soriano)*, a court employee; that he requested a copy of the transmittal receipt which would prove that Soriano indeed received the ORs, but COA failed to produce it; that sometime in April 2015, he was informed by Valdez that Soriano burned several blank receipts in her backyard which was witnessed by Kagawad Celia Ocumen *(Ocumen)*; and that he and Bumohya immediately went to the house of Soriano and talked to Ocumen who confirmed that Soriano indeed burned several blank receipts.

As to the 42 booklets of ORs, Lindawan averred that the COA took them for audit, but failed to return them to the court; and that on July 20, 2015, a certain COA personnel, named Rose Mae L. Saquing, returned the missing ORs to the court. Lindawan submitted a copy of the COA's transmittal regarding the said ORs.

Furthermore, Lindawan admitted that he failed to deposit the judiciary collections because the court personnel borrowed the money and failed to return the same; that some of the bail bonds could not have been signed due to oversight; that the forms for legal fees were not attached to the case folders as it was not the practice of the former clerk of court, but, nonetheless, he wrote the ORs in front of the case folder; and that except for the Fiduciary Fund and Mediation Fund, he submitted his monthly reports of collection for JDF and SAJF.

Lastly, Lindawan accepted his mistakes and transgressions and asked compassion from the Court to give him another chance to reform and be a productive member of the community.

In the meantime, the Court received a Letter,[8] dated June 10, 2016, from Lindawan informing the Court of his resignation due to medical reasons.

Report and Recommendation of the OCA

In its Memorandum,[9] dated October 6, 2016, the OCA found Lindawan guilty of gross dishonesty, grave misconduct, and gross neglect of duty. Consequently, it recommended his dismissal from the service.

With respect to Judge Buyucan, the OCA found him guilty of simple neglect of duty and recommended that he be fined in the amount of Five Thousand Pesos *(₱5,000.00)* for his failure to give attention to a task expected of him and for disregarding a duty resulting from carelessness or indifference. It stated that Judge Buyucan, as the Presiding Judge of MCTC, is mandated to organize and supervise the court personnel to ensure the prompt and efficient dispatch of court business, and, as the person charged with the proper and efficient management of the court, he is ultimately responsible for the mistakes of his court personnel.

The Ruling of the Court

Liability of Lindawan

The Court agrees with the recommendation of the OCA.

The Court, in Circular No. 13-92 and Circular No. 5-93, mandates all clerks of courts to immediately deposit all fiduciary collections, upon receipt thereof, with the Land Bank, as an authorized depository bank. Further, the Court has always reminded clerks of courts, cash clerks and all court personnel entrusted with the collections of court funds to deposit immediately with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody.[10] Also, the failure to deposit these

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[8] *Id*. at 191-192.

[9] *Id*. at 195-207.

[10] *Re: Financial Audit Conducted in the MTCC-OCC, Angeles City*, 525 Phil. 548, 560 (2006).

judiciary collections on time deprives the court of the interest that may be earned if the amounts were deposited in a bank.[11] The unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability.[12]

In the case of *OCA v. Fortaleza,*[13] the Court stressed the role of clerk of courts and their responsibilities in the collection of court funds. Thus:

> Clerks of court are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. On the other hand, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the courts ministerial officers. It should be brought home to both that the safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the Circulars designed to promote full accountability for government funds.[14]

In the present case, Lindawan committed several irregularities in the administration of court funds. Not only did he incur unexplained cash shortages in the Fiduciary Fund and in the Judiciary Development Fund, he also failed to deposit court collections on time and neglected to submit his monthly financial reports to the OCA. Worst, he collected cash bonds without

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[11] *Office of the Court Administrator v. Nini,* 685 Phil. 340, 350 (2012).

[12] *Office of the Court Administrator v. Elumbaring*, 673 Phil. 84, 94 (2011).

[13] 434 Phil. 511, 522 (2002), citing *Report on the Financial Audit in RTC, General Santos City and the RTC & MTC of Polomok, South Cotabato,* 384 Phil. 155 (2000).

[14] *Id*. at 167.

issuing official receipts, falsified official receipts and lost several booklets of official receipts. Undeniably, Lindawan abused the trust and confidence reposed in him and failed to perform his duty with utmost loyalty and honesty.

The Court has said time and again that those who work in the judiciary, from the highest official to the lowest clerk, must adhere to high ethical standards to preserve the court's good name and standing. As officers of the court and agents of the law, they should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence.[15] For the Court will never tolerate any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the judiciary.[16]

In the case of *Report on the Financial Audit Conducted at the MTC of Bani Alaminos and Lingayen in Pangasinan,*[17] the Court held that the failure of a clerk of court to turn over money deposited with him and adequately explain and present evidence thereon constituted gross dishonesty, grave misconduct, and even malversation of public funds, and even the restitution of the whole amount would not exculpate him from liability.[18]

Further, in *Re: Final Report on the Financial Audit Conducted at the Municipal Trial Court of Midsayap, North Cotabato,*[19] the Court ruled that failure to remit the funds in due time constitutes gross dishonesty and gross misconduct and even malversation of funds, which are considered grave offenses punished by dismissal even if committed for the first time.

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[15] *Report on the Financial Audit Conducted in the MCTC-Maddela, Quirino*, 598 Phil. 339, 356 (2009).

[16] *Office of the Court Administrator v. Atty. Galo*, 373 Phil. 483, 491 (1999).

[17] 462 Phil. 535 (2003).

[18] *Id*. at 542.

[19] 516 Phil. 369 (2006).

Undoubtedly, the ultimate penalty of dismissal would have been imposed upon Lindawan had he not resigned from his post. Thus, in lieu of the dismissal, the Court shall forfeit the retirement benefits that may be due him.

Liability of Judge Buyucan

The Court agrees with the OCA that Judge Buyucan should be held administratively liable for simple neglect of duty. Although the custody, submission, and monitoring of monthly reports of collections and deposits were mainly the responsibility of the clerk of court, he is, however, subject to the control and supervision of the Presiding Judge. As the administrative officer who has authority over the office of the clerk of court, Judge Buyucan should be familiar with the different circulars of the Court as his duty is not confined to adjudicatory functions, but includes the administrative responsibility of organizing and supervising the court personnel to secure a prompt and efficient dispatch of business.[20] It is his responsibility to see to it that the clerk of court performs his duties and observes the circulars issued by the Supreme Court.[21] Thus, he should have taken the necessary steps to ensure that the correct procedure in the collections and deposits of court funds were dutifully carried out.[22]

In addition, Judge Buyucan should likewise be held administratively liable for conduct unbecoming of a judge for his inappropriate actions and use of intemperate language. The incident narrated by the audit team was never denied by Judge Buyucan who offered his apologies to the audit team and begged for their understanding and forgiveness for his outburst and rise in temper.

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[20] *Re: Initial Report on the Financial Audit Conducted in the MTC of Pulilan Bulacan,* 477 Phil. 577, 583 (2004).

[21] *Re: Report on the Judicial and Financial Audit Conducted in the Municipal Trial Courts of Bayombong and Solano and the Municipal Circuit Trial Court, Aritao-Sta. Fe, All in Nueva Vizcaya,* 561 Phil. 349, 363 (2007).

[22] *Re: Report of Acting Presiding Judge Wilfredo F. Herico*, 490 Phil. 292, 317 (2005).

The New Code of Judicial Conduct for the Philippine Judiciary requires judges to exemplify propriety at all times[23] in order to preserve public confidence in the judiciary. Judge Buyucan must comport himself irreproachably, not only while in the discharge of official duties but also in his personal behavior every day. He should exercise judicial temperament in all his dealings and must maintain composure and equanimity at all times.[24]

The OCA recommends that Judge Buyucan be fined in the amount of ₱5,000.00. The Court, however, considers this to be too light considering his violation of the rules. Judge Buyucan is not only guilty of simple neglect of duty but is also liable for conduct unbecoming of a judge for his inappropriate actions and for using intemperate language. Thus, the fine should be increased to Twenty Thousand Pesos (₱20,000.00), with a warning that a repetition of the same or similar act shall be dealt with more severely.

WHEREFORE, finding respondent Gerard N. Lindawan, former Clerk of Court II, Bagabag-Diadi, Municipal Circuit Trial Court, **GUILTY** of Gross Dishonesty and Grave Misconduct, the Court hereby orders the **FORFEITURE** of his retirement benefits. The respondent is further **BARRED** from reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations.

On the other hand, finding Judge Bill D. Buyucan, Presiding Judge of the same court, **GUILTY** of Simple Neglect of Duty and Conduct Unbecoming of a Judge, the Court hereby imposes upon him a **FINE** in the amount of Twenty Thousand Pesos (₱20,000.00), with a **WARNING** that a repetition of the same or similar act shall be dealt with more severely.

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[23] Section 1, Canon 4.

[24] *Re: Anonymous Complaint Against Judge Francisco C. Gedorio, Jr.,* 551 Phil. 174, 180 (2007).

SO ORDERED.

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

Del Castillo and *Jardeleza, JJ.,* on official leave.

EN BANC

[A.M. No. MTJ-16-1883. July 11, 2017]
(Formerly OCA IPI No. 12-2497-MTJ)

EMMA G. ALFELOR, *complainant, vs.* **HON. AUGUSTUS C. DIAZ, PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 37, QUEZON CITY,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES AND JUSTICES; GROSS IGNORANCE OF THE LAW; DEFINED; GROSS IGNORANCE OF THE LAW MAY BE COMMITTED WHEN A JUDGE IGNORES, CONTRADICTS OR FAILS TO APPLY SETTLED LAW AND JURISPRUDENCE BECAUSE OF BAD FAITH, FRAUD, DISHONESTY OR CORRUPTION, AND THE SAME CANNOT BE EXCUSED BY A CLAIM OF GOOD FAITH.— While the Court agrees with the OCA that Judge Diaz was careless in convicting Alfelor in the nine (9) checks subject of the BP Blg. 22 cases which were **raffled to his sala**, it does not and cannot dismiss this act as simple inadvertence. Such carelessness can only be considered as **gross ignorance of the law**, as defined by this Court in *Re: Anonymous Letter dated August 12, 2010, Complaining Against Judge Ofelia T. Pinto, RTC, Branch 60, Angeles City, Pampanga*: We have previously held that when a law or a rule is basic, judges owe it to their office to simply

apply the law. "Anything less is gross ignorance of the law." **There is gross ignorance of the law when an error committed by the judge was** "**gross or patent**, deliberate or malicious." It may also be committed when a judge ignores, contradicts or fails to apply settled law and jurisprudence because of bad faith, fraud, dishonesty or corruption. **Gross ignorance of the law or incompetence cannot be excused by a claim of good faith.**

2. ID.; ID.; ID.; THE JUDGE'S ACT OF HAPHAZARDLY RENDERING A DECISION IN A CRIMINAL CASE WITHOUT REGARD TO THE SPECIFIC ALLEGATIONS IN THE OFFENSE CHARGED AND HIS JURISDICTION, OR LACK THEREOF, TO TAKE COGNIZANCE OF THE CASE, CONSTITUTES GROSS IGNORANCE OF THE LAW.— [I]t is obvious that the subject criminal case in Judge Diaz's sala **pertained to only one (1) check**, that is, the subject Land Bank Check No. 0000251550. Had Judge Diaz been more circumspect in reviewing the records of the case, he could have easily noticed that glaring fact, as well as Judge Sta. Cruz's prior order acquitting Alfelor of the nine (9) BP Blg. 22 cases raffled to MeTC 43, and promulgated a decision based only on that particular check. The fact that he had served more than 21 years in the judiciary meant that he should have known better than to haphazardly render a decision in a criminal case without regard to the specific allegations in the offense charged and his jurisdiction, or lack thereof, to take cognizance of the case. This is gross ignorance of the law.

3. ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW IS CLASSIFIED AS A SERIOUS CHARGE; PROPER IMPOSSABLE PENALTY.— As for the imposable penalty, it is important to stress that gross ignorance of the law is a serious charge under Section 8, Rule 140 of the Rules of Court. Under Section 11(A) thereof, it is punishable by: (*1*) dismissal from the service, forfeiture of benefits except accrued leave credits and disqualification from reinstatement or appointment to any public office; (*2*) suspension from office without salary or other benefits for more than three (3) months but not exceeding six (6) months; or (*3*) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. Considering that Judge Diaz already reached the compulsory retirement age of 70 on August 22, 2016, the Court can only impose a fine or forfeiture of benefits to him.

D E C I S I O N

CAGUIOA, *J.:*

Before the Court is an administrative complaint[1] filed with the Office of the Court Administrator (OCA) by Complainant Emma G. Alfelor (Alfelor) against Respondent Hon. Augustus C. Diaz (Judge Diaz), Presiding Judge, Metropolitan Trial Court (MeTC), Branch 37, Quezon City (MeTC 37), for gross ignorance of the law, incompetence and manifest bias and partiality in connection with the Decision in Criminal Case No. 37-139993,[2] wherein Alfelor was the accused.

The undisputed facts, as borne by the records, are as follows:

Romeo Garchitorena (Romeo) is the brother of Alfelor. Sometime in 2000, Alfelor issued ten (10) postdated Land Bank of the Philippines (Land Bank) checks in favor of Romeo for payment of the loan she obtained from him in 1995, including interest, to wit:

Check Number	Date	Amount
0000251546	January 19, 2000	₱100,000.00
0000251547	January 24, 2000	₱100,000.00
0000251548	January 31, 2000	₱100,000.00
0000251549	February 29, 2000	₱500,000.00
0000251550	March 30, 2000	₱500,000.00
0000251551	April 30, 2000	₱500,000.00
0000251552	May 31, 2000	₱500,000.00
0000251553	June 30, 2000	₱500,000.00
0000251554	July 31, 2000	₱203,492.75
0000251555	August 31, 2000	₱203,492.75[3]

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

[2] Entitled "*People of the Philippines v. Emma Alfelor.*" See Decision dated January 30, 2012; *id*. at 43-46.

[3] *Rollo,* pp. 2, 43-44.

Upon presentment for payment by Romeo, the bank dishonored the checks for having been drawn against insufficient funds and closed accounts, prompting him to send verbal and written demands to Alfelor. However, Alfelor failed to pay the total amount of the checks despite demand.[4]

On January 9, 2002, Romeo filed a complaint for Violation of Batas Pambansa Blg. 22 (BP Blg. 22) with the Office of the City Prosecutor of Quezon City (OCP) against Alfelor in connection with the ten (10) dishonored Land Bank checks. Thereafter, on March 14, 2002, the OCP recommended the filing of *Informations* for nine (9) counts of Violation of BP Blg. 22, one (1) *Information* for each check. The nine (9) cases of Violation of BP Blg. 22 were raffled to the MeTC, Branch 43, Quezon City (MeTC 43), which was then presided by Judge Manuel B. Sta. Cruz, Jr. (Judge Sta. Cruz).[5] The OCP dismissed the complaint as to Land Bank Check No. 0000251550 (subject check) on the ground that it was presented for payment beyond the 90-day period from the date of issuance; hence, the presumption of knowledge of insufficiency of funds on the part of Alfelor did not arise.[6]

This prompted Romeo to file a petition for review with the Secretary of the Department of Justice (DOJ Secretary), seeking to reverse the OCP's recommendation. The DOJ Secretary granted the petition, and on July 10, 2006, a separate Information for Violation of BP Blg. 22 as regards the subject check was filed against Alfelor, and raffled to MeTC 37, which was presided by Judge Diaz. The case was docketed as Criminal Case No. 37-139993 (subject criminal case).[7]

In an Order[8] dated March 25, 2009, **MeTC 43, through Judge Sta. Cruz, acquitted Alfelor in the nine (9) BP Blg. 22 cases**

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[4] *Id*. at 44.

[5] *Id*. at 2; see also Order dated March 25, 2009, *id*. at 12-15.

[6] *Id*.

[7] *Id*. at 2-3.

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

filed against her based on the demurrer to evidence she filed, on the ground that the prosecution failed to prove that Alfelor received the demand letter notifying her of the dishonor of the checks, as follows:

> WHEREFORE, premises considered, the Demurrer to Evidence is hereby GRANTED and the accused is acquitted on the criminal charges.
>
> ACCORDINGLY, set the reception of defense evidence on the civil aspect on September 2, 2009 at 8:30 in the morning.
>
> SO ORDERED.[9]

Subsequent to the acquittal, on May 5, 2010, Alfelor also filed with MeTC 37 a Demurrer to Evidence[10] in the subject criminal case **based on the same ground, that was, the failure of the prosecution to prove that Alfelor received the demand letter notifying her of the dishonor of the checks**, and the additional ground that she already settled the amount of the subject check. However, in his Order[11] dated June 1, 2010, Judge Diaz denied the demurrer on the ground that he wanted to have "a [better] perspective" in the resolution of the case, and not due to the sufficiency of evidence on the part of the prosecution. Alfelor filed a Motion for Reconsideration[12] on June 15, 2010, but this was denied in an Order[13] dated August 6, 2010. Trial ensued thereafter,[14] and Alfelor filed her Formal

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[9] *Id*. at 15.

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

[11] *Id*. at 33.

[12] *Id*. at 34-41.

[13] *Id*. at 42.

[14] See *id*. at 37-38. Please note that although the violation of BP Blg. 22 is included in criminal cases where the 1991 Revised Rules on Summary Procedure is applicable pursuant to A.M. No. 00-11-01-SC, a trial would still be conducted and testimonies of witnesses may still be subject to cross-examination under Section 15 thereof, as follows:

> SEC. 15. *Procedure of trial*. — At the trial, the affidavits submitted by the parties shall constitute the direct testimonies of the witnesses

Offer of Evidence,[15] after which the case was submitted for decision.

Alfelor thereafter received a copy of the Decision[16] dated January 30, 2012 in the subject criminal case, where Judge Diaz convicted her of violation of BP Blg. 22 not only for the subject check, **but also for the nine (9) other checks which were the subjects of the BP Blg. 22 cases raffled to MeTC 43, and where she was already previously acquitted by Judge Sta. Cruz.** The dispositive portion reads:

> The foregoing manifest that the accused committed a Violation of Batas Pambansa Bilang 22 beyond reasonable doubt. The accused is hereby ordered to:
>
> 1. Pay the total amount of the **ten checks** which are the subject matter of this case;
> 2. Suffer an imprisonment of thirty (30) days for each of the **ten (10) checks**;
> 3. Pay a fine of [₱]200,000.00 for all of the **ten checks**; and

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who executed the same. Witnesses who testified may be subjected to cross-examination, redirect or re-cross examination. Should the affiant fail to testify, his affidavit shall not be considered as competent evidence for the party presenting the affidavit, but the adverse party may utilize the same for any admissible purpose.

Except in rebuttal or sur-rebuttal, no witness shall be allowed to testify unless his affidavit was previously submitted to the court in accordance with Section 12 hereof.

However, should a party desire to present additional affidavits or counter-affidavits as part of his direct evidence, he shall so manifest during the preliminary conference, stating the purpose thereof. If allowed by the court, the additional affidavits of the prosecution or the counter-affidavits of the defense shall be submitted to the court and served on the adverse party not later than three (3) days after the termination of the preliminary conference. If the additional affidavits are presented by the prosecution, the accused may file his counter-affidavits and serve the same on the prosecution within three (3) days from such service.

[15] *Id*. at 61-63.

[16] *Id*. at 43-46.

4. Pay the costs of suits [sic].

The accused is to suffer subsidiary imprisonment in case of insolvency. The payment of the fine is to be made within a reasonable period of time.

SO ORDERED.[17]

Astonished by the outcome of the subject criminal case, Alfelor appealed the Decision to the Regional Trial Court of Quezon City (RTC),[18] and filed with the OCA the instant complaint for gross ignorance of the law, incompetence and manifest bias and partiality against Judge Diaz.

In his Comment[19] and Supplemental Comment,[20] Judge Diaz acknowledged his grave error and profusely apologized to Alfelor for his lapses.[21] He attributed it to plain oversight on his part and heavy caseload. He explained that he was in haste in making the decision and relied heavily on the evidence of the prosecution in deciding the case.[22] He also stated that he could have made the necessary correction had the parties pointed out that only one (1) check was involved in the case.[23] In addition, Judge Diaz confirmed with this Court that the decision in the subject criminal case is pending appeal before the RTC.[24] Judge Diaz expressed his remorse and asked for clemency, stressing that this was the first time he committed such an error in all his years in the judiciary.[25]

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[17] *Id*. at 46; emphasis supplied.

[18] See *id*. at 74.

[19] *Id*. at 69-72.

[20] *Id*. at 73-75.

[21] *Id*. at 70-71, 74.

[22] *Id*. at 70.

[23] *Id*. at 74.

[24] *Id*.

[25] *Id*. at 71-72, 75.

The OCA's Report and Recommendation

In its Report[26] dated June 13, 2016, the OCA opined that the acts complained of were judicial issues that were beyond the realm of an administrative matter.[27] It also stated that the administrative complaint was prematurely filed, considering that the subject criminal case is still pending appeal with the RTC.[28] Nevertheless, the OCA found that Judge Diaz was careless in rendering the assailed decision based on his admission in his Comment that he indeed committed an error in the decision due to plain oversight.[29]

The OCA also noted that Judge Diaz had served for 21 years[30] in the judiciary, and that **he would reach his compulsory retirement age of 70 on August 22, 2016**. Moreover, he had been fined in three (3) administrative cases, and he still has two (2) more pending cases, including the instant administrative matter, which prevented him from being promoted to a higher court.[31]

Taking into account Judge Diaz's length of service in the judiciary and his admission of his mistake in rendering the assailed judgment, the OCA issued its recommendation as follows:

RECOMMENDATION: It is respectfully recommended for [the] consideration of the Honorable Court that:

1. the instant administrative complaint be **RE-DOCKETED** as a regular administrative matter for Gross Ignorance of the Law, Incompetence and Manifest Bias and Partiality against Presiding Judge Augustus C. Diaz, Branch 37, Metropolitan Trial Court, Quezon City; and

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[26] *Id*. at 80-84.

[27] *Id*. at 81.

[28] *Id*. at 82.

[29] *Id*. at 82, 84.

[30] *Id*. at 83.

[31] *Id*. at 81, 83.

2. respondent Judge Diaz be **ABSOLVED** of the aforesaid charges but nonetheless be **REPRIMANDED** for his carelessness and **REMINDED** to be more circumspect in the discharge of his duties, with a **STERN WARNING** that a repetition of the same or any similar act shall be dealt with more severely by the Court.[32]

In a Resolution dated October 10, 2016, the Court ordered that the instant matter be re-docketed as a regular administrative matter.

The Court's Ruling

After a judicious review of the records, the Court partially agrees with the findings of the OCA. However, the penalty should be modified.

The OCA observed that Judge Diaz carelessly rendered the questioned Decision convicting Alfelor in the said **nine (9) checks subject of the BP Blg. 22 cases which were raffled to MeTC 43 under Judge Sta. Cruz,** due to plain oversight and heavy caseload, and that he hastily promulgated the said Decision, as he admitted in his Comment and Supplemental Comment.

While the Court agrees with the OCA that Judge Diaz was careless in convicting Alfelor in the nine (9) checks subject of the BP Blg. 22 cases which were **not raffled to his sala**, it does not and cannot dismiss this act as simple inadvertence. Such carelessness can only be considered as **gross ignorance of the law,** as defined by this Court in *Re: Anonymous Letter dated August 12, 2010, Complaining Against Judge Ofelia T. Pinto, RTC, Branch 60, Angeles City, Pampanga*[33]:

> We have previously held that when a law or a rule is basic, judges owe it to their office to simply apply the law. "Anything less is gross ignorance of the law." **There is gross ignorance of the law when an error committed by the judge was "gross or patent**, deliberate or malicious." It may also be committed when a judge ignores, contradicts or fails to apply settled law and jurisprudence

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[32] *Id.* at 84.

[33] 696 Phil. 21 (2012).

because of bad faith, fraud, dishonesty or corruption. **Gross ignorance of the law or incompetence cannot be excused by a claim of good faith.**[34]

In *Chua Keng Sin v. Mangente,*[35] the Court found Judge Job Mangente guilty of gross ignorance of the law when he carelessly denied the Motion to Dismiss the case for Slight Physical Injuries filed against Chua Keng Sin by his brother, Victorio Chua, despite the obvious lack of a Certificate to File Action from the *Lupon* of the barangay as required under the Local Government Code's provisions on *Katarungang Pambarangay* and Section 18 of the 1991 Revised Rules on Summary Procedure. The Court did not consider Judge Mangente's excuse of heavy caseload and his being a newly appointed judge, "considering the extent of his experience as public attorney for nine (9) years and as prosecutor for twelve (12) years"[36] for his failure to observe such basic and elementary rules, thus:

> Respondent was careless in disposing the Motions filed by complainant, in a criminal case no less. The Office of the Court Administrator correctly underscores that **his experience as a public attorney and prosecutor should have ingrained in him well-settled doctrines and basic tenets of law.** He cannot be relieved from the consequences of his actions simply because he was newly appointed and his case load was heavy. These circumstances are not unique to him. **His careless disposition of the motions is a reflection of his competency as a judge in discharging his official duties.**[37]

Here, it is obvious that the subject criminal case in Judge Diaz's sala **pertained to only one (1) check**, that is, the subject Land Bank Check No. 0000251550. Had Judge Diaz been more circumspect in reviewing the records of the case, he could have easily noticed that glaring fact, as well as Judge Sta. Cruz's prior order acquitting Alfelor of the nine (9) BP Blg. 22 cases

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[34] *Id.* at 28. Citations omitted; emphasis supplied.

[35] 753 Phil. 447 (2015).

[36] *Id.* at 453.

[37] *Id.* at 455. Emphasis supplied.

raffled to MeTC 43, and promulgated a decision based only on that particular check. The fact that he had served more than 21 years in the judiciary meant that he should have known better than to haphazardly render a decision in a criminal case without regard to the specific allegations in the offense charged and his jurisdiction, or lack thereof, to take cognizance of the case. This is gross ignorance of the law.

As for the imposable penalty, it is important to stress that gross ignorance of the law is a serious charge under Section 8, Rule 140 of the Rules of Court. Under Section 11(A) thereof, it is punishable by: *(1)* dismissal from the service, forfeiture of benefits except accrued leave credits and disqualification from reinstatement or appointment to any public office; *(2)* suspension from office without salary or other benefits for more than three (3) months but not exceeding six (6) months; or *(3)* a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[38] Considering that Judge Diaz already reached the compulsory retirement age of 70 on August 22, 2016, the Court can only impose a fine or forfeiture of benefits to him.

In this regard, it is relevant to note that this is not the first time that the Court has held Judge Diaz administratively liable. In *De Joya v. Judge Diaz,*[39] the Court fined Judge Diaz ₱1,000.00 for inefficiency due to his failure to decide Civil Case No. 24930 within the prescribed period. In *Alvarez v. Judge Diaz,*[40] he was fined ₱20,000.00 for grave abuse of authority and gross ignorance of the law in granting a Motion for Execution despite the lack of proof of service of the Notice of Hearing to all the parties to the case as required under Section 5, Rule 15 of the Rules of Court. Finally, in *Montecalvo, Sr. v. Judge Diaz,*[41] he was fined ₱5,000.00 for undue delay in resolving criminal cases for twelve (12) years.

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[38] RULES OF COURT, Rule 140, Sec. 11(A).

[39] 458 Phil. 278 (2003).

[40] 468 Phil. 347 (2004).

[41] A.M. No. MTJ-07-1684, August 7, 2013 (Unsigned Resolution).

While Judge Diaz expressed his remorse in convicting Alfelor in the criminal cases which were not raffled to his sala, and where she was already previously acquitted, the Court cannot close its eyes to the aforementioned administrative matters, especially the fact that he had been previously found guilty of gross ignorance of the law, putting his competency in the discharge of official duties into serious doubt.

In view of the foregoing, a fine of ₱30,000.00, which shall be deducted from his retirement benefits, would be more appropriate under the circumstances.

WHEREFORE, Hon. Augustus C. Diaz, Presiding Judge, Metropolitan Trial Court, Branch 37, Quezon City, is found **GUILTY** of Gross Ignorance of the Law. He is hereby **FINED in the amount of THIRTY THOUSAND PESOS (₱30,000.00)** to be deducted from his retirement benefits.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Mendoza, Perlas-Bernabe, Leonen, Martires, and *Tijam, JJ.,* concur.

Carpio, J., no part, close relation to respondent.

Del Castillo and *Jardeleza, JJ.,* on official leave.

EN BANC

[A.M. No. SB-17-24-P. July 11, 2017[
(Formerly A.M. No. 14-12-07-SB)

SECURITY AND SHERIFF DIVISION, SANDIGANBAYAN, *complainant, vs.* **RONALD ALLAN GOLE R. CRUZ, Security Guard I, Security and Sheriff Division,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; SOLICITATION IS CONSIDERED A PROHIBITED ACT WHICH IS CLASSIFIED AS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL FROM SERVICE.— Under the Code of Conduct and Ethical Standards for Public Officials and Employees, solicitation is considered a prohibited act. Moreover, Canon I of the Code of Conduct for Court Personnel provides that "[c]ourt personnel shall not solicit or accept any gift, favor, or benefit based on any explicit or implicit understanding that such gift, favor, or benefit shall influence their official actions." In addition, the RRACCS classifies soliciting as a grave offense punishable by dismissal from service.

2. ID.; ID.; ID.; IN AN ADMINISTRATIVE PROCEEDING, THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IS ONLY SUBSTANTIAL EVIDENCE, OR SUCH RELEVANT EVIDENCE THAT A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION; MET IN CASE AT BAR.— Based on the investigation report of the Sandiganbayan and the findings of the OCA, it has been sufficiently established that respondent Cruz solicited money from Atty. David. Although there is no direct evidence, several circumstances point to him as the one who solicited money from Atty. David, as found by the OCA x x x. This being an administrative proceeding, the quantum of proof necessary for a finding of guilt is only substantial evidence, or such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. This requirement has been met in this case.

3. ID.; ID.; ID.; CHARGE OF IMPROPER SOLICITATION; MERE DENIAL, IF UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, HAS NO WEIGHT IN LAW, AND CANNOT BE GIVEN GREATER EVIDENTIARY VALUE THAN THE TESTIMONIES OF WITNESSES WHO HAVE TESTIFIED IN THE AFFIRMATIVE.— As to the accusations against him, respondent could only proffer the defense of denial. However,

"mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law, and cannot be given greater evidentiary value than the testimonies of witnesses who have testified in the affirmative." In this light, respondent's bare denial cannot prevail over the testimonies of 10 members of the Sandiganbayan security personnel and cameraman Gonzales, as these are testimonies that have withstood the scrutiny of the Sandiganbayan's Investigating Officer and the OCA.

4. ID.; ID.; ID.; ID.; IN ESTABLISHING IMPROPER SOLICITATION, THE RECEIPT OF MONEY IS NOT NECESSARY, AS MERE DEMAND IS SUFFICIENT.— [R]espondent's assertion that there is no evidence that he received the money is of no moment, because its receipt is not necessary in establishing improper solicitation, mere demand being sufficient.

5. ID.; ID.; ID.; ID.; IT IS THE SACRED DUTY OF EVERY WORKER IN THE JUDICIARY TO MAINTAIN THE GOOD NAME AND STANDING OF THE COURTS; HENCE, EVERY EMPLOYEE OF THE COURT SHOULD BE AN EXEMPLAR OF INTEGRITY, UPRIGHTNESS, AND HONESTY.— No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the Judiciary. The Court is mindful that any act of impropriety on the part of judicial officers and personnel, be they the highest or the lowest members of the work force, can greatly erode the people's confidence in our justice system. Hence, it is the sacred duty of every worker in the Judiciary to maintain the good name and standing of the courts. Every employee of the court should be an exemplar of integrity, uprightness, and honesty. The Court will not hesitate to impose the ultimate penalty on those who have fallen short of their accountabilities.

6. ID.; ID.; ID.; ID.; A COURT PERSONNEL'S ACT OF SOLICITING OR RECEIVING MONEY FROM LITIGANTS CONSTITUTES GRAVE MISCONDUCT PUNISHABLE BY DISMISSAL FROM SERVICE EVEN FOR THE FIRST OFFENSE.— In numerous cases, this Court has held that court personnel's act of soliciting or receiving money from litigants constitutes grave misconduct. Under Section 46(A) of RRACCS, this is punishable by dismissal from

service even for the first offense. The Court has not hesitated to impose this extreme punishment on employees falling short of their accountabilities, for no less than the Constitution enshrines the principle that public office is a public trust. While there are cases in which the Court has mitigated the imposable penalty for humanitarian reasons and other considerations such as length of service, acknowledgment of infractions, feelings of remorse, and family circumstances, none of these is applicable to the case at hand. Hence, respondent's dismissal is proper.

7. LEGAL ETHICS; ATTORNEYS; A LAWYER IS AN OFFICER OF THE COURT WHO HAS THE DUTY TO UPHOLD ITS DIGNITY AND AUTHORITY AND NOT PROMOTE DISTRUST IN THE ADMINISTRATION OF JUSTICE.— [T]he Court notes that Atty. David, who is in the best position to state whether respondent Cruz received money from him through improper solicitation, has chosen to remain silent and refused to give his statement. As a lawyer, he is an officer of the court who has the duty to uphold its dignity and authority and not promote distrust in the administration of justice. He is therefore under obligation to shed light on the truth or falsity of the issue, considering that he is at the center of the controversy.

R E S O L U T I O N

PER CURIAM:

Before this Court is an administrative case against Ronald Allan Gole R. Cruz (respondent Cruz), Security Guard (SG) I of the Sandiganbayan, for improper solicitation.

The Facts

On 5 December 2014, Sandiganbayan Presiding Justice Amparo M. Cabotaje-Tang received a Sworn Information Report[1] filed by Sandiganbayan security officers[2] against respondent

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[1] *Rollo*, pp. 15-17, dated 3 December 2014.

[2] Prepared by Security Officers (SO) I Darwin V. Trinidad and Rodelio Z. Lalongisip and attested to by SG III Armando S. Astor, SG II Rosita P.

Cruz. The report alleged an incident of solicitation of money from the counsel of a party to a case pending before the Sandiganbayan. Based on the report, Presiding Justice Cabotaje-Tang requested this Court to preventively suspend respondent Cruz pending investigation,[3] a request which We granted.[4]

Thereafter, an investigation of the alleged solicitation by respondent Cruz was conducted by the Sandiganbayan,[5] yielding the following factual findings:

Sometime in the last week of November 2014, respondent Cruz convinced TV5 cameraman Dave Gonzales (Gonzales) to hand over a white solicitation envelope to Atty. Stephen David (Atty. David).[6] The latter was the counsel for the accused Janet Lim Napoles in the Priority Development Assistance Fund (PDAF) case pending before the Sandiganbayan.[7] Gonzales claimed that he did not know what the envelope was for, but that he obliged only out of *"pakikisama."*[8] He was able to hand over the envelope to Atty. David's aide.[9] Respondent purportedly said that the money to be solicited would be used for the Christmas party of the Sandiganbayan's security personnel.[10]

Domingo, SG II Danilo V. Reyes, and SG II Jose Jerry D. Dimaano, all from the Security and Sheriff Services Division of Sandiganbayan.

[3] *Rollo*, pp. 2-4. Letter dated 15 December 2014.

[4] *Id*. at 9. Order dated 17 December 2014.

[5] *Id*. at 14. Fact-Finding Investigation Report conducted by Atty. Mary Ruth Ferrer, Director III of the Legal Research and Technical Staff of the Sandiganbayan.

[6] The same request was also made by respondent to SG III Armando Astor. *See id*. at 355 where SG III Astor testified that respondent told him "*Pre, gusto mo bang magkapera? Ibigay mo lang tong envelope kay Atty. David, sulatan mo na rin ng 'Merry Christmas'"* to which SG III Astor replied "*Ayoko pare hindi ko kaya, bawal yan eh.*"

[7] *Id*. at 331.

[8] *Id*. at 332.

[9] *Id*.

[10] *Id*. at 354.

On 1 December 2014, Atty. David passed by the back door entrance and told the security guards posted there that he would give back the envelope the following day.[11] When they asked what the envelope was for, Atty. David clarified that it was a "*pamasko"* "for the boys."[12] The next day, as Atty. David passed by the same entrance, he told SG III Armando Astor, *"O nabigay ko na yung pang Christmas nyo ha."* When SG III Astor inquired into the matter, Atty. David replied, *"Nandun kay Gole yung kasama nyo na* security."[13] This conversation was overheard by four other security guards,[14] one of whom was SG II Rosita Domingo. When she confronted respondent about it, he merely replied *"Bakit ka ba nagtatanong?"* Domingo then reported the incident to Security Officer (SO) I Darwin Trinidad.[15] Thereafter, SO I Trinidad, together with SO I Rodelio Lalongisip, conducted an investigation into the matter.

It appears that several security personnel discovered that respondent had received the amount of ₱20,000 from Atty. David inside a comfort room in the Sandiganbayan, just after a hearing for the case of Senator Jinggoy Estrada and Ms. Napoles.[16] Respondent purportedly admitted to some security personnel that he had received money from Atty. David, albeit in the amount of ₱10,000 only.[17]

Acting Chief Judicial Staff Officer (ACJSO) Albert de la Cruz also alleged that earlier that day, respondent came to see him. Respondent supposedly said that he would sponsor the catering for the Christmas party of the security personnel. When ACJSO de la Cruz asked where the money came from, respondent

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[11] *Id*. at 331.

[12] *Id*. at 355.

[13] *Id*.

[14] *Id*. at 331. Referring to SG III Ronald Woods, SG II Danilo Reyes, SG II Rosita Domingo, and SG II Franco Alegre.

[15] *Id*.

[16] *Id*. at 355.

[17] *Id.*

admitted that he had received ₱10,000 from a lawyer in the PDAF case. He advised respondent to return the money. But when asked by the former to produce it, respondent allegedly refused for fear of being implicated.[18]

In his *Salaysay*,[19] respondent denied soliciting or receiving any money from Atty. David, whom the former allegedly did not even know personally. Respondent claimed that the Complaint was hatched by persons who had an axe to grind against him.[20] In particular, he contended that SO I Trinidad accused him years ago of writing poison letters against security officers and circulating them to the Justices.[21] He also alleged that the signatories of the Information Report were merely forced to sign it.[22]

As for Atty. Stephen David, while he attended the clarificatory hearing for the fact-finding investigation, he did not give any statement on the matter.[23]

The investigating lawyer recommended that a formal charge be filed against respondent for improper solicitation and/or for grave misconduct, under the Revised Rules on Administrative Cases in the Civil Service (RRACCS).[24]

Findings and Recommendations of the Office of the Court Administrator

Upon evaluation, the Office of the Court Administrator (OCA) recommended that the administrative complaint be re-docketed as a regular administrative matter.[25] The OCA found the Fact-

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[18] *Id.* at 332.

[19] *Id*. at 19-22, dated 15 December 2014.

[20] *Id*. at 356.

[21] *Id*. at 21.

[22] *Id*. at 356.

[23] *Id*. at 310.

[24] *Id*. at 337-338.

[25] *Id*. at 362.

Finding Investigation Report well-taken and duly supported by evidence.[26] It stated that despite the absence of any direct evidence connecting respondent to the solicitation, the testimonies of the witnesses showed that several circumstances pointed to respondent as the one who had solicited money from Atty. David. According to the OCA, his defense of general denial cannot overcome the testimonies of the witnesses who have testified in the affirmative.[27]

Since improper solicitation is classified as a grave offense under RRACCS, the OCA recommended that respondent be held administratively liable and that he be dismissed from the service with forfeiture of all retirement benefits, except accrued leave credits, and with perpetual disqualification from employment in any branch of the government or any of its agencies or instrumentalities, including government-owned and controlled corporations.[28]

In addition, the OCA also recommended that Atty. David's apparent obstinacy and refusal to cooperate in the investigation regarding the solicitation be referred to the Office of the Bar Confidant for appropriate action.[29]

THE COURT'S RULING

We adopt the recommendations of the Office of the Court Administrator.

Under the Code of Conduct and Ethical Standards for Public Officials and Employees,[30] solicitation is considered a prohibited act.[31]Moreover, Canon I of the Code of Conduct for Court

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[26] *Id*. at 358.

[27] *Id*. at 359.

[28] *Id*. at 362.

[29] *Id*.

[30] Republic Act No. 6713.

[31] Section 7(d) of R.A. No. 6713 provides:

(d) *Solicitation or acceptance of gifts*. — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor,

Personnel provides that "[c]ourt personnel shall not solicit or accept any gift, favor, or benefit based on any explicit or implicit understanding that such gift, favor, or benefit shall influence their official actions."[32] In addition, the RRACCS[33] classifies soliciting as a grave offense punishable by dismissal from service.[34]

Based on the investigation report of the Sandiganbayan and the findings of the OCA, it has been sufficiently established that respondent Cruz solicited money from Atty. David. Although there is no direct evidence, several circumstances point to him as the one who solicited money from Atty. David, as found by the OCA:

SG II Alegre testified that he was personally informed by TV5 cameraman Gonzales that the latter acceded to the prior request of respondent SG I Cruz to give the solicitation envelope to Atty. David. SG III Astor attested that a week prior to the actual solicitation incident, respondent SG I Cruz approached him at the Backdoor II post and gave him an envelope with official Sandiganbayan logo intended for Atty. David. The incident was witnessed and confirmed by SG II Dimaano. SG II Astor also testified that on 2 December 2014, Atty. David told him at Backdoor II that he had already given the money intended to augment the fund for the Christmas party to respondent SG I Cruz and the same was corroborated by SG II Reyes. However, while both SG II Alegre and SG III Woods heard an almost identical conversation, both did not hear Atty. David mentioning the name "Gole". Nonetheless, ACJSO Albert Dela Cruz disclosed that respondent SG I Cruz admitted to him that the latter received ten thousand pesos (₱10,000) from a lawyer and even offered to shoulder the catering for the Christmas party of the Security and Sheriff's Division. **All these circumstances factored in lead to the**

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entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

[32] A.M. No. 03-06-13-SC (2004), Sec. 2.

[33] Civil Service Resolution No. 1101502 (s. 2011).

[34] *Id.* at Sec. 46(A)(10).

conclusion that respondent SG I Cruz solicited money from Atty. David, counsel of accused Janet Lim Napoles in the PDAF cases presently being tried before the graft court.[35] (Emphasis supplied)

This being an administrative proceeding, the quantum of proof necessary for a finding of guilt is only substantial evidence,[36]or such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[37] This requirement has been met in this case.

As to the accusations against him, respondent could only proffer the defense of denial.[38] However, "mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law, and cannot be given greater evidentiary value than the testimonies of witnesses who have testified in the affirmative."[39] In this light, respondent's bare denial cannot prevail over the testimonies of 10 members of the Sandiganbayan security personnel[40] and cameraman Gonzales, as these are testimonies that have withstood the scrutiny of the Sandiganbayan's Investigating Officer[41] and the OCA.

Moreover, respondent's assertion[42] that there is no evidence that he received the money is of no moment, because its receipt

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[35] *Rollo*, pp. 358-359.

[36] Rules of Court, Rule 133, Sec. 5.

[37] *Pamintuan v. Comuyog, Jr.*, A.M. No. P-11-2982, 17 August 2015.

[38] *Rollo*, p. 335.

[39] *Villaros v. Orpiano*, 459 Phil.1, 8 (2003), citing *In Re: Derogatory News Items Charging CA Associate Justice Demetrio G. Demetria with Interference on Behalf of a Suspected Drug Queen*, 423 Phil. 916 (2001).

[40] *Rollo*, p. 310. The Sandiganbayan security personnel are: SO I Lalongisip and Trinidad, SG III Astor and Woods, SG II Domingo, Dimaano, Alegre, and Reyes, SG I Astorga, and ACJSO de la Cruz.

[41] *See id*. at 335, where the Investigating Officer said that the witnesses "could not be said to be fabricating lies against [respondent] as they had no personal grudge nor personal issues against him."

[42] *Id*. at 336.

is not necessary in establishing improper solicitation, mere demand being sufficient.[43]

No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the Judiciary.[44] The Court is mindful that any act of impropriety on the part of judicial officers and personnel, be they the highest or the lowest members of the work force, can greatly erode the people's confidence in our justice system.[45] Hence, it is the sacred duty of every worker in the Judiciary to maintain the good name and standing of the courts.[46] Every employee of the court should be an exemplar of integrity, uprightness, and honesty.[47] The Court will not hesitate to impose the ultimate penalty on those who have fallen short of their accountabilities.[48]

In numerous cases, this Court has held that court personnel's act of soliciting or receiving money from litigants constitutes grave misconduct.[49] Under Section 46(A) of RRACCS, this is punishable by dismissal from service even for the first offense. The Court has not hesitated to impose this extreme punishment on employees falling short of their accountabilities,[50] for no

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[43] *Villaros v. Orpiano*, *supra*.

[44] *Enriquez v. De Castro*, 553 Phil. 244 (2007), citing *Imperial v. Santiago, Jr.*, 446 Phil. 104 (2003).

[45] *Velasco v. Baterbonia*, 695 Phil. 769 (2012).

[46] *Id.* citing *Office of the Court Administrator v. Recio*, 665 Phil. 13 (2011).

[47] *Enriquez v. De Castro*, *supra*, citing *Chiong v. Baloloy*, 536 Phil. 365 (2006).

[48] *Aldecoa-Delorino v. Abellanosa*, 648 Phil. 32 (2010).

[49] *Villahermosa, Sr. v. Sarcia*, 726 Phil. 408 (2014), citing *Office of the Court Administrator v. Diaz*, 362 Phil. 580 (1999); *Narag v. Manio*, 608 Phil. 1 (2009); *Ramos v. Limeta*, 650 Phil. 243 (2010); *Canlas-Bartolome v. Manio*, 564 Phil. 307 (2007); *Ong v. Manalabe*, 489 Phil. 96 (2005).

[50] See *Accredited Local Publishers v. Del* Rosario, A.M. No. P-14-3213. 12 July 2016, *Office of the Court Administrator v. Magno*, 419 Phil. 593 (2001), *Villahermosa, Sr. v. Sarcia, supra* note 49, *Bacbac-Del Isen v. Molina,* A.M. No. P-15-3322*,* 23 June 2015, 760 SCRA 289.

less than the Constitution enshrines the principle that public office is a public trust.[51] While there are cases in which the Court has mitigated the imposable penalty for humanitarian reasons and other considerations such as length of service, acknowledgment of infractions, feelings of remorse, and family circumstances,[52] none of these is applicable to the case at hand. Hence, respondent's dismissal is proper.

In a related matter, the Court notes that Atty. David, who is in the best position to state whether respondent Cruz received money from him through improper solicitation, has chosen to remain silent and refused to give his statement. As a lawyer, he is an officer of the court who has the duty to uphold its dignity and authority and not promote distrust in the administration of justice.[53] He is therefore under obligation to shed light on the truth or falsity of the issue, considering that he is at the center of the controversy.[54]

Records show that in *Bondoc v. Simbulan,*[55] Atty. David and his wife Atty. Lanee David were found guilty of indirect contempt of court and fined, with a stern warning that the commission of a similar offense shall be dealt with more severely for making a mockery of the judicial system. In that case, Attys. Stephen and Lanee David were charged with crafting a Complaint and incorporating therein unfounded accusations against a judge in order to conceal their inadequacies in the handling of their client's case before that judge.[56] In the present administrative matter, although Atty. David is not a respondent, his involvement in the controversy is nonetheless a matter of concern for this Court. Our ruling in *Villaceran v. Rosete*[57] is a case in point.

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[51] CONSTITUTION, Art. XI, Sec. 1.

[52] *Marquez v. Pacariem*, 589 Phil. 72 (2008).

[53] *Racines v. Morallos*, 571 Phil. 1 (2008).

[54] *Rollo*, p. 361.

[55] 619 Phil. 406 (2009).

[56] *Id*. at 419.

[57] 661 Phil. 380 (2011).

Although that administrative complaint was against a judge, the Court nevertheless took note of the participation of the private lawyer involved, to wit:

> As a final note, the affidavit itself of complainant Villaceran points to the **complicity (or at least, the willing participation) of her lawyer** Atty. Edmar Cabucana in the corruption that attended her criminal case. This matter, to the Court's mind, deserves attention **as his participation in the corruption that attended this case is no less real than the participation of respondent** Taguba. For this reason, we believe it proper to refer this case to the Office of the Bar Confidant for its appropriate action.[58] (Emphasis supplied)

IN VIEW OF THE FOREGOING, this Court finds respondent **Ronald Allan Gole R. Cruz**, Security Guard I of the Sandiganbayan, **GUILTY** of improper solicitation. He is hereby **DISMISSED** from service, with **FORFEITURE** of all retirement benefits, except accrued leave credits, and **PERPETUAL DISQUALIFICATION** from employment in any branch of the government or any of its agencies or instrumentalities, including government-owned and -controlled corporations.

The Court further resolves to

1. **RE-DOCKET** as a regular administrative matter the Sworn Information Report dated 3 December 2014 against respondent Security Guard I Ronald Allan Gole R. Cruz, Security and Sheriff Services Division, Sandiganbayan;
2. **REFER** to the Office of the Bar Confidant for evaluation and recommendation the apparent obstinacy and refusal of **Atty. Stephen David** to cooperate in the investigation regarding the solicitation of respondent Cruz, with the directive to submit a report to this Court on this matter within 30 days from receipt of this Decision; and
3. **REFER** this matter to the Ombudsman for appropriate action.

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[58] *Id*. at 389.

SO ORDERED.

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

Martires, J., no part.

Del Castillo and *Jardeleza, JJ.,* on official leave.

EN BANC

[G.R. No. 213424. July 11, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **COMMISSION ON AUDIT (COA), JANET D. NACION, ANTONIO L. CASTILLO, LEAH S. DAGUIO, VIRGINIA G. DATUKON, ELSA H. RAMOS-MAPILI, CECILIA C. RACIMO, FLORENTINA N. SAGABAEN, IRENE P. SALVANERA, NIMFA VILLAROMAN-SANTOS, TERESITA D. TEVES, AND LILIAN F. VARELA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; THE FINDINGS OF ADMINISTRATIVE AGENCIES ARE ACCORDED RESPECT WHEN THE DECISION IS NOT TAINTED WITH UNFAIRNESS OR ARBITRARINESS THAT WOULD AMOUNT TO GRAVE ABUSE OF DISCRETION.— It is the general policy of the Court that findings of administrative agencies are accorded respect when the decision is not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is 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, that this Court entertains a petition questioning its rulings.

2. POLITICAL LAW; ADMINISTRATIVE LAW; COMMISSION ON AUDIT; NOTICE OF DISALLOWANCE ISSUED BY THE COMMISSION ON AUDIT DECLARED INVALID IN CASE AT BAR.— The refresher course had two objectives — *first*, to train and enhance the skills of the bank's officers and make them more effective in carrying out their respective duties and responsibilities, and *second*, to prepare the officers to pass the CSEE/MATB examination and be eligible for permanent appointments to third level positions. Here, the true test of the necessity of the refresher course lies on who benefited from it. We believe that both LBP and its officers gained from the refresher course. On one hand, the officers were given an opportunity to grow professionally by acquiring eligibility in their career service, and on the other, the bank gained a workforce with more knowledge and skills in the hope of increasing their efficiency, **whether or not the same officers pass the eligibility examination**. Thus, the refresher course was conducted not solely to aid the bank's officers to pass the eligibility examination but also to strengthen the bank's upper management group who supervises LBP's more than 300 branches and field offices nationwide while performing highly technical or specialized core banking functions. Truly, the refresher course was a necessary and reasonable expenditure for the bank under the circumstances. Consequently, the Notice of Disallowance (ND) No. LBP-001-(2005) referring to the payments made by LBP to MSA representing review fees in the total amount of ₱1,778,100.51, as well as the other Notices of Disallowance referring to travel expenses of select LBP officers who participated in the second refresher course in the total amount of ₱98,562.00, was erroneously issued by the COA. The COA clearly committed grave abuse of discretion amounting to lack or excess of jurisdiction in promulgating COA CP Decision No. 2012-024, which affirmed LAO-C Decision No. 2008-078.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CARPIO, *J.*:

This is a petition for certiorari[1] assailing the Decision[2] dated 27 February 2012 and the Resolution[3] dated 4 Apri1 2014 of the Commission on Audit (COA) in COA CP Case No. 2011-146. The COA affirmed the Decision[4] dated 4 December 2008 of the COA Legal and Adjudication Office – Corporate (COA LAO-C) which disallowed (1) payments made by Land Bank of the Philippines (LBP) to MSA Academic Advancement Institute (MSA) representing refresher course and examination review fees, and (2) travel expenses incurred by bank officers in connection with the said refresher course.

The Facts

On 3 November 2004 and 1 July 2005, petitioner LBP engaged MSA for the conduct of the Professional Advancement Refresher Course (PARC), a five-day refresher program designed to provide LBP officers nationwide with Pay Grade 9 (Career Executive Service position) and up, with managerial, verbal, and analytical skills which can assist them in effectively carrying out their respective duties and responsibilities. The said refresher course was also LBP's response to the Civil Service Commission's (CSC) policy on temporary appointments as laid down in CSC Memorandum Circular No. 20, series of 2002 (CSC MC No. 20).[5]

It is the policy of the CSC, as the central personnel agency of the government empowered to issue and enforce rules and

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[1] Under Rule 65 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 31-40. Penned by Chairperson Ma. Gracia M. Pulido Tan, with Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza concurring.

[3] *Id*. at 42.

[4] *Id*. at 43-48.

[5] CSC MC No. 20, in promulgating CSC Resolution No. 02-1136 (dated 5 September 2002), deals with the revised policies on temporary appointments and publication of vacant positions; signed on 23 September 2002.

regulations to carry out its mandate in the recruitment and selection of officials and employees in the career service at all levels, that only those who meet all the requirements for the position to which they are appointed, including the appropriate eligibility prescribed, shall be issued a permanent appointment in the government service.

Due to the pressure posed by CSC MC No. 20 and its effect on the morale and productivity of the bank's affected officers, LBP felt the need to protect the institution from being deprived of bank officers whose appointments were being threatened from being taken away because of the eligibility requirement. Thus, by undergoing a training program like the PARC, LBP sought to prepare its officers, holding temporary appointments (including permanent employees who became temporary employees upon their promotion to positions which require third level eligibility),[6] for the Career Service Executive Eligibility/

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[6] See CSC MC No. 20. It is stated in said circular that appointees in the third level or Career Executive Service (CES) positions require a CES eligibility or Career Service Executive Eligibility (CSEE) as a requirement to permanent appointment to enjoy security of tenure. If any of these officers whose appointments were under temporary status are transferred or promoted to other positions which require third level eligibility, the rules on temporary appointment shall apply to them. The pertinent provisions of the circular state:

1. The revised policies on temporary appointments shall cover all positions in the first, second and third levels of the career service.

2. Appointees under temporary status do not have security of tenure and may be separated from the service, with or without cause. As such, they shall not be considered illegally terminated and hence, not entitled to claim back wages and/or salaries and ask for reinstatement to their positions.

3. Appointees under temporary status may be terminated without necessarily being replaced by another. Temporary appointees may also be replaced within the twelve month period by qualified eligibles or even by non-eligibles.

A 30-day written notice signed by the appointing authority shall be given to the temporary appointee prior to termination/removal or replacement.

4. Appointees to Career Executive Service (CES) positions who do not possess any CES/CSEE eligibility but who were issued permanent appointments prior to the effectivity of CSC MC No. 46, s.1993 on November 26, 1993, which require a CES eligibility for third level positions or the conversion

Management Aptitude Test Battery (CSEE/MATB) examination. This examination is conducted by the Career Executive Service Board (CES Board) for third level positions (Assistant Department Manager and up) in the career service.

The CSEE/MATB examination is a unified third level examination system called Career Executive Officer (CEO) Examination that was actually a merger of the Career Executive Service (CES) eligibility and the CSEE which used to be conducted separately by the CES Board and the CSC, respectively. The CSEE/MATB examination was given on 21 November 2004 and 17 July 2005.

The refresher course, done in two batches, was conducted in Metro Manila, Cebu City, and Davao City. A total of 122 bank officers holding the positions of Managers and Assistant Managers attended the first refresher course held in November 2004 while 192 bank officers attended the second refresher course held in July 2005. Fifty-one out of the 192 officers who attended the second refresher course in July 2005 failed in the CSEE/MATB examination given on 21 November 2004. Hence, they were given by LBP's Management Committee the privilege to review for the second time in July 2005, as part of the second batch, which was also conducted by MSA in a five-day refresher course.

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of their positions to CES positions, enjoy vested right to the position under permanent status; provided that upon transfer or promotion to other positions which require a third level eligibility, the rules on temporary appointments shall apply.

5. Appointees to CES positions who do not possess any CES/CSEE eligibility but were issued permanent appointments after the effectivity of CSC MC No. 46, s.1993 but prior to the promulgation of this Resolution, with or without a condition at the back of their appointments that they will not enjoy security of tenure are considered on a temporary status. They are not required to be issued new appointments except upon transfer or promotion to other positions which require third level eligibility. In such case, they will be issued temporary appointments.

x x x x x x x x x

On 7 September 2005, the LBP Human Resources Development Department (LBP HRDD) received Audit Observations Memorandum (AOM)[7] with Reference No. OP-EXP AO 2005-05 issued by LBP's Supervising Auditor, Ms. Emelita R. Quirante. In the AOM, Auditor Quirante acknowledged that the refresher course was intended for the advancement and professional growth of the bank officers concerned in their respective careers at LBP. However, she viewed the attendance of the 51 out of the 192 LBP officers who took the refresher course for the second time in July 2005 as an unwarranted government expense and considered it to be a personal undertaking. Thus, the seminar and training expenses of the 51 LBP officers in the amount of ₱341,769.87, as well as the traveling expenses including board and lodging incurred by said participants, were treated in audit as unnecessary/ excessive expenses. As a consequence, Auditor Quirante recommended the following:

- Require the concerned officers to refund the review expenses amounting to ₱341,769.87 or ₱6,701.37 per participant (₱1,286,663.01/192 participants, DV #046913). The Bank should consider providing the benefit only once for each officer to give chance to others.
- Instruct the concerned officers to file their application for leave since the attendance to the seminar of concerned officers should be considered personal.
- Require the participants from the field units to refund the traveling expenses including board and lodging claimed.[8]

Assistant Vice-President, Voltaire Pablo P. Pablo III, the head of LBP HRDD, wrote a Memorandum[9] dated 3 November 2005 to Auditor Quirante explaining that the LBP Management Committee approved those who have already availed of the refresher course during its first run to take another training

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[7] *Rollo*, pp. 115-117.

[8] *Id*. at 117.

[9] *Id*. at 118.

course for the second time in view of the CSEE/MATB unified third level examination which merged CES eligibility and CSEE examinations resulting to the addition and deletion of some subjects in the previous CSEE. Thus, the Management Committee agreed to offer the training course not only to first timers but also to those who have already availed of the first refresher course.

In a memorandum-rejoinder,[10] Auditor Quirante maintained her position that the refresher course should be availed of only once to give chance to others and for prudence in government spending. Auditor Quirante also informed LBP that the matter has been elevated to the COA for a more authoritative evaluation.

On 16 January 2007, the COA Legal and Adjudication Office-Corporate (COA LAO-C), through respondent Director IV Janet D. Nacion (Director Nacion), issued a Notice of Disallowance (ND) No. LBP-001-(2005).[11] The COA LAO-C disallowed for lack of legal basis, not only the review fees and expenses of the 51 officers who attended the second refresher course as recommended by the Supervising Auditor of LBP, but **ALL** the review fees and expenses paid by LBP to MSA in the total amount of ₱1,778,100.51 pertaining to the attendance of 314 bank officers — 122 in the November 2004 and 192 in the July 2005 refresher courses, respectively. The relevant portion of the Notice of Disallowance states:

> Please be informed that payments for the CSEE/MATB review fees to MSA in the total amount of ₱1,778,100.51 have been disallowed in audit for lack of legal basis. The CSEE/MATB is an eligibility examination for personal enhancement and not to improve performance and job competency, hence, the payment for the review fees to MSA are considered unnecessary expenses in violation of COA Circular No. 85-55A dated September 8, 1985.[12]

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[10] *Id.* at 119.

[11] *Id.* at 49-56.

[12] *Id.* at 49.

The venue and inclusive dates of the review classes corresponding to the amount disallowed are outlined[13] as follows:

CV No.	Amount Disallowed	Venue	Inclusive Dates
037502	₱ 488,000.00	MSA Katipunan	Nov. 6, 14 & 15, 2004
		MSA Katipunan	Nov. 7, 14 & 15, 2004
		MSA Makati	Nov. 3-4, 7-11 & 21, 2004
		MSA Fairview	Oct. 30, Nov. 6 & 13, 2004
		MSA Cebu City	Nov. 9-11, 2004
046913	₱ 1,286,663.01	MSA Cebu City	July 2-5, 2005
		Mindanao Training Resource Center	July 8-12, 2005
		MSA Makati/LBP Plaza	July 11-15, 2005
		MSA Katipunan/ LBP Plaza	July 11-15, 2005
		LBP Buendia Branch/LBP Plaza	July 11-15, 2005
146941	₱ 3,437.50	MSA Cebu City	July 5, 2005 (venue rental)
Total	₱ 1,778,100.51		

The amounts of ₱488,000.00, ₱1,286,663.01, and ₱3,437.50 refer to the payments of LBP to MSA for the refresher course fees of 122 LBP officers in November 2004, the refresher course fees of 192 LBP officers in July 2005, and for the venue rental in MSA Cebu City, respectively.

Subsequently, LBP's Supervising Auditor, Teresita R. Gojunco, issued a Memorandum[14] dated 19 July 2007, addressed

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[13] *Id.* at 121.

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

to COA State Auditors – Audit Team Leaders (ATLs) assigned to LBP branches nationwide, disallowing the travel expenses claimed by the LBP officers who participated in the MSA refresher courses in Metro Manila, Cebu City, and Davao City. Consequently, the ATLs required the LBP officers concerned to file an application for leave for the days covered by the five-day review classes and eventually issued the Notices of Disallowance[15] to the LBP officers concerned pertaining to traveling expenses in the total amount of ₱98,562.

Respondents Antonio L. Castillo, Leah S. Daguio, Virginia G. Datukon, Elsa H. Ramos-Mapili, Cecilia C. Racimo, Florentina N. Sagabaen, Irene P. Salvanera, Nimfa Villaroman-Santos, Teresita D. Teves, and Lilian F. Varela were the ATLs who followed the instruction of Auditor Gojunco and issued separate Notices of Disallowance to the LBP officers who claimed payment for their travel expenses. Thus, Director Nacion and the ATLs assigned in various LBP branches nationwide were impleaded in this case in their official capacity pursuant to Section 5,[16] Rule 64 of the Rules of Court.

On 22 August 2007, LBP filed a petition for review with the COA seeking the reversal and/or modification of the Notice of Disallowance (ND) No. LBP-001-(2005) dated 16 January 2007. The petition was referred to the COA LAO-C pursuant to Item III-A(12)[17] of COA Memorandum No. 2002-053.[18]

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[15] *Id.* at 59-85.

[16] SEC. 5. *Form and contents of petition.*– The petition shall be verified and filed in eighteen (18) legible copies. The petition shall name the aggrieved party as petitioner and shall join as respondents the Commission concerned and the person or persons interested in sustaining the judgment, final order or resolution *a quo*. x x x.

[17] 12. The Director, Legal and Adjudication Office for the sector shall act on appeals filed by the aggrieved parties from the disallowances or charges in the form of a decision within thirty (30) days from receipt thereof. He shall entertain only one motion for reconsideration of his decision which he shall act upon within fifteen days from receipt.

[18] Guidelines on the Delineation of the Auditing and Adjudication Functions. Issued on 26 August 2002.

Pending the resolution of the petition with the COA proper and to avoid any possible technicalities, LBP also filed an Appeal-Memorandum[19] dated 30 January 2008 with the COA Office of the Cluster Director, Cluster I-Financial A, Corporate Government Sector on the separate Notices of Disallowance for the traveling expenses of the participant-bank officers concerned. On 18 July 2008, the appeal-memorandum was forwarded to the COA LAO-C for consolidation with the petition for review earlier filed.

On 4 December 2008, in COA LAO-C Decision No. 2008-078 issued by Director Nacion, the COA LAO-C denied the petition for lack of merit. While finding the expenditures for the conduct of the CSEE/MATB refresher course in accord with Sections 30[20] and 31,[21] Chapter 5, Subtitle A, Title I, Book V of Executive Order No. 292 (E.O. 292)[22] or the Administrative Code of 1987, the same being "intended for the career advancement of, and most importantly, to protect the security of tenure accorded by the Constitution to the government employees," the COA LAO- C viewed the corresponding cost of review classes for the 51 bank officers who had undergone the refresher course for the second time as an undue privilege

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[19] *Rollo*, pp. 122-142.

[20] SECTION 30. Career and Personnel Development.– The development and retention of a competent and efficient work force in the public service is a primary concern of government. It shall be the policy of the government that a continuing program of career and personnel development be established for all government employees at all levels. An integrated national plan for career and personnel development shall serve as the basis for all career and personnel development activities in the government

[21] SECTION 31. Career and Personnel Development Plans. – Each department or agency shall prepare a career and personnel development plan which shall be integrated into a national plan by the Commission. Such career and personnel development plans which shall include provisions on merit promotions, performance evaluation, in-service training, including overseas and local scholarships and training grants, job rotation, suggestions and incentive award systems, and such other provisions for employees' health, welfare, counseling, recreation and similar services.

[22] Signed on 25 July 1987.

tantamount to unwarranted government spending. Thus, the COA LAO-C stated that all the expenses, including review fees and traveling allowances incurred by LBP in connection with the said refresher course were properly disallowed in audit.

LBP filed an appeal through a Manifestation with Motion dated 26 January 2009 with the COA proper. In its COA CP Decision No. 2012-024 dated 27 February 2012, the COA denied the petition and affirmed COA LAO-C Decision No. 2008-078. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, this Commission hereby DENIES the Petition and AFFIRMS LAO-C Decision No. 2008-078 dated December 4, 2008 disallowing payments for the CSEE/MATB examination refresher course/review classes paid to MSA amounting to ₱1,778,100.[5]1 and various NDs issued by ATLs of appellant's branches representing travel expenses in the total amount of ₱98,562.00.[23]

LBP filed a motion for reconsideration which was denied for lack of merit by the COA in a Resolution dated 4 April 2014.

Hence, the instant petition.

The Issue

The main issue is whether or not the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing the (1) payments made by LBP to MSA for the Professional Advancement Refresher Course fees and expenses, and (2) travel expenses incurred by LBP bank officers in connection with the second refresher course.

The Court's Ruling

The petition is meritorious.

LBP contends that the refresher course was a legitimate undertaking in pursuit of LBP's mandate under the Omnibus

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[23] *Rollo*, pp. 38-39.

Civil Service Rules and Regulations and in compliance with the requirements of CSC MC No. 20. LBP asserts that the personal benefit the bank officers may have gained from the course was only incidental to the bank's ultimate purpose of improving the officers' performance and productivity, and that the required eligibility reasonably contributes to improvement in performance and productivity.

LBP asserts that the attendance of the LBP officers, as well as the corresponding review fees and travel expenses, was official, necessary and allowable in audit. The refresher course was not only essential for the development of their professional workforce but it was also LBP's response to the CSC's policy on temporary appointments which affected the morale and productivity of the bank's affected officers. Also, LBP insists that the refresher course was a necessary expense under COA Circular No. 85-55-A since it supports the bank's objectives and mission to maintain the "highest standards of integrity and performance" relative to the nature of its business and operations as a banking institution.

COA, on the other hand, maintains that there is nothing in CSC MC No. 20 which requires LBP to utilize government funds to prepare temporary appointees for eligibility examinations through trainings conducted by outside service providers. Also, respondents aver that if LBP's employees are already competent in their functions, then there is no compelling need to spend a considerable amount of government funds on procuring such service. Thus, the COA maintains that it correctly disallowed the refresher course as an unnecessary expense since the refresher course was primarily for the benefit of the LBP officers in preparation for the CSEE/MATB eligibility examination rather than for the improvement of the LBP officers' performance and productivity.

It is the general policy of the Court that findings of administrative agencies are accorded respect when the decision is not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is 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, that this Court entertains a petition questioning its rulings.[24]

The main issue should be the propriety of allowing some bank officers to undergo the refresher course for the second time at the expense of the bank. The Supervising Auditor of LBP viewed shouldering the expenses of the 51 bank officers who took the refresher course for the second time as an unwarranted government expense and treated their review fees and traveling expenses as a personal undertaking. The COA LAO-C expressed that "[i]t is enough that the bank has granted them one-time refresher course to provide them the necessary tools that would aid them to pass the CSEE. Allowing them to undertake a refresher course for the second time at the expense of the bank is not fair to other government officers and employees who are entitled to the same privilege."[25]

However, while the COA LAO-C considered the attendance of the other officers who took the course for the first time as a valid expense, **ALL** the expenses incurred by LBP for the refresher courses held in November 2004 and July 2005, including review fees and traveling expenses of those officers who took the refresher course for the first time, as indicated in Notice of Disallowance (ND) No. LBP-001-(2005), were disallowed as a whole. The COA proper, in its Decision dated 27 February 2012, affirmed this decision by the COA LAO-C.

The disallowance is erroneous.

Sections 1 and 2, Rule VIII of the Omnibus Rules Implementing Book V of E.O. 292[26] state:

SECTION 1. Every official and employee of the government is an asset or resource to be valued, developed and utilized in the delivery of basic services to the public. Hence, the development and retention of a highly competent and professional workforce in the public service shall be the main concern of every department and agency.

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[24] *Sanchez v. Commission on Audit*, 575 Phil. 428, 446 (2008).

[25] *Rollo*, p. 47.

[26] CSC Resolution No. 91-1631, approved on 27 December 1991.

Every department or agency shall therefore establish a continuing program for career and personnel development for all agency personnel at all levels, and shall create an environment or work climate conducive to the development of personnel skills, talents and values for better public service.

SEC. 2. Each department or agency shall prepare a career and personnel development plan which shall be integrated into a national plan by the Commission which shall serve as the basis for all career and personnel development activities in the government. The Career and Personnel Development Plan shall include provisions on merit promotion, performance evaluation; in-service training; overseas and local scholarships and training grants; suggestions, incentive award systems, provisions for welfare, counseling, recreation and similar services; and other human resource development interventions such as on the job training, counseling, coaching, job rotation, secondment, job swapping and others.

The records[27] show that the LBP-HRDD recommended the approval of an external training program, the Professional Advancement Refresher Course by MSA, for the benefit of LBP's bank officers holding career executive positions with Pay Grade 9 and up. The course was approved by then LBP President and Chief Executive Officer Margarito B. Teves. The aim of the refresher course is to provide updated information on the enhancement of managerial and verbal skills, and on the analysis and interpretation of data which can assist the officers concerned in (1) effectively carrying out their respective duties and responsibilities, and (2) enhancing LBP's delivery of service to its clients.

LBP HRDD felt that there was a need for the refresher course in order to (1) assess the bank officers' analytical ability, (2) enhance their analytical skills particularly in verbal reasoning, logical reasoning, and quantitative reasoning, (3) improve their word knowledge and reading skills to make them competent in communication and in the use of the English language, (4) refresh concepts in management and leadership in order to view and understand corporate realities, and (5) provide continuous advancement.

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[27] *Rollo*, pp. 172-174.

The refresher course was also intended to prepare the bank officers holding temporary appointments (including permanent employees who became temporary employees upon their promotion to positions which require third level eligibility) for the career service executive examination to address the CSC's eligibility requirement for third level positions (Assistant Department Manager with Pay Grade 9 and up) in the bank.

These objectives of LBP in securing MSA's service to conduct a professional advancement refresher course are clearly in line with its mandate to provide a continuing program for career development of its personnel as laid down in the civil service rules. Even LBP's Supervising Auditor and the COA LAO-C were in accord in recognizing the importance of the refresher course for LBP's bank officers. The Supervising Auditor of the LBP, in its AOM dated 7 September 2005, quly acknowledged that the refresher course was conducted for the advancement and professional growth of the LBP officers in pursuit of their careers at LBP. Even the COA LAO-C, in its Decision dated 4 December 2008, found that "x x x the conduct of the refresher course finds legal basis as provided in the above-stated CSC rules and regulations[28] the same being intended for the career advancement of, and most importantly, to protect the security of tenure accorded by the Constitution to the government employees."[29] As added in COA LAO-C's decision:

> The instant refresher course is similar with other privileges granted by the CSC such as scholarships for graduate studies, board or bar examinations that could be availed only once by the prospective applicants. The reason for that policy is very obvious, that is, to give all qualified government employees equal chances to avail the said benefits/privileges and more importantly, to minimize government expenditures without compromising the right of the government employees to career advancements as guaranteed by the aforesaid CSC pronouncements.[30]

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[28] *Id.* at 46.

[29] *Id.*

[30] *Id.*

With all these considerations on the benefits of the refresher course for the professional growth and advancement of the officers concerned, all the expenses in connection with the said refresher course should have been allowed by COA.

While it is true that 51 of the bank officers attended the review classes twice after failing to pass the November 2004 CSEE examination, LBP's Management Committee approved their attendance to the second refresher course taking into account the changes in content of the CSEE examination compared to previous ones administered. In the Memorandum dated 3 November 2005 sent by the Head of LBP HRDD to LBP's Supervising Auditor, Mr. Pablo justified these seminar and training expenses in response to LBP's audit observations:

> We wish to inform you that initially the training for the 3rd level examination was intended for those who have not previously availed of the first CSEE training course. This was presented to the Management Committee last June 14, 2005 for approval.
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> However, during the deliberation, the following items were taken into account:
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> 1. The examination, which took place last July 17, 2005, was a unified third level examination system which was called Career Executive Officer (CEO) Examination.
> 2. Considering that it is a merger of the CES eligibility and CSEE conducted separately by the Career Executive Service Board and the Civil Service Commission respectively, there were subjects that were added and deleted as compared to the previous examinations (CSEE).
>
> Foregoing considered, the MANCOM agreed to offer the training course even to those who have availed of the first CSEE training course.[31]

Thus, with the approval of LBP's Management Committee, some bank officers were allowed to attend the CSEE training and refresher course for the second time **in order to obtain more information on the new examination system**. LBP's

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[31] *Id*. at 118.

contention finds solace in Section 5, Rule VIII of the same Omnibus Rules which states:

> Sec. 5. The performance appraisal or evaluation system shall be integrated into the Integrated Human Resource Planning and Development System (IHRPDS) as a tool to enable employees to improve performance and assess their professional growth including determining the potentials and development needs of individual employees. Hence, **if performance appraisal indicates development needs, the individuals concerned shall undergo training or other appropriate human resource development interventions designed to improve their performance and productivity**. (Emphasis supplied)

LBP provided assistance and further training to the concerned bank officers not only to improve their performance and job competency but also to keep the bank from losing competent officers and dissipating its manpower pooL There are no findings that LBP's Management Committee approved the subsequent training program only for the personal interests of the select LBP officers who did not pass the first CSEE examination. In fact, aside from the 51 officers, 141 other bank officers participated in and benefited from the second refresher course. From the two refresher courses conducted by MSA, a total of 263 bank officers gained knowledge and information that helped develop their managerial and analytical skills and enhanced their personal needs while maintaining and even upgrading the bank's standards of professionalism and excellence.

COA asserts that the procurement of the service of MSA is in violation of Section 7(b), Rule VIII of the Omnibus Rules Implementing Book V of E.O. 292 which states:

> SEC. 7. In establishing a continuing program for the development of personnel, each department or agency or local government unit shall:
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> x x x x x x x x x
>
> (b) Design, implement and evaluate in-service training and development programs solely or in coordination with the Commission and/or other government agencies and institutions. Such programs shall include the following:

x x x x x x x x x

Middle Management Development Program — refers to a set or series of planned human resource interventions and training courses designed to provide division chiefs and other officials of comparable rank with management and administrative skills and to prepare them for greater responsibilities.

x x x x x x x x x

Executive Development Program — refers to activities and experiences, and continuing education intended to enhance the managerial skills of government officials or executives who belong to the 3rd level.

COA maintains that the CSEE/MATB refresher course is akin to either the Middle Management Development Program or Executive Development Program which should have been conducted by the LBP's own Organization Development Department (ODD).

LBP argues that the bank conducts regular training courses by its own ODD, formerly the HRDD, for its own officers and employees. These courses are consistent and well-aligned with the objectives of the MSA refresher course. However, the MSA refresher course is updated, enhanced, or supplemented with LBP's ODD-managed courses that deal with culture building and values formation, bank operations, personal/interpersonal effectiveness, communication and customer relations, environmental management, and development enhancement. These subjects or courses lead to learning and knowledge that go beyond personal enhancement and directly improve the officers' performance and productivity.

We agree.

LBP has its own ODD which provides training and development programs. However, LBP is not constrained to provide training in-house only by utilizing its own ODD. Section 7(d) of the same rules states:

SEC. 7. In establishing a continuing program for the development of personnel, each department or agency or local government unit shall:

x x x x x x x x x

(d) **Provide other human resource development opportunities and activities which shall include training** and scholarship grants, both local and foreign. In addition, **shall utilize alternative strategies or approaches for improving job performance** such as coaching, counseling, job rotation, on-the-job training and others. (Emphasis supplied)

LBP's then HRDD recommended to the. LBP President a training program for its bank officers to be conducted by an outside service provider like MSA. Absent any findings to the contrary and given the needs of the bank at the time, the Professional Advancement Refresher Course, which MSA conducted for the benefit ofLBP's bank officers, can be considered as a human resource development opportunity and activity or an alternative approach to improving job performance which is allowed and sanctioned under the civil service rules.

Further, COA insists that CSC MC No. 20 does not require LBP to hire service providers to train its temporary appointees for eligibility examinations.

CSC MC No. 20 provides:

MEMORANDUM CIRCULAR

TO: ALL HEADS OF DEPARTMENTS, BUREAUS AND AGENCIES OF THE NATIONAL AND LOCAL GOVERNMENTS, INCLUDING GOVERNMENT-OWNED AND/OR CONTROLLED CORPORATIONS WITH ORIGINAL CHARTERS

SUBJECT: REVISED POLICIES ON TEMPORARY APPOINTMENTS AND PUBLICATIONS OF VACANT POSITIONS

The Civil Service Commission (CSC) as the central personnel agency of the government, promulgates policies, standards and guidelines to promote merit and fitness in the recruitment and selection of officials and employees in the career service at all levels.

The Commission has noted that, there is a growing complaint relative to the issuance of temporary appointments, including the termination and replacement of temporary appointees, especially in the third level. As such, the policies governing the issuance of temporary appointments and the publication of vacant positions need to be revisited to maintain

merit and fitness in the civil service and at the same time to protect the rights of government employees holding temporary appointments.

In answer thereto, the Commission has promulgated CSC Resolution No. 02-1136 dated September 5, 2002 prescribing the Revised Policies on Temporary Appointments and Publication of Vacant Positions which provides, as follows:

1. The revised policies on temporary appointments shall cover all positions in the first, second and third levels of the career service.

2. Appointees under temporary status do not have security of tenure and may be separated from the service, with or without cause. As such, they shall not be considered illegally terminated and hence, not entitled to claim back wages and/or salaries and ask for reinstatement to their positions.

3. Appointees under temporary status may be terminated without necessarily being replaced by another. Temporary appointees may also be replaced within the twelve month period by qualified eligibles or even by non-eligibles.

A 30-day written notice signed by the appointing authority shall be given to the temporary appointee prior to termination/removal or replacement.

4. Appointees to Career Executive Service (CES) positions who do not possess any CES/CSEE eligibility but who were issued permanent appointments prior to the effectivity of CSC MC No. 46, s.1993 on November 26, 1993, which require a CES eligibility for third level positions or the conversion of their positions to CES positions, enjoy vested right to the position under permanent status; provided that upon transfer or promotion to other positions which require a third level eligibility, the rules on temporary appointments shall apply.

5. Appointees to CES positions who do not possess any CES/CSEE eligibility but were issued permanent appointments after the effectivity of CSC MC No. 46, s.1993 but prior to the promulgation of this Resolution, with or without a condition at the back of their appointments that they will not enjoy security of tenure are considered on a temporary status. They are not required to be issued new appointments except upon transfer or promotion to other positions which require third level eligibility. In such case,they will be issued temporary appointments.

6. Vacant positions in all levels in the career service shall be published in the Bulletin of Vacancies in the Civil Service or through other modes of publication. Published vacant positions shall likewise be posted in at least three conspicuous places in the agency for at least ten (10) working days. For local government units, filling of vacant positions shall be made after fifteen (15) calendar days from their posting and publication as provided under RA 7160 (Local Government Code of 1991).The following positions are exempt from the publication and posting requirements:

- *Primarily confidential positions;*
- *Positions which are policy determining;*
- *Highly technical positions;*
- *Coterminous with the appointing authority or limited to the duration of a particular project; and*
- *Positions to be filled by existing regular employees in the agency in case of reorganization.*

7. All government entities are enjoined to publish non-career positions such as casuals and contractuals including job orders and contracts of services.

8. All positions occupied by holders of temporary appointments shall be published and posted every six months, reckoned from the date the vacant position was last published, simultaneously with the other existing vacant positions.

9. In the appointment of casual and contractual employees, agency heads are enjoined to appoint those who possess civil service eligibilities.

All other existing Civil Service Commission issuances which are inconsistent herewith, are deemed repealed or amended.

This Memorandum Circular shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

In the present case, LBP at the time was under a growing pressure to keep its third level positions occupied only by officers with the appropriate eligibility and had to deal with anxious and demoralized pool of officers whose appointments were on

the line. The 263 officers who participated in the said refresher course were all occupying Assistant Department Manager or Manager positions. While it is true that CSC MC No. 20 does not require LBP to hire service providers to train its temporary appointees for eligibility examinations, there is also nothing in CSC MC No. 20 which forbids LBP to engage the services of an outside provider like MSA to conduct training programs for its officers.

In *Domingo v. Development Bank of the Philippines*,[32] we held that the development and retention of a competent and efficient work force in the public service is considered as a primary concern of the government. Hence, employees are selected on the basis of merit and fitness to perform the duties and assume the responsibilities of the position to which they are appointed. Concomitantly, the government has committed itself to engender a continuing program of career and personnel development for all government employees, by establishing a performance evaluation system to be administered in such manner as to continually foster the improvement of individual employee efficiency and organizational effectiveness.

By hiring the services of MSA in administering the Professional Advancement Refresher Course, LBP allowed its officers to undergo personnel and management training and at the same time gave them an opportunity to retain their positions or be promoted by possessing the required civil service eligibility.

Lastly, COA argues that the corresponding costs incurred in the refresher course which were the subject of notices of disallowance are considered as unnecessary expenses m violation of COA Circular No. 85-55-A.[33]

Item 3.2 of COA Circular No. 85-55-A defines unnecessary expenditures:

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[32] 284 Phil. 52, 64 (1992).

[33] Amended Rules and Regulations on the Prevention of Irregular, Unnecessary, Excessive or Extravagant Expenditures of Uses of Funds and Property. Took effect on 8 September 1985.

The term pertains to expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service. Unnecessary expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This would also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which can not be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditures must be considered in determining in whether or not an expenditure is necessary.

Under the Declaration of Policies of the same COA circular, there are several factors which determine whether an expenditure is unnecessary. Item 2.2 of COA Circular No. 85-55-A states:

2.2 The service mission, size, systems, structure, strategy, skills, style, spirit and financial performance of government agency are the primary considerations in determining whether or not their expenditures are irregular, unnecessary, excessive or extravagant.

In *National Center for Mental Health Management v. COA*,[34] we quoted then COA Chairperson Francisco Tantuico, Jr. that "the terms 'irregular,' 'unnecessary,' 'excessive,' and 'extravagant,' when used in reference to expenditures of funds or uses of property, are relative. The determination of which expenditure of funds or use of property belongs to this or that type is situational. Circumstances of time and place, behavioral and ecological factors, as well as political, social and economic conditions, would influence any such determination. Viewed from this perspective, transactions under audit are to be judged on the basis of not only the standards of legality but also those of regularity, necessity, reasonableness and moderation."

The refresher course had two objectives – *first*, to train and enhance the skills of the bank's officers and make them more effective in carrying out their respective duties and

[34] 333 Phil. 222, 239 (1996).

responsibilities, and *second*, to prepare the officers to pass the CSEE/MATB examination and be eligible for permanent appointments to third level positions. Here, the true test of the necessity of the refresher course lies on who benefited from it. We believe that both LBP and its officers gained from the refresher course. On one hand, the officers were given an opportunity to grow professionally by acquiring eligibility in their career service, and on the other, the bank gained a workforce with more knowledge and skills in the hope of increasing their efficiency, **whether or not the same officers pass the eligibility examination**. Thus, the refresher course was conducted not solely to aid the bank's officers to pass the eligibility examination but also to strengthen the bank's upper management group who supervises LBP's more than 300 branches and field offices nationwide while performing highly technical or specialized core banking functions. Truly, the refresher course was a necessary and reasonable expenditure for the bank under the circumstances.

Consequently, the Notice of Disallowance (ND) No. LBP-001-(2005) referring to the payments made by LBP to MSA representing review fees in the total amount of ₱1,778,100.51, as well as the other Notices of Disallowance referring to travel expenses of select LBP officers who participated in the second refresher course in the total amount of P98,562.00, was erroneously issued by the COA. The COA clearly committed grave abuse of discretion amounting to lack or excess of jurisdiction in promulgating COA CP Decision No. 2012-024, which affirmed LAO-C Decision No. 2008-078.

WHEREFORE, the petition is **GRANTED**. The Decision dated 27 February 2012 and the Resolution dated 4 April 2014 of the Commission on Audit in COA CP Case No. 2011-146, which affirmed COA LAO-C Decision No. 2008-078 dated 4 December 2008, are declared **INVALID**.

SO ORDERED.

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

Del Castillo and *Jardeleza, JJ.*, on official leave.

THIRD DIVISION

[A.C. No. 10580. July 12, 2017]

SPOUSES GERALDY AND LILIBETH VICTORY, *complainants, vs.* **ATTY. MARIAN JO S. MERCADO**, *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; GOOD CHARACTER IS AN ESSENTIAL QUALIFICATION FOR THE ADMISSION TO AND CONTINUED PRACTICE OF LAW; THUS, ANY WRONGDOING, WHETHER PROFESSIONAL OR NON-PROFESSIONAL, INDICATING UNFITNESS FOR THE PROFESSION JUSTIFIES DISCIPLINARY ACTION.—** Emphatically, a lawyer shall at all times uphold the integrity and dignity of the legal profession. The bar should maintain a high standard of legal proficiency as well as honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. Canon 1, Rule 1.01, and Canon 7 provides: 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. CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR. Exercising its disciplinary authority over the members of the bar, this Court has imposed the penalty of suspension or disbarment for any gross misconduct that a lawyer committed, whether it is in his professional or in his private capacity. Good character is an essential qualification for the admission to and continued practice of law. Thus, any wrongdoing, whether professional or non-professional, indicating unfitness for the profession justifies disciplinary action.

2. **ID.; ID.; ID.; A LAWYER IS EXPECTED TO MAINTAIN NOT ONLY LEGAL PROFICIENCY, BUT ALSO A HIGH**

STANDARD OF MORALITY, HONESTY, INTEGRITY AND FAIR DEALING SO THAT THE PEOPLE'S FAITH AND CONFIDENCE IN THE JUDICIAL SYSTEM IS ENSURED. — [I]t is without dispute that respondent has an outstanding obligation with Spouses Victory, as the latter's investments which they coursed through the respondent fell through. To make matters worse, respondent issued several checks to settle her obligation; unfortunately, said checks bounced. As a lawyer, respondent is expected to act with the highest degree of integrity and fair dealing. She is expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. She must, at all times, faithfully perform her duties to society, to the bar, to the courts and to her clients, which include prompt payment of financial obligations.

3. **ID.; ID.; ID.; DELIBERATE FAILURE TO PAY JUST DEBTS AND THE ISSUANCE OF WORTHLESS CHECKS CONSTITUTE GROSS MISCONDUCT, FOR WHICH A LAWYER MAY BE SANCTIONED WITH SUSPENSION FROM THE PRACTICE OF LAW.—** It must be considered that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system. We cannot exempt respondent from liability just because she encountered financial difficulties in the course of her investment deals. Respondent even admitted that she continued to do business despite such financial hardships; as such, her monetary obligations with different investors accumulated at an alarming rate. In an attempt to settle her obligations, respondent issued checks, which all bounced. To Our mind, the actuations of respondent fell short of the exacting standards expected of every member of the bar. In this case, while respondent admitted her responsibility and signified her intention of complying with the same, We cannot close our eyes to the fact that respondent committed infractions. To uphold the integrity of the legal profession, We deem it proper to uphold the findings as well as the sanction imposed by the IBP Board of Governors.

D E C I S I O N

TIJAM, *J.*:

This is a disbarment case against respondent Atty. Marian Jo S. Mercado for violation of the Code of Professional Responsibility and the Lawyer's Oath.

The Facts

Sometime in 2009, Spouses Geraldy and Lilibeth Victory (Spouses Victory) were enticed by respondent to enter into a financial transaction with her with a promise of good monetary returns. As respondent is a lawyer and a person of reputation, Spouses Victory entrusted their money to respondent to invest, manage, and administer into some financial transactions that would earn good profit for the parties.[1]

Respondent called and asked Geraldy Victory (Geraldy) whether he wanted to invest his money. The respondent promised that for an investment of PhP 400,000, she will give Geraldy PhP 600,000 in 30 days; and for PhP 500,000, she will give Geraldy PhP 625,000.[2]

The investment transactions went well for the first 10 months. Spouses Victory received the agreed return of profit. Some of such financial transactions were covered by Memoranda of Agreement.[3]

Later on, respondent became evasive in returning to Spouses Victory the money that the latter were supposed to receive as part of the agreement. Respondent failed to settle and account the money entrusted to her by Spouses Victory.[4]

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[1] *Rollo,* p. 95.

[2] *Id*. at 68.

[3] *Id*. at 98.

[4] *Id*. at 96.

Spouses Victory alleged that the outstanding obligation of respondent is PhP 5 Million plus interest or a total of PhP 8.3 Million.[5]

Spouses Victory filed a criminal complaint for estafa and violation of Batas Pambansa Blg. 22 with the Office of the City Prosecutor of Sta. Rosa, Laguna.[6]

After the filing of said criminal case, respondent met with Spouses Victory. Respondent proposed to reduce her obligation from PhP 8.3 Million to PhP 7.5 Million in staggered payments, to which Spouses Victory agreed. Respondent then issued three postdated checks in the amount of PhP 300,000 each. However, said checks bounced.[7]

Report and Recommendation of the Integrated Bar of the Philippines Commission on Bar Discipline

The Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline (CBD) found that respondent indeed lured Spouses Victory in entering into a series of financial transactions with a promise of return of profit. Respondent, however, failed to deliver such promise. On such premise, the IBP-CBD recommended respondent's suspension, to wit:

> On the basis of the foregoing, it is respectfully recommended that respondent Atty. Marian Jo S. Mercado be SUSPENDED for SIX (6) MONTHS from the practice of law.[8]

Resolutions of the IBP Board of Governors

On March 20, 2013, the IBP Board of Governors issued Resolution No. XX-2013-199, which reads:

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[5] *Id*. at 98

[6] *Id*. at 96.

[7] *Id*. at 99.

[8] *Id*. at 101.

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering Respondent's violation of Canon 7 of the Code of Professional Responsibility for evading the settlement of her financial obligations to the complainants and for not bothering to appear in the investigation of this case, Atty. Marian Jo S. Mercado is hereby* ***DISBARRED****.*[9] (Emphasis supplied)

Respondent filed a motion for reconsideration,[10] which was denied in Resolution No. XXI-2014-158, to wit:

RESOLVED to DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. However, considering that Respondent is currently settling her financial obligations to Complainants and very apologetic and granting her good faith in her investment transaction with Complainants, Resolution No. XX-2013-199 dated March 20, 2013 is hereby ***AFFIRMED, with modification****, and accordingly the penalty earlier imposed on Atty. Marian Jo S. Mercado is hereby reduced to* ***SUSPENSION*** *from the practice of law for one (1) year.*[11] (Emphasis supplied)

Issue

Should the respondent be held administratively liable based on the allegations in the pleadings of all parties on record?

Our Ruling

Emphatically, a lawyer shall at all times uphold the integrity and dignity of the legal profession. The bar should maintain a high standard of legal proficiency as well as honesty and fair

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[9] *Id*. at 94.

[10] *Id*. at 102-110.

[11] *Id*. at 115.

dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients.[12] Canon 1, Rule 1.01, and Canon 7 provides:

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.

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

Exercising its disciplinary authority over the members of the bar, this Court has imposed the penalty of suspension or disbarment for any gross misconduct that a lawyer committed, whether it is in his professional or in his private capacity. Good character is an essential qualification for the admission to and continued practice of law. Thus, any wrongdoing, whether professional or non-professional, indicating unfitness for the profession justifies disciplinary action.[13]

In this case, it is without dispute that respondent has an outstanding obligation with Spouses Victory, as the latter's investments which they coursed through the respondent fell through. To make matters worse, respondent issued several checks to settle her obligation; unfortunately, said checks bounced.

As a lawyer, respondent is expected to act with the highest degree of integrity and fair dealing. She is expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. She must, at

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[12] *Atty. Alcantara, et al. v. Atty. De Vera*, A.C. No. 5859, November 23, 2010.

[13] *Sosa v. Atty. Mendoza*, A.C. No. 8776, March 23, 2015.

all times, faithfully perform her duties to society, to the bar, to the courts and to her clients, which include prompt payment of financial obligations.[14]

It must be considered that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system.[15]

We cannot exempt respondent from liability just because she encountered financial difficulties in the course of her investment deals. Respondent even admitted that she continued to do business despite such financial hardships; as such, her monetary obligations with different investors accumulated at an alarming rate. In an attempt to settle her obligations, respondent issued checks, which all bounced.

To Our mind, the actuations of respondent fell short of the exacting standards expected of every member of the bar.

In this case, while respondent admitted her responsibility and signified her intention of complying with the same, We cannot close our eyes to the fact that respondent committed infractions. To uphold the integrity of the legal profession, We deem it proper to uphold the findings as well as the sanction imposed by the IBP Board of Governors.

WHEREFORE, premises considered, We resolve to **SUSPEND** Atty. Marian Jo S. Mercado from the practice of law for **one (1) year** to commence immediately from the receipt of this Decision, with a **WARNING** that a repetition of the same or similar offense will warrant a more severe penalty.

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[14] *Id*., citing *Yuhico v. Atty. Gutierrez*, A.C. No. 8391, November 23, 2010.

[15] *Barrientos v. Atty. Libiran-Meteoro*, A.C. No. 6408, August 31, 2004, 437 SCRA 209, 216.

Let copies of this Decision be furnished all courts, the Office of the Bar Confidant, and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is directed to append a copy of this Decision to respondent's record as member of the Bar.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. P-06-2253. July 12, 2017]
(Formerly A.M. No. 06-9-297-MTC)

THE OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ELIZABETH R. TENGCO, CLERK OF COURT II, MUNICIPAL TRIAL COURT, STA. CRUZ, LAGUNA,** *respondent.*

[A.M. No. P-07-2360. July 12, 2017]
(Formerly OCA IPI No. 06-2427-P)

JUDGE ELPIDIO R. CALIS, *complainant, vs.* **ELIZABETH R. TENGCO, CLERK OF COURT II, MUNICIPAL TRIAL COURT, STA. CRUZ, LAGUNA,** *respondent.*

[A.M. No. P-13-3157. July 12, 2017]
(Formerly A.M. No. 12-4-30-MTC)

THE OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ELIZABETH R. TENGCO, FORMER**

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[*] Designated Fifth Member of the Third Division per Special Order No. 2461 dated July 10, 2017 *vice* Associate Justice Bienvenido L. Reyes.

CLERK OF COURT II, MUNICIPAL TRIAL COURT, STA. CRUZ, LAGUNA, *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; MANDATED TO TIMELY DEPOSIT JUDICIARY COLLECTIONS AS WELL AS TO SUBMIT MONTHLY FINANCIAL REPORTS ON THE SAME; FAILURE OF THE CLERK OF COURT TO REMIT COURT FUNDS IS TANTAMOUNT TO GROSS NEGLECT OF DUTY, DISHONESTY AND GRAVE MISCONDUCT.— As held in *Office of the Court Administrator v. Panganiban*,Clerks of Court, as custodians of court funds and revenues, have the duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody. Such functions are highlighted by OCA Circular Nos. 50-95 and 113-2004 and Administrative Circular No. 35-2004, which mandate Clerks of Court to timely deposit judiciary collections as well as to submit monthly financial reports on the same. And failure of the Clerk of Court to remit court funds is tantamount to *gross neglect of duty, dishonesty* and *grave misconduct.*

2. ID.; ID.; ID.; ID.; AS DESIGNATED CUSTODIAN OF THE COURT'S FUNDS, REVENUES, RECORDS, PROPERTIES AND PREMISES, THE CLERKS OF COURTS AND THOSE ACTING IN THIS CAPACITY SHALL BE ACCOUNTABLE FOR ANY LOSS, SHORTAGE, AND DESTRUCTION OR IMPAIRMENT OF THOSE FUNDS AND PROPERTY.— It must be emphasized that the safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. Clerks of Courts and those acting in this capacity perform a delicate function as designated custodian of the court's funds, revenues, records, properties and premises. Hence, any loss, shortage, and destruction or impairment of those funds and property makes them accountable.

3. ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY, DISHONESTY AND GRAVE MISCONDUCT MERIT THE SUPREME PENALTY OF DISMISSAL.—Following the Court's ruling in *Office of the Court Administrator v. Panganiban*, Tengco's actions and her continued refusal to make satisfactory explanations thereto make her liable for gross neglect of duty, dishonesty and grave misconduct, which merit the supreme penalty of dismissal. In view, however, of the Resolution dated August 15, 2007 wherein Tengco was already dropped from the service and her position declared vacant, the penalty of dismissal can no longer be imposed. Further, the Decision dated April 7, 2010 of the Court in A.M. No. P-07-2338 already barred her from future employment in any branch or instrumentality of the government, including government-owned or controlled corporations. Therefore, all that is left for the Court to do is process the remaining balance of previously computed monetary value of Tengco's earned leave credits to partly answer for her financial accountabilities to the Court; and direct the OCA to finally initiate criminal proceedings against her posthaste.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

These consolidated administrative matters arose from (***i***) the Memorandum dated March 30, 2006 of Judge Elpidio R. Calis (Judge Calis), Presiding Judge, Municipal Trial Court (MTC), Sta. Cruz, Laguna addressed to then Court Administrator, now Associate Justice of the Court, Honorable Presbitero J. Velasco, Jr., recommending that Ms. Elizabeth R. Tengco (Tengco), Clerk of Court II, MTC, Sta. Cruz, Laguna be suspended from work; that her salaries and other benefits be withheld; and that an immediate financial audit of her books of accounts be undertaken; and (***ii***) the Financial Audit conducted on the Books of Accounts of Tengco, the designated custodian of court funds, during the period of April 1, 2000 to March 26, 2006.

Antecedents

In a Memorandum dated February 27, 2006, Judge Calis directed Tengco to explain the following:

1. Failure to deposit Fiduciary Fund Collection;
2. Delayed (sic) in the Release of Cash Bond;
3. Failure to prepare and submit your Statement of Unwithdrawn Fiduciary Fund; [and]
4. Failure to explain the alleged wrong assessment of filing fees of Violation of BP 22 under Criminal Cases (sic) Nos. 32872 to 32874.[1]

The Memorandum was issued as a result of –

[A] random checking and comparison of Unwithdrawn Cash Bond available on [record] and Unwithdrawn Cash Deposit as reflected in the Xerox copies of the Fiduciary Bank Book reveals that there are Fiduciary Fund Collection duly receipted posted by the accused for the period of 2004-2005 that were not deposited.

Furthermore, since the alleged wrong assessment of the filing fees you made in the Violation of BP 22 under Criminal Cases (sic) Nos. 32782 to 32784 and came to the attention of the Court last December 2005 and after confronting you, and directed to explain, you failed up to the present.[2]

Criminal Case Nos. 32782-84 involved the violation of Batas Pambansa Bilang 22 by the spouses Edwina and Ferdinand Dator before the MTC, Sta. Cruz, Laguna. The complaint was filed by one Jonathan Rebong (Rebong) and his mother. According to Rebong, Tengco required him to pay ₱400,000.00, instead of just ₱75,525.00, as filing fees for the two complaints.[3]

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[1] *Rollo* (A.M. No. P-07-2360), p. 17.

[2] *Id*.

[3] On April 11, 2006, Rebong filed a complaint-affidavit against Tengco before the OCA. He alleged that he asked Tengco for his official receipts. Tengco, however, could only give him photocopies of the supposed receipts; and when pressed for the originals thereof, she claimed that she still needed to enter them in the books and promised to send them to Rebong as soon as possible. But despite repeated demands, Tengco failed to produce and turn over the originals of the official receipts. The aforementioned complaint-affidavit was eventually docketed as **A.M. No. P-07-2338**, a regular administrative matter against Tengco. (*Rollo* [A.M. No. P-13-3157], p. 41.)

Due to the continued absence of Tengco since February 27, 2006, in a letter dated March 1, 2006, Judge Calis wrote the Office of the Court Administrator (OCA) for the immediate conduct of a financial audit of the Books of Accounts of Tengco on the ground that "*there are complaints about the delay of released (sic) of the Fiduciary bond due to the bondsman after the case has been dismissed or decided. Thus, a random checking of [some] approved cash bond duly receipted (sic) by the Clerk of Court and compared to the Fiduciary Bank Book reveals that cash bond are not deposited on time or not deposited at all.*"[4]

In the meantime, Judge Calis designated Ms. Leslie San Juan (San Juan), Court Stenographer, MTC, Sta. Cruz, Laguna as the acting accountable officer of said sala.

On March 9, 2006, Judge Calis issued another Memorandum to Tengco directing her to report to work, otherwise she would be considered AWOL or absent without official leave. However, Tengco still failed to do so.

On March 22, 2006, Judge Calis issued a third Memorandum that (*i*) directed Tengco to submit her monthly report of Judiciary Development Fund (JDF), Special Allowance for the Judiciary Fund (SAJF), and Fiduciary Fund (FF) collections; (*ii*) reminded Tengco to turn over all records in her possession; and (*iii*) reiterated his earlier directive to Tengco to explain the alleged wrong assessment of filing fees in Criminal Case Nos. 32782-84 for violation of Batas Pambansa Blg. 22. But, as with the other earlier memoranda, Tengco still failed to comply thereto.

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[4] *Rollo* (A.M. No. P-06-2253), p. 98.

In consideration of the above, in a Resolution dated July 12, 2006, in A.M. No. 06-5-158-MTC entitled "*Re: Withholding of Salaries and Other Benefits of Ms. Elizabeth R. Tengco, Clerk of Court, MTC, Sta. Cruz, Laguna,*" the Court resolved to withhold the salaries and benefits of Tengco for non-submission of Daily Time Records/Bundy Cards until compliance is made pursuant to Sec. 50, Rule XVI, CSC MC No. 41, s. 1998 of the Omnibus Rules on Leave. Further, the CMO-OCA formed a financial audit team to look into the books of account of MTC, Sta. Cruz, Laguna *vis-à-vis* any accountability of Tengco from April 1, 2000 to February 28, 2006. (*Id.* at 82.)

Re: A.M. No. P-06-2253 (formerly A.M. No. 06-9-297-MTC [Re: Partial Report on the Financial Audit Conducted on the Books of Accounts of Ms. Elizabeth R. Tengco, Clerk of Court II, Municipal Trial Court, Sta. Cruz, Laguna])

Acting on the letter of Judge Calis dated March 1, 2006, the Court Management Office (CMO)-OCA formed a Financial Audit Team to look into the Books of Accounts of the MTC, Sta. Cruz, Laguna *vis-à-vis* the accountability of Tengco during the period that she was the Clerk of Court of said sala, from April 1, 2000 to February 28, 2006.

The Financial Audit Team's Partial Report of said financial audit was docketed as A.M. No. 06-9-297-MTC.

In a Memorandum dated August 23, 2006, the OCA adopted and recommended the approval of the Partial Report containing the following findings and recommendations:

SUMMARY OF CASH ACCOUNTABILITIES OF MS. ELIZABETH R. TENGCO AS OF MARCH 31, 2006

FUND	AMOUNT
Judiciary Development Fund	₱619,521.39
Special Allowance for the Judiciary Fund	143,079.60
Clerk of Court General Fund	64,866.00
Clerk of Court Fiduciary Fund	1,326,503.91
Philippine Mediation Fund	5,500.00
TOTAL	**₱2,159,470.90**

The findings and recommendation of the team are hereby adopted and recommend approval thereof[,] to wit:

1. This Report be docketed as a regular administrative complaint against Ms. Elizabeth Tengco, Clerk of Court II, Municipal Trial Court, Sta. Cruz, Laguna;

2. MS. ELIZABETH TENGCO, Clerk of Court of the Municipal Trial Court (MTC), Sta. Cruz, Laguna be:

(a) DIRECTED to:

a.1 RESTITUTE the amounts of ₱619,521.39, ₱143,079.60, ₱64,866.00, ₱746,603.91 and ₱5,500.00 representing the shortages in the JDF, SAJF, GF, Fiduciary Fund and Philippine Mediation Fund, respectively, by depositing said amounts to their respective accounts, furnishing the Fiscal Monitoring Division, CMO-OCA, with the machine validated deposit slips as proof of remittance x x x;

x x x x x x x x x

a.2 EXPLAIN in writing within the period of fifteen days (15) from notice the ff:

a.2.1) why she incurred the above shortages in her collections;

a.2.2) the failure to remit her collections on time for the Fiduciary Fund as follows:

O.R. No.	Date of Collection	Date Deposited	Amount	Period Delayed
16370583	7/19/2004	3/20/2006	₱3,000.00	1 yr. & 8 months
17897401	7/19/2004	3/20/2006	1,000.00	1 yr. & 8 months
	8/4/2004	3/20/2006	500.00	1 yr., 7 months & 16 days
17897453 & 55	8/9/2004	3/20/2006	1,000.00	1 yr., 7 months & 11 days
17897469	8/17/2004	3/20/2006	500.00	1 yr., 7 months & 3 days
17897595 to 600	10/5/2004	3/20/2006	24,000.00	1 yr., 5 months & 15 days
17899126	2/9/2005	3/20/2006	6,000.00	1 yr., 1 month & 11 days
862534	5/3/2005	3/20/2006	4,000.00	10 months & 17 days
862536	5/4/2005	3/20/2006	4,500.00	10 months & 16 days
862658	6/1/2005	3/20/2006	5,000.00	9 months & 19 days
862728	7/18/2005	3/20/2006	500.00	8 months & 2 days
1325177	10/25/2005	3/20/2006	6,000.00	4 months & 23 days

1325385 to 86	9/21/2005	3/20/2006	5,500.00	5 months
1325375	9/21/2005	3/20/2006	3,000.00	5 months
1325063 to 64	7/21/2005	3/20/2006	6,000.00	7 months
1325159	10/27/2005	3/20/2006	6,000.00	4 months & 25 days
1325171	10/20/2005	3/20/2006	4,000.00	5 months
16371086	12/5/2005	3/20/2006	500.00	3 months & 15 days
1325461	12/13/2005	3/20/2006	500.00	3 months & 7 days
17897450	8/6/2004	3/7/2006	2,000.00	1 yr. & 7 months
17897459	8/10/2004	3/7/2006	1,500.00	1 yr., 6 months & 25 days
17897464	8/13/2004	3/7/2006	2,000.00	1 yr., 6 months & 22 days
17897479	8/23/2004	3/7/2006	2,500.00	1 yr., 6 months & 12 days
17897503	9/3/2004	3/7/2006	6,000.00	1 yr., 6 months & 4 days
17897533	9/10/2004	3/7/2006	1,000.00	1 yr., 5 months & 25 days
1325352	9/13/2004	3/7/2006	10,000.00	1 yr., 5 months & 22 days
17897543	9/14/2004	3/7/2006	3,000.00	1 yr., 5 months & 21 days
17897562	9/20/2004	3/7/2006	15,000.00	1 yr., 5 months & 15 days
17897590	10/4/2004	3/7/2006	3,000.00	1 yr., 5 months & 3 days
17898902	10/6/2004	3/7/2006	3,000.00	1 yr., 5 months & 1 day
17898994 to 95	12/6/2004	3/7/2006	13,000.00	1 yr., 3 months & 1 day
17899064	1/11/2005	3/7/2006	3,000.00	1 yr., 1 month & 20 days
17899074	1/12/2005	3/7/2006	3,000.00	1 yr., 1 month & 19 days
20989227 to 229	2/22/2005	3/7/2006	9,000.00	1 yr. & 13 days
433924	3/28/2005	3/7/2006	2,000.00	11 months & 7 days
1325366 to 68	9/14/2005	3/7/2006	30,000.00	5 months & 21 days

a.3 SUBMIT to the Fiscal Monitoring Division, CMO-OCA the following:

a.3.1) Machine validated deposit slips in item 2.a.1;

a.3.2) Cashbook, Deposit Slips and Monthly reports for all funds and triplicate official receipts issued for

fiduciary funds from April 1, 2000 to February 28, 2006;

a.3.3) the ACKNOWLEDGMENT RECEIPTS, WITHDRAWAL SLIPS AND ORIGINAL OFFICIAL RECEIPTS of the bonds in the dismissed cases/undocumented withdrawals as enumerated in Annex "K" of this report amounting to ₱579,900.00 otherwise this will form part of her accountabilities;

a.3.4) Deposit slips as reflected in the subsidiary ledgers of the Accounting Division, FMO-OCA amounting to ₱935,774.01 (Annex "P-1"), ₱142,928.20 (Annex "Q-1") and ₱52,887.00 (Annex "R-1") for Judiciary Development Fund, Special Allowance for the Judiciary Fund and General Fund, respectively, otherwise this will form part of her accountabilities; and

a.3.[4]) The following missing and unaccounted official receipts:

Official Receipts No.	Quantity	Date Requisitioned/Remarks
10995980 – 10996000	21 pieces	Beg. Inventory of unused OR's as of 4/27/00
11310788 – 11310800	13 pieces	Beg. Inventory of unused OR's as of 4/27/00
11794589 – 11794600	12 pieces	Beg. Inventory of unused OR's as of 4/27/00
11310632 – 11310650	19 pieces	Beg. Inventory of unused OR's as of 4/27/00
11793429 – 11793450	22 pieces	Beg. Inventory of unused OR's as of 4/27/00
13869601 – 13869650	1 booklet	November 29, 2000
13871101 – 13871150	1 booklet	November 29, 2000
14899801 – 14899850	1 booklet	July 12, 2001
15361701 – 15361750	1 booklet	September 21, 2001
15918051 – 15918100	1 booklet	February 6, 2002
16369951 – 16370000	1 booklet	April 30, 2002
16370351 – 16370400	1 booklet	April 30, 2002
16370701 – 16370750	1 booklet	April 30, 2002
16370951 – 16371000	1 booklet	April 30, 2002
16371051 – 16371100	1 booklet	April 30, 2002

17897251 – 17897750	10 booklets	March 5, 2003
17898901 – 17899250	7 booklets	March 5, 2003
20987801 – 20987850	1 booklet	August 12, 2004
20989201 – 20989250	1 booklet	August 12, 2004
433901 – 433950	1 booklet	January 10, 2005
2044001 – 2046000	40 booklets	July 6, 2005
2955201 – 2956450	25 booklets	November 11, 2005
862501 – 862750	5 booklets	
12571851 – 12571900	1 booklet	April 07, 2000
12890351 – 12890400	1 booklet	May 22, 2000
433951 – 434000	1 booklet	January 10, 2005
2046001 – 2046200	4 booklets	July 06, 2005
2046301 – 2046400	2 booklets	July 06, 2005
1325051 – 1325500	9 booklets	
Total	118 booklets & 87 pieces	

3. Judge Calis, Presiding Judge, MTC, Sta. Cruz, Laguna, be DIRECTED to cause the personal delivery of the resolution of this Court to Ms. Elizabeth Tengco at her home address and submit proof of such service within ten (10) days from notice.

4. A hold Departure Order be ISSUED to prevent Ms. Tengco from leaving the country.[5]

By Resolution[6] dated October 9, 2006, the Court adopted the recommendation of the OCA. We also directed the Legal Office of the OCA to file the appropriate case against Tengco. The Partial Report was re-docketed as A.M. No. P-06-2253.

Tengco was furnished copies of the above-mentioned Resolution and Hold Departure Order at her addresses on record but the same were returned unserved with the notations "*RTS-moved out*" and "*RTS-addressee abroad nobody to receive.*"

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[5] *Rollo* (A.M. No. P-06-2253), pp. 4-9.

[6] *Id*. at 231-236.

Similarly, in a Manifestation dated October 31, 2006, Judge Calis informed the Court that the Process Server of the MTC, Sta. Cruz, Laguna made two attempts to personally serve the subject Resolution but there was no one inside the premises on both times; hence, he was forced to leave a copy thereof in the mailbox.[7]

***Re: A.M. No. P-07-2360* (formerly OCA IPI No. 06-2427-P [Re: Judge Elpidio R. Calis v. Elizabeth Tengco, Clerk of Court, MTC, Sta. Cruz, Laguna])**

In a Memorandum dated March 30, 2006 to the OCA, Judge Calis recommended the following actions against Tengco:

1. Request for SUSPENSION of Elizabeth R. Tengco;
2. WITH[H]OLDING of her salary and other benefits;
3. Declaring her absent without [official] leave (AWOL);
4. Reiterating further the request for immediate auditing as reflected in the letter of the herein presiding judge dated March 1, 2006 and indorsed by the Executive Judge, Hon. Mary Ann Enrile Corpuz Manalac on March 1, 2006 and received by the Fiscal Monitoring Division on March 3, 2006 and also the Office of the Deputy Court Administrator Jose P. Perez on March 3, 2006 also; and
5. Other appropriate actions under the premises.[8]

Judge Calis alleged that he had no other option but make the abovestated recommendations in view of Tengco's refusal to comply with his directive to explain the non-submission of Monthly Report of JDF, SAJ and Fiduciary Collections for the month of February 2006 and other matters pertaining to her obligations as clerk of court.

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[7] *Id*. at 298-299.

[8] *Rollo* (A.M. No. P-07-2360), p. 2.

The OCA treated the foregoing Memorandum as an administrative complaint for grave misconduct and dereliction of duty against Tengco, and docketed it as OCA IPI No. 06-2427-P entitled "*Judge Elpidio R. Calis v. Elizabeth R. Tengco, Clerk of Court II, MTC, Sta. Cruz, Laguna.*"

Several times Tengco was directed to comment on the administrative complaint against her, but all Indorsements sent to her address on record were also returned unserved with the notation "*RTS-Moved Out.*" Note that it appeared on record, however, that Tengco filed a letter dated March 8, 2006 (with attachments) before the Leave Division-OCA, wherein she manifested that she was filing her Daily Time Record (DTR) for the month of February 2006, an Application for Leave[9] duly signed by Judge Calis and a Medical Certificate.

When asked to comment on Tengco's March 8, 2006 letter-manifestation with attachments, Judge Calis admitted signing Tengco's Application for Leave, but he clarified that it was obtained through fraud, *i.e.*, he signed it way back in November 2005 upon Tengco's representation that the same would be used relative to the latter's forced leave credits in 2005.[10]

In a Memorandum dated June 14, 2007, the OCA made the following evaluation and recommendation, to wit:

> Respondent's silence and inaction on the directive of complainant can be misinterpreted as admission of guilt. Defying the express directive of the complainant to explain her non-submission of her report on financial records, she chose not to explain, to the prejudice of the service.
>
> Time and again the Court has pronounced that Public Officers must at all times be accountable to the people, serve them with utmost degree of responsibility, integrity, loyalty and efficiency. A court

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[9] From February 27-April 18, 2006, broken down as follows forced Leave for 5 working days, sick leave for 15 working days and vacation leave for 15 working days (*Id*. at 24).

[10] Judge Calis's reply was reiterated in a 2nd Indorsement dated December 19, 2006. (*Rollo* [A.M. No. P-07-2360], pp. 48-50.)

employee's AWOL for a prolonged period of time constitutes conduct prejudicial to the best interest of the public service and warrants the penalty of dismissal from the service with forfeiture of benefits.

x x x x x x x x x

RECOMMENDATION: x x x

1. That instant administrative complaint be re-docketed as a regular administrative matter;

2. The respondent[,] Elizabeth R. Tengco, be DROPPED from the service and her position declared vacant; [and]

3. This instant administrative complaint be incorporated to A.M. No. P-06-2253 (OCA vs. Ms. Elizabeth R. Tengco, Clerk of Court II, MTC, Sta. Cruz, Laguna).[11]

By Resolution[12] dated August 15, 2007, the Court adopted the recommendation of the OCA. The administrative complaint was re-docketed as A.M. No. P-07-2360 and consolidated with A.M. No. P-06-2253.

And in a Resolution[13] dated December 8, 2008, taking note that copies of its Hold Departure Order issued against Tengco that were sent to her given addresses were all returned unserved with the notations "*RTS addressee abroad nobody to receive*" or "*RTS-moved out,*" the Court resolved to direct the Legal Office-OCA to file the appropriate criminal case against Tengco.

In a Memorandum dated July 5, 2011, however, the OCA recommended that the filing of a criminal case against Tengco be held in abeyance pending the completion of the reconciliation of all accounts maintained by the MTC, Sta. Cruz, Laguna. The OCA explained that in another round of financial audit conducted on February 15-26, 2011, the Financial Audit Team unearthed more discrepancies relative to Tengco's financial accounts. The subject recommendation was approved and adopted by the Court on August 22, 2011.

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[11] *Rollo* (A.M. No. P-07-2360), pp. 83-84.

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

[13] *Id.* at 88.

***Re: A.M. No. P-13-3157* (formerly A.M. No. 12-4-30-MTC [Final Report on the Financial Audit conducted on the books of accounts of the Municipal Trial Court, Sta. Cruz, Laguna])**

In a Memorandum dated March 9, 2012, the OCA submitted its Final Report on the financial audit conducted on the Books of Accounts of the MTC, Sta. Cruz, Laguna for the period of April 1, 2000 to March 31, 2006 and April 1, 2006 to January 31, 2011, finding that –

I. For the Inventory of Used and Unused Official Receipts:

A total of One Hundred Eighteen (118) Booklets & Eighty-Seven (87) Pieces of Official Receipts with original, duplicate and triplicate copies were missing. These unaccounted Official Receipts were already reported in the partial report as missing during the accountability period of Ms. Elizabeth R. Tengco.

The Missing Official Receipts with series number are as follows:

Official Receipts No.	Quantity	Date Requisitioned/Remarks
10995980 – 10996000	21 pieces	Beg. Inventory of unused OR's as of 4/27/00
11310788 – 11310800	13 pieces	Beg. Inventory of unused OR's as of 4/27/00
11794589 – 11794600	12 pieces	Beg. Inventory of unused OR's as of 4/27/00
11310632 – 11310650	19 pieces	Beg. Inventory of unused OR's as of 4/27/00
11793429 – 11793450	22 pieces	Beg. Inventory of unused OR's as of 4/27/00
13869601 – 13869650	1 booklet	November 29, 2000
13871101 – 13871150	1 booklet	November 29, 2000
14899801 – 14899850	1 booklet	July 12, 2001
15361701 – 15361750	1 booklet	September 21, 2001
15918051 – 15918100	1 booklet	February 6, 2002
16369951 – 16370000	1 booklet	April 30, 2002
16370351 – 16370400	1 booklet	April 30, 2002

16370701 – 16370750	1 booklet	April 30, 2002
16370951 – 16371000	1 booklet	April 30, 2002
16371051 – 16371100	1 booklet	April 30, 2002
17897251 – 1789750	10 booklets	March 5, 2003
17898901 – 17899250	7 booklets	March 5, 2003
20987801 – 20987850	1 booklet	August 12, 2004
20989201 – 20989250	1 booklet	August 12, 2004
433901 – 433950	1 booklet	January 10, 2005
2044001 – 2046000	40 booklets	July 6, 2005
2955201 – 2956450	25 booklets	November 11, 2005
862501 – 862750	5 booklets	
1325051 – 1325500	9 booklets	
Total	117 booklets & 87 pieces	

II. For the Fiduciary Fund (FF):

Scope of Audit (First Audit) – April 1, 2000 to March 31, 2006

The audit of the court's Fiduciary Fund account showed an Unwithdrawn Fiduciary Fund outstanding balance of One Million Eighty-Five Thousand Six Hundred Thirty-Nine Pesos (₱1,085,639.00) as of March 31, 2006 and the reconciliation of the said balance against the court's LBP Savings Account disclosed a final shortage of Seven Hundred Seventy-Four Thousand Six Hundred Three Pesos & 91/100 (₱774,603.91). A detailed computation is presented below:

Beg. Balance of Unwithdrawn Fiduciary Fund as of 3/31/2000	₱ 332,500.00
Add: Cash bond collections dated 8/6/1997 of Case No. 23866 under OR No. 7786133 but excluded in the beginning balance of Unwithdrawn Fiduciary Fund as of 3/31/2000	6,000.00
Adjusted Beg. Balance of Unwithdrawn Fiduciary Fund as of 3/31/2000	₱ 338,500.00
Add: Collections (April 1, 2000 to March 31, 2000)	1,327,039.00
Total	[₱]1,637,539.00
Less: Withdrawals	579,900.00
Bal. of Unwithdrawn Fiduciary Fund as of 3/31/2006	₱1,085,639.00

Bank Balance as of March 31, 2006	₱ 348,036.29
Less: Adjustment, Bank error dated September 3, 2004	2,000.00
Balance	₱ 346,036.29
Less: Unwithdrawn Interest (net of tax) as of 3/31/2006	
Jan. 1998-March 31, 2000 (previous audit) ₱ 15,612.36	
April 1, 2000-March 31, 2006 19,388.84	35,001.20
Adjusted Bank Balance as of March 31, 2006	₱ 311,035.09
Balance of Unwithdrawn Fiduciary Fund as of 3/31/2006	₱1,085,639.00
Adjusted Bank Balance as of March 31, 2006	311,035.09
Balance of Accountability – shortage	**₱ 774,603.91**

Scope of Audit (Second Audit) – April 1, 2006 to January 31, 2011

Beg. Balance of Unwithdrawn Fiduciary Fund as of 4/1/2006	₱1,085,639.00
Add: Collections (April 1, 2006 to January 31, 2011)	591,000.00
Total	[₱]1,676,639.00
Less: Withdrawals (April 1, 2006 to January 31, 2011)	616,500.00
Bal. of Unwithdrawn Fiduciary Fund as of January 31, 2011 ₱1,060,139.00	
Bank Balance as of Jan. 31, 2011	₱ 361,185.83
Less: Adjustment, Bank error dated September 3, 2004	2,000.00
Balance	₱ 359,185.83
Less: Unwithdrawn Interest (net of tax) as of 3/31/2006	
Jan. 1998 – March 31, 2006 ₱ 35,001.20	
Less: Withdrawal of interest 350.46	34,650.74
Balance	₱ 311,035.09
Less: Sheriff's Trust Fund collections deposited to this account	39,000.00
Adjusted Bank Balance as of January 31, 2011	₱ 285,535.09
Balance of Unwithdrawn Fiduciary Funds as of January 31, 2011	₱1,060,139.00
Adjusted Bank Balance as of January 31, 2011	285,535.09
Balance of Accountability – shortage	**₱ 774,603.91**

In sum, the balance of accountabilities of Ms. Tengco for Fiduciary Fund was increased by Thirty-Eight Thousand Pesos (₱38,000.00) from ₱746,603.91 in the partial report to ₱774,603.91 as of January 31, 2011 due to cash bonds received in Case Nos. SC 955-32873 & 32040, amounting to ₱12,000.00 and ₱16,000.00, respectively, which were not included in the lists of cash bond collections during the period of accountability of Ms. Tengco.

The outstanding deposits per bank statement in the fiduciary fund account during the accountability period of the former Clerk of Court, Ms. Elizabeth R. Tengco was already depleted by ₱29,964.91 as of January 31, 2011, computed as follows:

Bank Balance as of March 31, 2006		[₱] 346,036.29
Less (Adjustments):		
Unwithdrawn Interests-[Jan.] 1998 to [Mar.] 2006	[₱]35,001.20	
Deposits (Ms. Leslie San Juan collections)	16,500.00	51,501.20
Adjusted Bank deposits – Ms. Tengco's term		[₱] 294,535.09
Withdrawals of cashbond – OR's issued by Ms. Tengco		[₱] 326,500.00
Adjusted Bank deposits – Ms. Tengco's term		294,535.09
Over-withdrawal		**[₱] 29,964.91**

III. For the Sheriff's Trust Fund (STF):

The examination of this fund disclosed neither shortage nor overage, computed as follows:

Beg. Unwithdrawn Sheriff's Trust Fund	[₱] -
Add: Total Collections (April 1, 2010 to January 31, 2011)	39,000.00
Total	[₱] 39,000.00
Less: Withdrawals	
Unwithdrawn Sheriff's Trust Fund as of January 31, 2011	[₱] 39,000.00
Less: Deposited in the FF account	39,000.00
Balance of Accountability	**[₱] 0.00**

IV. Judiciary Development Fund (JDF) – April 1, 2000 to January 31, 2011

For Ms. Elizabeth R. Tengco – April 1, 2000 to February 26, 2006

Total Collections	₱ 1,556,754.60
Less: Total Deposits	936,603.21
Balance of Accountability	₱ 620,151.39
Less: Payments from terminal leave of Ms. Tengco	50,300.00
Final Accountability	**₱ 569,851.39**

An increase by [₱]630.00 from the initial report of ₱619,521.39 to ₱620,151.39 of the balance of accountability of Ms. Elizabeth R. Tengco, due to erroneous footings of deposit in the reconciliation statement of this account.

For Ms. Leslie San Juan – March 1, 2006 to January 31, 2011

Total Collections		₱ 379,614.06
Less: Total Deposits		380,994.91
Balance		₱ (1,380.85)
Less: Deposit in transit on 2/2/2011	96.00	
Cash shortage incurred by Ms. San Juan,		

Deposited on February 24, 2011	19.20	115.20
Balance		[₱] (1,496.05)
Less: Erroneous deposits – SAJF collections deposited to this acct.		(1,494.80)
Over-remittance		**[₱](1.25)**

The over-remittance during the accountability period of Ms. Leslie San Juan was due to Special Allowance for the Judiciary Fund (SAJF) collections erroneously deposited to this account and over-deposit of collection for the period April 2008 amounting to [₱]1,494.80 and [₱]1.25, respectively.

V. Special Allowance for the Judiciary Fund (SAJF) – Nov. 11, 2003 to January 31, 2011:

For Ms. Elizabeth R. Tengco – November 11, 2003 to February 26, 2006:

Total Collections	₱ 292,748.60
Less: Total Deposits	142,928.20
Balance of Accountability	₱ 149,820.40
Less: Payments from terminal leave of Ms. Tengco	25,225.00
Final Accountability	**₱ 124,595.40**

For Ms. Leslie San Juan – March 1, 2006 to January 31, 2011

Total Collections	₱ 865,885.80
Less: Total Deposits	864,068.80
Balance	₱ 1,817.00
Less: Deposit in transit on 2/2/2011	404.00
Balance	[₱] 1,413.00
Less: Erroneous deposits to JDF account	1,494.80
Over-remittance	**[₱] (81.80)**

VI. Clerk of Court General Fund (COCGF) – April 1, 2000 to November 10, 2003

For Ms. Elizabeth R. Tengco – April 1, 2000 to November 10, 2003

Total Collections	₱ 117,753.00
Less: Total Deposits	52,887.99
Final Accountability - shortage	**₱ 64,866.00**

VII. Philippine Mediation Fund

For Ms. Elizabeth R. Tengco – January 1, 2005 to February 26, 2006

Total Collections	₱ 7,500.00
Less: Total Deposits	6,500.00
Final Accountability - shortage	**₱ 1,000.00**

For Ms. Leslie San Juan – March 1, 2006 to January 31, 2011

Total Collections	₱ 178,000.00
Less: Total Deposits	178,000.00
Final Accountability - shortage	**₱ 0.00**

In sum, the total final accountabilities of Ms. Elizabeth R. Tengco amounted to One Million Five Hundred Thirty Four Thousand Nine Hundred Sixteen Pesos & 70/100 (₱1,534,916.70).

TOTAL ACCOUNTABILITIES

Nature of Funds	Accountabilities
Clerk of Court Fiduciary Fund	₱ 774,603.91
Judiciary Development Fund	569,851.39
Special Allowance for the Judiciary Fund	124,595.40
General Fund	64,866.00
Mediation Fund	1,000.00
TOTAL	**₱ 1,534,916.70**[14]

Taking note of the Decision dated April 7, 2010 of the Court in **A.M. No. P-07-2338,** entitled "*Jonathan A. Rebong v. Elizabeth R. Tengco, Clerk of Court, Municipal Trial Court, Sta. Cruz, Laguna*"[15] finding Tengco liable for gross dishonesty and grave misconduct with the following penalties, *viz.*:

WHEREFORE, we find respondent Elizabeth R. Tengco liable for gross dishonesty and grave misconduct, and order the forfeiture of her retirement benefits. She is **BARRED** from future re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporations.

The Financial Management Office, Office of the Court Administrator is hereby **DIRECTED** to process the terminal leave benefits of respondent, dispensing with the documentary requirements,

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[14] *Rollo* (A.M. No. P-13-3157), pp. 1-5.

[15] 631 Phil. 457, 469-470 (2010).

and **REMIT** to the Municipal Trial Court, Sta. Cruz, Laguna the amounts of ₱50,300.00 representing collections for the JDF and ₱25,225.00 representing collections for the SAJ Fund, or the total amount of ₱75,525.00. The release of the remaining ₱103,080.72 of the terminal leave benefits of respondent shall be held in abeyance pending the resolution of *Judge Elpidio R. Calis v. Elizabeth R. Tengco* and *Office of the Court Administrator v. Elizabeth R. Tengco*.

Respondent Tengco is hereby **DIRECTED to PAY** complainant Jonathan A. Rebong, the ₱324,475.00 excess fees she collected from the latter.

The Legal Division of the Office of the Court Administrator is likewise **DIRECTED to INITIATE** appropriate criminal proceedings against respondent Tengco, with deliberate dispatch.

And with the Court's actions in the consolidated cases of A.M. Nos. P-06-2253 and P-07-2360, the OCA recommended that:

1. This report be docketed as an administrative complaint against former Clerk of Court Elizabeth R. Tengco, MTC, Sta. Cruz, Laguna;

2. The Financial Management Office, Office of the Court Administrator be **DIRECTED** to:

    a. **PROCESS** the remaining balance of the previously computed monetary value of the earned leave credits of respondent Elizabeth R. Tengco, dispensing with the documentary requirements in the amount of ₱103,080.72, and **REMIT** to the Municipal Trial Court, Sta. Cruz, Laguna, as partial restitution of the shortages incurred in the Fiduciary Fund;

    b. **COORDINATE** with the Fiscal Monitoring Division, Court Management Office, (FMD, CMO) OCA, before the release of the checks issued in favor of MTC, Sta. Cruz, Laguna for the FMD, CMO, OCA to prepare the necessary communication to the incumbent Clerk of Court of MTC, Sta. Cruz, Laguna, and to furnish the FMD, CMO, OCA with a copy of the machine validated deposit slip as proof of partial restitution of the shortages incurred in the Fiduciary Fund account, in order to finalize the herein audit; and

> 3. **Ms. Elizabeth R. Tengco,** former Clerk of Court II of the Municipal Trial Court, Sta. Cruz, Laguna, be **DIRECTED** within ten (10) days from notice to **PAY and DEPOSIT** the amount of ₱774,603.991, ₱569,851.39, ₱124,595.40, ₱64,866.00 and ₱1,000.00 representing shortages in the FF, JDF, SAJF, GF and MF, respectively, by depositing said amounts to their respective accounts. [16]

Acting on the findings and recommendation of the OCA, the Court issued a Resolution[17] dated October 21, 2013 noting the foregoing Memorandum Report dated March 9, 2012; re-docketing the case as a regular administrative matter against Tengco; and adopting the recommendations of the OCA relative to the directive to the Financial Management Office (FMO) of the OCA.

On June 21, 2017, the Court consolidated A.M. No. P-13-3157 with A.M. Nos. P-06-2253 and P-07-2360.

The Court's Ruling

The Court sustains the findings and recommendations of the OCA.

As held in *Office of the Court Administrator v. Panganiban*,[18] Clerks of Court, as custodians of court funds and revenues, have the duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody. Such functions are highlighted by OCA Circular Nos. 50-95 and 113-2004 and Administrative Circular No. 35-2004, which mandate Clerks of Court to timely deposit judiciary collections as well as to submit monthly financial reports on the same. And failure of

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[16] *Rollo* (A.M. No. P-13-3157), pp. 5-6.

[17] *Id.* at 52-53.

[18] A.M. No. P-15-3368, November 8, 2016, citing *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan*, 753 Phil. 31, 37 (2015) and *Office of the Court Administrator v. Recio*, 665 Phil. 13, 33 (2011).

the Clerk of Court to remit court funds is tantamount to *gross neglect of duty*, *dishonesty* and *grave misconduct*.

Records disclose in this case that there were missing 118 booklets of official receipts and 87 pieces of official receipts during Tengco's term as Clerk of Court of the MTC, Sta. Cruz, Laguna. From the Final Report of the Financial Audit Team, her total accountabilities amounted to ₱1,534,916.70, consisting of Clerk of Court Fiduciary Fund (₱774,603.91), Judiciary Development Fund (₱569,851.39), Special Allowance for the Judiciary Fund (₱124,595.40), General Fund (₱64,866.00), and Mediation Fund (₱1,000.00). Evidently, Tengco was remiss in her duties to safeguard the receipts and to deposit on time the funds entrusted to her. She likewise failed to comply with Judge Calis's memoranda to explain, among other things, her failure to deposit fiduciary fund collections, to submit monthly report of collections, and to turn over all records in her possession. Her unexplained actions coupled with her absence without official leave lead the Court to conclude that she went into hiding to run away from her accountabilities. Such silence and inaction are indications of guilt. And considering the Decision of the Court in A.M. No. P-07-2338, these additional administrative cases against her speak eloquently of the gravity of her offenses, and should be characterized as gross in nature.

It must be emphasized that the safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. Clerks of Courts and those acting in this capacity perform a delicate function as designated custodian of the court's funds, revenues, records, properties and premises. Hence, any loss, shortage, and destruction or impairment of those funds and property makes them accountable.[19]

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[19] *Office of the Court Administrator v. Dionisio*, A.M. No. P-16-3485, August 1, 2016.

Following the Court's ruling in *Office of the Court Administrator v. Panganiban,*[20] Tengco's actions and her continued refusal to make satisfactory explanations thereto make her liable for gross neglect of duty, dishonesty and grave misconduct, which merit the supreme penalty of dismissal.[21]

In view, however, of the Resolution dated August 15, 2007 wherein Tengco was already dropped from the service and her position declared vacant, the penalty of dismissal can no longer be imposed. Further, the Decision dated April 7, 2010 of the Court in A.M. No. P-07-2338 already barred her from future employment in any branch or instrumentality of the government, including government-owned or controlled corporations. Therefore, all that is left for the Court to do is process the remaining balance of previously computed monetary value of Tengco's earned leave credits to partly answer for her financial accountabilities to the Court; and direct the OCA to finally initiate criminal proceedings against her posthaste.

WHEREFORE, Elizabeth R. Tengco is held liable for gross neglect of duty, dishonesty, and grave misconduct.

The Financial Management Office, Office of the Court Administrator is hereby **DIRECTED** to:

1. **PROCESS** the terminal leave benefits of Tengco, dispensing with the documentary requirements, and **REMIT** to the Municipal Trial Court, Sta. Cruz, Laguna the amounts of ₱103,080.72 representing partial restitution of the shortages in the Fiduciary Fund, and
2. **COORDINATE** with the Fiscal Monitoring Division (FMD, Court Management Office (CMO), OCA, before the release of the checks issued in favor of the MTC, Sta. Cruz, Laguna for the FMD, CMO, OCA to prepare the necessary communication to the incumbent Clerk

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[20] *Supra* note 18.

[21] *Office of the Court Administrator v. Galo*, 373 Phil. 483, 492 (1999), cited in *Office of the Court Administrator v. Dionisio*, *supra* note 19.

of Court of the MTC, Sta. Cruz, Laguna, and to furnish the FMD, CMO, OCA with a copy of the machine validated deposit slip as proof of partial restitution of the shortages incurred in the Fiduciary Fund account, in order to finalize the herein audit.

Elizabeth R. Tengco, former Clerk of Court II of the Municipal Trial Court, Sta. Cruz, Laguna, is **DIRECTED** within ten (10) days from notice to **PAY and DEPOSIT** the amount of ₱774,603.91, ₱569,851.39, ₱124,595.40, ₱64,866.00, and ₱1,000.00 representing shortages in the Clerk of Court Fiduciary Fund, Judiciary Development Fund, Special Allowance for the Judiciary Fund, General Fund, and Mediation Fund, respectively, or a total of **₱1,534,916.70** by depositing said amounts to their respective accounts.

The Legal Division of the Office of the Court Administrator is likewise **DIRECTED to INITIATE** appropriate criminal proceedings against respondent Tengco, with deliberate dispatch.

SO ORDERED.

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

Del Castillo, J., on official leave.

SECOND DIVISION

[G.R. No. 183408. July 12, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **LANCASTER PHILIPPINES, INC.**, *respondent.*

SYLLABUS

1. TAXATION; COURT OF TAX APPEALS (CTA); REPUBLIC ACT NO. 1125 (AN ACT CREATING THE COURT OF

TAX APPEALS); JURISDICTION OF THE COURT OF TAX APPEALS; THE JURISDICTION OF THE CTA IS NOT LIMITED ONLY TO CASES WHICH INVOLVE DECISIONS OR INACTIONS OF THE COMMISSIONER OF INTERNAL REVENUE (CIR) ON MATTERS RELATING TO ASSESSMENTS OR REFUNDS BUT ALSO INCLUDES OTHER CASES ARISING FROM THE NATIONAL INTERNAL REVENUE CODE (NIRC) OR RELATED LAWS ADMINISTERED BY THE BUREAU OF INTERNAL REVENUE (BIR).— The law vesting unto the CTA its jurisdiction is Section 7 of Republic Act No. 1125 *(R.A. No. 1125)* x x x. Under the aforecited provision, the jurisdiction of the CTA is not limited only to cases which involve decisions or inactions of the CIR on matters relating to assessments or refunds but also includes other cases arising from the NIRC or related laws administered by the BIR. Thus, for instance, we had once held that the question of whether or not to impose a deficiency tax assessment comes within the purview of the words "*other matters arising under the National Internal Revenue Code*." The jurisdiction of the CTA on such ***other matters arising under the NIRC*** was retained under the amendments introduced by R.A No. 9282.

2. ID.; ID.; ID.; ID.; ISSUE ON WHETHER THE REVENUE OFFICERS WHO HAD CONDUCTED THE EXAMINATION ON THE TAXPAYER EXCEEDED THEIR AUTHORITY PURSUANT TO THE LETTER OF AUTHORITY MAY BE CONSIDERED AS COVERED BY THE TERMS "OTHER MATTERS" UNDER SECTION 7 OF R.A. NO. 1125, AS AMENDED.— It must be stressed that the assessment of internal revenue taxes is one of the duties of the BIR. x x x. In connection therewith, the CIR may authorize the examination of any taxpayer and correspondingly make an assessment whenever necessary. Thus, to give more teeth to such power of the CIR, to make an assessment, the NIRC authorizes the CIR to examine any book, paper, record, or data of any person. The powers granted by law to the CIR are intended, among other things, to determine the liability of any person for any national internal revenue tax. It is pursuant to such pertinent provisions of the NIRC conferring the powers to the CIR that the petitioner (CIR) had, in this case, authorized its revenue officers to conduct an examination of the books of

account and accounting records of Lancaster, and eventually issue a deficiency assessment against it. From the foregoing, it is clear that the issue on whether the revenue officers who had conducted the examination on Lancaster exceeded their authority pursuant to LOA No. 00012289 may be considered as covered by the terms "other matters" under Section 7 of R.A. No. 1125 or its amendment, R.A. No. 9282. The authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA.

3. **ID.; ID.; ID; ID.; THE COURT OF TAX APPEALS IS NOT BOUND BY THE ISSUES SPECIFICALLY RAISED BY THE PARTIES BUT MAY ALSO RULE UPON RELATED ISSUES NECESSARY TO ACHIEVE AN ORDERLY DISPOSITION OF THE CASE.—** Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads: SECTION 1. *Rendition of judgment*. – x x x In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda, The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter.

4. **ID.; NATIONAL INTERNAL REVENUE CODE (NIRC); TAX ASSESSMENT; A VALID LETTER OF AUTHORITY (LOA) DOES NOT NECESSARILY CLOTHE VALIDITY TO AN ASSESSMENT ISSUED ON IT, AS WHEN THE REVENUE OFFICERS DESIGNATED IN THE LOA ACT IN EXCESS OR OUTSIDE OF THE AUTHORITY GRANTED THEM UNDER SAID LOA; AN ASSESSMENT ISSUED AGAINST A TAXPAYER IS VOID, WHERE THE TAXABLE YEAR COVERED BY THE ASSESSMENT IS OUTSIDE OF THE PERIOD SPECIFIED IN THE LOA.—** The audit process normally commences with the issuance by

the CIR of a Letter of Authority. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a ***particular period***. x x x. [A] valid LOA does not necessarily clothe validity to an assessment issued on it, as when the revenue officers designated in the LOA act in excess or outside of the authority granted them under said LOA. [I]n the earlier case of *CIR v. Sony, Phils., Inc.*, we affirmed the cancellation of a deficiency VAT assessment because, while the LOA covered "***the period 1997*** *and unverified prior years*, " the said deficiency was arrived at based on the records of a later year, from ***January to March 1998***, or using the fiscal year which ended on 31 March 1998. x x x. The present case is no different from *Sony* in that the subject LOA specified that the examination should be for the taxable year 1998 only but the subsequent assessment issued against Lancaster involved disallowed expenses covering the next fiscal year, or the period ending 31 March 1999. x x x. The taxable year covered by the assessment being outside of the period specified in the LOA in this case, the assessment issued against Lancaster is, therefore, void.

5. ID.; ID.; ACCOUNTING METHODS; THE NIRC DOES NOT PRESCRIBE A UNIFORM, OR SPECIFIC, METHOD OF ACCOUNTING; THUS, THE TAXPAYER MAY ADOPT OTHER METHODS OF ACCOUNTING APPROVED BY THE CIR, EVEN WHEN NOT EXPRESSLY MENTIONED IN THE NIRC, IF SUCH METHOD WOULD ENABLE THE TAXPAYER TO PROPERLY REFLECT ITS INCOME; THE CROP METHOD OF ACCOUNTING IS AUTHORIZED UNDER RAM NO. 2-95.— An accounting method is a "set of rules for determining when and how to report income and deductions." The provisions under Chapter VIII, Title II of the NIRC cited above enumerate the methods of accounting that the law expressly recognizes, to wit: (1) Cash basis method; (2) Accrual method; (3) Installment method; (4) Percentage of completion method; and (5) Other accounting methods. Any of the foregoing methods may be employed by any taxpayer so long as it reflects its income properly and such method is used regularly. The peculiarities of the business or occupation engaged in by a taxpayer would

largely determine how it would report incomes and expenses in its accounting books or records. The NIRC does not prescribe a uniform, or even specific, method of accounting. Too, other methods approved by the CIR, even when not expressly mentioned in the NIRC, may be adopted if such method would enable the taxpayer to properly reflect its income. Section 43 of the NIRC authorizes the CIR to allow the use of a method of accounting that in its opinion would clearly reflect the income of the taxpayer. An example of such method not expressly mentioned in the NIRC, but duly approved by the CIR, is the **'crop method of accounting'** authorized under RAM No. 2-95.

6. ID.; ID.; ID.; ID.; A TAXPAYER IS AUTHORIZED TO EMPLOY WHAT IT FINDS SUITABLE FOR ITS PURPOSE SO LONG AS IT CONSISTENTLY DOES SO.— The crop method recognizes that the harvesting and selling of crops do not fall within the same year that they are planted or grown. This method is especially relevant to farmers, or those engaged in the business of producing crops who, pursuant to RAM No. 2-95, would then be able to compute their taxable income on the basis of their crop year. On when to recognize expenses as deductions against income, the governing rule is found in the second sentence of Subsection F cited above. The rule enjoins the recognition of the expense (or the deduction of the cost) of crop production *in the year that the crops are sold* (when income is realized). In the present case, we find it wholly justifiable for Lancaster, as a business engaged in the production and marketing of tobacco, to adopt the crop method of accounting. A taxpayer is authorized to employ what it finds suitable for its purpose so long as it consistently does so, and in this case, Lancaster does appear to have utilized the method regularly for many decades already. Considering that the crop year of Lancaster starts from October up to September of the following year, it follows that all of its expenses in the crop production made within the crop year starting from October 1997 to September 1998, including the February and March 1998 purchases covered by purchase invoice vouchers, are rightfully deductible for income tax purposes in the year when the gross income from the crops are realized.

7. ID.; ID.; ID.; ID.; RAM NO. 2-95; DOES NOT STRICTLY REQUIRE THAT FOR THE EXPENSE TO BE DEDUCTIBLE, THE INCOME TO WHICH SUCH

EXPENSE IS RELATED TO BE REALIZED IN THE SAME YEAR THAT IT IS PAID OR INCURRED.— In essence, the matching concept, which is one of the generally accepted accounting principles, directs that the expenses are to be reported in the same period that related revenues are earned. It attempts to match revenue with expenses that helped earn it. The CIR posits that Lancaster should not have recognized in FY 1999 the purchases for February and March 1998. Apparent from the reasoning of the CIR is that such expenses ought to have been deducted in FY 1998, when they were supposed to be paid or incurred by Lancaster. In other words, the CIR is of the view that the subject purchases match with revenues in 1998, not in 1999. A reading of RAM No. 2-95, however, clearly evinces that it conforms with the concept that the expenses *paid* or *incurred* be deducted in the year in which gross income from the sale of the crops is *realized*. Put in another way, the expenses are matched with the related incomes which are eventually earned. Nothing from the provision is it strictly required that for the expense to be deductible, the income to which such expense is related to be realized in the same year that it is *paid* or *incurred.* As noted by the CTA, the crop method is an unusual method of accounting, unlike other recognized accounting methods that, by mandate of Sec. 45 of the NIRC, strictly require expenses be taken in the same taxable year when the income is '*paid* or *incurred*,' or '*paid or accrued*,' depending upon the method of accounting employed by the taxpayer.

8. ID.; ID.; ID.; REVENUE MEMORANDUM CIRCULAR (RMC) NO. 22-04; WHERE THERE IS CONFLICT BETWEEN THE NIRC INCLUDING ITS IMPLEMENTING RULES AND REGULATIONS, ON ACCOUNTING METHODS AND THE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP), THE FORMER SHALL PREVAIL; THE RAM NO. 2-95 PREVAILS OVER ANY GAAP, INCLUDING THE MATCHING CONCEPT AS APPLIED IN FINANCIAL OR BUSINESS ACCOUNTING.— Even if we were to accept the notion that applying the 1998 purchases as deductions in the fiscal year 1998 conforms with the generally accepted principle of matching cost against revenue, the same would still not lend any comfort to the CIR. Revenue Memorandum Circular *(RMC)* No. 22-04, entitled "*Supplement to Revenue Memorandum Circular*

> *No. 44-2002 on Accounting Methods to be Used by Taxpayers for Internal Revenue Tax Purposes*" dated 12 April 2004, commands that where there is conflict between the provisions of the Tax Code (NIRC), including its implementing rules and regulations, on accounting methods and the generally accepted accounting principles, the former shall prevail. RAM No. 2-95 is clear-cut on the rule on when to recognize deductions for taxpayers using the crop method of accounting. The rule prevails over any GAAP, including the matching concept as applied in financial or business accounting.

APPEARANCES OF COUNSEL

BIR Litigation Division for petitioner.
Ricardo R. Querrer, Jr. for respondent.

D E C I S I O N

MARTIRES, *J.*:

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court seeking to reverse and set aside the 30 April 2008 Decision[2] and 24 June 2008 Resolution[3] of the Court of Tax Appeals (*CTA*) En Banc in CTA EB No. 352.

The assailed decision and resolution affirmed the 12 September 2007 Decision[4] and 12 December 2007 Resolution[5] of the CTA First Division *(CTA Division)* in CTA Case No. 6753.

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[1] *Rollo,* pp. 8-26.

[2] *Id*. at 28-44; Penned by Associate Justice Olga Palanca-Enriquez, and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista and Caesar A. Casanova. Associate Justice Erlinda P. Uy was on official business.

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

[4] *Id*. at 48-56; Penned by Presiding Justice Ernesto D. Acosta, and concurred in by Associate Justices Lovell R. Bautista and Caesar A. Casanova.

[5] *Id*. at 58-60.

THE FACTS

The facts[6] are undisputed.

Petitioner Commissioner of Internal Revenue *(CIR)* is authorized by law, among others, to investigate or examine and, if necessary, issue assessments for deficiency taxes.

On the other hand, respondent Lancaster Philippines, Inc. *(Lancaster)* is a domestic corporation established in 1963 and is engaged in the production, processing, and marketing of tobacco.

In 1999, the Bureau of Internal Revenue *(BIR)* issued Letter of Authority (*LOA*) No. 00012289 authorizing its revenue officers to examine Lancaster's books of accounts and other accounting records for all internal revenue taxes due from ***taxable year 1998 to an unspecified date***. The LOA reads:

SEPT. 30 1999

LETTER OF AUTHORITY

LANCASTER PHILS. INC.
11th Flr. Metro Bank Plaza
Makati City

SIR/MADAM/GENTLEMEN:

The bearer(s) hereof RO's Irene Goze & Rosario Padilla to be supervised by GH Catalina Leny Barrion of the Special Team created pursuant to RSO 770-99 is/are authorized to examine your books of accounts and other accounting records for all internal revenue taxes for the period from taxable year, 1998 to _____, 19__. He is/[t]hey are provided with the necessary identification card(s) which shall be presented to you upon request.

It is requested that all facilities be extended to the Revenue Officer(s) in order to expedite the examination.

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[6] The salient portions are culled from the CTA *En Banc* Decision.

You will be duly informed of the results of the examination upon approval of the report submitted by the aforementioned Revenue Officer(s).[7]

After the conduct of an examination pursuant to the LOA, the BIR issued a *Preliminary Assessment Notice (PAN)*[8] which cited Lancaster for: 1) overstatement of its purchases for the ***fiscal year April 1998*** to ***March 1999***; and 2) noncompliance with the generally accepted accounting principle of proper matching of cost and revenue.[9] More concretely, the BIR disallowed the purchases of tobacco from farmers covered by Purchase Invoice Vouchers (PIVs) for the months of ***February*** and ***March 1998*** as deductions against income for the ***fiscal year April 1998*** to ***March 1999***. The computation of Lancaster's tax deficiency, with the details of discrepancies, is reproduced below:

INCOME TAX:	
Taxable Income per ITR	-0-
Add: Adjustments-Disallowed purchases	11,496,770.18
Adjusted Taxable Income per Investigation	₱11,496,770.18
INCOME TAX DUE – Basic	
April 1 – December 31, 1998 (9/12 x ₱11,496,770.18 x 34%)	₱ 2,913,676.4
January 1 – March 31, 1999 (3/12 x ₱11,496,770.18 x 33%)	948,483.54
Income tax still due per investigation	₱ 3,880,159.94
Interest (6/15/99 to 10/15/02) .66	2,560,905.56
Compromise Penalty	25,000
TOTAL DEFICIENCY INCOME TAX	**₱ 6,466,065.50**

[7] *Rollo*, p. 36.

[8] *Id*. at 30 and 49; The PAN was received by Lancaster on 19 September 2002.

[9] Records, p. 71; Joint Stipulation of Facts.

DETAILS OF DISCREPANCIES
Assessment No. LTAID II-98-00007

A. INCOME TAX (₱3,880,159.94) – Taxpayer's fiscal year covers April 1998 to March 1999. Verification of the books of accounts and pertinent documents disclosed that there was an overstatement of purchases for the year. Purchase Invoice Vouchers (PIVs) for February and March 1998 purchases amounting to ₱11,496,770.18 were included as part of purchases for taxable year 1998 in violation of Section 45 of the National Internal Revenue Code in relation to Section 43 of the same and Revenue Regulations No. 2 which states that the Crop-Basis method of reporting income may be used by a **farmer** engaged in producing crops which take more than one (1) year from the time of planting to the time of gathering and disposing of crop, in such a case, the entire cost of producing the crop must be taken as deduction in the year in which the gross income from the crop is realized and that the taxable income should be computed upon the basis of the taxpayer's annual accounting period, (fiscal or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping with the books of the taxpayer. Furthermore, it did not comply with the generally accepted principle of proper matching of cost and revenue.[10]

Lancaster replied[11] to the PAN contending, among other things, that for the past decades, it has used an entire ***'tobacco-cropping season'*** to determine its total purchases covering a one-year period from ***1 October*** up to ***30 September of the following year*** (as against its fiscal year which is from ***1 April*** up to ***31 March of the following year***); that it has been adopting the 6-month timing difference to conform to the matching concept (of cost and revenue); and that this has long been installed as part of the company's system and consistently applied in its accounting books.[12]

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[10] *Rollo*, pp. 37-38.

[11] Records, p. 71; Lancaster filed its Reply to the PAN on 3 October 2002.

[12] *Id.*

Invoking the same provisions of the law cited in the assessment, *i.e.*, Sections 43[13] and 45[14] of the National Internal Revenue Code *(NIRC)*, in conjunction with Section 45[15] of Revenue Regulation No. 2, as amended, Lancaster argued that the February and March 1998 purchases should not have been disallowed. It maintained that the situation of farmers engaged in producing tobacco, like Lancaster, is unique in that the costs, *i.e.*, purchases, are taken as of a different period and posted in the year in which the gross income from the crop is realized. Lancaster concluded that it correctly posted the subject purchases in the fiscal year ending March 1999 as it was only in this year that the gross income from the crop was realized.

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[13] SECTION 43. *General Rule*. – The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income.

If the taxpayer's annual accounting period is other than a fiscal year, as defined in Section 22(Q), or if the taxpayer has no annual accounting period, or does not keep books, or if the taxpayer is an individual, the taxable income shall be computed on the basis of the calendar year.

[14] SECTION 45. *Period for which Deductions and Credits Taken*. –The deductions provided for in this Title shall be taken for the taxable year in which 'paid or accrued' or 'paid or incurred', dependent upon the method of accounting upon the basis of which the net income is computed, ***unless in order to clearly reflect the income, the deductions should be taken as of a different period***.

In the case of the death of a taxpayer, there shall be allowed as deductions for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period. (emphasis supplied)

[15] If a farmer is engaged in producing crops which takes more than a year from the time of planting to the time of gathering and disposing, the income therefrom may be computed upon the ***crop basis***; but in any such cases ***the entire cost of producing the crop must be taken as a deduction in the year in which the gross income from the crop is realized***. (underscoring supplied)

Subsequently on 6 November 2002, Lancaster received from the BIR a final assessment notice *(FAN)*,[16] captioned *Formal Letter of Demand and Audit Result/Assessment Notice LTAID II IT-98-00007*, dated 11 October 2002, which assessed Lancaster's deficiency income tax amounting to ₱11,496,770.18, as a consequence of the disallowance of purchases claimed for the ***taxable year ending 31 March 1999***.

Lancaster duly protested[17] the FAN. There being no action taken by the Commissioner on its protest, Lancaster filed on 21 August 2003 a petition for review[18] before the CTA Division.

The Proceedings before the CTA

In its petition before the CTA Division, Lancaster essentially reiterated its arguments in the protest against the assessment, maintaining that the tobacco purchases in February and March 1998 are deductible in its fiscal year ending 31 March 1999.

The issues[19] raised by the parties for the resolution of the CTA Division were:

I

WHETHER OR NOT PETITIONER COMPLIED WITH THE GENERALLY ACCEPTED ACCOUNTING PRINCIPLE OF PROPER MATCHING OF COST AND REVENUE;

II

WHETHER OR NOT THE DEFICIENCY TAX ASSESSMENT AGAINST PETITIONER FOR THE TAXABLE YEAR 1998 IN THE AGGREGATE AMOUNT OF ₱6,466,065.50 SHOULD BE CANCELLED AND WITHDRAWN BY RESPONDENT.

After trial, the CTA Division granted the petition of Lancaster, disposing as follows:

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[16] Exhibit folder; Exhibit "I".

[17] Records, pp. 17-19.

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

[19] *Id*. at 152-153 and 162.

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **GRANTED.** Accordingly, respondent is **ORDERED** to **CANCEL** and **WITHDRAW** the deficiency income tax assessment issued against petitioner under Formal Letter of Demand and Audit Result/Assessment Notice No. LTAID II IT-98-00007 dated October 11, 2002, in the amount of **₱6,466,065.50**, covering the fiscal year from April 1, 1998 to March 31, 1999.[20]

The CIR moved[21] but failed to obtain reconsideration of the CTA Division ruling.[22]

Aggrieved, the CIR sought recourse[23] from the CTA En Banc to seek a reversal of the decision and the resolution of the CTA Division.

However, the CTA En Banc found no reversible error in the CTA Division's ruling, thus, it affirmed the cancellation of the assessment against Lancaster. The dispositive portion of the decision of the CTA En Banc states:

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and, accordingly **DISMISSED** for lack of merit.[24]

The CTA En Banc likewise denied[25] the motion for reconsideration from its Decision.

Hence, this petition.

The CIR assigns the following errors as committed by the CTA En Banc:

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[20] *Rollo*, p. 56.

[21] *Id*. at 32. The CIR filed the "Motion for Reconsideration" on 2 October 2007.

[22] *Id*. at 33. The CTA Division denied, through a Resolution, the CIR's "Motion for Reconsideration" on 12 December 2007.

[23] *Id*. The CIR filed the "Petition for Review" before the CTA *En Banc*.

[24] *Id*. at 43.

[25] *Id*. at 46-47. The CTA *En Banc* issued the assailed Resolution on 24 June 2008.

I.

THE COURT OF TAX APPEALS EN BANC ERRED IN HOLDING THAT PETITIONER'S REVENUE OFFICERS EXCEEDED THEIR AUTHORITY TO INVESTIGATE THE PERIOD NOT COVERED BY THEIR LETTER OF AUTHORITY.

II.

THE COURT OF TAX APPEALS EN BANC ERRED IN ORDERING PETITIONER TO CANCEL AND WITHDRAW THE DEFICIENCY ASSESSMENT ISSUED AGAINST RESPONDENT.[26]

THE COURT'S RULING

We deny the petition.

I.

The CTA En Banc did not err when it ruled that the BIR revenue officers had exceeded their authority.

To support its first assignment of error, the CIR argues that the revenue officers did not exceed their authority when, upon examination (of the Lancaster's books of accounts and other accounting records), they verified that Lancaster made purchases for February and March of 1998, which purchases were not declared in the latter's fiscal year from 1 April 1997 to 31 March 1998. Additionally, the CIR posits that Lancaster did not raise the issue on the scope of authority of the revenue examiners at any stage of the proceedings before the CTA and, consequently, the CTA had no jurisdiction to rule on said issue.

On both counts, the CIR is mistaken.

A. The Jurisdiction of the CTA

Preliminarily, we shall take up the CTA's jurisdiction to rule on the issue of the scope of authority of the revenue officers to conduct the examination of Lancaster's books of accounts and accounting records.

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[26] *Id.* at 18.

The law vesting unto the CTA its jurisdiction is Section 7 of Republic Act No. 1125 *(R.A. No. 1125)*,[27] which in part provides:

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 (emphasis supplied)

Under the aforecited provision, the jurisdiction of the CTA is not limited only to cases which involve decisions or inactions of the CIR on matters relating to assessments or refunds but also includes other cases arising from the NIRC or related laws administered by the BIR.[28] Thus, for instance, we had once held that the question of whether or not to impose a deficiency tax assessment comes within the purview of the words *"other matters arising under the National Internal Revenue Code."*[29]

The jurisdiction of the CTA on such ***other matters arising under the NIRC*** was retained under the amendments introduced by R.A No. 9282.[30] Under R.A. No. 9282, Section 7 now reads:

Sec. 7. *Jurisdiction*. — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[27] Approved on 16 June 1954. The petition of Lancaster before the CTA Division was filed on 21 August 2003, or prior to the amendment of R.A. No. 1125.

[28] See *CIR v. Hambrecht & Quist Philippines, Inc.*, 649 Phil. 446, 455 (2010).

[29] See *Meralco Securities Corp. v. Savellano,* 203 Phil. 173 (1982).

[30] Approved on 30 March 2004, the law expanded the jurisdiction of the CTA and elevated its rank to a collegiate court, with the same rank as the Court of Appeals. R.A. No. 9282 was already in effect at the time the assailed decisions of the CTA Division and CTA En Banc were promulgated.

> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or ***other matters*** arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or ***other matters*** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; x x x." (emphasis supplied)

Is the question on the authority of revenue officers to examine the books and records of any person cognizable by the CTA?

It must be stressed that the assessment of internal revenue taxes is one of the duties of the BIR. Section 2 of the NIRC states:

> Sec. 2. *Powers and Duties of the Bureau of Internal Revenue*. – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the ***assessment*** and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.
>
> The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws. (emphasis supplied)

In connection therewith, the CIR may authorize the examination of any taxpayer and correspondingly make an assessment whenever necessary.[31] Thus, to give more teeth to

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[31] Section 6 of the NIRC provides:

> Sec. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement*. –

such power of the CIR, to make an assessment, the NIRC authorizes the CIR to examine any book, paper, record, or data of any person.[32] The powers granted by law to the CIR are intended, among other things, to determine the liability of any person for any national internal revenue tax.

It is pursuant to such pertinent provisions of the NIRC conferring the powers to the CIR that the petitioner (CIR) had, in this case, authorized its revenue officers to conduct an examination of the books of account and accounting records of Lancaster, and eventually issue a deficiency assessment against it.

From the foregoing, it is clear that the issue on whether the revenue officers who had conducted the examination on Lancaster exceeded their authority pursuant to LOA No. 00012289 may be considered as covered by the terms "other matters" under Section 7 of R.A. No. 1125 or its amendment, R.A. No. 9282. The authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA.

On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

(A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

[32] Sec. 5 of the NIRC provides:

Sec. 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons*. – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry; x x x

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals,[33] the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

> SECTION 1. *Rendition of judgment.* – x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter.

B. The Scope of the Authority of the Examining Officers

In the assailed decision of the CTA Division, the trial court observed that LOA No. 00012289 authorized the BIR officers to examine the books of account of Lancaster for the taxable year 1998 only or, since Lancaster adopted a fiscal year *(FY)*, for the period ***1 April 1997*** to ***31 March 1998***. However, the deficiency income tax assessment which the BIR eventually issued against Lancaster was based on the disallowance of expenses reported in ***FY 1999***, or for the period ***1 April 1998*** to ***31 March 1999***. The CTA concluded that the revenue examiners had exceeded their authority when they issued the assessment against Lancaster and, consequently, declared such assessment to be without force and effect.

We agree.

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[33] Took effect on 15 December 2005, or before C.T.A. Case No. 6753 was submitted for decision.

The audit process normally commences with the issuance by the CIR of a Letter of Authority. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a ***particular period***.[34]

In this case, a perusal of LOA No. 00012289 indeed shows that the period of examination is the taxable year 1998. For better clarity, the pertinent portion of the LOA is again reproduced, thus:

> The bearer(s) hereof x x x is/are authorized to examine your books of accounts and other accounting records for all internal revenue taxes for the period from **taxable year, 1998** to _____, 19__. x x x." (emphasis supplied)

Even though the date after the words "taxable year 1998 to" is unstated, it is not at all difficult to discern that the period of examination is the whole taxable year 1998. This means that the examination of Lancaster must cover the FY period from 1 April 1997 to 31 March 1998. It could not have contemplated a longer period. The examination for the full taxable year 1998 only is consistent with the guideline in Revenue Memorandum Order (RMO) No. 43-90, dated 20 September 1990, that the LOA shall cover a taxable period ***not exceeding one taxable year***.[35] In other words, absent any other valid cause, the LOA issued in this case is valid in all respects.

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[34] Revenue Audit Memorandum Order No. 2-95.

[35] The pertinent portion of Section C of Revenue Memorandum Order No. 43-90 reads:

> 3. A Letter of Authority should cover a taxable period ***not exceeding one taxable year***. The practice of issuing L/As covering audit of "unverified prior years" is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A. (emphasis supplied)

Nonetheless, a valid LOA does not necessarily clothe validity to an assessment issued on it, as when the revenue officers designated in the LOA act in excess or outside of the authority granted them under said LOA. Recently in *CIR v. De La Salle University, Inc.*[36] we accorded validity to the LOA authorizing the examination of DLSU for "*Fiscal Year Ending **2003** and Unverified Prior Years" and correspondingly held* the assessment for taxable year 2003 as valid because this taxable period is specified in the LOA. However, we declared void the assessments for taxable years **2001** and **2002** for having been *unspecified* on separate LOAs as required under RMO No. 43-90.

Likewise, in the earlier case of *CIR v. Sony, Phils., Inc.,*[37] we affirmed the cancellation of a deficiency VAT assessment because, while the LOA covered *"**the period 1997** and unverified prior years,"* the said deficiency was arrived at based on the records of a later year, from ***January to March 1998**,* or using the fiscal year which ended on 31 March 1998. We explained that the CIR knew which period should be covered by the investigation and that if the CIR wanted or intended the investigation to include the year 1998, it would have done so by including it in the LOA or by issuing another LOA.[38]

The present case is no different from *Sony* in that the subject LOA specified that the examination should be for the taxable year 1998 only but the subsequent assessment issued against Lancaster involved disallowed expenses covering the next fiscal year, or the period ending 31 March 1999. This much is clear from the notice of assessment, the relevant portion of which we again restate as follows:

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[36] G.R. Nos. 196596, 198841 and 198941, 9 November 2016.

[37] 649 Phil. 519 (2010).

[38] *Id.* at 530-531.

INCOME TAX:

Taxable Income per ITR		-0-
Add:	Adjustments-Disallowed purchases	11,496,770.18
	Adjusted Taxable Income per Investigation	₱11,496,770.18
INCOME TAX DUE – Basic		
	April 1 – December 31, 1998 (9/12 x ₱11,496,770.18 x 34%)	₱ 2,913,676.4
	January 1 – March 31, 1999 (3/12 x ₱11,496,770.18 x 33%)	948,483.54
Income tax still due per investigation		₱ 3,880,159.94
Interest (6/15/99 to 10/15/02) .66		2,560,905.56
Compromise Penalty		25,000
TOTAL DEFICIENCY INCOME TAX		**₱ 6,466,065.50**

(emphasis supplied)

The taxable year covered by the assessment being outside of the period specified in the LOA in this case, the assessment issued against Lancaster is, therefore, void.

This point alone would have sufficed to invalidate the subject deficiency income tax assessment, thus, obviating any further necessity to resolve the issue on whether Lancaster erroneously claimed the February and March 1998 expenses as deductions against income for FY 1999.

But, as the CTA did, we shall discuss the issue on the disallowance for the proper guidance not only of the parties, but the bench and the bar as well.

II.

The CTA En Banc correctly sustained the order cancelling and withdrawing the deficiency tax assessment.

To recall, the assessment against Lancaster for deficiency income tax stemmed from the disallowance of its February and March 1998 purchases which Lancaster posted in its fiscal year

ending on 31 March 1999 *(FY 1999)* instead of the fiscal year ending on 31 March 1998 *(FY 1998)*.

On the one hand, the BIR insists that the purchases in question should have been reported in FY 1998 in order to conform to the generally accepted accounting principle of proper matching of cost and revenue. Thus, when Lancaster reported the said purchases in FY 1999, this resulted in overstatement of expenses warranting their disallowance and, by consequence, resulting in the deficiency in the payment of its income tax for FY 1999.

Upon the other hand, Lancaster justifies the inclusion of the February and March 1998 purchases in its FY 1999 considering that they coincided with its crop year covering the period of October 1997 to September 1998. Consistent with Revenue Audit Memorandum (*RAM*) No. 2-95,[39] Lancaster argues that its purchases in February and March 1998 were properly posted in FY 1999, or the year in which its gross income from the crop was realized. Lancaster concludes that by doing so, it had complied with the matching concept that was also relied upon by the BIR in its assessment.

The issue essentially boils down to the ***proper timing when Lancaster should recognize its purchases in computing its taxable income***. Such issue directly correlates to the fact that Lancaster's '*crop year'* does not exactly coincide with its fiscal year for tax purposes.

Noticeably, the records of this case are rife with terms and concepts in accounting. As a science, accounting[40] pervades

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[39] The pertinent provision cited by Lancaster reads:

II. Accounting Methods x x x

F. Crop Year Basis is a method applicable only to farmers engaged in the production of crops which take more than a year from the time of planting to the process of gathering and disposal. Expenses paid or incurred are deductible in the year the gross income from the sale of the crops are realized.

[40] *Black's Law Dictionary*, Sixth Edition, defines *'Accounting'* as "[a]n act or a system of making up or settling accounts, consisting of a statement of account with debits and credits arising from relationship of parties. x x x The methods under which income and expenses are determined for tax

many aspects of financial planning, forecasting, and decision making in business. Its reach, however, has also permeated tax practice.

To put it into perspective, although the foundations of accounting were built principally to analyze finances and assist businesses, many of its principles have since been adopted for purposes of taxation.[41] In our jurisdiction, the concepts in business accounting, including certain generally accepted accounting principles (GAAP), embedded in the NIRC comprise the rules on tax accounting.

To be clear, the principles under financial or business accounting, in theory and application, are not necessarily interchangeable with those in tax accounting. Thus, although closely related, tax and business accounting had invariably produced concepts that at some point diverge in understanding or usage. For instance, two of such important concepts are taxable income and business income (or accounting income). Much of the difference can be attributed to the distinct purposes or objectives that the concepts of tax and business accounting are aimed at. Chief Justice Querube Makalintal made an apt observation on the nature of such difference. In *Consolidated Mines, Inc. v. CTA,*[42] he noted:

> While taxable income is based on the method of accounting used by the taxpayer, it will almost always differ from accounting income. This is so because of a fundamental difference in the ends the two concepts serve. Accounting attempts to ***match cost against revenue***. Tax law is aimed at ***collecting revenue***. It is quick to treat an item as income, slow to recognize deductions or losses. Thus, the tax law

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purposes. Major accounting methods are the cash basis and the accrual basis. Special methods are available for the reporting of gain on installment sales, recognition of income on construction projects (*i.e.*, the completed-contract and percentage-of-completion methods), and the valuation of inventories (*i.e.*, last-in first-out and first-in first-out).

[41] It is not suggested, however, that tax rules do not influence accounting practice. It is generally recognized that certain tax incentives do have certain repercussionary effect on accounting approach and practice.

[42] 157 Phil. 608 (1974).

will not recognize deductions for contingent future losses except in very limited situations. Good accounting, on the other hand, requires their recognition. Once this fundamental difference in approach is accepted, income tax accounting methods can be understood more easily.[43] (emphasis supplied)

While there may be differences between tax and accounting,[44] it cannot be said that the two mutually exclude each other. As already made clear, tax laws borrowed concepts that had origins from accounting. In truth, tax cannot do away with accounting. It relies upon approved accounting methods and practices to effectively carry out its objective of collecting the proper amount of taxes from the taxpayers. Thus, an important mechanism established in many tax systems is the requirement for taxpayers to make a return of their true income.[45] Maintaining accounting books and records, among other important considerations, would in turn assist the taxpayers in complying with their obligation to file their income tax returns. At the same time, such books

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[43] *Id*., footnote 1 citing 33 Am. Jur. 2d 688; also cited (as a footnote) in *CIR v. Central Luzon Drug Corporation,* 496 Phil. 307, 320-321 (2005).

[44] The BIR, through Revenue Memorandum Circular No. 22-04, dated 12 April 2004, recognized the differences between GAAP and the provisions of the NIRC and its implementing rules and regulations. It provides:

I. Background.

From time to time, the Accounting Standard Council (ASC) approves and adopts certain generally accepted accounting principles (GAAP) and generally accepted auditing standards (GAAS) which shall be used as the basis for the recording of financial transactions and preparing financial statements for businesses in the Philippines. It has been observed that the generally accepted accounting principles (GAAP) and generally accepted auditing standards (GAAS) approved and adopted may from time to time be different from the provisions of the National Internal Revenue Code of 1997 (Tax Code) and the rules and regulations Implementing said Tax Code. This Revenue Memorandum Circular is hereby issued to put forth the definitive rule in case there [are] differences between what is contained in the Tax Code and such rules and regulations issued in relation thereto, and that of the generally accepted accounting principle (GAAP) and generally accepted auditing standards (GAAS) as approved and adopted by ASC.

[45] For income tax purposes, the provisions relating to returns are contained in Chapter IX of the NIRC.

and records provide vital information and possible bases for the government, after appropriate audit, to make an assessment for deficiency tax whenever so warranted under the circumstances.

The NIRC, just like the tax laws in other jurisdictions, recognizes the important facility provided by generally accepted accounting principles and methods to the primary aim of tax laws to collect the correct amount of taxes. The NIRC even devoted a whole chapter on accounting periods and methods of accounting, some relevant provisions of which we cite here for more emphasis:

CHAPTER VIII

ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

Sec. 43. ***General Rule.*** – The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income.

If the taxpayer's annual accounting period is other than a fiscal year, as defined in Section 22(Q), or if the taxpayer has no annual accounting period, or does not keep books, or if the taxpayer is an individual, the taxable income shall be computed on the basis of the calendar year.

Sec. 44. ***Period in which Items of Gross Income Included.*** – The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under Section 43, any such amounts are to be properly accounted for as of a different period.

In the case of the death of a taxpayer, there shall be included in computing taxable income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period.

Sec. 45. ***Period for which Deductions and Credits Taken.*** – The deductions provided for in this Title shall be taken for the taxable year in which ***'paid or accrued'*** or ***'paid or incurred,'*** dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income, the deductions should be taken as of a different period. In the case of the death of a taxpayer, there shall be allowed as deductions for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period.

Sec. 46. ***Change of Accounting Period.*** – If a taxpayer, other than an individual, changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Commissioner, be computed on the basis of such new accounting period, subject to the provisions of Section 47.

x x x x x x x x x

Sec. 48. ***Accounting for Long-term Contracts.*** – Income from long-term contracts shall be reported for tax purposes in the manner as provided in this Section.

As used herein, the term '***long-term contracts***' means building, installation or construction contracts covering a period in excess of one (1) year.

Persons whose gross income is derived in whole or in part from such contracts shall report such income upon the basis of percentage of completion.

The return should be accompanied by a return certificate of architects or engineers showing the percentage of completion during the taxable year of the entire work performed under contract.

There should be deducted from such gross income all expenditures made during the taxable year on account of the contract, account being taken of the material and supplies on hand at the beginning and end of the taxable period for use in connection with the work under the contract but not yet so applied.

If upon completion of a contract, it is found that the taxable net income arising thereunder has not been clearly reflected for any year or years, the Commissioner may permit or require an amended return.

Sec. 49. ***Installment Basis.*** **–**

(A) ***Sales of Dealers in Personal Property.*** – Under rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year, which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

(B) ***Sales of Realty and Casual Sales of Personality.*** – In the case (1) of a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding One thousand pesos (₱1,000), or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed twenty-five percent (25%) of the selling price, the income may, under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be returned on the basis and in the manner above prescribed in this Section.

As used in this Section, the term ***'initial payments'*** means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

(C) ***Sales of Real Property Considered as Capital Asset by Individuals.*** — An individual who sells or disposes of real property, considered as capital asset, and is otherwise qualified to report the gain therefrom under Subsection (B) may pay the capital gains tax in installments under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

(D) ***Change from Accrual to Installment Basis.*** – If a taxpayer entitled to the benefits of Subsection (A) elects for any taxable year to report his taxable income on the installment basis, then in computing his income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other dispositions of property made in any prior year shall not be excluded." (emphasis in the original)

We now proceed to the matter respecting the accounting method employed by Lancaster.

An accounting method is a "set of rules for determining when and how to report income and deductions."[46] The provisions under Chapter VIII, Title II of the NIRC cited above enumerate the methods of accounting that the law expressly recognizes, to wit:

(1) Cash basis method;[47]
(2) Accrual method;[48]
(3) Installment method;[49]
(4) Percentage of completion method;[50] and
(5) Other accounting methods.

Any of the foregoing methods may be employed by any taxpayer so long as it reflects its income properly and such method is used regularly. The peculiarities of the business or occupation engaged in by a taxpayer would largely determine how it would report incomes and expenses in its accounting books or records. The NIRC does not prescribe a uniform, or even specific, method of accounting.

Too, other methods approved by the CIR, even when not expressly mentioned in the NIRC, may be adopted if such method would enable the taxpayer to properly reflect its income. Section 43 of the NIRC authorizes the CIR to allow the use of a method of accounting that in its opinion would clearly reflect the income of the taxpayer. An example of such method not expressly mentioned in the NIRC, but duly approved by the CIR, is the **'crop method of accounting'** authorized under RAM No. 2-95. The pertinent provision reads:

II. Accounting Methods

x x x x x x x x x

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[46] *Consolidated Mines, Inc. v. CTA, supra* note 42 at 613-614; *CIR v. Isabela Cultural Corporation*, 544 Phil. 288, 495 (2007).

[47] Sec. 45, NIRC.

[48] *Id.*

[49] Sec. 49, NIRC.

[50] Sec. 48, NIRC.

F. Crop Year Basis is a method applicable only to farmers engaged in the production of crops which take more than a year from the time of planting to the process of gathering and disposal. Expenses paid or incurred are deductible in the year the gross income from the sale of the crops are realized.

The crop method recognizes that the harvesting and selling of crops do not fall within the same year that they are planted or grown. This method is especially relevant to farmers, or those engaged in the business of producing crops who, pursuant to RAM No. 2-95, would then be able to compute their taxable income on the basis of their crop year. On when to recognize expenses as deductions against income, the governing rule is found in the second sentence of Subsection F cited above. The rule enjoins the recognition of the expense (or the deduction of the cost) of crop production ***in the year that the crops are sold*** (when income is realized).

In the present case, we find it wholly justifiable for Lancaster, as a business engaged in the production and marketing of tobacco, to adopt the crop method of accounting. A taxpayer is authorized to employ what it finds suitable for its purpose so long as it consistently does so, and in this case, Lancaster does appear to have utilized the method regularly for many decades already. Considering that the crop year of Lancaster starts from October up to September of the following year, it follows that all of its expenses in the crop production made within the crop year starting from October 1997 to September 1998, including the February and March 1998 purchases covered by purchase invoice vouchers, are rightfully deductible for income tax purposes in the year when the gross income from the crops are realized. Pertinently, nothing from the pleadings or memoranda of the parties, or even from their testimonies before the CTA, would support a finding that the gross income from the crops (to which the subject expenses refer) was actually realized by the end of March 1998, or the closing of Lancaster's fiscal year for 1998. Instead, the records show that the February and March 1998 purchases were recorded by Lancaster as *advances* and later taken up as *purchases* by the close of the crop year in September 1998, or as stated

very clearly above, *within the fiscal year 1999.*[51] On this point, we quote with approval the ruling of the CTA En Banc, thus:

> Considering that [Lancaster] is engaged in the production of tobacco, it applied the crop year basis in determining its total purchases for each fiscal year. Thus, [Lancaster's] total cost for the production of its crops, which includes its purchases, must be taken as a deduction in the year in which the gross income is realized. Thus, We agree with the following ratiocination of the First Division:
>
> > Evident from the foregoing, the crop year basis is one unusual method of accounting wherein the entire cost of producing the crops (including purchases) must be taken as a deduction in the year in which the gross income from the crop is realized. Since the petitioner's crop year starts in October and ends in September of the following year, the same does not coincide with petitioner's fiscal year which starts in April and ends in March of the following year. However, the law and regulations consider this peculiar situation and allow the costs to be taken up at the time the gross income from the crop is realized, as in the instant case.
>
> [Lancaster's] fiscal period is from April 1, 1998 to March 31, 1999. On the other hand, its crop year is from October 1, 1997 to September 1, 1998. Accordingly, in applying the crop year method, all the purchases made by the respondent for October 1, 1997 to September 1, 1998 should be deducted from the fiscal year ending March 31, 1999, since it is the time when the gross income from the crops is realized.[52]

The matching principle

Both petitioner CIR and respondent Lancaster, it must be noted, rely upon the concept of matching cost against revenue to buttress their respective theories. Also, both parties cite RAM 2-95 in referencing the crop method of accounting.

We are tasked to determine which view is legally sound.

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[51] TSN, 9 August 2004, p. 21.

[52] *Rollo*, pp. 41-42.

In essence, the matching concept, which is one of the generally accepted accounting principles, directs that the expenses are to be reported in the same period that related revenues are earned. It attempts to match revenue with expenses that helped earn it.

The CIR posits that Lancaster should not have recognized in FY 1999 the purchases for February and March 1998.[53] Apparent from the reasoning of the CIR is that such expenses ought to have been deducted in FY 1998, when they were supposed to be paid or incurred by Lancaster. In other words, the CIR is of the view that the subject purchases match with revenues in 1998, not in 1999.

A reading of RAM No. 2-95, however, clearly evinces that it conforms with the concept that the expenses *paid* or *incurred* be deducted in the year in which gross income from the sale of the crops is *realized*. Put in another way, the expenses are matched with the related incomes which are eventually earned. Nothing from the provision is it strictly required that for the expense to be deductible, the income to which such expense is related to be realized in the same year that it is *paid* or *incurred*. As noted by the CTA,[54] the crop method is an unusual method of accounting, unlike other recognized accounting methods that, by mandate of Sec. 45 of the NIRC, strictly require expenses be taken in the same taxable year when the income is '*paid* or *incurred,*' or '*paid* or *accrued,*' depending upon the method of accounting employed by the taxpayer.

Even if we were to accept the notion that applying the 1998 purchases as deductions in the fiscal year 1998 conforms with the generally accepted principle of matching cost against revenue, the same would still not lend any comfort to the CIR. Revenue Memorandum Circular (*RMC*) No. 22-04, entitled "*Supplement to Revenue Memorandum Circular No. 44-2002 on Accounting Methods to be Used by Taxpayers for Internal Revenue Tax*

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[53] *Id.* at 21.

[54] *Id.* at 41.

Purposes"[55] dated 12 April 2004, commands that where there is conflict between the provisions of the Tax Code (NIRC), including its implementing rules and regulations, on accounting methods and the generally accepted accounting principles, the former shall prevail. The relevant portion of RMC 22-04 reads:

II. Provisions of the Tax Code Shall Prevail.

All returns required to be filed by the Tax Code shall be prepared always in conformity with the provisions of the Tax Code, and the rules and regulations implementing said Tax Code. Taxability of income and deductibility of expenses shall be determined strictly in accordance with the provisions of the Tax Code and the rules and regulations issued implementing said Tax Code. *In case of difference between the provisions of the Tax Code and the rules and regulations implementing the Tax Code, on one hand, and the generally accepted accounting principles (GAAP) and the generally accepted accounting standards (GAAS), on the other hand, the provisions of the Tax Code and the rules and regulations issued implementing said Tax Code shall prevail.* (italics supplied)

RAM No. 2-95 is clear-cut on the rule on when to recognize deductions for taxpayers using the crop method of accounting. The rule prevails over any GAAP, including the matching concept as applied in financial or business accounting.

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[55] Dated 12 April 2004. https://www.bir.gov.ph/images/bir_files/old_files/pdf/1764rmc22_04.pdf. Last visited 5 April 2017. Even though the present case pertains to the taxable year 1998, RMC 22-04, which was issued by the BIR only in 2004, could very well be applied reasonably based on the principle that interpretative rules issued by an administrative agency are given retroactive effect as of the date of the effectivity of the statute. Perusing the text of RMC 22-04, it is clear that by recognizing the supremacy of the provisions of the Tax Code over generally accepted accounting principles or auditing standards (GAAP or GAAS), the circular did no more than interpret the statute (Tax Code) being administered by the BIR. When this case arose in 1998, the Tax Code provisions had long been in effect. Following the principle enunciated here, it cannot be doubted that, as of 1998, the pertinent Tax Code provisions and implementing rules (on accounting methods) should, whenever conflict arises, prevail over generally accepted accounting principles.

In sum, and considering the foregoing premises, we find no cogent reason to overturn the assailed decision and resolution of the CTA. As the CTA decreed, Assessment Notice LTAID II IT-98-00007, dated 11 October 2002, in the amount of ₱6,466,065.50 for deficiency income tax should be cancelled and set aside. The assessment is void for being issued without valid authority. Furthermore, there is no legal justification for the disallowance of Lancaster's expenses for the purchase of tobacco in February and March 1998.

WHEREFORE, the petition is **DENIED**. The assailed 30 April 2008 Decision and 24 June 2008 Resolution of the Court of Tax Appeals En Banc are **AFFIRMED**. No costs.

SO ORDERED.

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

Leonen, J., on leave but left his vote concurring with the *ponencia*.

SECOND DIVISION

[G.R. No. 188057. July 12, 2017]

HILLTOP MARKET FISH VENDORS' ASSOCIATION, INC., *petitioner, vs.* **HON. BRAULIO YARANON, City Mayor, Baguio City, HON. GALO WEYGAN, City Councilor and Chairman Anti-Vice Coordinating Task Force, and the CITY GOVERNMENT OF BAGUIO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE OF THE PHILIPPINES; OBLIGATIONS AND CONTRACTS; LEASE; BEING A CONSENSUAL CONTRACT, A LEASE IS PERFECTED

AT THE MOMENT THERE IS A MEETING OF THE MINDS UPON THE THING AND THE CAUSE OR CONSIDERATION WHICH ARE TO CONSTITUTE THE CONTRACT; OBLIGATIONS OF THE LESSOR AND THE LESSEE.— In a contract of lease, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite. Being a consensual contract, a lease is perfected at the moment there is a meeting of the minds upon the thing and the cause or consideration which are to constitute the contract. Thereafter, the lessor is obliged to deliver the thing which is the object of the contract in such a condition as to render it fit for the use intended, and the lessee is obliged to use the thing leased as a diligent father of a family, devoting it to the use stipulated or that which may be inferred from the nature of the thing leased.

2. **ID.; ID.; ID.; ID.; ELEMENTS OF A CONTRACT OF LEASE; FROM THE MOMENT THAT THE CONTRACT IS PERFECTED, THE PARTIES ARE BOUND TO FULFILL WHAT THEY HAVE EXPRESSLY STIPULATED.** — In a contract of lease, the cause or essential purpose is the use and enjoyment of the thing. The thing or subject matter of the contract in this case was clearly identified and agreed upon as the lot where the building would be constructed by Hilltop. The consideration were the annual lease rental and the ownership of the building upon the termination of the lease period. Considering that Hilltop and the City of Baguio agreed upon the essential elements of the contract, the contract of lease had been perfected. From the moment that the contract is perfected, the parties are bound to fulfill what they have expressly stipulated. Thus, the City of Baguio gave the use and enjoyment of its lot to Hilltop. Both the RTC and the CA found that upon the execution of the contract on 22 June 1974, Hilltop took possession of the lot and constructed the Rillera building on it. Thereafter, Hilltop's members occupied the Rillera building and conducted business in it up to the present. The findings of fact of the RTC and the CA are final and conclusive and cannot be reviewed on appeal by this Court.

3. **ID.; ID.; ID.; ID.; A CONTRACT CONSTITUTES THE LAW BETWEEN THE PARTIES AND THEY ARE, THEREFORE, BOUND BY ITS STIPULATIONS; IF THE**

TERMS OF A CONTRACT ARE CLEAR AND LEAVE NO DOUBTS AS TO THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATIONS SHALL CONTROL.— Since Hilltop exercised its right as lessee based on the contract of lease and the law, it has no basis in claiming that the contract of lease did not commence. Contrary to Hilltop's contention, the issuance of the Certificate was not a suspensive condition which determines the perfection of the contract or its effectivity. The contract of lease specifically provides that: "x x x the annual lease rental shall be ₱25,000 payable within the first 30 days of each and every year; **the first payment to commence immediately upon issuance by the City Engineer's Office of the Certificate of full occupancy** of the entire building to be constructed thereon x x x." Clearly, the issuance of the Certificate is only a condition that will make Hilltop start paying the annual lease rental to the City of Baguio. Because the Certificate was not issued, the payment of annual lease rental did not commence. A contract constitutes the law between the parties and they are, therefore, bound by its stipulations. If the terms of a contract are clear and leave no doubts as to the intention of the contracting parties, the literal meaning of its stipulations shall control.

4. **ID.; ID.; ID.; ID.; FAILURE TO COMPLY WITH THE CONDITION IMPOSED UPON THE PERFECTION OF THE CONTRACT RESULTS IN THE FAILURE OF A CONTRACT, WHILE THE FAILURE TO COMPLY WITH THE CONDITION IMPOSED ON THE PERFORMANCE OF AN OBLIGATION ONLY GIVES THE OTHER PARTY THE OPTION EITHER TO REFUSE TO PROCEED OR TO WAIVE THE CONDITION; PAYMENT OF THE RENT GOES INTO THE PERFORMANCE OF THE CONTRACT AND HAS NOTHING TO DO WITH THE PERFECTION OF THE CONTRACT.—** Hilltop failed to distinguish between a condition imposed upon the perfection of the contract and a condition imposed on the performance of an obligation. Failure to comply with the first condition results in the failure of a contract, while the failure to comply with the second condition only gives the other party the option either to refuse to proceed or to waive the condition. In this case, the condition, which is the issuance of the Certificate, was imposed only for the

obligation to pay the rent to commence. Payment of the price, or the rent, in this case, goes into the performance of the contract and has nothing to do with the perfection of the contract.

5. ID.; ID.; ID.; ID.; PARTIES WHO DO NOT COME TO COURT WITH CLEAN HANDS CANNOT BE ALLOWED TO PROFIT FROM THEIR OWN WRONGDOING.— Undeniably, Hilltop failed to comply with its obligations under the contract of lease. It failed to complete the requirements for the issuance of the Certificate and maintain the sanitation of the Rillera building. The City Engineer's Office did not issue the Certificate because of the fault of Hilltop. The party at fault, Hilltop, cannot use the non-issuance of the Certificate to its advantage because the non-issuance was due to its fault. In short, Hilltop cannot claim that the 25-year lease period has not yet commenced because of the non-issuance of the Certificate, since Hilltop itself was responsible for the non-issuance of the Certificate. Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equity must be "free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter.

6. ID.; ID.; ID.; ID.; THE CONTINUANCE, EFFECTIVITY, AND FULFILMENT OF A CONTRACT OF LEASE CANNOT BE MADE TO DEPEND EXCLUSIVELY UPON THE FREE AND UNCONTROLLED CHOICE OF THE LESSEE.— Since the contract of lease already commenced, Hilltop has been occupying the Rillera building even after the termination of the lease period. The contract of lease provides that the period of lease is 25 years and it is renewable for the same period at the option of both parties. Based on the findings of the RTC that Hilltop started occupying the lot in 1974 and 25 years have lapsed without the parties renewing the contract, the contract of lease is already terminated. Thus, the City of Baguio is justified in issuing AO No. 30, and in taking over the Rillera building being its owner under the contract of lease. There is no basis in granting damages to Hilltop. In a reciprocal contract like a lease, the period must be deemed to have been agreed upon for the benefit of both parties, absent language showing that the term was deliberately set for the benefit of the lessee or lessor alone. The continuance, effectivity, and

fulfillment of a contract of lease cannot be made to depend exclusively upon the free and uncontrolled choice of the lessee. Mutuality does not obtain in such a contract of lease and no equality exists between the lessor and the lessee since the life of the contract would be dictated solely by the lessee.

APPEARANCES OF COUNSEL

E.L. Gayo & Associates for petitioner.
Baguio City Legal Office for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the Decision[2] dated 27 November 2008 and the Resolution[3] dated 15 May 2009 of the Court of Appeals (CA) affirming the Decision[4] dated 28 September 2006 of the Regional Trial Court of Baguio City, Branch 3 (RTC) in Civil Case No. 5994-R.

The Facts

The facts, as culled from the records, are as follows:

On 22 June 1974, petitioner Hilltop Market Fish Vendors' Association, Inc. (Hilltop), represented by its president Gerardo Rillera (Rillera), and respondent City of Baguio, represented by its then Mayor Luis Lardizabal, entered into a Contract of Lease[5] over a lot owned by the City of Baguio, with an area of

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[1] *Rollo,* pp. 9-32. Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Id*. at 36-45. Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Regalado E. Maambong and Ramon R. Garcia concurring.

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

[4] *Id*. at 188-196. Penned by Judge Fernando Vil Pamintuan.

[5] *Id*. at 79-82.

568.80 square meters and located at the Hilltop Market, Baguio City.

The contract provided that the period of lease is 25 years, renewable for the same period at the option of both parties, and the annual lease rental is ₱25,000, with the first payment commencing upon the issuance by the City Engineer's Office of the Certificate of full occupancy (Certificate) of the building to be constructed by Hilltop on the lot. Before the Certificate is issued, the City of Baguio can continue collecting market fees from the vendors who are allowed to occupy any portion of the building. At the termination of the lease period, the City of Baguio will own the building without payment or reimbursement for Hilltop's costs.

Sometime in 1975, Hilltop constructed the building, thereafter known as the Rillera building, on the lot. Even though the City Engineer's Office did not issue a Certificate, Hilltop's members occupied the Rillera building and conducted business in it.

On 16 October 1980, the City Council of Baguio, through its then Mayor Ernesto Bueno, issued Resolution No. 74-80[6] rescinding the contract of lease with Hilltop, for its continued failure to comply with its obligation to complete the Rillera building. In Resolution Nos. 18-81[7] and 50-86,[8] the City Council of Baguio reiterated its resolution to rescind the contract and sought to undertake the completion of the building.

On 20 February 1990, then Mayor Jaime Bugnosen ordered the closure of the two upper floors of the Rillera building based on the City Council's Resolution No. 24, s. of 1990, that the Rillera building failed to comply with the minimum sanitary standards under Presidential Decree No. 856.[9]

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[6] *Id*. at 105-106.

[7] *Id*. at 107. Dated 26 February 1981.

[8] *Id*. at 108. Dated 7 May 1986.

[9] *Id*. at 110.

In a Letter to the Building Official, City Administrator Leonardo dela Cruz stated that "Rillera and his officers would like to discuss x x x the possibility of completing the necessary requirements for the x x x permit to occupy the Rillera building."[10]

Subsequently, the City Engineer's Office issued its finding that the two upper floors of the Rillera building were unsafe for occupancy.[11] Thereafter, it recommended to condemn the building.[12] Sometime in 2003, then Mayor Bernardo Vergara issued a notice to take over the Rillera building.[13]

On 28 February 2005, respondent then Mayor Braulio Yaranon (Yaranon) issued Administrative Order No. 030 S. 2005 (AO No. 30), ordering the City Building and Architects Office (CBAO) and Public Order and Safety Division to immediately close the Rillera building to have it cleaned, sanitized and enclosed; to prevent illegal activities in it; and for its completion and preparation for commercial use.[14]

On 7 March 2005, Hilltop filed with the RTC a Complaint with Very Urgent Application for Temporary Restraining Order and Writ of Preliminary Injunction[15] praying that the court issue an injunction against the implementation of AO No. 30 and order the concerned office to issue the Certificate to make the contract of lease effective.

In their Answer dated 13 April 2005,[16] Yaranon and respondent Galo Weygan alleged that the Certificate was not issued to Hilltop because the Rillera building was not completed, and there were no provisions for electrical and plumbing systems or facilities for conduct of regular business. In any case, they argued that

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[10] *Id*. at 177. Dated 14 March 1990.

[11] *Id*. at 112.

[12] *Id*. at 114.

[13] *Id*. at 117.

[14] *Id*. at 89.

[15] *Id*. at 60-77.

[16] *Id*. at 94-104.

the issuance of the Certificate shall only signal the start of payment of annual lease rental and not the effectivity of the contract. They further alleged that even without the Certificate, Hilltop's members occupied the building and conducted busines in it; hence, Hilltop already waived the condition.

The Ruling of the RTC

After trial, the RTC ruled in favor of the City of Baguio and dismissed the complaint. The dispositive portion of the Decision states:

> WHEREFORE, the instant complaint is hereby DISMISSED.
>
> The defendant, Baguio City Council Resolution giving rise to Administrative Order No. 030 s. 2005 is hereby found to be valid, and according to law.
>
> IT IS SO ORDERED.[17]

The RTC found that the contract of lease automatically expired on 22 June 1999, because the lease period of 25 years was expressly provided in the contract of lease dated 22 June 1974. The RTC did not give weight to Hilltop's contention that the Certificate authorized it to occupy the lot because even without the Certificate, Hilltop already occupied the lot as early as 22 June 1974 up to the present, which is beyond the 25-year period provided in the contract of lease. The RTC further found the Rillera building unsanitary and dangerous to those occupying it.

The Ruling of the CA

The CA affirmed the decision of the RTC and ruled that there was already a perfected contract of lease: the issuance of the Certificate was imposed only on the performance of the obligations contained in it. The CA held that Hilltop is estopped from claiming that the period of lease has not began, since it already occupied the Rillera building and conducted business in it even without the Certificate.

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[17] *Id*. at 196.

In a Resolution dated 15 May 2009, the CA denied the motion for reconsideration.

Hence, this petition.

The Issues

Hilltop raises the following issues for resolution:

THE COURT OF APPEALS ERRED IN FINDING THAT THE CONTRACT OF LEASE ENTERED INTO BY THE PARTIES WAS ALREADY PERFECTED CONTRARY TO EVIDENCE AND TO LAW.

THE COURT OF APPEALS ERRED IN RULING THAT THE PETITIONER IS ESTOPPED FROM CLAIMING THAT THE PERIOD OF LEASE HAS NOT YET BEGAN CONTRARY TO EVIDENCE AND TO LAW.

THE COURT OF APPEALS ERRED IN FINDING THAT RESPONDENTS PROPERLY WITHHELD THE ISSUANCE OF THE OCCUPATION PERMIT TO PETITIONER.

THE COURT OF APPEALS ERRED IN NOT RULING ON AND AWARDING THE DAMAGES PRAYED FOR BY PETITIONER CONTRARY TO EVIDENCE AND TO LAW.[18]

The Ruling of the Court

We deny the petition.

In a contract of lease, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite.[19] Being a consensual contract, a lease is perfected at the moment there is a meeting of the minds upon the thing and the cause or consideration which are to constitute the contract.[20] Thereafter, the lessor is obliged to deliver the thing which is the object of the contract in such a condition as to render it fit for the use

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[18] *Id.* at 17-18.

[19] Civil Code, Article 1643.

[20] *Bugatti v. Court of Appeals*, 397 Phil. 376 (2000).

intended, and the lessee is obliged to use the thing leased as a diligent father of a family, devoting it to the use stipulated or that which may be inferred from the nature of the thing leased.[21]

The relevant provisions of the contract of lease between Hilltop and the City of Baguio are:

That the LESSOR leases unto the LESSEE, and the latter hereby accepts in lease from the former, that area of 568.80 square meters, as shown in the location plan prepared by the City Engineer's Office, the same being originally occupied by the fish vendors and where the construction of the proposed Fish Market Building is now being done, located at the Hilltop Market, Baguio City under the following terms and conditions, to wit:

1. That the above-referred to location plan prepared by the City Engineer's Office be made an integral part of this contract in order to properly delimit the area under lease;
2. That the period of the lease will be twenty-five (25) years renewable for the same period at the option of both parties, that is the City of Baguio which will be represented by the City Mayor and the Hilltop and Fish Vendors' Association, Inc.;
3. That the annual lease rental shall be ₱25,000.00 payable within the first 30 days of each and every year; the first payment to commence immediately upon issuance by the City Engineer's Office of the Certificate of full occupancy of the entire building to be constructed thereon, provided further, that before the certification of full occupancy of the entire building is issued by the City Engineer's Office, the City shall continue collecting market fees due from the

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[21] Civil Code, Article 1654 provides: "The lessor is obliged: (1) To deliver the thing which is the object of the contract in such a condition as to render it fit for the use intended; (2) To make on the same during the lease all the necessary repairs in order to keep it suitable for the use to which it has been devoted, unless there is a stipulation to the contrary; (3) To maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract." Article 1657 provides: "The lessee is obliged: (1) To pay the price of the lease according to the terms stipulated; (2) To use the thing leased as a diligent father of a family, devoting it to the use stipulated; and in the absence of stipulation, to that which may be inferred from the nature of the thing leased, according to the custom of the place; (3) To pay expenses for the deed of lease."

vendors who would be allowed to occupy whether permanently or temporarily any portion/floor of said building, and said collection to belong to the City of Baguio;

4. That the annual lease rental of ₱25,000.00 stipulated in paragraph (3) hereof, shall be for fifteen (15) years from date of effectivity of the contract and for the remaining ten (10) years thereafter, the parties herein shall determine another rate of rental that may be deemed equitable by the LESSOR taking into consideration the increase of commercial value of the premises, the aggregate improvements made and all the unearned increments that have accrued with the time, place and other circumstances affecting the value of the premises which is the subject matter of this contract;

5. That the building to be constructed by the Hilltop Market Vendors' Association, Inc., on the lot, subject of the lease, shall subsequently be owned by the City of Baguio at the termination of the lease period herein-before mentioned without payment or reimbursement for its costs;

x x x x x x x x x

10. That the Hilltop Market and Fish Vendors' Association, Inc., shall maintain the cleanliness and sanitation of the building and its premises at its expense in accordance with existing ordinances and future ordinances and existing rules and regulations on cleanliness and sanitation;[22]

x x x x x x x x x

In a contract of lease, the cause or essential purpose is the use and enjoyment of the thing.[23] The thing or subject matter of the contract in this case was clearly identified and agreed upon as the lot where the building would be constructed by Hilltop. The consideration were the annual lease rental and the ownership of the building upon the termination of the lease period. Considering that Hilltop and the City of Baguio agreed upon the essential elements of the contract, the contract of lease had been perfected.

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[22] *Rollo,* pp. 79-81.

[23] *Philippine National Construction Corporation v. Court of Appeals,* 338 Phil. 691 (1997).

From the moment that the contract is perfected, the parties are bound to fulfill what they have expressly stipulated.[24] Thus, the City of Baguio gave the use and enjoyment of its lot to Hilltop. Both the RTC and the CA found that upon the execution of the contract on 22 June 1974, Hilltop took possession of the lot and constructed the Rillera building on it. Thereafter, Hilltop's members occupied the Rillera building and conducted business in it up to the present. The findings of fact of the RTC and the CA are final and conclusive and cannot be reviewed on appeal by this Court.[25]

Since Hilltop exercised its right as lessee based on the contract of lease and the law, it has no basis in claiming that the contract of lease did not commence.

Contrary to Hilltop's contention, the issuance of the Certificate was not a suspensive condition which determines the perfection of the contract or its effectivity. The contract of lease specifically provides that: "x x x the annual lease rental shall be ₱25,000 payable within the first 30 days of each and every year; **the first payment to commence immediately upon issuance by the City Engineer's Office of the Certificate of full occupancy** of the entire building to be constructed thereon x x x."[26] Clearly, the issuance of the Certificate is only a condition that will make Hilltop start paying the annual lease rental to the City of Baguio. Because the Certificate was not issued, the payment of annual lease rental did not commence. A contract constitutes the law between the parties and they are, therefore, bound by its stipulations.[27] If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations shall control.[28]

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[24] Civil Code, Article 1315.

[25] *R & M General Merchandise v. Court of Appeals,* 419 Phil. 131 (2001).

[26] *Rollo*, p. 79.

[27] *Id*., Civil Code, Article 1159.

[28] *Id*., citing Civil Code, Article 1370; *Baylon v. Court of Appeals,* 371 Phil. 435 (1999).

Hilltop failed to distinguish between a condition imposed upon the perfection of the contract and a condition imposed on the performance of an obligation. Failure to comply with the first condition results in the failure of a contract, while the failure to comply with the second condition only gives the other party the option either to refuse to proceed or to waive the condition.[29] In this case, the condition, which is the issuance of the Certificate, was imposed only for the obligation to pay the rent to commence. Payment of the price, or the rent, in this case, goes into the performance of the contract and has nothing to do with the perfection of the contract.[30]

As further found by the CA:

x x x. Considering however that plaintiff-appellant has occupied the building and conducted therein business without the certificate, it is now estopped to claim that the period of lease has not yet began.

It would be incredible for plaintiff-appellant to assert that the certificate was a condition prior to its occupancy. Plaintiff-appellant raised no protest when it occupied [the] Rillera [b]uilding. Furthermore, it took no direct action to promptly disavow or disaffirm the alleged condition in the lease contract. As a matter of fact, it was only in 1999, when the term of the contract had expired, that plaintiff-appellant became persistent in trying to obtain the certificate from defendants-appellees.

By its continued silence, it has agreed that the issuance of the said certificate was not a condition to the perfection of the lease contract. The rule of acquiescence by silence has estopped plaintiff-

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[29] *Laforteza v. Machuca*, 389 Phil. 167 (2000); Civil Code, Article 1653 provides: "The provisions governing warranty, contained in the Title on Sales, shall be applicable to the contract of lease. x x x."

Civil Code, Article 1545 (Title on Sales, Section 3 on Conditions and Warranties) provides: "Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty. x x x."

[30] *Sps. Buenaventura v. Court of Appeals,* 461 Phil. 761 (2003).

appellant to deny the reality of the state of things which it made to appear to exist and upon which others have been led to rely. Parties must take the consequences of the position they assume.[31]

Hilltop is also estopped from claiming that the contract of lease did not commence since it based its occupancy of the Rillera building on the contract of lease. In its petition, Hilltop alleged that "an examination of the provisions of the contract of lease would show that the terms and conditions for the possession and occupation of the building before the issuance of the occupancy permit by respondents has, likewise, been contemplated by the parties."[32]

On Hilltop's allegation that it completed the building as early as 1975, the records show that the City Council of Baguio issued Resolutions demanding for the rescission of the contract of lease for failure of Hilltop to complete the construction of the Rillera building. In reply, the Letter to the Building Official stated that "Rillera and his officers would like to discuss x x x the possibility of completing the necessary requirements for the x x x permit to occupy the Rillera building."[33] Hilltop did not deny the authenticity of these documents. Hilltop also admitted in the Letter that it has not completed the requirements for the Certificate. Furthermore, the RTC found that:

> Moreover, uncontroverted findings were made by the Baguio Health Department and the City Engineer's Office, to the effect that the situation in the Rillera [b]uilding is unsanitary, and considering the structures were damaged by the July 16, 1990 killer earthquake, it has made the said building dangerous for those occupying it. The Anti-Vice Committee of the Department of Local Government made also the findings that inside the building were illegal activities like gambling and drinking.[34]

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[31] *Rollo,* pp. 42-43.

[32] *Id*. at 21.

[33] *Id*. at 177.

[34] *Id*. at 196.

Undeniably, Hilltop failed to comply with its obligations under the contract of lease. It failed to complete the requirements for the issuance of the Certificate and maintain the sanitation of the Rillera building. The City Engineer's Office did not issue the Certificate because of the fault of Hilltop. The party at fault, Hilltop, cannot use the non-issuance of the Certificate to its advantage because the non-issuance was due to its fault. In short, Hilltop cannot claim that the 25-year lease period has not yet commenced because of the non-issuance of the Certificate, since Hilltop itself was responsible for the non-issuance of the Certificate.

Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing.[35] The action (or inaction) of the party seeking equity must be "free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter."[36]

Since the contract of lease already commenced, Hilltop has been occupying the Rillera building even after the termination of the lease period. The contract of lease provides that the period of lease is 25 years and it is renewable for the same period at the option of both parties. Based on the findings of the RTC that Hilltop started occupying the lot in 1974 and 25 years have lapsed without the parties renewing the contract, the contract of lease is already terminated. Thus, the City of Baguio is justified in issuing AO No. 30, and in taking over the Rillera building being its owner under the contract of lease. There is no basis in granting damages to Hilltop.

In a reciprocal contract like a lease, the period must be deemed to have been agreed upon for the benefit of both parties, absent language showing that the term was deliberately set for the

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[35] *Department of Public Works and Highways v. Quiwa,* 681 Phil. 485 (2012).

[36] *Id*., citing *Kentland Coal & Coke Co. v. Elswick,* 167 Ky., 593; 181 S. W., 181, 182, 183.

benefit of the lessee or lessor alone.[37] The continuance, effectivity, and fulfillment of a contract of lease cannot be made to depend exclusively upon the free and uncontrolled choice of the lessee.[38] Mutuality does not obtain in such a contract of lease and no equality exists between the lessor and the lessee since the life of the contract would be dictated solely by the lessee.[39]

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 27 November 2008 and the Resolution dated 15 May 2009 of the Court of Appeals in CA-G.R. CV No. 88472.

SO ORDERED.

Peralta, Mendoza, and *Martires, JJ.,* concur.

Leonen, J., on leave but left his vote concurring with the *ponencia*.

SECOND DIVISION

[G.R. No. 190590. July 12, 2017]

ROBERTO V. SAN JOSE and DELFIN P. ANGCAO, *petitioners, vs.* **JOSE MA. OZAMIZ,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; INTRA-CORPORATE CONTROVERSIES; THE RELATIONSHIP AND THE NATURE OF THE CONTROVERSY TEST, DISTINGUISHED.— To determine whether or not a case involves an intra-corporate dispute, two tests are applied — the relationship test and the nature of the controversy test. Under

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[37] *Buce v. Court of Appeals*, 387 Phil. 897 (2000).

[38] *Id.*

[39] *Id.*

the relationship test, there is an intra-corporate controversy when the conflict is (1) between the corporation, partnership, or association and the public; (2) between the corporation, partnership, or association and the State insofar as its franchise, permit, or license to operate is concerned; (3) between the corporation, partnership, or association and its stockholders, partners, members, or officers; and (4) among the stockholders, partners, or associates themselves. On the other hand, in accordance with the nature of controversy test, an intra-corporate controversy arises when the controversy is not only rooted in the existence of an intra-corporate relationship, but also in the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation.

2. **ID.; ID.; ID.; A CONFLICT BETWEEN A STOCKHOLDER AND THE CORPORATION WHICH INVOLVES THE ENFORCEMENT OF THE RIGHT OF THE STOCKHOLDER TO INSPECT THE BOOKS OF THE CORPORATION AND THE OBLIGATION OF THE LATTER TO ALLOW ITS STOCKHOLDER TO INSPECT ITS BOOKS IS AN INTRA-CORPORATE DISPUTE.—** Based on the tests, it is clear that this case involves an intra-corporate dispute. It is a conflict between a stockholder and the corporation, which satisfies the relationship test, and it involves the enforcement of the right of Ozamiz, as a stockholder, to inspect the books of PHC and the obligation of the latter to allow its stockholder to inspect its books. [W]e also note that in *Abad v. Philippine Communications Satellite Corporation*, one of the issues resolved by this Court was whether it was the Sandiganbayan or the RTC which had jurisdiction over a stockholder's suit to enforce its right of inspection under Section 74 of the Corporation Code against PHC, the same corporation involved in this present case. We categorized the concern of its stockholder as an intra-corporate dispute.

3. **ID.; ID.; ID.; THE SECURITIES REGULATION CODE (RA NO. 8799); THE FINAL ORDER OF THE REGIONAL TRIAL COURT IN CASES FALLING UNDER THE INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES UNDER RA NO. 8799, SHALL BE APPEALABLE TO THE COURT OF APPEALS THROUGH A PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT. —** [W]e

find that the dispute at hand, which involves the stockholder, Ozamiz, demanding to inspect the books of PHC and the consequent refusal of the corporation to show its books, is simply an intra-corporate dispute. And because this is an intra-corporate dispute, the matter was properly elevated to the CA. A.M. No. 04-9-07-SC x x x. The order of the RTC dismissing the case for lack of jurisdiction was a final order under the Interim Rules of Procedure Governing Intra- Corporate Controversies under RA No. 8799, which was the effective set of rules when the complaint and subsequent appeal were filed. Thus, the proper remedy was to appeal the order to the CA through a petition for review under Rule 43 of the Rules of Court. The CA was therefore correct in taking cognizance of the appeal.

4. **ID.; ID.; ID.; THE MERE FACT THAT A CORPORATION'S SHARES OF STOCKS ARE OWNED BY A SEQUESTERED CORPORATION DOES NOT, BY ITSELF, AUTOMATICALLY CATEGORIZE THE MATTER AS ONE INVOLVING SEQUESTERED ASSETS, OR MATTERS INCIDENTAL TO OR RELATED TO TRANSACTIONS INVOLVING SEQUESTERED CORPORATIONS AND/OR THEIR ASSETS; THE SANDIGANBAYAN HAS NO JURISDICTION OVER THE CASE AT BAR.—** The mere fact that a corporation's shares of stocks are owned by a sequestered corporation does not, by itself, automatically categorize the matter as one involving sequestered assets, or matters incidental to or related to transactions involving sequestered corporations and/or their assets. To be clear, jurisdiction of a court is conferred by law and the jurisdiction of the Sandiganbayan in relation to sequestered property is conferred by Presidential Decree (PD) No. 1606, as amended by RA No. 8249 x x x. In this case, there is no question on any illegally acquired or misappropriated property by former President Marcos or his agents. This case does not relate to the recovery of ill-gotten wealth or any property that needs to be sequestered or assets that have already been placed under sequestration. Thus, the subject matter of this case does not arise from, or is incidental to, or is related to the Executive Orders cited in the law that would vest jurisdiction with the Sandiganbayan.

5. **ID.; ID.; ID.; THE SECURITIES REGULATION CODE; CASES INVOLVING INTRA-CORPORATE DISPUTE ARE WITHIN THE JURISDICTION OF THE REGIONAL**

TRIAL COURT (RTC); A COMPLAINT FOR INSPECTION OF BOOKS OF THE CORPORATION FILED BY THE STOCKHOLDER FALLS WITHIN THE JURISDICTION OF THE RTC.— We find that the CA was correct in remanding the case back to the RTC. [T]he case merely involves a simple intra-corporate dispute. Such cases are within the jurisdiction of the RTC. While PD No. 902-A conferred original and exclusive jurisdiction over intra-corporate disputes to the Securities and Exchange Commission, this was transferred to the appropriate RTC under RA No. 8799, to wit: Section 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is **hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court** xxx. The Interim Rules of Procedure for Intra-Corporate Controversies also provide: Rule I GENERAL PROVISIONS Section 1. (a) *Cases covered*. – These Rules shall govern the procedure to be observed in civil cases involving the following x x x. **(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;** x x x **(5) Inspection of corporate books.** x x x. Based on the foregoing, we find no reversible error on the part of the CA when it remanded the case back to the RTC upon finding that the RTC had jurisdiction over the complaint for inspection of books filed by Ozamiz.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioners.
Bernadette S. Yanson for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Petitioners Roberto V. San Jose (San Jose)

and Delfin P. Angcao (Angcao) challenge the 25 September 2009 Decision[1] and 9 December 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 105543 which reversed and set aside the 10 September 2008 Order[3] of the Regional Trial Court (RTC) of Makati City, Branch 149, in Civil Case No. 08-226 which dismissed the complaint for inspection of books[4] filed by respondent Jose Ma. Ozamiz (Ozamiz) for lack of jurisdiction.

The Facts

On 17 July 1996, San Jose was elected Corporate Secretary of Philcomsat Holdings Corporation (PHC) then known as Liberty Mines, Inc. Thereafter, on 10 January 1997, San Jose was elected as a member of the Board of Directors and was re-elected several times as director and Corporate Secretary in the succeeding years. On 8 October 1999, Angcao was elected as Assistant Corporate Secretary, and was likewise re-elected several times thereafter as such. On 20 February 2007, San Jose resigned as PHC director. On 7 May 2007, he also relinquished his position as Corporate Secretary. With this resignation, Angcao was elected to serve as the Corporate Secretary of PHC. Since then, San Jose ceased to be connected with PHC and has not held any position of office in PHC.

Ozamiz was a stockholder of PHC since 6 January 1997. On 11 May 2007, he wrote petitioners to request for a copy of all the Minutes of the Meetings of the Board of Directors and Executive Committee of PHC from 2000 to 2007 and a certification as to the completeness thereof.[5] On 15 May 2007,

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[1] *Rollo*, pp. 35-58. Penned by Justice Romeo F. Barza, with Associate Justices Remedios A. Salazar-Fernando and Isaias P. Dicdican concurring.

[2] *Id*. at 61-62.

[3] *Id*. at 63-64.

[4] *Id*. at 77-84.

[5] *Id*. at 75.

Angcao received this letter. On 18 May 2007, Ozamiz's secretary inquired from the office of Angcao if the minutes were ready and was informed that the request was referred to the Board of Directors for approval. In a letter to Angcao dated 21 May 2007, Ozamiz demanded for either the copies of the minutes and the issuance of the requested certification of completeness or an explanation in writing for his refusal to do so. From 23 May 2007 to 28 May 2007, Ozamiz and his secretary followed-up with the petitioners to no avail. On 29 May 2007, Ozamiz was told that his request for documents would be taken up at the next Board Meeting. Since 29 May 2007 up to the filing of the complaint, Ozamiz did not hear anything from PHC, its Board of Directors, or any others.

On 20 June 2007, at the meeting of the Board of Directors, the request of Ozamiz was discussed. Considering that a similar case filed by Atty. Victor Africa for the inspection of the books of PHC was still pending in court, and in view of the fact that Ozamiz belonged to the same group as Atty. Africa, the matter was referred by the Board of Directors to the PHC Legal Committee for study and recommendation. Until his resignation in 22 January 2008, Angcao never heard from Ozamiz again.

On 25 March 2008, Ozamiz filed a complaint for inspection of books with the RTC, praying that he be provided a copy of all the minutes of the meetings of directors, the Executive Committee and such other committees constituted by the PHC from 2000 to 2007. On 5 May 2008, petitioners, together with Alma Kristina O. Alobba and Kristine Joy R. Diaz who were also subsequently impleaded by Ozamiz, filed their Answer *Ad Cautelam* where they denied the allegations of Ozamiz for lack of knowledge.[6] They also argued that the RTC had no jurisdiction over the complaint as the subject matter thereof is under the exclusive jurisdiction of the Sandiganbayan.

Petitioners asserted that since 80.35% of PHC is owned by Philippine Communications Satellite Corporation (Philcomsat),

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[6] *Id*. at 101-108.

and Philcomsat is wholly owned by Philippine Overseas Telecommunications Corporation (POTC), and both Philcomsat and POTC are subjects of a standing sequestration order issued by the Presidential Commission on Good Government (PCGG), the case should have been filed before the Sandiganbayan. They prayed that the complaint be dismissed for lack of jurisdiction and for lack of merit.

The Ruling of the RTC

On 10 September 2008, the RTC rendered its Order dismissing the complaint for lack of jurisdiction. The Order provides in part:

> Perusal of the complaint shows that the intra-corporate controversy herein involves plaintiff's demand for the production and inspection of 'all the minutes of the meetings of the board of directors, the Executive Committee and such other committees constituted by the PHC from 2000 to 2007.' It is noted that Philcomsat has controlling interest in PHC, and that POTC is the beneficial owner of Philcomsat. Both POTC and Philcomsat are sequestered companies being administered by the PCGG.
>
> Jurisprudence tells us that not only principal causes of action involving sequestered companies fall under the Sandiganbayan jurisdiction, but also 'all incidents arising from, incidental to, or related, to such cases (Del Moral, et al. vs. Republic of the Philippines, 457 SCRA 188 [2005] citing PCGG vs. Peña, 159 SCRA 556 [1998]). It was further cited in Del Moral that 'Sequestration is taking into custody under PCGG's control or possession any asset, fund or property, as well as relevant records, papers and documents, in order to prevent their concealment, destruction, impairment or dissipation pending determination of the question whether said asset, fund or property is ill-gotten wealth under Executive Order[] Nos. 1 and 2.[7]

On 3 October 2008, Ozamiz filed with the CA a petition for review under Rule 43 of the Rules of Court to assail the Order of the RTC. Ozamiz argued that the RTC, and not the Sandiganbayan, had jurisdiction over the case because PHC is

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[7] *Id*. at 63-64.

an unsequestered corporation and the case is not about a supposed violation of the Anti-Graft and Corrupt Practices Act[8] or about the forfeiture of ill-gotten wealth under Republic Act (RA) No. 1379.[9] Ozamiz argued that since it is a simple case for inspection of books, it is an intra-corporate controversy under RA No. 8799[10] and the Interim Rules of Procedure for Intra-Corporate Controversies.[11]

The Ruling of the CA

In a Decision dated 25 September 2009, the CA reversed and set aside the Order of the RTC.[12] The CA found that the case filed by Ozamiz was a simple intra-corporate dispute, and thus it was the RTC which had jurisdiction over the case. The CA held:

> In the present case, it bears remembering that only POTC and Philcomsat are under sequestration by the PCGG and not PHC itself. True, POTC appears to wholly own Philcomsat, and Philcomsat, in turn, owns a substantial part of PHC (about 80.35%), but the fact remains that **PHC is not under any writ of sequestration issued by the PCGG**.
>
> Moreover, while 80.35% of PHC is owned by Philcomsat, it is important to remember that only the said shares corresponding to such a majority ownership of PHC are considered assets of a sequestered corporation. **Hence, only the shares corresponding to Philcomsat's 80.35% stake over PHC is a sequestered asset.** In fact, as a rule, the PCGG, as a mere conservator of the said shares, does not even automatically exercise acts of dominion over PHC by voting these shares as it is settled that, as a general rule, the registered owner of the shares of a corporation, even if they are sequestered by the government through the PCGG, still exercises the right and the privilege of voting on them (See Cojuangco, Jr. vs. Roxas, G.R.

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[8] Republic Act No. 3019.

[9] *Rollo*, pp. 148-150.

[10] The Securities Regulations Code.

[11] *Rollo*, p. 154.

[12] *Id.* at 57.

Nos. 91925 & 93005, 16 April 1991, citing Section 24 of the Corporation Code. See also PCGG vs. Cojuangco, Jr., G.R. No. 133197, 27 January 1999).

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Bearing those in mind, therefore, in the Court's considered view, petitioner's request in the present controversy, by virtue of being a stockholder, to be provided with a copy of all the minutes of the meetings of directors, the Executive Committee and such other committees constituted by PHC, is simply an intra-corporate dispute within PHC. Lest it be forgotten, an intra-corporate dispute has been defined as a dispute which arises between the stockholder and the corporation (Philex Mining Corp. vs. Reyes, 118 SCRA 602). In fact, the various allegations by the respondents that the petitioner's motivation in filing the present complaint is part of a concerted effort by the petitioner's group to wrest control over PHC all the more convinces this Court that the same is nothing more but an intra-corporate dispute within PHC. As such, jurisdiction over the question as to whether the petitioner is entitled to his request pertains to the Regional Trial Court and not the Sandiganbayan.[13] (Boldfacing and underscoring in the original)

In a Resolution dated 9 December 2009,[14] the CA denied the Motion for Reconsideration filed by petitioners.

Hence, this petition.

The Issues

In this petition, petitioners seek a reversal of the decision of the CA, and raise the following arguments:

THE COURT OF APPEALS DID NOT HAVE JURISDICTION TO ENTERTAIN RESPONDENT'S "PETITION FOR REVIEW" DATED OCTOBER 3, 2008 AS IT RAISED PURE QUESTIONS OF LAW;

PURSUANT TO THIS HONORABLE COURT'S RULING IN DEL MORAL VS. REPUBLIC OF THE PHILIPPINES AND OTHER

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[13] *Id*. at 53-54, 56-57.

[14] *Id*. at 61-62.

RELATED JURISPRUDENCE, THE TRIAL COURT DID NOT HAVE JURISDICTION OVER RESPONDENT'S COMPLAINT; and

THIS CASE DOES NOT INVOLVE A MERE INTRA-CORPORATE DISPUTE BECAUSE IT CONCERNS MATTERS RELATING TO THE ASSETS OF A SEQUESTERED CORPORATION.[15]

The Ruling of the Court

This petition is without merit.

First, we review whether the CA erred in taking cognizance of the petition for review under Rule 43 of the Rules of Court. Petitioners argue that since the petition for review involved a pure question of law – whether the RTC erred in dismissing the complaint filed for lack of jurisdiction – the CA did not have jurisdiction to resolve the petition.

Respondent, however, argues that the appeal to the CA under Rule 43 of the Rules of Court is correct under A.M. No. 04-9-07-SC[16] which provides that the proper mode of appeal in cases involving corporate rehabilitation and intra-corporate controversies – which include 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 RA No. 8799 – is a petition for review under Rule 43 of the Rules of Court filed with the CA.

Thus, to determine whether or not the appeal to the CA via a petition for review under Rule 43 of the Rules of Court was proper, we determine whether this case involves an intra-corporate dispute.

To determine whether or not a case involves an intra-corporate dispute, two tests are applied – the relationship test and the nature of the controversy test.

Under the relationship test, there is an intra-corporate controversy when the conflict is (1) between the corporation,

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[15] *Id.* at 16.

[16] Dated 14 September 2004.

partnership, or association and the public; (2) between the corporation, partnership, or association and the State insofar as its franchise, permit, or license to operate is concerned; (3) between the corporation, partnership, or association and its stockholders, partners, members, or officers; and (4) among the stockholders, partners, or associates themselves.[17]

On the other hand, in accordance with the nature of controversy test, an intra-corporate controversy arises when the controversy is not only rooted in the existence of an intra-corporate relationship, but also in the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation.[18]

Based on the foregoing tests, it is clear that this case involves an intra-corporate dispute. It is a conflict between a stockholder and the corporation, which satisfies the relationship test, and it involves the enforcement of the right of Ozamiz, as a stockholder, to inspect the books of PHC and the obligation of the latter to allow its stockholder to inspect its books.

More importantly, we also note that in *Abad v. Philippine Communications Satellite Corporation*,[19] one of the issues resolved by this Court was whether it was the Sandiganbayan or the RTC which had jurisdiction over a stockholder's suit to enforce its right of inspection under Section 74 of the Corporation Code against PHC, the same corporation involved in this present case. We categorized the concern of its stockholder as an intra-corporate dispute, to wit:

In the case at bar, the complaint concerns PHILCOMSAT's demand to exercise its right of inspection as stockholder of PHC but which

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[17] *Philippine Communications Satellite Corporation v. Sandiganbayan, 5th Division*, G.R. No. 203023, 17 June 2015, 759 SCRA 242, citing *Medical Plaza Makati Condominium Corp. v. Cullen*, 720 Phil. 732, 742-743 (2013).

[18] *Id*., citing *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation,* 649 Phil. 669, 691 (2010) and *Reyes v. RTC of Makati, Br. 142*, 583 Phil. 591, 608 (2008).

[19] 756 Phil. 294 (2015).

petitioners refused on the ground of the ongoing power struggle within POTC and PHILCOMSAT that supposedly prevents PHC from recognizing PHILCOMSAT's representative (Africa) as possessing such right or authority from the legitimate directors and officers. **Clearly, the controversy is intra-corporate in nature as they arose out of intra-corporate relations between and among stockholders, and between stockholders and the corporation.**[20] (Boldfacing and underscoring supplied)

In this wise, we find that the dispute at hand, which involves the stockholder, Ozamiz, demanding to inspect the books of PHC and the consequent refusal of the corporation to show its books, is simply an intra-corporate dispute. And because this is an intra-corporate dispute, the matter was properly elevated to the CA. A.M. No. 04-9-07-SC[21] provides:

WHEREFORE, the Court Resolves:

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.** (Boldfacing and underscoring supplied)

The order of the RTC dismissing the case for lack of jurisdiction was a final order under the Interim Rules of Procedure Governing Intra-Corporate Controversies under RA No. 8799, which was the effective set of rules when the complaint and subsequent appeal were filed. Thus, the proper remedy was to appeal the order to the CA through a petition for review under Rule 43 of the Rules of Court. The CA was therefore correct in taking cognizance of the appeal.

Next, we discuss whether the CA erred in remanding the case back to the RTC after finding that the complaint was within the jurisdiction of the RTC.

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[20] *Id*. at 306.

[21] Dated 14 September 2004.

Petitioners argue that since the majority of the stocks of PHC is owned by corporations sequestered by the PCGG, the case concerns assets of sequestered corporations, and thus the Sandiganbayan is the proper court with jurisdiction.

Again, we disagree.

The mere fact that a corporation's shares of stocks are owned by a sequestered corporation does not, by itself, automatically categorize the matter as one involving sequestered assets, or matters incidental to or related to transactions involving sequestered corporations and/or their assets.

To be clear, jurisdiction of a court is conferred by law and the jurisdiction of the Sandiganbayan in relation to sequestered property is conferred by Presidential Decree (PD) No. 1606, as amended by RA No. 8249, which provides in part:

> Section 4. *Jurisdiction.* The Sandiganbayan shall have jurisdiction over:
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> c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

In turn, these Executive Orders refer to the recovery by the PCGG of the ill-gotten wealth of former President Ferdinand E. Marcos, his relatives, dummies, and other agents. This Court held in *PCGG v. Peña*:[22]

> On the issue of jurisdiction squarely raised, as above indicated, the Court sustains petitioner's stand and holds that regional trial courts and the Court of Appeals for that matter have *no* jurisdiction over the Presidential Commission on Good Government in the exercise of its powers under the applicable Executive Orders and Article XVIII, [S]ection 26 of the Constitution and therefore may not interfere with and restrain or set aside the orders and actions of the Commission. Under [S]ection 2 of the President's Executive Order No. 14 issued on May 7, 1986, **all cases of the Commission regarding "the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs.**

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[22] 243 Phil. 93, 102 (1988).

Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees" whether civil or criminal, are lodged within the "exclusive and original jurisdiction of the Sandiganbayan" and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction, subject to review on certiorari exclusively by the Supreme Court. (Boldfacing and underscoring supplied)

Petitioners' insistence that the RTC has no jurisdiction over the case seems to be based on the interpretation of the phrase "all incidents arising from, incidental to, or related to such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction." Unfortunately, this is an erroneous interpretation because the term "cases," as referred to in the said paragraph, pertains to "the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees." In this case, there is no question on any illegally acquired or misappropriated property by former President Marcos or his agents. This case does not relate to the recovery of ill-gotten wealth or any property that needs to be sequestered or assets that have already been placed under sequestration. Thus, the subject matter of this case does not arise from, or is incidental to, or is related to the Executive Orders cited in the law that would vest jurisdiction with the Sandiganbayan.

Petitioners' reliance on the case of *Del Moral v. Republic of the Philippines*[23] is severely misplaced because that particular case involved assets that were actually sequestered by the PCGG. Unlike the present case, there was a writ of sequestration issued over all properties or assets of Mountain View Real Estate Corporation which was believed to be part of the ill-gotten wealth of former President Marcos. The writ of sequestration was even annotated on the Transfer Certificate of Title of the land, which was subsequently partitioned without the knowledge of

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[23] 496 Phil. 657 (2005).

the PCGG. Thus, the subject matter of the amended decision which the PCGG sought to annul was properly considered as an incident or transaction related to the recovery of ill-gotten wealth which falls under the jurisdiction of the Sandiganbayan. That case actually involved recovery of property over which a writ of sequestration had already been issued. This is in stark contrast with the present case, which merely involves an intra-corporate dispute between a corporation and its stockholder, and raises no questions or issues in relation to the recovery of any ill-gotten wealth. Moreover, PHC is not under any sequestration order, and no asset or property of PHC is involved in this case. Thus, the pronouncement of the Court in *Del Moral v. Republic of the Philippines* has no application to this case.

We find that the CA was correct in remanding the case back to the RTC. As earlier discussed, the case merely involves a simple intra-corporate dispute. Such cases are within the jurisdiction of the RTC. While PD No. 902-A conferred original and exclusive jurisdiction over intra-corporate disputes to the Securities and Exchange Commission,[24] this was transferred to the appropriate RTC under RA No. 8799, to wit:

Section 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is **hereby transferred to the Courts of general jurisdiction or the**

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[24] Section 5, PD No. 902-A provides:

Section 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

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b. Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

x x x x x x x x x

appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed. (Boldfacing and underscoring supplied)

The Interim Rules of Procedure for Intra-Corporate Controversies also provide:

Rule I

GENERAL PROVISIONS

Section 1. (a) *Cases covered.* – These Rules shall govern the procedure to be observed in civil cases involving the following:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

(4) Derivative suits; and

(5) Inspection of corporate books.

x x x x x x x x x

Sec. 5. *Venue*. – All actions covered by these Rules shall be commenced and tried in the **Regional Trial Court** which has jurisdiction over the principal office of the corporation, partnership, or association concerned. Where the principal office of the corporation,

partnership or association is registered in the Securities and Exchange Commission as Metro Manila, the action must be filed in the city or municipality where the head office is located.[25] (Boldfacing and underscoring in the original)

Based on the foregoing, we find no reversible error on the part of the CA when it remanded the case back to the RTC upon finding that the RTC had jurisdiction over the complaint for inspection of books filed by Ozamiz.

WHEREFORE, the petition is **DENIED.** The assailed Decision and Resolution of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

Peralta, Mendoza, and *Martires, JJ.,* concur.

Leonen, J., on leave but left his vote concurring with the *ponencia*.

THIRD DIVISION

[G.R. No. 201018. July 12, 2017]

UNITED COCONUT CHEMICALS, INC., *petitioner, vs.* **VICTORIANO B. VALMORES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; ILLEGAL DISMISSAL; BACKWAGES; FULL BACKWAGES SHALL BE PEGGED AT THE WAGE RATE AT THE TIME OF THE EMPLOYEE'S DISMISSAL, UNQUALIFIED BY ANY DEDUCTIONS AND INCREASES.— The extent of the backwages to be awarded to an illegally dismissed employee has been set in Article 279

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[25] A.M. No. 01-2-04-SC.

of the *Labor Code* x x x. The settled rule is that full backwages shall be pegged at the wage rate at the time of the employee's dismissal, unqualified by any deductions and increases, thus: [T]he determination of the salary base for the computation of backwages requires simply an application of judicial precedents defining the term "backwages." An unqualified award of backwages means that the employee is paid at the wage rate at the time of his dismissal. Furthermore, the award of salary differentials is not allowed, the established rule being that upon reinstatement, illegally dismissed employees are to be paid their backwages without deduction and qualification as to any wage increases or other benefits that may have been received by their co-workers who were not dismissed or did not go on strike.

2. ID.; ID.; ID.; ID.; THE BASE FIGURE FOR THE COMPUTATION OF BACKWAGES SHOULD INCLUDE NOT ONLY THE BASIC SALARY BUT ALSO THE REGULAR ALLOWANCES BEING RECEIVED, SUCH AS THE EMERGENCY LIVING ALLOWANCES AND THE 13TH MONTH PAY; RATIONALE.— The base figure for the computation of backwages should include not only the basic salary but also the regular allowances being received, such as the emergency living allowances and the 13th month pay mandated by the law.The purpose for this is to compensate the worker for what he has lost because of his dismissal, and to set the price or penalty on the employer for illegally dismissing his employee. Conformably with the foregoing guidelines, the Labor Arbiter did not err in using ₱11,194.00 as the base figure because the sum represented the respondent's wage rate at the time of his dismissal on February 22, 1996. Also, the Labor Arbiter properly included in the computation the respondent's 13th month pay and service incentive leave.

3. ID.; ID.; ID.; ID.; FULL BACKWAGES IS THE SALARY RATE OF THE EMPLOYEE AT THE TIME OF HIS DISMISSAL, BUT DOES NOT INCLUDE THE INCREASES OR BENEFITS GRANTED TO HIS CO-EMPLOYEES DURING THE PERIOD OF HIS DISMISSAL.— The base figure to be used in reckoning full backwages is the salary rate of the employee at the time of his dismissal. The amount does not include the increases or benefits granted during the period of his dismissal because time stood still for him at the precise moment of his termination, and move

forward only upon his reinstatement. Hence, the respondent should only receive backwages that included the amounts being received by him at the time of his illegal dismissal but not the benefits granted to his co-employees after his dismissal.

4. ID.; ID.; ID.; ID.; SALARY INCREASES AND BENEFITS WHICH ARE NOT AUTOMATICALLY GIVEN TO THE WORKER, BUT ARE GIVEN SUBJECT TO CONDITIONS SHOULD BE EXCLUDED FROM THE BACKWAGES.— The Court is also aware of the reality that salary increases and benefits are not automatically given to the worker, but are given subject to conditions. As such, the respondent's claim for the increases in salary, meal subsidy, safety incentive pay, SOFA, financial grant and medical assistance for the period from 1997 until 2007, and one-time CBA increase, should be excluded trom his backwages.

5. ID.; ID.; ID.; ID.; CBA ALLOWANCES AND BENEFITS THAT THE EMPLOYEE WAS REGULARLY RECEIVING BEFORE HIS ILLEGAL DISMISSAL SHOULD BE ADDED TO THE BASE FIGURE, BUT HE STILL HAD TO PROVE HIS ENTITLEMENT TO THE BENEFITS BY SUBMITTING PROOF OF HIS HAVING RECEIVED THE SAME AT THE TIME OF HIS ILLEGAL DISMISSAL.— CBA allowances and benefits that the respondent was regularly receiving before his illegal dismissal on February 22, 1996 should be added to the base figure of ₱11,194.00. This is because Article 279 of the *Labor Code* decrees that the backwages shall be "*inclusive of allowances, and to his other benefits or their monetary equivalent*." Considering that the law does not distinguish between the benefits granted by the employer and those granted under the CBA, he should not be denied the latter benefits. Nonetheless, the respondent still had to prove his entitlement to the benefits by submitting proof of his having received the same at the time of his illegal dismissal.

6. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; WHERE THERE IS A CONFLICT BETWEEN THE BODY OF THE DECISION AND THE DISPOSITIVE PORTION OR THE FALLO, THE FALLO CONTROLS BECAUSE IT IS THE FINAL ORDER, WHILE THE OPINION STATED IN THE BODY IS A MERE STATEMENT ORDERING NOTHING; HOWEVER, WHERE THE INEVITABLE CONCLUSION FROM THE BODY OF THE

DECISION IS SO CLEAR AS TO SHOW THAT THERE WAS A MISTAKE IN THE DISPOSITIVE PORTION, THE BODY OF THE DECISION SHOULD PREVAIL.— The November 29, 2000 decision of the NLRC faulted the UCCI for dismissing the respondent without cause and for non-observance of procedural due process. The body of the decision explained how the UELO had wrongly expelled him from its membership, but such explanation was made only to highlight how the UCCI had not conducted its own investigation of the circumstances behind his expulsion in order to determine for itself whether or not the union security clause was applicable. Although the NLRC did not include in the body of its decision anything to the effect that UELO should be liable for the respondent's expulsion, it nonetheless decreed: WHEREFORE, premises considered, the appeal is GRANTED. The Decision appealed from is SET ASIDE and a new one entered **finding respondents liable for illegal dismissal and ordering them to reinstate complainant to his former position without loss of seniority rights and with full backwages** from the date of dismissal on 22 February 1996 to the date of actual reinstatement. x x x. There is thus a conflict between the body of the decision and the dispositive portion or the *fallo*. As a rule, the *fallo* controls in such a situation on the theory that the *fallo* is the final order, while the opinion stated in the body is a mere statement ordering nothing. However, where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision should prevail. Indeed, the rationality of the decision should justify the *fallo*. To say otherwise is to tolerate a farce. We have no doubt at all that the exception fully applies herein.

7. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; THE EMPLOYER EFFECTING THE UNLAWFUL DISMISSAL IS SOLELY LIABLE FOR THE BACKWAGES OF THE DISMISSED EMPLOYEE.— Verily, the petitioner, as the employer effecting the unlawful dismissal, was solely liable for the backwages of the respondent, its employee. In *General Milling Corporation v. Casio*, we explained the liability of the employer in case of the unlawful termination pursuant to the union security provision of the CBA, *viz*: x x x Despite a closed shop provision in the CBA and the expulsion of Casio, *et al.* from IBP-Local 31, law and

jurisprudence imposes upon GMC the obligation to accord Casio, *et al.* substantive and procedural due process before complying with the demand of IBP-Local 31 to dismiss the expelled union members from service. The failure of GMC to carry out this obligation makes it liable for illegal dismissal of Casio, *et al.*

8. ID.; ID.; ID.; ID.; INTEREST AT THE LEGAL RATE SHALL BE IMPOSED ON THE MONETARY AWARDS IN FAVOR OF THE ILLEGALLY DISMISSED EMPLOYEE WHERE THE EMPLOYER INCURRED A DELAY IN DISCHARGING ITS LEGAL OBLIGATIONS TO PAY HIM FULL BACKWAGES; 12% INTEREST PER ANNUM IMPOSED ON THE MONETARY AWARD.— The position of the respondent that the interest rate to be imposed on the monetary award should be fixed at 12% *per annum* reckoned from the finality of the decision of the NLRC until full payment is warranted and upheld. Pursuant to Article 2209 of the *Civil Code*, interest at the legal rate should be imposed on the monetary awards in favor of the respondent because UCCI incurred a delay in discharging its legal obligations to pay him full backwages. In *BPI Employees Union-Metro Manila*, the Court, conformably with *Eastern Shipping Lines, Inc. v. Court of Appeals*, imposed interest of 12% per annum on the monetary award in favor of the employee from the finality of the decision until full satisfaction "for the delay caused." Considering that the decision of the NLRC in favor of the respondent became final and executory on November 17, 2003, *Eastern Shipping Lines, Inc.* was the prevailing rule on the legal rate of interest.

APPEARANCES OF COUNSEL

Herrera Teehankee & Cabrera for petitioner.

Francisco A. Sanchez III for the heirs of Victoriano B. Valmores.

D E C I S I O N

BERSAMIN, *J.*:

The base figure in the determination of full backwages is fixed at the salary rate received by the employee at the time he was illegally dismissed. The award shall include the benefits

and allowances regularly received by the employee as of the time of the illegal dismissal, as well as those granted under the Collective Bargaining Agreement (CBA), if any.

The Case

The petitioner United Coconut Chemicals, Inc. (UCCI) appeals the decision promulgated on August 23, 2011,[1] whereby the Court of Appeals (CA) upheld the order of the National Labor Relations Commission (NLRC)[2] to remand the case to the Labor Arbiter for the re-computation of the respondent's full backwages.

Antecedents

UCCI hired the respondent as its Senior Utilities Inspector with a monthly salary of ₱11,194.00. He then became a member of the United Coconut Chemicals, Inc. Employees' Labor Organization (UELO) until his expulsion sometime in 1995.[3] Due to the expulsion, UELO formally demanded that UCCI terminate the services of the respondent pursuant to the union security clause of the CBA. UCCI dismissed him on February 22, 1996.[4] He then filed a complaint for illegal dismissal in the NLRC.[5] After due proceedings, the Labor Arbiter dismissed his complaint for lack of merit.[6] On appeal, however, the NLRC reversed the Labor Arbiter and disposed as follows:

WHEREFORE, premises considered, the appeal is GRANTED. The Decision appealed from is SET ASIDE and a new one entered

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[1] *Rollo,* pp. 34-45; penned by Associate Justice Ramon R. Garcia, with Associate Justice Rosmari D. Carandang and Associate Justice Samuel H. Gaerlan, concurring.

[2] *Id*. at 50-60.

[3] *Id*. at 35.

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

[5] Docketed as NLRC Case No. RAB-IV-02-07928-96-B entitled *Victoriano B. Valmores v. United Coconut Chemicals, Inc. (COCOCHEM) and United Coconut Chemicals, Inc. Employees' Labor Organization, its Executive Officers led by Mr. Nello Borbon*.

[6] *Rollo*, pp. 62-71.

finding respondents liable for illegal dismissal and ordered them to reinstate complainant to his former position without loss of seniority rights and with full backwages from the date of dismissal on 22 February 1996 to the date of actual reinstatement.

SO ORDERED.[7]

The parties, including UELO, moved for reconsideration. The NLRC denied the motions for reconsideration of the respondent and UELO, but partially granted UCCI's motion by granting its prayer to be exempted from paying backwages.[8]

Consequently, the respondent and UELO separately elevated the matter to the CA on *certiorari*, insisting that the NLRC thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

On January 18, 2002,[9] the CA promulgated its decision disposing as follows:

> WHEREFORE, foregoing considered, the DECISION of the Third Division of NLRC dated November 29, 2000 is AFFIRMED in all respect.
>
> The Resolution of the Third Division of NLRC dated January 31, 2001 which states:
>
> > "The motion for reconsideration filed by respondent United Coconut Chemicals from the decision of November 29, 2000 is partially GRANTED in that it is not held liable insofar as the award of full backwages in favor of complainant is concerned."
>
> is ordered DELETED and declared null and void.
>
> SO ORDERED.[10]

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[7] *Id.* at 88.

[8] *Id.* at 91-92.

[9] *Id.* at 90-98; penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justice Teodoro P. Regino and Associate Justice Rebecca De Guia-Salvador.

[10] *Id.* at 97-98.

Still, UCCI appealed to the Court, which, on November 17, 2003, denied the petition for review on *certiorari*.[11] The denial became final and executory on February 26, 2004;[12] hence, the respondent moved for the execution of the judgment in his favor.

On January 18, 2010, Labor Arbiter Michaela A. Lontoc issued an order decreeing thusly:

WHEREFORE, respondent [UCCI's] motion to hold respondent UELO primarily liable to pay complainant the herein monetary awards and/or direct respondent UELO to reimburse [UCCI] of whatever amount it may be made to pay complainant, disguised as a motion for clarification, is **DENIED** for lack of legal basis.

Complainant's motion for execution dated 29 November 2000 is **GRANTED**. Let a writ of execution be issued for its immediate implementation.

SO ORDERED.[13]

Labor Arbiter Lontoc opined that the backwages due to the respondent should be computed by excluding the benefits under the CBA, to wit:

In fine, we compute the backwages of complainant beginning 22 February 1996 as directed in the 29 November 2000 decision of the NLRC up to 30 June 2008. Complainant was admittedly reinstated to work effective on 01 July 2008, with the corresponding wages beginning said period paid and received by complainant until he was declared in AWOL and consequently terminated from work. Thus;

Backwages: ₱11,194.00 x 148.26 months =	₱1,659,622.44
13th Month Pay: ₱1,659,622.44 / 12 months=	₱ 138,301.87
SILP: ₱11,194.00 30 days x 5 days/12 mos. x 148.26 mos.=	₱ 23,050.31
TOTAL	₱1,820,974.62

[11] *Id*. at 100.

[12] *Id*. at 102.

[13] *Id*. at 113-114.

We do not neglect that in some of complainant's pleadings, he offered the computation of his backwages, which included a list of the benefits he claimed should be included, thus:

	Monthly Wage	Meal Subsidy	Safety Incentive Pay	SOFA	Financial Grant	Medical Assistance
1996	11,194.00	22.50	---	1,000.00	2,500.00	3,800.00
1997	12,444.00	25.00	---	1,000.00	2,500.00	3,800.00
1998	13,814.00	35.00	300.00	2,500.00	4,000.00	5,500.00
1999	15,314.00	35.00	300.00	2,500.00	4,000.00	5,500.00
2000	15,314.00	37.00	300.00	2,500.00	4,000.00	5,500.00
2001	16,314.00	37.00	300.00	2,500.00	4,000.00	5,500.00
2002	17,314.00	37.00	300.00	2,500.00	4,000.00	5,500.00
2003	19,064.00	40.00	500.00	2,500.00	4,000.00	6,500.00
2004	20,564.00	40.00	500.00	2,600.00	4,000.00	6,500.00
2005	22,564.00	40.00	500.00	2,600.00	5,000.00	10,000.00
2006	24,564.00	40.00	500.00	2,600.00	5,000.00	10,000.00
2007	26,614.00	40.00	500.00	2,600.00	5,000.00	10,000.00

One-time CBA increase 2000	₱20,000.00
Built-in OT/NSD	₱35,044.29/annum
Other bonuses	₱ 5,000/annum
Rice subsidy	one sack / month
Uniform	₱8,765.00 monetary equivalent/annum
Christmas package	₱1,000.00 / annum
VL/SL	46 days / annum

We cannot recognize these alleged CBA granted benefits. While the term "backwages" used in Article 279 of the Labor Code includes the benefits which the complainant should have received had he not been dismissed from work, benefits which are not prescribed by law of those referring to benefits granted by the employer either pursuant to the CBA or its benevolence, cannot be recognized unless duly proved. The decision dated 29 November 2000, which is the subject of the instant execution proceedings, did not recognize the foregoing alleged CBA and company issued benefits, although they were

enumerated by complainant in his position paper. Neither did we find the basis of these alleged CBA negotiated benefits. While complainant attached a few pages of what purports to be their collective bargaining agreement, the effectivity date thereof was never presented for the NLRC and for us to determine the dates of their applicability. Thus, complainant's entitlement to these benefits was not substantially proven. For the same reason, we have no basis to consider the same. Except for the bare allegation that he should have been paid these benefits, no proof of such grant was presented by complainant.

Corollary, we can only recognize the legally mandated benefits that need not be established by substantial evidence, *i.e.*, the 13th month pay and service incentive leave.[14]

On June 29, 2010, the NLRC issued its resolution remanding the case to the Labor Arbiter for the recomputation of the backwages inclusive of the benefits granted under the CBA,[15] disposing:

WHEREFORE, the decision dated 10 January 2010 is MODIFIED. The case is remanded to the Arbitration Branch of origin only for the purpose of recomputation of complainant's full backwages using the Collective Bargaining Agreement for the covered period as basis of computation. Respondent [UCCI] is directed to furnish the office of the Labor Arbiter's copies of the Collective Bargaining Agreement pertinent thereto.

The other findings are AFFIRMED.

SO ORDERED.[16]

The NLRC observed that there was a need to include the benefits granted under the CBA; that in the personnel action form submitted by UCCI, the reinstatement salary of the respondent amounted to ₱26,614.00 as opposed to the ₱11,194.00 alleged salary at the time of his dismissal; and the disparity should have prompted the Labor Arbiter to probe into his claim

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[14] *Id.* at 112-113.

[15] *Id.* at 50-60.

[16] *Id.* at 59.

of entitlement to the benefits under the CBA as part of his backwages.[17]

Judgment of the CA

Not satisfied, UCCI assailed the resolution issued on June 29, 2010 by the NLRC on *certiorari*.

On August 23, 2011, the CA upheld the NLRC, agreeing with the latter's observation that UCCI had failed to submit the documents providing the details of the benefits granted to its employees from the time when the respondent was illegally terminated until his reinstatement on July 1, 2008. It cited *Fulache v. ABS-CBN Broadcasting Corporation*[18] in holding that illegally dismissed employees were also entitled to the CBA benefits.[19]

Upon denial of its motion for reconsideration,[20] UCCI now appeals by petition for review on *certiorari*.

We note that during the pendency of the appeal, Isaias A. Valmores, Sr. and Leonarda B. Valmores, the parents of the respondent, prayed for their substitution herein in view of the respondent's intervening demise.[21]

Issues

UCCI submits that:

THE COMPUTATION FOR THE PAYMENT OF BACKWAGES SHOULD CONFORM TO ESTABLISHED JURISPRUDENCE WHICH PROVIDES THAT THE BASE FIGURE TO BE USED IN THE COMPUTATION OF BACKWAGES IS PEGGED AT THE WAGE RATE AT THE TIME OF THE EMPLOYEE'S DISMISSAL UNQUALIFIED BY DEDUCTIONS, INCREASES AND/OR MODIFICATIONS GRANTED IN THE INTERIM[22]

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

[18] G.R. No. 183810, January 21, 2010, 610 SCRA 567.

[19] *Rollo*, pp. 43-44.

[20] *Id.* at 47-48.

[21] *Id.* at 119-124.

[22] *Id.* at 20.

Citing *BPI Employees' Union-Metro Manila v. Bank of the Philippine Islands*,[23] UCCI posits that in determining the respondent's backwages the prospective increases in wages as well as the benefits provided in the CBA should be excluded; that, as a consequence, the base figure for computing the respondent's backwages should be his basic salary prevailing at the time of his dismissal, unqualified by deductions or increases; that the ruling of the CA and the NLRC to include the CBA-granted benefits was without legal basis and was contrary to prevailing jurisprudence; and that at any rate the respondent did not establish that he was enjoying such CBA benefits at the time of his dismissal.

In contrast, the respondent, now represented by his parents, manifests that he would not oppose the computation of the backwages in accordance with the *BPI Employees' Union-Metro Manila* ruling, provided that: (1) the 12% interest *per annum* imposed from the time when the decision became final until full payment based on *BPI Employees' Union-Metro Manila* should be applied herein; and (2) that all CBA benefits being received by the respondent at the time of his dismissal should be added to his basic salary. He maintains that UCCI should alone be held liable for the payment of backwages instead of being held jointly liable with UELO.

In riposte, UCCI argues that it could not be solely held liable for the payment of backwages because of the express ruling of the NLRC on November 29, 2000 (as upheld by the CA and affirmed by this Court) declaring it and UELO liable for illegal dismissal; and that the respondent cannot belatedly raise the matter during the period of execution inasmuch as the matter should have been properly raised while the NLRC's decision was still on appeal.

In fine, the Court shall now determine the following, namely: (1) the correct basis for computing the backwages of the respondent; (2) the nature of UCCI's liability for payment of

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[23] G.R. Nos. 178699 and 178735, September 21, 2011, 658 SCRA 127.

full backwages; and (3) the proper interest rate to be imposed on the judgment award.

Ruling of the Court

We deny the petition for review on *certiorari*.

I

Backwages include all benefits previously enjoyed by the illegally dismissed employee

The extent of the backwages to be awarded to an illegally dismissed employee has been set in Article 279[24] of the *Labor Code*, *viz.*:

> 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 reinstatement.**

The settled rule is that full backwages shall be pegged at the wage rate at the time of the employee's dismissal, unqualified by any deductions and increases, thus:

> [T]he determination of the salary base for the computation of backwages requires simply an application of judicial precedents defining the term "backwages." An unqualified award of backwages means that the employee is paid at the wage rate at the time of his dismissal. Furthermore, the award of salary differentials is not allowed, the established rule being that upon reinstatement, illegally dismissed employees are to be paid their backwages without deduction and qualification as to any wage increases or other benefits that may

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[24] Now Article 294 pursuant to R.A. No. 10151 (*See* DOLE Department Advisory No. 01, series of 2015)

have been received by their co-workers who were not dismissed or did not go on strike.[25]

The base figure for the computation of backwages should include not only the basic salary but also the regular allowances being received, such as the emergency living allowances and the 13th month pay mandated by the law.[26] The purpose for this is to compensate the worker for what he has lost because of his dismissal, and to set the price or penalty on the employer for illegally dismissing his employee.[27]

Conformably with the foregoing guidelines, the Labor Arbiter did not err in using ₱11,194.00 as the base figure because the sum represented the respondent's wage rate at the time of his dismissal on February 22, 1996. Also, the Labor Arbiter properly included in the computation the respondent's 13th month pay and service incentive leave.

The respondent insisted before the Labor Arbiter that his CBA-granted benefits should be included, but UCCI opposed, citing the 2011 ruling in *BPI Employees' Union-Metro Manila v. Bank of the Philippine Islands*. It contended that any computation that reflected increases during the period of his dismissal would be incorrect for want of legal basis and for being contrary to prevailing jurisprudence.

We agree with UCCI.

The base figure to be used in reckoning full backwages is the salary rate of the employee at the time of his dismissal. The amount does not include the increases or benefits granted during the period of his dismissal because time stood still for

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[25] *Evangelista v. National Labor Relations Commission*, G.R. No. 93915, October 11, 1995, 248 SCRA 194, 196, citing *Paramount Vinyl Products Corp. v. National Labor Relations Commission,* G.R. No. 81200, October 17, 1990, 190 SCRA 525, 537.

[26] *Paramount Vinyl Products Corp. v. National Labor Relations Commission,* G.R. No. 81200, October 17, 1990, 190 SCRA 525, 537.

[27] *Bustamante v. National Labor Relations Commission,* G.R. No. 111651, November 28, 1996, 265 SCRA 61, 70.

him at the precise moment of his termination, and move forward only upon his reinstatement. Hence, the respondent should only receive backwages that included the amounts being received by him at the time of his illegal dismissal but not the benefits granted to his co-employees after his dismissal.

The Court is also aware of the reality that salary increases and benefits are not automatically given to the worker, but are given subject to conditions. As such, the respondent's claim for the increases in salary, meal subsidy, safety incentive pay, SOFA, financial grant and medical assistance for the period from 1997 until 2007, and one-time CBA increase, should be excluded from his backwages.

CBA allowances and benefits that the respondent was regularly receiving before his illegal dismissal on February 22, 1996 should be added to the base figure of ₱11,194.00. This is because Article 279 of the *Labor Code* decrees that the backwages shall be "*inclusive of allowances, and to his other benefits or their monetary equivalent*." Considering that the law does not distinguish between the benefits granted by the employer and those granted under the CBA, he should not be denied the latter benefits.

Nonetheless, the respondent still had to prove his entitlement to the benefits by submitting proof of his having received the same at the time of his illegal dismissal. In *BPI Employees' Union-Metro Manila*, the claim for CBA benefits such as the signing bonus, medical and doctor's allowance, and dental allowance was denied because the employee was unable to prove that he was receiving such benefits at the time of the illegal dismissal. To do so, therefore, the respondent must have submitted before the Labor Arbiter sufficient evidence establishing his receiving meal subsidy, SOFA, financial grant, medical assistance, built-in overtime and night shift differential, rice subsidy, uniform allowance, Christmas package, vacation and sick leave at the time he was dismissed. Yet, the respondent was unable to discharge his burden because the relevant documents, including the CBA, had been in UCCI's exclusive possession and custody. Unfortunately, the Labor Arbiter did

not rule on his motion to compel the production of the documents by subpoena *duces tecum* because, as the NLRC put it:[28]

> The Labor Arbiter did not recognize the CBA benefits which complainant alleged should have been included in the computation because the complainant failed to prove the same. On 2 June 2008, the complainant filed a motion xxxx for computation of backwages and issuance of subpoena to the personnel manager/payroll officer or any employee of respondent employer-company to bring documents as well as the Collective Bargaining Agreement in force related to the latest salary/benefits of a Senior Utilities Operator and to testify thereon. This motion was not resolved by the Labor Arbiter. xxx On 1 July 2008, respondent [UCCI] in its personnel action form xxx admitted complainant's re-instatement salary to be ₱26,614.00 per month. The difference or disparity between the amount of ₱11,194.00 allegedly complainant's salary at the time of his dismissal on 26 February 2006 and ₱26,614.00 salary of complainant for the month of July 2008 should have prompted the Labor Arbiter to dig deeper into the allegations of complainant that he is entitled to other benefits under the CBA, the same to form part of the full backwages awarded to him.

The observations of the CA on this are adopted with approval, to wit:

> In the case at bench, it is undisputed that private respondent was a regular employee of petitioner UCCI and a member of UELO. A perusal of the records also shows that his expulsion from the union was deemed unjustified. This was the finding of the Former Sixth Division of this Court in its Decision dated January 18, 2002. Had private respondent not been unlawfully ousted from the union and unjustly terminated from work, he would have been entitled to the benefits being regularly received by the employees of petitioner UCCI who are members of the bargaining unit. As aptly noted by the NLRC, petitioner UCCI failed to submit the documents providing the details of benefits granted to its employees from the time of private respondent's dismissal on February 22, 1996 up to the date of his reinstatement. The presumption that evidence willfully suppressed would be adverse if produced thus applies. Consequently, We sustain the NLRC's ruling that private respondent's full backwages should

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[28] *Rollo*, pp. 57-58.

be re-computed in order to include the benefits regularly given to petitioner UCCI's employees under the CBA.[29]

We consider as patent error on the part of the Labor Arbiter to declare that the respondent had not proved his entitlement to the CBA benefits. Accordingly, the remand to enable the proper determination of the CBA benefits that the respondent had been receiving as of February 22, 2006 is proper and necessary.

II
UCCI is solely liable for the payment of backwages

The respondent submits that UCCI, as the employer, was solely liable for the payment of backwages. UCCI counters that the NLRC's decision promulgated on November 29, 2000, which the Court already affirmed, declared both UCCI and the UELO as liable for the backwages to the respondent; and insists that because the NLRC's decision had already become final and executory, no modifications thereof can be allowed without violating the rule on immutability of a final decision.

UCCI is mistaken.

The November 29, 2000 decision of the NLRC faulted the UCCI for dismissing the respondent without cause and for non-observance of procedural due process. The body of the decision explained how the UELO had wrongly expelled him from its membership, but such explanation was made only to highlight how the UCCI had not conducted its own investigation of the circumstances behind his expulsion in order to determine for itself whether or not the union security clause was applicable. Although the NLRC did not include in the body of its decision anything to the effect that UELO should be liable for the respondent's expulsion, it nonetheless decreed:

WHEREFORE, premises considered, the appeal is GRANTED. The Decision appealed from is SET ASIDE and a new one entered

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

finding respondents liable for illegal dismissal and ordering them to reinstate complainant to his former position without loss of seniority rights and with full backwages from the date of dismissal on 22 February 1996 to the date of actual reinstatement.

SO ORDERED.[30]

There is thus a conflict between the body of the decision and the dispositive portion or the *fallo*. As a rule, the *fallo* controls in such a situation on the theory that the *fallo* is the final order, while the opinion stated in the body is a mere statement ordering nothing.[31] However, where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision should prevail.[32] Indeed, the rationality of the decision should justify the *fallo*. To say otherwise is to tolerate a farce. We have no doubt at all that the exception fully applies herein.

Verily, the petitioner, as the employer effecting the unlawful dismissal, was solely liable for the backwages of the respondent, its employee. In *General Milling Corporation v. Casio*,[33] we explained the liability of the employer in case of the unlawful termination pursuant to the union security provision of the CBA, *viz.*:

x x x Despite a closed shop provision in the CBA and the expulsion of Casio, *et al*. from IBP-Local 31, law and jurisprudence imposes upon GMC the obligation to accord Casio, *et al*. substantive and procedural due process before complying with the demand of IBP-Local 31 to dismiss the expelled union members from service. The

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[30] *Id*. at 88 (bold underscoring supplied for emphasis).

[31] *Florentino v. Rivera*, G.R. No. 167968, January 23, 2006, 479 SCRA 522, 528-529; *Asian Center for Career and Employment System and Services, Inc. (ACCESS) v. NLRC,* G.R. No. 131656. October 12, 1998, 297 SCRA 727, 731.

[32] *Asian Center for Career and Employment System and Services, Inc. (ACCESS) v. NLRC,* G.R. No. 131656, October 12, 1998, 297 SCRA 727, 731-732.

[33] G.R. No. 149552, March 10, 2010, 615 SCRA 13, 37.

failure of GMC to carry out this obligation makes it liable for illegal dismissal of Casio, *et al*.

In *Malayang Samahan ng mga Manggagawa sa M. Greenfield*, the Court held that notwithstanding the fact that the dismissal was at the instance of the federation and that the federation undertook to hold the company free from any liability resulting from the dismissal of several employees, the company may still be held liable if it was remiss in its duty to accord the would-be dismissed employees their right to be heard on the matter.

III
The interest rate to be imposed on the judgment award

The position of the respondent that the interest rate to be imposed on the monetary award should be fixed at 12% *per annum* reckoned from the finality of the decision of the NLRC until full payment is warranted and upheld. Pursuant to Article 2209 of the *Civil Code*,[34] interest at the legal rate should be imposed on the monetary awards in favor of the respondent because UCCI incurred a delay in discharging its legal obligations to pay him full backwages. In *BPI Employees Union-Metro Manila*,[35] the Court, conformably with *Eastern Shipping Lines, Inc. v. Court of Appeals*,[36] imposed interest of 12% *per annum* on the monetary award in favor of the employee from the finality of the decision until full satisfaction "for the delay caused." Considering that the decision of the NLRC in favor of the respondent became final and executory on November 17, 2003, *Eastern Shipping Lines, Inc.* was the prevailing rule on the legal rate of interest.

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[34] Article 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum. (1108)

[35] *Supra* note 23.

[36] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

WHEREFORE, the Court **GRANTS** the Motion for Substitution filed by the Heirs of Victoriano B. Valmores, and, accordingly, **AUTHORIZES** the substitution of the respondent by his parents Spouses Isaias A. Valmores, Sr. and Leonarda B. Valmores; **DENIES** the petition for review on *certiorari* for its lack of merit; and **AFFIRMS** the decision promulgated on August 23, 2011 by the Court of Appeals, subject to the following **MODIFICATIONS**, namely:

(a) **REMANDING** the case to the Labor Arbiter for the recomputation of respondent Victoriano B. Valmores' full backwages using the base figure of ₱11,194.00 plus the other benefits and allowances granted under the Collective Bargaining Agreement being regularly received by him as of February 22, 1996, and

(b) **DECLARING** petitioner United Coconut Chemicals, Inc. solely liable to pay the respondent's full backwages plus legal interest of 12% *per annum* of the total monetary awards computed from finality of the illegal dismissal case on November 17, 2003 until their full satisfaction.

Costs of suit to be paid by the petitioner.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Martires,*[*] and *Tijam, JJ.,* concur.

Del Castillo,[**] *J.,* on wellness leave.

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[*] Additional Member, per Special Order No. 2461 dated July 10, 2017.

[**] In lieu of Justice Francis H. Jardeleza, who inhibited due to prior close relations with a party, per the raffle of July 3, 2017.

THIRD DIVISION

[G.R. No. 212814. July 12, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERNIE CARILLO *y* PABELLO *alias* "Nanny," RONALD ESPIQUE *y* LEGASPI *alias* "Borlok," RAFAEL SUSADA *y* GALURA *alias* "Raffy,"** *accused,*

ERNIE P. CARILLO and RONALD L. ESPIQUE, *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; THE TRIAL COURT'S EVALUATION SHALL BE BINDING ON THIS COURT UNLESS IT IS SHOWN THAT CERTAIN FACTS OF SUBSTANCE AND VALUE HAVE BEEN PLAINLY OVERLOOKED, MISUNDERSTOOD, OR MISAPPLIED; EXCEPTIONS NOT PRESENT.— There is no cogent reason to deviate from the CA ruling affirming the RTC's factual finding that accused-appellants are guilty of rape. The issues raised are factual in nature. The trial court's evaluation shall be binding on this Court unless it is shown that certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied. None of the exceptions are present in this case. Even if We consider the factual issues raised, the findings of fact of the RTC and the CA still sufficiently support the conviction of and imposition of the penalty of *reclusion perpetua* on accused-appellants for the crime of rape against AAA.

2. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS; PRESENT.— Article 266-A 1(b) of the RPC, as amended, pertinently reads: Article 266-A. *Rape, When And How Committed*.– Rape is committed – 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat or intimidation; b) When the offended party is deprived of reason or is otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. We find that

the evidence on record sufficiently established that the elements of rape are present in this case.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AS LONG AS THE TESTIMONY OF THE WITNESS IS COHERENT AND INTRINSICALLY BELIEVABLE AS A WHOLE, DISCREPANCIES OF MINOR DETAILS AND COLLATERAL MATTERS DO NOT AFFECT THE VERACITY OR DETRACT FROM THE ESSENTIAL CREDIBILITY OF THE WITNESSES' DECLARATIONS.—The argument of inconsistencies can hardly affect the credibility of AAA and We still sustain accused-appellants' conviction. In *People v. Burce*, the Court held that: As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed. It is settled in this jurisdiction that as long as the testimony of the witness, herein AAA, is coherent and intrinsically believable as a whole, discrepancies of minor details and collateral matters do not affect the veracity or detract from the essential credibility of the witnesses' declarations. Moreover, in prosecuting a crime of rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.

4. ID.; ID.; ID.; THE FAILURE OF THE VICTIM TO DISCLOSE HER DEFILEMENT WITHOUT LOSS OF TIME TO PERSONS CLOSE TO HER OR TO REPORT THE MATTER TO THE AUTHORITIES DOES NOT PERFORCE WARRANT THE CONCLUSION THAT SHE WAS NOT SEXUALLY MOLESTED AND THAT HER CHARGES AGAINST THE ACCUSED ARE ALL BASELESS, UNTRUE AND FABRICATED.— Jurisprudence has recognized the fact that no clear-cut behavior can be expected

of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help does not negate rape. The delay in reporting the incident to her parents or the proper authorities is insignificant and does not affect the veracity of her charges. The failure of AAA to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.

5. **ID.; ID.; DEFENSE OF ALIBI; ALIBI IS AN INHERENTLY WEAK DEFENSE BECAUSE IT IS EASY TO FABRICATE AND HIGHLY UNRELIABLE.—** [T]heir defense of *alibi* and denial cannot stand against the prosecution's evidence. *Alibi* is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, they must adduce clear and convincing evidence that they were in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for them to have been at the scene of the crime when it was committed. Accused-appellants failed in this regard.

6. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; PENALTY OF *RECLUSION PERPETUA*, IMPOSED; AWARD OF DAMAGES, MODIFIED.—** [W]e find no cogent reason to disturb the findings of the trial and appellate courts for the conviction of accused-appellants for the crime of rape against AAA as they were sufficiently supported by the evidence on record. The CA properly imposed the penalty of *reclusion perpetua* in conformity with Article 266-B of the RPC. However, to conform with the prevailing jurisprudence, We deem it proper to modify the amount of damages awarded in this case. The Court modifies the award of damages as follows: Php 75,000.00 as civil indemnity and Php 75,000.00 as moral damages. We note that no exemplary damages were awarded to AAA. In accordance with the case of *People v. Jugueta*, where exemplary damages in rape cases are awarded for the inherent bestiality of the act committed even if no aggravating circumstance attended the commission of the crime, We hereby award

Php75,000.00 as exemplary damages to AAA. In addition, all damages awarded shall earn legal interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

Accused-appellants Ernie P. Carillo (Carillo) and Ronald L. Espique (Espique) challenge before Us the July 8, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05088, which found them guilty beyond reasonable doubt for the crime of Rape and sentenced them to suffer the penalty of *reclusion perpetua.*

Accused-appellants and Rafael Susada *y* Galura alias "Raffy" (Rafael), together with Randel Susada *y* Galura (Randel) and Dante Fabillar *y* Lumagbas (Dante) were charged with the crime of Rape under Article 266-A paragraph 1 of the Revised Penal Code (RPC), in an Amended Information, which reads:

That on or about [the] 6th day of October 2006, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and all of them mutually helping and aiding one another, with lewd design and while the woman is unconscious, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA,[2] against her will and consent.

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[1] Penned by Associate Justice Rosmari D. Carandang, concurred in by Associate Justice Ricardo R. Rosario and Associate Justice Leoncia R. Dimagiba; *rollo,* pp. 2-13.

[2] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as

CONTRARY TO LAW.[3]

Upon arraignment, accused-appellants and Rafael entered separate pleas of not guilty. However, Randel and Dante were not arraigned because they remained at large. Trial on the merits ensued with respect to accused-appellants and Rafael.

Evidence for the Prosecution:

AAA testified that she was a nursing student at Perpetual Help School in Las Piñas City. She said that on October 6, 2006 at around 1:00 p.m., AAA was in Zapote, Las Piñas City, waiting for a jeepney ride going to Bacoor, Cavite to attend a party. Suddenly, someone held her right arm and instructed her to just walk normally as if nothing was happening. She complied but due to extreme fear and coupled with her menstrual period, after several steps, she lost consciousness.[4]

Upon regaining consciousness, AAA noticed that she was lying on a "papag" inside a nipa hut (*kubo*) with only her bra and panty on. AAA saw five male persons standing in front of her. They were laughing, smoking and drinking. Carillo, then went on top of her, pulled AAA's panty and held her breasts. Carillo inserted his penis into AAA's vagina and made a push and pull movement. Thereafter, Espique went on top of her and did what Carillo did to her. AAA also stated that while accused-appellants were sexually abusing her, their three companions were shouting "s*ige pa, sige pa.*" She felt very weak and lost her consciousness again.[5]

When AAA woke up, she was alone and was already wearing her bra and panty. She immediately put on her clothes and

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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.

[3] CA *rollo,* p. 8.

[4] *Rollo*, p. 3.

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

left. AAA proceeded to her classmate's house in Bacoor, Cavite, and narrated what happened. Upon learning of the incident, her classmate's mother accompanied AAA to her uncle's house in BF Homes, Parañaque. They went immediately to Bacoor Police Station to lodge a complaint, but they were referred to Las Piñas Police Station which had jurisdiction over the case. Thereafter, AAA was referred to Camp Crame, Quezon City for her medical examination.[6]

Further, AAA testified that she did not actually see the other three accused, Rafael, Randel and Dante at the time of the incident. It was Espique who provided their names and not AAA.[7]

Evidence for the Defense:

Espique for his defense, asserted that on the date of the incident, he was in his house located at No. 340, Basa Compound, Zapote, Las Piñas City, helping his parents take care of their pigs. On October 7, 2006, he was surprised when three police officers invited him to the police precinct. At the police station, he, together with Carillo, was ordered to stand in front of a woman. The latter pointed at Carillo, hence, Espique was allowed to go home.[8] Espique learned later that the woman is the AAA in this case.

On October 18, 2006 around midnight, when Espique was on his way home after attending a wake, some police officers grabbed him and brought him to Camp Crame, where he was tortured. Said police officers forced him to admit that he raped AAA.[9]

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[6] CA *rollo*, p. 12.

[7] *Rollo*, p. 12.

[8] CA *rollo*, p. 14.

[9] *Rollo*, p. 6.

Carillo for his part, denied any participation in the crime imputed against him. Carillo alleged that he was at a store in Lalig, Zapote waiting for his friends, namely Dante and Randell.[10]

Rafael, on the other hand, claimed that he was in his house located at No. 340 Basa Compound, Zapote, Las Piñas City. Later in the morning, he went to his mother's house in Bacoor to ask for money. Rafael arrived there at around 9:30 a.m. and stayed there for about one hour. He went back to Zapote and proceeded directly to his father. They chatted for about 20 minutes and he immediately left. Rafael stated that thereafter, he stayed home with his wife and children, watched television, and they all went to sleep. He woke up around 4:00 p.m. and bought snacks at a bakery. He learned about the case against him only on October 18, 2006, when he received a subpoena. Rafael further claimed that he never met AAA and he does not know of any reason why she would point at him.[11]

The RTC, in a Decision[12] dated July 8, 2011, found accused-appellants and Rafael guilty beyond reasonable doubt for two (2) counts of rape. Accused-appellants and Rafael were sentenced to suffer the penalty of *reclusion perpetua* for each count of rape without eligibility of parole. The dispositive portion of the RTC decision reads:

WHEREFORE, accused Ernie Carillo y Pabella [sic] alias "Nanny", Ronald Espigue @ "Borlok", and Rafael Susada y Galura @ "Raffy" @ "Rafly" are each found guilty beyond reasonable doubt of two (2) counts of consummated rape and accordingly, sentenced the penalty of *reclusion perpetua* for each count without eligibility for parole.

Further, said accused are ordered to pay jointly and severally [AAA] the sum of Php 150,000.00 by way of indemnity for the two counts of consummated rape plus Php 100,000.00 as moral damages and to pay the costs of suit.

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[10] *Id*. at 5.

[11] *Id*.

[12] Penned by Judge Ismael T. Duldulao, CA *rollo*, pp. 10-22.

SO ORDERED.[13]

On appeal, the CA, in a Decision[14] dated July 8, 2013, affirmed the RTC's decision with modification. It ruled that the RTC erred in convicting accused-appellants for two counts of rape, since they were charged only under a single information for a single crime of rape. As for Rafael, the prosecution failed to prove his guilt beyond reasonable doubt as co-conspirator to the crime of raping AAA, since AAA testified that she did not actually see the other three accused, Rafael, Randel and Dante at the time of the incident. It was Espique who provided their names and not AAA. Hence, the CA acquitted Rafael and ordered his immediate release. The CA decision's *fallo* provides:

> **WHEREFORE,** in view of the foregoing, the Decision dated July 8, 2011 is hereby **AFFIRMED with MODIFICATION**. Accused-Appellants Ernie Carillo y Pabella [sic] alias "Nanny", Ronald Espigue alias "Borlok" are found GUILTY only of one count of Rape as charged in the Information and sentenced to Reclusion Perpetua. They are also ordered to pay jointly and severally [AAA] the sum of P50,000.00 plus ₱50,000.00 as moral damages and to pay the costs of suit. Accused-appellant **RAFAEL SUSADA** is hereby **ACQUITTED.** The Court orders his immediate release from custody unless he is being held for some other lawful cause.
>
> **SO ORDERED.**[15]

Hence, this appeal.

Accused-appellants question the CA decision and argue that the prosecution failed to prove their guilt beyond reasonable doubt due to AAA's inconsistent statements and her immediate conduct following the incident of rape.

The appeal lacks merit.

There is no cogent reason to deviate from the CA ruling affirming the RTC's factual finding that accused-appellants are

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[13] *Id.* at 22.

[14] *Rollo,* pp. 2-13.

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

guilty of rape. The issues raised are factual in nature. The trial court's evaluation shall be binding on this Court unless it is shown that certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied.[16] None of the exceptions are present in this case.

Even if We consider the factual issues raised, the findings of fact of the RTC and the CA still sufficiently support the conviction of and imposition of the penalty of *reclusion perpetua* on accused-appellants for the crime of rape against AAA.

Article 266-A 1(b) of the RPC, as amended, pertinently reads:

> Article 266-A. *Rape, When And How Committed*. – Rape is committed –
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat or intimidation;
>
> b) When the offended party is deprived of reason or is otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

We find that the evidence on record sufficiently established that the elements of rape are present in this case. In convicting accused-appellants, the appellate court relied upon a finding that AAA was unconscious when accused-appellants had carnal knowledge of her, which We uphold. As testified by AAA, accused-appellants went on top of her and ravished her; thereafter, she felt dizzy, weak and unconscious. This enabled accused-appellants to consummate their bestial design on AAA. Clearly, the requisites of Article 266-A(1)(b) of the RPC were satisfied.

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[16] *People v. Ofemaniano*, G.R. No. 187155, February 1, 2010.

Also, as correctly observed by the CA, the prosecution was able to prove that a crime of rape has been committed against AAA, that accused-appellants were present at the scene of the crime and that they were positively identified by AAA as her sexual assailants.

AAA was able to positively identify accused-appellants as her sexual assailants. But due to their positive identification, they now argue that there are inconsistencies in AAA's testimony vìs-a-vìs her statements in her complaint-affidavit. They point out that in AAA's testimony, she stated that she lost consciousness right after she was abducted, but regained consciousness just in time to see the perpetrators' faces and that she was awake during her harrowing experience, while in her complaint-affidavit, she stated that she was totally unconscious during the incident. The argument of inconsistencies can hardly affect the credibility of AAA and We still sustain accused-appellants' conviction.

In *People v. Burce*,[17] the Court held that:

> As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.[18]

It is settled in this jurisdiction that as long as the testimony of the witness, herein AAA, is coherent and intrinsically believable as a whole, discrepancies of minor details and

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[17] G.R. No. 201732, March 26, 2014.

[18] *Id*.

collateral matters do not affect the veracity or detract from the essential credibility of the witnesses' declarations.[19]

Moreover, in prosecuting a crime of rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.[20]

Accused-appellants further argue that it is hard to believe that a rape victim like AAA would confide her experience to her classmates and friends rather than to her family. They insist that AAA's act of going to her classmate's house in Bacoor, Cavite, where she narrated her experience was contrary to human experience.

Jurisprudence has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help does not negate rape.[21] The delay in reporting the incident to her parents or the proper authorities is insignificant and does not affect the veracity of her charges. The failure of AAA to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.[22]

Furthermore, their defense of *alibi* and denial cannot stand against the prosecution's evidence. *Alibi* is an inherently weak

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[19] *People v. Corpuz*, G.R. No. 191068, July 17, 2013, citing *People v. Laog,* G.R. No. 178321, October 5, 2011.

[20] *People v. Espenilla*, G.R. No. 192253, September 18, 2013.

[21] *People v. Pareja*, G.R. No. 202122, January 15, 2014.

[22] *People v. Ogarte*, G.R. No. 182690, May 30, 2011.

defense because it is easy to fabricate and highly unreliable.[23] To merit approbation, they must adduce clear and convincing evidence that they were in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for them to have been at the scene of the crime when it was committed.[24] Accused-appellants failed in this regard.

Thus, We find no cogent reason to disturb the findings of the trial and appellate courts for the conviction of accused-appellants for the crime of rape against AAA as they were sufficiently supported by the evidence on record.

The CA properly imposed the penalty of *reclusion perpetua* in conformity with Article 266-B of the RPC. However, to conform with the prevailing jurisprudence, We deem it proper to modify the amount of damages awarded in this case. The Court modifies the award of damages as follows: Php 75,000.00 as civil indemnity and Php 75,000.00 as moral damages.[25]

We note that no exemplary damages were awarded to AAA. In accordance with the case of *People v. Jugueta*,[26] where exemplary damages in rape cases are awarded for the inherent bestiality of the act committed even if no aggravating circumstance attended the commission of the crime, We hereby award Php 75,000.00 as exemplary damages to AAA.

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[23] *People v. Gani*, G.R. No. 195523, June 5, 2013.

[24] *People v. Tabio*, G.R. No. 179477, February 6, 2008.

[25] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

[26] G.R. No. 202124, April 5, 2016.

For Simple Rape/Qualified Rape:

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2.1 Where the penalty imposed is *reclusion perpetua,* other than the above-mentioned:

a. Civil indemnity – ₱75,000.00
b. Moral damages – ₱75,000.00
c. Exemplary damages – ₱75,000.00

In addition, all damages awarded shall earn legal interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.[27]

WHEREFORE, premises considered, the appeal is **DENIED**. The Court of Appeals Decision dated July 8, 2013 in CA-G.R. CR-HC No. 05088, finding accused-appellants Ernie P. Carillo and Ronald L. Espique guilty beyond reasonable doubt of rape and sentencing them to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATION**. The civil indemnity and moral damages awarded are both modified to Php 75,000.00. Exemplary damages of Php 75,000.00 is hereby awarded. Likewise, the award of damages shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Perlas-Bernabe,* and *Martires JJ.,* concur.

SECOND DIVISION

[G.R. No. 213192. July 12, 2017]

TERESA R. IGNACIO, *petitioner, vs.* **RAMON REYES, FLORENCIO REYES, JR., ROSARIO R. DU and CARMELITA R. PASTOR**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; VALID ONLY WHEN THE QUESTION INVOLVED IS AN ERROR OF

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[27] *People v. Sabal*, G.R. No. 201861, June 2, 2014.

JURISDICTION, OR WHEN THERE IS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE COURT OR TRIBUNALS EXERCISING QUASI-JUDICIAL FUNCTIONS.— As a rule, a petition for certiorari under Rule 65 of the Rules of Court is valid only when the question involved is an error of jurisdiction, or when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court or tribunals exercising *quasi*-judicial functions. In this case, the propriety of the special civil action for *certiorari* as a remedy depended on whether the assailed orders of the RTC were final or interlocutory in nature.

2. ID.; ID.; ORDERS; INTERLOCUTORY AND FINAL ORDERS, DISTINGUISHED.— This Court has distinguished the interlocutory and final orders, as follows: **A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto,** e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of res judicata or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory." x x x **Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory"** *e*.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. **Unlike a "final" judgment or order, which is appealable, as above**

pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.

3. ID.; ID.; ID.; THE ORDERS DENYING THE MOTION TO ALLOW THE DISTRIBUTION OF THE ESTATE'S AND CO-OWNERS' SHARES IN THE PROPERTIES ARE INTERLOCUTORY.— The assailed April 13, 2004 and June 14, 2012 Orders denying respondents' motion to allow the distribution of the estate's and co-owners' shares in the subject properties were interlocutory. This is because such denial was not a final determination of their alleged co-ownership. In fact, the intestate court merely asserted its jurisdiction over the properties which were allegedly co-owned with the Florencio Sr. estate.

4. ID.; ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSON; A PROBATE COURT OR ONE IN CHARGE OF PROCEEDINGS WHETHER TESTATE OR INTESTATE CANNOT ADJUDICATE OR DETERMINE TITLE TO PROPERTIES CLAIMED TO BE A PART OF THE ESTATE AND WHICH ARE CLAIMED TO BELONG TO OUTSIDE PARTIES, FOR ALL THAT THE SAID COURT COULD DO AS REGARDS SAID PROPERTIES IS TO DETERMINE WHETHER THEY SHOULD OR SHOULD NOT BE INCLUDED IN THE INVENTORY OR LIST OF PROPERTIES TO BE ADMINISTERED BY THE ADMINISTRATOR.— Jurisprudence teaches that jurisdiction of the trial court as an intestate court is special and limited as it relates only to matters having to do with the probate of the will and/or settlement of the estate of deceased persons, but does not extend to the determination of questions of ownership that arise during the proceedings. This is true whether or not the property is alleged to belong to the estate. Furthermore, the doctrine that "in a special proceeding for the probate of a will, the question of ownership is an extraneous matter which the probate court cannot resolve with finality" applies with equal force to an intestate proceeding as in the case at bar. "[A] probate court or one in charge of proceedings whether testate or intestate cannot adjudicate or determine title to properties claimed to be a part of the estate and which are claimed to belong to outside parties. All that the said court could do as regards said properties is to

determine whether they should or should not be included in the inventory or list of properties to be administered by the administrator. If there is not dispute, well and good, but if there is, then the parties, the administrator, and the opposing parties have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so."

5. ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.— [I]n the case of *Agtarap v. Agtarap, et al.* the Court enumerated the instances when the intestate court may pass upon the issue of ownership, to wit: However, this general rule is subject to exceptions as justified by expediency and convenience. First, the probate court may provisionally pass upon in an intestate or a testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to the final determination of ownership in a separate action. Second, if the interested parties are all heirs to the estate, or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, then the probate court is competent to resolve issues on ownership. Verily, its jurisdiction extends to matters incidental or collateral to the settlement and distribution of the estate, such as the determination of the status of each heir and whether the property in the inventory is conjugal or exclusive property of the deceased spouse. From the foregoing, this Court holds that the general rule on the limited jurisdiction of the RTC as intestate court is applicable in Special Civil Action Nos. 5055-R and 5056-R. As to the Magsaysay property in Special Civil Action No. 5057-R, it is evident from the certificate of title that the rights of parties other than the heirs of Florencio Sr. will be impaired should the intestate court decide on the ownership of the property.

6. ID.; ID.; ID.; ID.; ID.; THE JURISDICTION OF THE INTESTATE COURT RELATES ONLY TO MATTERS HAVING TO DO WITH THE SETTLEMENT OF THE ESTATE OF DECEASED PERSONS, AND ANY DECISION THAT THE INTESTATE COURT WOULD RENDER ON THE TITLE OF THE PROPERTIES WOULD AT BEST BE MERELY PROVISIONAL IN CHARACTER, AND WOULD YIELD TO A FINAL DETERMINATION IN A SEPARATE ACTION.— We note that respondents

presented certificates of title of the properties registered under their names and the Florencio Sr. estate, and their respective shares. As pronounced in *Bolisay v. Judge Alcid*: In regard to such incident of inclusion or exclusion, We hold that if a property covered by Torrens Title is involved, the presumptive conclusiveness of such title should be given due weight, and in the absence of strong compelling evidence to the contrary, the holder thereof should be considered as the owner of the property in controversy until his title is nullified or modified in an appropriate ordinary action, particularly, when as in the case at bar, possession of the property itself is in the persons named in the title. As such, they are considered the owners of the properties until their title is nullified or modified in an appropriate ordinary action. The co-ownership of the said properties by virtue of the certificates of title is a common issue in the complaints for partition filed before the Baguio RTC. Thus, the intestate court committed grave abuse of discretion when it asserted jurisdiction over the subject properties since its jurisdiction relates only to matters having to do with the settlement of the estate of deceased persons. Any decision that the intestate court would render on the title of the properties would at best be merely provisional in character, and would yield to a final determination in a separate action.

7. ID.; ID.; SPECIAL CIVIL ACTIONS; PARTITION; AN ACTION FOR PARTITION IS 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; AN ORDER ISSUED IN AN ACTION FOR PARTITION IS A FINAL ONE AND MAY BE APPEALED BY ANY PARTY AGGRIEVED THEREBY.— An action for partition under Rule 69 of the Rules of Court 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. As discussed in *Lim De Mesa v. Court of Appeals*, the determination of the existence of co-ownership is the first stage to accord with the remedy of judicial

partition, thus: 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, that is, it is not otherwise legally proscribed and may be made by voluntary agreement of all the parties interested in the property. This phase may end in a declaration that plaintiff is not entitled to the desired partition either because a co-ownership does not exist or a partition is legally prohibited. It may also end, on the other hand, with an adjudgment that a co-ownership does in truth exist, that partition is proper in the premises, and that an accounting of rents and profits received by the defendant from the real estate in question is in order. In the latter case, "the parties may, if they are able to agree, make partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties." In either case, whether the action is dismissed or partition and/or accounting is decreed, the order is a final one and may be appealed by any party aggrieved thereby.

8. ID.; ID.; ID.; ID.; THE REGIONAL TRIAL COURT MUST PROCEED AND DETERMINE THE OWNERSHIP OF THE SUBJECT PROPERTIES AND TO PARTITION TO CO-OWNERS IF THERE IS NO LEGAL PROHIBITION.— [T]he Baguio RTC shirked from its duty when it deferred the trial to await a request order from the intestate court regarding the possible distribution. In fact, it has not yet made a definite ruling on the existence of co-ownership. There was no declaration of entitlement to the desired partition either because a co-ownership exists or a partition is not legally prohibited. As this Court is not a trier of facts, it is for the trial court to proceed and determine once and for all if there is co-ownership and to partition the subject properties if there is no legal prohibition. It is also best for the Baguio RTC to settle whether the respondents are claiming ownership over the properties by virtue of their title adverse to that of their late father and his estate and not by any right of inheritance.

APPEARANCES OF COUNSEL

Roberto R. Ignacio, Attorney-in-Fact of petitioner.
Andres Padernal and Paras Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on certiorari filed by petitioner Teresa R. Ignacio (*Teresa*) challenging the Decision[1] and Resolution,[2] dated March 27, 2014 and June 27, 2014, respectively, of the Court of Appeals (*CA*), which annulled and set aside the Orders dated April 13, 2004 and June 14, 2012 of the Regional Trial Court (*RTC*) of Pasig City, Branch 151.

The facts follow:

On July 11, 1967, Angel Reyes (*Angel*) and Oliva[3] R. Arevalo (*Oliva*) filed before the then Court of First Instance of Rizal (now RTC of Pasig City, Branch 151) (*intestate court*) a Petition[4] for Letters of Administration of the Estate of their father Florencio Reyes, Sr. (*Florencio Sr.*) who died on June 23, 1967, and enumerated therein the surviving heirs, namely: Oliva, Francisca Vda. de Justiniani (*Francisca*), Angel, Amparo R. Avecilla (*Amparo*), Ramon Reyes (*Ramon*), Teresa, Rosario R. Du (*Rosario*), Jose Reyes (*Reyes*), Soledad Reyes (*Soledad*), Carmelita[5] R. Pastor (*Carmelita*), and Florencio Reyes, Jr. (*Florencio Jr.*). On July 15, 1967, the intestate court appointed Oliva as the special administratrix of the estate of Florencio Sr. (*Florencio Sr. estate*), and then as the regular administratrix in an Order dated November 23, 1967.[6] Florencio, Jr. replaced

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring; *rollo* pp. 27-40.

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

[3] Also spelled as "Olivia" in the records.

[4] CA *rollo,* pp. 47-50.

[5] Also "Carmelita Clara" or "Clara Carmelita" in the records.

[6] CA *rollo,* pp. 55 and 59, issued by the then Judge, Justice Cecilia Muñoz Palma.

Oliva in 1982. Thereafter, Teresa became the administratrix of the Florencio Sr. estate on August 8, 1994.[7]

On December 5, 1994, Teresa executed a lease contract over a 398 square meters (*sq. m.*) parcel of land located at Magsaysay Avenue, Baguio City covered by Transfer Certificate of Title (*TCT*) No. T-59201 (*Magsaysay property*) in favor of Gonzalo Ong, Virginia Lim, Nino Yu, Francisco Lim and Simona Go.[8] In an Order[9] dated July 15, 1996, the intestate court approved the lease contract upon Teresa's motion dated June 4, 1996.

Likewise, on September 26, 1996, the intestate court allowed Teresa to enter into a lease contract over the parcel of land located at Session Road, Baguio City with a total area of 646 sq. m. covered by TCT No. T-26769 (*Session Road property*) to Famous Realty Corporation (*FRC*).[10] Thus, on October 29, 1996, Teresa leased the Session Road property to FRC for the period of July 1, 1996 to June 30, 2003, with a monthly rental of ₱135,000.00.[11]

Sometime in January 1997, Teresa also leased the properties located at Loakan Road, Baguio City covered by TCT Nos. T-26770 and T-26772 (*Loakan and Military Cut-off properties*), in favor of ATC Wonderland, Inc. and, subsequently, to Gloria de Guzman and Sonshine Pre-School for a period of ten years, effective September 1, 1996 to August 31, 2006.[12]

On September 25, 2001, herein respondents Ramon, Florencio Jr., Rosario and Carmelita, and the Heirs of Amparo, Intestate Estate of Soledad, Jose and Intestate Estate of Angel (*plaintiffs*) filed before the RTC of Baguio City, Branch 3 (*Baguio RTC*), three complaints for partition, annulment of lease contract,

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[7] *Rollo* p. 29.

[8] CA *rollo* pp. 77-79.

[9] Penned by Judge Deogracias O. Felizardo; *id.* at 80.

[10] CA *rollo,* p. 91.

[11] *Id.* at 94.

[12] *Id.* at 103.

accounting and damages with prayer for the issuance of a writ of preliminary injunction against Teresa and the lessees of the subject Baguio properties.[13]

The plaintiffs alleged in their Complaints[14] that, with the exception of the lessees, the parties and the Florencio Sr. estate own one-tenth (1/10) of each of the Session Road, Loakan and Military Cut-off, and Magsaysay properties. They claimed that Teresa misrepresented that the Florencio Sr. estate is the sole owner of the properties and leased the same to the other parties without their conformity. They also asserted in one of their complaints that the Florencio Sr. estate is different from the Heirs of Florencio Sr. and Heirs of Salud.

They averred that, as co-owners, they have not received their share in the monthly rentals of the properties aforementioned due to Teresa's failure to duly account for the same. Thus, they are asking for the partition of the properties, for the accounting of all the rentals, income or profits derived, and deliver the same to the plaintiffs, for the annulment of the lease contracts and order the lessees to vacate the premises, and for the payment of damages.[15]

Thereafter, the Baguio RTC directed and commissioned a team of auditors with Leticia Clemente as the head accountant to conduct an accounting of the properties. Based on the Report,[16] Teresa, as administratrix of the Florencio Sr. estate, had a total cash accountability amounting to Fifteen Million Two Hundred Thirty-Eight Thousand Sixty-Six Pesos and Fifty-One Centavos (₱15,238,066.51). In an Order[17] dated August 27, 2003, the Baguio RTC manifested that it shall await a Request Order

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[13] *Rollo* p. 29.

[14] CA *rollo,* pp. 92-100, Special Civil Action No. 5055-R; at 101-113, Special Civil Action No. 5056-R; at 115-122, Special Civil Action No. 5057-R.

[15] *Rollo* pp. 31-32.

[16] CA *rollo* pp. 131-132.

[17] Penned by Presiding Judge Fernando Vil Pamintuan; *id.* at 194.

from the intestate court regarding the possible distribution of the subject properties.[18]

Subsequently, on January 19, 2004, respondents and the others filed a motion[19] before the intestate court praying for the issuance of an order allowing the distribution of the heirs' aliquot shares in the co-owned properties' net income, and the partition of the said properties by the Baguio RTC. However, the intestate court denied the motion in an Order[20] dated April 13, 2004, a portion of which reads:

> x x x This Court cannot allow the Baguio Court to partition the property of the estate because this Court already has jurisdiction over the matter. In fact, this Court is wondering why actions for partition are being entertained in other jurisdictions when such can be readily addressed by this Court as an estate court.
>
> WHEREFORE, finding no merit in the instant motion, the Court hereby DENIES the same.
>
> SO ORDERED.[21]

In an Order dated June 14, 2012, the intestate court denied respondents' motion for reconsideration dated May 12, 2004, thus:

> Thus finding no sufficient reasons to reverse and set aside this court's Order dated April 13, 2004 considering the pendency before this court of the other incidents involving the Baguio properties including the sale of Session Road property covered by TCT No. 26769 and even the distribution of the proceeds of the sale thereof with hearings conducted on the Financial Report (Re: Proceeds of the Sale of the Property at Session Road in Baguio City), and recently

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[18] CA *rollo*, p. 157.

[19] Motion to Allow the Distribution of the Estate's and Co-owners' Shares in the Properties Co-owned by the Estate and the Heirs Located in Baguio City, *id.* at 158-163.

[20] Penned by then Judge Franchito N. Diamante, now a Justice of the Court of Appeals; *id.* at 31.

[21] *Id.*

with the filing of the Proposed Project of Partition/ Amended Proposed Project of Partition, as such, the Motion for Reconsideration dated May 12, 2004 is DENIED.

The continuation of presentation of evidence for the Heirs of Carmelita Clara Pastor et. (sic) al. re: Removal of Adminstratix/ Motion to Liquidate and Reimburse Cash Advances is previously set on August 15, 2012 at 1:30 in the afternoon.

SO ORDERED.[22]

Thereafter, the respondents filed before the CA a petition for certiorari assailing the Orders dated April 13, 2004 and June 14, 2012 of the intestate court disallowing the partition of the Baguio properties.

In a Decision dated March 27, 2014, the CA granted the petition and annulled and set aside the assailed Orders of the intestate court. The dispositive portion of the Decision states:

WHEREFORE, the instant Petition is GRANTED. The Assailed Orders of the Regional Trial Court of Pasig City, Branch 151, dated April 13, 2004 and June 14, 2012 are ANNULLED and SET ASIDE. Petitioners' motion to allow partition and distribution of shares over properties Co-Owned by the Estate and the Heirs [l]ocated in Baguio City, is GRANTED.

On the other hand, the Regional Trial Court of Baguio City, Branch 3, before which court Special Civil Actions Nos. 5055-R, 5056-R, and 5057-R are pending, is DIRECTED to partition the Baguio Properties among the registered co-owners thereof.

SO ORDERED.[23]

Upon denial of her motion for reconsideration, Teresa filed before this Court the instant petition raising the following issues:

I. THERE IS AN APPEAL OR OTHER PLAIN, SPEEDY AND [ADEQUATE] REMEDY IN THE ORDINARY COURSE OF LAW [AVAILABLE] TO THE RESPONDENTS.

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[22] Penned by Presiding Judge Ma. Teresa Cruz-San Gabriel; *id.* at 46.

[23] *Rollo,* p. 40.

II. RESPONDENTS ARE, IN EFFECT, ASKING THE TRIAL COURT TO VIOLATE THE RULES OF COURT.

III. IN LEGAL CONTEMPLATION, THE CHALLENGED ORDERS WERE NOT ISSUED WITH GRAVE ABUSE OF DISCRETION.

The Court finds the instant petition without merit.

Teresa argues that there is an appeal or other plain, speedy and adequate remedy in the ordinary course of law available. She maintains that the intestate court asserted its jurisdiction and authority over the subject properties and proceeded to conduct hearings to resolve the issues of accounting, payment of advances, and distribution of assets and the proceeds of the sale of the estate properties. The Baguio RTC opted to defer and not to proceed with the cases. Thus, it is logical and proper that the respondents ask the Baguio RTC to proceed with the case and then appeal the same if denied.[24] Teresa further avers that it is not disputed that the obligations enumerated in Section 1,[25] Rule 90 of the Rules of Court has not yet been fully paid. Thus, it would be premature for the trial court to allow the advance distribution of the estate. A partial and premature distribution

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[24] *Id.* at 15.

[25] Section 1. *When order for distribution of residue made.* — When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

of the estate may only be done upon posting of a bond, conditioned upon the full payment of the obligations, which was not done in the present case.

We note, however, that in her Partial Motion to Dismiss[26] dated July 1, 2016 before this Court, Teresa now agrees with the findings of the CA that the Magsaysay property is co-owned by the parties, and should not be covered by the estate proceedings.[27]

As a rule, a petition for certiorari under Rule 65 of the Rules of Court is valid only when the question involved is an error of jurisdiction, or when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court or tribunals exercising *quasi*-judicial functions.[28] In this case, the propriety of the special civil action for certiorari as a remedy depended on whether the assailed orders of the RTC were final or interlocutory in nature.[29] This Court has distinguished the interlocutory and final orders, as follows:

> **A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto,** e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of res judicata or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory."

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[26] *Rollo,* pp. 85-87.

[27] *Id.* at 86.

[28] *Maglalang v. Philippine Amusement and Gaming Corp.,* 723 Phil. 546, 561 (2013).

[29] *Aranas v. Mercado,* 724 Phil. 174, 183 (2014).

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Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory" e.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. **Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.**[30]

The assailed April 13, 2004 and June 14, 2012 Orders denying respondents' motion to allow the distribution of the estate's and co-owners' shares in the subject properties were interlocutory. This is because such denial was not a final determination of their alleged co-ownership. In fact, the intestate court merely asserted its jurisdiction over the properties which were allegedly co-owned with the Florencio Sr. estate.

Jurisprudence teaches that jurisdiction of the trial court as an intestate court is special and limited as it relates only to matters having to do with the probate of the will and/or settlement of the estate of deceased persons, but does not extend to the determination of questions of ownership that arise during the proceedings. This is true whether or not the property is alleged to belong to the estate.[31]

Furthermore, the doctrine that "in a special proceeding for the probate of a will, the question of ownership is an extraneous matter which the probate court cannot resolve with finality"

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[30] *Calderon v. Roxas, et al.,* 701 Phil. 301, 308-309 (2013).

[31] *Ongsingco, etc. v. Tan, etc., and Borja*, 97 Phil. 330, 334 (1955), as cited in *Jardeleza v. Jardeleza,* G.R. No. 167975, June 17, 2015, 758 SCRA 659, 663.

applies with equal force to an intestate proceeding as in the case at bar.[32] Thus:

"[A] probate court or one in charge of proceedings whether testate or intestate cannot adjudicate or determine title to properties claimed to be a part of the estate and which are claimed to belong to outside parties. All that the said court could do as regards said properties is to determine whether they should or should not be included in the inventory or list of properties to be administered by the administrator. If there is not dispute, well and good, but if there is, then the parties, the administrator, and the opposing parties have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so."[33]

Corollarily, in the case of *Agtarap v. Agtarap, et al.*[34] the Court enumerated the instances when the intestate court may pass upon the issue of ownership, to wit:

However, this general rule is subject to exceptions as justified by expediency and convenience.

First, the probate court may provisionally pass upon in an intestate or a testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to the final determination of ownership in a separate action. Second, if the interested parties are all heirs to the estate, or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, then the probate court is competent to resolve issues on ownership. Verily, its jurisdiction extends to matters incidental or collateral to the settlement and distribution of the estate, such as the determination of the status of each heir and whether the property in the inventory is conjugal or exclusive property of the deceased spouse.[35]

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[32] *Sanchez v. Court of Appeals,* 345 Phil. 155, 179 (1997)

[33] *Id.* at 180, citing *Ortega vs. Court of Appeals*, 237 Phil. 99, 105 (1987).

[34] 666 Phil. 452 (2011).

[35] *Agtarap v. Agtarap, et al., supra,* at 469.

From the foregoing, this Court holds that the general rule on the limited jurisdiction of the RTC as intestate court is applicable in Special Civil Action Nos. 5055-R and 5056-R. As to the Magsaysay property in Special Civil Action No. 5057-R, it is evident from the certificate of title that the rights of parties other than the heirs of Florencio Sr. will be impaired should the intestate court decide on the ownership of the property.

We note that respondents presented certificates of title of the properties registered under their names and the Florencio Sr. estate, and their respective shares.[36] As pronounced in *Bolisay v. Judge Alcid*:[37]

> In regard to such incident of inclusion or exclusion, We hold that if a property covered by Torrens Title is involved, the presumptive conclusiveness of such title should be given due weight, and in the absence of strong compelling evidence to the contrary, the holder thereof should be considered as the owner of the property in controversy until his title is nullified or modified in an appropriate ordinary action, particularly, when as in the case at bar, possession of the property itself is in the persons named in the title.[38]

As such, they are considered the owners of the properties until their title is nullified or modified in an appropriate ordinary action. The co-ownership of the said properties by virtue of the certificates of title is a common issue in the complaints for partition filed before the Baguio RTC. Thus, the intestate court committed grave abuse of discretion when it asserted jurisdiction over the subject properties since its jurisdiction relates only to matters having to do with the settlement of the estate of deceased persons. Any decision that the intestate court would render on the title of the properties would at best be merely provisional in character, and would yield to a final determination in a separate action.

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[36] CA *rollo* pp. 99-100; 108-110; 111-113; 123-125.

[37] 174 Phil. 463 (1978).

[38] *Bolisay v. Judge Alcid*, *supra,* at 470, as cited in *Pacioles, Jr. v. Chuatoco-Ching*, 503 Phil. 707, 719 (2005).

An action for partition under Rule 69 of the Rules of Court 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,[39] and is premised on the existence or non-existence of co-ownership between the parties.[40] As discussed in *Lim De Mesa v. Court of Appeals*,[41] the determination of the existence of co-ownership is the first stage to accord with the remedy of judicial partition, thus:

> 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, that is, it is not otherwise legally proscribed and may be made by voluntary agreement of all the parties interested in the property. This phase may end in a declaration that plaintiff is not entitled to the desired partition either because a co- ownership does not exist or a partition is legally prohibited. It may also end, on the other hand, with an adjudgment that a co-ownership does in truth exist, that partition is proper in the premises, and that an accounting of rents and profits received by the defendant from the real estate in question is in order. In the latter case, "the parties may, if they are able to agree, make partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties." In either case, whether the action is dismissed or partition and/or accounting is decreed, the order is a final one and may be appealed by any party aggrieved thereby.

In this regard, the Baguio RTC shirked from its duty when it deferred the trial to await a request order from the intestate court regarding the possible distribution. In fact, it has not yet made a definite ruling on the existence of co-ownership. There was no declaration of entitlement to the desired partition either because a co-ownership exists or a partition is not legally prohibited. As this Court is not a trier of facts, it is for the trial

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

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

[41] *Supra* note 39, at 790.

court to proceed and determine once and for all if there is co-ownership and to partition the subject properties if there is no legal prohibition. It is also best for the Baguio RTC to settle whether the respondents are claiming ownership over the properties by virtue of their title adverse to that of their late father and his estate and not by any right of inheritance.

WHEREFORE, the petition for review on *certiorari* filed by petitioner Teresa R. Ignacio is hereby **DENIED**. The Decision and Resolution, dated March 27, 2014 and June 27, 2014, respectively, of the Court of Appeals in CA-G.R. SP No. 127151 are hereby **AFFIRMED with MODIFICATION**, such that the Regional Trial Court of Baguio City, Branch 3 is **DIRECTED** to **RESUME** trial on the merits in Special Civil Action Nos. 5055-R, 5056-R, and 5057-R to determine the ownership of the subject properties and to partition as co-owners, if proper.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza,* and *Martires, JJ.,* concur.

Leonen, J., on leave but left his vote concurring with the *ponencia*.

SECOND DIVISION

[G.R. No. 214529. July 12, 2017]

JERRYSUS L. TILAR, *petitioner, vs.* **ELIZABETH A. TILAR and the REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CIVIL LAW; THE FAMILY CODE; MARRIAGE; REQUISITES OF MARRIAGE, DISCUSSED.— Our

Constitution clearly gives value to the sanctity of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution the maintenance of which the public is deeply interested. Thus, the State is mandated to protect marriage, being the foundation of the family, which in turn is the foundation of the nation. The State has surrounded marriage with safeguards to maintain its purity, continuity and permanence. The security and stability of the State are largely dependent upon it. It is the interest of each and every member of the community to prevent the bringing about of a condition that would shake its foundation and ultimately lead to its destruction. Our law on marriage, particularly the Family Code, restates the constitutional provision to protect the inviolability of marriage and the family relations. x x x. As marriage is a special contract, their terms and conditions are not merely subject to the stipulations of the contracting parties but are governed by law. The Family Code provides for the essential as well as formal requisites for the validity of marriage. The absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Article 35 (2). A defect in any of the essential requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable. No prescribed form or religious rite for the solemnization of the marriage is required. It shall be necessary, however, for the contracting parties to appear personally before the solemnizing officer and declare in the presence of not less than two witnesses of legal age that they take each other as husband and wife. This declaration shall be contained in the marriage certificate which shall be signed by the contracting parties and their witnesses and attested by the solemnizing officer. A marriage license shall be issued by the local civil registrar of the city or municipality where either contracting party habitually resides, except in marriages where no license is required. The rationale for the compulsory character of a marriage license is that it is the authority granted by the State to the contracting parties, after the proper government official has inquired into their capacity to contract marriage. The Family Code also provides on who may solemnize and how marriage may be solemnized.

2. ID.; ID.; ID.; ANNULMENT OF MARRIAGE; THE PROCEEDINGS FOR CHURCH ANNULMENT WHICH

IS IN ACCORDANCE WITH THE NORMS OF CANON LAW IS NOT BINDING UPON THE STATE AS THE COUPLE IS STILL CONSIDERED MARRIED TO EACH OTHER IN THE EYES OF THE CIVIL LAW.— [T]he contract of marriage is entered into by complying with the requirements and formalities prescribed by law. The marriage of petitioner and respondent which was solemnized by a Catholic priest and was held in a church was in accordance with the x x x provisions. Although, marriage is considered a sacrament in the Catholic church, it has civil and legal consequences which are governed by the Family Code. As petitioner correctly pointed out, the instant petition only seeks to nullify the marriage contract between the parties as postulated in the Family Code of the Philippines; and the declaration of nullity of the parties' marriage in the religious and ecclesiastical aspect is another matter. Notably, the proceedings for church annulment which is in accordance with the norms of Canon Law is not binding upon the State as the couple is still considered married to each other in the eyes of the civil law. Thus, the principle of separation of the church and state finds no application in this case.

3. **ID.; ID.; ID.; ID.; A PETITION FOR DECLARATION OF NULLITY OF MARRIAGE FALLS WITHIN THE EXCLUSIVE JURISDICTION OF THE REGIONAL TRIAL COURT.—** As marriage is a lifetime commitment which the parties cannot just dissolve at whim, the Family Code has provided for the grounds for the termination of marriage. These grounds may be invoked and proved in a petition for annulment of voidable marriage or in a petition for declaration of nullity of marriage, which can be decided upon only by the court exercising jurisdiction over the matter. Section 19 of Batas Pambansa Blg. 129, as amended, otherwise known as the *Judiciary Reorganization Act of 1980* provides: Section 19. Jurisdiction in civil cases.— Regional Trial Courts shall exercise exclusive original jurisdiction: x x x (15) In all actions involving the contract of marriage and marital relations; Hence, a petition for declaration of nullity of marriage, which petitioner filed before the RTC of Baybay City, falls within its exclusive jurisdiction; thus, the RTC erred in dismissing the petition for lack of jurisdiction.

APPEARANCES OF COUNSEL

Gerentstein T. Banzon for petitioner.
Office of the Solicitor General for public respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a direct recourse from the Decision[1] dated June 3, 2014 and the Order[2] dated August 19, 2014, both issued by the Regional Trial Court, Branch 14, Baybay City, (*RTC*) in Special Proceeding (*SP*) No. B-10-11-39 dismissing the petition for declaration of nullity of marriage on the ground of lack of jurisdiction over the subject matter, and denying reconsideration thereof, respectively.

The factual antecedents are as follows:

On November 4, 2010, petitioner filed with the RTC a petition[3] for declaration of nullity of marriage on the ground of private respondent's (respondent) psychological incapacity based on Article 36 of the Family Code. He alleged that he and respondent were married on June 29, 1996 in a Catholic Church in Poro, Poro Camotes, Cebu with Rev. Fr. Vicente Igot as the solemnizing officer; that a son was born of their marriage; that their marriage went well in the first few months but respondent later became an extremely jealous, violent person which resulted to frequent quarrels and petitioner being threatened and physically harmed; that she is a happy-go- lucky and extravagant type of person and a gambler; that they eventually separated in 2002; and, that respondent is now living with another man in Cebu City. Petitioner consulted a clinical psychologist and respondent was said to be suffering from "aggressive

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[1] Penned by Judge Carlos O. Arguelles; *rollo*, pp. 18A-22.

[2] *Id*. at 31.

[3] *Id*. at 14-18.

personality disorder as well as histrionic personality disorder" which made her psychologically incapacitated to comply with her essential marital obligations.

Respondent failed to file her Answer despite being served with summons. The RTC then required the Public Prosecutor to conduct an investigation whether collusion existed. In his Manifestation and Compliance, the Public Prosecutor certified as to the absence of collusion between the parties.[4] Trial, thereafter, ensued with petitioner and his witness testifying.

On June 3, 2014, the RTC issued its assailed Decision, the dispositive portion of which reads as follows:

> WHEREFORE, PREMISES CONSIDERED, this case is ORDERED DISMISSED for lack of jurisdiction over the subject matter.[5]

In so ruling, the RTC ratiocinated in this wise:

> x x x the lingering issue that confronts this Court, whether it can validly [pass] upon the validity of church marriage in the light of the separation of the Church and the State as enunciated in Section 6 of Art. (sic) of the 1987 Constitution. Withal, marriage is a sacrament according to the teaching of the Catholic Church. Being a sacrament, the same is purely religious. Declaration of nullity, which is commonly called an annulment in the Catholic Church, is a judgment rendered by an ecclesiastical tribunal determining that the sacrament of marriage was invalidly contracted. The procedure is governed by the Church's Canon Law not by the civil law observed by the State in nullity cases involving civil marriages. Ergo, the principle of separation of Church and State finds application in this case. x x x
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> x x x x x x x x x
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> Clearly, the State cannot encroach into the domain of the Church, thus, resolving the validity of the church marriage is outside the province of its authority. Although the Family Code did not categorize the marriage subject of the petition for nullity or annulment, the

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[4] *Id*. at 19.

[5] *Id*. at 22.

Constitution as the fundamental law of the State laid down the principle of separation, ergo, it is beyond cavil that nullity of a church marriage cannot be taken out of the church jurisdiction. The court being an entity of the State is bereft of any jurisdiction to take cognizance of the case.

As the second issue hinges on the affirmative resolution on the jurisdiction of this Court, the same becomes moot due to the non-affirmance of jurisdiction over the subject matter of the case.[6]

Petitioner filed his motion for reconsideration, which the RTC denied in an Order datedAugust 19, 2014.

In denying the motion for reconsideration, the RTC said:

Marriages solemnized and celebrated by the Church are [*per se*] governed by its Canon Law. Although the Family Code provides for some regulations, the same does not follow that the State is authorized to inquire to its validity, The Constitution is supreme to the Family Code. Under the doctrine of constitutional supremacy, the Constitution is written in all laws, acts and transactions, hence, the same must be upheld.[7]

Petitioner filed the instant petition for review on the sole ground that:

The Regional Trial Court erred in dismissing the case on the ground that the validity of church marriage is outside of the province of its authority.[8]

Petitioner contends that the RTC had rendered judgment principally on the ground that the validity of church marriage is outside the province of its authority, however, it is the civil law, particularly the Family Code, which principally governs the marriage of the contracting parties.

The Solicitor General filed a Manifestation in Lieu of Comment on the petition for review arguing that the courts

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[6] *Id*. at 20-21.

[7] *Id*. at 31.

[8] *Id*. at 8.

have jurisdiction to rule on the validity of marriage pursuant to the provision of the Family Code, and that the RTC has exclusive jurisdiction over cases involving contracts of marriage and marital relations.

We find merit in this petition.

Section 2 of Article XV of the Constitution provides:

> Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Our Constitution clearly gives value to the sanctity of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution the maintenance of which the public is deeply interested.[9] Thus, the State is mandated to protect marriage, being the foundation of the family, which in turn is the foundation of the nation.[10] The State has surrounded marriage with safeguards to maintain its purity, continuity and permanence. The security and stability of the State are largely dependent upon it. It is the interest of each and every member of the community to prevent the bringing about of a condition that would shake its foundation and ultimately lead to its destruction.[11]

Our law on marriage, particularly the Family Code, restates the constitutional provision to protect the inviolability of marriage and the family relations. In one of the whereas clauses of the Family Code, it is stated:

> Whereas, there is a need to implement policies embodied in the New Constitution that strengthen marriage and the family as a basic social institution and ensure equality between men and women.

Accordingly, Article 1 of the Family Code pertinently provides:

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[9] *Mariategui v. Court of Appeals*, 282 Phil. 348, 356 (1992).

[10] Section 1, Art. XV, Constitution, thus:

> Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

[11] *Jimenez v. Cañizares*, 109 Phil. 273, 276 (1960).

Art. 1. Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.

As marriage is a special contract, their terms and conditions are not merely subject to the stipulations of the contracting parties but are governed by law. The Family Code provides for the essential[12] as well as formal[13] requisites for the validity of marriage. The absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Article 35 (2). A defect in any of the essential requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable.[14] No prescribed form or religious rite for the solemnization of the marriage is required. It shall be necessary, however, for the contracting parties to appear personally before the solemnizing officer and declare in the presence of not less than two witnesses of legal age that they take each other as husband and wife. This declaration shall be contained in the marriage certificate which shall be signed by the contracting parties and their witnesses and attested by the

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[12] Art. 2. No marriage shall be valid, unless these essential requisites are present:

(1) Legal capacity of the contracting parties who must be a male and a female; and

(2) Consent freely given in the presence of a solemnizing officer.

[13] Art. 3. The formal requisites of marriage are:

(1) Authority of the solemnizing officer;

(2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and

(3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

[14] Art. 4.

solemnizing officer. A marriage license shall be issued by the local civil registrar of the city or municipality where either contracting party habitually resides, except in marriages where no license is required.[15] The rationale for the compulsory character of a marriage license is that it is the authority granted by the State to the contracting parties, after the proper government official has inquired into their capacity to contract marriage.[16]

The Family Code also provides on who may solemnize and how marriage may be solemnized, thus:

> Art. 7. Marriage may be solemnized by:
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> x x x x x x x x x
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> (2) Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, acting within the limits of the written authority granted by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer's church or religious sect;
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> x x x x x x x x x
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> Article. 8. The marriage shall be solemnized publicly in the chambers of the judge or in open court, in the church, chapel or temple, or in the office of the consul-general, consul or vice-consul, as the case may be, and not elsewhere, except in cases of marriages contracted on the point of death or in remote places in accordance with Article 29 of this Code, or where both of the parties request the solemnizing officer in writing in which case the marriage may be solemnized at a house or place designated by them in a sworn statement to that effect.

Thus, the contract of marriage is entered into by complying with the requirements and formalities prescribed by law. The marriage of petitioner and respondent which was solemnized by a Catholic priest and was held in a church was in accordance with the above-quoted provisions. Although, marriage is

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[15] Art. 9.

[16] See *Republic v. Dayot,* 573 Phil. 553, 569 (2008).

considered a sacrament in the Catholic church, it has civil and legal consequences which are governed by the Family Code. As petitioner correctly pointed out, the instant petition only seeks to nullify the marriage contract between the parties as postulated in the Family Code of the Philippines; and the declaration of nullity of the parties' marriage in the religious and ecclesiastical aspect is another matter.[17] Notably, the proceedings for church annulment which is in accordance with the norms of Canon Law is not binding upon the State as the couple is still considered married to each other in the eyes of the civil law. Thus, the principle of separation of the church and state finds no application in this case.

As marriage is a lifetime commitment which the parties cannot just dissolve at whim, the Family Code has provided for the grounds[18] for the termination of marriage. These grounds may be invoked and proved in a petition for annulment of voidable

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[17] *Rollo*, p. 9-A.

[18] Art. 35. The following marriages shall be void from the beginning:

(1) Those contracted by any party below eighteen years of age even with the consent of parents or guardians;

(2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;

(3) Those solemnized without license, except those covered by the preceding Chapter;

(4) Those bigamous or polygamous marriages not failing under Article 41;

(5) Those contracted through mistake of one contracting party as to the identity of the other; and

(6) Those subsequent marriages that are void under Article 53.

Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. (As amended by Executive Order 227)

Art. 37. Marriages between the following are incestuous and void from the beginning, whether relationship between the parties be legitimate or illegitimate:

marriage or in a petition for declaration of nullity of marriage, which can be decided upon only by the court exercising jurisdiction over the matter. Section 19 of Batas Pambansa

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(1) Between ascendants and descendants of any degree; and

(2) Between brothers and sisters, whether of the full or half blood.

Art. 38. The following marriages shall be void from the beginning for reasons of public policy:

(1) Between collateral blood relatives whether legitimate or illegitimate, up to the fourth civil degree;

(2) Between step-parents and step-children;

(3) Between parents-in-law and children-in-law;

(4) Between the adopting parent and the adopted child;

(5) Between the surviving spouse of the adopting parent and the adopted child;

(6) Between the surviving spouse of the adopted child and the adopter;

(7) Between an adopted child and a legitimate child of the adopter;

(8) Between adopted children of the same adopter; and

(9) Between parties where one, with the intention to marry the other, killed that other person's spouse, or his or her own spouse.

Art. 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

Art. 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

(1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;

(2) That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;

Blg. 129, as amended, otherwise known as the *Judiciary Reorganization Act of 1980* provides:

> Section 19. Jurisdiction in civil cases. — Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> x x x x x x x x x
>
> (15) In all actions involving the contract of marriage and marital relations;

Hence, a petition for declaration of nullity of marriage, which petitioner filed before the RTC of Baybay City, falls within its exclusive jurisdiction; thus, the RTC erred in dismissing the petition for lack of jurisdiction.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Regional Trial Court, Branch 14, Baybay City, Leyte is **ORDERED** to **PROCEED** with the resolution of the case based on the sufficiency of the evidence presented.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza,* and *Martires, JJ.,* concur.

Leonen, *J.*, on leave but left his vote concurring with the *ponencia*.

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(3) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

(4) That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;

(5) That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or

(6) That either party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable.

SECOND DIVISION

[G.R. No. 217345. July 12, 2017]

WILMER O. DE ANDRES, *petitioner, vs.* **DIAMOND H MARINE SERVICES & SHIPPING AGENCY, INC., WU CHUN HUA and RUBEN J. TURINGAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; SEAFARER; POEA STANDARD EMPLOYMENT CONTRACT (POEA–SEC); TOTAL AND PERMANENT DISABILITY BENEFITS; REPORTORIAL REQUIREMENT; THE FAILURE OF THE SEAFARER TO SUBMIT HIMSELF TO A POST-EMPLOYMENT MEDICAL EXAMINATION BY A COMPANY-DESIGNATED PHYSICIAN WITHIN THREE (3) WORKING DAYS FROM REPATRIATION WILL RESULT IN THE FORFEITURE OF HIS CLAIM FOR DISABILITY BENEFITS; EXCEPTIONS.— A seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation. Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.

2. ID.; ID.; ID.; ID.; ID.; EVEN IF A SEAFARER'S CONTRACT EXPIRED, IT DOES NOT RELEASE THE EMPLOYER FROM ITS OBLIGATIONS UNDER THE POEA-SEC WHEN THERE IS A CLAIM FOR DISABILITY BENEFITS DUE TO AN INJURY SUFFERED DURING THE TERM OF THE EMPLOYMENT CONTRACT.— [D]e Andres' accident occurred on February 27, 2009. He sustained an open fracture injury over his left lower leg with an 8 cm. open wound,

which resulted in bone exposure and active bleeding. Instead of immediately repatriating him when his condition permitted, the respondents kept him in Taiwan for almost a year and they waited for his contract to expire. Obviously, the delayed repatriation was intended to show that he returned due to his expired contract, and not for medical reasons. Nonetheless, even if a seafarer's contract expired, it does not release the employer from its obligations under the POEA-SEC when there is a claim for disability benefits due to an injury suffered during the term of the employment contract. Accordingly, Section 20 (B) (3) must still be complied with.

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT CAN ENTERTAIN A QUESTION OF FACT WHERE THE FINDINGS OF FACT ARE CONFLICTING. —** De Andres was repatriated on February 5, 2010. On the next working day, February 8, 2010, he reported to the office of Diamond H where he met Ellen Purification, the Operations Manager. This is an undisputed fact as uniformly found by the LA, the NLRC and the CA. De Andres claims that Purification invited him to go to the nearest fast-food restaurant to discuss his claim. There, she told him that Diamond H would not entertain any of his claims and that he should find a lawyer instead. Thus, he left the meeting. On the other hand, the respondents assert that while De Andres reported to Diamond H and met with its Operations Manager, he did not submit himself to post-employment medical examination by a company-designated physician. The LA upheld the position of De Andres; while the NLRC and the CA sided with the respondents. As the findings of fact are conflicting, the Court can entertain a question of fact.

4. **LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; SEAFARER; POEA STANDARD EMPLOYMENT CONTRACT (POEA–SEC); TOTAL AND PERMANENT DISABILITY BENEFITS; IT IS ILLOGICAL THAT A SEAFARER WOULD SEEK TREATMENT FROM OTHER DOCTORS IMMEDIATELY AFTER HIS DISEMBARKATION WHEN HE COULD AVAIL OF THE SERVICES OF THE COMPANY-DESIGNATED PHYSICIAN.—** The assertion of the respondents that De Andres merely reported to Diamond H but did not submit himself to a post-employment medical examination is highly dubious. It

is quite absurd for a seafarer, who has a legitimate disability claim, to immediately report to his employer within three (3) working days from repatriation, only to leave the said place without any demand and without even requesting a referral from a company-designated physician. Evidently, the purpose of De Andres' reporting to Diamond H was to seek medical examination and treatment from the company-designated physician in order to initiate his claim for disability benefits. As stated in *Apines*, it is illogical that a seafarer would seek treatment from other doctors immediately after his disembarkation when he could avail of the services of the company-designated physician.

5. ID.; ID.; ID.; ID.; ID.; THE *ONUS* OF ESTABLISHING THAT THE SEAFARER WAS REFERRED TO A COMPANY-DESIGNATED PHYSICIAN IS ON THE EMPLOYER.— [T]he *onus* of establishing that the seafarer was referred to a company-designated physician is on the employer. The Court in *Apines* declared that the burden to prove with evidence whether the seafarer was referred to a company-designated doctor rests on the employer as the latter has custody of the documents, and not the seafarer. Here, the respondents could have easily presented proof that they referred De Andres to a company-designated physician, but they did not. Interestingly, they could not even cite the name of their company-designated physician who would have assessed the medical condition of De Andres. Thus, it is clear that it was the respondents who prevented the submission of De Andres to a post-employment medical examination. Indeed, De Andres did his part when he immediately reported to Diamond H within three (3) working days from repatriation. Consequently, it was the duty of the employer to refer him to a company-designated physician for a post-employment medical examination knowing fully well that he had a claim for disability benefits. The respondents, however, failed to do so. Instead, they outrightly denied his claims because of the quitclaim he signed.

6. ID.; ID.; ID.; WAIVER AND QUITCLAIM; REQUISITES TO BE VALID.— To be valid, a Deed of Release, Waiver and/or Quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is sufficient and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial

to a third person with a right recognized by law. Courts have stepped in to invalidate questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person, or where the agreement or settlement was unconscionable on its face. A quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. Moreover, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim. The Court finds that the MOA is not a valid quitclaim.

7. ID.; ID.; ID.; ID.; IN CONTROVERSIES BETWEEN A LABORER AND HIS MASTER, DOUBTS REASONABLY ARISING FROM THE EVIDENCE OR IN THE INTERPRETATION OF AGREEMENTS AND WRITINGS SHOULD BE RESOLVED IN THE FORMER'S FAVOR; RATIONALE. — [T]he MOA cannot be considered as a valid quitclaim because it lacks a reasonable consideration; De Andres was not given any freedom to reject it; and the document was not properly explained and notarized by any Philippine government representative. The present case is similar with *Interorient* where the employer declined to refer the seafarer to the company-designated physician upon repatriation due to a quitclaim which was declared null and void by the Court. It is a time-honored rule that, in controversies between a laborer and his master, doubts reasonably arising from the evidence or in the interpretation of agreements and writings should be resolved in the former's favor. The policy is to extend the applicability 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.

8. ID.; ID.; ID.; POEA STANDARD EMPLOYMENT CONTRACT (POEA–SEC); TOTAL AND PERMANENT DISABILITY BENEFITS; ABSENT A CERTIFICATION FROM THE COMPANY-DESIGNATED PHYSICIAN, THE SEAFARER HAD NOTHING TO CONTEST AND THE LAW STEPS IN TO CONCLUSIVELY CHARACTERIZE HIS DISABILITY AS TOTAL AND PERMANENT. — Between the non-existent medical assessment of a company-designated physician of the respondents and the medical

assessment of De Andres' physician of choice, the latter evidently stands. The permanent and total disability claim of De Andres remains unchallenged and must be granted by the Court. The respondents had the opportunity to refer De Andres to a company-designated physician, but they chose to escape their responsibility by relying on an illegal quitclaim. Further, there was no need to refer the medical assessment of De Andres to a third doctor. Absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.

9. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES OR GROUNDS NOT RAISED BELOW CANNOT BE RESOLVED ON REVIEW BY THE SUPREME COURT, FOR TO ALLOW THE PARTIES TO RAISE NEW ISSUES IS ANTITHETICAL TO THE SPORTING IDEA OF FAIR PLAY, JUSTICE AND DUE PROCESS.— In its Decision, dated May 20, 2011, the LA granted De Andres sickness allowance, payment for salary differentials, insurance compensation, and attorney's fees. The said decision, however, was set aside by the NLRC. Notably, when the petition for *certiorari* was filed before the CA, these deleted awards were not included in the issues. When the case eventually reached this Court, De Andres no longer raised the issue of whether he was entitled to these benefits. Thus, these matters cannot be tackled as only issues raised on appeal may be entertained by the appellate court. Basic is the rule that issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process. The only issues raised by De Andres in this petition are whether the MOA was a valid quitclaim and whether he is entitled to permanent and total disability benefits under the POEA-SEC. As the Court finds in the affirmative, De Andres is entitled to the amount of US$60,000.00 as permanent and total disability benefits.

10. LABOR AND SOCIAL LEGISLATION; LABOR CODE; SEAFARER; WAIVER AND QUITCLAIM; THE EMPLOYER AND THE SEAFARER MAY ENTER INTO A QUITCLAIM TO AVOID LEGAL CONTROVERSIES PROVIDED THE SAME IS FAIR, REASONABLE, AND PROPERLY EXPLAINED TO THE SEAFARER.— The

Court laments that the employer of a seafarer resorted to insensitive quitclaims to avoid any disability claims. Section 20 (B) (3) specifically outlines the procedure in determining the proper compensation of a seafarer's disability. The rigorous process therein aims to provide a fair and definitive assessment on the seafarer's medical condition and to ensure that they will receive a just compensation for their injuries. At the same time, it protects the interest of the employer by ensuring that only genuine disability or injuries shall be entitled to compensation. Although there is nothing in the law which prevents the employer and the seafarer from entering into a quitclaim to avoid legal controversies, the same must be fair, reasonable, and properly explained to the seafarer. To frustrate the provisions of the POEA-SEC by forging erroneous and prejudicial quitclaims would defeat its expedient and systematic processes and lead to protracted litigation. The Court will not think twice in striking down invalid agreements in order to uphold the constitutional obligation of the State to give fullest aid and protection to labor.

APPEARANCES OF COUNSEL

Henry S. Zamora for petitioner.
Laguesma Magsalin Consulta & Gastardo for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the July 31, 2014 Decision[1] and the March 12, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 124862, which affirmed the January 18, 2012 Decision[3] of the National Labor Relations Commission *(NLRC),* in NLRC

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[1] *Rollo,* pp. 31-39.

[2] *Id*. at 54.

[3] Penned by Commissioner Angelo Ang Palana, with Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, concurring; *id*. at 77-85.

LAC No. OFW-(M)-09-000825-11, which, in turn, reversed and set aside the May 20, 2011 Decision[4] of the Labor Arbiter *(LA)* in NLRC OFW Case No. (M) 02-02844-10, a case for total and permanent disability benefits of a seafarer.

The Antecedents

Petitioner Wilmer O. De Andres *(De Andres)* was hired by respondent agency Diamond H Marine Services & Shipping Agency, Inc. *(Diamond H)* for and in behalf of its Taiwanese principal, Wu Chun Hua. On February 1, 2008, he entered into an Employment Contract,[5] wherein it was stipulated that he would be working in the fishing vessel, Yi Man En No. 2; that he would receive a monthly salary of NT$17,280.00; and that the duration of the contract was for two years.

De Andres claimed that before he departed for Taiwan, he was made to sign a Contract of Agreement.[6] At the vessel, he was tasked to work as a wiper, messman and bosun, and was also required to throw the fishnet, dive in the sea, and repair the nets. De Andres added that he and his Filipino crewmates were made to work for almost twenty-four hours a day. They later discovered that the document they signed before leaving for Taiwan set aside the POEA-approved contract. He averred that this agreement reduced their salaries, increased their workload, and showed that the Filipino crewmates were abused and taken advantage of.

On February 27, 2009, at around 10:00 o'clock in the evening, De Andres was tasked by the master to lower the nets for the shipping operation. While he was lowering the nets, he was accidentally hit by big waves, which caused him to be thrown out of the vessel together with the fishing nets. While struggling from the big waves, De Andres was pulled by the moving vessel

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[4] Penned by Executive Labor Arbiter Fatima Jambaro-Franco; *id*. at 289-302.

[5] *Id*. at 169-173.

[6] *Id*. at 407.

with his left leg entangled by the fishing nets. As a consequence, he sustained an open fracture of the *distal tibia* and *fibula*.

De Andres was brought to Keelong Hospital in Taiwan and underwent surgical operation. The medical findings of the said hospital are as follows:

> Left Tibial shaft lower third fracture, open type III
> Left Tibial shaft lower third fracture, open type III S/P ESF & K-PIN
> Painful disability of left lower leg with active bleeding and bone exposure was noted
> He sustained injury over left lower leg when he work on a fishboat
> Deformity of left lower leg with an 8 cm in size open wound with bone exposure and active bleeding was noted. He was sent to ER and was admitted for further treatment
> An 8 cm in size open wound over left lower leg
>
> Active bleeding (+)
> Visible bone exposure (+)
> Limited range of left ankle and knee due to pain
> Palpable pulsation over left ankle.[7]

After twenty (20) days of confinement at the Keelong Hospital, De Andres was transferred to the nearest lodge. On March 23, 2009, he was brought to Zueifang Hospital due to pain and swelling over his left leg. Moreover, his exterior fixator had to be readjusted.

De Andres averred that after the operation, he was placed in a dormitory, instead of a hospital. There, he was left alone with no one to assist him in his recovery. On September 4, 2009, De Andres underwent another operation because of the non-union of his tibia. Buttress plating with autonomous bone grafting harvested from the left iliac was done on the tibia to unite the fractured tibia. He said that he repeatedly asked for repatriation as no one would attend to his needs in Taiwan, but his plea fell on deaf ears.

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[7] *Id*. at 120.

On February 4, 2010, almost a year after his accident, De Andres was informed by the respondents that he was free to go home. He was surprised by this decision because he had been requesting for his repatriation since his injury. De Andres later discovered that his repatriation was not due to his medical condition, but due to the expiration of his employment contract.

Before he was repatriated, De Andres was made to sign a Memorandum of Agreement[8] *(MOA),* stipulating that the respondents agreed to pay him NT$40,000.00 and gave him a plane ticket back to the Philippines, and that, in return, he would not file any complaint against the respondents in the future. De Andres claimed, however, that he was forced to sign the agreement as he would not be able to return to the Philippines if he would not sign it. On February 5, 2010, he arrived in Manila, but no representatives from Diamond H fetched him.

On February 8, 2010, the next working day, De Andres reported to Diamond H where he was met by Ellen Purification *(Purification)*, Operations Manager. He averred that Purification invited him to go to the nearest fast-food restaurant to discuss his predicament. There, she told him that Diamond H would not entertain any claim and that he should find a lawyer instead. De Andres could not believe what he heard from Purification because the company could not simply declare that he had no claim against them.

On February 23, 2010, De Andres filed the subject complaint against the respondents before the LA for permanent and total disability benefits, sickness allowances, salary differentials, labor insurance as provided in the contract, moral damages, exemplary damages, and attorney's fees. In his Position Paper,[9] he attached the Medical Assessment,[10] dated March 5, 2010, of Dr. Renato P. Runas *(Dr. Runas),* his physician of choice, which stated:

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[8] *Id.* at 177.

[9] *Id.* at 89-104.

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

The patient is unable to stand with the left foot in plantigrade position. In this case, he will not be able to assume good balance and cannot ambulate properly because of the inability of the ankle to dorsiflex. The presence of calcifications around the ankle joint will hinder its normal movement that will be hard to correct or improve even with extended physical therapy.

Since the patient is working on a fishing vessel, the above condition is no longer suitable on his working environment. He can no longer withstand the strenuous activities onboard which require that both feet can assume a plantigrade position in order to maintain his balance and support his body particularly during ship rolling when the vessel will enter rough seas. In this regard, [I] recommend that he shall not be allowed to work on board permanently since he is already physically unfit for sea duties. In addition, he may already qualify for permanent total disability.[11] [Boldface omitted]

For their part, the respondents countered that the injury sustained by De Andres was due to his negligence; that he was paid his salaries in full during his period of medication; that he voluntarily signed a valid MOA which stated that he would no longer file any case against them in exchange for the amount of NT$40,000.00; that the MOA was notarized by the Manila Economic Cultural Office *(MECO)* in Taiwan; and that before he was repatriated to the Philippines, he was declared fit to work by Dr. Chien Hua Huang *(Dr. Huang)* as indicated in the Certificate of Diagnosis,[12] dated January 21, 2010. They also asserted that De Andres forfeited his claim for disability benefits when he failed to subject himself to the respondents for the mandatory medical examination within three working days upon his arrival in the Philippines.

The LA Ruling

In its Decision, dated May 20, 2011, the LA ruled in favor of De Andres. It explained that even though his contract expired, the respondents still had the obligation to provide medical

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[11] *Id.*

[12] *Id.* at 176.

attention because he suffered permanent and total disability. The LA was of the view that De Andres was forced to sign the MOA so he could be repatriated. Hence, there was no valid quitclaim. The LA likewise awarded De Andres insurance compensation based on the terms of the employment contract; sickness allowance because the respondents did not pay the same; salary differential due to the smaller amount of salary received in Taiwan; and 10% attorney's fees. The LA disposed the case in this wise:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents **Diamond H Marine Services & Shipping Agency Inc./Wu Chun Hua/Ruben J. Turingan** to pay jointly and severally complainant **Wilmer O. De Andres**, the following:

1. **SIXTY THOUSAND US DOLLARS (US$60,000.00)** representing his total permanent disability benefits;
2. **SIX THOUSAND US DOLLARS (US$6,000.00)** – attorney's fees;
3. **THREE HUNDRED THOUSAND NEW TAIWAN DOLLARS (NT$300,000.00)** – compensation benefits (Clause 10 of his contract);
4. **SIXTY NINE THOUSAND ONE HUNDRED TWENTY NEW TAIWAN DOLLARS** (NT$69,120.00) – sickness allowance;
5. **EIGHTY THOUSAND THREE HUNDRED TWENTY NEW TAIWAN DOLLARS (NT$80,320.00)** – salary differential; and
6. **FORTY FOUR THOUSAND NINE HUNDRED FORTY FOUR NEW TAIWAN DOLLARS (NT$44,944.00)** – attorney's fees.

or the equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment.

All other claims are **DISMISSED** for lack of merit.

SO ORDERED.[13]

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[13] *Id*. at 301-302.

Aggrieved, the respondents elevated an appeal to the NLRC.

The NLRC Ruling

In its January 18, 2012 Decision, the NLRC *reversed* and *set aside* the LA ruling. It stated that De Andres failed to comply with the mandatory reportorial requirement. The NLRC observed that although he went to Diamond H on the next working day of his repatriation, he did not submit himself to the medical examination of the company-designated physician. Thus, the NLRC concluded that he was barred from demanding disability benefits. The other awards granted by the LA were also deleted by the NLRC due to insufficient basis. The *fallo* reads:

IN VIEW WHEREOF, the respondents' appeal is **GRANTED** and the appealed Decision is hereby **REVERSED** and **SET ASIDE**. The Complaint is DISMISSED for lack of cause of action.

SO ORDERED.[14]

The CA Ruling

In its assailed July 31, 2014 Decision, the CA *affirmed* the NLRC ruling. It wrote that De Andres indeed failed to comply with the mandatory reportorial requirement. The CA stressed that the failure of the seafarer to report to the company-designated physician within three (3) working days upon return shall forfeit his right to claim any benefit. It also opined that the MOA, wherein De Andres waived all claims against the respondents, was valid and binding because it was duly explained and notarized by the MECO to him. The dispositive portion reads:

WHEREFORE, premises considered, the instant Petition is DISMISSED. The Decision of the NLRC is **AFFIRMED**.

SO ORDERED.[15]

De Andres moved for reconsideration, but his motion was denied by the CA in its assailed March 12, 2015 Resolution.

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[14] *Id*. at 84.

[15] *Id*. at 38.

Hence, this petition.

ISSUES

I

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT DISMISSED THE PETITION ON THE GROUND THAT THE PETITIONER FAILED TO COMPLY WITH THE REPORTORIAL REQUIREMENT PROVIDED UNDER THE POEA CONTRACT.

II

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT DISMISSED THE PETITION ON THE GROUND THAT THE PETITIONER WAIVE[D] HIS RIGHT BY RECEIVING THE SUM OF NT$40,000 (MORE OR LESS PHP 50,000 IN PHILIPPINE CURRENCY) WHICH IS HIGHLY UNCONSCIONABLE AND UNREASONABLE COMPARED TO US$60,000 WHICH HE [WAS] SUPPOSED TO RECEIVE UNDER THE POEA CONTRACT. [16]

De Andres argued that the mandatory reportorial requirement should not be strictly applied in his case because it was the respondents who prevented him from complying with the same. He underscored that on the next working day from his repatriation, he immediately reported to Diamond H. Its Operations Manager, however, directly told him that the respondents would not entertain any of his claims. De Andres emphasized that such incident was never denied by the respondents.

De Andres also claimed that the MOA was an invalid quitclaim because its consideration was unreasonable. He explained that from the gravity of his condition, which necessitated almost a year of medical treatment and operation, it could be shown that the amount of NT$40,000 or more or less ₱50,000, was insufficient consideration for disability compensation. Moreover, De Andres pointed out that the MOA was neither notarized nor explained by the MECO, which simply stamped it.

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[16] *Id*. at 17.

Position of Respondents

In their Comment,[17] the respondents argued that De Andres failed to comply with the mandatory reportorial requirement because he did not present himself to a company-designated physician for medical examination within three (3) working days from his repatriation. They also stressed that while De Andres was in Taiwan, he was declared fit to work by Dr. Huang, as indicated in the certificate of diagnosis, dated January 21, 2010.

The respondents pointed out that the medical assessment of Dr. Runas was insignificant because his medical diagnosis was not referred to a third doctor, which was required under the POEA Standard Employment Contract *(POEA-SEC)*. They also underscored that the MOA was valid as there was a reasonable consideration of NT$40,000.00 in addition to the monthly salary received by De Andres while he was under medical treatment in Taiwan.

Reply of Petitioner

In his Reply,[18] De Andres stressed that it was the respondents' primary responsibility to immediately repatriate him when he sustained a severe injury. He opined that the evil sought to be avoided by the reportorial requirement did not exist in his case because the respondents were fully aware of his medical condition while he was in Taiwan. De Andres reiterated that the MOA was an invalid quitclaim because it did not provide for a reasonable compensation and it was not signed in front of a MECO official.

The Court's Ruling

The petition is meritorious.

The present controversy involves the claim of permanent and total disability benefits of a seafarer. De Andres avers that

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[17] *Id.* at 305-326.

[18] *Id.* at 669-678.

he reported on time to the respondents with respect to his disability claims upon repatriation but they refused to acknowledge his claim and failed to subject him to medical examination. On the other hand, the respondents counter that it was De Andres who neglected to submit himself to the post-medical examination through the company-designated physician. As this case involves the reportorial requirement under the POEA-SEC, the said requirement must be scrutinized.

Compliance with the reportorial requirement; Exceptions

Section 20 (B) (3) of the 2000 Amended POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels *(Section 20 (B) (3))*, which was incorporated in the POEA-SEC, lays down the procedure to be followed by a seafarer in claiming disability benefits, to wit:

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

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. [Emphases supplied]

The rationale for this requirement is that reporting the illness or injury by the seafarer within three (3) working days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult. To ignore the rule might set a precedent with negative repercussions, like opening floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.[19]

Moreover, the provision mandated a period of three (3) working days within which the seafarer should report so that the company-designated physician can promptly arrive at a medical diagnosis. It must be underscored that the company-designated physician has either 120 or 240 days, depending on the circumstances, within which to complete the medical assessment of the seafarer; otherwise, the disability claim shall be granted.[20] Due to the express mandate on the reportorial requirement, the failure of the seafarer to comply with the same shall result in the forfeiture of his right to claim the above benefits.

In *Musnit v. Sea Star Shipping Corporation,*[21] the seafarer therein only submitted himself to the company-designated physician after seven (7) months from repatriation. As he failed to comply with the mandatory three working day-period, the Court denied his claim for permanent and total disability benefits.

Similarly, in *Cootauco v. MMS Phil. Maritime Services, Inc.,*[22] the seafarer therein only submitted himself to a post-employment

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[19] *Scanmar Maritime Services, Inc. v. De Leon*, G.R. No. 199977, January 25, 2017, citing *Wallem Maritime Services, Inc. v. Tanawan,* 693 Phil. 416 (2012).

[20] See *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.,* G.R. No. 211882, July 29, 2015, 764 SCRA 431.

[21] 622 Phil. 772 (2009).

[22] 629 Phil. 506 (2010).

medical examination after fifteen (15) months from repatriation. The Court ruled that the seafarer's explanation was insufficient to justify an exemption from the application of the reportorial requirement rule.

Nevertheless, while the requirement to report within three (3) working days from repatriation appears to be indispensable in character, there are some established exceptions to this rule.

First, Section 20 (B) (3) expressly provides that a seafarer is not required to submit himself to post-employment medical examination by a company-designated physician within three (3) working days from repatriation when he is physically incapacitated to do so. In such event, a written notice to the agency within the same period is deemed as compliance.

This exception was applied in *Wallem Maritime Services, Inc. v. National Labor Relations Commission,*[23] where the repatriated seafarer was terminally ill. The Court ruled that it could not be expected that the seafarer would immediately submit himself to post-employment medical examination due to his condition and it was understandable that he would first go home to his family. Moreover, the seafarer's wife sufficiently notified the employer therein about the condition and confinement of the seafarer.

Second, another exception is when the seafarer failed to timely submit himself to post-employment medical examination due to the employer's fault. In *Interorient Maritime Enterprises, Inc. v. Remo*[24] *(Interorient),* the Court recognized and addressed the unscrupulous practice of employers of deliberately or inadvertently refusing to refer the seafarer to the company-designated physician to deny his disability claim. In *Interorient,* the seafarer therein reported to the employer for post-employment medical examination within three (3) working days from repatriation. The employer, however, did not refer him to a

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[23] 376 Phil. 738 (1999).

[24] 636 Phil. 240 (2010).

company-designated physician because he already signed a quitclaim, releasing it from liability. The Court ruled that the absence of post-employment medical examination should not be taken against the seafarer because the employer declined to provide the same. Likewise, the quitclaim therein was declared void due to lack of consideration and unconscionable terms. Hence, the Court granted full disability benefits to the seafarer's family.

Recently, in *Apines v. Elburg Shipmanagement Philippines, Inc.*[25] *(Apines),* the repatriated seafarer reported to the employer. He was, however, not referred to the company-designated physician. The Court emphasized that the employer, and not the seafarer, has the burden to prove that the seafarer was referred to a company-designated doctor. It was also stated that without the assessment of the said doctor, there was nothing for the seafarer's own physician to contest, rendering the requirement of referral to a third doctor superfluous. The seafarer therein was granted total and permanent disability benefits.

To recapitulate, a seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation. Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.

Accordingly, the issue at hand is whether De Andres sufficiently complied with the reportorial requirement under Section 20 (B) (3). After a judicious scrutiny of the records, the Court answers in the affirmative.

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[25] G.R. No. 202114, November 9, 2016.

The respondents failed to provide a post-employment medical examination by a company-designated physician

In this case, De Andres' accident occurred on February 27, 2009. He sustained an open fracture injury over his left lower leg with an 8 cm. open wound, which resulted in bone exposure and active bleeding. Instead of immediately repatriating him when his condition permitted, the respondents kept him in Taiwan for almost a year and they waited for his contract to expire. Obviously, the delayed repatriation was intended to show that he returned due to his expired contract, and not for medical reasons. Nonetheless, even if a seafarer's contract expired, it does not release the employer from its obligations under the POEA-SEC when there is a claim for disability benefits due to an injury suffered during the term of the employment contract.[26] Accordingly, Section 20 (B) (3) must still be complied with.

De Andres was repatriated on February 5, 2010. On the next working day, February 8, 2010, he reported to the office of Diamond H where he met Ellen Purification, the Operations Manager. This is an undisputed fact as uniformly found by the LA, the NLRC and the CA.

De Andres claims that Purification invited him to go to the nearest fast-food restaurant to discuss his claim. There, she told him that Diamond H would not entertain any of his claims and that he should find a lawyer instead. Thus, he left the meeting. On the other hand, the respondents assert that while De Andres reported to Diamond H and met with its Operations Manager, he did not submit himself to post-employment medical examination by a company-designated physician. The LA upheld the position of De Andres; while the NLRC and the CA sided

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[26] See Section 20 of the 2000 Amended POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels which states that the employer has liabilities when the seafarer suffers work-related injury or illness during the term of his contract.

with the respondents. As the findings of fact are conflicting, the Court can entertain a question of fact.[27]

The Court is of the view that the account of De Andres is more credible. The fact that he reported to Diamond H on the next working day from his repatriation and met Purification show that he was sincere in asserting his claim against the respondents for disability benefits. Before he could even commence the procedure laid down under Section 20 (B) (3), however, Purification pre-empted him and bluntly told him that Diamond H would not entertain any of his claims and that he should find a lawyer instead. Thus, De Andres was no longer given an opportunity to submit himself to a post-employment medical examination by a company-designated physician.

The assertion of the respondents that De Andres merely reported to Diamond H but did not submit himself to a post-employment medical examination is highly dubious. It is quite absurd for a seafarer, who has a legitimate disability claim, to immediately report to his employer within three (3) working days from repatriation, only to leave the said place without any demand and without even requesting a referral from a company-designated physician. Evidently, the purpose of De Andres' reporting to Diamond H was to seek medical examination and treatment from the company-designated physician in order to initiate his claim for disability benefits. As stated in *Apines,* it is illogical that a seafarer would seek treatment from other doctors immediately after his disembarkation when he could avail of the services of the company-designated physician.

Moreover, the *onus* of establishing that the seafarer was referred to a company-designated physician is on the employer. The Court in *Apines* declared that the burden to prove with evidence whether the seafarer was referred to a company-designated doctor rests on the employer as the latter has custody of the documents, and not the seafarer. Here, the respondents could have easily presented proof that they referred De Andres

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[27] *Carbonell v. Carbonell-Mendes*, G.R. No. 205681, July 1, 2015, 762 SCRA 260.

to a company-designated physician, but they did not. Interestingly, they could not even cite the name of their company-designated physician who would have assessed the medical condition of De Andres. Thus, it is clear that it was the respondents who prevented the submission of De Andres to a post-employment medical examination.

Indeed, De Andres did his part when he immediately reported to Diamond H within three (3) working days from repatriation. Consequently, it was the duty of the employer to refer him to a company-designated physician for a post-employment medical examination knowing fully well that he had a claim for disability benefits. The respondents, however, failed to do so. Instead, they outrightly denied his claims because of the quitclaim he signed. The validity of the said quitclaim shall be discussed *infra.*

In fine, the exception to the reportorial requirement applies in this case because the seafarer was prevented by the employer from submitting himself to a post-employment medical examination by a company-designated physician. Thus, the disability claim of De Andres is not forfeited.

The quitclaim presented by the respondents is invalid

The primary reason for the respondents' upfront denial of De Andres' disability claims was the MOA signed by the latter which, to them, constituted as a quitclaim. It stated that the respondents agreed to pay De Andress NT$40,000.00 and gave him a plane ticket back to the Philippines; and that, in return, he would not file any complaint or sue the respondents in the future. De Andres asserted, however, that he was forced to sign the agreement.

To be valid, a Deed of Release, Waiver and/or Quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is sufficient and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third

person with a right recognized by law. Courts have stepped in to invalidate questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person, or where the agreement or settlement was unconscionable on its face. A quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. Moreover, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim.[28]

The Court finds that the MOA is not a valid quitclaim.

First, the MOA had an unreasonable consideration which was greatly disproportionate to the injury that De Andres suffered. To recall, he sustained an open fracture injury on his left lower leg with an 8 cm in size open wound which had bone exposure and active bleeding. Due to the seriousness of his injury, he was subjected to three (3) separate operations. The gravity of his injury left him incapacitated for almost a year until he was repatriated on February 5, 2010. Even in the Philippines, De Andres continued to suffer from his injury and his physician of choice, Dr. Runas, concluded that he was permanently unfit for sea duty.

In spite of the severity and prolonged injury of De Andres, the respondents gave him only NT$40,000.00, or its equivalent of ₱57,000.00.[29] The said amount is even smaller than the lowest disability benefit granted to a seafarer under the POEA-SEC in the amount of US$1,870.00, or its equivalent of ₱87,220.15.[30] Manifestly, the meager consideration provided by the MOA is not commensurate to the grave and protracted injury endured by De Andres.

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[28] *City Government of Makati v. Odeña*, 716 Phil. 284, 319 (2013).

[29] Based on the exchange rate of NT$1 = ₱1.425 on February 4, 2010, the date of the execution of the MOA.

[30] Under the Schedule of Disability Allowances, the lowest impediment grade, which is Grade 14, has a disability allowance of 3.74% of US$50,000.00 or US$1,870.00.

Second, De Andres was not given any other option aside from signing the MOA. He claims that he was required to execute the MOA; otherwise, he would not be allowed to return home. On the other hand, the respondents did not categorically state that De Andres could return to the Philippines even without signing the MOA. They could not argue that the execution of the MOA was optional and that De Andres had the bargaining power to disregard the agreement or any provisions therein. In other words, he was not given any freedom to decline the execution of the MOA, and he could not be faulted for signing it as it was the only way for him to go home. Thus, the execution of the MOA was a precondition before De Andres could be repatriated.

Lastly, the respondents claim that the MOA was explained to De Andres by a MECO representative and was duly notarized therein. A reading of the MOA, however, reveal that the same merely contained a stamp at the blank space provided for the MECO.[31] The one (1) page document did not bear any signature or the name of the alleged MECO representative. In addition, there was nothing in the MOA which stated that the contents thereof had been explained to De Andres. Alone in the dormitory, De Andres was guileless as to the contents of the MOA and he had no other option but to sign the same. Again, this renders suspect the legitimacy of its execution.

Accordingly, the MOA cannot be considered as a valid quitclaim because it lacks a reasonable consideration; De Andres was not given any freedom to reject it; and the document was not properly explained and notarized by any Philippine government representative. The present case is similar with *Interorient* where the employer declined to refer the seafarer to the company-designated physician upon repatriation due to a quitclaim which was declared null and void by the Court.

It is a time-honored rule that, in controversies between a laborer and his master, doubts reasonably arising from the

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[31] *Rollo,* p. 177.

evidence or in the interpretation of agreements and writings should be resolved in the former's favor. The policy is to extend the applicability 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.[32]

The respondents failed to provide a medical assessment of a company-designated physician

Under Section 20 (B) (3), the first procedure to determine the validity of a seafarer's claim for disability benefits is to refer him to a company-designated physician of the employer who shall conduct the medical examination. As earlier mentioned, the respondents did not comply with the initial stage because they failed to refer De Andres to a company-designated physician despite his timely reporting. They blindly relied on the MOA to cast away De Andres even though he was clearly asserting his disability claim. As discussed earlier, the MOA was an invalid quitclaim. Thus, the respondents cannot shield themselves from liability. Moreover, they could not present any medical assessment of a company-designated physician. The respondents have no legitimate means to refute his claim for permanent and total disability benefits.

The respondents insist that De Andres was declared fit to work by Dr. Huang as indicated in the Certificate of Diagnosis,[33] dated January 21, 2010. A reading of the said certification, however, shows that there was nothing therein which stated that De Andres was fit to work. It simply stated that the fracture had been healing, but there was neither a categorical declaration that he was fit for sea duty nor a disability grading for his injury.

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[32] *Metropolitan Bank and Trust Co. v. National Labor Relations Commission*, 607 Phil. 359, 375 (2009).

[33] *Id*. at 176.

Further, under Section 20 (B) (3), only upon repatriation may the company-designated physician examine the seafarer. Dr. Huang could not be considered as a company-designated physician because he was a doctor who assessed De Andres in Taiwan, before his repatriation. The medical diagnosis of Dr. Huang could not be considered as that of a company-designated physician.

On the other hand, De Andres proved that he sustained the injury on February 27, 2009 while on board the vessel. He suffered a severe open fracture leg injury which had bone exposure and active bleeding. He was incapacitated for almost a year and he underwent three (3) surgeries. Moreover, De Andres presented a medical assessment of his physician of choice, Dr. Runas, who found that he is unable to stand with the left foot in plantigrade position and the presence of calcifications around the ankle joint hindered its normal movement, which would be hard to correct or improve even with extended physical therapy. As such, Dr. Runas concluded that he was permanently unfit for sea duty.

Between the non-existent medical assessment of a company-designated physician of the respondents and the medical assessment of De Andres' physician of choice, the latter evidently stands. The permanent and total disability claim of De Andres remains unchallenged and must be granted by the Court. The respondents had the opportunity to refer De Andres to a company-designated physician, but they chose to escape their responsibility by relying on an illegal quitclaim.

Further, there was no need to refer the medical assessment of De Andres to a third doctor. Absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.[34]

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[34] *Island Overseas Transport Corp. v. Beja,* G.R. No. 203115, December 7, 2015.

Claims for sickness allowance, salary differentials, insurance compensation, and attorney's fees not raised on appeal

In its Decision, dated May 20, 2011, the LA granted De Andres sickness allowance, payment for salary differentials, insurance compensation, and attorney's fees. The said decision, however, was set aside by the NLRC. Notably, when the petition for *certiorari* was filed before the CA, these deleted awards were not included in the issues.[35] When the case eventually reached this Court, De Andres no longer raised the issue of whether he was entitled to these benefits. Thus, these matters cannot be tackled as only issues raised on appeal may be entertained by the appellate court. Basic is the rule that issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process.[36]

The only issues raised by De Andres in this petition are whether the MOA was a valid quitclaim and whether he is entitled to permanent and total disability benefits under the POEA-SEC. As the Court finds in the affirmative, De Andres is entitled to the amount of US$60,000.00 as permanent and total disability benefits.

Final Note

The Court laments that the employer of a seafarer resorted to insensitive quitclaims to avoid any disability claims. Section 20 (B) (3) specifically outlines the procedure in determining the proper compensation of a seafarer's disability. The rigorous process therein aims to provide a fair and definitive assessment on the seafarer's medical condition and to ensure that they will receive a just compensation for their injuries. At the same time,

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[35] *Rollo,* pp. 64-65.

[36] *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.,* 662 Phil. 473, 486 (2011).

it protects the interest of the employer by ensuring that only genuine disability or injuries shall be entitled to compensation.

Although there is nothing in the law which prevents the employer and the seafarer from entering into a quitclaim to avoid legal controversies, the same must be fair, reasonable, and properly explained to the seafarer. To frustrate the provisions of the POEA-SEC by forging erroneous and prejudicial quitclaims would defeat its expedient and systematic processes and lead to protracted litigation. The Court will not think twice in striking down invalid agreements in order to uphold the constitutional obligation of the State to give fullest aid and protection to labor.

WHEREFORE, the petition is **GRANTED.** The July 31, 2014 Decision and the March 12, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 124862 are hereby **REVERSED** and **SET ASIDE**. The May 20, 2011 Decision of the Labor Arbiter in NLRC OFW Case No. (M) 02-02844-10 is hereby **REINSTATED** but **MODIFIED** to read as follows:

> **WHEREFORE,** judgment is hereby rendered ordering respondents Diamond H Marine Services & Shipping Agency Inc., Wu Chun Hua, Ruben J. Turingan to pay jointly and severally complainant Wilmer O. De Andres SIXTY THOUSAND US DOLLARS (US$60,000.00), or the equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment, representing his total and permanent disability benefits.
>
> All other claims are **DISMISSED** for lack of merit.
>
> **SO ORDERED.**

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

Leonen, J., on leave but left his vote concurring with the *ponencia*.

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[*] Designated additional member per Raffle dated July 10, 2017.

SECOND DIVISION

[G.R. No. 220057. July 12, 2017]

RENE MICHAEL FRENCH, *petitioner, vs.* **COURT OF APPEALS, EIGHTEENTH DIVISION, CEBU CITY and MAGDALENA O'DELL, represented by HECTOR P. TEODOSIO as her Attorney-in-fact,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; DISTINGUISHED FROM FORCIBLE ENTRY.—** The nature of an action and the jurisdiction of the court over a case are determined by the allegations in the complaint. Forcible entry and unlawful detainer are distinct from each other. The Court differentiated the two actions, as follows: In forcible entry, one is deprived of physical possession of real property by means of force, intimidation, strategy, threats, or stealth whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The two are distinguished from each other in that in forcible entry, the possession of the defendant is illegal from the beginning, and that the issue is which party has prior *de facto* possession while in unlawful detainer, possession of the defendant is originally legal but became illegal due to the expiration or termination of the right to possess.

2. **ID.; ID.; ID.; ID.; REQUISITES OF COMPLAINT FOR AN ACTION FOR UNLAWFUL DETAINER.—** A complaint for an action for unlawful detainer is sufficient if the following allegations are present: 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.

3. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— As pointed out by the Court of Appeals, all the allegations in the complaint constitute a cause of action for unlawful detainer. The complaint clearly indicated that Magdalena allowed Henry to occupy the land subject to certain conditions. Among the conditions is that Henry will vacate the land when the time comes for Magdalena to use it. In 1991, Henry died and Rene took over the property. On 10 January 2008, Magdalena, through her counsel, sent a demand letter to Rene to vacate the land but the latter failed to comply. Rene's refusal to vacate the land prompted Magdalena to file the complaint for unlawful detainer on 13 October 2008, well within the one year period from the demand to vacate. Thus, all the requirements for an action for unlawful detainer have been sufficiently shown in the complaint.

4. ID.; ID.; ID.; ID; THE ONLY ISSUE IS THE MATERIAL OR PHYSICAL POSSESSION OF THE PROPERTY INVOLVED, INDEPENDENT OF ANY CLAIM OF OWNERSHIP BY ANY OF THE PARTIES INVOLVED.— The Court, likewise, cannot accept Rene's claim that there was transfer of ownership between Magdalena and Henry. Rene failed to substantiate this claim. The MTCC found that in the contract for easement and tower occupancy with the National Power Corporation, Rene was a signatory as an administrator of the land. As such, Rene's defense of open, continuous, notorious, and public possession of the land in the concept of an owner must fail. In addition, the Court of Appeals correctly ruled that in an ejectment case, the issue of ownership is only provisional. The only issue in an unlawful detainer case is the material or physical possession of the property involved, independent of any claim of ownership by any of the parties involved.

APPEARANCES OF COUNSEL

Ilarde Penetrante and Associates for petitioner.

Teodosio Daquilanea Ventilacion and Averia Law Offices for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Petitioner assails the 30 January 2015 Decision[1] and the 21 July 2015 Resolution[2] of the Court of Appeals Cebu City in CA-G.R. SP No. 07803. The Court of Appeals set aside the 12 October 2012 Decision[3] of the Regional Trial Court (RTC) of P. D. Monfort North, Dumangas, Iloilo, Branch 68, and reinstated the 27 January 2008 Judgment[4] of the Municipal Trial Court in Cities (MTCC), City of Passi, Province of Iloilo in Civil Case No. 437 for Ejectment.

The Antecedent Facts

Magdalena O'dell (Magdalena), an American citizen residing in Houston, Texas, United States of America (U.S.A.), through her attorney-in-fact Thomas O'dell (Thomas), filed a complaint for ejectment against Rene Michael French[5] (Rene). Magdalena alleged that she is one of the owners of a parcel of land, Lot No. 6895, covered by TCT No. T-19522 and located in the City of Passi. The lot has an area of more or less 487,871 square meters. Magdalena alleged that sometime in the 1980s, Henry French (Henry), Rene's father, sought her permission to cultivate a portion of the land without paying any rental. According to Magdalena, she and Henry had an agreement that he would pay some of her loans with the Philippine National Bank (PNB) and would vacate the land once she needs it. However, Magdalena alleged that upon Henry's death in 1991, Rene took over

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[1] *Rollo*, pp. 58-68. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Renato C. Francisco concurring.

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

[3] *Id*. at 162-171. Penned by Acting Judge Victorino O. Maniba, Jr.

[4] *Id*. at 135-161. Penned by Judge Jerry F. Marañon.

[5] Referred to in the Court of Appeals' Decision as Michael French.

possession of the land without her permission. As such, Rene was occupying the land by mere tolerance of the owner. Magdalena sent a letter, dated 10 January 2008, demanding Rene to vacate the land but he failed to comply, prompting Magdalena to file a case against him.

Rene countered that his father Henry and French-Solinap Development Corporation (the corporation) had been in possession and acted as owners of the land since 1985. Rene alleged that sometime in 1980, Magdalena and Thomas obtained a loan from PNB and used the land as collateral. Magdalena and Thomas, then living in the U.S.A., defaulted in their payment and asked Henry to redeem the land. In turn, Henry redeemed the land through the corporation. Upon payment of the obligation, PNB released the land from mortgage and turned over the original owner's copy of TCT No. T-19522 to Henry. Rene alleged that upon his parents' death, he succeeded as the administrator, owner, and President of the corporation. Rene alleged that Magdalena and Thomas assigned, abandoned, and waived their rights and interests over the land in favor of Henry and his successors-in-interest who had been in open, continuous, notorious, and public possession of the land in the concept of an owner for 23 years. Rene further alleged that Henry and his successors-in-interest had been paying the land's real property taxes from 1976 until 2007.

The Decisions of the Trial Courts

The MTCC ruled that Rene's occupation of the land was by mere tolerance of the owner. The MTCC found that the special power of attorney to mortgage the property was executed while Magdalena and Thomas were in the U.S.A. and was made as accommodation to their relatives, Wilson French and Edward French. The MTCC also found that Henry, another relative, was allowed to cultivate the land without rentals, on the condition that he would pay the loan of Magdalena and Thomas and the real property taxes over the land.

Aside from bare allegations made by Rene, the MTCC did not find any written proof of the alleged assignment of rights between Magdalena and Henry. The MTCC ruled that the

payment of the loan and the real property taxes was not inconsistent with the concept of tolerance of the owner and was in fact in compliance with the conditions set by Magdalena and Thomas. The MTCC likewise did not agree with Rene that there was an assignment of credit in favor of Henry due to lack of evidence to support the claim. The MTCC noted that the alleged partial payment to PNB was made by the corporation but it did not indicate to which loan it was applied. The MTCC also noted that the evidence of additional payment presented by Rene was actually a document for transfer of funds. In addition, the MTCC noted that the payment made by the National Power Corporation for easement and tower occupancy over a portion of the land shows that Rene's capacity as a signatory to the contract was as an administrator of the land.

The MTCC reiterated that lands registered under the Torrens System cannot be acquired by prescription, and possession of the transfer certificate of title does not, in itself, vest title or ownership. The MTCC held that material possession of the land cannot prevail over the superior right of the registered owner.

The dispositive portion of the MTCC's decision reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:

1) Ordering the defendant RENE MICHAEL FRENCH and all persons claiming rights under him to vacate Lot 6895 covered by TCT No. T-19522 and turn over the possession thereof to the plaintiff;

2) Ordering said defendant to pay annually the sum of TWO HUNDRED TEN THOUSAND PESOS (₱210,000.00) starting January 10, 2008, until defendant vacates and turn[s] over the premises in question to the plaintiff as reasonable compensation for the use and occupation of [L]ot 6895;

3) Ordering the said defendant to pay plaintiff the sum of Twenty Thousand Pesos (₱20,000.00) as attorney's fees;

4) Ordering said defendant to pay the plaintiff the sum of FIVE THOUSAND PESOS (₱5,000.00) as litigation expenses; and

5) The cost[s] of the suit.

The [counterclaim] is dismissed for lack of merit.

SO ORDERED.[6]

Rene filed an appeal before the RTC. In its 12 October 2012 Decision, the RTC set aside the MTCC's decision.

The RTC sustained the MTCC's finding that neither Rene nor his predecessor-in-interest was the owner of the land. According to the RTC, Rene only presented evidence of payment of loan and discharge of mortgage but not transfer of ownership. The RTC likewise sustained the MTCC in ruling that Rene's occupation of the land was by mere tolerance of the owner.

However, the RTC sustained Rene that the MTCC had no jurisdiction over the action. The dispositive portion of the RTC's decision reads:

> WHEREFORE, premises considered, for lack of jurisdiction, the questioned decision subject of the herein appeal is hereby set aside and the instant complaint is hereby dismissed.
>
> No pronouncement as to cost.
>
> SO DECIDED.[7]

Magdalena filed a petition for review before the Court of Appeals questioning the RTC's decision.

The Decision of the Court of Appeals

In the assailed decision, the Court of Appeals ruled in favor of Magdalena. The Court of Appeals ruled that the allegations in the complaint comprise a cause of action for unlawful detainer and not for forcible entry as claimed by Rene. The Court of Appeals ruled that all the requisites for an action for unlawful detainer are present in the complaint.

The Court of Appeals ruled that Henry's occupation was authorized by Magdalena. Upon Henry's death in 1991, Rene entered the property. The Court of Appeals noted that it was

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[6] *Rollo*, p. 161.

[7] *Id*. at 171.

only in 2008, when Magdalena wanted to use the land, that she demanded that Rene vacate the same. The Court of Appeals further noted that both the MTCC and the RTC agreed that Rene's occupation of the land was by mere tolerance. The Court of Appeals also noted that Rene did not even challenge the jurisdiction of the MTCC to try the case.

The dispositive portion of the Court of Appeals' decision reads:

> WHEREFORE, the Petition for Review is hereby GRANTED. The Decision of the Regional Trial Court dated October 12, 2012 in Civil Case No. 437 is SET ASIDE. The Decision of the Municipal Trial Court in Cities of Passi City is AFFIRMED and REINSTATED.
>
> SO ORDERED.[8]

Rene filed a motion for reconsideration. In its 21 July 2015 Resolution, the Court of Appeals denied the motion for lack of merit.

Thus, Rene came to this Court for relief.

The Issue

The sole issue in this case is whether the Court of Appeals committed a reversible error in ruling that the Municipal Trial Court in Cities had jurisdiction over the case filed by Magdalena O'dell against Rene Michael French.

The Ruling of this Court

We deny the petition.

The nature of an action and the jurisdiction of the court over a case are determined by the allegations in the complaint.[9] Forcible entry and unlawful detainer are distinct from each other. The Court differentiated the two actions, as follows:

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[8] *Id*. at 68.

[9] *Delos Reyes v. Spouses Odones*, 661 Phil. 676 (2011).

In forcible entry, one is deprived of physical possession of real property by means of force, intimidation, strategy, threats, or stealth whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The two are distinguished from each other in that in forcible entry, the possession of the defendant is illegal from the beginning, and that the issue is which party has prior de facto possession while in unlawful detainer, possession of the defendant is originally legal but became illegal due to the expiration or termination of the right to possess.[10]

A complaint for an action for unlawful detainer is sufficient if the following allegations are present:

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.[11]

As pointed out by the Court of Appeals, all the allegations in the complaint constitute a cause of action for unlawful detainer. The complaint clearly indicated that Magdalena allowed Henry to occupy the land subject to certain conditions. Among the conditions is that Henry will vacate the land when the time comes for Magdalena to use it. In 1991, Henry died and Rene took over the property. On 10 January 2008, Magdalena, through her counsel, sent a demand letter to Rene to vacate the land but the latter failed to comply. Rene's refusal to vacate the land prompted Magdalena to file the complaint for unlawful detainer on 13 October 2008, well within the one year period from the

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[10] *Spouses Valdez v. Court of Appeals*, 523 Phil. 39, 45-46 (2006).

[11] *Supra* note 9 at 683.

demand to vacate. Thus, all the requirements for an action for unlawful detainer have been sufficiently shown in the complaint.

The Court, likewise, cannot accept Rene's claim that there was transfer of ownership between Magdalena and Henry. Rene failed to substantiate this claim. The MTCC found that in the contract for easement and tower occupancy with the National Power Corporation, Rene was a signatory as an administrator of the land. As such, Rene's defense of open, continuous, notorious, and public possession of the land in the concept of an owner must fail. In addition, the Court of Appeals correctly ruled that in an ejectment case, the issue of ownership is only provisional. The only issue in an unlawful detainer case is the material or physical possession of the property involved, independent of any claim of ownership by any of the parties involved.[12]

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 30 January 2015 Decision and the 21 July 2015 Resolution of the Court of Appeals Cebu City in CA-G.R. SP No. 07803.

SO ORDERED.

Peralta, Mendoza, and *Martires, JJ.,* concur.

Leonen, J., on leave but left his vote concurring with the *ponencia*.

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[12] *Manila Electric Company v. Heirs of Spouses Deloy*, 710 Phil. 427 (2013).

THIRD DIVISION

[A.C. No. 11482. July 17, 2017]

JOCELYN IGNACIO, *complainant, vs.* **ATTY. DANIEL T. ALVIAR,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; ACCEPTANCE OF MONEY FROM A CLIENT ESTABLISHES AN ATTORNEY-CLIENT RELATIONSHIP AND GIVES RISE TO THE DUTY OF FIDELITY TO THE CLIENT'S CAUSE; EXPOUNDED.— Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. Canon 18 of the CPR mandates that once a lawyer agrees to handle a case, it is the lawyer's duty to serve the client with competence and diligence. In *Voluntad-Ramirez v. Atty. Bautista*, the Court citing *Santiago v. Fojas* expounds: It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment, subject, however, to Canon 14 of the Code of Professional Responsibility. Once he agrees to take up the cause of [his] client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care and devotion. Elsewise stated, he owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of the law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects

the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.

2. ID.; ID.; ID.; FAILURE OF A COUNSEL TO COMPETENTLY AND DILIGENTLY ATTEND TO THE LEGAL MATTER ENTRUSTED TO HIM CONSTITUTES NEGLIGENCE.— We agree with the finding of the Investigating Commissioner that respondent failed to competently and diligently attend to the legal matter entrusted to him. It is undisputed that respondent came to see complainant's son, his client, only once for about 20 minutes and no more thereafter; it is likewise undisputed that respondent failed to attend the scheduled arraignment despite the latter's commitment to either find a way to attend, or send a collaborating counsel to do so;that he forgot the date of arraignment is an equally dismal excuse. Equally revealing of respondent's negligence was his nonchalant attitude towards complainant's request for a refund of a portion of, not even the entire, PhP100,000. In his Answer before the IBP, respondent simply denied having received any of the letters sent by complainant. Respondent's claim that it was complainant who failed to talk to him and his admission that he "forgot about complainant" reveal his rather casual and lackadaisical treatment of the complainant and the legal matter entrusted to him. If it were true that complainant already failed to communicate with him, the least respondent could have done was to withdraw his appearance as counsel. But even this measure, it appears, respondent failed to perform. His failure to take such action speaks of his negligence.

3. ID.; ID.; ID.; ID.; PENALTY OF REPRIMAND IMPOSED FOR NEGLIGENCE; IN ADMINISTRATIVE PROCEEDINGS, ONLY SUBSTANTIAL EVIDENCE IS REQUIRED TO WARRANT DISCIPLINARY SANCTIONS OR SUCH RELEVANT EVIDENCE AS A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION.— In administrative proceedings, only substantial evidence is required to warrant disciplinary sanctions. Substantial evidence is consistently defined as relevant evidence as a reasonable mind might accept as adequate to support a conclusion.While the Court finds respondent guilty of negligence, We cannot ascribe to him any unlawful, dishonest, immoral or

deceitful conduct nor causing undue delay and impediment to the execution of a judgment or misusing court processes. As such, and consistent with current jurisprudence, We find the penalty of reprimand with stern warning commensurate to his offense.

4. ID.; ID.; ID.; ATTORNEY'S FEE AND ACCEPTANCE FEE, DISTINGUISHED.— As regards the restitution of the acceptance fees, We find it necessary to first distinguish between an attorney's fee and an acceptance fee as the former depends on the nature and extent of the legal services rendered, while the other does not. On one hand, attorney's fee is understood both in its ordinary and extraordinary concept. In its ordinary concept, attorney's fee refers to the reasonable compensation paid to a lawyer by his client for legal services rendered. While, in its extraordinary concept, attorney's fee is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages. In the present case, the Investigating Commissioner referred to the attorney's fee in its ordinary concept. On the other hand, acceptance fee refers to the charge imposed by the lawyer for mere acceptance of the case. The rationale for the fee is because once the lawyer agrees to represent a client, he is precluded from handling cases of the opposing party based on the prohibition on conflict of interest. The opportunity cost of mere acceptance is thus indemnified by the payment of acceptance fee. However, since acceptance fee compensates the lawyer only for lost opportunity, the same is not measured by the nature and extent of the legal services rendered. In this case, respondent referred to the PhP100,000 as his acceptance fee while to the complainant, said amount answers for the legal services which respondent was engaged to provide. Preceding from the fact that complainant agreed to immediately pay, as she, in fact, immediately paid the sums of PhP20,000, PhP30,000 and PhP50,000, said amounts undoubtedly pertain to respondent's acceptance fee which is customarily paid by the client upon the lawyer's acceptance of the case.

5. ID.; ID.; ATTORNEY'S FEES; PRINCIPLE OF *QUANTUM MERUIT*; FACTORS IN DETERMINING ATTORNEY'S FEES: THE COURT SHALL ORDER THE RETURN OF ACCEPTANCE FEES WHERE THE LAWYER HAD BEEN NEGLIGENT IN THE HANDLING OF HIS CLIENT'S

CASE.—[T]he Court had not shied from ordering a return of acceptance fees in cases wherein the lawyer had been negligent in the handling of his client's case. x x x [T]he next query to be had is how much of the acceptance fee should respondent restitute. In this regard, the principle of *quantum meruit* (as much as he deserves) may serve as a basis for determining the reasonable amount of attorney's fees. *Quantum meruit* is a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without working for it. Also, Section 24, Rule 138 should be observed in determining respondent's compensation x x x. The criteria found in the Code of Professional Responsibility are also to be considered in assessing the proper amount of compensation that a lawyer should receive. Canon 20, Rule 20.01 provides: CANON 20 A LAWYER SHALL CHARGE ONLY FAIR AND REASONABLE FEES. Rule 20.01. A lawyer shall be guided by the following factors in determining his fees: (a) The time spent and the extent of the services rendered or required; (b) The novelty and difficulty of the question involved; (c) The importance of the subject matter; (d) The skill demanded; (e) The probability of losing other employment as a result of acceptance of the proffered case; (f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs; (g) The amount involved in the controversy and the benefits resulting to the client from the service; (h) The contingency or certainty of compensation; (i) The character of the employment, whether occasional or established; and (j) The professional standing of the lawyer. Here, respondent only conferred once with the complainant's son for 20 minutes, filed his entry of appearance, obtained copies of the case records and inquired twice as to the status of the case. For his efforts and for the particular circumstances in this case, respondent should be allowed a reasonable compensation of PhP3,000. The remainder, or PhP 97,000 should be returned to the complainant.

D E C I S I O N

TIJAM, *J.*:

This is an administrative case filed by complainant Jocelyn Ignacio against respondent Atty. Daniel T. Alviar for violation

of Canon 1[1], Rule 1.01[2] of the Code of Professional Responsibility (CPR) for his alleged refusal to refund the amount of acceptance fees; Canon 12[3], Rule 12.04[4] and Canon 18[5], Rule 18.03[6] for his alleged failure to appear in the criminal case he is handling and to file any pleading therein.

The Facts

In March 2014, respondent was referred to complainant for purposes of handling the case of complainant's son who was then apprehended and detained by the Philippine Drug Enforcement Agency (PDEA) in Quezon City. Respondent agreed to represent complainant's son for a stipulated acceptance fee of PhP100,000. Respondent further represented that he could refer the matter to the Commission on Human Rights to investigate the alleged illegal arrest made on complainant's son.[7]

After the initial payments of PhP20,000 and PhP30,000 were given to respondent, the latter visited complainant's son at the PDEA detention cell.[8] There, respondent conferred with

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[1] CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW OF AND LEGAL PROCESSES.

[2] Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[3] CANON 12 – A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

[4] Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

[5] CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

[6] Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

[7] *Rollo*, p. 24.

[8] *Id*. at 2.

complainant's son for some 20 minutes. After which, respondent left.[9]

Respondent, through his secretary, secured from the Office of the Pasay City Prosecutor plain copies of the case records. Respondent also verified twice from the Hall of Justice if the case was already filed in court.[10] It was at this time that respondent asked, and was paid, the remaining balance of PhP50,000. Subsequently, respondent filed his notice of appearance as counsel for complainant's son.[11]

Sometime in April 2014, complainant informed respondent that her son's arraignment was set on April 29, 2014. Respondent, however, replied that he cannot attend said arraignment due to a previously scheduled hearing. He committed to either find a way to attend the hearing or ask another lawyer-friend to attend it for him.

On April 26, 2014, complainant wrote a letter[12] to respondent informing the latter that she had decided to seek the intercession of another lawyer owing to the fact that respondent cannot attend her son's scheduled arraignment. Complainant then requested that respondent retain a portion of the PhP100,000 to fairly remunerate respondent for the preparatory legal service he rendered. Respondent denies having received said letter.[13]

On the date of the arraignment, neither respondent nor his promised alternate, appeared. When asked, respondent replied that he forgot the date of arraignment.[14]

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[9] *Id*.

[10] *Supra* note 7.

[11] *Rollo,* p. 3.

[12] *Id*. at 7.

[13] *Id*. at 26.

[14] *Id*. at 3.

This incident prompted complainant to write another letter[15] dated May 6, 2014 to respondent, requesting the latter to formally withdraw as counsel and emphasized that respondent's withdrawal as counsel is necessary so that she and her son can hire another lawyer to take his stead. In said letter, complainant also reiterated her request that a portion of the PhP100,000 be remitted to them after respondent deducts his professional fees commensurate to the preparatory legal service he rendered.[16]

When respondent failed to take heed, complainant filed on June 16, 2014, the instant administrative complaint before the Commission on Bar Discipline, Integrated Bar of the Philippines.

At the proceedings therein, respondent failed to attend the initial mandatory conferences and to file his responsive pleading, citing as reason therefor the persistent threats to his life allegedly caused by a former client.[17] Upon finally submitting his Answer[18], respondent denied having neglected his duties to complainant's son.

Report and Recommendation of the Commission on Bar Discipline

On January 21, 2016, the Investigating Commissioner found respondent liable for negligence under Rule 18.03 of the CPR and recommended a penalty of six months suspension from the practice of law. The Investigating Commissioner observed that while respondent performed some tasks as lawyer for complainant's son, such do not command a fee of PhP100,000. It was also emphasized that respondent's failure to attend the arraignment shows the latter's failure to handle the case with diligence.[19]

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[15] *Id.* at 9.

[16] *Id.*

[17] *Id.* at 20-21.

[18] *Id.* at 23-29.

[19] *Id.* at 64.

As such, the Investigating Commissioner disposed:

WHEREFORE, PREMISES CONSIDERED, the undersigned recommends that respondent be meted out with the penalty of suspension for six (6) months from the practice of law and ordered to restitute the amount of One Hundred Thousand (Php100,000) Pesos to the complainant.

Respectfully Submitted.[20]

Resolution of the Board of Governors of the Integrated Bar of the Philippines

On February 25, 2016, the IBP Board of Governors passed Resolution No. XXII-2016-178[21] lowering the recommended penalty to reprimand with stern warning, thus:

RESOLVED to ADOPT with modification the recommendation of the Investigating Commissioner reducing the penalty to REPRIMAND WITH STERN WARNING.[22]

Pursuant to Rule 139-B, the records of the administrative case were transmitted by the IBP to the Court for final action. Complainant further seeks a review[23] of the Resolution No. XXII-2016-178 dated February 25, 2016.

The Issue

The threshold issue to be resolved is whether respondent is guilty of negligence in handling the case of complainant's son.

The Ruling of the Court

The Court affirms the Resolution No. XXII-2016-178 dated February 25, 2016 of the IBP Board of Governors, reducing

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[20] *Id.* at 65.

[21] *Id.* at 59.

[22] *Id.*

[23] Through a pleading denominated as *"Manifestation and Motion to Admit Motion for Reconsideration and Motion for Review"* dated March 27, 2017.

the recommended penalty from six months to reprimand with stern warning. However, on the undisputed factual finding that respondent only performed preparatory legal services for complainant's son, he is not entitled to the entire PhP100,000 but only to fees determined on the basis of *quantum meruit,* Section 24, Rule 138, and Canon 20, Rule 20.01 of the CPR and that the remainder should be restituted to complainant.

Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.[24] Canon 18[25] of the CPR mandates that once a lawyer agrees to handle a case, it is the lawyer's duty to serve the client with competence and diligence.

In *Voluntad-Ramirez v. Atty. Bautista*[26], the Court citing *Santiago v. Fojas*[27] *expounds:*

It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment, subject, however, to Canon 14 of the Code of Professional Responsibility. Once he agrees to take up the cause of [his] client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care and devotion. Elsewise stated, he owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of the law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the

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[24] *Hernandez v. Atty. Padilla,* A.C. No. 9387, June 20, 2012, citing *Fernandez v. Atty. Cabrera*, 463 Phil. 352 (2003).

[25] *Supra* note 5.

[26] A.C. No. 6733, October 10, 2012.

[27] A.C. No. 4103, September 7, 1995, 248 SCRA 68.

correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[28]

We agree with the finding of the Investigating Commissioner that respondent failed to competently and diligently attend to the legal matter entrusted to him. It is undisputed that respondent came to see complainant's son, his client, only once for about 20 minutes and no more thereafter;[29] it is likewise undisputed that respondent failed to attend the scheduled arraignment despite the latter's commitment to either find a way to attend, or send a collaborating counsel to do so;[30] that he forgot the date of arraignment is an equally dismal excuse.

Equally revealing of respondent's negligence was his nonchalant attitude towards complainant's request for a refund of a portion of, not even the entire, PhP100,000. In his Answer before the IBP, respondent simply denied having received any of the letters sent by complainant.[31] Respondent's claim that it was complainant who failed to talk to him and his admission that he "forgot about complainant"[32] reveal his rather casual and lackadaisical treatment of the complainant and the legal matter entrusted to him.

If it were true that complainant already failed to communicate with him, the least respondent could have done was to withdraw his appearance as counsel. But even this measure, it appears, respondent failed to perform. His failure to take such action speaks of his negligence.

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[28] *Id.*

[29] *See* respondent's *Answer*; *Rollo*, p. 25.

[30] *Id.*

[31] *Id.* at 27.

[32] *Id.*

In administrative proceedings, only substantial evidence is required to warrant disciplinary sanctions. Substantial evidence is consistently defined as relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[33] While the Court finds respondent guilty of negligence, We cannot ascribe to him any unlawful, dishonest, immoral or deceitful conduct nor causing undue delay and impediment to the execution of a judgment or misusing court processes. As such, and consistent with current jurisprudence, We find the penalty of reprimand with stern warning commensurate to his offense.[34]

As regards the restitution of the acceptance fees, We find it necessary to first distinguish between an attorney's fee and an acceptance fee as the former depends on the nature and extent of the legal services rendered, while the other does not.

On one hand, attorney's fee is understood both in its ordinary and extraordinary concept.[35] In its ordinary concept, attorney's fee refers to the reasonable compensation paid to a lawyer by his client for legal services rendered. While, in its extraordinary concept, attorney's fee is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages.[36] In the present case, the Investigating Commissioner referred to the attorney's fee in its ordinary concept.

On the other hand, acceptance fee refers to the charge imposed by the lawyer for mere acceptance of the case. The rationale for the fee is because once the lawyer agrees to represent a client, he is precluded from handling cases of the opposing party based on the prohibition on conflict of interest. The opportunity cost of mere acceptance is thus indemnified by

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[33] *Re: Anonymous Complaint against Ms. Hermogena F. Bayani for Dishonesty*, A.M. No. 2007-22-SC, February 1, 2011.

[34] See *Carino v. Atty. De Los Reyes*, A.C. No. 4982, August 9, 2001; *Cristobal v. Atty. Renta*, A.C. No. 9925, September 17, 2014.

[35] *Traders Royal Bank Employees Union-Independent v. NLRC*, 336 Phil. 705, 712 (1997).

[36] *Ortiz v. San Miguel Corporation*, 582 Phil. 627, 640 (2008).

the payment of acceptance fee. However, since acceptance fee compensates the lawyer only for lost opportunity, the same is not measured by the nature and extent of the legal services rendered.[37]

In this case, respondent referred to the PhP100,000 as his acceptance fee while to the complainant, said amount answers for the legal services which respondent was engaged to provide. Preceding from the fact that complainant agreed to immediately pay, as she, in fact, immediately paid the sums of PhP20,000, PhP30,000 and PhP50,000, said amounts undoubtedly pertain to respondent's acceptance fee which is customarily paid by the client upon the lawyer's acceptance of the case.

Be that as it may, the Court had not shied from ordering a return of acceptance fees in cases wherein the lawyer had been negligent in the handling of his client's case. Thus, in *Carino v. Atty. De Los Reyes*,[38] the respondent lawyer who failed to file a complaint-affidavit before the prosecutor's office, returned the PhP10,000 acceptance fee paid to him and was admonished to be more careful in the performance of his duty to his clients. Likewise, in *Voluntad-Ramirez v. Bautista*,[39] the respondent lawyer was ordered to return the PhP14,000 acceptance fee because he did nothing to advance his client's cause during the six-month period that he was engaged as counsel.

This being the case, the next query to be had is how much of the acceptance fee should respondent restitute. In this regard, the principle of *quantum meruit* (as much as he deserves) may serve as a basis for determining the reasonable amount of attorney's fees. *Quantum meruit* is a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without working for it.

Also, Section 24, Rule 138 should be observed in determining respondent's compensation, thus:

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[37] *Dalupan v. Atty. Gacott*, A.M. No. 5067, June 29, 2015.

[38] *Supra* note 34.

[39] *Supra* note 26.

SEC. 24. *Compensation of attorney's; agreement as to fees.* An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

The criteria found in the Code of Professional Responsibility are also to be considered in assessing the proper amount of compensation that a lawyer should receive.[40] Canon 20, Rule 20.01 provides:

CANON 20 A LAWYER SHALL CHARGE ONLY FAIR AND REASONABLE FEES.

Rule 20.01. A lawyer shall be guided by the following factors in determining his fees:

(a) The time spent and the extent of the services rendered or required;
(b) The novelty and difficulty of the question involved;
(c) The importance of the subject matter;
(d) The skill demanded;
(e) The probability of losing other employment as a result of acceptance of the proffered case;
(f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs;
(g) The amount involved in the controversy and the benefits resulting to the client from the service;
(h) The contingency or certainty of compensation;
(i) The character of the employment, whether occasional or established; and
(j) The professional standing of the lawyer.

Here, respondent only conferred once with the complainant's son for 20 minutes, filed his entry of appearance, obtained copies of the case records and inquired twice as to the status of the

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[40] *Masmud v. NLRC*, G.R. No. 183385, February 13, 2009.

case. For his efforts and for the particular circumstances in this case, respondent should be allowed a reasonable compensation of PhP3,000. The remainder, or PhP97,000 should be returned to the complainant.

WHEREFORE, We find Atty. Daniel T. Alviar **LIABLE** for violation of Canon 18 and Rule 18.03 of the Code of Professional Responsibility and he is hereby **REPRIMANDED** with a stern warning that a repetition of the same or similar act would be dealt with more severely. Atty. Daniel T. Alviar is ordered to **RESTITUTE** to complainant the amount of PhP97,000 out of the Php100,000 acceptance fee.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Reyes, Jr., JJ.,* concur.

FIRST DIVISION

[A.C. No. 11668. July 17, 2017]

JOY T. SAMONTE, *complainant, vs.* **ATTY. VIVENCIO V. JUMAMIL,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS ARE REQUIRED TO MAINTAIN, AT ALL TIMES, A HIGH STANDARD OF LEGAL PROFICIENCY, AND TO DEVOTE THEIR FULL ATTENTION, SKILL, AND COMPETENCE TO THEIR CASES, REGARDLESS OF THEIR IMPORTANCE, AND WHETHER THEY ACCEPT THEM FOR A FEE OR FOR FREE.— The relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard,

clients are led to expect that lawyers would be ever-mindful of their cause, and accordingly, exercise the required degree of diligence in handling their affairs. Accordingly, lawyers are required to maintain, at all times, a high standard of legal proficiency, and to devote their full attention, skill, and competence to their cases, regardless of their importance, and whether they accept them for a fee or for free. To this end, lawyers are enjoined to employ only fair and honest means to attain lawful objectives. These principles are embodied in Rule 10.01 of Canon 10 and Rule 18.03 of Canon 18 of the CPR.

2. ID.; ID.; LAWYER-CLIENT RELATIONSHIP; COMMENCES WHEN A LAWYER SIGNIFIES HIS AGREEMENT TO HANDLE A CLIENT'S CASE AND ACCEPTS MONEY REPRESENTING LEGAL FEES FROM THE LATTER; FROM THEN ON, A LAWYER IS DUTY-BOUND TO SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE AND NOT NEGLECT A LEGAL MATTER ENTRUSTED TO HIM.— [I]t is undisputed that a lawyer-client relationship was forged between complainant and respondent when the latter agreed to file a position paper on her behalf before the NLRC and, in connection therewith, received the amount of ₱8,000.00 from complainant as payment for his services. Case law instructs that a lawyer-client relationship commences when a lawyer signifies his agreement to handle a client's case and accepts money representing legal fees from the latter, as in this case. From then on, as the CPR provides, a lawyer is duty-bound to "serve his client with competence and diligence," and in such regard, "not neglect a legal matter entrusted to him."

3. ID.; ID.; ID.; ONCE A LAWYER AGREES TO TAKE UP THE CAUSE OF A CLIENT, THE LAWYER OWES FIDELITY TO SUCH CAUSE AND MUST ALWAYS BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM, AND HE MUST SERVE THE CLIENT WITH COMPETENCE AND DILIGENCE, AND CHAMPION THE LATTER'S CAUSE WITH WHOLEHEARTED FIDELITY, CARE, AND DEVOTION.— [I]t is fairly apparent that respondent breached this duty when he admittedly failed to file the necessary position paper before the NLRC, which had, in fact, resulted into an adverse ruling against his client, *i.e.,* herein complainant. To

be sure, it is of no moment that complainant purportedly failed to produce any credible witnesses in support of her position paper; clearly, this is not a valid justification for respondent to completely abandon his client's cause. By voluntarily taking up complainant's case, respondent gave his unqualified commitment to advance and defend the latter's interest therein. Verily, he owes fidelity to such cause and must be mindful of the trust and confidence reposed in him. In *Abay v. Montesino,* it was explained that regardless of a lawyer's personal view, the latter must still present every remedy or defense within the authority of the law to support his client's cause: Once a lawyer agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Otherwise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied.

4. ID.; ID.; **THE LAWYER'S OATH; EVERY LAWYER IS ENJOINED NOT ONLY TO OBEY THE LAWS OF THE LAND BUT ALSO TO REFRAIN FROM DOING ANY FALSEHOOD IN OR OUT OF COURT OR FROM CONSENTING TO THE DOING OF ANY IN COURT, AND TO CONDUCT HIMSELF ACCORDING TO THE BEST OF HIS KNOWLEDGE AND DISCRETION WITH ALL GOOD FIDELITY TO THE COURTS AS WELL AS TO HIS CLIENTS.—** [T]he IBP correctly found that respondent violated Rule 10.01, Canon 10 of the CPR. Records show that he indeed indulged in deliberate falsehood when he admittedly prepared and notarized the affidavit of complainant's intended witness, Romeo, despite his belief that Romeo was a perjured witness. In *Spouses Umaguing v. De Vera,* the Court highlighted the oath undertaken by every lawyer to not only obey the laws of the land, but also to refrain from doing any falsehood, *viz.:* The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also **to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his**

knowledge and discretion with all good fidelity to the courts as well as to his clients. Every lawyer is a servant of the law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others. It is by no means a coincidence, therefore, that the core values of honesty, integrity, and trustworthiness are emphatically reiterated by the Code of Professional Responsibility. In this light, **Rule 10.01, Canon 10 of the Code of Professional Responsibility provides that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice."**

5. ID.; ID.; 2004 RULES ON NOTARIAL PRACTICE;A NOTARY PUBLIC MUST OBSERVE WITH UTMOST CARE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF THEIR DUTIES; OTHERWISE, THE CONFIDENCE OF THE PUBLIC IN THE INTEGRITY OF THIS FORM OF CONVEYANCE WOULD BE UNDERMINED; NOTARIZATION OF A PERJURED AFFIDAVIT CONSTITUTES A VIOLATION OF THE 2004 RULES ON NOTARIAL PRACTICE.— Notably, the notarization of a perjured affidavit also constituted a violation of the 2004 Rules on Notarial Practice. Section 4 (a), Rule IV thereof pertinently provides:SEC. 4. *Refusal to Notarize.* – A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he tenders the appropriate fee specified by these Rules if:(a) **the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral[.]** On this score, it is well to stress that "notarization is not an empty, meaningless routinary act. It is invested with substantive public interest. It must be underscored that the notarization by a notary public converts a private document into a public document, making that document admissible in evidence without further proof of authenticity thereof. A notarial document is, by law, entitled to full faith and credit upon its face. For this reason, a notary public must observe with utmost care the basic requirements in the performance of their duties; otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined."

6. ID.; ID.; RESPONDENT FOUND GUILTY OF VIOLATING RULE 10.01, CANON 10 AND RULE 18.03, CANON 18

OF THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE 2004 RULES ON NOTARIAL PRACTICE; PROPER IMPOSABLE PENALTY.— The appropriate penalty to be meted against an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. In *Del Mundo v. Capistrano,* the Court suspended the lawyer for a period of one (1) year for his failure to perform his undertaking under his retainership agreement with his client. Similarly, in *Conlu v. Aredonia, Jr.,* the same penalty was imposed on a lawyer for his inexcusable negligence in failing to file the required pleading to the prejudice of his client. Hence, consistent with existing jurisprudence, the Court adopts the penalty recommended by the IBP and accordingly suspends respondent from the practice of law for a period of one (1) year. Moreover, as in the case of *Dela Cruz v. Zabala,* where the notary public therein notarized an irregular document, the Court hereby revokes respondent's notarial commission and further disqualifies him from being commissioned as a notary public for a period of two (2) years.

APPEARANCES OF COUNSEL

R.L. Moldez Law Office for complainant.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a Complaint[1] dated March 15, 2013, filed before the Integrated Bar of the Philippines (IBP), by complainant Joy T. Samonte (complainant) against respondent Atty. Vivencio V. Jumamil (respondent), praying that the latter be disbarred for acts unbecoming of a lawyer and betrayal of trust.

The Facts

Complainant alleged that sometime in October 2012, she received summons from the National Labor Relations

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

Commission (NLRC), Regional Arbitration Branch XI, Davao City, relative to an illegal dismissal case, *i.e.,* NLRC Case RAB-XI-10-00586-12, filed by four (4) persons claiming to be workers in her small banana plantation.[2] Consequently, complainant engaged the services of respondent to prepare her position paper, and paid him the amount of ₱8,000.00[3] as attorney's fees.[4] Despite constantly reminding respondent of the deadline for the submission of her position paper, complainant discovered that he still failed to file the same.[5] As such, on January 25, 2013, the Labor Arbiter rendered a Decision[6] based on the evidence on record, whereby complainant was held liable to the workers in the total amount of ₱633,143.68.[7] When complainant confronted respondent about the said ruling, the latter casually told her to just sell her farm to pay the farm workers.[8] Because of respondent's neglect, complainant claimed that she was left defenseless and without any remedy to protect her interests against the execution of the foregoing judgment;[9] hence, she filed the instant complaint.

In an Order[10] dated March 26, 2013, the IBP Commission on Bar Discipline (IBP-CBD) directed respondent to submit his Answer to the complaint.

In his Answer[11] dated April 19, 2013, respondent admitted that he indeed failed to file a position paper on behalf of complainant. However, he maintained that said omission was

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[2] *Id.* at 2 and 8.

[3] See Receipt by way of a letter dated December 20, 2012; *id*. at 6.

[4] *Id.* at 3.

[5] See *id*. at 3-4.

[6] *Id*. at 8-12. Penned by Executive Labor Arbiter Elbert C. Restauro.

[7] *Id.* at 12.

[8] *Id.* at 48.

[9] *Id.* at 4.

[10] *Id*. at 13.

[11] *Id*. at 14-16.

due to complainant's failure to adduce credible witnesses to testify in her favor. In this relation, respondent averred that complainant instructed her to prepare an Affidavit[12] for one Romeo P. Baol (Romeo), who was intended to be her witness; nevertheless, respondent was instructed that the contents of Romeo's affidavit were not to be interpreted in the Visayan dialect so that the latter would not know what he would be testifying on. Respondent added that complainant's uncle, Nicasio Ticong, who was also an intended witness, refused to execute an affidavit and testify to her lies. Thus, it was complainant who was deceitful in her conduct and that the complaint against him should be dismissed for lack of merit.[13]

The IBP's Report and Recommendation

In its Report and Recommendation[14] dated March 14, 2014, the IBP-CBD found respondent administratively liable and, accordingly, recommended that he be suspended from the practice of law for a period of one (1) year. Essentially, the IBP-CBD found respondent guilty of violating Rule 10.01, Canon 10, and Rule 18.03, Canon 18 of the Code of Professional Responsibility (CPR), as well as the 2004 Rules on Notarial Practice.[15]

In a Resolution[16] dated December 13, 2014, the IBP Board of Governors adopted and approved the aforesaid Report and Recommendation, finding the same to be fully supported by the evidence on record and the applicable laws and rules.

The Issue Before the Court

The sole issue in this case is whether or not respondent should be held administratively liable.

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[12] See *id*. at 17.

[13] *Id*. at 15-16.

[14] *Id*. at 71-76.

[15] A.M. No. 02-8-13-SC (August 1, 2004).

[16] See Notice of Resolution in Resolution No. XXI-2014-898 issued by National Secretary Nasser A. Marohomsalic; *id*. at 70, including dorsal portion.

The Court's Ruling

The Court concurs with and affirms the findings of the IBP, with modification, however, as to the penalty in order to account for his breach of the rules on notarial practice.

The relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect that lawyers would be ever-mindful of their cause, and accordingly, exercise the required degree of diligence in handling their affairs. Accordingly, lawyers are required to maintain, at all times, a high standard of legal proficiency, and to devote their full attention, skill, and competence to their cases, regardless of their importance, and whether they accept them for a fee or for free.[17] To this end, lawyers are enjoined to employ only fair and honest means to attain lawful objectives.[18] These principles are embodied in Rule 10.01 of Canon 10 and Rule 18.03 of Canon 18 of the CPR, which respectively read as follows:

CANON 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

In this case, it is undisputed that a lawyer-client relationship was forged between complainant and respondent when the latter agreed to file a position paper on her behalf before the NLRC and, in connection therewith, received the amount of ₱8,000.00 from complainant as payment for his services. Case law instructs

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[17] *Dagala v. Quesada, Jr.,* 722 Phil. 447, 456 (2013).

[18] *Pitcher v. Gagate,* 719 Phil. 82, 91 (2013).

that a lawyer-client relationship commences when a lawyer signifies his agreement to handle a client's case and accepts money representing legal fees from the latter,[19] as in this case. From then on, as the CPR provides, a lawyer is duty-bound to "serve his client with competence and diligence," and in such regard, "not neglect a legal matter entrusted to him."

However, it is fairly apparent that respondent breached this duty when he admittedly failed to file the necessary position paper before the NLRC, which had, in fact, resulted into an adverse ruling against his client, *i.e.,* herein complainant. To be sure, it is of no moment that complainant purportedly failed to produce any credible witnesses in support of her position paper; clearly, this is not a valid justification for respondent to completely abandon his client's cause. By voluntarily taking up complainant's case, respondent gave his unqualified commitment to advance and defend the latter's interest therein. Verily, he owes fidelity to such cause and must be mindful of the trust and confidence reposed in him.[20] In *Abay v. Montesino,*[21] it was explained that regardless of a lawyer's personal view, the latter must still present every remedy or defense within the authority of the law to support his client's cause:

> Once a lawyer agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Otherwise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. **This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense.** If much

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[19] See *Egger v. Duran,* A.C. No. 11323, September 14, 2016.

[20] *Villaflores v. Limos,* 563 Phil. 453, 460 (2007).

[21] 462 Phil. 496 (2003).

is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[22] (Emphasis and underscoring supplied)

In light of the foregoing, the Court therefore agrees with the IBP that respondent should be held administratively liable for violation of Rule 18.03, Canon 18 of the CPR.

Likewise, the IBP correctly found that respondent violated Rule 10.01, Canon 10 of the CPR. Records show that he indeed indulged in deliberate falsehood when he admittedly prepared[23] and notarized[24] the affidavit of complainant's intended witness, Romeo, despite his belief that Romeo was a perjured witness. In *Spouses Umaguing v. De Vera,*[25] the Court highlighted the oath undertaken by every lawyer to not only obey the laws of the land, but also to refrain from doing any falsehood, *viz.:*

The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also **to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients.** Every lawyer is a servant of the law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others. It is by no means a coincidence, therefore, that the core values of honesty, integrity, and trustworthiness are emphatically reiterated by the Code of Professional Responsibility. In this light, **Rule 10.01, Canon 10 of the Code of Professional Responsibility provides that "[a] lawyer shall not do any falsehood, nor consent**

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[22] *Id.* at 505-506, citing *Ong v. Grijaldo,* 450 Phil. 1, 12 (2003).

[23] In his Answer, respondent admitted that he "adamantly complied" with the instruction of complainant to prepare Romeo's affidavit. (See *rollo,* p. 14.)

[24] See Romeo's Affidavit; *id.* at 17.

[25] 753 Phil. 11 (2015).

to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice."[26] (Emphases supplied)

Notably, the notarization of a perjured affidavit also constituted a violation of the 2004 Rules on Notarial Practice. Section 4 (a), Rule IV thereof pertinently provides:

> SEC. 4. *Refusal to Notarize.* – A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he tenders the appropriate fee specified by these Rules if:
>
> (a) **the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral[.]** (Emphasis supplied)

On this score, it is well to stress that "notarization is not an empty, meaningless routinary act. It is invested with substantive public interest. It must be underscored that the notarization by a notary public converts a private document into a public document, making that document admissible in evidence without further proof of authenticity thereof. A notarial document is, by law, entitled to full faith and credit upon its face. For this reason, a notary public must observe with utmost care the basic requirements in the performance of their duties; otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined."[27]

Having established respondent's administrative liability, the Court now determines the proper penalty.

The appropriate penalty to be meted against an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. In *Del Mundo v. Capistrano,*[28] the Court suspended the lawyer for a period of one (1) year for his failure to perform his undertaking under his retainership agreement with his client. Similarly, in *Conlu v. Aredonia, Jr.,*[29] the same

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[26] *Id.* at 19.

[27] *Dela Cruz v. Zabala,* 485 Phil. 83 (2004).

[28] See 685 Phil. 687 (2012).

[29] See 673 Phil. 1 (2011).

penalty was imposed on a lawyer for his inexcusable negligence in failing to file the required pleading to the prejudice of his client. Hence, consistent with existing jurisprudence, the Court adopts the penalty recommended by the IBP and accordingly suspends respondent from the practice of law for a period of one (1) year. Moreover, as in the case of *Dela Cruz v. Zabala,*[30] where the notary public therein notarized an irregular document, the Court hereby revokes respondent's notarial commission and further disqualifies him from being commissioned as a notary public for a period of two (2) years.

WHEREFORE, respondent Atty. Vivencio V. Jumamil is found **GUILTY** of violating Rule 10.01, Canon 10 and Rule 18.03, Canon 18 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** for a period of one (1) year, effective upon his receipt of this Resolution. Moreover, in view of his violation of the 2004 Rules on Notarial Practice, his notarial commission, if still existing, is hereby **REVOKED,** and he is **DISQUALIFIED** from being commissioned as a notary public for a period of two (2) years. Finally, he is **STERNLY WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Let a copy of this Decision 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.

Leonardo-de Castro[*] and *Caguioa, JJ.,* concur.

Sereno, C.J. (Chairperson), on leave.

Del Castillo, J., on official leave.

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[30] *Supra* note 27.

[*] Designated Acting Chairperson per Special Order No. 2464 dated July 17, 2017.

SECOND DIVISION

[G.R. No. 198196. July 17, 2017]

SPOUSES LORETO AND MILAGROS SIBAY and SPOUSES RUEL AND OLGA ELAS, *petitioners, vs.* **SPOUSES BIENVENIDO AND JUANITA BERMUDEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; CONFINED TO THE REVIEW OF ERRORS OF LAW THAT MAY HAVE BEEN COMMITTED IN THE JUDGMENT UNDER REVIEW.— It must be stressed anew that in petitions for review on *certiorari* the Court addresses only the questions of law. It is not our function to analyze or weigh the evidence (which tasks belong to the trial court as the trier of facts and to the appellate court as the reviewer of facts). We are confined to the review of errors of law that may have been committed in the judgment under review.In *Far Eastern Surety and Insurance Co., Inc. v. People*, citing *Madrigal v. Court of Appeals*, We had the occasion to stress this rule in these words: The Supreme Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. The Supreme Court is not a trier of facts. It leaves these matters to the lower court, which [has] more opportunity and facilities to examine these matters. This same Court has declared that it is the policy of the Court to defer to the factual findings of the trial judge, who has the advantage of directly observing the witnesses on the stand and to determine their demeanor whether they are telling or distorting the truth.

2. ID.; ID.; MOTIONS; MOTION FOR POSTPONEMENT; THE GRANT OR DENIAL OF A MOTION FOR POSTPONEMENT IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT, WHICH SHOULD ALWAYS BE PREDICATED ON THE CONSIDERATION THAT MORE THAN THE MERE CONVENIENCE OF THE COURTS OR OF THE PARTIES IN THE CASE, THE

ENDS OF JUSTICE AND FAIRNESS SHOULD BE SERVED THEREBY, AND SUCH DISCRETION WILL NOT BE INTERFERED WITH EITHER BY *MANDAMUS* OR APPEAL UNLESS GRAVE ABUSE OF DISCRETION IS SHOWN.— As a rule, the grant or denial of a motion for postponement is addressed to the sound discretion of the court, which should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case, the ends of justice and fairness should be served thereby. After all, postponements and continuances are part and parcel of our procedural system of dispensing justice. When no substantial rights are affected and the intention to delay is not manifest with the corresponding motion to transfer the hearing having been filed accordingly, it is sound judicial discretion to allow the same to the end that the merits of the case may be fully ventilated. Thus, in considering motions for postponements, two things must be borne in mind: (1) the reason for the postponement, and (2) the merits of the case of the movant. Unless grave abuse of discretion is shown, such discretion will not be interfered with either by *mandamus* or appeal. Because it is a matter of privilege, not a right, a movant for postponement should not assume beforehand that his motion will be granted.

3. **ID.; ID.; ID.; ID.; THE COURT CANNOT OVERTURN THE DECISION OF THE COURT *A QUO* ABSENT ANY CLEAR AND MANIFEST GRAVE ABUSE OF DISCRETION RESULTING IN LACK OR IN EXCESS OF JURISDICTION; MORESO, WHERE THE DENIAL OF THE MOTION FOR POSTPONEMENT APPEARS TO BE JUSTIFIED; DENIAL OF THE MOTION FOR POSTPONEMENT, AND IMPOSITION OF FINE AND REIMBURSEMENT OF EXPENSES, AFFIRMED.—** [W]e agree with the appellate court's finding that in the absence of any clear and manifest grave abuse of discretion resulting in lack or in excess of jurisdiction, We cannot overturn the decision of the court *a quo*. Moreso, in this case, where the denial of the motion for postponement appears to be justified. The court *a quo* committed no grave abuse of discretion in denying the Spouse Sibay's motion for postponement, and in imposing fine and reimbursement of expenses. [L]oretoSibay's unexcused absence, *albeit* he subsequently submitted a four-month late medical certificate, and his counsel's absence due to conflict

of schedule are valid justification for the court *a quo*'s denial of the motion of postponement and the resulting directive to reimburse defendants' counsel of incurred expenses and payment of fine imposed upon them. We, likewise, find the counsel's absence as "*not unavoidable and one that could not have been foreseen*" considering that the July 29, 2008 hearing was set with prior agreement of the parties and consultation with their respective calendars, four months in advance. In some instances, resort to postponements may be allowed because of extraordinary circumstances — such as a party's or counsel's sudden death, *force majeure* or an act of God rendering impossible the accomplishment of its purpose.Here, no such circumstances existed. Loreto Sibay grounded his motion on an unsubstantiated claim of illness, while his counsel's excuse is conflict of schedule. Even if these were true, there is still no reason why both Loreto Sibay and his counsel could not have submitted his medical certificate, or fix the schedule and file the motion for postponement, seasonably.

4. ID.; ID.; ID.; ID.; UNJUSTIFIED POSTPONEMENT OF HEARING COMPROMISES THE TIME NOT ONLY OF THE LITIGANTS BUT ALSO OF THE COURT; JUDGE MUST, AT ALL TIMES, REMAIN IN FULL CONTROL OF THE PROCEEDINGS IN HIS SALA AND SHOULD ADOPT A FIRM POLICY AGAINST IMPROVIDENT POSTPONEMENTS.— Consequently, We cannot strike down the court *a quo*'s Orders dated July 29, 2008 and October 10, 2008. These Orders are not oppressive since unjustified postponement of hearing, in effect, compromises the time not only of the litigants but also of the court. Moreover, although the unjustified absence delayed the progress of the case, the court *a quo* still allowed the resetting of the presentation of evidence and, subsequently, reduced the reimbursement fees and fine to a total of Php5,000.00. It is, likewise, not violative of the right to access to courts for the trial judge has the duty to resolve judicial disputes without unreasonable delay.

5. LEGAL ETHICS; JUDGES; JUDGES SHOULD FOLLOW THE TIME LIMIT SET FOR DECIDING CASES, AND SHOULD ACTIVELY MANAGE THE TRIAL OF THEIR CASES BY RATIONAL CALENDARING OF CASES, AND AVOID UNNECESSARY POSTPONEMENTS OF CASES, AS THE PUBLIC'S FAITH AND CONFIDENCE IN THE

JUDICIAL SYSTEM DEPENDS, TO A LARGE EXTENT, ON THE JUDICIOUS AND PROMPT DISPOSITION OF CASES AND OTHER MATTERS PENDING BEFORE THE COURTS.— Litigants must be reminded that the judge must, at all times, remain in full control of the proceedings in his sala and should adopt a firm policy against improvident postponements. More importantly, he should follow the time limit set for deciding cases. Judges should actively manage the trial of their cases by rational calendaring of cases, and avoid unnecessary postponements of cases as mandated by Administrative Circular No. 1, dated January 28, 1988, paragraph 2.2. Judges are bound to dispose of the courts' business promptly and to decide cases within the required period. It bears repeating that the public's faith and confidence in the judicial system depends, to a large extent, on the judicious and prompt disposition of cases and other matters pending before the courts.

6. **REMEDIAL LAW; RULES OF PROCEDURE; WHILE IT IS TRUE THAT A LITIGATION IS NOT A GAME OF TECHNICALITIES, THIS DOES NOT MEAN THAT THE RULES OF COURT MAY BE IGNORED AT WILL AND AT RANDOM TO THE PREJUDICE OF THE ORDERLY PRESENTATION AND ASSESSMENT OF THE ISSUES AND THEIR JUST RESOLUTION.—** [I]t must be emphasized anew that procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to 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 procedure prescribed. While it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution.

APPEARANCES OF COUNSEL

Arnado & Associates for petitioners.
Allan T. Latras for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated November 5, 2010 and Resolution[2] dated June 21, 2011, respectively, of the Court of Appeals in CA-G.R. SP No. 03998.[3]

The factual background is as follows:

The petitioners-spouses Loreto and Milagros Sibay (*Spouses Sibay*) were registered owners of the subject parcel of land covered under Transfer Certificate of Title No. T-77589, on which they built their family house.

Sometime in 1995, the Spouses Sibay obtained a loan from respondent Land Bank of the Philippines (*LBP*) and, as a security, they mortgaged the subject lot to LBP. On October 16, 1996, LBP foreclosed the mortgaged property and, thereafter, transferred the title over the said property in its name.

Subsequently, LBP sold the subject property to Nemesia Bermudez (*Nemesia*) through the private respondents Spouses Bienvenido and Juanita Bermudez (*Spouses Bermudez*) for Two Million Pesos (Php2,000,000.00). The purchase price was completely paid on May 26, 2003. Consequently, LBP executed a Deed of Sale dated August 29, 2003 in favor of Nemesia. By virtue of a writ of possession dated July 8, 2003, the subject property was transferred to LBP. Later, LBP transferred the same to Nemesia, who thereafter assigned herein private respondents Spouses Bermudez as caretakers.

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[1] *Rollo,* pp. 216-233.

[2] *Id.* at 225-226.

[3] Penned by Court of Appeals-Cebu City Associate Justice Edgardo L. Delos Santos, with Associate Justices Pampio A. Abarientos and Agnes Reyes-Carpio concurring.

On December 15, 2003, the Spouses Sibay filed before the Regional Trial Court, Branch 60 of Barili, Cebu, a complaint for annulment of the loan contract, docketed as Civil Case No. CEB-BAR-290.

However, on March 18, 2008,[4] when the case was called for the presentation of the Spouses Sibay's evidence, Loreto Sibay failed to attend due to arthritis. Thus, the court *a quo,* upon motion of the Spouses Bermudez, reset the hearing on July 29, 2008. It also directed Loreto Sibay, through counsel, to submit his medical certificate, otherwise, they will have to reimburse the defendants of the expenses incurred for unjustified postponement of the hearing.

On July 16, 2008, the Spouses Sibay, thru counsel, filed a motion for postponement due to a conflict in the hearing schedule of its counsel before another court.

In an Order[5] dated July 29, 2008, the court *a quo* denied the motion for postponement. In the same Order, the Spouses Sibay were ordered to reimburse the Spouses Bermudez in the amount of Five Thousand Pesos (Php5,000.00) and pay another Five Thousand Pesos (Php5,000.00) for their unexcused absences on the March 18, 2008 scheduled hearing, or a total of Ten Thousand Pesos (Php10,000.00).

Aggrieved, the Spouses Sibay filed a motion for reconsideration, but the same was denied. In the Order dated October 10, 2008, the court *a quo* resolved to reduce the amount to be reimbursed and the fine to a total of Five Thousand Pesos (Php5,000.00).[6] Thus, before the Court of Appeals, the Spouses Sibay filed a petition for *certiorari* under Rule 65 of the Rules of Court, alleging grave abuse of discretion on the part of the court *a quo* when it fined the Spouses Sibay and their counsel for being absent due to illness and conflict of scheduled hearings, respectively.[7]

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[4] *Rollo,* p. 166.

[5] *Id.* at 174-175.

[6] *Id.* at 180-181.

[7] *Id.* at 182-193.

In the disputed Decision[8] dated November 5, 2010, the appellate court denied the petition for lack of merit. The appellate court found no grave abuse of discretion amounting to lack or excess of jurisdiction on the act of the public respondent of meting upon the petitioners the disputed fine.

The Spouses Sibay moved for reconsideration, but the same was denied anew in the Resolution[9] dated June 21, 2011. Thus, the instant petition.

This Court is now confronted with the following issues that are far from being novel, to wit:

I

WHETHER THE FAILURE TO ATTEND THE MARCH 18, 2008 HEARING BY A LITIGANT DUE TO SEVERE ARTHRITIS IS JUSTIFIED UNDER THE LAW AND THE RULES.

II

WHETHER LORETO SIBAY'S ABSENCE DUE TO SEVERE ARTHRITIS MERIT A FINE, PARTICULARLY ON LITIGANT WHO IS A PAUPER.

III

WHETHER THE ABSENCE OF THE PETITIONER'S COUNSEL ON JULY 29, 2008 WAS JUSTIFIED.

We deny the petition.

It must be stressed anew that in petitions for review on *certiorari* the Court addresses only the questions of law. It is not our function to analyze or weigh the evidence (which tasks belong to the trial court as the trier of facts and to the appellate court as the reviewer of facts). We are confined to the review of errors of law that may have been committed in the judgment under review.

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[8] *Supra* note 1.

[9] *Supra* note 2.

In *Far Eastern Surety and Insurance Co., Inc. v. People*,[10] citing *Madrigal v. Court of Appeals*,[11] We had the occasion to stress this rule in these words:

> The Supreme Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. The Supreme Court is not a trier of facts. It leaves these matters to the lower court, which [has] more opportunity and facilities to examine these matters. This same Court has declared that it is the policy of the Court to defer to the factual findings of the trial judge, who has the advantage of directly observing the witnesses on the stand and to determine their demeanor whether they are telling or distorting the truth.

Thus, in reviewing the instant petition for review on *certiorari* under Rule 45, in relation to the CA's decision on a Rule 65 petition, We will limit the issue on: *Whether the appellate court was correct in its finding that the court a quo committed no grave abuse of discretion in denying the Spouses Sibay's motion for postponement and in imposing a fine therein?*

The petition lacks merit.

As a rule, the grant or denial of a motion for postponement is addressed to the sound discretion of the court, which should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case, the ends of justice and fairness should be served thereby. After all, postponements and continuances are part and parcel of our procedural system of dispensing justice. When no substantial rights are affected and the intention to delay is not manifest with the corresponding motion to transfer the hearing having been filed accordingly, it is sound judicial discretion to allow the same to the end that the merits of the case may be fully ventilated. Thus, in considering motions for postponements, two things must be borne in mind: (1) the reason for the

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[10] 721 Phil. 760, 769 (2013).

[11] 496 Phil. 149, 156-157 (2005), citing *Bernardo v. Court of Appeals,* 290 Phil. 649, 658 (1992).

postponement, and (2) the merits of the case of the movant. Unless grave abuse of discretion is shown, such discretion will not be interfered with either by *mandamus* or appeal.[12] Because it is a matter of privilege, not a right, a movant for postponement should not assume beforehand that his motion will be granted.[13]

Thus, We agree with the appellate court's finding that in the absence of any clear and manifest grave abuse of discretion resulting in lack or in excess of jurisdiction, We cannot overturn the decision of the court *a quo*. Moreso, in this case, where the denial of the motion for postponement appears to be justified.

The court *a quo* committed no grave abuse of discretion in denying the Spouse Sibay's motion for postponement, and in imposing fine and reimbursement of expenses. To recapitulate: *First,* when Loreto Sibay failed to appear during the March 18, 2008 hearing, the court *a quo* directed him, through counsel, to submit his medical certificate to support his defense of illness. However, Loreto Sibay took four (4) months to submit the medical certificate which is actually dated July 17, 2008; *Second,* the court *a quo* categorically notified the Spouses Sibay's counsel that failure to submit the medical certificate would entail the reimbursement of defendants' expenses due to unjustified postponement. Nevertheless, despite sufficient notice, even during the hearing on July 29, 2008, no medical certificate was submitted, thus, the court *a quo* granted the motion to reimburse defendant's expenses and the corresponding fine for unjustified absence; and *Third,* the Spouses Sibay's counsel's absence on the July 29, 2008 hearing was unjustified, considering that said hearing was scheduled months in advance.

From the foregoing, Loreto Sibay's unexcused absence, *albeit* he subsequently submitted a four-month late medical certificate, and his counsel's absence due to conflict of schedule are valid justification for the court *a quo*'s denial of the motion of

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[12] *Simon v. Canlas,* 521 Phil. 558, 572 (2006).

[13] *The Philippine American Life & General Insurance Company v. Enario,* 645 Phil. 166, 178 (2010).

postponement and the resulting directive to reimburse defendants' counsel of incurred expenses and payment of fine imposed upon them. We, likewise, find the counsel's absence as "*not unavoidable and one that could not have been foreseen*"[14] considering that the July 29, 2008 hearing was set with prior agreement of the parties and consultation with their respective calendars, four months in advance. In some instances, resort to postponements may be allowed because of extraordinary circumstances — such as a party's or counsel's sudden death, *force majeure* or an act of God rendering impossible the accomplishment of its purpose.[15] Here, no such circumstances existed. Loreto Sibay grounded his motion on an unsubstantiated claim of illness, while his counsel's excuse is conflict of schedule. Even if these were true, there is still no reason why both Loreto Sibay and his counsel could not have submitted his medical certificate, or fix the schedule and file the motion for postponement, seasonably.

In the case of *De Castro v. De Castro, Jr.,*[16] citing *Ortigas, Jr. v. Lufthansa German Airlines*,[17] We ruled that:

> Where a party seeks postponement of the hearing of this case for reasons caused by his own inofficiousness, lack of resourcefulness and diligence if not total indifference to his own interests or to the interests of those he represents, thereby resulting in his failure to present his own evidence, the court would not extend to him its mantle of protection. If it was he who created the situation that brought about the resulting adverse consequences, he cannot plead for his day in court nor claim that he was so denied of it.

Consequently, We cannot strike down the court *a quo's* Orders dated July 29, 2008 and October 10, 2008. These Orders are

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[14] See *Hap Hong Hardware Co., Inc. v. Philippine Milling Company,* 111 Phil. 1096, 1099 (1961).

[15] *Intestate Estate of the Late Ricardo P. Presbitero, Sr. v. CA,* 291 Phil. 387, 396 (1993).

[16] 607 Phil. 252, 266 (2009).

[17] 159-A Phil. 863, 885 (1975).

not oppressive since unjustified postponement of hearing, in effect, compromises the time not only of the litigants but also of the court. Moreover, although the unjustified absence delayed the progress of the case, the court *a quo* still allowed the resetting of the presentation of evidence and, subsequently, reduced the reimbursement fees and fine to a total of Php5,000.00.TIt is, likewise, not violative of the right to access to courts for the trial judge has the duty to resolve judicial disputes without unreasonable delay.

Litigants must be reminded that the judge must, at all times, remain in full control of the proceedings in his sala and should adopt a firm policy against improvident postponements. More importantly, he should follow the time limit set for deciding cases.[18] Judges should actively manage the trial of their cases by rational calendaring of cases, and avoid unnecessary postponements of cases as mandated by Administrative Circular No. 1, dated January 28, 1988, paragraph 2.2.[19] Judges are bound to dispose of the courts' business promptly and to decide cases within the required period.[20] It bears repeating that the public's faith and confidence in the judicial system depends, to a large extent, on the judicious and prompt disposition of cases and other matters pending before the courts.[21]

Thus, it must be emphasized anew that procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to 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 procedure

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[18] *Hernandez v. Judge De Guzman,* 322 Phil. 65, 69 (1996).

[19] "*A strict policy on postponements should be observed to avoid unnecessary delays in court proceedings. Faithful adherence to Secs. 3, 4 and 5 of Rule 22, Rules of Court should be observed*" Supreme Court Administrative Circular No. 1-88, January 28, 1988.

[20] *Office of the Court Administrator v. Andaya,* 457 Phil. 58, 65 (2003).

[21] *Gallego v. Doronila,* 389 Phil. 677, 684 (2000).

prescribed. While it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution.[22]

WHEREFORE, all premises considered, the instant petition is **DENIED** for lack of merit. Accordingly, the Decision dated November 5, 2010 and the Resolution dated June 21, 2011 of the Court of Appeals in CA-G.R. SP No. 03998 are **AFFIRMED *in toto*.**

SO ORDERED.

Carpio (*Chairperson*), *Mendoza,* and *Martires, JJ.,* concur.

Leonen, J., on wellness leave.

THIRD DIVISION

[G.R. No. 207684. July 17, 2017]

PHILTRANCO SERVICE ENTERPRISES, INC., AND/OR JOSE PEPITO ALVAREZ, ARSENIO YAP AND CENTURION SOLANO, *petitioners, vs.* **FRANKLIN CUAL, NOEL PORMENTO, RAMIL TIMOG, WILFREDO PALADO, ROBERTO VILLARAZA, JOSE NERIO ARTISTA, CESAR SANCHEZ, RENERIO MATOCIÑOS, VALENTINO SISCAR, LARRY ACASIO, GERARDO NONATO, JOSE SAFRED, JUAN LUNA, GREGORIO MEDINA, NESTOR ZAGADA, FRANCISCO MIRANDA, LEON MANUEL VILLAFLOR, RODOLFO NOLASCO, REYNALDO PORTES, GERARDO CALINYAO,**

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[22] *Limpot v. Court of Appeals,* 252 Phil. 377, 388 (1989).

LUTARDO DAYOLA, VICENTE BALDOS, ROGELIO MEJARES, RENIE SILOS AND SERVANDO PETATE, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; LAW OF THE CASE DOCTRINE; THE DOCTRINE IS MERELY A RULE OF PROCEDURE AND DOES NOT GO TO THE POWER OF THE COURT, AND WILL NOT BE ADHERED TO WHERE ITS APPLICATION WILL RESULT IN AN UNJUST DECISION; CASE AT BAR.— We find the *law of the case* doctrine not applicable in the cases under consideration. The doctrine has been defined as "that principle under which determinations of questions of law will generally be held to govern a case throughout all its subsequent stages where such determination has already been made on a prior appeal to a court of last resort. It is merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision. **It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case.**" The second NLRC case is certainly not a continuation of the first NLRC case from which respondents were excluded. It is a separate case instituted anew by respondents because the prior case was only given due course with respect to the parties who signed the complaint and position paper.

2. ID.; ID.; ID.; *RES JUDICATA*; APPLICATION OF THE PRINCIPLE OF *RES JUDICATA* IN THE CONCEPT OF COLLATERAL ESTOPPEL OR ISSUE PRECLUSION IN CASE AT BAR; EXPLAINED.— While the second NLRC case is separate from the first NLRC case and the NCMB case, it is not altogether accurate to say that the determinations made in these previously decided cases has no bearing on the second NLRC case. We hold that the LA's decision in the first NLRC case, finding Philtranco's retrenchment program to be illegal, constitutes *res judicata* in the concept of collateral estoppel or issue preclusion. As amply discussed in *Degayo v. Magbanua-Dinglasan, et al.*: x x x **The second aspect precludes the relitigation of a particular fact of issue in another action between the same parties on a different claim or cause of**

action. This is traditionally known as collateral estoppel; in modern terminology, it is called issue preclusion. Conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively settled fact or question furthermore cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment. x x x It is beyond dispute that the determination on the invalidity of the retrenchment in the first NLRC case has attained finality. Moreover, records show that the decision was adjudicated on the merits. We likewise find that there is a community of interest among the complainants in the prior labor case and in the present. x x x In both the first and second NLRC cases, the issue of whether or not complainants were illegally dismissed is hinged on the validity of Philtranco's retrenchment program in 2006 and 2007. Without a doubt, the interests of all the complainants are inextricably intertwined on that factual question.

3. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT BY EMPLOYER; THE LACK OF AUTHORIZED OR JUST CAUSE TO TERMINATE ONE'S EMPLOYMENT AND THE FAILURE TO OBSERVE DUE PROCESS DO NOT *IPSO FACTO* MEAN THAT THE CORPORATE OFFICER ACTED WITH MALICE OR BAD FAITH.—** [O]n the issue of whether or not the individual petitioners, Jose Pepita Alvarez, Arsenio Yap and Centurion Solano, who are officers of Philtranco, should be jointly and severally held liable with petitioner corporation, this Court finds merit in petitioners' arguments. As pronounced in *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, the lack of authorized or just cause to terminate one's employment and the failure to observe due process do not *ipso facto* mean that

the corporate officer acted with malice or bad faith. There must be independent proof of malice or bad faith which is lacking in the present case.

APPEARANCES OF COUNSEL

Lajara Mayuga Namit Law Office for petitioners.
Miralles & Associates Law Offices for respondents.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review on Certiorari under Rule 45 assailing the Decision[1] dated November 9, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 123587, as well as its June 11, 2013 Resolution[2] denying reconsideration thereof. The CA reinstated the Labor Arbiter's finding that petitioner Philtranco Service Enterprises, Inc. (Philtranco) illegally dismissed the respondents, who were drivers, conductors, and maintenance personnel of Philtranco.

At the outset, the present petition stemmed from a refiled case before the labor arbiter. The respondents in the present case failed to sign the verification page of the earlier filed position paper and their names were not mentioned in the board resolution authorizing the filing of the complaint, which caused their exclusion from the case.

The Antecedents

Respondents were all members of Philtranco Workers Union – Association of Genuine Labor Organization (PWU-AGLO). They were all included in a retrenchment program embarked on by Philtranco in the years 2006 to 2007, on the ground that

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[1] Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon; *Rollo*, pp. 39-70.

[2] *Id*. at 72-74.

Philtranco was suffering business losses. Consequently, PWU-AGLO filed a Notice of Strike with the Department of Labor and Employment (DOLE), claiming that Philtranco engaged in unfair labor practices. The case was docketed as NCMB-NCR Case No. NS-02-028-07.

The parties were unable to settle their differences, thus the case was eventually referred to the Office of the Secretary of the DOLE and docketed as Case No. OS-VA-2007-008.

On June 13, 2007, Acting DOLE Secretary Danilo P. Cruz issued a Decision ordering Philtranco to:

> 1. REINSTATE to their former positions, without loss of seniority rights, the ILLEGALLY TERMINATED 17 "union officers", xxx, and PAY them BACKWAGES from the time of termination until their actual or payroll reinstatement, provided in the computation of backwages [those] among the seventeen (17) who had received their separation pay *(sic)* should deduct the payments made to them from the backwages due them.
>
> 2. MAINTAIN the status quo and continue in full force and effect the terms and conditions of the existing CBA – specifically, Article VI on Salaries and Wages (commissions) and Article XI, on Medical and Hospitalization – until a new agreement is reached by the parties; and
>
> 3. REMIT the withheld union dues to PWU-AGLO without unnecessary delay.
>
> The PARTIES are enjoined to strictly and fully comply with the provisions of the existing CBA and the other dispositions of this Decision.
>
> SO ORDERED.[3]

The respondents alleged that they were not absorbed by Philtranco despite the fact that the company was hiring new employees; thus, the respondents, together with other Philtranco employees, filed a labor complaint for illegal dismissal on

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[3] *Philtranco Service Enterprises, Inc. v. PWU-AGLO*, G.R. No. 180962, February 26, 2014; and *Rollo*, pp. 42 and 120.

October 16, 2007, and prayed for reinstatement, backwages and wage differentials. Docketed as NLRC NCR Case No. 00-10-11607-07 (first NLRC case), the complaint essentially assailed the employees' inclusion in the retrenchment program of Philtranco.[4]

In March 25, 2008 Decision, Labor Arbiter (LA) Antonio Macam found union president Jose Jessie Olivar (Olivar) to have been illegally dismissed and was entitled to reinstatement, backwages and attorney's fees. The present respondents' claims, however, were dismissed for their failure to sign the verification and certification of non-forum shopping of the complaint and position paper; the latter was signed only by Olivar without specific authority from the board.[5]

Respondents' appeal to the National Labor Relations Commission (NLRC), on the matter of their exclusion, was unsuccessful. So was their subsequent petition before the CA in CA-G.R. SP No. 110410[6], which attained finality on May 14, 2010. Thus, they remained excluded from the award.

Significantly, the LA, as affirmed by the NLRC and the CA in CA-G.R. SP No. 110410, found the retrenchment program undertaken by Philtranco in the years 2006 to 2007 as invalid for failure to sufficiently prove its necessity, considering that the audited financial statements for those years were not presented. On this basis, Olivar was declared to have been illegally dismissed.

On the belief that the dismissal of their claims due to a technicality was without prejudice to their refiling of the same complaint, the respondents filed NLRC-NCR Case No. 06-08130-10 (second NLRC case).[7] This time, Philtranco submitted its audited financial statements for the years 2006 and 2007.

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[4] *Id*. at 14-15, 43, 120-121.

[5] *Infra.*

[6] *PWU-AGLO v. NLRC*, penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr.

[7] *Rollo*, pp. 15-16, 44 and 122-123.

On April 15, 2011, Labor Arbiter Quintin Cueto III (LA Cueto) rendered a decision finding respondents to have been illegally dismissed. In so deciding, LA Cueto applied the *law of the case* principle, stating that the first NLRC case is binding upon Philtranco. The dispositive portion of LA Cueto's April 15, 2011 decision reads:

> WHEREFORE, premises considered, respondents are hereby declared guilty of illegal dismissal and ordered to reinstate complainants immediately to their former positions and to pay them, jointly and severally, full backwages from date of dismissal until actual reinstatement plus their 13th month pay and attorney's [fees] equivalent to 10% of all the monetary award computed as follows:
>
> x x x x x x x x x
>
> COMPLAINANTS, who had received their separation pay should be deducted (sic) from the amount of backwages due them.
>
> SO ORDERED.[8]

When Philtranco appealed LA Cueto's decision to the NLRC, the commission reversed and set aside LA Cueto's decision on September 15, 2011. Unlike LA Cueto, the commission gave weight to the audited financial statements for the years 2006 and 2007 submitted by Philtranco in the refiled case, but which was not presented in the prior case. The NLRC also disagreed with LA Cueto's application of the *law of the case* in the refiled complaint, stating that the principle applies only to Olivar.[9]

Respondents' motion for reconsideration before the NLRC was denied on December 13, 2011. Hence, they assailed the reversal via a petition for certiorari before the CA, which thereafter reinstated LA Cueto's decision.[10] The CA reasoned that the supervening event is inapplicable in the present case and agreed with LA Cueto that it is inappropriate to consider the belatedly filed audited financial statements for the years 2006 and 2007.

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[8] *Id*. at 44-45, 122-123.

[9] *Id*. at 16, 47-53.

[10] Note 1.

Aggrieved by the denial of its motion for reconsideration, Philtranco timely filed the present Petition for Review on Certiorari under Rule 45 raising the following issues:

I. The Court of Appeals committed reversible error when it ruled that the retrenchment was invalid and the respondents were illegally dismissed[;]

II. The Court of Appeals committed reversible error when it ruled that the "law of the case" applied to respondents' "refiled" labor claim in 2010[; and]

III. The Court of Appeals committed reversible error when it ruled that individual petitioners Jose Pepito Alvarez, Arsenio Yap and Centurion Solano were jointly and severally liable for payment of backwages and other awards.[11]

The threshold issue for resolution is whether or not the CA correctly applied the principle of the *law of the case* in the second NLRC complaint.

We find the *law of the case* doctrine not applicable in the cases under consideration.

The doctrine has been defined as "that principle under which determinations of questions of law will generally be held to govern a case throughout all its subsequent stages where such determination has already been made on a prior appeal to a court of last resort. It is merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision. **It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case**." (emphasis ours)[12]

The second NLRC case is certainly not a continuation of the first NLRC case from which respondents were excluded. It is a separate case instituted anew by respondents because the prior case was only given due course with respect to the parties who signed the complaint and position paper.

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[11] *Rollo,* p. 17.

[12] *Villa v. Sandiganbayan* and consolidated cases, G.R. Nos. 87186, 87281, 87466, and 87524, April 24, 1992.

Furthermore, the matter of whether or not Philtranco sufficiently proved its alleged business losses when it embarked on its retrenchment program is a question of fact and not a question of law. The appellate court's finding then in CA-G.R. SP No. 110410, that the retrenchment undertaken by Philtranco in 2006-2007 was invalid, may not be invoked as the *law of the case*.

With respect to the DOLE Secretary's decision finding the retrenchment invalid in the NCMB case, the issue that reached the CA via CA-G.R. SP No. 100324 and this Court in G.R. No. 180962 was confined only to the correct remedy against the DOLE Secretary's decision, *i.e.*, whether it should be Rule 43 or Rule 65. This Court remanded the case to the CA on February 26, 2014, where it is still pending decision.

While the second NLRC case is separate from the first NLRC case and the NCMB case, it is not altogether accurate to say that the determinations made in these previously decided cases has no bearing on the second NLRC case.

We hold that the LA's decision in the first NLRC case, finding Philtranco's retrenchment program to be illegal, constitutes *res judicata* in the concept of collateral estoppel or issue preclusion. As amply discussed in *Degayo v. Magbanua-Dinglasan, et al.*:[13]

> *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the "rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.
>
> x x x x x x x x x

[13] G.R. No. 173148, April 6, 2015.

The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court, which in its relevant part reads:

Sec. 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x x x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

This provision comprehends two distinct concepts of res judicata: (1) bar by former judgment and (2) conclusiveness of judgment.

The first aspect is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. In traditional terminology, this aspect is known as merger or bar; in modern terminology, it is called claim preclusion.

The second aspect precludes the relitigation of a particular fact of issue in another action between the same parties on a different claim or cause of action. This is traditionally known as collateral estoppel; in modern terminology, it is called issue preclusion.

Conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively settled

fact or question furthermore cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.

While conclusiveness of judgment does not have the same barring effect as that of a bar by former judgment that proscribes subsequent actions, the former nonetheless estops the parties from raising in a later case the issues or points that were raised and controverted, and were determinative of the ruling in the earlier case. In other words, the dictum laid down in the earlier final judgment or order becomes conclusive and continues to be binding between the same parties, their privies and successors-in-interest, as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court in a later case; the binding effect and enforceability of that earlier dictum can no longer be re-litigated in a later case since the issue has already been resolved and finally laid to rest in the earlier case.[14]

It is beyond dispute that the determination on the invalidity of the retrenchment in the first NLRC case has attained finality. Moreover, records show that the decision was adjudicated on the merits.

We likewise find that there is a community of interest among the complainants in the prior labor case and in the present. Pertinently:

There is identity of parties where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity. **Absolute identity of parties is not required, shared identity of interest is sufficient to invoke the coverage of this principle. Thus, it is enough that there is a community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case**.

x x x x x x x x x

[14] *Id*.

x x x **One test to determine substantial identity of interest would be to see whether the success or failure of one party materially affects the other.**[15]

In both the first and second NLRC cases, the issue of whether or not complainants were illegally dismissed is hinged on the validity of Philtranco's retrenchment program in 2006 and 2007. Without a doubt, the interests of all the complainants are inextricably intertwined on that factual question.

The only difference between the first NLRC case and the second NLRC case is Philtranco's submission of its audited financial statements for the years 2006 and 2007 in the second NLRC case. The NLRC treated such belated submission as a "supervening event". We, however, agree with the CA that the supervening event principle does not apply in this case. It correctly ratiocinated:

> x x x Supervening events refer to facts which transpire after judgment has become final and executory or to new circumstances which developed after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time. In this case, the Audited Financial Statements could not be considered as a supervening event because the existence thereof should have been established as early as February 2007, the time when the retrenchment of petitioners was effected. Unfortunately, respondents failed to present the same.[16]

Contrary to Philtranco's stance that there was no belated filing of the audited financial statements since this is a newer and different case, the factual milieu prevailing at the time the retrenchment was effected is still the same one under consideration. The CA cannot, thus, be faulted for concluding that at the time the retrenchment program was effected in February 2007, Philtranco had no basis and was in fact unaware of the true state of its finances. This, coupled with the records

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[15] *Id*.

[16] *Rollo,* p. 64, citing *Natalia Realty v. CA*, G.R. No. 126462, November 12, 2002.

annexed to the case showing that Philtranco hired new employees for the years 2006 to 2010, were taken to belie Philtranco's claim that it exercised the retrenchment of respondents in good faith.[17]

Finally, on the issue of whether or not the individual petitioners, Jose Pepito Alvarez, Arsenio Yap and Centurion Solano, who are officers of Philtranco, should be jointly and severally held liable with petitioner corporation, this Court finds merit in petitioners' arguments. As pronounced in *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*[18], the lack of authorized or just cause to terminate one's employment and the failure to observe due process do not *ipso facto* mean that the corporate officer acted with malice or bad faith. There must be independent proof of malice or bad faith which is lacking in the present case.

WHEREFORE, in view of the foregoing, the instant petition is **DENIED** and the assailed decision and resolution, respectively, dated November 9, 2012 and June 11, 2013, rendered by the Court of Appeals in CA-G.R. SP No. 123587 are **AFFIRMED with the modification** that petitioner Philtranco is held solely liable for the illegal dismissal of the respondents.

Costs against the petitioner Philtranco.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Reyes, Jr., JJ.,* concur.

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[17] *Rollo,* p. 66.

[18] G.R. No. 170464, July 12, 2010.

THIRD DIVISION

[G.R. No. 208441. July 17, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ZENAIDA FABRO or ZENAIDA MANALASTAS *y* VIÑEGAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS.— The elements of Kidnapping and Serious Illegal Detention under Article 267 of the Revised Penal Code, as amended, are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; or (b) it is committed by simulating public authority; or (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer. If the victim of kidnapping and serious illegal detention is a minor, the duration of his detention is immaterial. x x x The prevailing jurisprudence on kidnapping and illegal detention is that the curtailment of the victim's liberty need not involve any physical restraint upon the victim's person. For kidnapping to exist, it is not necessary that the offender kept the victim in an enclosure or treated him harshly. x x x Leaving a child in a place from which he did not know the way home, even if he had the freedom to roam around the place of detention, would still amount to deprivation of liberty. Under such a situation, the child's freedom remains at the mercy and control of the abductor.

2. ID.; ID.; ID.; ID.; WHERE THE VICTIM IS A MINOR, LACK OF CONSENT IS PRESUMED; CASE AT BAR.— Where the victim is a minor, lack of consent is presumed. She is incompetent to assent to seizure and illegal detention. The consent of such child could place accused-appellant in no better position than if the act had been done against her will. The Court also

notes AAA's testimony that she had been deceived by accused-appellant to go with her. Both on direct and cross-examination, AAA testified that accused-appellant told her that they would be going to the barangay captain as her husband had taken her suitcase, but they did not proceed to the barangay captain and accused-appellant took her instead to Nueva Ecija. It has been held that the fact that the victim voluntarily went with the accused did not remove the element of deprivation of liberty, because the victim went with the accused on a false inducement. What is controlling is the act of the accused in detaining the victim against his or her will after the offender is able to take the victim in his custody. x x x Suffice it to state that the charge against accused-appellant was for kidnapping of a minor, committed by taking the victim from her school and detaining her against her will. In kidnapping, the specific intent is to deprive the victim of his/her liberty. If the victim is a child, it also includes the intention of the accused to deprive the parents with the custody of the child. In this case, the prosecution has established beyond reasonable doubt that accused-appellant intended to deprive AAA of her liberty, and her parents, with the custody of their daughter.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DISCREPANCIES BETWEEN THE STATEMENTS OF THE AFFIANT IN HIS AFFIDAVIT AND THOSE MADE BY HIM ON THE WITNESS STAND DO NOT NECESSARILY DISCREDIT HIM SINCE *EX PARTE* AFFIDAVITS ARE GENERALLY INCOMPLETE.— It is oft-repeated that affidavits are usually abbreviated and inaccurate. Oftentimes, an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court. Generally, the affiant is asked standard questions, coupled with ready suggestions intended to elicit answers, that later turn out not to be wholly descriptive of the series of events as the affiant knows them. Worse, the process of affidavit-taking may sometimes amount to putting words into the affiant's mouth, thus, allowing the whole statement to be taken out of context. Discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since *ex parte* affidavits are generally incomplete.

4. ID.; ID.; ID.; THE SUPREME COURT ACCORDS GREAT RESPECT AND EVEN FINALITY TO THE FINDINGS OF

CREDIBILITY OF THE TRIAL COURT, MORE SO IF THE SAME IS AFFIRMED BY THE COURT OF APPEALS; RATIONALE.— [T]he basic rule is that the Supreme Court accords great respect and even finality to the findings of credibility of the trial court, more so if the same were affirmed by the CA, as in this case. We find no reason to depart from this rule. As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected on the record. The trial court has the singular opportunity to observe the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, or the sudden pallor of a discovered lie, or the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere, or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. Thus, when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.

5. **ID.; ID.; ID.; WHERE THERE IS NO EVIDENCE TO SHOW IMPROPER MOTIVE WHY A PROSECUTION WITNESS SHOULD IMPLICATE THE ACCUSED IN A HEINOUS CRIME, THE TESTIMONY IS WORTHY OF FULL FAITH AND CREDIT.—** It is settled that where there is no evidence to show any dubious or improper motive why a prosecution witness should bear false witness against the accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.

6. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; IMPOSABLE PENALTY.— Article 267 of the RPC prescribes the penalty of *reclusion perpetua* to death for Serious Illegal Detention. Absent any aggravating or modifying circumstance, the RTC, as affirmed by the CA, correctly imposed the penalty of *reclusion perpetua*, pursuant to Article 63 of the RPC.

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

TIJAM, *J.*:

This is an appeal from the Decision[1] dated February 19, 2013 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04598, affirming *in toto* the Decision dated July 16, 2010 of the Regional Trial Court (RTC),[2] Branch 45 of San Fernando, Pampanga, in Criminal Case No. 1204, which found accused-appellant Zenaida Fabro or Zenaida Viñegas Manalastas guilty of Serious Illegal Detention.

The Antecedents

In an Information dated March 6, 2006, accused-appellant was charged with Serious Illegal Detention under Article 267[3]

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[1] Penned by Associate Justice Samuel H. Gaerlan, and concurred in by Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr.; *Rollo*, pp. 2-8.

[2] Penned by Presiding Judge Adelaida Ala-Medina; CA *rollo,* pp. 7-12.

[3] Article 267 of the RPC as amended by Republic Act No. 7659 reads:

Art. 267. *Kidnapping and serious illegal detention*. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death.

1. If the kidnapping or detention shall have lasted more than three days.

of the Revised Penal Code (RPC), in relation to Republic Act No. 7610,[4] committed as follows:

That on or about the 2nd day of March 2006, in the municipality of YYY, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ZENAIDA FABRO or ZENAIDA V. MANALASTAS, did then and there willfully, unlawfully and feloniously and by force take [AAA],[5] 9 years old, minor, while the latter is in front of the XXX Elementary School, YYY whom the said accused detained and kept in the house of Brgy. Capt. Fabro, brother of the accused in Brgy. Villa Viniegas, Llanera, Nueva Ecija from March 2 to March 5, 2006 or a period of four (4) days under restraint and against her will.

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2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

The word "female" in paragraph 1(4) of Article 267 of the Revised Penal Code refers to the gender of the victim and not of the offender. (*People v. Bisda,* G.R. No. 140895, July 17, 2003.)

[4] Known as the *"Special Protection of Children Against Abuse, Exploitation and Discrimination Act.*"

[5] The identity of the victim and any information which could establish or compromise her identity are withheld in keeping with the policy set forth in Republic Act No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes), Republic Act No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes), and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence Against Women and Their Children, effective November 5, 2004, and in view of this Court's pronouncement in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006. See *People v. De Guzman*, G.R. No. 214502, November 25, 2015.

Contrary to law.

When arraigned, accused-appellant pleaded "not guilty."

During trial, the prosecution presented the testimonies of AAA and SPO1 Elmer Guevarra who received the report of AAA's abduction. Accused-appellant was the lone witness for the defense.

The prosecution sought to establish that on March 2, 2006, 9-year old AAA was attending her Grade IV class at the XXX School in YYY, when accused-appellant suddenly arrived supposedly to fetch her. Since accused-appellant was AAA's aunt residing just next to AAA's house, the teacher allowed accused-appellant to take AAA. However, instead of bringing AAA home, accused-appellant brought her to Nueva Ecija. Accused-appellant kept AAA in Nueva Ecija despite the latter's plea to go home. She refused to let AAA go even after AAA's parents called her via cellular phone begging her to release their daughter.[6]

AAA's parents had reported the abduction to the police. After receiving information that accused-appellant might go to her brother's house in Barangay Villa Viniegas, Nueva Ecija, the police organized a team and monitored said house. On March 5, 2006, police operatives, accompanied by AAA's parents, rescued AAA and apprehended the accused-appellant at her brother's house.[7]

Denying the charge, accused-appellant declared that she could not have committed the crime because she loved AAA whom she had known since 1999 and who used to frequent her house to sleep, eat, and watch television with her siblings. She claimed that she brought AAA to Nueva Ecija on March 2, 2006 with the consent of AAA's mother and teacher. She explained that she had intended to bring AAA along to the Barangay Captain to prove that her

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[6] *Rollo*, pp. 3-4.

[7] *Id.* at 4.

husband had taken her luggage and some documents, given that AAA used to clean their room. The Barangay Captain was not around so they proceeded to Nueva Ecija after AAA requested to join her. After two days in Nueva Ecija, or on March 5, 2006, she brought AAA to her brother's house where she was arrested.[8]

The RTC convicted accused-appellant of Serious Illegal Detention, disposing as follows:

WHEREFORE, premises considered, the Court finds the accused ZENAIDA FABRO or ZENAIDA VIÑEGAS MANALASTAS GUILTY beyond reasonable doubt of Serious Illegal Detention penalized under Article 267 of the Revised Penal Code and hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA, together with all the accessory penalties provided for by law and to pay the private complainant, AAA, thru her father BBB, the sum of one hundred thousand pesos (₱100,000.00) as moral damages.

The Jailer is hereby ordered to make the proper reduction of the period during which the accused was under preventive custody by reason of this case in accordance with law.

SO ORDERED.

Accused-appellant elevated the case to the CA, arguing that the prosecution failed to prove her guilt beyond reasonable doubt, and faulting the trial court for relying on the prosecution's version of the events.[9] The CA subsequently rendered the assailed Decision affirming the RTC's Decision *in toto*. In the present appeal, accused-appellant further asserts that the prosecution failed to prove her intent to detain the victim.[10]

Our Ruling

The appeal lacks merit.

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[8] *Rollo*, pp. 4-5.

[9] CA *rollo*, p. 27.

[10] *Rollo*, p. 23.

The elements of Kidnapping and Serious Illegal Detention under Article 267 of the Revised Penal Code, as amended, are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; or (b) it is committed by simulating public authority; or (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer. If the victim of kidnapping and serious illegal detention is a minor, the duration of his detention is immaterial.[11]

There is no dispute that accused-appellant is a private individual and that she took AAA from her school on March 2, 2006, brought her to Nueva Ecija and kept her there until she was arrested on March 5, 2006.

That AAA was deprived of her liberty is clear from her testimony that despite her pleas for accused-appellant to let her go home, the latter refused, thus:

> Q: How many days did you stay in that house in Nueva Ecija, AAA?
> A: Four, Ma'am.
>
> **Q: And, in those four days did you ask Tita Zeny to let you go home?**
> **A: Yes Ma'am.**
>
> **Q: And what did Tita Zeny tell you?**
> **A: "Huwag muna daw po."**
>
> **Q: At that time AAA, did you want to go home already in those four days?**
> **A: Yes Ma'am.**

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[11] *People v. Pepino*, G.R. No. 174471, January 12, 2016.

Q: And do you know if Tita Zeny called your father or your mother thru cellphone in those four days?
A: Yes Ma'am.

Q: Whom did Tita Zeny call, your father or your mother?
A: "Tatay ko."

Q: How did you know that Tita Zeny called your father?
A: "Sinabi po ng kaklase ko na kinipnap (sic) po ako."

Q: AAA, you said that Tita Zeny called your father. Were you able to talk to your father on the cellphone?
A: No, Ma'am. "Nakausap ko po ang nanay ko."

Q: Were you able to talk to your mother and that was thru the cellphone that was being used by Tita Zeny?
A: Yes ma'am.

Q: And, what did you tell your mother?
A: "Sya po ang sumabi."

Q: What did your mother tell you?
A: "Sabi po iuwi na niya ako."

Q: Is that the only conversation that you had with your mother?
A: "Ayaw po ako iuwi ni Tita Zeny."[12]

x x x x x x x x x

Q: Did you again ask her to go home?
A: Yes Ma'am.

Q: What did she tell you?
A: "Huwag muna daw po."

Q: During those four days AAA, did you cry?
A: Yes, Ma'am.

Q: Why did you cry?
A: "Ayaw po ako iuwi."[13] *(Emphasis supplied.)*

Accused-appellant, however, contends that AAA had not been deprived of liberty while in her custody. She argues that the

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[12] *Rollo,* pp. 6-7; Citing TSN, January 12, 2007, pp. 16-17.

[13] *Id.* at 7; Citing TSN, January 12, 2007, pp. 18-19.

records are bereft of any indication that AAA was physically restrained, or was under her constant control, or was ever prevented from going home. She claims that during the period she had custody of AAA, the latter was free to interact with third persons and communicate with her relatives, and was well taken care of.[14]

The argument fails. The prevailing jurisprudence on kidnapping and illegal detention is that the curtailment of the victim's liberty need not involve any physical restraint upon the victim's person.[15] For kidnapping to exist, it is not necessary that the offender kept the victim in an enclosure or treated him harshly.[16]

In *People v. Bisda,*[17] the Court upheld the conviction of kidnapping for ransom even though the abducted five-year old child was, during her detention, free to roam around the place of detention, to practice on her drawing and to watch television, and was regularly fed and bathed. Citing *United States v. McCabe,*[18] the Court stated that "to accept a child's desire for food, comfort as the type of will or consent contemplated in the context of kidnapping would render the concept meaningless." Should the child even want to escape, said the Court, she could not do so all by herself given her age; she was under the control of her abductors and was merely waiting and hoping that she would be brought home or that her parents would fetch her.

Nine-year old AAA was brought by accused-appellant to a place unfamiliar to her.[19] In fact, she learned that the name of the place was Nueva Ecija only after she was rescued.[20]

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[14] *Id.* at 26-27; Accused-appellant's Supplemental Brief, pp. 4-5.

[15] *Astorga v. People,* G.R. No. 154130, October 1, 2003.

[16] *People v. Baluya,* G.R. No. 181822, April 13, 2011.

[17] *People v. Bisda*, G.R. No. 140895, July 17, 2003.

[18] 812 F. 2d. 1660 (1987).

[19] CA *rollo*, p. 11.

[20] *Ibid.*

Leaving a child in a place from which he did not know the way home, even if he had the freedom to roam around the place of detention, would still amount to deprivation of liberty. Under such a situation, the child's freedom remains at the mercy and control of the abductor.[21]

The RTC, thus, correctly held that even in the absence of evidence that AAA was locked up, she was still deprived of her liberty because considering her minority and the distance between her home and Nueva Ecija, she could not possibly go back home to YYY without accused-appellant's assistance.[22]

The RTC rightly invoked the Court's pronouncement in *People v. Acosta:*[23]

> The next question to be determined is whether or not element of restraint is present as to constitute the crime of kidnapping with which the appellants are charged. On this point the trial court made this observation: "While it is true that the boy was playing while he was in the house at Murphy on April 6, 1956, the fact remains that he was under the control of the accused Consolacion Bravo who left him there, as he could not leave that house until she shall have returned for him. **Because of his tender age and the fact that he did not know the way back home, he was then and there in a way deprived of his liberty.** It is like putting him in a prison or in an asylum where **he may have freedom of locomotion but not the freedom to leave it at will**. The same thing can be said of his stay in the house at Tondo, where he was left by her on April 7, 1956." In addition, we may say that because the boy was of tender age and he was warned not to leave until her return by his godmother, he was practically a captive in the sense that he could not leave because of his fear to violate such instruction. *(Emphasis supplied.)*

Accused-appellant also questions AAA's credibility, pointing out that while AAA claimed to have been taken by force in her

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[21] *People v. Baluya, supra,* note 16.

[22] *Id.* at 10-11.

[23] *People v. Acosta*, G.R. No. L-11954, March 24, 1960.

Sinumpaang Salaysay,[24] she subsequently testified[25] in court that she voluntarily went with accused-appellant.[26]

The Court is not persuaded.

It is oft-repeated that affidavits are usually abbreviated and inaccurate. Oftentimes, an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court. Generally, the affiant is asked standard questions, coupled with ready suggestions intended to elicit answers, that later turn out not to be wholly descriptive of the series of events as the affiant knows them. Worse, the process of affidavit-taking may sometimes amount to putting words into the affiant's mouth, thus, allowing the whole statement to be taken out of context.[27]

Discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since *ex parte* affidavits are generally incomplete.[28] Reiterating this principle, the Court, in the recently decided case of *People v. Dayaday,*[29] declared:

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[24] AAA's *Sinumpaang Salaysay*, in part, states:

2. *T – AAA, ano ang nanyari sa iyo noong Marso 2, 2006?*

S – Habang nasa school po ako dumating si Tita Zeny (Zenaida V. Manalastas) hinawakan niya ako sa kamay at may pinapipirma sa akin. Hindi ko po pinirmahan at sapilitan niya akong sinakay sa tricycle. Sinabi niya sa akin sandali lang at samahan ko daw siya. At sumakay na kami sa tricycle papuntang ZZZ, YYY. Hindi ko na po naisuot and aking tsinelas dahil sa paghatak niya sa akin.

[25] TSN, January 12, 2007, p. 11.

x x x x x x x x x

Q: Now, AAA, when you were in school and your Tita Zeny came, how did you leave the school AAA?

A: *"Kusa po akong sinama niya. Niloko po niya ako."*

x x x x x x x x x

[26] Brief for the Accused-Appellant, pp. 5-6; CA *rollo,* pp. 31-32

[27] *Kummer v. People,* G.R. No. 174461, September 11, 2013.

[28] *Ibid*.

[29] *People v. Dayaday,* G.R. No. 213224, January 16, 2017, citing *People v. Yanson*, G.R. No. 179195, October 3, 2011.

x x x [T]his Court had consistently ruled that the **alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects** to justify a reversal of judgment. Such discrepancies do not necessarily discredit the witness since *ex parte* affidavits are almost always incomplete. A sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken *ex parte* are generally considered to be inferior to the testimony given in open court.

x x x x x x x x x

The discrepancies in [the witness]'s testimony do not damage the essential integrity of the prosecution's evidence in its material whole. Instead, **the discrepancies only erase suspicion that the testimony was rehearsed or concocted. These honest inconsistencies serve to strengthen rather than destroy [the witness]'s credibility.**

We also note that the force allegedly employed by the accused-appellant, as stated in AAA's *Sinumpaang Salaysay*, referred to the moment accused-appellant made AAA board a tricycle after the latter refused to sign a document from the accused-appellant. This obviously took place when they were already outside the school premises. On the other hand, when AAA testified to voluntarily going with accused-appellant, it was in reference to the time accused-appellant came to her classroom to take her. We are, thus, disinclined to conclude that there exists a glaring and irreconcilable inconsistency in AAA's declarations that would completely discredit her testimony.

In any event, the essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect the same.[30] In this case, AAA has clearly and consistently declared that accused-appellant kept her in Nueva Ecija despite her repeated plea for accused-appellant to bring her home.

In *People v. Bisda,*[31] this Court held:

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[30] *People v. De Guzman*, G.R. No. 214502, November 25, 2015.

[31] *Supra*, note 17**,** citing *People v. Molas*, G.R. Nos. 88006-08, March 2, 1998, *People v. Alba,* G.R. No. 131858, April 14, 1999, and *People v. Dela Cruz*, G.R. No. 116726, July 28, 1997.

Appellants must come to grips with case law that testimonies of child victims are given full weight and credit. The testimony of children of sound mind is likewise to be more correct and truthful than that of older persons. In *People vs. Alba*, this Court ruled that children of sound mind are likely to be more observant of incidents which take place within their view than older persons, and their testimonies are likely more correct in detail than that of older persons. Angela was barely six years old when she testified. Considering her tender years, innocent and guileless, it is incredible that Angela would testify falsely that the appellants took her from the school through threats and detained her in the "dirty house" for five days. In *People v. Dela Cruz*, this Court also ruled that ample margin of error and understanding should be accorded to young witnesses who, much more than adults, would be gripped with tension due to the novelty and the experience in testifying before the trial court.

Furthermore, the basic rule is that the Supreme Court accords great respect and even finality to the findings of credibility of the trial court, more so if the same were affirmed by the CA, as in this case.[32] We find no reason to depart from this rule.

As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected on the record.[33] The trial court has the singular opportunity to observe the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, or the sudden pallor of a discovered lie, or the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere, or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[34]

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[32] *Kummer v. People, supra,* note 27.

[33] *People v. Basao,* G.R. No. 189820, October 10, 2012.

[34] *People v. Jacalne,* G.R. No. 168552, October 3, 2011.

Thus, when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.[35]

It bears stressing, too, that no improper motive has been imputed against AAA or her parents in filing the case against accused-appellant. In fact, accused-appellant testified that she was in good terms with AAA's family before the incident and that AAA's family was, in fact, "on (her) side because of the maltreatment of (her) other in-laws."[36]

It is settled that where there is no evidence to show any dubious or improper motive why a prosecution witness should bear false witness against the accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[37]

The Court cannot accept accused-appellant's contention that AAA was not deprived of liberty based on the RTC's supposed observation that she gave in to AAA's request to go home after AAA cried. *First* of all, the RTC's observation[38] was prefaced by a statement that accused-appellant "did not want (AAA) to go home," which explains why AAA had been crying. Thus, the RTC's observation reinforces rather than diminishes accused-appellant's culpability for detaining the child against her will. *Secondly*, a perusal of AAA's testimony, upon which the RTC

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[35] *People v. Basao, supra,* note 33.

[36] TSN, August 8, 2008, pp. 6 & 9.

[37] *People v. Gregorio,* G.R. No. 194235, June 8, 2016.

[38] CA *rollo*, p. 8.

ostensibly based its observation, showed that accused-appellant did not accede to AAA's request to be returned home; she merely brought the child to her brother's house in Villa Viniegas where she was subsequently arrested by police operatives.[39] *Finally*, there is nothing in accused-appellant's testimony that showed her intent to return AAA to her home.

That accused-appellant had no justification whatsoever to detain AAA is undeniable.

AAA's parents had not given their consent for accused-appellant to take and keep their child. This is evident from the fact that they reported accused-appellant's taking of AAA to the police on the same day she was removed from her school.[40] It is likewise clear from the plea of AAA's mother, via cellular phone, for accused-appellant to bring AAA home.[41] We are, thus, hard-pressed to believe accused-appellant's claim, uncorroborated as it is, that AAA's mother had given her consent for accused-appellant to take her child to Nueva Ecija.

Furthermore, as the CA correctly held, neither the permission given by AAA's teacher nor AAA's supposed agreement to go with accused-appellant, justified AAA's detention.

Besides, AAA was just nine (9) years old at the time of her detention, as evidenced by her Certificate of Live Birth.[42] Thus, accused-appellant's claim that AAA voluntarily went with her to Nueva Ecija cannot hold water, as AAA was not in a position to give consent.

Where the victim is a minor, lack of consent is presumed. She is incompetent to assent to seizure and illegal detention. The consent of such child could place accused-appellant in no better position than if the act had been done against her will.[43]

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[39] TSN, January 12, 2007, p. 19.

[40] *Id.* at 4; CA *rollo*, p. 8.

[41] *Id.* at 10.

[42] *Rollo*, p. 7.

[43] *People v. Bisda,* G.R. No. 140895, July 17, 2003, 406 SCRA 454.

The Court also notes AAA's testimony that she had been deceived by accused-appellant to go with her. Both on direct and cross-examination, AAA testified that accused-appellant told her that they would be going to the barangay captain as her husband had taken her suitcase, but they did not proceed to the barangay captain and accused-appellant took her instead to Nueva Ecija.[44]

It has been held that the fact that the victim voluntarily went with the accused did not remove the element of deprivation of liberty, because the victim went with the accused on a false inducement. What is controlling is the act of the accused in detaining the victim against his or her will after the offender is able to take the victim in his custody.[45]

In this case, the inscrutable fact is that accused-appellant detained AAA despite the latter's repeated plea to be returned home.

Accused-appellant's defense of denial, uncorroborated by testimony or other evidence, cannot be sustained in the face of AAA's categorical and consistent testimony that accused-appellant rejected her pleas to be brought home. Denial is a self-serving negative evidence, which cannot be given greater weight than that of the declaration of a credible witness who testifies on affirmative matters. Like alibi, denial is inherently a weak defense, which cannot prevail over the positive and credible testimonies of prosecution witnesses who, as in this case, were not shown to have any ill-motive to testify against accused-appellant.[46]

Accused-appellant asserts that while the prosecution attempted to show that she had planned to poison AAA, and that she had made demands for a PhP2 Million ransom and for AAA's father

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[44] TSN, January 12, 2007, pp. 11 & 12; TSN, March 9, 2007, p. 6.

[45] *People v. Siongco,* G.R. No. 186472, July 5, 2010; *People v. Deduyo,* G.R. No. 138456, October 23, 2003.

[46] *People v. Jacalne, supra* note 34; *People v. Marquez,* G.R. No. 181440, April 13, 2011; *People v. De Guzman, supra* note 30.

to kill her estranged husband (his sibling) as conditions for AAA's release, the RTC found that such purpose, allegedly heard by AAA from a telephone conversation, had not been sufficiently substantiated, let alone alleged in the Information. She argues that this negates her intent to kidnap or illegally detain the victim.

The argument deserves scant consideration.

Suffice it to state that the charge against accused-appellant was for kidnapping of a minor, committed by taking the victim from her school and detaining her against her will. In kidnapping, the specific intent is to deprive the victim of his/her liberty.[47] If the victim is a child, it also includes the intention of the accused to deprive the parents with the custody of the child.[48] In this case, the prosecution has established beyond reasonable doubt that accused-appellant intended to deprive AAA of her liberty, and her parents, with the custody of their daughter.

The Court notes the RTC's finding that while accused-appellant sought to excuse her actions by "her desire to be loved" and "to accomplish some family concerns," her detention of AAA was not justifiable as it already prejudiced a minor.[49] Indeed, as the RTC pointed out, despite the alleged closeness of AAA's family to accused-appellant and their relationship by affinity, AAA's family still filed and pursued a serious charge against accused-appellant.[50]

In fine, considering that the elements of Serious Illegal Detention have been sufficiently established in this case, there is no cogent reason for the Court to reverse accused-appellant's conviction for said offense.

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[47] *People v. Delim,* G.R. No. 142773, January 28, 2003.

[48] *People v. Baluya, supra* note 16; *People v. Acbangin,* G.R. No. 117216, August 9, 2000.

[49] CA *rollo*, p. 11; Citing TSN, August 8, 2008, p. 10.

[50] *Ibid.*

Article 267 of the RPC prescribes the penalty of *reclusion perpetua* to death for Serious Illegal Detention. Absent any aggravating or modifying circumstance, the RTC, as affirmed by the CA, correctly imposed the penalty of *reclusion perpetua*, pursuant to Article 63[51] of the RPC.[52]

In line with prevailing jurisprudence,[53] the Court reduces the award of moral damages from PhP100,000 to PhP75,000, and directs accused-appellant to additionally pay AAA a civil indemnity of PhP75,000 and exemplary damages of PhP75,000. The civil indemnity and damages are subject to interest at the rate of six percent *per annum* from the finality of this Decision until fully paid.

The moral damages awarded by the RTC, as affirmed by the CA, were made payable to AAA through her father because of her minority. Considering that AAA is no longer a minor, the civil indemnity and damages shall be paid directly to AAA.

WHEREFORE, the Court of Appeals' Decision dated February 19, 2013 in CA-G.R. CR-H.C. No. 04598 is **AFFIRMED** with the following **MODIFICATIONS:** (a) the award for moral damages is reduced to PhP75,000; (b) accused-appellant is further ordered to pay a civil indemnity of PhP75,000 and exemplary damages of PhP75,000; (c) the civil indemnity, moral damages and exemplary damages so awarded shall be paid by accused-appellant directly to AAA, all with interest at the rate of six percent *per annum* from the time of finality of this Decision until fully paid.

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[51] Article 63. Rules for the application of indivisible penalties.

x x x x x x x x x

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 x x x x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

x x x x x x x x x

[52] *People v. Jacalne, supra* note 34.

[53] *People v. Jugueta,* G.R. No. 202124, April 5, 2016.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 219885. July 17, 2017]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **AUGUSTO F. GALLANOSA, JR.,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE DEEMED BINDING AND CONCLUSIVE.—** Well-settled is the rule that the trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies. Furthermore, factual findings of the trial court, when affirmed by the Court of Appeals, are deemed binding and conclusive.

2. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ESSENTIAL ELEMENTS; UNLAWFUL AGGRESSION, AS ESSENTIAL ELEMENT, MUST BE REAL AND IMMINENT AND NOT MERELY SPECULATIVE.—** There are three essential elements that must be established by an accused claiming self-defense: (1) the victim committed unlawful aggression amounting to actual and imminent threat to the life of the accused; (2) there was reasonable necessity of the means

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[*] Designated additional Member per Raffle dated February 6, 2017 *vice* Associate Justice Francis H. Jardeleza.

employed by the accused to prevent or repel the attack; and (3) there was lack of sufficient provocation on the part of the accused claiming self-defense. x x x Clearly, even if there might be unlawful aggression on the part of Nonilon at the start, it already ceased when Nonilon ran away and when appellant caught up with him. Nonilon, who was already kneeling with his hands raised, was quite helpless when appellant started stabbing him. At that moment, there was no unlawful aggression on the part of Nonilon which amounts to actual or imminent threat to the life of appellant. Thus, the first element of unlawful aggression is already lacking in this case. x x x Unlawful aggression, as an essential and primary element of self-defense, must be real and imminent and not merely speculative.

3. **ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; NOT PRESENT IN CASE AT BAR.—** [W]e find that treachery was not clearly established in this case which would qualify the crime to murder. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim who is deprived of any chance to defend himself, without the slightest provocation on the part of the victim. In this case, the prosecution witnesses merely testified that appellant arrived at the crime scene and stabbed Dante. No other details regarding the manner of stabbing were offered in the testimonies which would clearly indicate treachery in the attack. Accordingly, appellant's indeterminate penalty is 6 years and 1 day of *prision mayor*, as minimum, to 12 years and 1 day of *reclusion temporal* as maximum.

4. **ID.; ID.; HOMICIDE; IMPOSABLE PENALTY.—** Under Article 249 of the Revised Penal Code, the penalty for homicide is *reclusion temporal.* Considering appellant's voluntary surrender which is a mitigating circumstance, the penalty should be imposed in its minimum period (that is, from 12 years and 1 day to 14 years and 8 months). Under the Indeterminate Sentence Law, the indeterminate penalty to be imposed is *prision mayor* in any of its periods as minimum to *reclusion temporal* in its minimum period as maximum.

5. **ID.; ID.; CIVIL LIABILITY; DAMAGES; MORAL AND EXEMPLARY DAMAGES INCREASED TO ₱75,000.—** On the damages awarded, we find that moral damages and exemplary damages should each be increased to ₱75,000 in accordance with recent jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *ACTING C.J.*:

This is an appeal from the 31 July 2014 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 05887, affirming with modifications the trial court's decision, convicting appellant Augusto F. Gallanosa, Jr. (appellant) of two counts of murder in Criminal Case Nos. 1631 and 1632.

Appellant, among other accused, was charged with two counts of murder in two separate Informations:

Criminal Case No. 1631

The undersigned Prosecutor accuses AUGUSTO F. GALLANOSA, JR., alias "Aday" and AUGUSTO GALLANOSA, JR. [sic], alias "Onto" both of Barangay Banogao, Matnog, Sorsogon of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, as amended, committed as follows:

That on or about the 6th day of November, 2002 at around 3:00 o'clock in the afternoon, at Barangay Banogao, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and abuse of superior strength: Accused Augusto Gallanosa, Sr. armed with stones and accused Augusto Gallanosa, Jr. armed with a bladed weapon, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously attack, assault, stone and stab one Nonilon L. Frencillo, Jr., hitting and inflicting upon the latter mortal wounds which directly caused his death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.[2]

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[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Rosmari D. Carandang and Edwin D. Sorongon concurring.

[2] Records (Criminal Case No. 1631), p. 1.

Criminal Case No. 1632

The undersigned Prosecutor accuses AUGUSTO F. GALLANOSA, JR., alias "Aday," AUGUSTO GALLANOSA, JR. [sic], alias "Onto," NONITO GALLANOSA alias "Larot," MINDA GALLANOSA and GINA GALLANOSA, all of Barangay Banogao, Matnog, Sorsogon of the crime of MURDER, as defined and penalized under Article 248 of the Revised Penal Code, as amended, committed as follows:

That on or about the 6th day of November, 2002 at around 3:00 o'clock in the afternoon, at Barangay Banogao, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and abuse of superior strength: Accused Augusto F. Gallanosa, Sr., Nonito Gallanosa, Minda Gallanosa and Gina Gallanosa, all armed with stones and accused Augusto F. Gallanosa, Jr. armed with a bladed weapon, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously attack, assault, stone and stab one Dante L. Frencillo, hitting and inflicting upon the latter mortal wounds which directly caused his death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.[3]

Appellant and Minda Gallanosa[4] pleaded not guilty upon arraignment. The other accused, namely, Augusto Gallanosa, Sr. (Onto), Nonito Gallanosa, and Gina Gallanosa are at large. The two cases were tried jointly.

The prosecution presented four witnesses: (1) Lolita Frencillo Espinar, the sister of Dante, who witnessed the incident from the barangay hall which was 30 meters away; (2) Medina Frencillo, wife of Nonilon; (3) Maricel Frencillo, the common-law wife of Dante; and (4) Dr. Rossana Galeria, Municipal Health Officer of Matnog, Sorsogon, who examined the cadavers of the victims.

The prosecution alleged that at around 3:00 p.m. on 6 November 2002, Dante Frencillo (Dante) and his common-law wife Maricel were on their way to a wedding celebration. When they passed by the house of appellant, his relatives, namely

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[3] Records (Criminal Case No. 1632), p. 1.

[4] Also referred to as Luzviminda Gallanosa in the Records.

Minda Gallanosa, Augusto Gallanosa, Sr., Nonito Gallanosa, and Gina Gallanosa, started throwing stones at Dante. Appellant then ran toward Dante and stabbed him on his left abdomen, causing Dante to fall on the ground and die. When Nonilon Frencillo (Nonilon) rushed to assist his brother Dante, he too was stoned by Augusto Gallanosa, Sr. Nonilon ran away but was chased by appellant, who caught up with Nonilon when the latter slipped. Appellant then hacked Nonilon, who was already kneeling with his hands raised, hitting the latter on his arm. Appellant continued to stab Nonilon several times. The examination by Dr. Galeria revealed that Dante sustained a fatal stab wound on his left chest and that the cause of his death was hypovolemic shock from cardiac tamponade secondary to stab wound on the left chest wall.[5] Nonilon sustained five stab wounds: three on the right front chest, one on the left, and one on his left forearm. The cause of Nonilon's death was hypovolemic shock from the massive hemorrhage secondary to multiple stab wounds.[6]

The defense presented four witnesses, including appellant. The three other witnesses were: (1) Annie Grace Ramirez (Annie Grace), common-law wife of Medel Gallanosa (Medel); (2) Emilio Castedades; and (3) Minda Gallanosa, wife of appellant. The defense alleged that on 6 November 2002, Dante stood outside Medel's house and challenged him to come out of the house. When Medel failed to come out, Dante started throwing rocks at Medel's house. Annie Grace, who was inside the house, went outside and ran towards the house of Onto, Medel's uncle. Onto opened the door of his house and Annie Grace went inside. Thereafter, Dante ran after Onto and tried to stab him, but missed. Appellant arrived at the scene and was also attacked by Dante. Appellant, after evading the knife attack, stabbed Dante with a bolo. Nonilon came and punched appellant. When appellant ran away, Nonilon threw rocks at him and ran after him. Nonilon tried to hit appellant with a piece of wood, but appellant was able to stab him first with his bolo. Appellant later surrendered

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[5] Records (Criminal Case No. 1632), pp. 10-11.

[6] Records (Criminal Case No. 1631), pp. 10-12.

to Emilio Castedades, a barangay tanod, and appellant was then brought to the police station, where Castedades turned over appellant's bolo to the police.

The Ruling of the Trial Court

The trial court found the eyewitness accounts of prosecution witnesses Lolita Frencillo Espinar and Medina Frencillo to be straightforward and unequivocal. Overall, the trial court found the prosecution's version of the events credible and supported by evidence on record. On the other hand, the defense failed to establish appellant's claim of self-defense. Nevertheless, the trial court held that conspiracy cannot be inferred from the acts of the accused. The trial court adjudged appellant guilty of two counts of murder, but acquitted Minda Gallanosa for lack of evidence.

On 21 November 2011, the trial court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, The prosecution having established the guilt of the accused Augusto Gallanosa, Jr. beyond reasonable doubt in Crim. Case No. 1631 for the murder of Nonilon Frencillo is hereby sentenced to suffer the penalty of Reclusion Perpetua. To pay the heirs of the victim loss of earning capacity in the amount of ₱5,878,800.00, ₱51,000.00 as supported by receipts as actual compensatory damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as exemplary damages and to pay the costs.
>
> Likewise, the accused Augusto Gallanosa, Jr. in Crim. Case No. 1632, is hereby sentenced to suffer a penalty of reclusion perpetua. To pay the heirs of Dante Frencillo the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as exemplary damages and to pay the costs.
>
> The period of detention of Augusto Gallanosa, Jr. is credited in his favor in accordance with Article 29 of the Revised Penal Code.
>
> In Crim. Case No. 1632, Luzviminda Gallanosa is hereby ACQUITTED and the case against her is ordered DISMISSED.
>
> Issue a Warrant of Arrest for the other remaining accused who are still at large, namely Augusto Gallanosa, Sr. in Crim. Case No. 1631 and the accused in Crim. Case No. 1632, namely: Augusto

Gallanosa, Sr. @ Onto; Nonilon Gallanosa @ Larot and Gina Gallanosa.

Considering that the accused Luzviminda Gallanosa is a detention prisoner, she is hereby ordered released from legal custody. The provincial Warden of Sorsogon Provincial Jail is hereby ordered to release the person of the accused unless there is a case for which she may be further detained.

SO ORDERED.[7]

The Ruling of the Court of Appeals

On appeal, appellant contended that the trial court erred in convicting him of murder despite proof of self-defense on his part.

The Court of Appeals affirmed the trial court's decision with modifications. The Court of Appeals found material inconsistencies and implausibilities in the testimonies of appellant and the defense witnesses which render the defense not credible. For instance, defense witness Annie Grace testified that Nonilon tried to hit appellant with a piece of wood, but appellant was able to stab him first. Appellant, on the other hand, testified that Nonilon was armed with a knife and tried to stab him. Appellant never mentioned that Nonilon was carrying a piece of wood, with which he tried to hit appellant. Appellant also claimed that the knife used by Dante was recovered by a certain Junior Garduque, but he was not presented as a defense witness. The Court of Appeals also found illogical that appellant, upon hearing someone yelling for help, would rush outside his house carrying a bolo when he thought that his mother, who just suffered a stroke, might have fainted again. On the other hand, the Court of Appeals found more credible the prosecution witnesses, whose testimonies were consistent on material points.

As regards the award of loss of earning capacity, the Court of Appeals found no basis for the trial court to peg Nonilon's annual salary at ₱360,000 in computing the award. Thus, the

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[7] CA *rollo*, pp. 62-63.

Court of Appeals awarded temperate damages amounting to ₱500,000 in lieu of actual damages for loss of earning capacity.

On 31 July 2014, the Court of Appeals promulgated its Decision, the dispositive of which states:

> WHEREFORE, premises considered, the instant appeal is PARTIALLY GRANTED, such that the decision of the Regional Trial Court of Irosin, Sorsogon, Branch 55 dated 21 November 2011 is AFFIRMED with MODIFICATIONS. As modified, appellant Augusto Gallanosa, Jr., is ORDERED to pay the heirs of the victims as follows:
>
> Criminal Case No. 1631
>
> 1) loss of earning capacity in the amount of ₱500,000.00;
> 2) actual compensatory damages in the amount of ₱51,000.00;
> 3) civil indemnity in the amount of ₱75,000.00;
> 4) moral damages in the amount of ₱50,000.00;
> 5) exemplary damages in the amount of ₱30,000.00;
> 6) to pay the cost; and
> 7) interest at the rate of 6[%] per annum on the amounts awarded shall be imposed, computed from the time of finality of this decision until full payment thereof.
>
> Criminal Case No. 1632
>
> 8) civil indemnity in the amount of ₱75,000.00;
> 9) moral damages in the amount of ₱50,000.00;
> 10) exemplary damages in the amount of ₱30,000.00; and
> 11) to pay the cost; and
> 12) interest at the rate of 6[%] per annum on the amounts awarded shall be imposed, computed from the time of finality of this decision until full payment thereof.
>
> The rest of the decision are AFFIRMED.
>
> SO ORDERED.[8]

Hence, this appeal.

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[8] *Rollo*, p. 23.

The Issue

The issue is whether appellant was able to prove self-defense to acquit him in the two counts of murder.

The Court's Ruling

The appeal is partly meritorious. In Criminal Case No. 1631, we agree with the trial court and the Court of Appeals that the prosecution established beyond reasonable doubt appellant's guilt for the murder of Nonilon. However, in Criminal Case No. 1632, we find appellant guilty only of homicide for the death of Dante.

As found by the trial court and the Court of Appeals, appellant failed to prove self-defense in both cases. Compared with the testimonies of the defense witnesses which were marked with inconsistencies, both the trial court and the appellate court found the testimonies of the prosecution witnesses more credible, convincing, and consistent on material points. Well-settled is the rule that the trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies.[9] Furthermore, factual findings of the trial court, when affirmed by the Court of Appeals, are deemed binding and conclusive.[10]

Article 11 of the Revised Penal Code provides:

ART. 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 occur:

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[9] *People v. Pareja*, 724 Phil. 759 (2014); *People v. Bonaagua*, 665 Phil. 750 (2011); *People v. Oliquino*, 546 Phil. 410 (2007); *People v. Diunsay-Jalandoni*, 544 Phil. 163 (2007); *Navarrete v. People*, 542 Phil. 496 (2007).

[10] *Heirs of Spouses Liwagon v. Heirs of Spouses Liwagon*, 748 Phil. 675 (2014); *Republic of the Phils. v. Remman Enterprises, Inc.*, 727 Phil. 608 (2014); *David v. David*, 724 Phil. 239 (2014); *People v. Nogra*, 585 Phil. 712 (2008).

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.

x x x x x x x x x

There are three essential elements that must be established by an accused claiming self-defense: (1) the victim committed unlawful aggression amounting to actual and imminent threat to the life of the accused; (2) there was reasonable necessity of the means employed by the accused to prevent or repel the attack; and (3) there was lack of sufficient provocation on the part of the accused claiming self-defense.[11]

In Criminal Case No. 1631, the victim, Nonilon, was stabbed by appellant five times which caused Nonilon's death. When appellant started attacking Nonilon, the latter was already in a kneeling position with his hands raised, indicating a position of surrender. However, appellant still hacked Nonilon, hitting him on his left forearm. Thereafter, appellant stabbed Nonilon four more times on the right and left chest. Clearly, even if there might be unlawful aggression on the part of Nonilon at the start, it already ceased when Nonilon ran away and when appellant caught up with him. Nonilon, who was already kneeling with his hands raised, was quite helpless when appellant started stabbing him. At that moment, there was no unlawful aggression on the part of Nonilon which amounts to actual or imminent threat to the life of appellant. Thus, the first element of unlawful aggression is already lacking in this case. Appellant's claim that Nonilon tried to stab him first with a knife was belied by the testimony of another defense witness who stated that Nonilon was armed only with a piece of wood which he picked up while running after appellant.[12] Even appellant's wife testified that

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[11] *People v. Bosito*, 750 Phil. 183 (2015); *Guevarra v. People*, 726 Phil. 183 (2014).

[12] TSN, 19 August 2009, pp. 6-7.

she only saw Nonilon throwing stones at her husband. Appellant's wife never testified that Nonilon was armed with a knife.[13]

On the damages awarded, we find that moral damages and exemplary damages should each be increased to ₱75,000 in accordance with recent jurisprudence.[14]

In Criminal Case No. 1632, appellant claimed that Dante was about to attack his father (Onto) with a knife when he arrived at the crime scene. When Dante faced him and tried to stab him, appellant accidentally stabbed Dante.[15] Both the trial court and the appellate court held that the defense failed to prove self-defense. Appellant's testimony that he "accidentally stabbed" Dante is incongruent with his claim of self-defense. Unlawful aggression, as an essential and primary element of self-defense, must be real and imminent and not merely speculative.[16] Other than the claim of some of the defense witnesses that Dante was armed with a knife, which was denied by the prosecution witnesses, the defense failed to prove that Dante tried to stab appellant and his father. The inability of the defense to present the alleged weapon as evidence, alleging that the knife was hidden by Junior Garduque, further weakens their claim[17] especially since the prosecution witnesses were consistent in denying that Dante was carrying a knife when he was stabbed by appellant. As held by the appellate court, such claim by the defense is belied by its failure to subpoena Junior Garduque to testify on the matter, even if the defense knew Garduque's address. Appellant even testified that Junior Garduque, who was then a barangay tanod, was still residing in Barangay Banogao, Municipality of Matnog.[18] However, we find that

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[13] TSN, 1 September 2010, pp. 7-8, 15-17.

[14] *People v. Oandasan, Jr.*, G.R. No. 194605, 14 June 2016; *People v. Jugueta*, G.R. No. 202124, 5 April 2016, 788 SCRA 331.

[15] TSN, 1 March 2011, p. 6.

[16] *Dela Cruz v. People*, 747 Phil. 376 (2014).

[17] *People v. Bosito*, 750 Phil. 183, 192-193 (2015), citing *People v. Satonero*, 617 Phil. 983, 993 (2009).

[18] TSN, 1 March 2011, p. 14.

treachery was not clearly established in this case which would qualify the crime to murder. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim who is deprived of any chance to defend himself, without the slightest provocation on the part of the victim.[19] In this case, the prosecution witnesses merely testified that appellant arrived at the crime scene and stabbed Dante. No other details regarding the manner of stabbing were offered in the testimonies which would clearly indicate treachery in the attack.

Thus, appellant should only be liable for homicide for killing Dante. Under Article 249 of the Revised Penal Code, the penalty for homicide is *reclusion temporal*. Considering appellant's voluntary surrender which is a mitigating circumstance, the penalty should be imposed in its minimum period (that is, from 12 years and 1 day to 14 years and 8 months).[20] Under the Indeterminate Sentence Law, the indeterminate penalty to be imposed is *prision mayor* in any of its periods as minimum to *reclusion temporal* in its minimum period as maximum. Accordingly, appellant's indeterminate penalty is 6 years and 1 day of *prision mayor*, as minimum, to 12 years and 1 day of *reclusion temporal*, as maximum. Appellant is also liable to pay the heirs of Dante the amount of ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱50,000 as temperate damages. Temperate damages may be awarded where no receipts or other evidence was presented as proof of funeral or burial expenses.[21]

WHEREFORE, we **AFFIRM** the Decision dated 31 July 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05887 **WITH MODIFICATIONS**, as follows:

(A) In Criminal Case No. 1631, the amounts of moral damages and exemplary damages are increased to ₱75,000 each. Appellant

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[19] *People v. Oandasan, Jr.*, G.R. No. 194605, 14 June 2016; *People v. Dulin*, 762 Phil. 24 (2015).

[20] Article 64(2) of the Revised Penal Code provides that "[w]hen only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period."

[21] *People v. Macaspac*, G.R. No. 198954, 22 February 2017.

Augusto F. Gallanosa, Jr. is ordered to pay interest on the amounts awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

(B) In Criminal Case No. 1632, appellant Augusto F. Gallanosa, Jr. is found **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE** and is sentenced to suffer the indeterminate penalty of 6 years and 1 day of *prision mayor*, as minimum, to 12 years and 1 day of *reclusion temporal*, as maximum. Appellant is ordered to pay the heirs of Dante L. Frencillo: (1) civil indemnity in the amount of ₱50,000; (2) moral damages in the amount of ₱50,000; and (3) temperate damages in the amount of ₱50,000. Appellant is also ordered to pay the cost of the suit and to pay interest on the amounts awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.

Peralta, Mendoza, and *Martires, JJ.,* concur.

Leonen, J., on official leave.

FIRST DIVISION

[G.R. No. 221443. July 17, 2017]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOMINADOR LADRA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S FACTUAL FINDINGS

THEREON ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT AND WILL NOT BE DISTURBED ON APPEAL.— [T]he Court has held that factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal. This rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued, or where the trial court has acted arbitrarily in its appreciation of the facts. In FC Criminal Case No. 2008-426, the Court accords credence to the RTC's finding, as affirmed by the CA, that accused-appellant indeed committed the crime of Rape against then five (5)-year-old AAA. As astutely observed by the RTC, which had the opportunity to personally scrutinize AAA's conduct and demeanor during trial, she was a credible witness whose testimony must be given great weight. The trial judge's evaluation, which the CA sustained, now binds the Court, leaving to the accused-appellant the burden to bring to the fore facts or circumstances of weight, which were otherwise overlooked, misapprehended or misinterpreted that would materially affect the disposition of the case differently if duly considered. Unfortunately for accused-appellant, he miserably failed to discharge this burden, and the Court finds no reason to reverse the CA's conclusions.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; NOT A RESPECTER OF TIME OR PLACE AND IT IS KNOWN TO HAPPEN IN THE MOST UNLIKELY PLACES.—** [T]he presence of AAA' s brother in the room does not negate the commission of the crime. "Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. It is settled that lust is not a respecter of time or place and rape is known to happen in the most unlikely places."

3. **ID.; ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS.—** Acts of Lasciviousness is defined and penalized under Article 336 of the RPC x x x. Conviction for such crime requires the concurrence of the following elements: *(a)* that the offender

commits any act of lasciviousness or lewdness; *(b)* that it is done under any of the following circumstances: *(i)* through force, threat, or intimidation, *(ii)* when the offended party is deprived of reason or otherwise unconscious, *(iii)* by means of fraudulent machination or grave abuse of authority, and *(iv)* when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and (*c)* that the offended party is another person of either sex.

4. ID.; REPUBLIC ACT NO. 7610; LASCIVIOUS CONDUCT UNDER SECTION 5 (b); REQUISITES.— Before an accused can be held criminally liable for lascivious conduct under Section 5 (b) of RA 7610, the requisites of the crime of Acts of Lasciviousness as penalized under Article 336 of the RPC x x x must be met in addition to the requisites for sexual abuse under Section 5 (b) of RA 7610, as follows: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) that the child, whether male or female, is below 18 years of age. A judicious examination of the records reveals that all the elements of the crime of Acts of Lasciviousness under the RPC and lascivious conduct under Section 5 (b) of RA 7610 have been sufficiently established. The prosecution was able to prove AAA's minority at the time of the incident through the presentation of her Certificate of Live Birth showing that she was born on September 3, 1995. At the time of the commission of the lascivious act, AAA was then 12 years old. It was likewise established that accused-appellant, an adult who exercised influence on AAA, committed a lascivious act by "squeezing" her vagina.

5. ID.; ID.; ID.; THE MERE TOUCHING OF THE VICTIM'S GENITALIA CLEARLY CONSTITUTES LASCIVIOUS CONDUCT.— [T]he Court finds that the mere fact of "squeezing" the private part of a child – *a young girl 12 years of age* – could not have signified any other intention but one having lewd or indecent design. It must not be forgotten that several years prior, accused-appellant had raped AAA in the same house, for which act he was appropriately convicted.

> Indeed, the law indicates that the mere *touching* — more so, "squeezing," in this case, which strongly suggests that the act was intentional — of AAA's genitalia clearly constitutes lascivious conduct. It could not have been done merely to annoy or vex her, as opined by the courts *a quo*. That AAA was fully clothed at that time, which led the courts *a quo* to believe that accused-appellant could not have intended to lie with her, is inconsequential. "'Lewd' is defined as obscene, lustful, indecent, and lecherous. It signifies that form of immorality which has relation to moral impurity; or that which is carried on a wanton manner." As such, accused-appellant's act of squeezing AAA's vagina was a lewd and lascivious act within the definitions set by law and jurisprudence.

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.*:

On appeal[1] is the Decision[2] dated June 30, 2015 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 01160-MIN, which affirmed the Joint Decision[3] dated February 6, 2013 of the Regional Trial Court of Cagayan de Oro City, Branch 22 (RTC) in FC Crim. Case Nos. 2008-426 and 2008-427 finding accused-appellant Dominador Ladra (accused-appellant) guilty beyond reasonable doubt of Rape and Unjust Vexation.

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[1] See Notice of Appeal dated July 30, 2015; *rollo*, pp. 11-12.

[2] *Id.* at 3-10. Penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Pablito A. Perez concurring.

[3] CA *rollo*, pp. 28-36. Penned by Judge Richard D. Mordeno.

The Facts

Private complainant AAA[4] was born on September 3, 1995[5] and the eldest of five (5) siblings. At the time material to these cases, she lived with her family in a remote area in Dumarait, Balingasag, Misamis Oriental.[6]

On the other hand, it was alleged that accused-appellant was a relative of BBB, AAA's mother, who allowed him to stay with their family out of pity. He ran errands for them and attended to the children when BBB was busy washing clothes and her husband, CCC, was tending to their farm.[7]

Sometime between 2000 to 2001,[8] when AAA was around five (5) years old, she and her siblings were left at home with accused-appellant. After their meal, accused-appellant ordered them to sleep. Suddenly, AAA was awakened when she felt accused-appellant, who was already naked, on top of her, forced his penis into her vagina, and made push and pull movements, causing her pain. Accused-appellant threatened to kill her if she told anyone. Thereafter, accused-appellant repeatedly

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[4] 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].)

[5] See Certificate of Live Birth, Index of Exhibits, p. 2.

[6] See CA *rollo*, p. 29.

[7] See *id*. at 29-30.

[8] See *id*. at 28-29.

molested her, each time bringing his bolo with him.[9] The sexual abuse ceased in 2002, when accused-appellant left their house.[10]

Years later, or on the evening of April 16, 2008, AAA – who was already twelve (12) years old at the time – was surprised when she saw accused-appellant in their kitchen. To her shock, accused-appellant squeezed her vagina and told her that they were going to visit his house. Scared, AAA cried and told her cousin, DDD, about the incident.[11] She also told DDD about the first rape incident and the subsequent ones committed by accused-appellant. Eventually, AAA told BBB about her traumatic experiences in the hands of accused-appellant when she was five (5) years old. Together, they reported the incident to the barangay and thereafter, had the incident recorded in the police blotter.[12] Later, AAA filed criminal cases against accused-appellant, who was subsequently arrested.[13]

On April 19, 2008, Dr. Ma. Josefina Villanueva Taleon (Dr. Taleon), Medical Officer III at the Northern Mindanao Medical Center, conducted a physical examination on AAA and found the presence of old healed lacerations in her genitalia at the three (3), eight (8), and ten (10) o'clock positions.[14]

Hence, accused-appellant was charged with *violation of Section 5 (b) of Republic Act No.* (RA) *7610* in an Information[15] that reads:

Sometime in 2000 up to 2001, when the private complainant is about five to six [5 to 6] years old, at Dumarait, Balingasag, Misamis Oriental,

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[9] AAA testified that accused-appellant raped her "more than ten times." See TSN, July 21, 2011, pp. 7-8. See also CA *rollo*, p. 30.

[10] AAA testified that accused-appellant left their house when she was already seven (7) years old. See TSN, July 21, 2011, p. 14.

[11] See TSN, July 21, 2011, pp. 5-6.

[12] See Extract Copies from Police Blotter, Index of Exhibits, pp. 1 and 5.

[13] See *rollo*, pp. 5-6.

[14] See Living Case Report dated April 21, 2008. Index of Exhibits, p. 6.

[15] Records, pp. 3-4.

Philippines, within the jurisdiction of the Honorable Court, the above-named accused knowing full well the minority, with obvious ungratefulness, did then and there willfully, unlawfully and feloniously commit acts of sexual abuse on one [AAA], five to six years old, by inserting his penis into her vagina, against her will and without her consent, and which act debases, degrades and demeans the intrinsic worth and dignity of [AAA] as a child and as a human being and is prejudicial to the child's development.

CONTRARY TO and in violation of Section 5 Paragraph B of RA 7610.[16]

Likewise, accused-appellant was charged with *Acts of Lasciviousness* in an Information[17] that reads:

On 16 April 2008 at about 8:00 o'clock in the evening in Dumarait, Balingasag, Misamis Oriental, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who knew full well the minority of the victim, through force and intimidation, actuated by lust or lewd design, did then and there willfully, unlawfully and feloniously commit a lascivious conduct on twelve-year [12] old [AAA] by squeezing her vagina against her will and to her damage and prejudice.

CONTRARY TO and in violation of Article 336 of the Revised Penal Code as amended.[18]

When arraigned, accused-appellant entered a plea of *not guilty* to the offenses charged.[19]

In defense, accused-appellant denied the charges and claimed that AAA's family were angry at him when he left their house, leaving no one to attend to their errands. He asserted that he

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[16] *Id*. at 3.

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

[18] *Id*. at 42.

[19] See Orders dated December 8, 2008 and December 17, 2008 penned by Presiding Judge Francisco L. Calingin and Judge Jose L. Escobido, respectively; *id*. at 27 and 64.

left them because he could no longer understand what they were asking him to do for them.[20]

The RTC Ruling

In a Joint Decision[21] dated February 6, 2013, the RTC convicted accused-appellant of: (*a*) *Rape* in FC Crim. Case No. 2008-426, sentencing him to suffer the penalty of *reclusion perpetua* and 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; and (*b*) *Unjust Vexation* in FC Crim. Case No. 2008-427, sentencing him to suffer the penalty of imprisonment for a period of 30 days of *arresto menor* and to pay a fine of ₱200.00 with accessory penalties.[22]

In finding accused-appellant guilty of Rape in FC Criminal Case No. 2008-426, the RTC found that although the allegations in the Information are sufficient to make out a case for child abuse, it also constitutes *Statutory Rape* under Article 266-A of the Revised Penal Code (RPC), as amended. Relative thereto, it found that AAA's narration of her defloration in the hands of accused-appellant more than sufficiently established the offense, as well as the identity of the offender. Despite her tender age, she was straightforward, clear, categorical, and positive in her testimony, indicating that she was telling the truth. Moreover, her account of the incident was supported by the medical findings of Dr. Taleon, who testified that there were healed lacerations in AAA's genitalia at the 3, 8, and 10 o'clock positions.[23]

As regards FC Criminal Case No. 2008-427, the RTC found that the prosecution has established that on the evening of April 16, 2008, when AAA went to their kitchen, she encountered accused-appellant who, without warning, "just squeezed her

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[20] See CA *rollo*, p. 30.

[21] *Id*. at 28-36.

[22] *Id*. at 36.

[23] See *id*. at 31-33.

vagina."[24] The RTC opined, however, that the prosecution failed to establish the element of *lasciviousness or lewdness* as would justify accused-appellant's conviction for the crime of Acts of Lasciviousness. The overt act of accused-appellant of squeezing AAA's vagina did not show that he intended to gratify his sexual desires nor was it demonstrative of carnal lust. Nonetheless, AAA was clearly annoyed by the act; perforce, the RTC found accused-appellant guilty of Unjust Vexation, defined and penalized under Article 287[25] of the RPC.[26]

Conversely, the RTC brushed aside the defense proffered by accused-appellant, which it found insufficient to debunk the positive evidence of the prosecution.[27] Dissatisfied, accused-appellant appealed his conviction.[28]

The CA Ruling

In its assailed Decision[29] dated June 30, 2015, the CA affirmed *in toto*[30] the RTC's Joint Decision convicting accused-appellant of Rape and Unjust Vexation. Apart from concurring with the RTC's findings and conclusions, the CA found no merit in accused-appellant's contention that it was impossible for him to commit the crime as AAA's younger brother was sleeping beside her at the time of the alleged rape incident. Disregarding the argument, the CA ruled that the presence of another person at the scene does not render it impossible for accused-appellant to commit the crime of Rape. As regards its affirmance of

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[24] *Id*. at 33.

[25] Article 287. *Light coercions*. – x x x

Any other coercion or unjust vexation shall be punished by *arresto menor* or a fine ranging from 5 to 200 pesos, or both.

[26] See CA *rollo*, pp. 33-35.

[27] See *id*. at 35-36.

[28] See Notice of Appeal dated March 27, 2013; records, pp. 210-211.

[29] *Rollo*, pp. 3-10.

[30] See *id*. at 9.

accused-appellant's conviction for Unjust Vexation, the CA did not proffer any justification.[31]

Aggrieved, accused-appellant is now before the Court seeking the reversal of his conviction.[32]

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in affirming accused-appellant's conviction for Rape and Unjust Vexation.

The Court's Ruling

The appeal has no merit.

Time and again, the Court has held that factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal. This rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued, or where the trial court has acted arbitrarily in its appreciation of the facts.[33]

In FC Criminal Case No. 2008-426, the Court accords credence to the RTC's finding, as affirmed by the CA, that accused-appellant indeed committed the crime of Rape against then five (5)-year-old AAA. As astutely observed by the RTC, which had the opportunity to personally scrutinize AAA's conduct and demeanor during trial, she was a credible witness whose testimony must be given great weight. The trial judge's evaluation, which the CA sustained, now binds the Court, leaving to the accused-appellant the burden to bring to the fore facts or circumstances of weight, which were otherwise overlooked, misapprehended or misinterpreted that would materially affect the disposition of the case differently if duly considered.[34]

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[31] See *id*. at 7-9.

[32] See Notice of Appeal dated July 30, 2015; *rollo*, pp. 11-12.

[33] *People v. Esperanza*, 453 Phil. 54, 67 (2003).

[34] *People v. Lupac*, 695 Phil. 505, 511-512 (2012).

Unfortunately for accused-appellant, he miserably failed to discharge this burden, and the Court finds no reason to reverse the CA's conclusions.

Moreover, the CA correctly disregarded accused-appellant's argument that he could not have committed the crime in the presence of AAA's younger brother, who slept beside her.[35] It cannot be denied that the presence of AAA's brother in the room does not negate the commission of the crime. "Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. It is settled that lust is not a respecter of time or place and rape is known to happen in the most unlikely places."[36]

In view thereof, the courts *a quo* correctly found accused-appellant guilty of Rape and sentenced him to suffer the penalty of *reclusion perpetua*. However, the Court modifies the amounts of damages awarded conformably with prevailing jurisprudence.[37] Accordingly, accused-appellant is ordered to pay AAA the amount of ₱75,000.00 as moral damages, ₱75,000.00 as civil indemnity, and ₱75,000.00 as exemplary damages.

In FC Criminal Case No. 2008-427, however, the Court disagrees with the CA's affirmance of the RTC's finding that accused-appellant can only be held guilty of Unjust Vexation. After a punctilious review of the evidence, the Court finds that he should instead be convicted of Acts of Lasciviousness, as charged in the information, in relation to Section 5 (b) of RA 7610.

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[35] See *rollo*, pp. 7-8.

[36] *People v. Bangsoy*, G.R. No. 204047, January 13, 2016, 780 SCRA 564, 573.

[37] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382-383.

Acts of Lasciviousness is defined and penalized under Article 336 of the RPC, which reads:

> Article 336. *Acts of lasciviousness*. – Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned on the preceding article, shall be punished by *prision correccional*.

Conviction for such crime requires the concurrence of the following elements: (*a*) that the offender commits any act of lasciviousness or lewdness; (*b*) that it is done under any of the following circumstances: (*i*) through force, threat, or intimidation, (*ii*) when the offended party is deprived of reason or otherwise unconscious, (*iii*) by means of fraudulent machination or grave abuse of authority, and (*iv*) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and (*c*) that the offended party is another person of either sex.[38]

Meanwhile, Section 5 (b) of RA 7610 provides:

> Section 5. *Child Prostitution and Other Sexual Abuse*. – **Children**, whether male or female, who for money, profit, or any other consideration or **due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct**, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or **lascivious conduct with a child exploited in prostitution or subject to other sexual abuse**; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the

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[38] See *Quimvel v. People*, G.R. No. 214497, April 18, 2017.

victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

x x x x x x x x x.

Before an accused can be held criminally liable for lascivious conduct under Section 5 (b) of RA 7610, the requisites of the crime of Acts of Lasciviousness as penalized under Article 336 of the RPC above-enumerated must be met in addition to the requisites for sexual abuse under Section 5 (b) of RA 7610, as follows: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) that the child, whether male or female, is below 18 years of age.[39]

A judicious examination of the records reveals that all the elements of the crime of Acts of Lasciviousness under the RPC and lascivious conduct under Section 5 (b) of RA 7610 have been sufficiently established. The prosecution was able to prove AAA's minority at the time of the incident through the presentation of her Certificate of Live Birth[40] showing that she was born on September 3, 1995. At the time of the commission of the lascivious act, AAA was then 12 years old. It was likewise established that accused-appellant, an adult who exercised influence on AAA, committed a lascivious act by "squeezing" her vagina.

The courts *a quo* convicted accused-appellant of the crime of Unjust Vexation instead of Acts of Lasciviousness on the finding that there was no element of lasciviousness or lewdness in accused-appellant's act. In its Decision, the RTC even pointed out that accused-appellant could not have intended to lie with AAA at that moment considering that she still had her underwear on, and the act of "squeezing" her private part was not demonstrative of carnal lust.[41]

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[39] See *id*., citing *Cabila v. People*, 563 Phil. 1020, 1027 (2007), and *Amployo v. People*, 496 Phil. 747, 755 (2005).

[40] Index of Exhibits, p. 2.

[41] See CA *rollo*, pp. 34-35.

The Court disagrees.

"Lascivious conduct" is defined in Section 2 of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, as follows:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, **with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person**, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.

In *Amployo v. People*,[42] the Court expounded on the definition of the word "lewd," to wit:

The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.,* by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition. As early as *U.S. v. Gomez* we had already lamented that –

> It would be somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of article 439 of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover.[43]

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[42] *Supra* note 38.

[43] *Id*. at 756, citing *U.S. v. Gomez*, 30 Phil. 22, 25 (1915); other citations omitted.

After a careful evaluation, the Court finds that the mere fact of "squeezing" the private part of a child – *a young girl 12 years of age* – could not have signified any other intention but one having lewd or indecent design. It must not be forgotten that several years prior, accused-appellant had raped AAA in the same house, for which act he was appropriately convicted. Indeed, the law indicates that the mere *touching* – more so, "squeezing," in this case, which strongly suggests that the act was intentional – of AAA's genitalia clearly constitutes lascivious conduct. It could not have been done merely to annoy or vex her, as opined by the courts *a quo*. That AAA was fully clothed at that time, which led the courts *a quo* to believe that accused-appellant could not have intended to lie with her, is inconsequential. "'Lewd' is defined as obscene, lustful, indecent, and lecherous. It signifies that form of immorality which has relation to moral impurity; or that which is carried on a wanton manner."[44] As such, accused-appellant's act of squeezing AAA's vagina was a lewd and lascivious act within the definitions set by law and jurisprudence.

Under Section 5 (b) of RA 7610, the prescribed penalty for lascivious conduct is *reclusion temporal* in its medium period to *reclusion perpetua*. In the absence of mitigating or aggravating circumstances, the maximum term of the sentence shall be taken from the medium period[45] thereof. Applying the Indeterminate Sentence Law, the minimum term shall be taken within the range of the penalty next lower in degree, which is *prision mayor* in its medium and maximum periods to *reclusion temporal* in its minimum period.[46] Accordingly, accused-appellant is sentenced to suffer an indeterminate penalty of imprisonment ranging from ten (10) years and one (1) day of *prision mayor*, as minimum, to 17 years, four (4) months, and one (1) day of *reclusion temporal*, as maximum. In addition, and conformably with recent jurisprudence, accused-appellant is ordered to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, ₱15,000.00 as exemplary damages, and ₱15,000.00 as

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[44] *PO3 Sombilon, Jr. v. People*, 617 Phil. 187, 197 (2009); citation omitted.

[45] 17 years, four (4) months, and one (1) day to 20 years.

[46] 14 years, eight (8) months, and one (1) day to *reclusion perpetua*.

fine, all of which shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment.[47]

WHEREFORE, the Decision dated June 30, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01160-MIN is hereby **AFFIRMED** with the following **MODIFICATIONS**:

(1) In FC Criminal Case No. 2008-426, accused-appellant Dominador Ladra is found guilty beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code, as amended, and, accordingly, sentenced to suffer the penalty of *reclusion perpetua* and to pay private complainant the amounts of ₱75,000.00 as moral damages, ₱75,000.00 as civil indemnity, and ₱75,000.00 as exemplary damages;

(2) In FC Criminal Case No. 2008-427, accused-appellant Dominador Ladra is found guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code, as amended, in relation to Section 5 (b) of Republic Act No. 7610 and, accordingly, sentenced to suffer the indeterminate prison term of 10 years and one (1) day of *prision mayor*, as minimum, to 17 years, four (4), months and one (1) day of *reclusion temporal*, as maximum, and to pay private complainant the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, ₱15,000.00 as exemplary damages, and ₱15,000.00 as fine;

(3) Accused-appellant Dominador Ladra is ordered to pay the private complainant interest on all monetary awards at the legal rate of six percent (6%) per annum from the date of finality of this Decision until full payment.

SO ORDERED.

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

Sereno, C.J., on leave.

Del Castillo, J., on official leave.

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[47] See *Quimvel v. People*, *supra* note 37.

[*] Per Special Order No. 2464 dated July 17, 2017.

SPECIAL THIRD DIVISION

[G.R. No. 225054. July 17, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AGAPITO DIMAALA *y* ARELA**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXTINGUISHMENT OF CRIMINAL LIABILITY; THE DEATH OF ACCUSED-APPELLANT PRIOR TO HIS FINAL CONVICTION BY THE COURT RENDERS DISMISSIBLE THE CRIMINAL CASE AGAINST HIM.— It is settled that the death of accused-appellant prior to his final conviction by the Court renders dismissible the criminal case against him. Article 89 (1) of the Revised Penal Code provides that the criminal liability is **totally extinguished** by the death of the accused, to *wit:* Article 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 therefor is extinguished only when the death of the offender occurs before final judgment.

2. ID.; ID.; EXTINGUISHMENT OF CIVIL LIABILITY; THE DEATH OF THE ACCUSED PRIOR TO FINAL JUDGMENT TERMINATES THE CIVIL LIABILITY DIRECTLY ARISING FROM AND BASED SOLELY ON THE OFFENSE COMMITTED, BUT HIS CIVIL LIABILITY BASED ON SOURCES OTHER THAN THE SUBJECT DELICT SURVIVES.— In *People v. Culas,* citing *People v. Layag,* the Court explained the effects of the death of an accused pending appeal on his liabilities, as follows: 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 *sensostrictiore."* 2. Corollarily, the claim for civil liability survives notwithstanding the death

of the accused, if the same may also be predicated on a source of obligation other than delict. x x x. In this relation, the Court stresses that accused-appellant's civil liability based on sources *other than* the subject delict survives, and the victim may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.

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

PERLAS-BERNABE, *J.*:

In a Decision[1] dated May 8, 2012, the Regional Trial Court of Calauag, Quezon (RTC) in Criminal Case No. 4994-C found accused-appellant Agapito Dimaala *y* Arela (accused-appellant) guilty beyond reasonable doubt of the crime of Murder, the dispositive portion of which reads:

WHEREFORE, premises considered, this court renders judgment finding AGAPITO DIMAALA *y* Arela **GUILTY** beyond reasonable doubt of the crime charged for the treacherous killing of Rodrigo Marasigan. Said accused is hereby sentenced to Reclusion Perpetua without eligibility for parole.

He is likewise ordered to pay the family of Rodrigo Marasigan the following:

PhP 75,000.00 as civil indemnity;
PhP 75,000.00 as moral damages;
PhP 36,000.00 as actual damages;
PhP 30,000.00 as exemplary damages; and
PhP 25,000.00 as temperate damages.

SO ORDERED.[2]

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[1] Not attached to the *rollo*.

[2] *Rollo*, pp. 5-6.

Accused-appellant appealed his conviction before the Court of Appeals (CA). In a Decision[3] dated September 23, 2015 in CA-G.R. CR No. 05595, the CA affirmed the RTC's decision finding accused-appellant guilty of the crime charged but deleted the award of temperate damages.[4]

Aggrieved, accused-appellant filed a Notice of Appeal[5] from the CA's Decision, but later on decided not to pursue his appeal. Thus, he filed a Motion to Withdraw Appeal with Prayer for Immediate Issuance of Entry of Judgment,[6] which the Court granted in its Resolution[7] dated September 21, 2016. Following the closure and termination of the case, the Court declared the finality of the aforesaid Resolution and issued an Entry of Judgment.[8]

Meanwhile, the Court received a Letter[9] dated February 23, 2017 from the Bureau of Corrections informing it that accused-appellant had died on August 23, 2016 at the New Bilibid Prison Hospital, as evidenced by the Certificate of Death[10] attached thereto.

In view of this development, the criminal action, as well as the civil action for the recovery of the civil liability *ex* delicto, is *ipso facto* extinguished.[11]

It is settled that the death of accused-appellant prior to his final conviction by the Court renders dismissible the criminal

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[3] *Id*. at 2-13. Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Jose C. Reyes, Jr. and Stephen C. Cruz concurring.

[4] *Id*. at 12.

[5] *Id*. at 14.

[6] Dated July 28, 2016. *Id*. at 21-23.

[7] *Id*. at 30-31. Signed by Division Clerk of Court Wilfredo V. Lapitan.

[8] *Id*. at 36.

[9] *Id*. at 43.

[10] *Id*. at 44.

[11] See *People v. Layag*, G.R. No. 214875, October 17, 2016.

case against him.[12] Article 89 (1) of the Revised Penal Code provides that the criminal liability is **totally extinguished** by the death of the accused, to *wit*:

> Article 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 therefor is extinguished only when the death of the offender occurs before final judgment;
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> x x x x x x x x x

In *People v. Culas*,[13] citing *People v. Layag*,[14] the Court explained the effects of the death of an accused pending appeal on his liabilities, as follows:

> 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 the accused, if the same may also be predicated on a source of obligation other than delict. x x x.
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> x x x x x x x x x

In this relation, the Court stresses that accused-appellant's civil liability based on sources *other than* the subject delict survives, and the victim may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.[15]

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[12] See *People v. Culas*, G.R. No. 211166, June 5, 2017.

[13] See *id*.

[14] *Supra* note 12.

[15] See *id*.

WHEREFORE, the Court resolves to: *(a)* **DISMISS** Crim. Case No. 4994-C before the Regional Trial Court of Calauag, Quezon by reason of the death of accused-appellant Agapito Dimaala *y* Arela; and *(b)* **DECLARE** the instant case **CLOSED** and **TERMINATED**. No costs.

SO ORDERED.

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

THIRD DIVISION

[A.C. No. 7824. July 19, 2017]

ELIEZER F. CASTRO and BETHULIA C. CASAFRANCISCO, *complainants, vs.* **ATTY. JOHN BIGAY, JR. and ATTY. JUAN SIAPNO, JR.,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT OR SUSPENSION OF ATTORNEYS; CONSIDERING THE SERIOUS CONSEQUENCES OF THE DISBARMENT OR SUSPENSION OF A MEMBER OF THE BAR, THE COURT HAS CONSISTENTLY HELD THAT PREPONDERANT EVIDENCE IS NECESSARY TO JUSTIFY THE IMPOSITION OF ADMINISTRATIVE PENALTY ON A MEMBER OF THE BAR.— It is well to remember that in disbarment proceedings, the burden of proof rests upon the complainant. For the Court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof. It is settled that considering the serious consequences of the disbarment or suspension of a member of the Bar, the Court has consistently held that preponderant evidence is necessary to justify the imposition of administrative

penalty on a member of the Bar. Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. In the absence of preponderant evidence, the presumption of innocence of the lawyer subsists and the complaint against him must be dismissed.

2. **ID.; ID.; AN ATTORNEY ENJOYS THE PRESUMPTION OF INNOCENCE UNTIL THE CONTRARY IS PROVED, AND AS AN OFFICER OF THE COURT, HE IS PRESUMED TO HAVE PERFORMED HIS DUTIES IN ACCORDANCE WITH THE LAWYER'S OATH; CASE AT BAR.—** [W]hether or not We take into consideration such pieces of evidence, the fact still remains that the records are barren of any proof to support the accusations against Atty. Bigay in the instant administrative case. Section 3(a), Rule 131 of the Rules of Court (Rules) provides that every person is presumed innocent of a crime or wrongdoing. Thus, this Court has consistently held that an attorney enjoys the legal presumption that he or she is innocent of the charges against him or her until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. Thus, without such required proof to overcome the presumption of innocence, this Court will not hesitate to dismiss an administrative case against a member of the Bar.

3. **ID.; NOTARIES PUBLIC; A NOTARY PUBLIC EXERCISES DUTIES CALLING FOR CAREFULNESS AND FAITHFULNESS; VIOLATION IN CASE AT BAR; PENALTY.—** As to Atty. Siapno's liability, from his own admissions, it cannot be doubted that he is guilty of dereliction of duty as a notary public. It was admitted that the questioned deeds of sale bore the impression of his notarial seal. He, however, maintains that he did not notarize the said documents and that his signatures therein were forged, which, however, were not proven in this case. He admitted that he has no sole access and control of his notarial seal as other persons could make use of the same without his consent or knowledge. x x x A notary public exercises duties calling for carefulness and faithfulness. The Notarial Law and the 2004 Rules on Notarial Practice require a duly commissioned notary public to refrain

from committing any dereliction or any act which may serve as a cause for the revocation of his commission or the imposition of administrative sanctions. Thus, Atty. Siapno's excuse cited above cannot absolve him from liability. Anent the penalty, considering that this is Atty. Siapno's first infraction and that it was not clearly proven that there was indeed an illegal transaction in this case or that he participated therein, We find that the appropriate penalty is reprimand.

APPEARANCES OF COUNSEL

Ramon V. Cajipe, Jr. for complainants.
Teofilo B. Galang for respondent Juan Siapno, Jr.

D E C I S I O N

TIJAM, *J.*:

This is a disbarment case against respondents Atty. John Bigay, Jr. (Atty. Bigay) and Atty. Juan Siapno, Jr. (Atty. Siapno) filed by complainants Eliezer F. Castro (Eliezer) and Bethulia C. Casafrancisco (Bethulia).

The Facts

Originally, the complaint[1] filed directly to this Court imputed several violations, criminal and administrative in nature, against respondents such as perjury, estafa through falsification of public documents, obstruction of justice, deceit, and grave misconduct, among others. The case was then referred to the Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline (CBD) for investigation and recommendation. Upon preliminary conference, it was agreed upon that the issues, stipulations, and admissions shall be limited to the pleadings filed before the said office.[2] Thus, the factual backdrop of the case is as follows:

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[1] *Rollo*, pp. 1-7.

[2] *Id*. at 429.

The complaint alleged that sometime in August 1989, Bethulia engaged Atty. Bigay's legal services for the settlement of her late father's estate, which includes a 411-square meter parcel of land situated in Poblacion, Lingayen, Pangasinan. Atty. Bigay also represented Bethulia in several cases related to the estate's settlement.[3]

The complainants, however, discovered that Atty. Bigay had vested interest in having a share in the subject inheritance. According to the complainants, Atty. Bigay, with the cooperation of Atty. Siapno, was able to transfer an 80 sq m portion (subject property) of the said parcel of land to his and her wife's name by simulating contracts of sale, to wit: (1) a Deed of Absolute Sale dated June 1, 2005, covering the sale of the subject property to spouses Peter and Jocelyn Macaraeg (Spouses Macaraeg); and (2) a Deed of Absolute Sale dated October 4, 2006, covering the sale of the subject property to Atty. Bigay and his wife. These deeds were notarized by Atty. Siapno on the said dates.[4]

The instant complaint is, thus, filed against Atty. Bigay for having an interest in a property subject of litigation/s which he is handling and for forging and simulating deeds to the prejudice of his client and the latter's co-heirs.[5]

For his part, Atty. Bigay denied being Bethulia's counsel in 1989, averring that he passed the bar exam only in 1992.[6] Further, he averred that the subject estate had long been settled and the property subject of the deeds of sale had been apportioned to Bethulia way back in 1984 through extra-judicial partition.[7] To show Bethulia's ownership of the 411-sq m parcel of land prior to his and his wife's acquisition of the 80 sq m portion thereof, Atty. Bigay presented: (1) a Tax Declaration under

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[3] *Id*. at 2.

[4] *Id*. at 4.

[5] *Id*.

[6] *Id*. at 52.

[7] *Id*. at 55.

Bethulia's name; (2) annotations showing that Bethulia mortgaged the property to the bank in 1992 and 1996; (3) the Deed of Sale which shows that Bethulia sold the subject property to Macaraeg; (4) and a deed of donation which shows that Bethulia donated the remaining 331 sq m portion of the said parcel of land in 2005.[8] These circumstances, according to Atty. Bigay, clearly show that there was no irregularity in his and his wife's acquisition of the said portion, contrary to complainants' imputations.

For his part, Atty. Siapno denied having notarized the subject deeds of sale. Specifically, Atty. Siapno averred that the said deeds are falsified, that his signatures therein as notary public were forged, and that he has never met Atty. Bigay, Bethulia, and Macaraeg.[9]

Report and Recommendation of the IBP-CBD

Relying upon Atty. Siapno's claim that his signatures in the subject deeds were forged and that he had never personally met Atty. Bigay, Bethulia, and Macaraeg, the IBP-CBD was persuaded that the said deeds were falsified. Then, by virtue of Atty. Bigay and his wife's notorious claim over the property, the IBP-CBD theorized that the said spouses are the only persons interested in the property and the only beneficiary of the said simulated sales. The IBP-CBD then proceeded to conclude that only a person who has a legal mentality would be able to formulate such tactic to make it appear that Spouses Bigay were buyers in good faith. In addition, the IBP-CBD cited the principle that the person who is in possession of a forged/falsified document and made use and benefited from the same is presumed to be the forger/falsifier. Pinning the guilt mainly on Atty. Bigay, the IBP-CBD recommended in its November 6, 2009 Report and Recommendation,[10] thus:

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

[9] *Id*. at 30.

[10] *Id*. at 490-494.

WHEREFORE, it is most respectfully recommended that respondent John L. Bigay, Jr. be SUSPENDED for six (6) months from the active practice of law. For respondent Juan C. Siapno, Jr., he is WARNED to be extra careful with his notarial paraphernalia.[11]

The IBP Board of Governors Resolutions

On February 13, 2013, the IBP Board of Governors issued Resolution No. XX-2013-131,[12] which reads:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and for using a falsified Deed of Sale and benefiting (sic), Atty. John L. Bigay, Jr. is hereby* ***SUSPENDED from the practice of law for three (3) months*** *and Atty. Juan C. Siapno, Jr. is hereby* ***WARNED*** *to be circumspect in his notarial transaction.* (Emphasis supplied)

Atty. Bigay's Motion for Reconsideration[13] was denied by the IBP Board of Governors in its Resolution No. XXI-2014-187[14] dated March 23, 2014, thus:

RESOLVED to DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2013-131 dated February 13, 2013 is hereby **AFFIRMED**.[15]

Having a final say on the matter of disciplining members of the bar, We now resolve the instant complaint.

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[11] *Id*. at 494.

[12] *Id*. at 489.

[13] *Id*. at 495-501.

[14] *Id*. at 511.

[15] *Id*. at 510.

Issue

Should the respondents be held administratively liable based on the allegations in the pleadings of all parties on record?

Our Ruling

It is well to remember that in disbarment proceedings, the burden of proof rests upon the complainant. For the Court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof.[16]

It is settled that considering the serious consequences of the disbarment or suspension of a member of the Bar, the Court has consistently held that preponderant evidence is necessary to justify the imposition of administrative penalty on a member of the Bar.[17] Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[18]

In the absence of preponderant evidence, the presumption of innocence of the lawyer subsists and the complaint against him must be dismissed.[19]

The IBP-CBD found Atty. Bigay guilty of forging the subject deeds of sale and using the same for his benefit, hence, it recommended the latter's suspension from the practice of law for six months. Atty. Siapno, on the other hand, was merely warned to be extra careful with his notarial paraphernalia, the IBP-CBD relying on the latter's allegations and denial.

However, the findings and conclusions of the IBP lack factual and legal support.

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[16] *Francia v. Atty. Abdon*, A.C. No. 10031, July 23, 2014.

[17] *Id*. citing *Aba v. De Guzman, Jr.*, A.C. No. 7649, December 14, 2011.

[18] *Id*.

[19] *Id*.

As can be gleaned from the report and recommendation of the IBP-CBD quoted hereunder, its findings were merely based on bare allegations, assumptions, conjectures, and disputable legal presumption. Pertinent portions of the said report and recommendation read:

> Respondent John Bigay, Jr. was retained by complainant/petitioner Bethulia Casafrancisco as legal counsel/adviser of the heirs of the late Luis M. Castro, for possible division/settlement of their inheritance among the said nine heirs. x x x.
>
> Respondent Juan Siapno **claimed** that his signatures were falsified in [the subject deeds]. He further **claimed** that he had not met personally respondent John Bigay. Also, Bethulia Casafrancisco, Peter Macaraeg, and Jocelyn Macaraeg did not appear before him.
>
> On the other hand, respondent John Bigay with the use of **alleged** falsified Deeds of Absolute Sale made it appear that complainant Bethulia Casafrancisco sold portion of 80 square meters to Peter M. Macaraeg to simulate the sale not a direct sale from Bethulia Casafrancisco to the spouses respondent John Bigay and Glenda Lee Bigay.
>
> Spouses Atty. John L. Bigay and Glenda Lee J. Bigay are the only two persons **appearing** to have interest and benefited on the sale x x x as clearly manifested in their Affidavit of Adverse Claim, Notice of Rights and Ownership and photographs of the property showing that said property is already acquired by them. x x x.
>
> Being the interested and now the owners of the above-mentioned portion of land, Atty. John L. Bigay and wife Glenda Lee J. Bigay are **presumed** to know who really made the **alleged forgery/ falsification** in this case. If it were true that there was an agreement between Atty. Bigay and his client Bethulia C. Casafrancisco as to the payment of his legal services to be taken from her share on the properties subject of litigations, why the [sic] diversionary tactic employed in the first Deed of Absolute Sale from Bethulia C. Casafrancisco to the alleged fictitious spouses Peter and Jocelyn Macaraeg and the latter to spouses Atty. John L. Bigay and Glenda Lee J. Bigay? This tactic, for sure, was planned by one of legal mentality just to make it appear that they (Bigay) appear to be buyers in good faith and for value.
>
> The facts and circumstances above explained squarely fall on that leading case of *People v. Manansala* were the court held that "He

who is in possession of a forged/falsified document and made use and benefited from the same is **presumed** to be the forger/falsifier." x x x.[20] (Emphasis supplied)

After a careful review of the factual backdrop of the case and available evidence on record, the Court finds that the evidence submitted by the complainants, even if considered together with those presented by Atty. Siapno, fell short of the required quantum of proof. Aside from bare allegations, no evidence was presented to clearly and convincingly establish that Atty. Bigay engaged in unlawful and dishonest conduct, specifically, in forging and/or falsifying deeds of sale for his benefit and dealing with the property of his client under litigation.

To begin with, the allegation of forgery was not clearly substantiated. There is nothing on record that would show that the contracts were simulated, much less that the same were forged and/or falsified by Spouses Bigay. Atty. Siapno may have corroborated complainants' claim of forgery by alleging that he did not notarize and had never met the parties in the said deeds. We, however, could not accept hook, line, and sinker, the unsupported and self-serving claims and denial of Atty. Siapno. The complainants likewise did not adduce any evidence to support their imputations against Atty. Bigay.

On the other hand, Atty. Bigay presented sufficient evidence against the accusations of forgery and engaging in the prohibited practice of dealing with properties under litigation. He presented the notarized deeds of extrajudicial settlement of estate and partition executed by Bethulia and her sisters in 1984, which shows that the 411 sq m portion of the subject parcel of land had already been allocated to Bethulia way back in 1984 as her share in the estate. This was affirmed by the deed of quitclaim and renunciation of rights executed by Bethulia and her sister Minerva in the same year. A tax declaration was then issued in the name of Bethulia over the said property.

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[20] *Rollo,* pp. 516-517.

Further, the notarized Deed of Sale of the subject property clearly states that the same was sold by Bethulia to Macaraeg. Although the validity of the said deed was disputed, no sufficient proof was presented to support the claim of forgery or irregularity in the execution of the same. That the subject property was no longer available for disposal, as the same was already sold to Macaraeg, is affirmed by the deed of donation executed by Bethulia in favor of her children which covers only 331 sq m of the 411- sq m parcel of land. Lastly, the Deed of Sale executed between Macaraeg and Spouses Bigay over the subject property is existent albeit its validity was disputed, but then again, no proof was presented to support the claim of invalidity.

Let it be made clear, however, that neither the IBP nor this Court has the authority to inquire into or determine the rights of the parties, specifically the complainants and Atty. Bigay, over the property involved herein. We also do not attempt to make any determination as to the validity or otherwise of the subject documents, or the regularity or otherwise of the subject sales. Our function in this administrative case is limited to disciplining lawyers.[21] The pronouncements that We make in this case, thus, are not determinative of any issues of law and facts regarding the parties' legal rights over the disputed property.

At any rate, whether or not We take into consideration such pieces of evidence, the fact still remains that the records are barren of any proof to support the accusations against Atty. Bigay in the instant administrative case.

Section 3(a), Rule 131 of the Rules of Court (Rules) provides that every person is presumed innocent of a crime or wrongdoing. Thus, this Court has consistently held that an attorney enjoys the legal presumption that he or she is innocent of the charges against him or her until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath.[22]

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[21] *Gemina v. Atty. Madamba*, A.C. No. 6689, August 24, 2011.

[22] *Aba, et al. v. Atty. De Guzman, Jr., et al.*, A.C. No. 7649, December 14, 2011.

Thus, without such required proof to overcome the presumption of innocence, this Court will not hesitate to dismiss an administrative case against a member of the Bar.

As to Atty. Siapno's liability, from his own admissions, it cannot be doubted that he is guilty of dereliction of duty as a notary public. It was admitted that the questioned deeds of sale bore the impression of his notarial seal. He, however, maintains that he did not notarize the said documents and that his signatures therein were forged, which, however, were not proven in this case. He admitted that he has no sole access and control of his notarial seal as other persons could make use of the same without his consent or knowledge.

In *Gemina v. Atty. Madamba*,[23] the Court held that:

> A notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgment and affirmation of documents or instruments. In the performance of these notarial acts, the notary public must be mindful of the significance of the notarial seal affixed on documents. The notarial seal converts a document from a private to a public instrument, after which it may be presented as evidence without need for proof of its genuineness and due execution.

A notary public exercises duties calling for carefulness and faithfulness.[24]

The Notarial Law and the 2004 Rules on Notarial Practice require a duly commissioned notary public to refrain from committing any dereliction or any act which may serve as a cause for the revocation of his commission or the imposition of administrative sanctions.[25] Thus, Atty. Siapno's excuse cited above cannot absolve him from liability.

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[23] *Supra* note 21.

[24] *Id*.

[25] *Id*.

Anent the penalty, considering that this is Atty. Siapno's first infraction and that it was not clearly proven that there was indeed an illegal transaction in this case or that he participated therein, We find that the appropriate penalty is reprimand.

WHEREFORE, premises considered, the instant administrative case against Atty. John Bigay, Jr. is **DISMISSED**. On the other hand, Atty. Juan Siapno, Jr. is found guilty of violating the Notarial Law and is accordingly, meted out the penalty of **REPRIMAND**, with the stern warning that a repetition of the same or similar act will be dealt with more severely.

Let copies of this Decision be furnished all courts, the Office of the Bar Confidant, and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is directed to append a copy of this Decision to respondent's record as member of the Bar.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Reyes, Jr., JJ.,* concur.

THIRD DIVISION

[A.C. No. 9919. July 19, 2017]

DR. EDUARDO R. ALICIAS, JR. *complainant, vs.* **ATTY. VIVENCIO S. BACLIG**, *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT OR SUSPENSION OF ATTORNEYS; IN DISBARMENT PROCEEDINGS, THE BURDEN OF PROOF RESTS UPON THE COMPLAINANT.— A case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in

a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts. Jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant. In the recent case of *Carrie-Anne Shaleen Carlyle S. Reyes v. Atty. Ramon F. Nieva*, this Court had the occasion to clarify that the proper evidentiary threshold in disbarment cases is substantial evidence.

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; REQUISITES; PRESENT IN CASE AT BAR.— In forum shopping, the following requisites should concur: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. x x x On this note, We rule that there was forum shopping in this case, for while the case before the MTCC was pending, Atty. Baclig consented to the filing of another complaint before another forum, *i.e.*, RTC. Such cases deal with the same parties and same reliefs. Thus, a ruling in one case would resolve the other, and *vice versa*. Moreover, regardless of the fact that Atty. Baclig did not act as counsel in the case before the MTC, it would not exempt him from culpability. Atty. Baclig did not categorically deny the allegations of complainant regarding the commission of forum shopping. Moreover, it is surprising that he was able to answer the 10 causes of action raised by complainant, except the issue on forum shopping. Hence, he is deemed to have admitted that he has knowledge of the pendency of a similar complaint before the MTC when a complaint before the RTC was filed.

3. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); THE FILING OF MULTIPLE PETITIONS CONSTITUTES ABUSE OF COURT PROCESSES AND IMPROPER CONDUCT THAT TENDS TO IMPEDE, OBSTRUCT AND DEGRADE THE ADMINISTRATION OF JUSTICE AND WILL BE PUNISHED AS CONTEMPT OF COURT.— We emphasize that the filing of another action concerning the same subject matter runs contrary to Canon 1 and Rule 12.04 of Canon 12

of the CPR. Canon 1 of the CPR requires a lawyer to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice and Rule 12.04 of Canon 12 prohibits the undue delay of a case by misusing court processes. We reiterate that a lawyer owes fidelity to the cause of his client, but not at the expense of truth and the administration of justice. The filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice and will be punished as contempt of court. A former member of the judiciary need not be reminded of the fact that forum shopping wreaks havoc upon orderly judicial process and clogs the courts' dockets. As a former judge, Atty. Baclig must be mindful not only of the tenets of the legal profession but also of the proper observance of the same.

D E C I S I O N

TIJAM, *J.*:

Before Us is a complaint for disbarment[1] filed by complainant Eduardo R. Alicias, Jr. against Atty. Vivencio S. Baclig (Atty. Baclig) for violation of the Code of Professional Responsibility (CPR) and/or Lawyer's Oath.

The Facts

The case stemmed from the amended complaint[2] for declaration of nullity of void documents, recovery of ownership and possession, accounting of the natural, industrial fruits derived from the illegal occupation of the subject property, exercise of the right of legal redemption with damages, and application for a writ of preliminary injuction filed by Eleuterio Lamorena, Higinio Rene Lamorena, Oscar Lamorena and Eloisa Lamorena, duly represented by their Attorney-in-Fact, Marissa L. Peña, and Marissa L. Peña, in her own behalf (Lamorena, *et al.*) against Robert R. Alicias (Robert) and Urvillo A. Paa (Paa), and herein complainant before the Regional Trial Court (RTC) in Vigan

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

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

City. Said complaint was filed in September 2012 and Atty. Baclig was hired by Lamorena, *et al.* as their counsel.

In said amended complaint, Lamorena, *et al.* questioned the occupancy of complainant and his co-defendants of a certain parcel of land. Lamorena, *et al.* claimed that they are entitled to possession of the same, being the surviving heirs of the lawful owners of the subject property, spouses Vicente and Catalina Lamorena (Catalina).

Complainant and his co-defendants filed their Answer,[3] stressing, among others, that they legally acquired the subject property by virtue of a contract of sale from its lawful owner, Catalina, as the same is her paraphernal property.

It appears, however, that in February 2010, an amended complaint[4] for reconveyance, annulment of deeds and quieting of title was filed by Lamorena, *et al.* against herein complainant and Urvillo Paa before the Municipal Trial Court in Cities (MTCC) in Vigan City. However, it was not Atty. Baclig who acted as counsel in this case.

On May 14, 2013, the complainant filed an administrative case for disbarment against Atty. Baclig before Us.

In said administrative complaint, the complainant averred that Atty. Baclig consented to false assertions when his clients allegedly made false statements in their amended complaint. Complainant also stated that Atty. Baclig knowingly filed an action which was: (1) already barred by *res judicata* and laches; and (2) without the jurisdiction of the RTC where such complaint was filed. Lastly, complainant claimed that Atty. Baclig consented to the filing of a complaint, which asserted similar relief, when a similar case was filed before the MTCC.

In his Comment,[5] Atty. Baclig contended that the allegations in the subject complaint contained absolutely privileged

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[3] *Id*. at 77-93.

[4] *Id*. at 111-115.

[5] *Id*. at 67-76.

communication, which insulates him from liability. Also, the issues as to whether or not the assertions in the subject complaint are false statements and whether or not the RTC has jurisdiction over the subject matter of the action are yet to be decided; hence, the complaint against him holds no water.

Issue

Is Atty. Baclig administratively liable?

Our Ruling

A case of suspension or disbarment is sui generis and not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts.[6]

Jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant.[7] In the recent case of *Carrie-Anne Shaleen Carlyle S. Reyes v. Atty. Ramon F. Nieva*,[8] this Court had the occasion to clarify that the proper evidentiary threshold in disbarment cases is substantial evidence.

The gist of the complaint before Us is the alleged false assertions in the amended complaint, to which Atty. Baclig has consented to. Complainant alleged that Atty. Baclig consented to falsehood when the allegations in the amended complaint specified, among others, that the subject property is a hereditary property when in fact it is a paraphernal property; that the property is unregistered property; and that it was inherited in 1952 when it was not.

However, noteworthy is the fact that such assertions are the matters in dispute in the case before the RTC. In other words, the assertions as to the nature of the property and the time when

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[6] *Cristobal v. Renta*, A.C. No. 9925, September 17, 2014.

[7] *Concepcion v. Fandio, Jr.*, A.C. No. 3677, June 21, 2000.

[8] A.C. No. 8560, September 6, 2016.

it was inherited also deal with the main issue of the case. To recall, Lamorena, *et al.*'s main contention is that the subject property is a hereditary property, being the property of their parents. On the other hand, complainant alleged that they brought the property from Catalina and the latter had every right to sell it even without the consent of her spouse because it is her paraphernal property. In other words, the issue in the amended complaint is who between Lamorena, *et al.* and complainant herein has the right of possession over the subject property. Hence, Atty. Baclig cannot be faulted for consenting to his clients' act of asserting such statements.

At any rate, it must be considered that Atty. Baclig's pleadings were privileged and would not occasion any action against him as an attorney.[9]

As regards *res judicata*, laches, and jurisdiction, We note that the same are not founded on substantial evidence.

However, as to the matter of forum shopping, We find that Atty. Baclig resorted to the same.

In forum shopping, the following requisites should concur: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[10]

In this case, it must be noted that an amended complaint was filed by Lamorena, *et al.* against herein complainant and Paa before the MTCC in February 2010. In sum, such amended complaint sought for the nullification of the mortgage contract and deed of sale which transferred the property to herein

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[9] *De Leon v. Atty. Castelo*, A.C. No. 8620, January 12, 2011.

[10] *Atty. Alonso, et al. v. Atty. Relamida, Jr.*, AC No. 8481, August 3, 2010.

complainant and his co-defendants and the declaration of Lamorena, *et al*. as the absolute owners of the subject property. Eventually, the case before the MTCC was dismissed with prejudice in an Order[11] dated November 9, 2012.

However, on September 19, 2012, another amended complaint was filed by Lamorena, *et al*. against complainants, Robert and Paa, but this time, before the RTC. A cursory reading of the complaint reveals that the reliefs sought pertain to the nullification of any and all the documents in the form of a written agreement which may be executed without the consent of Lamorena, *et al. In esse*, such complaint before the RTC prayed for similar reliefs as those which were sought for in the complaint before the MTCC.

On this note, We rule that there was forum shopping in this case, for while the case before the MTCC was pending, Atty. Baclig consented to the filing of another complaint before another forum, *i.e.*, RTC. Such cases deal with the same parties and same reliefs. Thus, a ruling in one case would resolve the other, and *vice versa*.

Moreover, regardless of the fact that Atty. Baclig did not act as counsel in the case before the MTC, it would not exempt him from culpability. Atty. Baclig did not categorically deny the allegations of complainant regarding the commission of forum shopping. Moreover, it is surprising that he was able to answer the 10 causes of action raised by complainant, except the issue on forum shopping. Hence, he is deemed to have admitted that he has knowledge of the pendency of a similar complaint before the MTC when a complaint before the RTC was filed.[12]

In this regard, We emphasize that the filing of another action concerning the same subject matter runs contrary to Canon 1 and Rule 12.04 of Canon 12 of the CPR. Canon 1 of the CPR requires a lawyer to exert every effort and consider it his duty

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[11] Rendered by Judge Francisco A. Ante, Jr.; *id*. at 52.

[12] *Valdez v. Atty. Dabon, Jr.*, A.C. No. 7353, November 16, 2015.

to assist in the speedy and efficient administration of justice and Rule 12.04 of Canon 12 prohibits the undue delay of a case by misusing court processes.[13]

We reiterate that a lawyer owes fidelity to the cause of his client, but not at the expense of truth and the administration of justice. The filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice and will be punished as contempt of court.

A former member of the judiciary need not be reminded of the fact that forum shopping wreaks havoc upon orderly judicial process and clogs the courts' dockets.[14] As a former judge, Atty. Baclig must be mindful not only of the tenets of the legal profession but also of the proper observance of the same.

WHEREFORE, premises considered, We find the complaint meritorious and accordingly **CENSURE** Atty. Vivencio S. Baclig for violating Canon 1 and Rule 12.04 of Canon 12 of the Code of Professional Responsibility. He is **STERNLY WARNED** that any future violation of his duties as a lawyer will be dealt with more severely.

Let copies of this Decision be furnished all courts, the Office of the Bar Confidant, and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is directed to append a copy of this Decision to respondent's record as member of the Bar.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Reyes, Jr., JJ.,* concur.

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[13] *Teodoro III v. Atty. Gonzales*, A.C. No. 6760, January 30, 2013.

[14] *Pena v. Aparicio*, A.C. No. 7298, June 25, 2007.

THIRD DIVISION

[G.R. No. 196412. July 19, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs,* **MIGUEL OMENGAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM PROGRAM ([CARP]); JUST COMPENSATION; THE COURT FINDS NO REASON TO TREAT DIFFERENTLY THE DETERMINATION OF JUST COMPENSATION FOR EXPROPRIATION PROCEEDINGS UNDERTAKEN FOR THE PURPOSE OF AGRARIAN REFORM; RATIONALE.— We find no reason to treat differently the determination of just compensation for expropriation proceedings undertaken for purposes of agrarian reform. This must be so considering that the taking of property under R.A. No. 6657 has been consistently characterized as the State's exercise of the power of eminent domain. Found in the various provisions of the fundamental law is the uniform treatment of the payment of just compensation as a limitation to the State's exercise of eminent domain. The concept of just compensation likewise bears the consistent and settled meaning as the full and fair equivalent of the property taken from its owner by the expropriator, the measure is not the taker's gain, but the owner's loss. The word "just" is used to qualify the meaning of the word "compensation" and to convey thereby the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample. There is therefore no cause to treat differently the manner and the method by which just compensation is determined only because it is to be paid in implementation of the agrarian reform law.

2. ID.; ID.; ID.; THE VALUATION OF PROPERTY OR DETERMINATION OF JUST COMPENSATION IN EMINENT DOMAIN PROCEEDINGS IS ESSENTIALLY A JUDICIAL FUNCTION WHICH IS VESTED WITH THE COURTS AND NOT WITH ADMINISTRATIVE AGENCIES.— It is likewise jurisprudentially-settled that the valuation of property or determination of just compensation in

eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. By law, the RTC-SAC enjoys original and exclusive jurisdiction in determining just compensation for lands acquired for purposes of agrarian reform. x x x We emphasize that in determining just compensation, the RTC-SAC necessarily works within the parameters set by law and as such, should take into account the formulae provided by DAR. Be that as it may, when acting within the parameters set by the law itself, the RTC-SACs, are not strictly bound to apply the DAR formulae to its minute detail when the situation does not warrant the formula's strict application. The RTC, in the exercise of its judicial function of determining just compensation, cannot be restrained or delimited in the performance of its judicial function of determining just compensation as to do so would amount to a derogation of its judicial prerogative. x x x It is therefore inaccurate to argue that the RTC-SAC is mandated to strictly follow the formula, when the RTC-SAC, in the exercise of an essentially judicial function and discretion, can deviate therefrom subject to the jurisprudential limitation that the factual situation calls for it and that the RTC-SAC clearly explains the reason for such deviation.

3. CIVIL LAW; DAMAGES; INTEREST; THE INTEREST TO BE IMPOSED ONLY ON THE BALANCE OF THE FINAL JUST COMPENSATION; IMPOSABLE RATES, EXPLAINED.— In the instant case, the interest is to be imposed only on the balance of the final just compensation, *i.e.*, the final just compensation (Php 500,820.125) less the amount of the initial valuation (Php 219,524.98) or Php 281,295.145. Since petitioner's initial valuation had been contested, and it has been subsequently determined that the expropriated property had been undervalued, an interest on the balance or the difference between the amount already paid and the final just compensation is proper. While the debt incurred by the government on account of the taking of the property subject of an expropriation constitutes a forbearance, nevertheless, in line with the recent circular of the Monetary Board of the Bangko Sentral ng Pilipinas No. 799, Series of 2013, effective July 1, 2013, the prevailing rate of interest for loans or forbearance of money is six percent (6%) *per annum*, in the absence of an express contract as to such rate of interest. Accordingly, the interest rate of twelve percent (12%) *per annum* should be imposed on the balance

due from the date of the taking, or on March 20, 2000 until June 30, 2013 and the interest rate of six percent (6%) *per annum* is imposed from July 1, 2013 until fully paid.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Rainier D. Sarol for respondent.

D E C I S I O N

TIJAM, *J.*:

Petitioner Land Bank of the Philippines[1] (LBP) challenges through this Petition for Review[2] under Rule 45 the Decision[3] dated January 6, 2011 and Resolution[4] dated April 7, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 110387, which affirmed with modification the Decision[5] dated January 6, 2009 of the Regional Trial Court (RTC) of Bulanao, Tabuk City, Kalinga, Branch 25, sitting as Special Agrarian Court (RTC-SAC).

In its assailed decision and resolution, the CA upheld the RTC-SAC's valuation of just compensation but reduced the interest thereon from twelve percent (12%) to six percent (6%) *per annum.*

The Facts and Antecedent Proceedings

Respondent Miguel Omengan was the registered owner of a parcel of land located at Ileb, Nambaran, Tabuk City, Kalinga

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[1] A government financial institution organized and existing by virtue of Republic Act No. 3844 or the Agricultural Land Reform Code and is the financial intermediary for the Comprehensive Agrarian Reform Program.

[2] *Rollo*, pp. 9-49.

[3] Penned by Associate Justice Antonio L. Villamor, concurred in by Associate Justices Jose C. Reyes, Jr. and Franchito N. Diamante; *id*. at 53-64.

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

[5] Penned by Judge Marcelino K. Wacas; *id*. at 121-126.

with an area of 10.001 hectares and covered by Transfer Certificate of Title (TCT) No. T-10172.[6]

On March 20, 2000, respondent received a notice of coverage from the Department of Agrarian Reform (DAR) placing the subject property under the Comprehensive Agrarian Reform Program (CARP).[7] Field investigation was then conducted and the property was initially valued by petitioner at Php 219,524.98, computed as follows:

For Unirrigated Riceland

Area = 6.001 has.
CNI = ₱36,020.83/ha.
MV = ₱22,086.63/ha.

ULV/ha. = (CNI x .90) + (MV x .10)
= (₱36,020.83 x .90) + (₱22,076.63 x .10)
= ₱32,418.74 + ₱2,208.66
= ₱34,627.40

LV = ULV/ha x area
= ₱34,627.40 x 6.0001 has.
= ₱207,767.86

For Idle Land

Area = 4.000 has.
MV = ₱1,469.64/ha.

ULV/ha. = MV x 2
= ₱1,469.64 x 2
= ₱2,969.28

LV = ULV/ha. x area
= ₱2,939.28 x 4.000 has.
= ₱11,757.12

Total: ₱207,767.86
11,757.12
₱219,524.98[8]

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[6] *Id*. at 121, 173.

[7] *Id*. at 224.

[8] *Id*. at 15.

The Claim Folder and Processing Form were prepared and on October 18, 2000, payment for the property was approved and DAR accordingly made an offer to respondent.[9]

Respondent rejected the offer. DAR requested petitioner to deposit in the respondent's name the amount of the initial valuation. Thus, on December 12, 2000, petitioner deposited the sum of Php 219,524.98 in cash and agrarian reform bonds.[10]

On March 10, 2005, DAR, through its Provincial Agrarian Reform Officer (PARO), requested the Office of Provincial Agrarian Reform Adjudicator (PARAD) for Kalinga for preliminary determination of just compensation.[11]

In a Decision[12] dated July 14, 2005, the PARAD noted that since the property was taken in 2000, the unit market value (UMV) for the year 2000 which is Php 18,940/ha as certified by the Municipal Assessor of Tabuk, Kalinga should have been applied instead of the 1994 Schedule of Base UMV of Php 15,780/ha used by petitioner.[13] The PARAD further noted that the selling price of palay per kilo in 2000 as certified by the National Food Authority (NFA) in the amount of Php 10 should have been used in the computation of the Capitalized Net Income (CNI) and not petitioner's baseless valuation of Php 6.50/k.[14] Finally, the PARAD sustained petitioner's valuation of the idle portion of four has, the same not having been contested by respondent.[15]

In disposal, the PARAD held:

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[9] *Id*.

[10] *Id*. at 16.

[11] *Id*. at 174.

[12] Issued by Adjudicator Marivic C. Casabar; *id*. at 174-183.

[13] *Id*. at 182.

[14] *Id*.

[15] *Id*. at 182-183.

WHEREFORE, premises considered, the valuation of the subject property by the LBP is hereby MODIFIED. Subject landholding's valuation should be increased to Php326,918.20 plus legal interests.

SO ORDERED.[16]

However, on motion for reconsideration (MR), the PARAD in a Resolution[17] dated September 12, 2005 reversed the Decision dated July 14, 2005 and instead adopted petitioner's valuation of Php 264,458.74.

This prompted petitioner to file on August 12, 2005 a petition for judicial determination of just compensation before the RTC-SAC.[18]

The Ruling of the RTC-SAC

The RTC-SAC pegged the average harvest per ha of the subject property at 90 cavans considering respondent's testimony that he is harvesting more or less 80 to 100 cavans per ha.[19] The RTC-SAC then used the selling price of Php 9.50 per k based on the NFA's certification that the price per k of palay during dry season is Php 10, while the price is Php 9 during wet season.[20] Hence, for the six has of unirrigated riceland, the RTC-SAC arrived at the amount of Php 256,500 as CNI. The market value (MV) on the other hand was based on the BIR zonal valuation for unirrigated riceland for the years 1999 to 2000 which was Php 6 per square meter to arrive at an MV of Php 360,000.[21]

For the remaining four has of idle land which was planted with fruit-bearing trees, bananas, cassava and camote, the RTC-SAC valued its harvest per ha at Php 10,000. Thus, for the

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[16] *Id*. at 183.

[17] *Id*. at 167; computation not extant on records.

[18] *Id*. at 168.

[19] *Id*. at 124.

[20] *Id*. at 123.

[21] *Id*. at 124.

four has of idle land, the CNI is Php 40,000.[22] The MV was likewise based on the BIR zonal valuation of cogon land for the years 1999 to 2000 which was Php 1 per sq m or a total of Php 40,000.[23]

In computing the amount of just compensation, the RTC-SAC referred to the following formula:

LV = (CNI x 0.9) + (MV x 0.1)

and computed the land valuation of the six has and the four has as follows:

> Applying the formula for the 6 hectares:
>
> ₱256,500.00 x 0.9 = ₱230,850.00
> + ₱360,000.00 x 0.1 = ₱36,000.00
>
> Therefore, the land valuation is ₱266,850.00
>
> Applying the formula for the 4 hectares:
>
> ₱40,000.00 x 0.9 = ₱36,000.00
> + ₱40,000.00 x 0.1 = ₱4,000.00
>
> The land valuation then is ₱40,000.00.[24]

However, on the ground that the subject property is considered as one of Tabuk City's potential growth area for urban expansion, the RTC-SAC granted an additional valuation of Php 40,000 per ha or an additional MV of Php 400,000, for a total just compensation of Php706,850 for the 10.001 has.

In disposal, the RTC-SAC held:

> IN THE LIGHT OF THE FOREGOING PREMISES, the just compensation of the 10.001 hectares of agricultural land situated at Nambaran, Tabuk, Kalinga and embraced under Transfer Certificate of Title No. T-10172 issued in the registered name of Miguel Omengan is ₱706,850.00 plus legal interest of 12% from the date of compensable taking until full payment is made.

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[22] *Id*. at 125.

[23] *Id*.

[24] *Id*. at 126.

SO ORDERED.[25]

Petitioner's MR[26] was similarly denied by the RTC-SAC in its Resolution[27] dated July 31, 2009. Undaunted, petitioner elevated the case to the CA arguing that the RTC-SAC failed to comply with the mandatory formula prescribed under Section 17 of Republic Act (R.A.) No. 6657[28] and DAR Administrative Order (A.O.) No. 5,[29] Series of 1998.[30] Petitioner also disputed the imposition of 12% interest in the absence of delay.[31]

The Ruling of the CA

The CA adopted the RTC-SAC's award of just compensation.[32] The CA held that the formula prescribed in DAR A.O. No. 6[33] is mandatory and found that the RTC-SAC utilized "each and every"[34] factor prescribed in said formula in arriving at the just compensation. Nevertheless, the CA modified the interest rate from twelve percent (12%) to six percent (6%) *per annum* in accordance with DAR A.O. No. 13, Series of 1994.[35]

Accordingly, the CA disposed:

WHEREFORE, based on the foregoing, the Petition for Review is **GRANTED**. The Decision, dated January 6, 2009, and Resolution

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[25] *Id*.

[26] *Id*. at 131-147.

[27] *Id*. at 127-130.

[28] Otherwise known as the Comprehensive Agrarian Reform Law of 1998.

[29] Revised Rules And Procedures Governing The Acquisition Of Agricultural Lands Subject Of Voluntary Offer To Sell And Compulsorily Acquisition Pursuant To Republic Act No. 6657.

[30] *Id*. at 104.

[31] *Id*. at 106.

[32] *Id*. at 53-64.

[33] As amended by DAR A.O. No. 5, Series of 1998.

[34] *Rollo*, p. 58.

[35] *Id*. at 62-63.

dated July 31, 2009, issued by the Regional Trial Court of Bulanao, Tabuk City, Kalinga, Branch 25 in Agrarian Case No. 13 is **AFFIRMED with modification** reducing the interest rate from 12% to 6%.

SO ORDERED.[36]

Petitioner's MR[37] was similarly rebuked by the CA, in its Resolution[38] dated April 7, 2011. Hence, resort to the instant petition.

The Issues

Petitioner imputes error on the part of the CA when it affirmed the valuation made by the RTC-SAC despite the latter's alleged failure to strictly adhere to the mandatory formula prescribed under DAR A.O. No. 5-98. Petitioner advances the view that just compensation in the implementation of agrarian reform is absolutely different from ordinary expropriation proceedings.[39]

Petitioner further questions the CA's imposition of six percent (6%) interest as DAR A.O. No. 13-94 applies only to lands covered by Presidential Decree (P.D.) No. 27 and Executive Order (E.O) No. 228 and not under R.A. No. 6657. In any event, petitioner argues that no interest can be imposed as there was no delay in the payment of just compensation.

Hence, for resolution are: (1) whether the formula for determining just compensation prescribed under DAR A.O. No. 5-98 was complied with; and (2) whether the CA correctly imposed a six percent (6%) interest on the amount of just compensation pursuant to DAR A.O. No. 13-94.

The Ruling of this Court

There is merit in the petition.

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[36] *Id*. at 63.

[37] *Id*. at 268-279.

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

[39] *Id*. at 33.

Determination of Just Compensation is Essentially a Judicial Function to be Exercised within the Purview of R.A. 6657 and DAR A.O. No. 5-98; Deviation from the Prescribed Formula is Allowed Provided the Reason for such Deviation is Clearly Explained

Petitioner anchors its position that the RTC-SAC should have strictly complied with DAR A.O. No. 5-98 on the premise that just compensation in agrarian reform cases is different from ordinary expropriation proceedings.

On the contrary, We find no reason to treat differently the determination of just compensation for expropriation proceedings undertaken for purposes of agrarian reform. This must be so considering that the taking of property under R.A. No. 6657 has been consistently characterized as the State's exercise of the power of eminent domain.

Found in the various provisions of the fundamental law[40] is the uniform treatment of the payment of just compensation as

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[40] **Article III. Bill of Rights**

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

Article XII. National Economy and Patrimony

Section 18. The State may, in the interest of national welfare or defense, establish and operate vital industries and, **upon payment of just compensation**, transfer to public ownership utilities and other private enterprises to be operated by the Government.

Article XIII. Social Justice and Human Rights

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small

a limitation to the State's exercise of eminent domain. The concept of just compensation likewise bears the consistent and settled meaning as the full and fair equivalent of the property taken from its owner by the expropriator, the measure is not the taker's gain, but the owner's loss. The word "just" is used to qualify the meaning of the word "compensation" and to convey thereby the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample.[41]

There is therefore no cause to treat differently the manner and the method by which just compensation is determined only because it is to be paid in implementation of the agrarian reform law.

It is likewise jurisprudentially-settled that the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies.[42] By law,[43] the RTC-SAC enjoys original and exclusive jurisdiction in determining just compensation for lands acquired for purposes of agrarian reform.

Nevertheless, in the exercise of its judicial function to determine just compensation, the RTC-SAC takes into

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landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied)

[41] *National Power Corporation v. Spouses Zabala*, G.R. No. 173520, January 30, 2013, citing *Republic v. Rural Bank of Kabacan, Inc.*, G.R. No. 185124, January 25, 2012, 664 SCRA 233, 244; *National Power Corporation v. Manubay Agro-Industrial Development Corporation*, 480 Phil. 470, 479 (2004).

[42] *LBP v. Montalvan*, G.R. No. 190336, June 27, 2012, citing *LBP v. Court of Appeals*, 376 Phil. 252 (1999); and *LBP v. Celada*, 515 Phil. 467 (2006).

[43] Section 57 of R.A. No. 6657 pertinently provides:

Sec. 57. *Special Jurisdiction*. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

consideration the factors enumerated under Section 17 of R.A. No. 6657. DAR, on the other hand, is empowered under R.A. No. 6657 to promulgate rules for its implementation. Hence, pursuant to its rule-making power, DAR issued A.O. No. 5-98 which translated the factors listed under R.A. No. 6657 into a basic and alternative formulae.[44]

This brings Us to petitioner's postulate that the RTC-SAC ought to strictly abide by the provisions of DAR A.O. No. 5-98, describing the latter as mandatory.

We emphasize that in determining just compensation, the RTC-SAC necessarily works within the parameters set by law and as such, should take into account the formulae provided by DAR.[45] Be that as it may, when acting within the parameters set by the law itself, the RTC-SACs, are not strictly bound to apply the DAR formulae to its minute detail[46] when the situation does not warrant the formula's strict application. The RTC, in the exercise of its judicial function of determining just compensation, cannot be restrained or delimited in the performance of its judicial function of determining just compensation as to do so would amount to a derogation of its judicial prerogative.

In *LBP v. Heirs of Maximo Puyat*,[47] the Court explains:

> [T]he determination of just compensation is a judicial function; hence, courts cannot be unduly restricted in their determination thereof. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. While the courts should be mindful of the different

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[44] *LBP v. Yatco Agricultural Enterprises*, G.R. No. 172551, January 15, 2014.

[45] *Id*. See also *LBP v. Sps. Banal*, 478 Phil. 701, 709-710 (2004); *LBP v. Celada*, 515 Phil. 467, 477 (2006); *LBP v. Lim,* G.R. No. 171941, August 2, 2007, 529 SCRA 129, 134-136; *LBP v. Luciano,* G.R. No. 165428, November 25, 2009, 605 SCRA 426, 434-436; *LBP v. Colarina,* G.R. No. 176410, September 1, 2010, 629 SCRA 614, 624-632.

[46] *Supra* note 40.

[47] G.R. No. 175055, June 27, 2012, 675 SCRA 233.

formulae created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it. x x x:

> x x x [T]he basic formula and its alternatives – administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998) – although referred to and even applied by the courts in certain instances, does not and cannot strictly bind the courts. To insist that the formula must be applied with utmost rigidity whereby the valuation is drawn following a strict mathematical computation goes beyond the intent and spirit of the law. The suggested interpretation is strained and would render the law inutile. Statutory construction should not kill but give life to the law. As we have established in earlier jurisprudence, the valuation of property in eminent domain is essentially a judicial function which is vested in the regional trial court acting as a SAC, and not in administrative agencies. The SAC, therefore, must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be arbitrarily restricted by a formula dictated by the DAR, an administrative agency. Surely, DAR AO No. 5 did not intend to straightjacket the hands of the court in the computation of the land valuation. While it provides a formula, it could not have been its intention to shackle the courts into applying the formula in every instance. The court shall apply the formula after an evaluation of the three factors, or it may proceed to make its own computation based on the extended list in Section 17 of Republic Act No. 6657, which includes other factors.[48]

The above pronouncement is but a reflection of the Court's unwavering sentiment as enunciated in the seminal case of *EPZA v. Dulay, et al.*,[49] that the determination of just compensation is, and remains, a judicial function.

In fact, the question as to whether or not the RTC-SACs are mandated to strictly adhere to DAR A.O. No. 5-98 is not entirely novel. In the recent case of *Spouses Nilo and Erlinda Mercado v. LBP*,[50] the Court harmonized and summarized its

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[48] *Id.*

[49] G.R. No. 59603, April 29, 1987.

[50] G.R. No. 196707, June 17, 2015.

pronouncements as to the determination of just compensation *vis-à-vis* the application of the prescribed formulae under DAR A.O. No. 5-98 as follows:

In the recent cases of *Land Bank of the Philippines v. Yatco Agricultural Enterprises, Land Bank of the Phlippines v. Peralta, and Department of Agrarian Reform v. Spouses Diosdado Sta. Romana and Resurreccion O. Ramos*, the Court has made declarations as to the determination of just compensation.

In *Yatco*, the Court stated that the determination of just compensation is a judicial function and the RTC, acting as SAC, has the original and exclusive power to determine just compensation. It was also emphasized therein that in the exercise of its function, the RTC must be guided by the valuation factors under Section 17 of RA 6657, translated into a basic formula embodied in DAR A.O. No. 5. The factors under RA 6657 and the formula under DAR A.O. No. 5 serve as guarantees that the compensation arrived at would not be absurd, baseless, arbitrary or contradictory to the objectives of the agrarian reform laws. However, the Court clarified that the RTC may relax the application of the DAR formula, if warranted by the circumstnces of the case and provided the RTC explains its deviation from the factors or formula above mentioned.

In *Peralta*, the Court confirmed the mandatory character of the guidelines under Section 17 of RA 6657 and restated that the valuation factors under RA 6657 had been translated by the DAR into a basic formula as outlined in DAR A.O. No. 5.

In *Sta. Romana*, it was held that the RTC is not strictly bound by the formula created by the DAR, if the situations before it do not warrant its application. The RTC cannot be arbitrarily restricted by the formula outlined by the DAR. While the DAR provides a formula, "it could not have been its intention to shackle the courts into applying the formula in every instance."

Summarizing the pronouncements in the above-cited cases, the rule is that the RTC must consider the guidelines set forth in Section 17 of RA 6657 and as translated into a formula embodied in DAR A.O. No. 5. However, it may deviate from these factors/ formula if the circumstances warrant or, as stated in *Sta. Romana*, "if the situations before it do not warrant its application." In such a case, the RTC, as held in *Yatco*, must clearly explain the

reason for deviating from the aforesaid factors or formula.[51] (Emphasis ours and citations omitted)

Emphatically, the Court *En Banc* held in the case of *Ramon M. Alfonso v. LBP and Department of Agrarian Reform*,[52] and also in *LBP, et al. v. Heirs of Lorenzo Tanada and Expedita Ebarle*,[53] that:

For clarity, we restate the body of rules as follows: **The factors listed under Section 17 of RA 6657 and its resulting formulas provide a uniform framework or structure for the computation of just compensation which ensures that the amounts to be paid to affected landowners are not arbitrary, absurd or even contradictory to the objectives of agrarian reform. Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken. It is thus entirely allowable for a court to allow a landowner's claim for an amount higher than what would otherwise have been offered (based on an application of the formula) for as long as there is evidence on record sufficient to support the award**.[54] (Emphasis in the original)

It is therefore inaccurate to argue that the RTC-SAC is mandated to strictly follow the formula, when the RTC-SAC, in the exercise of an essentially judicial function and discretion, can deviate therefrom subject to the jurisprudential limitation

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[51] *Id.*

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

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

[54] *Id.*

that the factual situation calls for it and that the RTC-SAC clearly explains the reason for such deviation.[55]

The RTC-SAC Incompletely Applied the Basic Formula Provided under DAR A.O. No. 5-98; Reason for Deviation not Clearly Explained

Having settled that the determination of just compensation is a judicial function that must nevertheless be exercised within the parameters of DAR A.O. No. 5-98 as the guide administrative formula, the point of query is whether the RTC-SAC, in so computing the amount of just compensation, indeed considered the prescribed computation. And, in case of deviation, the further question to be asked is whether such deviation was clearly explained to be permissible.

The factors which the RTC-SAC should consider in determining just compensation is spelled under Section 17 of R.A. No. 6657 as follows:

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

As translated into formula, the pertinent provisions of DAR A.O. No. 5-98 provides:

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

[55] In *LBP v. Castro*, G.R. No. 189125, August 28, 2013, the Court found that the RTC-SAC erred because of, among others, the "unexplained disregard for the guide administrative formula, neglecting such factors as capitalized net income, comparable sales, and market value per tax declaration."

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where:
LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all 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 no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same barangay or municipality (in that order) approved by LBP within one (1) year from receipt of claim folder. (Emphasis supplied)

Considering that no Comparable Sales (CS) was reported,[56] the RTC-SAC ostensibly used the basic formula prescribed in paragraph A1 of DAR A.O. No. 5-98, *i.e.,* **LV = (CNI x 0.9) + (MV x 0.1)**.

The Capitalized Net Income (CNI) factor in the above formula is the difference between the gross sales and total cost of operations capitalized at 12%.[57] The CNI is expressed in equation form as **CNI = (AGP x SP) – CO/capitalization rate**.[58] Where:

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[56] *See* Field Investigation Report; *rollo*, p. 200.

[57] Item II-B of DAR A.O. No. 5-98.

[58] *Id.*

AGP= Average Gross Production corresponding to the latest available 12 months' gross production immediately preceding the date of FI (field investigation)

SP= Selling Price (the average of the latest available 12 months selling prices prior to the date of receipt of the CF (claim folder) by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered for the barangay or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO = Cost of Operations

Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of FI shall continue to use the assumed NIR of 70 %. DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP.

0.12 = Capitalization rate[59]

Petitioner argues that the RTC-SAC erred in computing the CNI as the Average Gross Production (AGP) was not based on the latest available 12 months' gross production immediately preceding the date of field investigation. Per petitioner's computation, the AGP of the six has of unirrigated riceland is 3,325 k only or 66.5 cavans.[60] However, the basis of such figure was not shown by petitioner and was even disproved by respondent's testimony that the property produces 80 to 100 cavans per ha. The RTC-SAC's determination of the AGP to be 90 cavans or 4,500 k per year is thus reasonable.

The selling price (SP) was, in turn, based by the RTC-SAC on the certification issued by the NFA that the buying price of palay per k in the year 2000 is Php 10 during summer and Php 9 during wet season. Taking the average, the RTC-SAC arrived

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[59] *Id*.

[60] at 1 cavan = 50 k

at Php 9.50 per k as SP. As between the certification issued by the NFA and the unfounded SP of Php 6.50 used by petitioner, we lend more credence to the former and as such, affirm the SP of Php 9.50 fixed by the RTC-SAC.

However, to arrive at the value of the CNI, the RTC-SAC simply multiplied the AGP by the SP and then further multiplied the product thereof to six has, without considering the 20% Net Income Rate (NIR) and the 12% capitalization rate. The RTC-SAC's application of the basic formula is therefore incomplete and its disregard of the NIR and the capitalization rate factors was not clearly explained.

Instead, if the 20% NIR and the 12% capitalization rate were taken into account, the CNI per ha of the unirrigated riceland should be Php 71,250.[61]

Further, the MV factor is understood to be the MV per tax declaration material to the time of taking. Petitioner pegged the UMV at Php 15,780 per ha for the unirrigated riceland. However, as observed by the PARAD, petitioner used the 1994 Schedule of Base UMV, instead of the market value as of 2000. Hence, the RTC-SAC correctly used the BIR zonal valuation of real property located at Nambaran, Tabuk, Kalinga for the years 1999 to 2000 which is Php 6 per sq m or Php 60,000 per ha for riceland without irrigation and Php1 per sq m or Php 10,000 per ha for cogon land.[62]

Applying the above values to the basic formula, the unit land value (ULV) per ha of the unirrigated riceland should be:

ULV = [Php71,250 (.90)] + [Php60,000 (.10)]
= Php64,125 + Php6,000
= **Php70,125**

LV = Php70,125(6.001)
= **Php420,820.125**

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[61] Php 71,250 = (4,500 x Php 9.50) x .20 / .12

[62] *Rollo*, p. 174.

With respect to the remaining four has, the parties agree that the same is cogonal. While respondent testified that it is also planted with fruit-bearing trees, bananas, cassava, and camote, he failed to establish the aggregate value of the crops produced. Thus, we cannot adopt the RTC-SAC's valuation of the cogon land as Php 10,000 per ha for obvious lack of factual support. Moreover, the RTC-SAC could not have arrived at the CNI of the idle land (which it computed at Php 40,000) considering that the AGP and SP factors are not present.

There being no CNI and CS, and only the MV is available, the RTC-SAC should have applied the formula prescribed under paragraph A3 of DAR A.O. No. 5-98, *i.e.*, **LV = MV x 2**.

Thus, the ULV of the four has idle land should be:

ULV = Php10,000 x 2
= **Php20,000**

LV = Php20,000(4.000)
= **Php80,000**

We also note that, in addition to the foregoing, the RTC-SAC granted an MV of Php 40,000 per ha for the *entire* area or an additional Php 400,000 to be paid as just compensation because it took into consideration the property's *potential* to be an area ideal for urban expansion. Such additional valuation cannot be sustained as the measure of the value of the property should be at the time when the loss resulted, *i.e.*, as of the time of taking in March 2000. What is more, such additional valuation cannot be considered "just" for lack of reliable and actual data to support the same. Trial courts are reminded, time and again, to be circumspect in its evaluation of just compensation due the property owner, considering that eminent domain cases involve the expenditure of public funds.[63]

For prompt resolution of the instance case and considering that the relevant factors have already been judicially determined,

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[63] *Republic v. Asia Pacific Integrated Steel Corporation,* G.R. No. 192100, March 12, 2014, 719 SCRA 50.

the final just compensation, by mathematical computation, should be **Php 500,820.125** for the 10.001 has.

Modification of Interest Rate

Petitioner assails the CA's imposition of six percent (6%) interest *per annum* on the ground that DAR A.O. No. 13-94 is inapplicable to expropriation under the agrarian reform program. In any case, petitioner argues that it cannot be held liable for interest in the absence of delay in the payment of just compensation.

There is no need to resolve whether DAR A.O. No. 13-94, which is specifically made applicable to lands covered by P.D. No. 27 and E.O. No. 228, also applies to lands covered by R.A. No. 6657 as case law[64] settles and instructs that the payment of just compensation for the expropriated property amounts to an effective forbearance on the part of the State, thus:

> In other words, the just compensation due to the landowners amounts to an effective forbearance on the part of the state—a proper subject of interest computed from the time the property was taken until the full amount of just compensation is paid—in order to eradicate the issue of the constant variability of the value of the currency over time. In the Court's own words:
>
> > The Bulacan trial court, in its 1979 decision, was correct in imposing interest[s] on the zonal value of the property to be computed from the time petitioner instituted condemnation proceedings and "took" the property in September 1969. This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time x x x.[65]

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[64] *Secretary of the Department of Public Works and Highways, et al. v. Spouses Tecson,* G.R. No. 179334, April 21, 2015 (Resolution on Motion for Reconsideration).

[65] *Id.*

In the instant case, the interest is to be imposed only on the balance of the final just compensation, *i.e.,* the final just compensation (Php 500,820.125) less the amount of the initial valuation (Php 219,524.98) or Php 281,295.145. Since petitioner's initial valuation had been contested, and it has been subsequently determined that the expropriated property had been undervalued, an interest on the balance or the difference between the amount already paid and the final just compensation is proper.

While the debt incurred by the government on account of the taking of the property subject of an expropriation constitutes a forbearance, nevertheless, in line with the recent circular of the Monetary Board of the Bangko Sentral ng Pilipinas No. 799, Series of 2013, effective July 1, 2013,[66] the prevailing rate of interest for loans or forbearance of money is six percent (6%) *per annum*, in the absence of an express contract as to such rate of interest. Accordingly, the interest rate of twelve percent (12%)[67] *per annum* should be imposed on the balance due from the date of the taking, or on March 20, 2000[68] until

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[66] The pertinent portion of which reads:

The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) *per annum*.

Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.

This Circular shall take effect on 1 July 2013.

[67] CB Circular No. 905 which took effect on December 22, 1982, particularly Section 2 thereof states:

Sec. 2. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall continue to be twelve per cent (12%) per annum.

[68] *Rollo*, p. 44.

June 30, 2013 and the interest rate of six percent (6%) *per annum* is imposed from July 1, 2013 until fully paid.

WHEREFORE, the petition is **GRANTED**. The Decision dated January 6, 2011 and Resolution dated April 7, 2011 of the Court of Appeals in CA-G.R. SP No. 110387 are **REVERSED** and **SET ASIDE**.

Petitioner Land Bank of the Philippines is ordered to pay to respondent Miguel Omengan the amount of Php 281,295.145 as balance on the final just compensation for the 10.001 hectares of expropriated property. Interest at the rate of twelve percent (12%) *per annum* on the balance of final just compensation is imposed from March 20, 2000 until June 30, 2013 and an interest at the rate of six percent (6%) *per annum* is imposed from July 1, 2013 until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Reyes, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 196888. July 19, 2017]

AURELIA NARCISE, GLORIA A. DELA CRUZ, MARITESS O. GARCIA, PHILIP FALCON, ENRICO M. VITUG, LYNETTE C. PONTRERAS, BONIFACIO BARRAMEDA, RAMON S. MORADA, MANUEL G. VIOLA, ZENAIDA LANUZA, CIRILO G. SALTO, TEODORO DEL ROSARIO, NANCY G. INSIGNE, MELANIE G. VIANA, ROMEO TICSAY, AMY J. FRANCISCO, MARIE J. FRANCISCO, ZENAIDA LANUZA, MIGUELITO B. MARTINEZ, APOLONIO SANTOS, MARIVIC TAN, JANE CLOR DILEMA, VALENTINO DILEMA, JOSE L. PANGAN, ANTONIA

M. MANGELEN, IMELDA MANALASTAS, TEODORICO N. ANDRADE, AIDA L. CRUZ, MANUEL YAMBOT, JAIME SERDENA, ARIEL PALACIOS, EVE BOLNEO, LIBETINE MODESTO, MA. AILEEN VERDE, BENNY ILAGAN, MICHELLE ROMANA, DANILO VILLANUEVA, LEO NALUGON, ROSSANA MARASIGAN, NELIE BINAY and ISABELITA MENDOZA, *petitioners, vs.* **VALBUECO, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; ACTION FOR REVERSION AND ACTION FOR ANNULMENT OF FREE PATENTS AND CERTIFICATES OF TITLE, DISTINGUISHED.— An action for reversion, a remedy provided under Commonwealth Act No. 141, seeks to cancel the original certificate of registration, and nullify the original certificate of title, including the transfer of certificate of title of the successors-in-interest because the same were all procured through fraud and misrepresentation. In cancelling and nullifying such title, it restores the public land fraudulently awarded and disposed of to private individuals or corporations to the mass of public domain. Such action is filed by the OSG pursuant to its authority under the Administrative Code. On the other hand, an action for annulment of free patents and certificates of title also seeks for the cancellation and nullification of the certificate of title, but once the same is granted, it does not operate to revert the property back to the State, but to its lawful owner. In such action, the nullity arises not from fraud or deceit, but from the fact that the director of the Land Management Bureau had no jurisdiction to bestow title; hence, the issued patent or certificate of title was void *ab initio*. Thus, the difference between them lies in the allegations as to the character of ownership of the realty whose title is sought to be nullified. In an action for reversion, the pertinent allegations in the complaint would admit State ownership of the disputed land, while in an action for annulment of patent and certificate of title, pertinent allegations deal with plaintiffs ownership of the contested land prior to the issuance of the same as well as defendant's fraud or mistake in successfully obtaining these documents of title over the parcel of land claimed by the plaintiff.

2. CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION OF ACTIONS; ACQUISITIVE PRESCRIPTION; REFERS TO THE MODE OF ACQUIRING OWNERSHIP OF A REAL OR IMMOVABLE PROPERTY BY POSSESSOR THROUGH THE REQUISITE LAPSE OF TIME; KINDS.— We hold that the action is one of annulment of patents and titles. The allegations in the complaint show that respondent asserts its ownership over the subject properties by acquisitive prescription. Acquisitive prescription is a mode of acquiring ownership of a real or immovable property by possessor through the requisite lapse of time. In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful and uninterrupted. The possession contemplated as foundation for prescriptive right must be one under claim of title or adverse to or in prescription. x x x [A]cquisitive prescription may either be extraordinary, which requires uninterrupted adverse possession for 30 years, or ordinary, which requires possession in good faith and with a just title for a period of ten years.

3. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; THE TRIAL COURT HAS JURISDICTION OVER AN ACTION OF AN OWNER OF A PIECE OF LAND TO RECOVER IT, IF THE DIRECTOR OF LANDS, THINKING THAT IT IS STILL DISPOSABLE PUBLIC LAND, GRANTS A FREE PATENT TO THE ONE WHO HAS OCCUPANCY AND CULTIVATION.— [T]he trial court has jurisdiction over an action of an owner of a piece of land to recover it, if the Director of Lands, thinking that it is still disposable public land, grants a free patent to the one who has occupancy and cultivation. The jurisdiction of the Director of Lands, contrary to petitioners' claim, covers those issues between two or more applicants for a free patent, which is not the case here. Here, respondent claims to be the owner of the subject properties prior to the issuance of the patents and the corresponding certificates of title. Thus, the trial court has jurisdiction to hear the case.

APPEARANCES OF COUNSEL

Raymond Roland R. Rojas for petitioners.
Jaso Dorillo & Associates for respondent.
Emiliano S. Pomer for Ricardo Canta, *et al.*

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45, which seeks to reverse and set aside the Decision[1] dated December 21, 2010 and Resolution[2] dated May 11, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 89616.

Facts

On March 8, 2005, respondent Valbueco, Inc. filed an action for Annulment of the Free Patents, Certificates of Title and Damages, docketed as Civil Case No. 8144,[3] against petitioners Narcise, *et al*., the Department of Natural Resources (DENR) and the Register of Deeds of Bataan before the Regional Trial Court (RTC) of Balanga City, Branch 1.

In said Complaint, respondent alleged that it is the possessor of the subject lots in an actual, peaceful, adverse and peaceful possession since 1970.[4] Respondent averred that from 1977 until 1999, Original Certificates of Title, Free Patents and Transfer Certificates of Title covering the lots in question were issued in the name of petitioners.[5]

Instead of filing their respective Answer, petitioners filed several Motions to Dismiss on the ground of lack of cause of action, failure to state cause of action, defect in the certificate of non-forum shopping and prescription.

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, concurred in by Associate Justices Fernanda Lampas Peralta and Elihu A. Ybañez; *rollo*, pp. 9-20.

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

[3] *Id*. at 100-135.

[4] *Id*. at 106.

[5] *Id*. at 11.

On December 7, 2006, the RTC issued an Order,[6] granting petitioners' motions. The RTC ruled that the instant case is an action for reversion because petitioners are not qualified to be issued said free patents. As such, the land must revert back to the State. Thus, it is the Office of the Solicitor General (OSG) who is the real party-in-interest, and not the respondent. The dispositive portion of the same reads:

> **WHEREFORE,** in view of the foregoing, let the instant complaint be dismissed and the motion to declare some defendants in default is necessarily denied.
>
> **SO ORDERED.**[7]

Respondent filed a motion for reconsideration, which was denied by the RTC in its Order[8] dated March 7, 2017.

Undaunted, respondent filed an appeal[9] before the CA. In a Decision[10] dated December 21, 2010, the CA reversed and set aside the ruling of the RTC. The CA maintained that respondent alleged all the facts necessary to seek the nullification of the subject free patents. The *fallo* thereof reads:

> **WHEREFORE,** premises considered, the instant appeal is hereby **GRANTED.** The Orders of the Regional Trial Court of Balanga City, Branch 1 dated December 7, 2006 and March 7, 2007 are hereby **REVERSED** and **SET ASIDE.** This case is **REMANDED** to the trial court for further proceedings.
>
> **SO ORDERED.**[11]

Petitioners filed a Motion for Reconsideration,[12] which was denied in a Resolution[13] dated May 11, 2011.

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[6] Rendered by Judge Benjamin T. Vianzon; *id*. at 280-283.

[7] *Id*. at 283.

[8] *Id*. at 296.

[9] *Id*. at 297.

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

[11] *Id*. at 19.

[12] *Id*. at 373-388.

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

Hence, this petition.

Issues

Petitioners interposed the following grounds for review:

I.

Whether or not the instant case is actually a reversion case, and not a case for annulment of free patents and certificates of title;

II.

Whether or not respondent is the real party-in-interest; and

III.

Whether or not the instant case had already prescribed.[14]

Our Ruling

The petition is denied.

An action for reversion, a remedy provided under Commonwealth Act No. 141, seeks to cancel the original certificate of registration, and nullify the original certificate of title, including the transfer of certificate of title of the successors-in-interest because the same were all procured through fraud and misrepresentation.[15] In cancelling and nullifying such title, it restores the public land fraudulently awarded and disposed of to private individuals or corporations to the mass of public domain. Such action is filed by the OSG pursuant to its authority under the Administrative Code.[16]

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[14] *Id.* at 40-41.

[15] *Republic of the Philippines v. Hon. Mangotara, et al.*, G.R. No. 170375, July 7, 2010, citing *Saad-Agro Industries, Inc. v. Republic*, G.R. No. 152570, September 27, 2006, 503 SCRA 522, 528-529.

[16] *Estate of the Late Jesus S. Yujuico, et al. v. Republic, et al.*, G.R. No. 168661, October 26, 2007.

On the other hand, an action for annulment of free patents and certificates of title also seeks for the cancellation and nullification of the certificate of title, but once the same is granted, it does not operate to revert the property back to the State, but to its lawful owner. In such action, the nullity arises not from fraud or deceit, but from the fact that the director of the Land Management Bureau had no jurisdiction to bestow title; hence, the issued patent or certificate of title was void *ab initio*.[17]

Thus, the difference between them lies in the allegations as to the character of ownership of the realty whose title is sought to be nullified. In an action for reversion, the pertinent allegations in the complaint would admit State ownership of the disputed land, while in an action for annulment of patent and certificate of title, pertinent allegations deal with plaintiff's ownership of the contested land prior to the issuance of the same as well as defendant's fraud or mistake in successfully obtaining these documents of title over the parcel of land claimed by the plaintiff.[18]

A careful perusal of respondent's complaint reads:

3. That the herein plaintiff has been in the **actual, peaceful, adverse, continuous and peaceful possession since sometime in 1970 and up to the present time**, by itself and its predecessor-in-interest, some of which it acquired by transfer of rights, claims, interest as evidence [sic] by the documents x x x and the rest by **occupation** and planting of root crops and other including trees x x x.

4. That the plaintiff and its workers and employees of its ranches and the **cultivation and planting** of different root crops and trees were always in the premises since 1970 or thereabouts, and their presence were never disturbed nor molested by anybody until sometime in the year 2000 x x x.[19] (Emphasis ours)

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[17] *Katon v. Palanca, Jr., et al.*, G.R. No. 151449, September 7, 2004.

[18] *Heirs of Kionisala, et al. v. Heirs of Dacut, et al.*, G.R. No. 147379, February 27, 2002.

[19] *Rollo,* pp. 106-107.

In this view, We hold that the action is one of annulment of patents and titles. The allegations in the complaint show that respondent asserts its ownership over the subject properties by acquisitive prescription.

Acquisitive prescription is a mode of acquiring ownership of a real or immovable property by possessor through the requisite lapse of time. In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful and uninterrupted.[20] The possession contemplated as foundation for prescriptive right must be one under claim of title or adverse to or in prescription.[21]

On this note, acquisitive prescription may either be extraordinary, which requires uninterrupted adverse possession for 30 years,[22] or ordinary, which requires possession in good faith and with a just title for a period of ten years.[23]

Without going into the merits of the case, We hold that the allegations in the complaint sufficiently show that respondent claims its ownership right by expounding on its uninterrupted possession of the same for a period of at least 35 years. Also, respondent's claim of its possession in a public, peaceful and uninterrupted manner constitutes an allegation of ownership by acquisitive prescription.

Being an action for annulment of patents and titles, it is the respondent who is the real party-in-interest for it is the one

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[20] *Heirs of Bienvenido and Araceli Tanyag, et al. v. Gabriel, et al.*, G.R. No. 175763, April 11, 2012.

[21] *Catapusan, et al. v. Court of Appeals, et al.*, G.R. No. 109262, November 21, 1996.

[22] *Andres, et al. v. Sta. Lucia Realty & Development, Inc.*, G.R. No. 201405, August 24, 2015.

[23] *Aguirre, et al. v. Court of Appeals, et al*., G.R. No. 122249, January 29, 2004.

claiming title or ownership adverse to that of the registered owner.[24]

Moreover, We agree with the CA when it declared that petitioners' argument of failure to exhaust administrative remedies is misguided.

It must be noted that the trial court has jurisdiction over an action of an owner of a piece of land to recover it, if the Director of Lands, thinking that it is still disposable public land, grants a free patent to the one who has occupancy and cultivation.[25] The jurisdiction of the Director of Lands, contrary to petitioners' claim, covers those issues between two or more applicants for a free patent,[26] which is not the case here. Here, respondent claims to be the owner of the subject properties prior to the issuance of the patents and the corresponding certificates of title. Thus, the trial court has jurisdiction to hear the case.

Lastly, the defense of prescription is evidentiary in nature which could not be established by mere allegations in the pleadings and must not be resolved in a motion to dismiss. Such issue must be resolved at the trial of the case on the merits wherein both parties will be given ample opportunity to prove their respective claims and defenses.[27]

Verily, the CA did not err in considering the instant case as an action for annulment of patents and titles.

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[24] *Goco, et al. v. Court of Appeals, et al.*, G.R. No. 157449, April 6, 2010.

[25] *Maximo, et al. v. Court of First Instance of Capiz, Branch III, Mambusno, Capiz, Presided by the Hon. Leviste and Isidro*, G.R. No. 61113, February 21, 1990.

[26] *Id*.

[27] *National Irrigation Administration (NIA) v. Hon. Court of Appeals, et al.*, G.R. No. 129169, November 17, 1999.

WHEREFORE, the instant appeal is DENIED. Accordingly, the Decision dated December 21, 2010 and the Resolution dated May 11, 2011 of the Court of Appeals in CA-G.R. CV No. 89616 are AFFIRMED *in toto*.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Reyes, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 202342. July 19, 2017]

AMA LAND, INC., *petitioner, vs.* **WACK WACK RESIDENTS' ASSOCIATION, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES.— [T]o be entitled to the injunctive writ, the petitioner must show that: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by the act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.

2. ID.; ID.; ID.; ID.; THE EXERCISE OF JUDICIAL DISCRETION TO GRANT OR DENY AN INJUNCTIVE RELIEF MAY NOT BE INTERFERED WITH EXCEPT UPON A FINDING OF GRAVE ABUSE OF DISCRETION.— The grant or denial of the injunctive relief rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the conclusive

determination by such court; and the exercise of judicial discretion by such court will not be interfered with, except upon a finding of grave abuse of discretion. In the issuance of the injunctive writ, grave abuse of discretion implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

3. **CIVIL LAW; CIVIL CODE; PROPERTY, OWNERSHIP AND ITS MODIFICATIONS; EASEMENTS OR SERVITUDES; TEMPORARY EASEMENT OF RIGHT OF WAY; CAN ONLY BE GRANTED AFTER PROOF OF COMPLIANCE WITH THE PRE-REQUISITES SET FORTH BY LAW DULY ADDUCED DURING A FULL-BLOWN TRIAL.—** Article 656 requires proof of indispensability and receipt of payment of the proper indemnity for the damage caused by the owner of the dominant estate before the owner of the servient estate can be compelled to grant a temporary easement of right of way. x x x AMALI presented no witnesses to establish these prerequisites. Being preconditions, they are akin to suspensive conditions that must be fulfilled before the obligation on the part of WWRAI to allow the easements can arise. Until the preconditions are met, AMALI has no legal basis to use a portion of Fordham Street as an access road and staging area of its AMA Tower project. To allow AMALI to do so would be in contravention of the legal provisions on the establishment and grant of the legal easement of right of way under the Civil Code. x x x [T]he temporary easement of right of way under Article 656 of the Civil Code, similar to the permanent easement of right of way pursuant to its Articles 649 and 650, can only be granted **after** proof of compliance with the prerequisites set forth in the articles duly adduced during a full-blown trial.

4. **REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; THE OBJECT OF A WRIT OF PRELIMINARY INJUNCTION IS TO PRESERVE THE *STATUS QUO,* WHICH IS THE LAST PEACEABLE UNCONTESTED STATUS THAT PRECEDED THE PENDING CONTROVERSY.—** [T]he *status quo* prevailing before the filing of the WWRAI petition

before the CA is not the *status quo ante* that must be preserved. The object of a writ of preliminary injunction is to preserve the *status quo,* which is the last peaceable uncontested status that preceded the pending controversy. Thus, the proper understanding of the *status quo ante* should refer to the situation prior to AMALI's unauthorized use of a portion of Fordham Street as an access road and staging area of its AMA Tower project.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioner.
Defensor Enrile & De Mata (SEDALAW) for respondent.

D E C I S I O N

CAGUIOA, *J.:*

Before the Court is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated June 14, 2012 (Decision) of the Court of Appeals[3] (CA) in CA-G.R. SP No. 118994, granting the petition filed by respondent Wack Wack Residents' Association, Inc. (WWRAI), reversing and setting aside the October 28, 2010 and February 23, 2011 Orders[4] of the Regional Trial Court of Pasig City assigned in San Juan (Metropolitan Manila), Branch 264 (RTC) in Civil Case No. 65668, ordering the RTC to issue the injunctive relief prayed for by WWRAI pending the determination of the petition for the declaration of permanent easement of right of way, and directing WWRAI to amend the title and the averments in the petition before the CA by disclosing the names of its principals and bringing the action in a representative capacity.

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[1] *Rollo* (Vol. I), pp. 3-49 (exclusive of Annexes).

[2] *Id*. at 51-65. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Sesinando E. Villon and Ricardo R. Rosario concurring.

[3] Special Former Tenth Division.

[4] *Rollo* (Vol. I), pp. 66-79. Both Orders were penned by Presiding Judge Leoncio M. Janolo, Jr.

The Facts and Antecedent Proceedings

The CA Decision summarized the facts as follows:

A commercial and residential building project located at Epifanio Delos Santos Avenue corner Fordham Street in Wack Wack Village, Mandaluyong City, was proposed by x x x AMA Land, Inc. (AMALI x x x) in [the] mid-1990s. As the latter proceeded to secure the needed licenses and permits for the construction of the project, the following were issued: Building Location Permit; Certificate of Locational Viability; Locational Clearance; Excavation and Ground Preparation Permit; Building Permit; Environmental Compliance Certificate; HLURB Certificate of Registration; and HLURB License to Sell.

On March 18, 1996, AMALI notified [WWRAI] – a registered homeowners' association of Wack Wack Village – of its intention to use Fordham Street as an access road and staging area of the project. As AMALI received no response from [WWRAI], the former temporarily enclosed the job site and set up a field office along Fordham Street. [WWRAI] claimed, however, that AMALI already converted part of the said street as barrack site and staging area even before March 18, 1996. All subsequent attempts of [WWRAI] to remove the said field office proved futile.

[On May 8, 1996,] AMALI then filed a petition before the [RTC], [wherein it seeks the temporary use of Fordham Street belonging to WWRAI as an access road to AMALI's construction site of its AMA Tower project pursuant to Article 656[5] of the Civil Code, and to establish a permanent easement of right of way in its favor over a portion of Fordham Street pursuant to Article 649[6] of the Civil Code.

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[5] CIVIL CODE, Art. 656. If it be indispensable for the construction, repair, improvement, alteration or beautification of a building, to carry materials through the estate of another, or to raise thereon scaffolding or other objects necessary for the work, the owner of such estate shall be obliged to permit the act, after receiving payment of the proper indemnity for the damage caused him.

[6] *Id*., 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.

Aside from its prayer for the declaration of temporary and permanent easement of right of way in its favor over a portion of Fordham Street, AMALI is also] praying for: (a) a temporary restraining order (TRO) to immediately enjoin [WWRAI] from demolishing and removing the temporary field office, constructing a fence isolating Fordham Street, and preventing AMALI from gaining access to the construction site; (b) a writ of preliminary mandatory injunction directing [WWRAI] to allow AMALI to use Fordham Street as an access road and staging area; (c) an order making the TRO and the aforesaid writ permanent; and (d) an order declaring a permanent right of way in favor of AMALI.

In its answer, [WWRAI] contends that the project of AMALI violates the applicable zoning ordinances; that the licenses and permits issued in favor of AMALI were irregular and unlawful; that the project is a nuisance, and; that Epifanio Delos Santos Avenue can be utilized as the staging area of the project.

On July 24, 1997, the [RTC] granted the writ of preliminary mandatory injunction "directing [WWRAI] to allow [AMALI] to use Fordham Street through a temporary easement of right of way."

In 1998, due to financial crisis, the construction of the project was put on hold and AMALI was constrained to finish merely the basement. Although AMALI asserted that "it continued to pay [WWRAI] for the use of Fordham Street," [WWRAI] claimed otherwise.

In 2002, before the Regional Trial Court of Muntinlupa, Branch 256, AMALI filed a petition for corporate rehabilitation which was later on approved. Also, the said rehabilitation court in Muntinlupa directed the Office of the Building Official and/or Office of the City Engineer of Mandaluyong City to issue an Amended Building Permit in favor of AMALI. As a consequence, Building Permit No. 08-2011-0048 was issued.

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.

As AMALI resume[d] the project, [WWRAI] filed in January 2010, an "Urgent Motion to Set for Hearing" its application for temporary restraining order and/or writ of preliminary injunction. The [RTC] heard the application and received the evidence presented by [WWRAI]. AMALI, on the other hand, failed to attend the proceedings. On October 28, 2010, the [RTC] ruled against the motion. Thus, it ordered the following:

> WHEREFORE, [WWRAI]'s application for the issuance of temporary restraining order and/or writ of preliminary injunction is DENIED for lack of merit.
>
> [AMALI] is directed to make representations with the Building Officials of Mandaluyong City on its application for permit to construct the building.
>
> Attention of the Building Officials of Mandaluying (sic) City is invited to the pending controversy of [the] parties involved, hence, his (sic) prompt final decision is suggested. x x x

A motion for reconsideration of the above order was filed but was denied on February 23, 2011. Hence, the x x x petition [for certiorari under Rule 65 before the CA].

On June 10, 2011, after a [clarificatory] hearing, [the CA] granted [WWRAI]'s application for a temporary restraining order[, and, accordingly, AMALI was commanded to cease and desist from further committing the act complained of, which is the construction of the commercial and residential condominium project located along EDSA corner Fordham Street in Wack Wack Village.[7]] Then, on July 28, 2011, the application of [WWRAI] for the issuance of a writ of preliminary injunction was granted as well pending resolution of the x x x petition for certiorari [before the CA].[8]

The CA Ruling

The CA rendered its Decision, the dispositive portion of which reads:

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[7] *Rollo* (Vol. I), p. 401.

[8] *Id*. at 53-56.

WHEREFORE, premises considered, the petition is **GRANTED**. The October 28, 2010 and February 23, 2011 Orders of the Regional Trial Court of Pasig City assigned in San Juan (Metropolitan Manila), Branch 264, in Civil Case No. 65668 is **REVERSED** and **SET ASIDE**. The latter court is hereby ordered to issue the injunctive relief prayed for by the petitioner Wack Wack Residents Association, Inc. pending determination of the petition for the declaration of **PERMANENT** easement of right of way.

Also, the petitioner is **DIRECTED** to **AMEND** the following: (a) the **TITLE**; and (b) the **AVERMENTS**, in the present petition by disclosing the names of its principals and bringing the action in a representative capacity.

SO ORDERED.[9]

Without filing a motion for reconsideration, AMALI filed the instant Rule 45 petition for review on *certiorari*.

Issues

AMALI raised the following issues in its Petition:

(1) whether WWRAI is guilty of forum shopping;

(2) whether WWRAI is entitled to a temporary restraining order and/or a writ of preliminary injunction;

(3) whether the CA Decision amounts to a prejudgment of the merits of Civil Case No. 65668 (original petition for easement of right of way);

(4) whether the CA Decision disturbed the *status quo* prevailing before the filing of the WWRAI petition; and

(5) whether WWRAI is the real party in interest in this case.[10]

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[9] *Id*. at 63-64.

[10] *Id*. at 16.

The Court's Ruling

AMALI's petition is meritorious.

The five issues raised by AMALI have, as core issue, the question of whether or not WWRAI is entitled to enjoin the construction of the AMA Tower pending determination of the original petition for the declaration of temporary and permanent easements of right of way over a portion of Fordham Street.

The Court in *Lukang v. Pagbilao Development Corporation*[11] reiterated the purpose and grounds for the issuance of a writ of preliminary injunction, *viz.*:

> A writ of preliminary injunction is a provisional remedy which is adjunct to a main suit, as well as a preservative remedy issued to maintain the *status quo* of the things subject of the action or the relations between the parties during the pendency of the suit. The purpose of injunction is to prevent threatened or continuous irremediable injury to the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the *status quo* until the merits of the case are fully heard. Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.[12]

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[11] 728 Phil. 608 (2014).

[12] *Id*. at 617.

Thus, to be entitled to the injunctive writ, the petitioner must show that: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by the act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[13]

The grant or denial of the injunctive relief rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the conclusive determination by such court; and the exercise of judicial discretion by such court will not be interfered with, except upon a finding of grave abuse of discretion.[14]

In the issuance of the injunctive writ, grave abuse of discretion implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[15]

Guided by the foregoing principles, the CA erred in finding that the RTC committed grave abuse of discretion in issuing its October 28, 2010 and February 23, 2011 Orders, denying WWRAI's application for the issuance of a temporary restraining order and writ of preliminary injunction.

The Court agrees with the RTC that:

[WWRAI]'s allegation that [its members'[16]] right to live in a peaceful, quiet and safe environment will be violated in the event

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[13] *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, 684 Phil. 283, 292 (2012); citation omitted.

[14] *Id.* at 292-293; citations omitted.

[15] *Id.* at 293; citation omitted.

[16] Per RTC Order dated October 28, 2010, WWRAI presented the judicial affidavits of four of its members, namely: Milagros Santos, Victoria Huang, Albert Montilla and Miguel Angelo Sarte Silverio; *rollo* (Vol. I), p. 69.

that the condominium project of [AMALI] will be erected is untenable. The alleged noise and dust that may be caused by the construction is the natural consequence thereof. However, this annoyance that may be brought by the construction is not permanent in nature but is merely temporary and once the building is completed, [said members'] right to live in a peaceful, quiet and safe environment will be restored without noise and dust.

As to the allegations that [said members'] privacy may be invaded for the reason that they may be photographed or videotaped without their knowledge, these fears are merely speculative and cannot be taken into consideration.

As admitted by [WWRAI's] witness, the construction activity is suspended, hence, there is nothing to restrain x x x. There is no urgent and paramount necessity for the writ to prevent serious damage.[17]

Indeed, WWRAI was unable to convincingly demonstrate a clear and unmistakable right that must be protected by the injunctive writ. The apprehensions of its members are, as correctly ruled by the RTC, speculative and insufficient to substantiate the element of serious and irreparable damage.

As to the issue of the legality of the construction of AMA Tower, the Resolution[18] in NBCDO NO. 12-11-93 MAND CITY dated March 29, 2012 issued by the Office of the Secretary of the Department of Public Works and Highways (DPWH), finding "the issuance of Amended Building Permit No. 08-2011-0048 for [AMALI's] proposed thirty-four (34) storey with seven (7) basement level AMA Tower Residences project is in accordance with the provisions of the National Building Code of the Philippines (P.D. 1096) and its IRR x x x"[19] carries the presumption of regularity as having been issued pursuant to official duty.[20] The authority to administer and enforce the provisions of the National Building Code, and the power to

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[17] RTC Order dated October 28, 2010, *id*. at 74-75.

[18] *Rollo* (Vol. II), pp. 890-897.

[19] *Id*. at 897.

[20] See RULES OF COURT, Rule 131, Sec. 3(m).

appoint Building Officials throughout the country, including Metro Manila, pertain to the Secretary of Public Works and Highways.[21] Until sufficiently rebutted, the determination of the Secretary of DPWH stands. Besides, the determination of the "special and affirmative defense" that the construction of the AMA Tower is illegal, which WWRAI raised in its Answer,[22] will be finally settled after the parties have adduced their evidence in chief. The same holds true with respect to the assertion of WWRAI that the construction of the AMA Tower is a nuisance. This issue can only be resolved after trial on the merits. The RTC also noted that no less than the Department of Environment and Natural Resources issued an Environmental Compliance Certificate in favor of AMALI and "it is clear that no question remains on the legality of [AMALI's] construction."[23]

However, the denial of WWRAI's application for a writ of preliminary injunction against the construction of the AMA Tower does not necessarily translate to AMALI's entitlement to a temporary easement of right of way over a portion of Fordham Street belonging to WWRAI for use as an access road and staging area of its AMA Tower project before the resolution of its petition for declaration of easement of right of way (original petition) by the RTC. Stated differently, WWRAI cannot be compelled **at this stage of the proceedings** to grant AMALI a temporary legal easement of right of way over a portion of Fordham Street.

In its original petition, AMALI alleges two distinct causes of action, namely:

> 3.0
> FIRST CAUSE OF ACTION
> (DECLARATION OF TEMPORARY EASEMENT OF RIGHT OF WAY)
> x x x x x x x x x

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[21] *Tapay v. Cruz*, 264 Phil. 850, 856 and 860 (1990).

[22] *Rollo* (Vol. I), pp. 330-347.

[23] RTC Order dated July 24, 1997, *id*. at 353.

3.2 [AMALI]'s use of Fordham Street belonging to [WWRAI] as an access road to [AMALI]'s construction site is indispensable to the construction of AMA TOWER Project.

3.3 [AMALI]'s property is so situated that the temporary site construction office and the temporary ingress and egress for the construction workers can only be created with least prejudice in Fordham Street. The Dolmar property on the right side of [AMALI]'s property is an existing commercial structure while the Sta. Cruz's at the back is a residential property. The front portion of [AMALI]'s property is facing a main thorough fare[, Epifanio de los Santos Avenue (EDSA),] and will be a part of the construction itself.

3.4 [AMALI] is ready, willing and able to pay the proper indemnity.

3.5 Article 656 of the New Civil Code provides that:

> "Art. 656. If it be indispensable for the construction, repair, improvement, alteration or beautification of a building, to carry materials through the estate of another, or to raise thereon scaffolding or other objects necessary for the work, the owner of such estate shall be obliged to permit the act, after receiving payment of the proper indemnity for the damage caused him. (5691)"

4.0

SECOND CAUSE OF ACTION

(DECLARATION OF PERMANENT EASEMENT OF RIGHT OF WAY)

x x x x x x x x x

4.2 The property of [AMALI] where the site of AMA TOWER is situated is surrounded by estates of others. A commercial building of Dolmar is on the right side of [AMALI]'s property and a residential property of Sta. Cruz is at the back. The front portion of [AMALI]'s property is facing a main thorough fare.

4.3 The property of [AMALI] has no adequate outlet to a public highway. The front portion of the property facing EDSA is a difficult and dangerous outlet not only for [AMALI] but for the public as well.

4.4 The use of small portion of Fordham Street near EDSA is a point least prejudicial to [WWRAI].

4.5 [AMALI] is ready, willing and able to pay the proper indemnity.

4.6 Article 649 of the New Civil Code provides that:

> "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.
>
> x x x x x x x x x "[24]

First of all, the CA Decision categorically found that WWRAI is the owner of the subject Fordham Street as this was expressly admitted by AMALI and pursuant to the RTC's pre-trial order.[25] Thus, inasmuch as AMALI prays for the grant of both temporary and permanent easements of right of way over a portion of Fordham Street against WWRAI in the original petition, WWRAI should be deemed to be the owner of the servient estate. Simply stated, WWRAI, and not its members, is the real party in interest in this case. To be sure, even AMALI itself filed the original petition against WWRAI and not against the latter's members.

Secondly, the question of whether or not AMALI, as owner of the dominant estate, may validly claim against WWRAI a compulsory permanent right of way under Articles 649 and 650[26] of the Civil Code, will depend on a finding that AMALI has established the existence of the following requisites, namely:

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[24] Petition before the RTC, *id.* at 316-318.

[25] *Rollo* (Vol. I), p. 63.

[26] CIVIL CODE, 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.

(1) the dominant estate is surrounded by other immovables; (2) it is without adequate outlet to a public highway; (3) after the proper indemnity has been paid; (4) the isolation was not due to the proprietor of the dominant estate's own acts; and (5) the right of way claimed is at a point least prejudicial to the servient estate.[27] A sixth requisite is that the right of way must be absolutely necessary for the normal enjoyment of the dominant estate by its owner.[28] There must be a real, not fictitious or artificial, necessity for the right of way,[29] and the right cannot be claimed merely for the convenience of the owner of the enclosed estate.[30] The burden of proving the existence of the foregoing requisites lies on AMALI, being the owner of the dominant estate.[31] **This issue has been correctly recognized by the CA as still pending determination by the Regional Trial Court of Pasig City assigned in San Juan (Metropolitan Manila) Branch 264, in Civil Case No. 65668**.

In turn, as regards the question of whether AMALI is entitled to a temporary easement of right of way, Article 656 of the Civil Code provides that this can be granted only after the payment of the proper indemnity by AMALI, the owner of the dominant estate; and only if AMALI has established that the easement is indispensable for the construction of its AMA Tower Project.

The Court is aware that the RTC had previously granted on July 24, 1997, a writ of preliminary mandatory injunction "directing [WWRAI] to allow [AMALI] [to] use Fordham Street x x x through a temporary easement of right of way [and set

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[27] See *Costabella Corp. v. Court of Appeals*, 271 Phil. 50, 358 (1991).

[28] De Leon and De Leon, *COMMENTS AND CASES ON PROPERTY* (2011 ed.), p. 520, citing *Rivera v. Intermediate Appellate Court*, 251 Phil. 287 (1989).

[29] *Ramos, Sr. v. Gatchalian Realty, Inc.*, 238 Phil. 689, 698 (1987).

[30] De Leon and De Leon, *COMMENTS AND CASES ON PROPERTY*, *supra* note 28, at 519.

[31] See *Costabella Corp. v. Court of Appeals*, *supra* note 27.

the] compensation for the use of Fordham Street x x x to Fifty Thousand Pesos (₱50,000.00) per month of use."[32]

As to how the RTC arrived at the ₱50,000.00 monthly compensation and the conclusion that the use of Fordham Street is indispensable in the construction of the AMA Tower, the Court is perplexed given the admission in the July 24, 1997 Order of the RTC that "the parties waived presentation of witnesses and submitted the incident [prayer for issuance of a writ of preliminary mandatory injunction] for resolution based on their respective pleadings."[33] Unlike the RTC Order dated October 28, 2010 which denied WWRAI's application for a temporary restraining order and writ of preliminary injunction where the judicial affidavits executed by four members of WWRAI were summarized, the RTC Order dated July 24, 1997 which granted a temporary easement of right of way in favor of AMALI simply concluded that:

> Article 656 of the New Civil Code provides:
>
> > "If it be indispensable for the construction, repair, improvement, alteration or beautification of a building, to carry materials through the estate of another, or to raise thereon scaffolding or other objects necessary for the work, the owner of such estate shall be obliged to permit the act, after receiving payment of the proper indemnity for the damage caused him."
>
> [WWRAI's] obligation is undoubtedly established by the above provision.
>
> From a map of the area in question (Annex "G" of [AMALI's] Reply), it is unmistakable that Fordham Street in Wack Wack Village, which is owned by [WWRAI], is the only road which [AMALI] is able to use with respect to the necessary preparations relative to the construction project.[34]

The RTC did not even factor in its Order the fact that the front portion of AMALI's property where the proposed AMA Tower

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[32] Order of the RTC dated July 24, 1997, *rollo* (Vol. I), p. 354.

[33] *Id*. at 349.

[34] *Id*. at 353.

project is situated is facing EDSA, which AMALI describes as a main thoroughfare. The said Order also fails to identify the specific portion of Fordham Street that would be subject to the temporary easement of right of way.

Not only is the July 24, 1997 Order granting the temporary easement of right of way short in factual basis, it is a virtual prejudgment of AMALI's "FIRST CAUSE OF ACTION (DECLARATION OF TEMPORARY EASEMENT OF RIGHT OF WAY)."

The Court reiterated in *Searth Commodities Corp. v. Court of Appeals*[35] that:

> The prevailing rule is that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. x x x There would in effect be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioners are inceptively bound to prove.[36]

The RTC erred and/or gravely abused its discretion when it granted AMALI's application for preliminary mandatory injunction because, in so doing, it prematurely decided disputed facts and disposed of the merits of the case without the benefit of a full-blown trial wherein testimonial and documentary evidence could be fully and exhaustively presented, heard and refuted by the parties.[37] As such, the RTC Order dated July 24, 1997 insofar as it granted a temporary easement of right of way over Fordham Street in favor of AMALI is concerned is declared void and of no force and effect.[38] The RTC lacked jurisdiction to declare a temporary easement of right of way arising from Article 656 of the Civil Code without a full-blown trial.

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[35] G.R. No. 64220, March 31, 1992, 207 SCRA 622.

[36] *Id*. at 629-630; cases cited omitted.

[37] See *Republic v. Spouses Lazo*, 744 Phil. 367, 400-401 (2014).

[38] See *id*. at 402.

Article 656 requires proof of indispensability and receipt of payment of the proper indemnity for the damage caused by the owner of the dominant estate before the owner of the servient estate can be compelled to grant a temporary easement of right of way. It appears from the *rollo* that AMALI presented no witnesses to establish these prerequisites. Being preconditions, they are akin to suspensive conditions that must be fulfilled before the obligation on the part of WWRAI to allow the easements can arise. Until the preconditions are met, AMALI has no legal basis to use a portion of Fordham Street as an access road and staging area of its AMA Tower project. To allow AMALI to do so would be in contravention of the legal provisions on the establishment and grant of the legal easement of right of way under the Civil Code.

The issue of forum shopping becomes irrelevant in the light of the Court's ruling that the CA erred in finding that the RTC acted with grave abuse of discretion in issuing its Orders dated October 28, 2010 and February 23, 2011. This issue is also immaterial in the determination of AMALI's temporary use of a portion of Fordham Street as an access road and staging area of its AMA Tower project. Even on the assumption that the Court finds WWRAI guilty of forum shopping, the burden of AMALI to establish the preconditions discussed above so as to entitle it to a temporary legal easement subsists.

Furthermore, the Court finds no compelling need to resolve the issue of prejudgment of the main case or the original petition in view of the granting of the present petition and the declaration as void the granting of a writ of preliminary mandatory injunction on the temporary easement of right of way under RTC Order dated July 24, 1997.

To stress, the temporary easement of right of way under Article 656 of the Civil Code, similar to the permanent easement of right of way pursuant to its Articles 649 and 650, can only be granted **after** proof of compliance with the prerequisites set forth in the articles duly adduced during a full-blown trial.

Lastly, the *status quo* prevailing before the filing of the WWRAI petition before the CA is not the *status quo ante* that

must be preserved. The object of a writ of preliminary injunction is to preserve the *status quo*, which is the last peaceable uncontested status that preceded the pending controversy.[39] Thus, the proper understanding of the *status quo ante* should refer to the situation prior to AMALI's unauthorized use of a portion of Fordham Street as an access road and staging area of its AMA Tower project.

WHEREFORE, premises considered, the petition for review on *certiorari* in G.R. No. 202342 is hereby **GRANTED**, and the Court of Appeals' Decision dated June 14, 2012 in CA-G.R. SP No. 118994 is hereby **REVERSED** and **SET ASIDE**. The October 28, 2010 and February 23, 2011 Orders of the Regional Trial Court of Pasig City assigned in San Juan (Metropolitan Manila), Branch 264 in Civil Case No. 65668 are **REINSTATED**, and its Order dated July 24, 1997 insofar as it granted a temporary easement of right of way over Fordham Street in favor of petitioner AMA Land, Inc. is concerned is declared **VOID** and of **NO EFFECT**. The said Regional Trial Court is **DIRECTED** to proceed with the trial of the case with dispatch.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin,[*] and *del Castillo, JJ.,* concur.

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[39] *Searth Commodities Corp. v. Court of Appeals*, *supra* note 35, at 630; cases cited omitted.

[*] Designated additional member per Raffle dated July 12, 2017 *vice* Associate Justice Estela M. Perlas-Bernabe.

FIRST DIVISION

[G.R. No. 203902. July 19, 2017]

SPOUSES DIONISIO ESTRADA AND JOVITA R. ESTRADA, *petitioners, vs.* **PHILIPPINE RABBIT BUS LINES, INC. AND EDUARDO R. SAYLAN,** *respondents.*

SYLLABUS

1. **CIVIL LAW; DAMAGES; AWARD OF MORAL DAMAGES; THOUGH INCAPABLE OF PECUNIARY COMPUTATION, MORAL DAMAGES MAY BE RECOVERED IF THEY ARE THE PROXIMATE RESULT OF THE DEFENDANT'S WRONGFUL ACT OR OMISSION; INSTANCES WHEN MORAL DAMAGES ARE RECOVERABLE, CITED.—** Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission. Under Article 2219 of the Civil Code, moral damages are recoverable in the following and analogous cases: (1) a criminal offense resulting in physical injuries; (2) quasi-delicts causing physical injuries; (3) seduction, abduction, rape or other lascivious acts; (4) adultery or concubinage; (5) illegal or arbitrary detention or arrest; (6) illegal search; (7) libel, slander, or any other form of defamation; (8) malicious prosecution; (9) acts mentioned in Article 309; and (10) acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

2. **ID.; ID.; ID.; GENERALLY MORAL DAMAGES ARE NOT RECOVERABLE IN ACTIONS FOR DAMAGES PREDICATED ON BREACH OF CONTRACT; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.—** Since breach of contract is not one of the items enumerated under Article 2219, moral damages, as a general rule, are not recoverable in actions for damages predicated on breach of contract. x x x As an exception, such damages are recoverable [in an action for breach of contract:] (1) in cases in which the

mishap results in the death of a passenger, as provided in Article 1764, in relation to Article 2206(3) of the Civil Code; and (2) in x x x cases in which the carrier is guilty of fraud or bad faith, as provided in Article 2220. x x x It is obvious that this case does not come under the first of the above-mentioned exceptions since Dionisio did not die in the mishap but merely suffered an injury. Nevertheless, petitioners contend that it falls under the second category since they aver that Philippine Rabbit is guilty of fraud or bad faith. x x x In this case, the fraud or bad faith that must be convincingly proved by petitioners should be one which was committed by Philippine Rabbit in breaching its contract of carriage with Dionisio. Unfortunately for petitioners, the Court finds no persuasive proof of such fraud or bad faith. x x x There is no showing here that Philippine Rabbit induced Dionisio to enter into a contract of carriage with the former through insidious machination. Neither is there any indication or even an allegation of deceit or concealment or omission of material facts by reason of which Dionisio boarded the bus owned by Philippine Rabbit. Likewise, it was not shown that Philippine Rabbit's breach of its known duty, which was to transport Dionisio from Urdaneta to La Union, was attended by some motive, interest, or ill will. From these, no fraud or bad faith can be attributed to Philippine Rabbit. Still, petitioners insist that since the defenses it pleaded in its Answer were designed to evade liability, Philippine Rabbit is guilty of fraud or bad faith. Suffice it to state, however, that the allegations which made up Philippine Rabbit's defenses are hardly the kind of fraud or bad faith contemplated by law. Again, it bears to mention that the fraud or bad faith must be one which attended the contractual breach or one which induced Dionisio to enter into contract in the first place. Clearly, moral damages are not recoverable in this case.

3. ID.; ID.; ID.; ALLEGATIONS OF FRAUD AND BAD FAITH MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE.— It has been held, however, that "allegations of bad faith and fraud must be proved by clear and convincing evidence." They are never presumed considering that they are serious accusations that can be so conveniently and casually invoked. And unless convincingly substantiated by whoever is alleging them, they amount to mere slogans or mudslinging. x x x Bad faith, on the other hand, "does not simply connote bad judgment or negligence; it imports a dishonest purpose or

some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."

CAGUIOA, *J.*, *concurring opinion*:

CIVIL LAW; MORAL DAMAGES; WHILE THERE IS BASIS TO DENY THE CLAIM FOR MORAL DAMAGES BASED ON BREACH OF CONTRACT OF CARRIAGE, ITS AWARD CAN BE JUSTIFIED UNDER *QUASI DELICT*; CASE AT BAR.— While there is legal basis to deny the claim for moral damages based on breach of contract of carriage, its award could, however, be justified under *quasi-delict*. The injury suffered by Dionisio resulted from both breach of contract of carriage and quasi-delict. Evidently, the facts establish the commission of a quasi-delict by the driver of Philippine Rabbit which resulted to the physical injury suffered by Dionisio — this scenario falls under Article 2219 (2) of the Civil Code. While the trial court treated Dionisio's complaint for damages as one predicated on breach of contract of carriage, it nonetheless found that Philippine Rabbit failed to exercise the diligence of a good father of a family in the selection and supervision of its negligent driver, rendering it solidarily liable for damages. This standard (diligence of a good father of a family in the selection and supervision of an employee) is applicable in cases of *quasi-delict*, not breach of contract of carriage, as the latter carries a different standard (exercise of extraordinary diligence in the performance of its contractual obligation). Moreover, in cases of breach of contract of carriage (*culpa contractual*) the liability of the common carrier or employer is direct and immediate, not merely subsidiary or secondary, while in cases of *quasi-delict* (*culpa aquiliana*), the liability of the common carrier (employer) and the negligent driver (employee) is direct, primary, and solidary. Thus, in a case of breach of contract of carriage, the common carrier is the person liable and not the driver, while in a case of quasi-delict, both the common carrier and the driver are liable.

APPEARANCES OF COUNSEL

Michael Henry C. Sevilleja for petitioners.
Juan B. Valdez for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The Court restates in this petition two principles on the grant of damages. *First*, moral damages, as a general rule, are not recoverable in an action for damages predicated on breach of contract.[1] *Second*, temperate damages in lieu of actual damages for loss of earning capacity may be awarded where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income.[2]

This Petition for Review on *Certiorari* assails the May 16, 2012 Decision[3] and October 1, 2012 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CV No. 95520, which partially granted the appeal filed therewith by respondent Philippine Rabbit Bus Lines, Inc. (Philippine Rabbit) and denied petitioners spouses Dionisio C. Estrada (Dionisio) and Jovita R. Estrada's motion for reconsideration thereto.

Factual Antecedents

On April 13, 2004, petitioners filed with the Regional Trial Court (RTC) of Urdaneta City, Pangasinan, a Complaint[5] for Damages against Philippine Rabbit and respondent Eduardo R. Saylan (Eduardo).

The facts as succinctly summarized by the RTC are as follows:

> [A] mishap occurred on April 9, 2002 along the national highway in Barangay Alipangpang, Pozorrubio, Pangasinan, between the passenger bus with plate number CVK-964 and body number 3101,

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[1] *Japan Arilines v. Simangan*, 575 Phil. 359, 375 (2008).

[2] *Tan v. OMC Carriers, Inc.*, 654 Phil. 443, 457 (2011).

[3] CA *rollo*, pp. 68-75; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Remedios A. Salazar-Fernando and Ramon M. Bato, Jr.

[4] *Id*. at 91-92.

[5] Records, pp. 2-5.

driven by [respondent] Eduardo Saylan and owned by [respondent] Philippine Rabbit Bus, Lines, Inc., and the Isuzu truck with plate number UPB-974 driven by Willy U. Urez and registered in the name of Rogelio Cuyton, Jr.. At the time of the incident, the Philippine Rabbit Bus was going towards the north direction, while the Isuzu truck was travelling towards the south direction. The collision happened at the left lane or the lane properly belonging to the Isuzu truck. The right front portion of the Isuzu Truck appears to have collided with the right side portion of the body of the Philippine Rabbit bus. x x x Before the collision, the bus was following closely a jeepney. When the jeepney stopped, the bus suddenly swerved to the left encroaching upon the rightful lane of the Isuzu truck, which resulted in the collision of the two (2) vehicles. x x x The [petitioner] Dionisio Estrada, who was among the passengers of the Philippine Rabbit bus, as evidenced by the ticket issued to him, was injured on the [right] arm as a consequence of the accident. His injured right arm was amputated at the Villaflor Medical Doctor's Hospital in Dagupan City x x x. For the treatment of his injury, he incurred expenses as evidenced by x x x various receipts.[6]

Dionisio argued that pursuant to the contract of carriage between him and Philippine Rabbit, respondents were duty-bound to carry him safely as far as human care and foresight can provide, with utmost diligence of a very cautious person, and with due regard for all the circumstances from the point of his origin in Urdaneta City to his destination in Pugo, La Union. However, through the fault and negligence of Philippine Rabbit's driver, Eduardo, and without human care foresight, and due regard for all circumstances, respondents failed to transport him safely by reason of the aforementioned collision which resulted in the amputation of Dionisio's right arm. And since demands for Philippine Rabbit[7] to pay him damages for the injury he sustained remained unheeded, Dionisio filed the said complaint wherein he prayed for the following awards: moral damages of ₱500,000, actual damages of ₱60,000.00, and attorney's fees of ₱25,000.00.

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[6] *Id*. at 351-352.

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

Petitioners' claim for moral damages, in particular, was based on the following allegations:

> 9. [The] amount of ₱500,000.00 as moral damages for the amputation of [Dionisio's] right arm for life including his moral sufferings for such [loss] of right arm is reasonable.
>
> Said amount is computed and derived using the formula (2/3 x [80- age of the complainant when the injury is sustained] = life expectancy) adopted in the American Expectancy Table of Mortality or the actuarial of Combined Experience Table of Mortality. From such formula, [Dionisio] is expected to live for 18 years, which is equivalent [to] about 6570 days. For each day, [Dionisio] is claiming ₱80.00 as he is expected to work for 8 hours a day with his amputated arm or to enjoy the same for at least 8 hours a day (or is claiming ₱10.00 for each hour) for 18 years (6570 days). The amount that can be computed thereof would be ₱525,600.00 (6570 days x ₱80.00). [Dionisio] then [rounded] it off to ₱500,000.00, the moral damages consisted [of] his moral sufferings due to the [loss] of his right arm for life;[8]

Denying any liability, Philippine Rabbit in its Answer[9] averred that it carried Dionisio safely as far as human care and foresight could provide with the utmost diligence of a very cautious person and with due regard for all the circumstances prevailing. While it did not contest that its bus figured in an accident, Philippine Rabbit nevertheless argued that the cause thereof was an extraordinary circumstance independent of its driver's action or a fortuitous event. Hence, it claimed to be exempt from any liability arising therefrom. In any case, Philippine Rabbit averred that it was the Isuzu truck coming from the opposite direction which had the last clear chance to avoid the mishap. Instead of slowing down upon seeing the bus, the said truck continued its speed such that it bumped into the right side of the bus. The proximate cause of the accident, therefore, was the wrongful and negligent manner in which the Isuzu truck was operated by its driver. In view of this, Philippine Rabbit believed that Dionisio has no cause of action against it.

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

[9] *Id*. at 54-57.

With respect to Eduardo, he was declared in default after he failed to file an Answer despite due notice.[10]

Ruling of the Regional Trial Court

Treating petitioners' Complaint for damages as one predicated on breach of contract of carriage, the RTC rendered its Decision[11] on December 1, 2009.

In concluding that Eduardo was negligent in driving the Philippine Rabbit bus, the said court ratiocinated, *viz.*:

> Evidently, prior to the accident, [Eduardo] was tailgating the jeepney ahead of him. When the jeepney stopped, [Eduardo] suddenly swerved the bus to the left, encroaching in the process the rightful lane of the oncoming Isuzu truck, thereby resulting in the collision. The fact that [Eduardo] did not apply the brakes, but instead swerved to the other lane, fairly suggests that he was not only unnecessarily close to the jeepney, but that he was operating the bus at a speed greater than what was reasonably necessary for him to be able to bring his vehicle to a full stop to avoid hitting the vehicle he was then following. Clearly, immediately before the collision, [Eduardo] was actually violating Section 35 of the Land Transportation and Traffic Code, Republic Act No. 4136, as amended:
>
> > Sec. 35. Restriction as to speed. – (a) Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed, not greater nor less than [what] is reasonable and proper, having due regard for the traffic, the width of the highway, and or any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such a speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the clear distance ahead.
>
> Too, when [Eduardo] swerved to the left and encroached on the rightful lane of the Isuzu truck, he was violating Section 41 of the same Traffic Code:

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[10] *Id.* at 43.

[11] *Id.* at 351-370; penned by Acting Judge Teodorico Alfonso P. Bauzon of RTC-Branch 48, Urdaneta City, Pangasinan.

> Sec. 41. Restriction on overtaking and passing. – (a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking or passing another vehicle, proceeding in the same direction, unless such left side is clearly visible, and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.

The fact that the collision occurred immediately after the bus swerved on the left lane clearly [indicates] that the other lane was not clear and free of oncoming vehicle at the time x x x [Eduardo] tried to overtake the jeepney to avoid hitting it.

It is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation, unless there is proof to the contrary (Article 2185 of the Civil Code). [Eduardo] failed to rebut this legal presumption as he chose not to answer the complaint and to testify in court. [Philippine Rabbit was also] unsuccessful in overthrowing the said legal presumption. x x x

[Eduardo's] failure to observe the proper and safe distance from the vehicle ahead of him and in running the bus at a speed greater than what was reasonably necessary to control and stop the vehicle when warranted by the circumstances, clearly were reflective of his lack of precaution, vigilance, and foresight in operating his vehicle. As an experienced driver, he should have known about the danger posed by tailgating another vehicle and driving his vehicle at an unreasonable speed called for by the circumstances. For, the sudden stopping of a motor vehicle, for whatever [reason], is not an uncommon and [unforeseeable] occurrence in the highway. If only he had exercised diligence, vigilance and foresight, he would have refrained from tailgating another vehicle at a dangerously close range. What he should have done instead was to maintain a reasonable distance from the jeepney and drove his vehicle at a speed not greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead. This he failed to do. As a consequence, when the jeepney stopped, he was unable to control and stop the bus. Instead, he was forced to swerve the bus to the left lane blocking the path of the oncoming Isuzu truck. While he averted smashing the jeepney, he however collided with the Isuzu truck. No doubt, it was [Eduardo's] lack of precaution, vigilance and foresight that led to the accident. Otherwise stated, it was his recklessness or negligence that was the proximate cause of the mishap.

[Philippine Rabbit's] imputation of fault to the driver of the Isuzu truck, claiming that it was the latter [which] had the last clear chance to avoid the accident, deserves scant consideration. As the evidence would show, the impact occurred immediately after the bus swerved and while in the process of encroaching on the left lane. This is evidenced by the fact that the front portion of the Isuzu truck collided with the right side portion of the bus. The driver of the Isuzu truck, before the accident, was cruising on the lane properly belonging to him. He had every right to expect that all the vehicles, including the bus coming from the opposite direction would stay on their proper lane. He certainly was not expected to know what prompted the bus driver to suddenly swerve his vehicle to the left. The abruptness by which the bus swerved without a warning could not have given him the luxury of time to reflect and anticipate the bus' encroachment of his lane for him to be able to avoid it. Needless to point out, there was no last clear chance to speak of on the part of the driver of the Isuzu truck to avoid the accident. Besides, the 'last clear chance' principle is not applicable in this case since the instant suit is between the passenger and the common carrier. x x x[12]

The RTC then proceeded to determine whether Philippine Rabbit, as it claimed, exercised the diligence of a good father of a family in the selection and supervision of its drivers as to negate any liability for damages. The said court, however, was unconvinced after it found that (1) Philippine Rabbit failed to show that it had taken all the necessary and actual steps to thoroughly examine the qualifications of Eduardo as a driver worthy of employment; and (2) no proof relative to the existence of company rules and regulations, instructions, and policies affecting its drivers, as well as to their actual implementation and observance, were presented. Hence, Philippine Rabbit was held jointly and severally liable with Eduardo for the awards made in favor of Dionisio as follows:

The emotional anguish and suffering of x x x Dionisio Estrada as a consequence of the injury and amputation of his right arm due to the reckless driving of x x x Eduardo, which resulted in the accident, cannot be overemphasized. The loss of the use of his right arm and the humiliation of being tagged in the public [eye] as a person with

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[12] *Id.* at 358-361.

only one arm would certainly be borne by him for the rest of his life. The amount of moral damages he is praying appears to be reasonable under the circumstances.

Too, the award of attorney's fees is proper considering that x x x [Dionisio] was forced to litigate after x x x [Philippine Rabbit] refused to heed his demand for the payment of damages as a consequence of the accident.

WHEREFORE, judgment is hereby rendered ordering x x x Philippine Rabbit Bus Lines, Inc. and Eduardo Saylan to pay jointly and severally x x x Dionisio Estrada the following amounts:

1. Five Hundred Thousand Pesos (₱500,000.00) as moral damages;

2. Fifty Seven Thousand Seven Hundred Sixty Six Pesos and Twenty Five Centavos (₱57,766.25), as actual damages; and

3. Twenty Five Thousand Pesos (₱25,000.00), as attorney's fees; and the costs of suit.

SO ORDERED.[13]

Philippine Rabbit filed a Motion for Reconsideration[14] but the same was denied for lack of merit in an Order[15] dated May 31, 2010.

Ruling of the Court of Appeals

On appeal, Philippine Rabbit imputed error upon the RTC in not finding that it exercised the diligence of a good father of a family in the selection and supervision of its drivers. In any case, it argued that moral damages are not recoverable in an action for damages predicated on breach of contract except when death results or when the carrier is guilty of fraud or bad faith. Since none of the two aforementioned circumstances are present in this case, Philippine Rabbit contended that it is Eduardo alone who should be held civilly liable.

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[13] *Id*. at 369-370.

[14] *Id*. at 373-376.

[15] *Id*. at 380-383.

In a Decision[16] dated May 16, 2012, the CA partially granted the appeal on the following ratiocination:

> Based from [sic] the aforecited allegations in the complaint, it was rightly regarded by the trial court as an action to recover damages arising from breach of contract of carriage. There was in fact, an admission that [Dionisio] was a passenger of a bus owned by [Philippine Rabbit]. In an action for breach of contract of carriage, all that is required is to prove the existence of such contract and its non-performance by the carrier through the latter's failure to carry the passenger safely to his destination. In the present case, it was duly established that there was a collision and as a result of which, [Dionisio] sustained an injury.
>
> [Philippine Rabbit] was therefore properly found liable for breach of contract of carriage. A common carrier is bound to carry its passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard to all the circumstances. In a contract of carriage, it is presumed that the common carrier was at fault or was negligent when a passenger dies or is injured. Unless the presumption is rebutted, the court need not even make an express finding of fault or negligence on the part of the common carrier. This presumption may only be overcome by evidence that the carrier exercised extraordinary diligence, and this presumption remained unrebutted in this case. The trial court found that the accident which led to the amputation of [Dionisio's] arm was due to the reckless driving and negligence of [Philippine Rabbit's] driver and stated that:
>
> > No doubt, it was x x x [Eduardo's] lack of precaution, vigilance and foresight that led to the accident. Otherwise stated, it was his recklessness or negligence that was the proximate cause of the mishap.
>
> Such negligence and recklessness is binding against [Philippine Rabbit] pursuant to Article 1759 of the Civil Code which provides:
>
> > Common carriers are liable for the death of or injuries to passengers through the negligence or willful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.

[16] CA *rollo*, pp. 68-75.

> This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.

Thus, [Philippine Rabbit's] defense that it acted with the diligence of a good father of a family in its selection of its driver, Eduardo R. Saylan, is unavailing. [Philippine Rabbit] however is correct in its contention that moral damages are not recoverable in actions for damages predicated on a breach of contract, unless death of a passenger results, or it is proved that the carrier was guilty of fraud or bad faith, even if death does not result.

There was no evidence on record indicative of fraud or bad faith on [Philippine Rabbit's] part. Bad faith should be established by clear and convincing evidence. The settled rule is that the law always presumes good faith such that any person who seeks to be awarded damages due to the acts of another has the burden of proving that the latter acted in bad faith or with ill motive. The award for attorney's fees must likewise be deleted considering that moral damages cannot be granted and none of the instances enumerated in Article 2208 of the Civil Code is present in the instant case. However, the actual damages awarded by the trial court are adequately substantiated by official receipts. Therefore, the same shall be sustained.

The driver on the other hand, may not be held liable under the contract of carriage, not being a party to the same. The basis of a cause of action of a passenger against the driver is either culpa criminal or culpa aquiliana. A passenger may file a criminal case based on culpa criminal punishable under the Revised Penal Code or a civil case based on culpa aquiliana under Articles 2176 and 2177 of the Civil Code.

A cause of action based on culpa contractual is also separate and distinct from a cause of action based on culpa aquiliana. x x x

x x x x x x x x x

The trial court therefore erred in ruling that [Philippine Rabbit] bus company and [respondent] driver are jointly and severally liable. The driver cannot be held jointly and severally liable with the carrier in case of breach of the contract of carriage. The contract of carriage is between the carrier and the passenger, and in the event of contractual liability, the carrier is exclusively responsible [therefor] to the passenger, even if such breach be due to the negligence of his driver.

The carrier can neither shift his liability on the contract to his driver nor share it with him for his driver's negligence is his.[17]

Accordingly, the CA modified the RTC Decision in that it declared Philippine Rabbit as solely and exclusively liable to Dionisio for actual damages in the amount of ₱57,766.25 and deleted the award of moral damages and attorney's fees.

Petitioners filed a Motion for Reconsideration[18] but the same was denied by the CA for lack of merit in a Resolution[19] dated October 1, 2012.

Hence, this Petition for Review on *Certiorari* raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT THERE WAS NO EVIDENCE ON RECORD INDICATIVE OF FRAUD OR BAD FAITH ON [PHILIPPINE RABBIT'S] PART.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT [CONSIDERING] X X X THE [COST OF THE] REPLACEMENT OF PETITIONER [DIONISIO'S AMPUTATED RIGHT ARM] WITH [AN] ARTIFICIAL ONE AS ACTUAL DAMAGES.[20]

The Parties' Arguments

Petitioners dispute the findings of lack of fraud or bad faith on the part of Philippine Rabbit as to make it liable for moral damages. According to them, the assertions of Philippine Rabbit in its Answer, *i.e.*, that it carried Dionisio safely; that it was not an insurer of all risks; that the accident was caused by a fortuitous event; that in any event, it was the negligent manner by which the Isuzu truck was operated which was the proximate

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[17] *Id.* at 72-74.

[18] *Id.* at 78-84.

[19] *Id.* at 91-92.

[20] *Rollo*, p. 9.

cause of the accident; and that Dionisio has no cause of action against Philippine Rabbit, were made with the intention to evade liability. Petitioners claim that the said assertions are clear indication of fraud or bad faith.

In justifying their claim for moral damages, petitioners aver that in their Complaint, they did not seek for moral damages in terms of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury *per se*, but for moral damages based purely on the fact that Dionisio lost his right arm. They argue that while in a strict sense, Dionisio incurred actual damages through the amputation of his right arm, such loss may rightly be considered as falling under moral damages. This is because a right arm is beyond the commerce of man and loss thereof necessarily brings physical suffering, mental anguish, besmirched reputation, social humiliation and similar injury to a person. At any rate, should this Court award the amount of ₱500,000.00 as actual damages due to the loss of Dionisio's right arm, petitioners also find the same proper and appropriate under the circumstances.

Now jointly represented by one counsel, respondents, on the other hand, reiterate the rule that moral damages are not recoverable in an action for damages predicated on a breach of contract, as in this case, since breach of contract is not one of the items enumerated in Article 2219 of the Civil Code. Only as an exception, moral damages may be recovered in an action for breach of contract of carriage when the mishap results in death or if the carrier acted fraudulently or in bad faith. Since Dionisio did not die in the mishap nor was Philippine Rabbit found guilty of fraud or bad faith, respondents argue that an award for moral damages is improper for having no basis in fact and in law.

Our Ruling

The Court modifies the CA ruling.

Moral damages; Instances when moral damages can be awarded in an action for breach of contract.

Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.[21]

Under Article 2219 of the Civil Code, moral damages are recoverable in the following and analogous cases: (1) a criminal offense resulting in physical injuries; (2) quasi-delicts causing physical injuries; (3) seduction, abduction, rape or other lascivious acts; (4) adultery or concubinage; (5) illegal or arbitrary detention or arrest; (6) illegal search; (7) libel, slander, or any other form of defamation; (8) malicious prosecution; (9) acts mentioned in Article 309;[22] and (10) acts and actions referred to in Articles 21,[23] 26,[24] 27,[25] 28,[26] 29,[27]

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[21] CIVIL CODE, Article 2217.

[22] CIVIL CODE, Article 309. Any person who shows disrespect to the dead, or wrongfully interferes with a funeral shall be liable to the family of the deceased for damages, material or moral.

[23] CIVIL CODE, Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

[24] CIVIL CODE, Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

(1) Prying into the privacy of another's residence;
(2) Meddling with or disturbing the private life or family relations of another;
(3) Intriguing to cause another to be alienated from his friends;
(4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

30,[28] 32,[29] 34,[30] and 35.[31]

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[25] CIVIL CODE, Article 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.

[26] CIVIL CODE, Article 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.

[27] CIVIL CODE, Article 29. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.

[28] CIVIL CODE, Article 30. When a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of.

[29] CIVIL CODE, Article 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

(1) Freedom of religion;
(2) Freedom of speech;
(3) Freedom to writ for the press or to maintain a periodical publication;
(4) Freedom from arbitrary or illegal detention;
(5) Freedom of suffrage;
(6) The right against deprivation of property without due process of law;
(7) The right to a just compensation when private property is taken for public use;
(8) The right to the equal protection of the laws;
(9) The right to be secured in one's person, house, papers, and effects against unreasonable searches and seizures;
(10) The liberty of abode and of changing the same;

x x x [C]ase law establishes the following requisites for the award of moral damages: (1) there must be an injury clearly sustained by

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(11) The privacy of communication and correspondence;
(12) The right to become a member of associations or societies for purposes not contrary to law;
(13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;
(14) The right to be free from involuntary servitude in any form;
(15) The right of the accused against excessive bail;
(16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
(17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
(18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and
(19) Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted) and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

[30] CIVIL CODE, Article 34. When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.

[31] CIVIL CODE, Article 35. When a person, claiming to be injured by a criminal offense, charges another with the same, for which no independent civil action is granted in this Code or any special law, but the justice of the

the claimant, whether physical, mental or psychological; (2) there must be a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award for damages is predicated on any of the cases stated in Article 2219 of the Civil Code.[32]

Since breach of contract is not one of the items enumerated under Article 2219, moral damages, as a general rule, are not recoverable in actions for damages predicated on breach of contract.[33]

x x x As an exception, such damages are recoverable [in an action for breach of contract:] (1) in cases in which the mishap results in the death of a passenger, as provided in Article 1764,[34] in relation to Article 2206(3)[35] of the Civil Code; and (2) in

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peace finds no reasonable grounds to believe that a crime has been committed, or the prosecuting attorney refuses or fails to institute criminal proceedings, the complainant may bring a civil action for damages against the alleged offender. Such civil action may be supported by a preponderance of evidence. Upon the defendant's motion, the court may require the plaintiff to file a bond to indemnify the defendant in case the complaint should be found to be malicious.

If during the pendency of the civil action, an information should be presented by the prosecuting attorney, the civil action shall be suspended until the termination of the criminal proceedings.

[32] *Cathay Pacific Airways, Ltd. v. Spouses Vazquez*, 447 Phil. 306, 323-324 (2003).

[33] *Japan Airlines v. Simangan*, *supra* note 1.

[34] CIVIL CODE, Article 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

[35] CIVIL CODE, Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least Three thousand pesos, even though there may have been mitigating circumstances. In addition:

x x x x x x x x x

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

x x x cases in which the carrier is guilty of fraud or bad faith, as provided in Article 2220[36].[37]

Moral damages are not recoverable in this case.

It is obvious that this case does not come under the first of the above-mentioned exceptions since Dionisio did not die in the mishap but merely suffered an injury. Nevertheless, petitioners contend that it falls under the second category since they aver that Philippine Rabbit is guilty of fraud or bad faith.

It has been held, however, that "allegations of bad faith and fraud must be proved by clear and convincing evidence."[38] They are never presumed considering that they are serious accusations that can be so conveniently and casually invoked.[39] And unless convincingly substantiated by whoever is alleging them, they amount to mere slogans or mudslinging.[40]

In this case, the fraud or bad faith that must be convincingly proved by petitioners should be one which was committed by Philippine Rabbit in breaching its contract of carriage with Dionisio. Unfortunately for petitioners, the Court finds no persuasive proof of such fraud or bad faith.

Fraud has been defined to include an inducement through insidious machination. Insidious machination refers to a deceitful scheme or plot with an evil or devious purpose. Deceit exists where the party, with intent to deceive, conceals or omits to state material facts and, by reason of such omission or concealment, the other party was induced to give consent that would not otherwise have been given.[41]

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[36] CIVIL CODE, Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[37] *Japan Airlines v. Simangan*, *supra* note at 375-376.

[38] *Spouses Palada v. Solidbank Corporation*, 668 Phil. 172, 174 (2011).

[39] *Cathay Pacific Airways, Ltd. v. Sps. Vazquez*, *supra* note 32 at 321.

[40] *Id*.

[41] *Id*.

Bad faith, on the other hand, "does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."[42]

There is no showing here that Philippine Rabbit induced Dionisio to enter into a contract of carriage with the former through insidious machination. Neither is there any indication or even an allegation of deceit or concealment or omission of material facts by reason of which Dionisio boarded the bus owned by Philippine Rabbit. Likewise, it was not shown that Philippine Rabbit's breach of its known duty, which was to transport Dionisio from Urdaneta to La Union,[43] was attended by some motive, interest, or ill will. From these, no fraud or bad faith can be attributed to Philippine Rabbit.

Still, petitioners insist that since the defenses it pleaded in its Answer were designed to evade liability, Philippine Rabbit is guilty of fraud or bad faith. Suffice it to state, however, that the allegations which made up Philippine Rabbit's defenses are hardly the kind of fraud or bad faith contemplated by law. Again, it bears to mention that the fraud or bad faith must be one which attended the contractual breach or one which induced Dionisio to enter into contract in the first place.

Clearly, moral damages are not recoverable in this case. The CA, therefore, did not err in deleting the award for moral damages.

Actual damages for loss/impairment of earning capacity are also not recoverable. In lieu thereof, the Court awards temperate damages.

In an attempt to recover the ₱500,000.00 awarded by the RTC as moral damages but deleted by the CA, petitioners would

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[42] *Id.* at 321-322.

[43] See *China Airlines v. Chiok*, 455 Phil. 169, 187 (2003).

instead want this Court to grant them the same amount as just and proper compensation for the loss of Dionisio's right arm.

It can be recalled that in the Complaint, petitioners justified their claim for moral damages as follows:

> 9. [The] amount of ₱500,000.00 as moral damages for the amputation of [Dionisio's] right arm for life including his moral sufferings for such [loss] of right arm is reasonable.
>
> Said amount is computed and derived using the formula (2/3 x [80- age of the complainant when the injury is sustained] = life expectancy) adopted in the American Expectancy Table of Mortality or the actuarial of Combined Experience Table of Mortality. From such formula, [Dionisio] is expected to live for 18 years, which is equivalent [to] about 6570 days. For each day, [Dionisio] is claiming ₱80.00 as he is expected to work for 8 hours a day with his amputated arm or to enjoy the same for at least 8 hours a day (or is claiming ₱10.00 for each hour) for 18 years (6570 days). The amount that can be computed thereof would be ₱525,600.00 (6570 days x ₱80.00). [Dionisio] then [rounded] it off to ₱500,000.00, the moral damages consisted [of] his moral sufferings due to the [loss] of his right arm for life;[44]

It thus appears that while petitioners denominated their claim for ₱500,000.00 as moral damages, their computation was actually based on the supposed loss/impairment of Dionisio's earning capacity.

Loss or impairment of earning capacity finds support under Article 2205 (1) of the Civil Code, to wit:

> Art. 2205. Damages may be recovered:
>
> (1) For loss or impairment of earning capacity in cases of temporary or permanent personal injury;
>
> x x x x x x x x x

It is, however, settled that "damages for loss [or impairment] of earning capacity is in the nature of actual damages x x x."[45]

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[44] Records, pp. 3-4.

[45] *Serra v. Mumar*, 684 Phil. 363, 374 (2012).

Actual or compensatory damages are those awarded in order to compensate a party for an injury or loss he suffered. They arise out of a sense of natural justice, aimed at repairing the wrong done. To be recoverable, they must be duly proved with a reasonable degree of certainty. A court cannot rely on speculation, conjecture, or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered, and on evidence of the actual amount thereof.[46]

Thus, as a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss [or impairment] of earning capacity may be awarded despite the absence of documentary evidence when **(1) the deceased [or the injured] was self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased was employed as a daily worker earning less than the minimum wage under current labor laws.**[47]

Here, it is unlikely that petitioners presented evidence to prove a claim for actual damages based on loss/impairment of earning capacity since what they were claiming at the outset was an award for moral damages. The Court has nonetheless gone over the records to find out if they have sufficiently shown during trial that they are entitled to such compensatory damages that they are now claiming. Unfortunately, no documentary evidence supporting Dionisio's actual income is extant on the records. What it bears is the mere testimony of Dionisio on the matter, *viz.*:

COURT:

Q: By the way, why did you submit the original copy of your exhibits to the GSIS?
A: I am claiming my GSIS compensation because I am a government employee.

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[46] *Philippine National Railways v. Brunty*, 537 Phil. 161, 177-178 (2006).

[47] *Enriquez v. Isarog Line Transport, Inc*., G.R No. 212008, November 16, 2016; emphasis supplied.

ATTY. SEVILLEJA:

Q: What particular government [agency do] you belong?
A: DECS.

Q: You are a teacher?
A: Yes sir.

Q: You are still continuing your profession as a teacher until now?
A: Yes sir.

Q: By the way Mr. witness, you are claiming x x x moral damages of ₱500,000.00? How did you compute that ₱500,000.00?
A: I based that from [sic] my income which is about ₱80.00 a day or ₱10.00 per hour.

Q: Is that x x x gross or not?
A: A: Net sir.

Q: What are your other sideline?
A: I know [how] to drive a tricycle.

Q: Because of [the] amputation of your right arm, you mean to say you [cannot] drive anymore a tricycle?
A: Yes sir.

Q: By the way Mr. witness, how old are you when you met [the] accident?
A: More than 53 years old sir, less than 54.

Q: If you are claiming for x x x moral damages of ₱80.00 a day, how come you are asking for ₱500,000.00?
A: If you compute that it is ₱2,400.00 monthly. If I still [live by] about 20-30 years [more], I can still [earn] that amount.[48]

It must be emphasized, though, that documentary proof of Dionisio's actual income cannot be dispensed with since based on the above testimony, Dionisio does not fall under any of the two exceptions aforementioned. Thus, as it stands, there is no competent proof substantiating his actual income and because of this, an award for actual damages for loss/ impairment of earning capacity cannot be made.

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[48] TSN dated February 23, 2006, pp. 6-7.

Nonetheless, since it was established that Dionisio lost his right arm, temperate damages in lieu of actual damages for loss/impairment of earning capacity may be awarded in his favor. Under Article 2224, "[t]emperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."

The case of *Tan v. OMC Carriers, Inc.*[49] enumerates several instances wherein the Court awarded temperate damages in lieu of actual damages for loss of earning capacity, *viz.*:

> In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income.
>
> In *Pleno v. Court of Appeals,* we sustained the award of temperate damages in the amount of ₱200,000.00 instead of actual damages for loss of earning capacity because the plaintiff's income was not sufficiently proven.
>
> We did the same in *People v. Singh*, and *People v. Almedilla*, granting temperate damages in place of actual damages for the failure of the prosecution to present sufficient evidence of the deceased's income.
>
> Similarly, in *Victory Liner, Inc. v. Gammad*, we deleted the award of damages for loss of earning capacity for lack of evidentiary basis of the actual extent of the loss. Nevertheless, because the income-earning capacity lost was clearly established, we awarded the heirs ₱500,000.00 as temperate damages.[50]

Accordingly, the Court in *Tan* awarded to the heirs of the therein deceased victim, who was working as a tailor at the time of his death, temperate damages in the amount of ₱300,000.00 in lieu of compensatory damages.[51]

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[49] *Supra* note 2.

[50] *Id.* at 457-458.

[51] *Id.*

In the subsequent case of *Orix Metro Leasing and Finance Corporation v. Mangalinao*,[52] the Court likewise awarded temperate damages as follows:

> While the net income had not been sufficiently established, the Court recognizes the fact that the Mangalinao heirs had suffered loss deserving of compensation. What the CA awarded is in actuality a form of temperate damages. Such form of damages under Article 2224 of the Civil Code is given in the absence of competent proof on the actual damages suffered. In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income. In this case, Roberto Mangalinao, the breadwinner of the family, was a businessman engaged in buying and selling *palay* and agricultural supplies that required high capital in its operations and was only 37 at the time of his death. Moreover, the Pathfinder which the Mangalinaos own, became a total wreck. Under the circumstances, we find the award of ₱500,000.00 as temperate damages as reasonable.[53]

And in the more recent case of *People v. Salahuddin*,[54] the lower courts' award of ₱4,398,000.00 as compensation for loss of earning capacity of a murdered lawyer was disallowed due to insufficiency of evidence. Again in lieu thereof, temperate damages of ₱1,000,000.00 was awarded.[55]

In view of the above rulings and under the circumstances of this case, the Court finds reasonable to award Dionisio temperate damages of ₱500,000.00 in lieu of actual damages for the loss/impairment of his earning capacity.

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[52] 680 Phil. 89 (2012).

[53] *Id.* at 108-109.

[54] G.R. No. 206291, January 18, 2016, 781 SCRA 154.

[55] *Id.* at 185.

Actual damages by way of medical expenses must be supported by official receipts.

Anent petitioners' assertion that actual damages should be awarded to them for the cost of replacement of Dionisio's amputated right arm, suffice it to state that petitioners failed to show during trial that the said amputated right arm was actually replaced by an artificial one. All that petitioners submitted was a quotation of ₱160,000.00 for a unit of elbow prosthesis[56] and nothing more. It has been held that actual proof of expenses incurred for medicines and other medical supplies necessary for treatment and rehabilitation must be presented by the claimant, in the form of official receipts, to show the exact cost of his medication and to prove that he indeed went through medication and rehabilitation. In the absence of the same, such claim must be negated.[57]

At any rate, the RTC already granted petitioners actual damages by way of medical expenses based on the official hospital receipts submitted.[58] There is, however, a need to correct the amount, that is, the same should be ₱57,658.25 as borne by the receipts and not ₱57,766.25.

Legal interest is imposed on the amounts awarded.

In addition, the amounts of damages awarded are declared subject to legal interest of 6% *per annum* from the finality of this Decision until full satisfaction.[59]

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed May 16, 2012 Decision and October 1, 2012 Resolution of the Court of Appeals in CA-G.R. CV

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[56] Records, p. 254.

[57] *Wuerth Philippines, Inc. v. Ynson*, 682 Phil. 143, 161 (2012).

[58] Records, pp. 239-245.

[59] *Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013).

No. 95520 are **AFFIRMED with MODIFICATIONS** as follows: (1) petitioners are declared entitled to temperate damages of ₱500,000.00; (2) the award of actual damages is set at the amount of ₱57,658.25; and (3) all damages awarded are subject to legal interest of 6% *per annum* from the finality of this Decision until full satisfaction.

SO ORDERED.

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

Caguioa, J., see separate concurring opinion.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the result. However, I am compelled to clarify certain basic legal principles on moral and actual damages.

While there is legal basis to deny the claim for moral damages based on breach of contract of carriage, its award could, however, be justified under quasi-delict. The injury suffered by Dionisio resulted from both breach of contract of carriage and quasi-delict. Evidently, the facts establish the commission of a quasi-delict by the driver of Philippine Rabbit which resulted to the physical injury suffered by Dionisio — this scenario falls under Article 2219 (2) of the Civil Code.[1]

While the trial court treated Dionisio's complaint for damages as one predicated on breach of contract of carriage, it nonetheless found that Philippine Rabbit failed to exercise the diligence of a good father of a family in the selection and supervision of its negligent driver, rendering it solidarily liable for damages. This standard (diligence of a good father of a family in the selection and supervision of an employee) is applicable in cases of quasi-delict, not breach of contract of carriage, as the latter carries

[1] Republic Act No. 386, entitled "AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES" otherwise known as the "CIVIL CODE OF THE PHILIPPINES" (1950).

a different standard (exercise of extraordinary diligence in the performance of its contractual obligation).[2] Moreover, in cases of breach of contract of carriage (*culpa contractual*) the liability of the common carrier or employer is direct and immediate, not merely subsidiary or secondary,[3] while in cases of quasi-delict (*culpa aquiliana*), the liability of the common carrier (employer) and the negligent driver (employee) is direct, primary, and solidary.[4] Thus, in a case of breach of contract of carriage, the common carrier is the person liable and not the driver, while in a case of quasi-delict, both the common carrier and the driver are liable.[5]

On the issue of actual damages, I believe that they could have been granted based on the testimony of Dionisio. Testimonial evidence may be sufficient to establish the award of actual damages for loss of compensation, in cases where the victim is : (1) self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is liable; or (2) was employed as a daily wage worker earning less than the minimum wage under current labor laws.[6]

While Dionisio was employed as a public-school teacher at the time of the incident, he also worked part-time as a tricycle driver. Dionisio testified that ₱80.00 is his average daily earnings in his sideline as a tricycle driver. The amount could not possibly pertain to his loss of income as a public-school teacher because he continued practicing his profession despite the amputation of his right arm. Rather, the loss of his right arm

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[2] CIVIL CODE, Art. 2180; *Torres-Madrigal Brokerage, Inc. v. FEB Mitsui Marine Insurance Co., Inc.*, G.R. 194121, July 11, 2016.

[3] *Vda. de Medina v. Cresencia*, 99 Phil. 506, 510 (1956).

[4] *National Power Corporation v. Court of Appeals*, 355 Phil. 642 (1998).

[5] TIMOTEO B. AQUINO, *REVIEWER ON CIVIL LAW* 763-764 (1st ed. 2014).

[6] *Enriquez v. Isarog Line Transport, Inc.*, G.R. No. 212008, November 16, 2016, pp. 3-4.

has a direct bearing on his ability to drive a tricycle. That Dionisio has to drive a tricycle to augment his salary as a public-school teacher is both lamentable and condemnable. If a tricycle passenger pays ₱20.00 for a special trip, which is a conservative estimate, then ₱80.00 covers only four (4) trips. Thus, as a self-employed part-time tricycle driver, who was earning less than the minimum wage under current labor laws and judicial notice is taken that no documentary evidence is available to prove the minimum wage in that line of work, Dionisio's testimony is sufficient to support the award of ₱500,000.00 for loss of earning capacity as computed by him.

Since there could be basis for the award of actual damages for loss of compensation, the award made by the *ponencia* of temperate damages could have been dispensed with.

THIRD DIVISION

[G.R. No. 208735. July 19, 2017]

BDO UNIBANK, INC. (*formerly* EQUITABLE PCI BANK), *petitioner, vs.* **NESTOR N. NERBES AND ARMENIA F. SURAVILLA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYER; SERIOUS MISCONDUCT OR WILLFUL DISOBEDIENCE BY THE EMPLOYEE OF THE LAWFUL ORDERS OF HIS EMPLOYER OR REPRESENTATIVE IN CONNECTION WITH HIS WORK IS A JUST CAUSE FOR DISMISSAL; SERIOUS MISCONDUCT AND WILLFUL DISOBEDIENCE, DISTINGUISHED.— Article 282, now Article 296, of the Labor Code enumerates the just causes for the termination of the employment of an employee. Under Article 282(a), serious misconduct or willful disobedience by

the employee of the lawful orders of his employer or representative in connection with his work is a just cause for dismissal. Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To be a valid cause for dismissal, such misconduct must be of grave and aggravated character and not merely trivial or unimportant. The misconduct must also be related to the performance of the employee's duties showing him to be unfit to continue working for the employer and that the employee's act or conduct was performed with wrongful intent. On the other hand, valid dismissal on the ground of willful disobedience requires the concurrence of twin requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

2. **ID.; ID.; ID.; ID.; NOT EVERY CASE OF INSUBORDINATION OR WILLFUL DISOBEDIENCE BY AN EMPLOYEE REASONABLY DESERVES THE PENALTY OF DISMISSAL BECAUSE THE PENALTY TO BE IMPOSED ON AN ERRING EMPLOYEE MUST BE COMMENSURATE WITH THE GRAVITY OF HIS OR HER OFFENSE.—** Not every case of insubordination or willful disobedience by an employee reasonably deserves the penalty of dismissal because the penalty to be imposed on an erring employee must be commensurate with the gravity of his or her offense. It is settled that notwithstanding the existence of a just cause, dismissal should not be imposed, as it is too severe a penalty, if the employee had been employed for a considerable length of time in the service of his or her employer, and such employment is untainted by any kind of dishonesty and irregularity. We note that aside from the subject incident, Nerbes and Suravilla were not previously charged with any other offense or irregularity. Considering the surrounding facts, termination of Nerbes and Suravilla's services was a disproportionately heavy penalty.

3. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); COMPROMISE AGREEMENT BETWEEN CLIENT AND THE ADVERSE PARTY; THE APPROVAL OF THE COMPROMISE AGREEMENT**

DOES NOT AFFECT THE COUNSEL'S RIGHT TO COMPENSATION.— It is settled that a client may enter into a compromise agreement with the adverse party to terminate the litigation before a judgment is rendered therein, and if the compromise agreement is found to be in order and not contrary to law, morals, good customs and public policy, its judicial approval is in order. There being no impediment to the court's approval of the Compromise Agreement between the bank and Suravilla, the court accordingly approves the same and grants the bank's motion to withdraw its petition with respect to Suravilla. Be that as it may, the grant of the bank's motion to withdraw the petition as regards Suravilla and the approval of their Compromise Agreement does not affect counsel's right to compensation. x x x In this case, We find that Atty. Jabla adequately and sufficiently represented Suravilla and prepared all the required pleadings on her behalf before the LA, the NLRC, the CA and this Court. Despite the absence of a written agreement as to the payment of fees, his entitlement to reasonable compensation may still be fairly ascertained. In this regard, Section 24 of Rule 138 of the Rules of Court should be observed in determining Atty. Jabla's compensation x x x As well, the criteria found in the Code of Professional Responsibility are considered in assessing the proper amount of compensation that a lawyer should receive.

4. ID.; ID.; ID.; ID.; THE OPPOSING PARTY WOULD BE SOLIDARILY LIABLE WITH THE CLIENT FOR THE ATTORNEY'S FEES UNDER THE THEORY THAT THEY UNFAIRLY AND UNJUSTLY INTERFERE WITH THE COUNSEL'S PROFESSIONAL RELATIONSHIP WITH HIS CLIENT; NOT PRESENT IN CASE AT BAR.— [T]he Court finds that the amount equivalent to 10% of the settlement amount received by Suravilla, or PhP 348,751.27 is reasonable compensation for the skill and services rendered by Atty. Jabla. However, the Court cannot easily hold the bank solidarily liable with Suravilla for the payment of said attorney's fees in the absence of proof that the bank acted in connivance with Suravilla to deprive Atty. Jabla of the fees reasonably due him. As held in *Malvar*, the opposing party would be liable if they were shown to have connived with the client in the execution of the compromise agreement, with the intention of depriving the intervenor of its attorney's fees. In such case, the opposing party would be solidarily liable with the client for the attorney's fees under the theory that they unfairly and unjustly interfered

with the counsel's professional relationship with his client. Such was not shown to be the case here.

5. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYER; ILLEGAL DISMISSAL; REINSTATEMENT AND BACKWAGES ARE TWO SEPARATE RELIEFS AVAILABLE TO AN ILLEGALLY DISMISSED EMPLOYEE; DISTINGUISHED.— Having found that Nerbes was illegally dismissed, he is necessarily entitled to reinstatement to his former position without loss of seniority and the payment of backwages pursuant to Section 279 of the Labor Code x x x Reinstatement and backwages are two separate reliefs available to an illegally dismissed employee. Payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal. Separation pay, on the other hand, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job. Hence, instead of limiting the payment of backwages to just one year and awarding separation pay in lieu of both the reinstatement aspect and the payment of backwages, the correct award, as is consistent with prevailing jurisprudence, is reinstatement and the payment of full backwages from the time of dismissal until finality of the decision.

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison Law Offices for petitioner.
Public Attorney's Office for respondent Armenia F. Suravilla.

D E C I S I O N

TIJAM, *J.*:

Assailed in this Petition for Review[1] under Rule 45 are the Decision[2] dated May 9, 2012 and Resolution[3] dated August

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[1] *Rollo*, pp. 1-36.

[2] Penned by Associate Justice Rosmari D. Carandang, concurred in by Associate Justices Ricardo R. Rosario and Danton Q. Bueser; *id*. at 41-56.

[3] *Id*. at 58-61.

15, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 108317 which reversed the decision of the National Labor Relations Commission (NLRC) and reinstated the Decision[4] dated August 26, 2005 of the Labor Arbiter (LA) in NLRC NCR Case No. 00-11-12543-04, finding respondents Nestor N. Nerbes (Nerbes) and Armenia F. Suravilla (Suravilla) to have been illegally dismissed and thus ordered their reinstatement and payment of backwages, or in lieu thereof, payment of separation pay.

The Factual Antecedents

Respondents Nerbes and Suravilla were employees of Equitable PCI Bank (now BDO Unibank, Inc.) (bank) and members of Equitable PCI Bank Employees Union (EPCIBEU), a legitimate labor union and the sole and exclusive bargaining representative of the rank and file employees of the bank.[5]

On February 4, 2004, an election of officers of EPCIBEU was held under the supervision of the Labor Relations Division of the National Capital Region Regional Office of the Department of Labor and Employment (DOLE-NCR). Nerbes and Suravilla won as President and Executive Vice President, respectively, and were proclaimed as winners thru a Resolution issued by the OIC Regional Director of the DOLE-NCR on March 19, 2004. The protest of the losing candidates was effectively dismissed.[6]

After taking their oath on March 22, 2004, Nerbes and Suravilla notified the bank of their decision to exercise their privilege under Section 10[d][3], Article IV of the Collective Bargaining Agreement (CBA) which allows the President and the Executive Vice President to be on full-time leave for the duration of their term of office in order to devote their time in maintaining industrial peace. Nerbes and Suravilla anchored

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[4] Issued by Labor Arbiter Arthur L. Amansec; *id*. at 340-347.

[5] *Id*. at 128-129.

[6] *Id*. at 129-130.

their right to immediately assume their respective positions on Rule XV, Section 5 of Department Order No. 09, Series of 1997 which, in part, provides that "*Upon resolution of the protest, the committee shall immediately proclaim the winners and the latter may assume their positions immediately*."[7] Thus, Nerbes took his leave beginning March 22, 2004, while Suravilla took hers beginning April 1, 2004.[8]

On April 1, 2004, the losing candidates appealed to the Bureau of Labor Relations (BLR) the DOLE-NCR's Resolution dated March 19, 2004.[9]

Because of the pendency of said appeal, the bank disapproved Nerbes and Suravilla's union leaves and were directed to refrain from being absent and to report back to work. Nerbes and Suravilla failed to comply.[10]

Consequently, the bank issued show cause Memoranda on May 28, 2004 directing Nerbes and Suravilla to explain why no disciplinary action should be imposed against them for violation of the bank's Code of Conduct on attendance and punctuality, and obedience and cooperation.[11] It appears that Nerbes himself filed a complaint[12] for unfair labor practice (ULP) against the bank. Thus, Nerbes was additionally asked to explain his alleged falsification of public document and perjury pertaining to his submission of a position paper in the ULP case which was purportedly signed by his lawyer but who later on denied having signed the same.[13]

Administrative hearings were then conducted and on October 22, 2004, the bank found Nerbes and Suravilla guilty of serious

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

[8] *Id*. at 157-158.

[9] *Id*. at 155.

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

[11] *Id*. at 161.

[12] Docketed as NLRC Case No. 00-04-04718-04; *id*. at 169.

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

misconduct and willful disobedience and imposed upon them the penalty of dismissal.[14] Nerbes and Suravilla then filed before the LA a complaint for ULP, illegal dismissal and money claims.

Meantime, in the proceedings before the BLR, the appeal filed by the losing candidates was initially dismissed. However, on motion for reconsideration, the BLR, in its November 4, 2004 Decision[15] reversed itself and nullified the election held on February 4, 2004. As a result, the BLR ordered a special election of officers. A special election was then held on April 13, 2005 wherein Nerbes and Suravilla's opponents were proclaimed as winners.[16]

On August 26, 2005, the LA rendered a Decision[17] in favor of Nerbes and Suravilla's reinstatement, the dispositive part of which reads:

> WHEREFORE, judgment is hereby made finding [Nerbes and Suravilla's] dismissal for insubordination a valid exercise of management prerogative but considering that [Nerbes and Suravilla's] defiance is anchored on law, ordering the [bank] to reinstate them to their former or equivalent positions in the [bank], without loss of seniority rights, with one (1) year backwages or, at the option of [Nerbes and Suravilla], to accept from the [bank], in lieu of reinstatement and backwages, a separation pay computed at thirty (30) days pay for every year of service, a fraction of at least six (6) months to be considered a full year or an applicable separation pay under the subsisting [CBA], whichever is higher.
>
> Subject to any subsequent developments involving the leadership of the [EPCIBEU] or a final decision of an administrative body and/or superior court, the [bank] are hereby ordered to allow [Nerbes and Suravilla], within the context of the [CBA], to go on paid union leaves and exercise their other rights as the duly elected President and Executive Vice President of the union.

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[14] *Id*. at 15-16.

[15] *Id*. at 228-232.

[16] *Id*. at 413-416.

[17] *Id*. at 340-347.

The charge of unfair labor practice and other claims are dismissed for lack of merit.

SO ORDERED.[18]

The bank appealed to the NLRC. In its Decision[19] dated November 11, 2008, the NLRC reversed the ruling of the LA and dismissed Nerbes and Suravilla's complaint. The NLRC disposed as follows:

WHEREFORE, premises considered, the Decision dated August 26, 2005 of [LA] Amansec is VACATED and SET ASIDE, and a NEW ONE rendered dismissing the case for lack of merit.

SO ORDERED.[20]

Their Motion for Reconsideration[21] likewise having been denied in the NLRC Resolution[22] dated January 30, 2009, Nerbes and Suravilla filed a *certiorari* petition[23] before the CA.

The Ruling of the CA

The CA framed the issue to be resolved as to whether Nerbes and Suravilla were illegally dismissed from employment, the resolution of which is, in turn, anchored on whether their refusal to return to work amounts to willful disobedience.

The CA held that while Nerbes and Suravilla disobeyed the bank's order to return to work, such disobedience was not characterized by a wrongful or perverse attitude. The CA noted that their refusal to return to work was brought by their honest belief that as elected officers, they were entitled to be on full-time leave. As such, the CA reasoned, their offense was disproportionate to the ultimate penalty of dismissal.

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[18] *Id*. at 346-347.

[19] *Id*. at 94-105.

[20] *Id*. at 105.

[21] *Id*. at 106-123.

[22] *Id*. at 125-126.

[23] *Id*. at 63-90.

Anent the charge of falsification of public document and perjury against Nerbes, the CA noted that this was a mere retaliatory move on the part of the bank which had nothing to do with the latter's work. In any case, the CA observed that Nerbes' counsel already acknowledged having notarized the questioned document.

In disposal, the CA pronounced:

> **WHEREFORE**, in view of the foregoing considerations, the Petition for Certiorari is **GRANTED**. The Decision of the [NLRC] in NLRC NCR CA No. 047601-06 dated November 11, 2008 and its subsequent Resolution dated January 30, 2009 are **ANNULLED AND SET ASIDE**. The Decision of the [LA] dated August 26, 2005 is **REINSTATED** insofar as it ordered private respondent Equitable PCI Bank (Now Banco De Oro) to reinstate [Nerbes and Suravilla] to their former or equivalent positions in the bank, without loss of seniority rights, with one (1) year backwages or, at the option of [Nerbes and Suravilla], to accept from [the bank], in lieu of reinstatement and backwages, a separation pay computed at thirty (30) days pay for every year of service, a fraction of at least six (6) months to be considered a full year or an applicable separation pay under the subsisting [CBA], whichever is higher.
>
> **SO ORDERED**.[24]

The bank's Motion for Reconsideration[25] was similarly rebuked by the CA, in its Resolution[26] dated August 15, 2013. Undaunted, the bank filed the instant petition.

Pending Incidents

Pending resolution of the instant petition, the bank moved for the withdrawal of its petition as regards Suravilla in view of the parties' Compromise Agreement.[27] Part of said Compromise Agreement is Suravilla's undertaking to release

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[24] *Id*. at 55.

[25] *Id*. at 613-625.

[26] *Id*. at 58-61.

[27] *Id*. at 700-701.

the bank from any and all claims arising from or related to the instant petition. The pertinent provisions of the Compromise Agreement state:

x x x x x x x x x

2. Within five working days from the signing of this agreement, BDO, shall release to Ms. Suravilla the amount of PESOS: THREE MILLION FOUR HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED TWELVE AND 77/100 (Php3,487,512.77) and Statement of Account, representing her separation pay net of her accountabilities on loans, insurance, and credit cards if any. The Bank shall likewise release to Ms. Suravilla, her BIR Form 2316.

3. Upon receipt of the check with the foregoing amount, Ms. Suravilla will acknowledge the same as the full satisfaction of the separation benefits due her in connection with her employment with the BDO, as well as any and all claims or court case she may have against the Bank.

4. Furthermore, Ms. Armenia F. Suravilla, her heirs, successors and assigns, hereby unconditionally release, remiss, waive and forever discharge BDO Unibank, Inc., its affiliates, subsidiaries and successors-in-interest, stockholders, officers, directors, agents, employees, associates, contractors, and consultants from any and all actions, whether civil, criminal, administrative or otherwise, or from any claim of any kind or character arising directly from, incidental to, or in any manner related to her employment with the Bank, as well as the release of her separation benefits and retirement claims in the amount quoted above.

5. More particularly, Ms. Armenia F. Suravilla, her heirs, successors and assigns, likewise unconditionally release, remiss, waive and forever discharge BDO Unibank, Inc., its affiliates, subsidiaries, and successors-in-interest, stockholders, officers, directors, agents, employees, associates, contractors, and consultants from ALL claims of any kind or character arising directly from, incidental to,or in any manner related with the case entitled "BDO Unibank, Inc. vs. Nestor Nerbes and Armenia Suravilla", pending with the Supreme Court of the Philippines, and docketed as SC GR NO. 208735.

6. By virtue of the release of the said amount under this Compromise Agreement, Ms. Armenia F. Suravilla hereby affirms that she has no further cause of action, demand, complaint, case or grievance whatsoever against BDO, its affiliates, subsidiaries and succesors-

in-interest, stockholders, officers, directors, agents, employees, associates, contractors, and consultants in respect of any matter arising out of the said separation benefits and retirement claims; and further affirms that this present agreement serves as the FULL SATISFACTION of the judgment in any and all claims she has against the Bank, specifically in the case "BDO Unibank, Inc. vs. Nestor Nerbes and Armenia Suravilla", pending with the Supreme Court of the Philippines, and docketed as SC GR No. 208735.

x x x x x x x x x[28] (Emphasis omitted)

Attached to said motion are plain copies of the Compromise Agreement with Undertaking[29] executed by and between the bank and Suravilla; and Release Waiver and Quitclaim[30] executed by Suravilla.

Consequently, Atty. Emmanuel R. Jabla (Atty. Jabla) of Jabla Brigola Bagas & Sampior Law Offices, counsel for Nerbes and Suravilla, moved to intervene.[31] Atty. Jabla alleged that said Compromise Agreement was wrung from Suravilla without his knowledge and consent, as a result of which, he was deprived of his professional fee supposed to be payable upon full recovery of her monetary claims. He alleged that there was a verbal agreement between him and Suravilla for the latter to pay a contingent fee of 10% of all money recovered. He prayed that the bank and Suravilla be held solidarily liable as joint tortfeasors to pay his professional fee equivalent to 10% of the amount received by Suravilla, or PhP 348,751.27 and that a lien upon all judgments for the payment of money and executions issued in pursuance of such judgments be granted in his favor.[32]

The Issues

We divide the issues raised in this petition into two: one, concerning the validity of Nerbes and Suravilla's dismissal which

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[28] *Id*.

[29] *Id*. at 701-704.

[30] *Id*. at 705-708.

[31] *Id*. at 715-728.

[32] *Id*. at 725.

is the main issue raised in the petition; and the other, the bank's motion to withdraw the petition with respect to Suravilla and Atty. Jabla's motion to intervene.

Otherwise stated, the issues for our consideration and determination are: (a) whether Nerbes and Suravilla's refusal to report to work despite the bank's order for them to do so constitutes disobedience of such a willful character as to justify their dismissal from service; (b) whether there is merit in the bank's motion to withdraw its petition with respect to Suravilla; and (c) whether the motion for intervention to protect attorney's rights can prosper and, if so, how much is counsel entitled to recover.

The Ruling of this Court

We deny the petition.

We begin by first emphasizing the following rules that guide the Court in disposing of petitions filed under Rule 45 which seek a review of a CA decision rendered under Rule 65, thus:

> [I]n a Rule 45 review (of the CA decision rendered under Rule 65), the question of law that confronts the Court is the legal correctness of the CA decision — *i.e.*, whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, and not on the basis of whether the NLRC decision on the merits of the case was correct.
>
> Specifically, in reviewing a CA labor ruling under Rule 45 of the Rules of Court, the Court's review is limited to:
>
> > (1) Ascertaining the correctness of the CA's decision in finding the presence or absence of a grave abuse of discretion. This is done by examining, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC findings; and

(2) Deciding any other jurisdictional error that attended the CA's interpretation or application of the law.[33]

Given this narrow scope of review, the ultimate question to be addressed by the Court is whether or not the CA erred in finding that the NLRC gravely abused its discretion in holding that Nerbes and Suravilla were dismissed for cause.

Further, We stress that the Court in a Rule 45 petition, as a rule, does not try facts and does not analyze and again weigh the evidence presented before the lower tribunals.[34] However, the conflicting findings of the administrative bodies exercising

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[33] *Stanley Fine Furniture, et al. v. Gallano, et al.*, G.R. No. 190486, November 26, 2014, 743 SCRA 306, 319.

[34] The Court held in *Chevron (Phils.), Inc. v. Galit, et al.*, G.R. No. 186114, October 7, 2015:

It is settled that this Court is not a trier of facts, and this applies with greater force in labor cases. Corollary thereto, this Court has held in a number of cases that factual 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. However, it is equally settled that the foregoing principles admit of certain exceptions, to wit: (1) the findings are grounded entirely on speculation, surmises or conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in petitioners main and reply briefs, are not disputed by respondent; (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (Citations omitted)

Here, the Court gives due course to the instant petition considering that the findings of fact and conclusions of law of the NLRC differ from those of the CA.

quasi-judicial functions and the CA in this case warrants an independent finding of facts from this Court.[35]

The present case likewise brings to fore the perennial task of balancing of interests between labor on one hand, and management, on the other. The law and jurisprudence consistently echo the commitment to protect the working class in keeping with the principle of social justice. In not a few instances, the Court struck down employer acts, even at the guise of exercise of management prerogative, which undermine the worker's right to security of tenure. Nevertheless, the law, in aiming to protect the rights of workers, does not thereby authorize the oppression or self-destruction of the employer.[36]

With these basic postulates in mind, the Court thus proceeds to resolve the issues raised in the instant petition.

Refusal to return to work was not characterized by a wrongful and perverse attitude to warrant dismissal

Petitioner bank essentially argues that it validly dismissed Nerbes and Suravilla from employment because they committed serious misconduct and willful disobedience when they failed to return to work despite orders for them to do so. Nerbes and Suravilla counter that as duly-elected officers of the union they are entitled to be on full-time leave. According to Nerbes and Suravilla, Department Order No. 09 allows them to immediately assume their respective positions upon resolution of the election protests of the losing candidates and that the appeal to the BLR filed by their opponents could not have stayed the execution of their proclamation as such appeal is not the appeal contemplated under Department Order No. 09.

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[35] See *Rowena A. Santos v. Integrated Pharmaceutical, Inc. and Katheryn Tantiansu*, G.R. No. 204620, July 11, 2016; *Convoy Marketing Corp. v. Albia*, G.R. No. 194969, October 7, 2015; and *United Tourist Promotions (UTP), et al. v. Kemplin*, 726 Phil. 337, 349 (2014).

[36] *Mercury Drug Corporation v. NLRC, et al.,* G.R. No. 75662, September 15, 1989, 177 SCRA 580, 586-587.

In siding with Nerbes and Suravilla, the LA held that their refusal to return to work, being anchored on the text of Department Order No. 09, does not constitute serious misconduct or willful disobedience. The CA, while finding that the bank's order for Nerbes and Suravilla to return to work was lawful and reasonable and that they refused to comply with said order, nevertheless found that their refusal to do so was not characterized by a wrongful and perverse attitude to warrant the supreme penalty of dismissal.

We agree.

Article 282,[37] now Article 296, of the Labor Code enumerates the just causes for the termination of the employment of an employee. Under Article 282(a), serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work is a just cause for dismissal.

Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.[38] To be a valid cause for dismissal, such misconduct must be of grave and aggravated character and not merely trivial or

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[37] ART. 282. Termination of Employer. x x x

An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[38] *Yabut v. Manila Electric Company, et al.,* G.R. No. 190436, January 16, 2012, 663 SCRA 92, 105.

unimportant.[39] The misconduct must also be related to the performance of the employee's duties showing him to be unfit to continue working for the employer[40] and that the employee's act or conduct was performed with wrongful intent.[41]

On the other hand, valid dismissal on the ground of willful disobedience requires the concurrence of twin requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[42]

As correctly held by the CA, the return to work order made by the bank is reasonable and lawful, and the act required for Nerbes and Suravilla relates to the performance of their duties. The point of contention is whether their refusal to return to work was willful or intentional and, if so, whether such willful or intentional conduct is attended by a wrongful and perverse attitude.

In this case, Nerbes and Suravilla's failure to report for work despite the disapproval of their application for leave was clearly intentional. However, though their refusal to do so may have been intentional, such was not characterized by a wrongful and perverse attitude or with deliberate disregard of their duties as such. At the time Nerbes and Suravilla notified the bank of their intent to avail of their union leaves, they were already proclaimed as winners and in fact took their respective oaths of office. Following the terms of the parties' CBA, which has the strength of law as between them, Nerbes and Suravilla, as

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[39] *Caltex (Philippines), Inc., et al. v. Agad, et al.,* G.R. No. 162017, April 23, 2010, 619 SCRA 196, 213.

[40] *Tomada, Sr. v. RFM Corporation-Bakery Flour Division, et al.,* G.R. No. 163270, September 11, 2009, 599 SCRA 381, 391.

[41] *Id.*

[42] *Micro Sales Operation Network, et al. v. NLRC, et al.*, G.R. No. 155279, October 11, 2005, 472 SCRA 328, 335-336.

duly-elected union officers, were entitled to take their union leaves. That Nerbes and Suravilla were indeed entitled to such privilege is tacitly recognized by the bank itself when it continued to pay them their full salaries, despite not reporting for work, from March 22, 2004 until June 15, 2004.[43]

Nerbes and Suravilla's belief that they are entitled to immediately assume their positions as union officers and thereby entitled to union leaves is not completely bereft of basis. For one, they based the exercise of such privilege on the existing CBA, the terms of which the bank has not demonstrated to be inapplicable. For another, it was only upon being proclaimed as winners did they assume their respective positions which, under Department Order No. 09, take place immediately.

On the other hand, the bank's disapproval of union leaves and return to work order were essentially based on the pendency of the appeal filed by Nerbes and Suravilla's opponents before the BLR. To the bank, the appeal before the BLR defeated the immediately executory nature of Nerbes and Suravilla's proclamation. Even then, their failure to report for work can hardly be equated as a perverse defiance of the bank's orders as they believed that such appeal could not have stayed their immediate proclamation and assumption to office for, after all, a doubtful or difficult question of law may be the basis of good faith. As to which interpretation is correct is beside the point and, hence, should be addressed at a more appropriate forum at a proper time.

So too, the Court finds that the penalty of dismissal in this case is harsh and severe. Not every case of insubordination or willful disobedience by an employee reasonably deserves the penalty of dismissal because the penalty to be imposed on an erring employee must be commensurate with the gravity of his or her offense.[44] It is settled that notwithstanding the existence of a just cause, dismissal should not be imposed, as it is too

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[43] *Rollo*, p. 132.

[44] *Montallana v. La Consolacion College Manila, et al.*, G.R. No. 208890, December 8, 2014, 744 SCRA 163, 175.

severe a penalty, if the employee had been employed for a considerable length of time in the service of his or her employer, and such employment is untainted by any kind of dishonesty and irregularity.[45] We note that aside from the subject incident, Nerbes and Suravilla were not previously charged with any other offense or irregularity. Considering the surrounding facts, termination of Nerbes and Suravilla's services was a disproportionately heavy penalty.

Compromise Agreement between petitioner bank and respondent Suravilla is approved; counsel's right to compensation is protected

It is settled that a client may enter into a compromise agreement with the adverse party to terminate the litigation before a judgment is rendered therein,[46] and if the compromise agreement is found to be in order and not contrary to law, morals, good customs and public policy, its judicial approval is in order.[47] There being no impediment to the court's approval of the Compromise Agreement between the bank and Suravilla, the court accordingly approves the same and grants the bank's motion to withdraw its petition with respect to Suravilla.

Be that as it may, the grant of the bank's motion to withdraw the petition as regards Suravilla and the approval of their Compromise Agreement does not affect counsel's right to compensation. On this score, the Court's disquisition in *Malvar v. Kraft Foods Philippines, Inc., et al.*,[48] resonates with relevance and is thus quoted extensively:

> On considerations of equity and fairness, the Court disapproves of the tendencies of clients compromising their cases behind the backs of their attorneys for the purpose of unreasonably reducing or

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[45] See *Samson v. NLRC, et al.*, 386 Phil. 669, 686 (2000).

[46] *Aro v. Nañawa,* No. L-24163, April 28, 1969, 27 SCRA 1090.

[47] *Republic v. CA, et al.*, G.R. Nos. 143108-09, September 26, 2001, 366 SCRA 87, 90.

[48] G.R. No. 183952, September 9, 2013.

completely setting to naught the stipulated contingent fees. Thus, the Court grants the Intervenor's Motion for Intervention to Protect Attorney's Rights as a measure of protecting the Intervenor's right to its stipulated professional fees that would be denied under the compromise agreement. The Court does so in the interest of protecting the rights of the practicing Bar rendering professional services on contingent fee basis.

Nonetheless, the claim for attorney's fees does not void or nullify the compromise agreement between Malvar and the respondents. There being no obstacles to its approval, the Court approves the compromise agreement. The Court adds, however, that the Intervenor is not left without a remedy, for the payment of its adequate and reasonable compensation could not be annulled by the settlement of the litigation without its participation and conformity. It remains entitled to the compensation, and its right is safeguarded by the Court because its members are officers of the Court who are as entitled to judicial protection against injustice or imposition of fraud committed by the client as much as the client is against their abuses as her counsel. In other words, the duty of the Court is not only to ensure that the attorney acts in a proper and lawful manner, but also to see to it that the attorney is paid his just fees. Even if the compensation of the attorney is dependent only on winning the litigation, the subsequent withdrawal of the case upon the client's initiative would not deprive the attorney of the legitimate compensation for professional services rendered.[49] (Citations omitted)

In this case, We find that Atty. Jabla adequately and sufficiently represented Suravilla and prepared all the required pleadings[50] on her behalf before the LA, the NLRC, the CA and this Court. Despite the absence of a written agreement as to the payment of fees, his entitlement to reasonable compensation may still be fairly ascertained. In this regard, Section 24 of Rule 138 of the Rules of Court should be observed in determining Atty. Jabla's compensation which provides:

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[49] *Id*.

[50] Consisting of a petition for *certiorari*, *rollo*, pp. 63-87; motion for reconsideration to the NLRC decision, *rollo*, pp. 106-121; Nerbes and Suravilla's position paper, *rollo*, pp. 127-147; reply to the bank's position paper; *rollo*, pp. 208-216, motion for reconsideration to the decision dated

SEC. 24. *Compensation of attorney's; agreement as to fees.* — An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

As well, the criteria found in the Code of Professional Responsibility are considered in assessing the proper amount of compensation that a lawyer should receive. Canon 20, Rule 20.01 provides:

CANON 20 – A LAWYER SHALL CHARGE ONLY FAIR AND REASONABLE FEES.

Rule 20.01. A lawyer shall be guided by the following factors in determining his fees:

(a) The time spent and the extent of the services rendered or required;
(b) The novelty and difficulty of the question involved;
(c) The importance of the subject matter;
(d) The skill demanded;
(e) The probability of losing other employment as a result of acceptance of the proffered case;
(f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs;
(g) The amount involved in the controversy and the benefits resulting to the client from the service;
(h) The contingency or certainty of compensation;
(i) The character of the employment, whether occasional or established; and
(j) The professional standing of the lawyer.

Taking into account the foregoing, the Court finds that the amount equivalent to 10% of the settlement amount received

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April 22, 2004, *rollo*, pp. 324-333; supplemental motion for reconsideration, *rollo*, pp. 335-337; and answer to bank's appeal, *rollo*, pp. 426-442.

by Suravilla, or PhP 348,751.27 is reasonable compensation for the skill and services rendered by Atty. Jabla.

However, the Court cannot easily hold the bank solidarily liable with Suravilla for the payment of said attorney's fees in the absence of proof that the bank acted in connivance with Suravilla to deprive Atty. Jabla of the fees reasonably due him. As held in *Malvar*,[51] the opposing party would be liable if they were shown to have connived with the client in the execution of the compromise agreement, with the intention of depriving the intervenor of its attorney's fees. In such case, the opposing party would be solidarily liable with the client for the attorney's fees under the theory that they unfairly and unjustly interfered with the counsel's professional relationship with his client. Such was not shown to be the case here.

An illegally dismissed employee is entitled to reinstatement and backwages; in lieu of reinstatement, separation pay is awarded

Having found that Nerbes was illegally dismissed, he is necessarily entitled to reinstatement to his former position without loss of seniority and the payment of backwages pursuant to Section 279 of the Labor Code which reads:

> 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 reinstatement.

Interpreting this provision, the Court held in *Bustamante, et al. v. NLRC, et al.*,[52] that illegally dismissed employees are entitled to full backwages without conditions or limitations.

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[51] *Malvar v. Kraft Foods Philippines, Inc., et al.*, *supra* note 48.

[52] 265 Phil. 61 (1996).

The CA's award of backwages that is limited to only one (1) year is thus without basis.

Moreover, the CA's award of separation pay in lieu of both reinstatement and backwages is incorrect. Reinstatement and backwages are two separate reliefs available to an illegally dismissed employee. Payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal. Separation pay, on the other hand, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.[53]

Hence, instead of limiting the payment of backwages to just one year and awarding separation pay in lieu of both the reinstatement aspect and the payment of backwages, the correct award, as is consistent with prevailing jurisprudence, is reinstatement and the payment of full backwages from the time of dismissal until finality of the decision. It is however understood that if Nerbes had, in the meantime, been reinstated on payroll and paid his corresponding salaries, such amounts should be deducted from the award of backwages consistent with the rule against double recovery.

However, since 13 years had passed since Nerbes was dismissed, it is no longer reasonable for the Court to direct him to return to work and for the bank to accept him.[54] It is therefore just and equitable to award separation pay, in lieu of reinstatement, in an amount equivalent to one month salary for every year of service, computed up to the time of Nerbes' dismissal on October 22, 2004.

WHEREFORE, the petition is **DENIED**. The Decision dated May 9, 2012 and Resolution dated August 15, 2013 of the Court of Appeals in CA-G.R. SP No. 108317 are **AFFIRMED** insofar as it declared respondents Nestor N. Nerbes and Armenia F. Suravilla to have been illegally dismissed.

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[53] *Wenphil Corporation v. Abing, et al.*, G.R. No. 207983, April 7, 2014.

[54] See *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, G.R. No. 212096, October 14, 2015.

The Compromise Agreement between petitioner BDO Unibank, Inc. (formerly Equitable PCI Bank) and respondent Suravilla is **APPROVED** and the motion to withdraw petition with respect to respondent Suravilla is accordingly **GRANTED**.

Respondent Suravilla is **ORDERED** to pay to movant-intervenor Jabla Brigola Bagas & Sampior Law Offices, as represented by Atty. Emmanuel R. Jabla, the attorney's fees equivalent to 10% of the amount received by respondent Suravilla, or PhP 348,751.27.

The Labor Arbiter is **DIRECTED** to recompute the proper amount of backwages and separation pay due to respondent Nerbes in accordance with this decision.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Reyes, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 214340. July 19, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GILDA ABELLANOSA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); ILLEGAL RECRUITMENT IN LARGE SCALE; ESTABLISHED IN CASE AT BAR.— Article 13(b) of the Labor Code defines recruitment and placement, x x x Recruitment becomes illegal when undertaken by non-licensees or non-holders of authority [as provided for under] Article 38

of the Labor Code. x x x Corollary to this, Section 6 of RA 8042 defines illegal recruitment x x x We agree with the trial court and the CA that the prosecution was able to establish that appellant was engaged in illegal recruitment in large scale. It was proved that appellant was a non-licensee or non-holder of authority to recruit workers for deployment abroad; she offered or promised employment abroad to private complainants; she received monies from private complainants purportedly as placement or processing fees; that private complainants were not actually deployed to Brunei; that despite demands, appellant failed to reimburse or refund to private complainants their monies; and that appellant committed these prohibited acts against three or more persons, individually or as a group. x x x Verily, the RTC and the CA correctly found the appellant guilty of large scale illegal recruitment. Section 7 of RA 8042 provides for the penalties for illegal recruitment in large scale.

2. ID.; ID.; ID.; IMPOSABLE PENALTY.— In the case at bar, we note that the RTC, as affirmed by the CA, imposed the penalty of life imprisonment in each of the seven cases. Considering however our finding that the offense involved is illegal recruitment in large scale, it being committed against three or more persons, the penalty of life imprisonment shall apply collectively to all seven cases lumped together, and not individually. The same is true with the accompanying penalty of fine; it must likewise be imposed collectively on all seven cases lumped together, not individually. However, instead of fine of ₱500,000.00, the amount should be increased to ₱1 million, or the maximum amount of fine considering that appellant was a non-licensee or non-holder of authority. However, the trial court as affirmed by the CA, correctly ordered appellant to reimburse to each private complainant the amount she respectively received from each of them, save for Elsie Pelipog who should be reimbursed the amount of ₱12,500.00 as stated in the Information and proved during trial, and not ₱12,000.00 as stated in the RTC Joint Decision.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This resolves the appeal from the March 19, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00179 which affirmed the September 9, 2002 Joint Decision[2] of Branch 38, Regional Trial Court (RTC) of Iloilo City, in Criminal Case Nos. 47984, 47985, 47987, 47988, 47989, 47990, and 47991 finding Gilda Abellanosa (appellant) guilty beyond reasonable doubt of the crime of Illegal Recruitment in large scale.

Appellant was charged with Illegal Recruitment in large scale defined and penalized under Section 6(m) in relation to Section 7, of Republic Act No. 8042 (RA 8042), otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995.

The Information in Criminal Case No. 47984 alleged as follows:

Criminal Case No. 47984

That on or about the 15th day of February, 1997, in the Municipality of Pavia, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused falsely representing to possess authority to recruit job applicants for employment abroad without first having secured the required authority from the Department of Labor and Employment/Philippine Overseas Employment [Administration], did then and there willfully, unlawfully[,] and illegally collect and [receive] from GEPHRE O. POMAR the amount of FIVE THOUSAND FIVE HUNDRED PESOS (₱5,500.00), Philippine Currency, as partial payment of processing and placement fees for overseas employment, which illegal recruitment activities is considered an offense involving economic sabotage, it being committed in large scale under Sec. 6(m) paragraph 2 of Republic

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[1] CA *rollo*, pp. 194-212; penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Ramon Paul L. Hernando and Carmelita Salandanan-Manahan.

[2] Records, Vol. 1, pp. 551-574; penned by Presiding Judge Roger B. Patricio.

Act [No.] 8042, having committed the same not only against Gephre O. Pomar but also against seven (7) others.

CONTRARY TO LAW.[3]

Except for the date of the commission of the crime, the names of the private complainants, and the amount purportedly collected from them, the seven other Informations in Criminal Case Nos. 47985, 47986, 47987, 47988, 47989, 47990, 47991 were similarly worded as the Information above. The following table provides a summary of the names of the private complainants and the amounts collected from them as follows:

Docket Number	Private Complainant	Amount Collected
Criminal Case No. 47985[4]	Timogen O. Pastolero	₱ 5,500.00
Criminal Case No. 47986[5]	Genelyn R. Sumentao	₱15,000.00
Criminal Case No. 47987[6]	Zeno M. Cathedral	₱20,000.00
Criminal Case No. 47988[7]	Cecilia L. Orias	₱10,000.00
Criminal Case No. 47989[8]	Janet P. Suobiron	₱10,000.00
Criminal Case No. 47990[9]	Nenita T. Bueron	₱ 5,000.00
Criminal Case No. 47991[10]	Elsie P. Pelipog	₱12,500.00

During arraignment, appellant pleaded not guilty to all charges against her. Thereafter, joint trial on the merits followed.

Version of the Prosecution

The prosecution presented the following witnesses: private complainants Timogen O. Pastolero (Pastolero), Zeno M.

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[3] *Id.* at 1.

[4] Records, Vol. 2, p, 1.

[5] Records, Vol. 1, pp. 552-553.

[6] Records, Vol. 3, p. 1.

[7] Records, Vol. 4, p. 1.

[8] Records, Vol. 5, p. 1.

[9] Records, Vol. 6, p. 1.

[10] Records, Vol. 7, p. 1.

Cathedral[11] (Cathedral), Cecilia L. Orias (Orias), Janet P. Suobiron (Suobiron), Nenita T. Bueron (Bueron), and Elsie P. Pelipog (Pelipog). The prosecution also presented Angelica Oriemo (Oriemo), Atty. Juan Amane (Atty. Amane), and Benito Agarada (Agarada). The testimonies of the witnesses established the following facts:

Pastolero, complainant in Criminal Case No. 47985, testified that on February 15, 1997, he went to the house of Shirley Taberna (Shirley) in Ungka, Pavia, Iloilo, accompanied by his grandmother, Oriemo, and cousins Pelipog and Gephre Pomar (Pomar). When appellant arrived at around 12:00 noon, she introduced herself as a recruiter from Brunei and showed them a job order and calling card. Swayed by appellant's representations, Pastolero filled out a bio-data sheet and applied for the position of janitor. Appellant then asked for ₱5,500.00 as processing fee which Pastolero's grandmother, Oriemo, paid. Oriemo also paid the same amount of processing fee for her other grandson, Pomar. However, appellant did not issue any receipt for the payments she received; instead, she made assurances that Pastolero and Pomar could leave for Brunei within two months from the payment of the processing fee.

When Pastolero submitted additional documents to appellant on April 1, 1997, the latter advised him to just wait for his visa. However, after two months, Oriemo informed him that per appellant, his visa had already expired.

Cathedral, private complainant in Criminal Case No. 47987, testified that on February 16, 1997, he met appellant at the house of Ernesto Taberna (Ernesto) in Ungka, Pavia, Iloilo. Appellant, who introduced herself as a recruiter of workers for Brunei, showed Cathedral a job order and a calling card both indicating that appellant was an Overseas Marketing Director of RTY Skill Development Corporation. Appellant also represented herself as an acquaintance of the Labor Attache assigned to Brunei; and that she was a legitimate recruiter.

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[11] Also spelled as Catedral in some parts of the records.

Beguiled by appellant's representations, Cathedral submitted his bio-data indicating therein that he was applying as a cook.

On March 10, 1997, Cathedral gave ₱20,000.00 to appellant as processing fee. Appellant did not issue any receipt despite demand but assured him that the receipt would be given after the renewal of his passport. On June 5, 1997, Cathedral received a photocopy of his passport from Loida Monterde (Monterde), the secretary of the appellant. He noticed though that the passport number in the photocopy was the same as the number in his expired passport. Cathedral thus asked Monterde to issue a receipt for the money he paid, but Monterde told him to wait for the appellant. Thereafter he did not see the appellant anymore. It was only when he went to the office of the National Bureau of Investigation (NBI) on June 11, 1997 that he came to know that the appellant was not an authorized recruiter.

Orias, private complainant in Criminal Case No. 47988, testified that on March 8, 1997, she met the appellant in Brgy. Mainggit, Badiangan, Iloilo at the house of Shirley. Appellant introduced herself as a recruiter from Brunei and assured her and Suobiron that she could give them work in Brunei. Orias thus applied for a job as a waitress. Appellant then asked her to pay ₱25,000.00 as placement fee and assured her that she would be deployed to Brunei as soon as she had completed her papers. On April 1, 1997, Orias gave appellant ₱10,000.00. She asked for a receipt but the appellant assured her that the receipt will be issued after full payment of the placement fees. During the second week of May 1997, Orias, along with her co-applicants, met with appellant to inquire when they would leave for Brunei. Appellant however told them that their medical certificates had already expired.

When Orias and her co-applicants met Pelipog, the latter informed them that she could not leave for Brunei because, according to appellant, her papers had expired as well. Alarmed by such development, Pelipog, Orias, and their co-applicants sought the help of the NBI.

Suobiron, private complainant in Criminal Case No. 47989, testified that on March 8, 1997, she went to Shirley's house

along with Jennifer Divinagracia (Divinagracia) and Orias where she met appellant who introduced herself as a recruiter. The following day, she went back to Shirley's house together with Orias and Bueron and submitted her bio-data, medical certificate, NBI clearance, and passport. Suobiron applied as a waitress and paid ₱10,000.00 of the ₱25,000.00 placement fee. When asked for a receipt, the appellant just wrote the amount paid in a notebook since it was only a partial payment. The full payment was supposed to be paid in April, 1997 before departing to Brunei. They were not able to pay the full amount of the placement fee because their visas did not arrive. According to the appellant the reason for this was their papers had expired.

Suobiron further testified that when she learned that Pelipog had filed a complaint against appellant before the NBI, she also lodged her complaint.

Bueron, private complainant in Criminal Case No. 47990, testified that on March 8, 1997, she, together with Orias and Suobiron, went to Shirley's house in Ungka, Pavia, Iloilo to apply for a job in Brunei. At that time, appellant was also at Shirley's house interviewing several applicants. Bueron initially applied as a waitress but the appellant advised her to apply as a domestic helper because of her height. After the interview, appellant told Bueron to submit her picture, medical certificate, passport, and NBI clearance, and to pay the processing fee. Appellant told her that her papers could not be processed without first paying the processing fee. Thus, on April 1, 1997, Bueron gave ₱5,000.00 to the appellant as processing fee. Despite submitting all requirements, appellant informed Bueron that she did not get the job since her papers had expired.

Pelipog, the private complainant in Criminal Case No. 47991, testified that together with Oriemo, Pomar and Pastolero, they went to Shirley's house on February 15, 1997 to apply for work in Brunei. Appellant introduced herself as the principal recruiter of RTY Skills Development Agency and showed a job order and calling card bearing her name. During her interview, appellant asked her if she wanted to leave on the last week of March. Pelipog agreed and paid processing fee in the amount of

₱12,500.00. When Pelipog demanded the receipt, the appellant replied, "*Why, you don't trust me*?" Thereafter, the appellant required her to submit her NBI clearance and medical certificate.

Version of the Defense

The defense presented the appellant as its sole witness. She denied meeting any of the private complainants while she was in Iloilo and maintained that her purpose in going to Iloilo was only to assist Shirley in processing the latter's business license. Appellant likewise denied that she received money from the private complainants; she claimed that it was Shirley who was engaged in recruitment activities.

Ruling of the Regional Trial Court

On September 9, 2002, the RTC of Iloilo City, Branch 38 rendered judgment finding appellant guilty beyond reasonable doubt of violation of Section 6(m) in relation to Section 7, of RA 8042 (illegal recruitment in large scale) in Crim. Case Nos. 47984, 47985, 47987, 47988, 47989, 47990 and 47991 and sentenced her to life imprisonment, to pay a fine of ₱500,000.00 and actual damages in the total amount of ₱68,000.00. The RTC held that the prosecution was able to establish that the appellant engaged in recruitment activities without a valid license or authority when she represented herself to private complainants as a recruiter and promised their deployment abroad after receipt of processing and placement fees; and that despite all these, the private complainants were not given work abroad and their placement/processing fees were not reimbursed. The RTC ruled that the illegal recruitment was in large scale because it was committed against three or more persons. The RTC found appellant's defense of denial as a self-serving negative evidence which cannot be given greater weight than the positive declaration of the prosecution witnesses. However, as regards Crim. Case No. 47986, the RTC found that no sufficient evidence was adduced by the prosecution hence, appellant could not be held criminally liable.

The dispositive part of the RTC's Joint Decision reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding accused GILDA ABELLANOSA guilty beyond reasonable doubt for the violation of Sec. 6(m) in relation to Sec. 7 of R.A. 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, in Criminal Cases Nos. 47984, 47985, 47987, 47988, 47989, 47990 and 47991 and hereby sentences her to serve the penalty of life imprisonment and a fine of five hundred thousand pesos (₱500,000.00) in each of these aforementioned criminal cases.

The accused is further ordered to pay actual damages [to] the following private complainants:

1. Gephre Pomar	.....	Five thousand five hundred pesos (₱5,500.00);
2. Timogen Pastolero	.....	Five thousand five hundred pesos (₱5,500.00);
3. Zeno M. Catedral	.....	Twenty thousand pesos (₱20,000.00);
4. Cecilia Orias	.....	Ten thousand pesos (₱10,000.00);
5. Janet Suobiron	.....	Ten thousand pesos (₱10,000.00);
6. Nenita Bueron	.....	Five thousand pesos (₱5,000.00);
7. Elsie Pelipog	.....	Twelve thousand pesos (₱12,000.00).

However, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt in Crim. Case No. 47986, judgment is hereby rendered acquitting her of the crime charged therein.

The accused is entitled to the privileges under Art. 29 of the Revised Penal Code.

SO ORDERED.[12]

Aggrieved by the RTC's Decision, appellant appealed to the CA.

Ruling of the Court of Appeals

On March 19, 2014, the CA affirmed the RTC's Decision and held as follows:

WHEREFORE, in light of the foregoing, the appeal is DENIED. The Joint Decision of the Regional Trial Court, Branch 38, 6th Judicial

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[12] Records, Vol. 1, pp. 573-574.

Region, Iloilo City, dated September 9, 2002 in Criminal Cases Nos. 47984, 47985, 47987, 47988, 47989, 47990 and 47991 is hereby AFFIRMED.

SO ORDERED.[13]

Dissatisfied with the CA's Decision, appellant elevated her case to this Court. On February 25, 2015, the Court issued a Resolution[14] requiring the submission of Supplemental Briefs. However, both parties manifested that they would no longer file supplemental briefs since they had exhaustively discussed their arguments before the CA.[15]

Issue

The main issue raised by the appellant is whether the trial court erred in finding that her guilt for the crime charged had been proven beyond reasonable doubt. Appellant maintains that she never met any of the private complainants during her short stay in Iloilo. Appellant lays the blame and points to Shirley as the one engaged in recruitment activities. She insists that she was a mere visitor in the house of Shirley's mother and thus prays for her acquittal.

Our Ruling

After a judicious review of the records of the case, we find the appeal unmeritorious.

Article 13(b) of the Labor Code defines recruitment and placement, *viz.*:

> [A]ny act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not; Provided, that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

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[13] CA *rollo*, p. 211.

[14] *Rollo*, pp. 31-32.

[15] *Id.* at 33-41.

Recruitment becomes illegal when undertaken by non-licensees or non-holders of authority. Article 38 of the Labor Code provides:

> Art. 38. Illegal Recruitment. — (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Secretary of Labor and Employment or any law enforcement officer may initiate complaints under this Article.
>
> (b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof
>
> Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof.
>
> Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

Corollary to this, Section 6 of RA 8042 defines illegal recruitment as follows:

> [A]ny act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee on non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, that any such non-licensee or non-holder who, in any manner offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:
>
> x x x x x x x x x
>
> (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate

or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment x x x is deemed committed in large scale if committed against three or more persons individually or as a group.

We agree with the trial court and the CA that the prosecution was able to establish that appellant was engaged in illegal recruitment in large scale. It was proved that appellant was a non-licensee or non-holder of authority to recruit workers for deployment abroad; she offered or promised employment abroad to private complainants; she received monies from private complainants purportedly as placement or processing fees; that private complainants were not actually deployed to Brunei; that despite demands, appellant failed to reimburse or refund to private complainants their monies; and that appellant committed these prohibited acts against three or more persons, individually or as a group.

To recall, private complainants Pomar, Pastolero, Cathedral, Orias, Suobiron, Bueron, and Pelipog testified that appellant went to Pavia, Iloilo and represented herself as a recruiter who could send them to Brunei for work; that appellant impressed upon them that she had the authority or ability to send them overseas for work by showing them a job order from Brunei and a calling card; and appellant collected processing or placement fees from the private complainants in various amounts ranging from ₱5,000.00 to ₱20,000.00; and that she did not reimburse said amounts despite demands.

In addition, it was proved that appellant does not have any license or authority to recruit workers for overseas employment as shown by the certification issued by the Philippine Overseas Employment Administration.[16]

Finally, appellant recruited seven persons, or more than the minimum of three persons required by law, for illegal recruitment to be considered in large scale.

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[16] Records, Vol. 1, p. 175.

Verily, the RTC and the CA correctly found the appellant guilty of large scale illegal recruitment.

Section 7 of RA 8042 provides for the penalties for illegal recruitment in large scale as follows:

SEC. 7. PENALTIES —

x x x x x x x x x

(b) The penalty of life imprisonment and a fine of not less than five hundred thousand pesos (₱500,000.00) nor more than one million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Provided however, that the maximum penalty shall be imposed if x x x committed by a non-licensee or non-holder of authority.

In the case at bar, we note that the RTC, as affirmed by the CA, imposed the penalty of life imprisonment in each of the seven cases. Considering however our finding that the offense involved is illegal recruitment in large scale, it being committed against three or more persons, the penalty of life imprisonment shall apply collectively to all seven cases lumped together, and not individually. The same is true with the accompanying penalty of fine; it must likewise be imposed collectively on all seven cases lumped together, not individually. However, instead of fine of ₱500,000.00, the amount should be increased to ₱1 million, or the maximum amount of fine considering that appellant was a non-licensee or non-holder of authority.[17] However, the trial court as affirmed by the CA, correctly ordered appellant to reimburse to each private complainant the amount she respectively received from each of them, save for Elsie Pelipog who should be reimbursed the amount of ₱12,500.00 as stated in the Information and proved during trial, and not ₱12,000.00 as stated in the RTC Joint Decision.

WHEREFORE, the appeal is **DISMISSED**. The March 19, 2014 Decision of the Court of Appeals in CA-G.R CR. HC No. 00179 is **AFFIRMED with MODIFICATION** that appellant

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[17] See *People v. Chua*, 695 Phil. 16, 34 (2012).

Gilda Abellanosa is found **GUILTY** of illegal recruitment in large scale and is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱1 million, and to reimburse Elsie Pelipog the amount of ₱12,500.00 instead of ₱12,000.00

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 216124. July 19, 2017]

RIZAL COMMERCIAL BANKING CORPORATION, *petitioner, vs.* **FEDERICO A. SERRA, SPOUSES EDUARDO and HENEDINA ANDUEZA, ATTY. LEOMAR R. LANUZA, MR. JOVITO C. SORIANO, ATTY. EDWIN L. RANA, ATTY. PARIS G. REAL, ATTY. PRUDENCIO B. DENSING, JR., HON. JUDGE MAXIMINO R. ABLES, and ATTY. ERWIN S. OLIVA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; DIRECT AND INDIRECT CONTEMPT, DISTINGUISHED.— In *Castillejos Consumers Association, Inc. v. Dominguez,* the Court defined contempt of court, as follows: Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the

respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court. There are two (2) kinds of contempt of court, namely: direct and indirect. Indirect contempt or constructive contempt is that which is committed out of the presence of the court. A person who is guilty of disobedience or of resistance to a lawful order of a court or who commits any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice may be punished for indirect contempt.

2. ID.; ID.; ID.; WHEN GUILTY OF INDIRECT CONTEMPT; CASE AT BAR.— As a party in G.R. No. 203241, Serra cannot feign ignorance of the Court's decision and restraining order in that case. The TRO was issued on 3 December 2012 while the decision was promulgated on 10 July 2013. By virtue of the TRO, which was made permanent, Serra was enjoined to perform any act to remove RCBC from the subject property. Yet, by defaulting on his loan obligation with Andueza, and Andueza's foreclosure of the real estate mortgage, Serra in effect allowed the removal of RCBC from the subject property. Serra's conduct tended to impede the administration of justice by effectively allowing RCBC to be removed from the premises of the subject property, in contravention of the clear directive in the decision and restraining order in G.R. No. 203241. Therefore, Serra is guilty of indirect contempt and accordingly fined ₱30,000.

3. ID.; ID.; ID.;ID.; SUPERVENING EVENT, AS A DEFENSE; ELUCIDATED; NOT ESTABLISHED IN CASE AT BAR.— In *Abrigo v. Flores*, the Court held: A supervening event consists of facts that transpire after the judgment became final and executory, or of new circumstances that develop after the judgment attained finality, including matters that the parties were not aware of prior to or during the trial because such matters were not yet in existence at that time. In that event, the interested party may properly seek the stay of execution or the quashal of the writ of execution, or he may move the court to modify or alter the judgment in order to harmonize it with justice and the supervening event. The party who alleges a supervening event to stay the execution should necessarily establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable

judgment. The Court is not convinced that a supervening event occurred which would effectively prevent the execution of the decision in G.R. No. 203241. While the foreclosure sale proceeded on 24 September 2014, after the finality of the decision in G.R. No. 203241, the real estate mortgage in favor of Spouses Andueza was executed on 21 September 2011 while G.R. No. 203241 was pending. Serra could not possibly be unaware that a foreclosure sale would likely transpire since he was the mortgagor who defaulted on his loan obligation. Clearly, Serra performed acts intended to defeat and circumvent the conclusive effects of the final decision in G.R. No. 203241. Serra defaulted on his loan obligation and did not lift a finger to prevent Andueza or any person for that matter from removing RCBC from the subject property.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro and Leaño for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for indirect contempt[1] with prayer for the issuance of a temporary restraining order (TRO) filed by petitioner Rizal Commercial Banking Corporation (RCBC) against respondents Federico A. Serra, et al., for acts allegedly disregarding this Court's final and executory decisions in G.R. Nos. 103338,[2] 182478,[3] 182664,[4] and 203241.[5]

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[1] Under Rule 71 of the Rules of Court.

[2] Entitled *Serra v. Court of Appeals*, which was promulgated on 4 January 1994 (299 Phil. 63 [1994]).

[3] Entitled *Liok v. RCBC*. Resolution issued on 30 June 2008.

[4] Entitled *Serra v. RCBC*. Resolution issued on 22 October 2008.

[5] Entitled *Rizal Commercial Banking Corporation v. Serra*, which was promulgated on 10 July 2013 (713 Phil. 722 [2013]).

The Facts

On 25 August 2011, RCBC filed a motion for execution before the Regional Trial Court, Makati, Branch 134 (RTC-Makati), in Civil Case No. 10054. RCBC sought to execute the RTC-Makati's Order dated 5 January 1989, which directed respondent Federico A. Serra (Serra) to sell to RCBC a parcel of land in Masbate covered by Original Certificate of Title (OCT) No. O-232 on which the Masbate Business Center of RCBC is located (subject property).

During the pendency of Civil Case No. 10054, Serra mortgaged the subject property to respondent Spouses Eduardo M. Andueza and Henedina V. Andueza (Spouses Andueza) on 21 September 2011. On 26 September 2011, Spouses Andueza had the real estate mortgage annotated on OCT No. O-232 under Entry No. 2011000513.[6]

In an Order dated 16 February 2012,[7] the RTC-Makati denied RCBC's motion for execution for lack of basis. The RTC-Makati found that it had been almost 18 years after the 5 January 1989 Order had become final and executory that RCBC filed the motion for execution. Neither did RCBC file an action to revive judgment within ten years from the date the Order became final.

In an Order dated 26 July 2012, the RTC-Makati denied RCBC's motion for reconsideration.

On 11 October 2012, RCBC filed a petition for review with this Court assailing the RTC-Makati's Orders dated 16 February 2012 and 26 July 2012. The petition was docketed as G.R. No. 203241. In its petition, RCBC prayed for the issuance of a TRO to prevent any attempt to remove it from the subject property, since Serra and Atty. Gina Besa-Serra had already caused the service of a notice to vacate and demand for the

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[6] *Rollo,* Vol. I, p. 69.

[7] *Rollo* (G.R. No. 203241), pp. 39-42.

payment of accrued back rentals, dated 6 September 2012, on RCBC.

On 3 December 2012, the Court issued a TRO, which restrained Serra and the RTC-Makati from implementing and enforcing the Orders dated 16 February 2012 and 26 July 2012 and from performing any act to remove or threaten RCBC from the subject property.

On 14 February 2013, RCBC had the TRO issued by this Court annotated on OCT No. O-232 under Entry No. 2013000087.

On 10 July 2013, the Court issued a Decision in G.R. No. 203241 which reads:

> WHEREFORE, we GRANT the petition. We SET ASIDE the assailed Orders of the Regional Trial Court of Makati dated 16 February 2012 and 26 July 2012. The Temporary Restraining Order issued by this Court on 3 December 2012 is made permanent. The Regional Trial Court of Makati City is DIRECTED to issue the writ of execution in Civil Case No. 10054 for the enforcement of the decision therein. Costs against petitioner.
>
> SO ORDERED.[8]

The Decision became final and executory on 27 November 2013.[9]

Meanwhile, Andueza filed a petition for extrajudicial foreclosure of real estate mortgage,[10] dated 13 August 2013, with the Provincial Sheriff of Masbate since Serra defaulted on his loan obligation.

Pursuant to the Decision in G.R. No. 203241, RCBC filed on 27 February 2014 a new motion for execution before the RTC-Makati. Andueza, a non-party to the case, filed an opposition to the motion for execution with affirmative reliefs.

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[8] *Rollo,* Vol. I, p. 75.

[9] *Id.* at 77.

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

In an Order dated 14 May 2014,[11] the RTC-Makati granted the motion for execution and dismissed the opposition of Andueza. The RTC-Makati held that the real estate mortgage is inferior to RCBC's right since the mortgage was constituted when Serra no longer had ownership and free disposal of the subject property. Accordingly, the RTC-Makati ordered the issuance of a writ of execution.

Andueza did not file a motion for reconsideration of the RTC-Makati's execution order. Neither did he file an appeal before the Court of Appeals. Thus, the Order of 14 May 2014 became final.

On 23 June 2014, the RTC-Makati issued a writ of execution.[12]

Based on his Report,[13] Sheriff Roberto V. Harina (Sheriff Harina) of the RTC-Makati attempted to serve on Serra a copy of the Notice to Comply and a copy of the Writ of Execution. However, Serra was not in his office so Sheriff Harina left with Serra's caretaker copies of the Notice to Comply and the Writ of Execution, who returned such copies by leaving them at the information table of the Bulwagan ng Katarungan, Masbate City.

Meanwhile, acting on the petition for extrajudicial foreclosure, respondents Atty. Leomar R. Lanuza (Atty. Lanuza), Clerk of Court and Ex-Officio Provincial Sheriff of the RTC-Masbate, and Jovito C. Soriano (Soriano), Sheriff of the RTC-Masbate, scheduled the public auction of the subject property on 26 June 2014 at 2:00 in the afternoon.[14]

On 14 June 2014, RCBC filed a petition for injunction[15] before the RTC-Masbate, docketed as Civil Case No. 6971, to enjoin the extrajudicial foreclosure sale and public auction of the subject

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[11] *Id.* at 80-83.

[12] *Id.* at 84-86.

[13] *Id.* at 87.

[14] *Id.* at 128-129.

[15] *Rollo,* Vol. II, pp. 549-564.

property. Respondent Judge Maximino R. Ables (Judge Ables), as Executive Judge of the RTC-Masbate, issued a 72-hour TRO on 25 June 2014.

In a Notice of Extrajudicial Foreclosure and Sale of Real Estate Mortgage dated 18 August 2014,[16] Soriano scheduled anew the public auction sale of the subject property on 24 September 2014 at 2:00 in the afternoon.

In the meantime, RCBC filed before the RTC-Makati a motion to divest Serra of his title, invoking Section 10(a), Rule 39 of the Rules of Court.[17]

In a Resolution dated 23 September 2014,[18] the RTC-Masbate denied RCBC's motion for the issuance of a 20-day TRO.

The public auction sale of the subject property proceeded on 24 September 2014, with Andueza being the highest bidder.[19]

On 25 September 2014, a Certificate of Sale[20] was issued by Soriano, noted by Atty. Lanuza and approved by Judge Ables. The certificate of sale showed that the subject property was sold to Andueza.

In an Order dated 26 September 2014,[21] the RTC-Makati granted RCBC's motion to divest Serra of his title. The RTC-Makati also granted RCBC's prayer to have the Registry of Deeds for Masbate cancel Entry No. 2011000513, representing the mortgage of the subject property. The RTC-Makati stated:

> In the same vein, the Court resolves to grant plaintiff's prayer to remove or cancel the mortgage annotation on OCT No. O-232, specifically Entry No. 2011000513. As held by this Court in its

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[16] *Rollo,* Vol. I, pp. 91-92.

[17] *Rollo,* Vol. II, pp. 574-585.

[18] *Id.* at 586-588.

[19] *Rollo,* Vol. I, pp. 93-94.

[20] *Id.* at 95.

[21] *Id.* at 96-98.

Order dated 14 May 2014, defendant no longer had ownership and free disposal of the property by the time he fraudulently mortgaged the property to the Spouses Eduardo M. Andueza and Dina Andueza. Clearly, mortgagees-spouses Andueza do not have any right or interest over the property and the title to be transferred to plaintiff must be free from invalid encumbrances, such as that of Entry No. 2011000513 of the Real Estate Mortgage in favor of the Spouses Andueza.[22]

In his Comment dated 7 October 2014,[23] Serra asserted that due to the public auction sale on 24 September 2014, where the subject property was sold to Andueza for being the highest bidder, he could no longer sell the subject property to RCBC.

In a motion dated 10 December 2014,[24] Spouses Andueza pleaded that the RTC-Makati vacate its 26 September 2014 Order. Spouses Andueza claimed that the RTC-Makati erred in cancelling the real estate mortgage without the trial court conducting any full-blown hearing. They also alleged that they were not parties in Civil Case No. 10054; thus, they are not bound by whatever decision or order the trial court issued in the case. RCBC opposed the motion.[25]

On 22 December 2014, RCBC had the Decision in G.R. No. 203241 annotated on OCT No. O-232 under Entry No. 2014000568.

On 27 January 2015, Andueza, through his counsels respondents Atty. Paris G. Real (Atty. Real) and Atty. Prudencio B. Densing, Jr. (Atty. Densing) filed before the RTC-Masbate an ex-parte motion for issuance of writ of possession,[26] which was granted by Judge Ables in an Order dated 28 January 2015.[27]

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[22] *Id*. at 98.

[23] *Id*. at 99-101.

[24] *Id*. at 107-119.

[25] *Id*. at 134-145.

[26] *Id*. at 146-153.

[27] *Id*. at 154.

On 29 January 2015, respondent Atty. Edwin L. Rana (Atty. Rana), Clerk of Court of RTC-Masbate, Branch 47 and Assistant Provincial Sheriff of RTC-Masbate, issued a writ of possession,[28] directing the provincial sheriff to place Andueza in possession of the subject property, and to eject all persons claiming rights under Serra.

On the same day, Atty. Rana issued a Notice to Vacate,[29] directed against Serra and RCBC, and all persons claiming any right under Serra. The Notice to Vacate was served on RCBC on 30 January 2015. The Notice to Vacate directed RCBC to "vacate the subject property and to peaceably turn-over its possession in favor of the mortgagee within five (5) working days from receipt hereof."[30] The Notice to Vacate also stated that RCBC will be forcibly evicted from the subject property should it refuse to vacate.

On 4 February 2015, RCBC filed the present petition for indirect contempt with prayer for a TRO to enjoin respondents from enforcing the Notice to Vacate and the Writ of Possession issued by RTC-Masbate, and to enjoin the respondent Register of Deeds from annotating on OCT No. O-232 the Notice to Vacate and Writ of Possession. RCBC pleaded that respondents be declared guilty of indirect contempt for disregarding the Court's decisions in G.R. Nos. 103338, 182478, 182664, and 203241, as well as the permanent restraining order in G.R. No. 203241.

On 11 February 2015, the Court issued a TRO,[31] enjoining respondents, the RTC-Masbate, the Register of Deeds of Masbate City, their agents, representatives, and all other persons acting on their behalf from (1) enforcing or causing the enforcement of the Notice to Vacate and the Writ of Possession, and (2)

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[28] *Id*. at 155-156.

[29] *Id*. at 157.

[30] *Id*.

[31] *Id*. at 199-201.

annotating on OCT No. O-232 the Notice to Vacate and Writ of Possession.

In its petition for indirect contempt, RCBC argues that Serra is liable for indirect contempt of court for refusing to obey the Court's restraining order and Decision in G.R. No. 203241, the RTC-Makati's 5 January 1989 Order, and for colluding with Spouses Andueza for the illegal mortgage and foreclosure of the subject property.

Respondents filed their respective Comments to the petition.

In his Corrected Comment filed on 13 March 2015,[32] Serra alleged that he is not liable for indirect contempt of court. He stated:

> As it is, the enforcement of the aforesaid Supreme Court Resolution dated July 10, 2013 was directed by the Supreme Court to the RTC of Makati, Branch 134. In turn, the enforcement of the RTC of Makati, Branch 134's May 14, 2014 Order of Execution and Writ of Execution dated June 23, 2014, were directed to be enforced by Sheriff Roberto V. Harina. Such being the case, Atty. Serra, to whom the power and authority to enforce the aforesaid Order and Writ of Execution is not being directed to, cannot be held liable for indirect contempt of court. x x x.[33]

Serra further claimed that he did not collude with Spouses Andueza in having the subject property mortgaged in 2011. Serra alleged he was a mortgagor in good faith and the Spouses Andueza were mortgagees in good faith when they executed a real estate mortgage over the subject property on 15 August 2011. Spouses Andueza validly annotated the mortgage on the title of the subject property with the Register of Deeds for Masbate City on 26 September 2011. At the time of the execution of the mortgage, OCT No. O-232 had no notice of *lis pendens*, no adverse claim, and there was no other lien annotated on the title of the subject property. In addition, Serra alleged that

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[32] *Id.* at 428-455.

[33] *Id.* at 443.

RCBC is guilty of forum-shopping. RCBC filed a petition for certiorari before the Court of Appeals assailing the RTC-Masbate's denial of RCBC's application for TRO. Meanwhile, RCBC filed with this Court the instant petition for indirect contempt seeking a similar relief.

In their Comment filed on 19 March 2015,[34] Spouses Andueza[35] and Atty. Real contended that they are not guilty of indirect contempt considering that the writ of execution issued by the RTC-Makati was directed to Sheriff Roberto V. Harina, and not to Spouses Andueza; and the Decision in G.R. No. 203241 was not directed to Spouses Andueza, who are not parties in the case. Spouses Andueza accused RCBC and its counsels of negligence and lack of prudence in failing to annotate for almost 18 years RCBC's supposed rights over the subject property on OCT No. O-232. Spouses Andueza claimed good faith in executing the real estate mortgage with Serra, after checking with the Register of Deeds of Masbate City that OCT No. O-232 was free from any lien. RCBC and its counsels allegedly did not exercise prudence to protect RCBC's interests even after the annotation of the real estate mortgage on OCT No. O-232 on 26 September 2011. Neither did RCBC and its counsels inform Spouses Andueza of RCBC's rights over the subject property. RCBC and its counsels also failed to oppose Andueza's petition for extrajudicial foreclosure, which Andueza filed after Serra defaulted on his loan obligation. They also failed to file any action to cancel the real estate mortgage with application for TRO to possibly enjoin the foreclosure proceedings. Spouses Andueza also claimed that RCBC committed forum-shopping when it filed the present petition since it had a pending petition for certiorari before the Court of Appeals seeking practically the same relief, which is to prevent

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[34] *Id.* at 469-538.

[35] In a Manifestation dated 22 June 2015, counsel for respondent Henedina Andueza informed the Court of the death of Eduardo M. Andueza, who will be substituted in this case by his heirs, Henedina Andueza and children Farrah France A. Corbeta and Froilan V. Andueza. *Rollo*, Vol. II, pp. 703-705.

the foreclosure of the real estate mortgage and auction sale of the subject property. Likewise, RCBC violated the doctrine of hierarchy of courts when it filed the present petition directly with this Court, when it should have been filed with the RTC.

In his Comment filed on 26 February 2015, Atty. Densing alleged that he was not a party or a counsel in G.R. No. 203241. He was merely a collaborating counsel in the extrajudicial foreclosure case filed by Spouses Andueza.

In his Comment filed on 9 July 2015,[36] Judge Ables argued that he issued a writ of possession order in favor of Andueza "after finding mortgagee x x x Andueza to have satisfied all the requirements provided for under Act No. 3135 x x x." He stated that he "simply performed his ministerial duty and was not in a position to adjudicate and look further on matters not forming part" of the case before him. Further, he alleged that at the time he issued the writ of possession, there was no injunction from the Court.

In their Comment filed on 11 March 2015,[37] Atty. Lanuza, Atty. Rana, and Soriano claimed that they were merely performing their ministerial duties under A.M. No. 99-10-05-0 which prescribes the procedure in extrajudicial foreclosure of mortgage. The TRO issued by this Court was specifically addressed to Serra, RTC-Makati, their agents, representatives and any person acting in their behalf. In short, the TRO was not addressed to respondent clerks of court and sheriff. Further, Atty. Rana issued the Writ of Possession and Notice to Vacate against Serra, RCBC, and all persons claiming rights under the former pursuant to the Order of RTC-Masbate dated 28 January 2015 and Section 10(c), Rule 39 of the Rules of Court.

In his Comment filed on 6 March 2015,[38] respondent Atty. Erwin S. Oliva, as Acting Register of Deeds for the Province of Masbate, argued that he was merely performing his ministerial

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[36] *Id.* at 714-715.

[37] *Rollo,* Vol. I, pp. 296-299.

[38] *Id.* at 278-281.

duty to approve and annotate documents when all the requirements have been complied with. The restraining order was allegedly not directed or addressed to his office.

The Issue

The issue in this case is whether respondents are liable for indirect contempt.

The Ruling of the Court

The petition is granted in part.

Indirect Contempt

In *Castillejos Consumers Association, Inc. v. Dominguez,*[39] the Court defined contempt of court, as follows:

> Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court.
>
> There are two (2) kinds of contempt of court, namely: direct and indirect. Indirect contempt or constructive contempt is that which is committed out of the presence of the court. A person who is guilty of disobedience or of resistance to a lawful order of a court or who commits any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice may be punished for indirect contempt.

In this case, RCBC accuses respondents of committing indirect contempt under Section 3, paragraphs (b) and (d), Rule 71 of the Rules of Court, to wit:

> Section 3. *Indirect contempt to be punished after charge and hearing*. After a charge in writing has been filed, and an opportunity given

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[39] 757 Phil. 149, 158-159 (2015).

to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x x x x x x

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

x x x x x x x x x

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

x x x x x x x x x

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings. (Emphasis supplied)

RCBC alleges that respondents are guilty of indirect contempt for disregarding this Court's final and executory decisions in G.R. Nos. 103338, 182478, 182664, and 203241, which essentially upheld RCBC's superior right over the subject property.

In G.R. No. 103338, which became final and executory on 15 April 1994, the Court found that "the contract of 'LEASE WITH OPTION TO BUY' between [Serra] and [RCBC] is valid, effective and enforceable, the price being certain and that there was consideration distinct from the price to support the option given to the lessee."[40]

In G.R. Nos. 182478 and 182664, the Court issued separate Resolutions dated 30 June 2008 and 22 October 2008, which

[40] *Serra v. Court of Appeals,* 299 Phil. 63, 75 (1994).

became final and executory on 27 August 2008 and 3 March 2009, respectively, finding neither reversible error nor grave abuse of discretion on the part of the Court of Appeals which held that Serra's donation of the subject property to Ablao was simulated and was done solely to evade Serra's obligation of selling the subject property to RCBC. Consequently, the deed of donation was null and void.[41]

The Decision and TRO in G.R. No. 203241

In its Resolution of 3 December 2012 in G.R. No. 203241, the Court issued a TRO which pertinently reads:

x x x x x x x x x

NOW, THEREFORE, effective immediately and continuing until further orders from this Court, **You, the respondent [Federico A. Serra], and the Regional Trial Court, Br. 134, Makati City, your agents, representatives and anyone acting on your behalf** are hereby RESTRAINED from implementing and enforcing the Orders dated 16 February 2012 and 26 July 2012 of the Regional Trial Court, Br. 134, Makati City, in Civil Case No. 10054 and from performing any act to remove or threaten to remove the petitioner Rizal Commercial Banking Corporation from the subject property.

x x x x x x x x x[42]
(Emphasis supplied)

In its Decision of 10 July 2013 in G.R. No. 203241, the Court directed the RTC-Makati to issue the writ of execution in Civil Case No. 10054 and made the TRO permanent. The Court further stated that:

In the present case, there is no dispute that RCBC seeks to enforce the decision which became final and executory on 15 April 1994. This decision orders Serra to execute and deliver the proper deed of sale in favor of RCBC. However, to evade his obligation to RCBC, Serra transferred the property to his mother Ablao, who then transferred it to Liok. Serra's action prompted RCBC to file the Annulment case.

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[41] *Rollo* (G.R. No. 182664), p. 45.

[42] *Rollo*, p. 64.

Clearly, the delay in the execution of the decision was caused by Serra for his own advantage. x x x.[43]

Serra and Spouses Andueza are guilty of indirect contempt.

As a party in G.R. No. 203241, Serra cannot feign ignorance of the Court's decision and restraining order in that case. The TRO was issued on 3 December 2012 while the decision was promulgated on 10 July 2013. By virtue of the TRO, which was made permanent, Serra was enjoined to perform any act to remove RCBC from the subject property. Yet, by defaulting on his loan obligation with Andueza, and Andueza's foreclosure of the real estate mortgage, Serra in effect allowed the removal of RCBC from the subject property. Serra's conduct tended to impede the administration of justice by effectively allowing RCBC to be removed from the premises of the subject property, in contravention of the clear directive in the decision and restraining order in G.R. No. 203241. Therefore, Serra is guilty of indirect contempt and accordingly fined ₱30,000.

Serra also claims that "he can no longer execute a Deed of Absolute Sale in favor of [RCBC] because the subject property was already foreclosed and sold in public auction in favor of Spouses Eduardo and Dina Andueza x x x."[44] In other words, Serra alleges that a supervening event – the foreclosure sale in favor of Spouses Andueza – occurred precluding the execution of the Court's decision in G.R. No. 203241.

In *Abrigo v. Flores*,[45] the Court held:

A supervening event consists of facts that transpire after the judgment became final and executory, or of new circumstances that develop after the judgment attained finality, including matters that the parties were not aware of prior to or during the trial because such matters were not yet in existence at that time. In that event, the interested party may properly seek the stay of execution or the quashal

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[43] *Supra* note 5, at 727.

[44] *Rollo,* Vol. I, p. 100.

[45] 711 Phil. 251, 262 (2013).

of the writ of execution, or he may move the court to modify or alter the judgment in order to harmonize it with justice and the supervening event. The party who alleges a supervening event to stay the execution should necessarily establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment.

The Court is not convinced that a supervening event occurred which would effectively prevent the execution of the decision in G.R. No. 203241. While the foreclosure sale proceeded on 24 September 2014, after the finality of the decision in G.R. No. 203241, the real estate mortgage in favor of Spouses Andueza was executed on 21 September 2011 while G.R. No. 203241 was pending. Serra could not possibly be unaware that a foreclosure sale would likely transpire since he was the mortgagor who defaulted on his loan obligation. Clearly, Serra performed acts intended to defeat and circumvent the conclusive effects of the final decision in G.R. No. 203241. Serra defaulted on his loan obligation and did not lift a finger to prevent Andueza or any person for that matter from removing RCBC from the subject property.

The 5 January 1989 Order of the RTC-Makati, which directed Serra to sell to RCBC the subject property, became final and executory on 15 April 1994. Serra has delayed for 23 years the execution of this Order. As the Court observed in G.R. No. 203241, "Serra has continued to evade his obligation by raising issues of technicality." Clearly, Serra deserves to be sanctioned for such reprehensible conduct of delaying for 23 years the execution of the final and executory order of the RTC-Makati, as affirmed by this Court in G.R. No. 203241.

Despite being non-parties in G.R. No. 203241, Spouses Andueza have notice of the pendency of such action. On 14 February 2013, RCBC had the TRO issued by this Court annotated on OCT No. O-232 under Entry No. 2013000087. Therefore, Spouses Andueza have actual knowledge of the Court's TRO in G.R. No. 203241 prior to their filing of the petition for extrajudicial foreclosure of the subject property

on 13 August 2013. Further, the decision in G.R. No. 203241 was promulgated prior to the Spouses Andueza's initiation of foreclosure proceedings. Spouses Andueza cannot therefore invoke lack of knowledge of RCBC's interest over the subject property when they filed the petition for extrajudicial foreclosure. Hence, such knowledge should have prevented, or at the very least cautioned, the Spouses Andueza from proceeding with the foreclosure which had the effect of removing RCBC from the property, in contravention of the clear language of the Court in G.R. No. 203241. In other words, the Spouses Andueza's act of instituting the petition for extrajudicial foreclosure, which would ultimately result in removing RCBC from the subject property, obviously tended to impede the administration of justice and thus constitutes indirect contempt of court. Accordingly, the Spouses Andueza are likewise adjudged guilty of indirect contempt and fined ₱30,000.

The other respondents, namely the counsels of the Spouses Andueza, merely acted to protect the interests of their clients over the subject property while the public respondents simply acted pursuant to their ministerial duties and responsibilities in foreclosure proceedings. These acts do not constitute indirect contempt of court absent any clear and convincing evidence that they willfully disobeyed the decision and restraining order in G.R. No. 203241 or committed any act which tended to impede the administration of justice.

The TRO must be lifted.

The TRO earlier issued in this case must be lifted. The Court notes that RCBC filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 137314, assailing the denial by Judge Jose C. Fortuno of RTC-Masbate, Branch 48 of its motion for issuance of a TRO, and praying for a writ of injunction to enjoin "respondent Clerk of Court and Ex *Officio* Sheriff of the Regional Trial Court of Masbate City, Deputy Sheriff Soriano, respondent Spouses Andueza, the Register of Deeds for the Province of Masbate, and respondent-intervenor Federico A. Serra, x x x from further performing any act done

pursuant to or resulting from the illegal foreclosure sale of the subject property, x x x and any other act pursuant to or resulting from the foreclosure sale that has the effect of ousting petitioner RCBC from the subject property, x x x."[46] RCBC's certiorari petition before the Court of Appeals questions the proceedings resulting from the extrajudicial foreclosure sale of the subject property and similarly involves the respondents impleaded in this contempt petition. Since the certiorari petition before the Court of Appeals likewise prays for an injunction writ and clearly involves the extrajudicial foreclosure of the subject property, the Court of Appeals must be given the opportunity to resolve the propriety of such prayer for injunction, and ultimately the validity of RCBC's claims over the subject property. This petition for indirect contempt is not the proper action to determine the validity of the mortgage between Serra and the Spouses Andueza, and the foreclosure proceedings resulting from such mortgage.

WHEREFORE, the petition is **GRANTED IN PART**. Respondents Federico A. Serra and Spouses Eduardo and Henedina Andueza are found guilty of indirect contempt of court and accordingly ordered to pay a fine of Thirty Thousand Pesos (₱30,000.00) each. The Temporary Restraining Order issued earlier is hereby LIFTED.

SO ORDERED.

Peralta, Mendoza, and *Martires, JJ.,* concur.

Leonen, J., on official leave.

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[46] *Rollo*, Vol. II, pp. 621-622.

FIRST DIVISION

[G.R. No. 217453. July 19, 2017]

DENMARK S. VALMORES, *petitioner, vs.* **DR. CRISTINA ACHACOSO, in her capacity as Dean of the College of Medicine, and DR. GIOVANNI CABILDO, Faculty of the Mindanao State University,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; DOCTRINE OF HIERARCHY OF COURTS; STRICT ADHERENCE THERETO HAS BEEN A LONG-STANDING POLICY OF THE COURTS IN DETERMINING THE APPROPRIATE FORUM FOR INITIATORY PLEADINGS; EXCEPTIONS.— Under Rule 65 of the Rules, a petition for *mandamus* is directed against a tribunal, corporation, board, officer or person who unlawfully neglects the performance of an act specifically enjoined by law or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled. If the petition relates to an act or omission of a board, officer, or person, the same must be filed with the Regional Trial Court exercising jurisdiction over the territorial area as may be defined by the Court. x x x Strict adherence to the judicial hierarchy of courts has been a long-standing policy of the courts in determining the appropriate forum for initiatory actions. While this Court has concurrent jurisdiction with the inferior courts to issue corrective writs of *certiorari*, prohibition, and *mandamus*, a party's choice of forum is by no means absolute. Needless to say, however, such rule is not without exception. Recently, in *Maza v. Turla*, the Court emphasized that it possesses full discretionary power to take cognizance and assume jurisdiction over petitions filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues involved in the dispute. Citing *The Diocese of Bacolod v. Commission on Elections,* the Court held therein that a direct resort is allowed in the following instances, *inter alia*: (i) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (ii) when the questions involved are dictated by public welfare and the advancement of public policy, or

demanded by the broader interest of justice; and (iii) when the circumstances require an urgent resolution.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF RELIGION; MAKING A PERSON CHOOSE BETWEEN HONORING HIS RELIGIOUS OBLIGATIONS AND FINISHING HIS EDUCATION IS A PATENT INFRINGEMENT OF HIS RELIGIOUS FREEDOM.— [T]he Constitution guarantees the freedom to believe absolutely, while the freedom to act based on belief is subject to regulation by the State when necessary to protect the rights of others and in the interest of public welfare. Today, religion has transcended mere rubric and has permeated into every sphere of human undertaking. As a result, religious freedom, to a limited extent, has come under the regulatory power of the State. x x x [T]he Bill of Rights guarantees citizens the freedom to act on their individual beliefs and proscribes government intervention unless necessary to protect its citizens from injury or when public safety, peace, comfort, or convenience requires it. Thus, as faculty members of the MSU-College of Medicine, respondents herein were duty-bound to protect and preserve petitioner Valmores' religious freedom. x x x [R]espondents' concerted refusal to accommodate petitioner Valmores rests mainly on extra-legal grounds, which cannot, by no stretch of legal verbiage, defeat the latter's constitutionally-enshrined rights. That petitioner Valmores is being made by respondents to choose between honoring his religious obligations and finishing his education is a patent infringement of his religious freedoms. As the final bulwark of fundamental rights, this Court will not allow such violation to perpetuate any further.

3. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; EMPLOYED TO COMPEL THE PERFORMANCE OF A MINISTERIAL DUTY, SUCH WHEN AN OFFICER IS REQUIRED TO PERFORM AN ACT NOT REQUIRING THE EXERCISE OF OFFICIAL DISCRETION OR JUDGMENT IN A GIVEN STATE OF FACTS.— *Mandamus* is employed to compel the performance of a ministerial duty by a tribunal, board, officer, or person. Case law requires that the petitioner should have a right to the thing demanded and that it must be the imperative duty of the respondent to perform the act required; such duty need not be

absolutely expressed, so long as it is clear. In this regard, a duty is considered ministerial where an officer is required to perform an act not requiring the exercise of official discretion or judgment in a given state of facts. Conversely, if the law imposes a duty upon a public officer and gives him the right to decide *how* or *when* the duty shall be performed, such duty is discretionary. x x x The crux of the dispute therefore lies in the interpretation of the 2010 CHED Memorandum x x x. [A] plain reading of the memorandum reveals the ministerial nature of the duty imposed upon HEIs. Its policy is crystal clear: a student's religious obligations takes precedence over his academic responsibilities, consonant with the constitutional guarantee of free exercise and enjoyment of religious worship. Accordingly, the CHED imposed a positive duty on all HEIs to exempt students, as well as faculty members, from academic activities in case such activities interfere with their religious obligations. x x x [U]nder the 2010 CHED Memorandum, HEIs do not possess absolute discretion to grant or deny requests for exemption of affected students. Instead, the memorandum only imposes minimum standards should HEIs decide to require remedial work, *i.e.*, that the same is within the bounds of school rules and regulations and that the grades of the students will not be affected. x x x [O]nce the required certification or proof is submitted, the concerned HEI is enjoined to exempt the affected student from attending or participating in school-related activities if such activities are in conflict with their religious obligations. As to whether HEIs will require remedial work or not, the Court finds the same to be already within their discretion, so long as the remedial work required is within the bounds of school rules and regulations and that the same will not affect the grades of the concerned students. For these reasons, the Court finds that respondents were duty bound to enforce the 2010 CHED Memorandum insofar as it requires the exemption of petitioner Valmores from academic responsibilities that conflict with the schedule of his Saturday worship. Their failure to do so is therefore correctible by *mandamus*.

APPEARANCES OF COUNSEL

Abayon Silva Salanatin and Associates for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a petition for *mandamus*[1] filed under Rule 65 of the Rules of Court (Petition), seeking the enforcement of Commission on Higher Education (CHED) Memorandum[2] dated November 15, 2010 (2010 CHED Memorandum) by herein respondents Dr. Cristina Achacoso (Achacoso) and Dr. Giovanni Cabildo (Cabildo) (collectively, "respondents"). Respondents are being sued in their respective capacities as Dean and faculty member of the Mindanao State University (MSU)-College of Medicine.[3]

Antecedent Facts

The facts culled from the records follow.

Petitioner Denmark S. Valmores (Valmores) is a member of the Seventh-day Adventist Church,[4] whose fundamental beliefs include the strict observance of the Sabbath as a sacred day.[5] As such, petitioner Valmores joins the faithful in worshipping and resting on Saturday, the seventh day of the week, and refrains from non-religious undertakings from sunset of Friday to sunset of Saturday.[6]

Prior to the instant controversy, petitioner Valmores was enrolled as a first-year student at the MSU-College of Medicine for Academic Year 2014-2015.[7] To avoid potential conflict

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[1] *Rollo*, pp. 3-26.

[2] *Id*. at 55.

[3] *Id*. at 8.

[4] *Id*. at 9.

[5] *Id*. at 9; Fundamental Belief No. 20, Fundamental Beliefs of Seventh-day Adventists, *id*. at 36-37.

[6] *Id*. at 10.

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

between his academic schedule and his church's Saturday worship, petitioner Valmores wrote a letter[8] to respondent Achacoso, requesting that he be excused from attending his classes in the event that a regular weekday session is rescheduled to a Saturday. At the same time, petitioner Valmores expressed his willingness to make up for any missed activity or session due to his absence.[9]

Between the months of June to August 2014, some of petitioner Valmores' classes and examinations were moved from weekdays to Saturdays.[10] In one instance, petitioner Valmores was unable to take his Histo-Pathology laboratory examination held on September 13, 2015, a Saturday.[11] Respondent Cabildo was his professor for the said subject.[12] Despite his request for exemption, no accommodation was given by either of the respondents. As a result, petitioner Valmores received a failing grade of 5 for that particular module and was considered ineligible to retake the exam.[13]

Thereafter, several pastors and officers of the Seventh-day Adventist Church sent a letter[14] to respondent Achacoso, requesting for a possible audience with the members of the MSU school board. In addition, the church, through Pastor Hanani P. Nietes, issued a Certification[15] dated September 15, 2014 in connection with petitioner Valmores' request for exemption.

The Certification dated September 15, 2014 reads in part:

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[8] *Id*. at 43.

[9] *Id*.

[10] *Id*. at 53.

[11] *Id*. at 64.

[12] See *id*. at 11.

[13] *Id*. at 64.

[14] *Id*. at 44.

[15] *Id*. at 46.

This is to certify that **DENMARK S. VALMORES** is a bona fide member of the Seventh-day Adventist Church affiliated at Balongis, Balulang, Cagayan de Oro City.

As Seventh-day Adventists, we uphold our observance of the Saturday Sabbath as a day of worship and rest from labor, observing the sacredness of the Lord's day from sunset Friday to sunset Saturday. We do away [with] secular activities like working in the office or field/**attending classes/participating/attending non-religious functions during Saturday**.

This certification is issued to support his request for exemption from all his Sabbath (from sunset Friday to sunset Saturday) classes, exams, and **other non-religious activities**.[16]

On September 19, 2014, petitioner Valmores again wrote a letter[17] to respondent Achacoso to seek reconsideration regarding his situation, reiterating his willingness to take make-up classes or their equivalent in order to complete the requirements of his course.

Despite the foregoing communications, petitioner Valmores' requests fell on deaf ears.[18]

Hence, aggrieved by respondents' lack of consideration, petitioner Valmores elevated the matter before the CHED.[19] In an Indorsement dated January 6, 2015, the CHED Regional Office, Region X, through Mr. Roy Roque U. Agcopra, Chief Administrative Officer, referred the matter directly to the President of MSU as well as respondent Achacoso and requested that the office be advised of the action thus taken.[20]

In response, Dr. Macapado Abaton Muslim (Dr. Muslim), President of MSU, instructed respondent Achacoso to enforce

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[16] *Id.*

[17] *Id.* at 45.

[18] See *id.* at 14.

[19] *Id.*

[20] *Id.* at 50.

the 2010 CHED Memorandum.[21] In doing so, Dr. Muslim sent a copy of the said memorandum to respondent Achacoso with the following marginal note in his own handwriting:

Urgent!

For: Dean Cristina Achacoso
College of Medicine

You are hereby enjoined to enforce this CHED memo re the case of MR. DENMARK S. VALMORES.

Thanks.[22]

Despite the foregoing correspondence, petitioner Valmores' request still went unheeded. Thus, in a Letter[23] dated March 25, 2015, petitioner Valmores, this time through his counsel on record, sought reconsideration from respondent Achacoso for the last time and manifested his intention to resort to appropriate legal action should no action be taken.

Notwithstanding the lapse of several months, no written or formal response was ever given by respondent Achacoso.[24]

Hence, the present Petition.

Petitioner Valmores brings his cause before the Court based on his constitutional right to freedom of religion, which he argues was violated by respondents when they refused to enforce the 2010 CHED Memorandum, as follows: (i) by refusing to excuse petitioner Valmores from attending classes and taking examinations on Saturdays, and (ii) by disallowing petitioner Valmores to take make-up examinations in order to comply with the academic requirements of his course.[25]

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[21] *Id*. at 15, 51.

[22] *Id*.

[23] *Id*. at 52-54.

[24] *Id*. at 15-16.

[25] *Id*. at 16.

Respondents, on the other hand, chiefly base their defense on the fact that MSU had other students who were able to graduate from their College of Medicine despite being members of the Seventh-day Adventist Church.[26] On this claim, respondents argued that petitioner Valmores' case was not "unique" as to merit exceptional treatment.[27] Respondents likewise claimed that the Certification dated September 15, 2014 submitted by petitioner Valmores was not the certification contemplated by the 2010 CHED Memorandum and therefore there was no corresponding duty on their part to enforce the same.[28] Lastly, respondents posited that the changes in schedule were not unreasonable as they were due to unexpected declarations of holidays as well as unforeseen emergencies of the professors in their respective hospitals.[29]

Petitioner Valmores, in his Reply,[30] reiterated his prayer for the issuance of a writ of *mandamus* against respondents and prayed for the immediate resolution of the dispute.

Issue

The threshold issue is simple: whether *mandamus* lies to compel respondents to enforce the 2010 CHED Memorandum in the case of petitioner Valmores.

The Court's Ruling

The Petition is impressed with merit.

Strict adherence to the doctrine of hierarchy of courts is not absolute

Before disposing of the substantial issue, although not raised by respondents in their Comment, a procedural matter warrants discussion.

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[26] *Id.* at 63, 65.

[27] See *id.* at 65.

[28] See *id.* at 64.

[29] *Id.*

[30] *Id.* at 81-96.

Under Rule 65 of the Rules, a petition for *mandamus* is directed against a tribunal, corporation, board, officer or person who unlawfully neglects the performance of an act specifically enjoined by law or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled.[31] If the petition relates to an act or omission of a board, officer, or person, the same must be filed with the Regional Trial Court exercising jurisdiction over the territorial area as may be defined by the Court.[32]

In the case at bench, petitioner Valmores questions the acts of respondents in their capacities as Dean and faculty member of MSU-College of Medicine. As such, by directly filing the Petition with the Court instead of the proper regional trial court, as required by the Rules, petitioner Valmores was in error.

Strict adherence to the judicial hierarchy of courts has been a long-standing policy of the courts in determining the appropriate forum for initiatory actions.[33] While this Court has concurrent jurisdiction with the inferior courts to issue corrective writs of *certiorari*, prohibition, and *mandamus*, a party's choice of forum is by no means absolute.[34]

Needless to say, however, such rule is not without exception. Recently, in *Maza v. Turla*,[35] the Court emphasized that it possesses full discretionary power to take cognizance and assume jurisdiction over petitions filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues involved in the dispute. Citing *The Diocese of Bacolod v. Commission on Elections*,[36] the Court held therein that a direct

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[31] RULES OF COURT, Rule 65, Sec. 3.

[32] *Id*., Sec. 4.

[33] See *Ouano v. PGTT International Investment Corp.*, 434 Phil. 28, 34 (2002).

[34] *Id*.

[35] G.R. No. 187094, February 15, 2017, pp. 11-12.

[36] 751 Phil. 301, 331, 333-334 (2015).

resort is allowed in the following instances, *inter alia*: (i) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (ii) when the questions involved are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice; and (iii) when the circumstances require an urgent resolution.

The above exceptions are all availing in this case.

The freedom of religion enjoys a preferred status among the rights conferred to each citizen by our fundamental charter.[37] In this case, no less than petitioner Valmores' right to religious freedom is being threatened by respondents' failure to accommodate his case.[38] In this regard, when confronted with a potential infringement of fundamental rights, the Court will not hesitate, as it now does, to overlook procedural lapses in order to fulfill its foremost duty of satisfying the higher demands of substantial justice.

The Court is also aware of petitioner Valmores' plea for the expedient resolution of his case, as he has yet to enroll in the MSU-College of Medicine and continue with his studies.[39] Plainly enough, to require petitioner Valmores to hold his education in abeyance in the meantime that he is made to comply with the rule on hierarchy of courts would be unduly burdensome. It is a known fact that education is a time-sensitive endeavor, where premium is placed not only on its completion, but also on the timeliness of its achievement. Inevitably, justice in this case must take the form of a prompt and immediate disposition if complete relief is to be accorded.

In a related matter, the Rules also require the exhaustion of other plain, speedy, and adequate remedies in the ordinary course of law before a petition for *mandamus* is filed.[40] In this case,

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[37] See *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 99-100 and 179 (2014).

[38] See *rollo*, pp. 19-21.

[39] *Id.* at 93-94.

[40] RULES OF COURT, Rule 65, Sec. 3.

petitioner Valmores had exerted all efforts to obtain relief from respondents, as clearly evidenced by the letters and other communications on record. Likewise, after respondents' repeated failure to enforce the 2010 CHED Memorandum, petitioner Valmores elevated the matter before the CHED, which in turn directly indorsed the matter to the President of MSU. Thus, prior to resorting to the instant Petition, the Court finds that petitioner Valmores had satisfactorily complied with the requirement of availing himself of other remedies under Rule 65.

On these premises, the Court finds sufficient bases to relax the foregoing procedural rules in the broader interest of justice.

The freedom of religion vis-à-vis the 2010 CHED Memorandum

Religion as a social institution is deeply rooted in every culture; it predates laws and survives civilizations. In the Philippines, the 1935, 1973, and 1987 Constitutions were crafted in full acknowledgment of the contributions of religion to the country through the enactment of various benevolent provisions.[41] In its present incarnation, our fundamental law, by "imploring the aid of Almighty God," makes manifest the State's respect and recognition of the collective spirituality of the Filipino.[42] Such recognition is embodied in Section 5, Article III of the Constitution:

> SEC. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

In *Centeno v. Villalon-Pornillos*,[43] the Court discussed the two-fold nature of the free-exercise clause enshrined in the cited provision:

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[41] *Spouses Imbong v. Ochoa, Jr.*, *supra* note 37, at 167.

[42] See *id*.

[43] 306 Phil. 219 (1994).

[T]he constitution embraces two concepts, that is, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definitions to preserve the enforcement of that protection. In every case, the power to regulate must be so exercised, in attaining a permissible end, as not to unduly infringe on the protected freedom.

Whence, even the exercise of religion may be regulated, at some slight inconvenience, in order that the State may protect its citizens from injury. Without doubt, a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The State is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort, or convenience.[44]

In a nutshell, the Constitution guarantees the freedom to believe absolutely, while the freedom to act based on belief is subject to regulation by the State when necessary to protect the rights of others and in the interest of public welfare.[45]

Today, religion has transcended mere rubric and has permeated into every sphere of human undertaking. As a result, religious freedom, to a limited extent, has come under the regulatory power of the State.

In 2010, the CHED institutionalized the framework for operationalizing Section 5, Article III of the 1987 Constitution vis-à-vis the academic freedom of higher education institutions (HEIs), pursuant to its statutory power to formulate policies, priorities, and programs on higher education in both public and private HEIs.[46]

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[44] *Id*. at 232.

[45] *Ebralinag v. The Division Superintendent of Schools of Cebu*, G.R. Nos. 95770 and 95887, March 1, 1993, 219 SCRA 256, 270.

[46] Republic Act (RA) No. 7722, entitled AN ACT CREATING THE COMMISSION ON HIGHER EDUCATION, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES otherwise known as "Higher Education Act of 1994," approved on May 18, 1994.

In the 2010 CHED Memorandum, the CHED laid down guidelines for the exemption of teachers, personnel, and students from participating in school or related activities due to compliance with religious obligations, as follows:

FOR : **ALL CHED REGIONAL OFFICE DIRECTORS AND OFFICERS-IN-CHARGE**

SUBJECT : **REMEDIAL WORK FOR TEACHERS, PERSONNEL AND STUDENTS TO BE EXCUSED DUE TO COMPLIANCE WITH RELIGIOUS OBLIGATIONS**

DATE : **November 15, 2010**

x x x x x x x x x

Our fundamental Law explicitly provides under Section 5 of the Bill of Rights that "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed." In this regard, the Commission is obligated to ensure that all higher education institutions render proper respect and compliance to this constitutional right, while at the same time acknowledging the exercise of their academic freedom also guaranteed under the Constitution.

The Commission therefore clarifies that in implementing the aforementioned policy, [higher education institutions] shall be enjoined to: (1) excuse students from attendance/participation in school or related activities if such schedule conflicts with the exercise of their religious obligations, and (2) allow faculty, personnel and staff to forego attendance during academic and related work and activities scheduled on days which would conflict with the exercise of their religious freedom. Instead, the affected students, faculty, personnel and staff may be allowed to do remedial work to compensate for absences, within the bounds of school rules and regulations without their grades being affected, or with no diminution in their salaries or leave credits or performance evaluation/assessment, provided they submit a certification or proof of attendance/participation duly signed by their pastor, priest, minister or religious leader for periods of absence from classes, work or school activities.

For your guidance and strict compliance.[47]

Transposing the foregoing to this case, petitioner Valmores beseeches the Court to direct respondents to enforce the 2010 CHED Memorandum, thus allowing him to continue taking up his medical studies at MSU.

The enforcement of the 2010 CHED Memorandum is compellable by writ of mandamus

Mandamus is employed to compel the performance of a ministerial duty by a tribunal, board, officer, or person.[48] Case law requires that the petitioner should have a right to the thing demanded and that it must be the imperative duty of the respondent to perform the act required; such duty need not be absolutely expressed, so long as it is clear.[49] In this regard, a duty is considered ministerial where an officer is required to perform an act not requiring the exercise of official discretion or judgment in a given state of facts.[50] Conversely, if the law imposes a duty upon a public officer and gives him the right to decide *how* or *when* the duty shall be performed, such duty is discretionary.[51]

MSU is an HEI created by legislative charter under Republic Act No. 1387, as amended, and was established "to better implement the policy of the Government in the intensification of the education of the Filipino youth, especially among the Muslims and others belonging to the national minorities."[52] Thus,

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[47] 2010 CHED Memorandum, *rollo*, p. 55.

[48] See *University of San Agustin, Inc. v. Court of Appeals*, 300 Phil. 819, 830 (1994).

[49] *Id.*

[50] See *Mateo v. Court of Appeals*, 273 Phil. 507, 513 (1991).

[51] *Carolino v. Senga*, G.R. No. 189649, April 20, 2015, 756 SCRA 55, 70-71.

[52] RA No. 1893, Sec. 1. RA No. 1893 amended RA No. 1387, further amended by RA No. 3791 and RA No. 3868.

respondents herein, as faculty members of MSU, fall under the policy-making authority of the CHED and therefore bound to observe the issuances promulgated by the latter.

The crux of the dispute therefore lies in the interpretation of the 2010 CHED Memorandum, the contents of which are again reproduced below for closer scrutiny:

> SUBJECT: **REMEDIAL WORK FOR TEACHERS, PERSONNEL AND STUDENTS TO BE EXCUSED DUE TO COMPLIANCE WITH RELIGIOUS OBLIGATIONS**
>
> x x x x x x x x x
>
> Our fundamental Law explicitly provides under Section 5 of the Bill of Rights that "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed." In this regard, **the Commission is obligated to ensure that all higher education institutions render proper respect and compliance to this constitutional right**, while at the same time acknowledging the exercise of their academic freedom also guaranteed under the Constitution.
>
> The Commission therefore clarifies that in implementing the aforementioned policy, [higher education institutions] **shall be enjoined to:** (1) **excuse students from attendance/participation in school or related activities if such schedule conflicts with the exercise of their religious obligations**, and (2) allow faculty, personnel and staff to forego attendance during academic and related work and activities scheduled on days which would conflict with the exercise of their religious freedom. Instead, **the affected students**, faculty, personnel and staff **may be allowed to do remedial work to compensate for absences,** within the bounds of school rules and regulations without their grades being affected, or with no diminution in their salaries or leave credits or performance evaluation/assessment, **provided they submit a certification or proof of attendance/ participation duly signed by their pastor, priest, minister or religious leader for periods of absence from classes, work or school activities.**
>
> **For your guidance and strict compliance.**[53] (Emphasis supplied)

[53] 2010 CHED Memorandum, *rollo*, p. 55.

Analyzed, the following are derived:

(i) HEIs are **enjoined** to excuse students from attending or participating in school or related activities, if such schedule conflicts with the students' exercise of their religious obligations;

(ii) to compensate for absences, students **may** be allowed to do remedial work, which in turn should be within the bounds of school rules and regulations and without affecting their grades; and

(iii) to be entitled to exemption, affected students must submit a certification of attendance duly signed by their respective minister.

At once, a plain reading of the memorandum reveals the ministerial nature of the duty imposed upon HEIs. Its policy is crystal clear: a student's religious obligations takes precedence over his academic responsibilities, consonant with the constitutional guarantee of free exercise and enjoyment of religious worship. Accordingly, the CHED imposed a positive duty on all HEIs to exempt students, as well as faculty members, from academic activities in case such activities interfere with their religious obligations.

Although the said memorandum contains the phrase "within the bounds of school rules and regulations," the same relates only to the requirement of remedial work, which, based on the language used, is merely optional on the part of the HEI. Neither can such phrase be said to have conferred discretion as the use of the words "shall be enjoined" and "strict compliance" denote a mandatory duty on the part of the HEI to excuse its students upon submission of the certification prescribed in the same memorandum.

Clearly, under the 2010 CHED Memorandum, HEIs do not possess absolute discretion to grant or deny requests for exemption of affected students. Instead, the memorandum only imposes minimum standards should HEIs decide to require remedial work, *i.e.*, that the same is within the bounds of school

rules and regulations and that the grades of the students will not be affected.

To evade liability, respondents, without delving into the specifics, made the blanket assertion that the Certification dated September 15, 2014 submitted by petitioner Valmores was improper:

> 8. That the Petitioner did submit a certification of his church that he is baptized as Seventh day Adventist which is clearly not the intention by the CHED memorandum (sic).[54]

Against such deficient claim, petitioner Valmores argues that the said certification issued by Pastor Hanani P. Nietes on behalf of the Seventh-day Adventist Church was sufficient to satisfy the requirement in the 2010 CHED Memorandum.[55] The Court agrees.

As a condition for exemption, the 2010 CHED Memorandum simply requires the submission of "a certification or proof of attendance/participation duly signed by their pastor, priest, minister or religious leader for periods of absence from classes, work or school activities."[56] Again, the salient portions of the Certification dated September 15, 2014 reads:

> As Seventh-day Adventists, we uphold our observance of the Saturday Sabbath as a day of worship and rest from labor, observing the sacredness of the Lord's day from sunset Friday to sunset Saturday. We do away with secular activities like working in the office or field/attending classes/participating/attending non-religious functions during Saturday.
>
> This certification is issued to support his request for exemption from **all his Sabbath (from sunset Friday to sunset Saturday) classes, exams**, and other non-religious activities.[57] (Emphasis in the original omitted; emphasis supplied)

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[54] *Id.* at 64.

[55] *Id.* at 90-91.

[56] *Id.* at 55.

[57] *Id.* at 46.

The cited certification needs little or no interpretation: petitioner Valmores, as a *bona fide* member of the Seventh-day Adventist Church, is expected to miss "**all** his Sabbath x x x classes [and] exams" due to his observance of the Sabbath day as a day of worship. There is nothing in the 2010 CHED Memorandum that prohibits the certification from being issued *before* the period of absence from class. Even then, the Certification dated September 15, 2014 is broad enough to cover both past and future Sabbath days for which petitioner Valmores would be absent.

It is likewise well to note that respondents, by placing the sufficiency of the Certification dated September 15, 2014 in issue, in effect admitted the ministerial nature of the duty imposed upon HEIs. By raising such defense, respondents admitted to the existence of a concomitant duty to exempt and that such duty on their part would have been called for had petitioner Valmores submitted a correct certification.

Significantly, respondents never even asserted, much less mentioned, their right to academic freedom in any of their submissions before the Court. Neither was there any resistance to exempt petitioner Valmores from the CHED Regional Office, Region X, or Dr. Muslim, the President of MSU, grounded on MSU's institutional independence. In fact, that Dr. Muslim explicitly ordered respondent Achacoso to enforce the 2010 CHED Memorandum[58] further underscores the ministerial nature of the duty of HEIs to exempt affected students.

Thus, to recapitulate, once the required certification or proof is submitted, the concerned HEI is enjoined to exempt the affected student from attending or participating in school-related activities if such activities are in conflict with their religious obligations. As to whether HEIs will require remedial work or not, the Court finds the same to be already within their discretion, so long as the remedial work required is within the bounds of school rules and regulations and that the same will not affect the grades of the concerned students.

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[58] *Id.* at 51.

For these reasons, the Court finds that respondents were duty bound to enforce the 2010 CHED Memorandum insofar as it requires the exemption of petitioner Valmores from academic responsibilities that conflict with the schedule of his Saturday worship. Their failure to do so is therefore correctible by *mandamus*.

Respondents violated Petitioner Valmores' right to freedom of religion

The importance of education cannot be overstated. The Court has, on many occasions, ruled that institutions of higher learning are bound to afford its students a fair opportunity to complete the course they seek to pursue, barring any violation of school rules by the students concerned.[59] In erudite fashion, the Court, in *Regino v. Pangasinan Colleges of Science and Technology,*[60] discussed:

> Education is not a measurable commodity. It is not possible to determine who is "better educated" than another. Nevertheless, a student's grades are an accepted approximation of what would otherwise be an intangible product of countless hours of study. The importance of grades cannot be discounted in a setting where education is generally the gate pass to employment opportunities and better life; such grades are often the means by which a prospective employer measures whether a job applicant has acquired the necessary tools or skills for a particular profession or trade.
>
> Thus, students expect that upon their payment of tuition fees, satisfaction of the set academic standards, completion of academic requirements and observance of school rules and regulations, the school would reward them by recognizing their "completion" of the course enrolled in.[61]

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[59] *Regino v. Pangasinan Colleges of Science and Technology*, 485 Phil. 446, 461 (2004).

[60] *Id*.

[61] *Id.* at 460-461.

In the landmark case of *Ebralinag v. The Division Superintendent of Schools of Cebu*,[62] the Court gave weight to the religious convictions of students who were members of Jehovah's Witnesses that refused to participate in their school's flag ceremony. Therein, the Court held that the expulsion of the affected students based on their religious beliefs would run against the State's duty to protect and promote the right of all its citizens to quality education and to make such education accessible to all:

> We are not persuaded that by exempting the Jehovah's Witnesses from saluting the flag, singing the national anthem and reciting the patriotic pledge, this religious group which admittedly comprises a "small portion of the school population" will shake up our part of the globe and suddenly produce a nation "untaught and uninculcated in and unimbued with reverence for the flag, patriotism, love of country and admiration for national heroes" (Gerona vs. Sec. of Education, 106 Phil. 2, 24). After all, what the petitioners seek only is exemption from the flag ceremony, not exclusion from the public schools where they may study the Constitution, the democratic way of life and form of government, and learn not only the arts, sciences, Philippine history and culture but also receive training for a vocation or profession and be taught the virtues of "patriotism, respect for human rights, appreciation for national heroes, the rights and duties of citizenship, and moral and spiritual values["] (Sec. 3[2], Art. XIV, 1987 Constitution) as part of the curricula. Expelling or banning the petitioners from Philippine schools will bring about the very situation that this court had feared in *Gerona*. Forcing a small religious group, through the iron hand of the law, to participate in a ceremony that violates their religious beliefs, will hardly be conducive to love of country or respect for duly constituted authorities.
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> x x x x x x x x x
>
> Moreover, the expulsion of members of Jehovah's Witnesses from the schools where they are enrolled will violate their right as Philippine citizens, under the 1987 Constitution, to receive free education, for it is the duty of the State to "protect and promote the right of all citizens to quality education x x x and to make such education accessible to all" (Sec. 1, Art. XIV).

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[62] *Supra* note 45.

In Victoriano vs. Elizalde Rope Workers' Union, 59 SCRA 54, 72-75, we upheld the exemption of members of the Iglesia ni Cristo, from the coverage of a closed shop agreement between their employer and a union because it would violate the teaching of their church not to join any labor group:

> "x x x It is certain that not every conscience can be accommodated by all the laws of the land; but when general laws conflict with scruples of conscience, exemptions ought to be granted unless some 'compelling state interests' intervenes." (Sherbert vs. Berner, 374 U.S. 398, 10 L. Ed. 2d 965, 970, 83 S. Ct. 1790.)"

We hold that a similar exemption may be accorded to the Jehovah's Witnesses with regard to the observance of the flag ceremony out of respect for their religious beliefs, however "bizarre" those beliefs may seem to others. x x x If they quietly stand at attention during the flag ceremony while their classmates and teachers salute the flag, sing the national anthem and recite the patriotic pledge, we do not see how such conduct may possibly disturb the peace, or pose "a grave and present danger of a serious evil to public safety, public morals, public health or any other legitimate public interest that the State has a right (and duty) to prevent" (German vs. Barangan, 135 SCRA 514, 517).[63]

Here, in seeking relief, petitioner Valmores argues that he is bound by his religious convictions to refrain from all secular activities on Saturdays, a day that is deemed holy by his church.

On the other hand, respondents' refusal to excuse petitioner Valmores from Saturday classes and examinations fundamentally rests only on the fact that there were other Seventh-day Adventists who had successfully completed their studies at the MSU-College of Medicine.[64] Respondents, in their Comment, stated thus:

> 14. That there are many successful doctors who are members of the Seventh day Adventist and surely they have sacrificed before they succeeded in their calling as many Filipinos who shone in their respective fields of study.

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[63] *Id.* at 271-273.

[64] *Rollo*, pp. 64-65.

15. That we ask ourselves, is the case of Mr. Valmores unique in (sic) its own? Certainly it is not because we have had students who are member (sic) of the Seventh-Day Adventist and our College did not have a problem with them. x x x[65]

Without more, respondents' bare arguments crumble against constitutional standards. As discussed above, the Bill of Rights guarantees citizens the freedom to act on their individual beliefs and proscribes government intervention unless necessary to protect its citizens from injury or when public safety, peace, comfort, or convenience requires it.[66] Thus, as faculty members of the MSU-College of Medicine, respondents herein were duty-bound to protect and preserve petitioner Valmores' religious freedom.

Even worse, respondents suggest that the "sacrifices" of other students of the common faith justified their refusal to give petitioner Valmores exceptional treatment. This is *non-sequitur*. Respondents brush aside petitioner Valmores' religious beliefs as if it were subject of compromise; one man's convictions and another man's transgressions are theirs alone to bear. That other fellow believers have chosen to violate their creed is irrelevant to the case at hand, for in religious discipline, adherence is always the general rule, and compromise, the exception.

While in some cases the Court has sustained government regulation of religious rights, the Court fails to see in the present case how public order and safety will be served by the denial of petitioner Valmores' request for exemption. Neither is there any showing that petitioner Valmores' absence from Saturday classes would be injurious to the rights of others. Precisely, the 2010 CHED Memorandum was issued to address such conflicts and prescribes the action to be taken by HEIs should such circumstance arise.

What is certain, as gathered from the foregoing, is that respondents' concerted refusal to accommodate petitioner

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[65] *Id.*

[66] *Ebralinag v. The Division Superintendent of Schools of Cebu*, *supra* note 45, at 271, 273.

Valmores rests mainly on extra-legal grounds, which cannot, by no stretch of legal verbiage, defeat the latter's constitutionally-enshrined rights. That petitioner Valmores is being made by respondents to choose between honoring his religious obligations and finishing his education is a patent infringement of his religious freedoms. As the final bulwark of fundamental rights, this Court will not allow such violation to perpetuate any further.

Conclusion

Every person is free to tread the far territories of their conscience, no matter where they may lead – for the freedom to believe and act on one's own convictions and the protection of such freedom extends to all people, from the theistic to the godless. The State must, as a matter of duty rather than consequence, guarantee that such pursuit remains unfettered.

As representatives of the State, educational institutions are bound to safeguard the religious freedom of their students. Thus, to such end, our schools carry the responsibility to restrict its own academic liberties, should they collide with constitutionally preferred rights.

WHEREFORE, the Petition is **GRANTED**. Respondents Dr. Cristina Achacoso and Dr. Giovanni Cabildo are **DIRECTED** to enforce the Commission on Higher Education Memorandum dated November 15, 2010 in the case of petitioner Denmark S. Valmores.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 217973. July 19, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FEDERICO GEROLA *y* AMAR *alias* "FIDEL",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON ARE GIVEN GREAT WEIGHT AND RESPECT ON APPEAL IN THE ABSENCE OF FACTS OR CIRCUMSTANCES OF WEIGHT AND SUBSTANCE THAT WOULD AFFECT THE RESULT OF THE CASE.— The assessment of the credibility of witnesses is a task most properly within the domain of trial courts. In *People v. Gahi*, the Court stressed that the findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. Said rule finds an even more stringent application where the said findings are sustained by the CA, as in the case at hand x x x.

2. ID.; ID.; ID.; VARIANCE IN MINOR DETAILS HAS THE NET EFFECT OF BOLSTERING INSTEAD OF DIMINISHING THE WITNESS' CREDIBILITY BECAUSE THEY DISCOUNT THE POSSIBILITY OF A REHEARSED TESTIMONY.— [T]hat a witness' testimony contains inconsistencies or discrepancies does not, by such fact alone, diminish the credibility of such testimony. In *People v. Esquila*, the accused therein similarly cited contradictions and discrepancies in the victim's testimony in questioning his conviction for rape. Notably, as in the present Appeal, the purported discrepancies consisted of statements relating to date of the commission of the crime. In affirming the findings of the lower courts, the Court brushed aside such inconsistencies and gave full weight and credit to the testimony of the victim, who was likewise a minor x x x. Time and again, the Court has

held that the date or time of the commission of rape is not a material ingredient of the crime and need not be stated with absolute accuracy; where the time of commission is not an essential element of the crime charged, conviction may be had on proof of the commission of the crime, even if it appears that the crime was not committed at the precise time alleged. It is well to stress that variance in minor details has the net effect of bolstering instead of diminishing the witness' credibility because they discount the possibility of a rehearsed testimony. Instead, what remains paramount is the witness' consistency in relating the principal elements of the crime and the positive and categorical identification of the accused as the perpetrator of the same.

3. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; REQUIRES ONLY MORAL CERTAINTY OR THAT DEGREE OF PROOF WHICH PRODUCES CONVICTION IN AN UNPREJUDICED MIND.— In criminal cases, "[p]roof beyond reasonable doubt" does not mean such degree of proof, excluding possibility of error, that produces absolute certainty; only "moral certainty" is required, or that degree of proof which produces conviction in an unprejudiced mind.

4. ID.; ID.; DENIAL; BEING SELF-SERVING NEGATIVE EVIDENCE, IT CANNOT BE ACCORDED GREATER EVIDENTIARY WEIGHT THAN THE POSITIVE DECLARATION OF A CREDIBLE WITNESS.— In the instant case, aside from harping on the alleged inconsistencies of AAA's testimony, Federico relies on his bare and uncorroborated refutations and nothing more. No other testimonial or documentary evidence was offered by Federico during the course of the trial. Such counter evidence, when weighed against the positive identification and straightforward testimony of AAA, do little to affect the issue of Federico's carnal knowledge of AAA, the elements of which have been consistently narrated by the latter. Following established jurisprudence, denials, being self-serving negative evidence, cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.

5. ID.; ID.; CREDIBILITY OF WITNESSES; DELAY IN THE PROSECUTION OF AN OFFENSE IS NOT AN *INDICIUM* OF A FABRICATED CHARGE.— Anent the issue of delay,

the Court agrees with the ruling of the CA that delay in the prosecution of an offense is not an *indicium* of a fabricated charge. Such fact of delay was satisfactorily explained during trial, where it was revealed that the same was brought about by AAA's fear of Federico, who was her step-father.

6. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; FOR THOSE CRIMES WHERE THE PENALTY IMPOSED IS DEATH BUT REDUCED TO *RECLUSION PERPETUA* BECAUSE OF REPUBLIC ACT NO. 9346, THE CIVIL INDEMNITY AS WELL AS THE AWARD FOR MORAL DAMAGES AND EXEMPLARY DAMAGES SHALL EACH BE SET AT ONE HUNDRED THOUSAND PESOS.— [I]n light of prevailing jurisprudence, the Court modifies the award for damages. As charged in the three (3) Informations, the crimes of rape are punishable by death under Section 11 of Republic Act (RA) No. 7659, given the confluence of the following elements: (i) that the victim was below eighteen (18) years of age at the time all three rape incidents occurred, and (ii) that the offender is the step-parent of the victim. In *People v. Jugueta*, the Court held that for those crimes where the penalty imposed is death but reduced to *reclusion perpetua* because of RA No. 9346, the civil indemnity as well as the award for moral and exemplary damages shall each be set at One Hundred Thousand Pesos (₱100,000.00).

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an Appeal[1] filed under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated September 25,

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[1] CA *rollo*, pp. 118-120.

[2] *Id.* at 104-117. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Renato C. Francisco and Jhosep Y. Lopez concurring.

2014 (questioned Decision) of the Court of Appeals, Special Eighteenth Division (CA), in CA-G.R. CR. HC. No. 01277, which affirmed the Decision[3] dated January 28, 2010 of the Regional Trial Court of Himamaylan City, Negros Occidental, Branch 55 (RTC) in Criminal Case Nos. 1213, 1214, and 1215, convicting accused-appellant Federico A. Gerola (Federico) for the crimes charged therein.

The Facts

Three (3) separate Informations for Rape under Article 266-A, paragraph 1[4] of the Revised Penal Code were filed in the RTC against Federico, as follows:

[CRIMINAL CASE NO. 1213]

That sometime in July of 1999, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA,[5] a minor, 11 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW.[6]

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[3] *Id*. at 51-57. Penned by Presiding Judge Franklin J. Demonteverde.

[4] As amended by Republic Act (RA) No. 8353 (The Anti-Rape Law of 1997) in relation to RA No. 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Act).

[5] Pursuant to RA No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," and its implementing rules, the real name of the victim, as well as those of her immediate family members, is withheld, and fictitious initials instead are used to represent her, to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703, 705-709 (2006).

[6] CA *rollo*, p. 105.

[CRIMINAL CASE NO. 1214]

That sometime in the year 1998, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA, a minor, 10 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW.[7]

[CRIMINAL CASE NO. 1215]

That on or about the 9th day of January, 2000, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA, a minor, 12 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW.[8]

As culled from the questioned Decision, the antecedent facts are as follows:

Version of the Prosecution

Private complainant AAA was born on July 5, 1987. She was a minor when all three (3) acts of rape were committed. She was 11 years old when the first act of rape occurred sometime in the year 1998. The second act of rape happened sometime in the year 1999 when she was 12 years old and the third time was in January 2000 when she was 12 years and 6 months of age. At the time all three (3) acts of rape occurred, she was living in the same house in Barangay Libacao, City of Himamaylan in San Jose with her full-blood sister, her half-siblings (children of her mother and step-father), her mother MMM and AAA's step-father, accused-appellant Federico Gerola.

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[7] *Id*.

[8] *Id*. at 105-106.

Sometime in 1998 at around 8:30 in the evening, AAA and her sisters were sleeping. Her mother was in the hospital tending to her aunt who had just delivered a baby. At that time, appellant crawled towards AAA. Accused-appellant told AAA to keep quiet, lie down and remove her underwear. AAA tried to resist but appellant gestured to box her. AAA tried to shout but he covered her mouth. After removing her underwear, accused also removed his brief and laid on top of AAA. Appellant inserted his penis into her vagina. AAA bled and felt pain. AAA did not tell her mother about the incident because appellant threatened her of maltreating them if she did so.

In July 1999 at around 9:30 in the evening, AAA was raped for the second time. While she was sleeping in bed, appellant sat beside her and removed her underwear. He then inserted his penis into her vagina. The victim felt pain and bled. At that time, AAA's mother was in the Himamaylan hospital tending to her grandmother. Again, she did not tell her mother due to appellant's threat to maltreat her mother.

In January of the year 2000, appellant did the same act of having carnal knowledge with AAA for the third time. This was done at around 2:30 in the morning and lasted for about thirty (30) minutes while everyone else in the house was sleeping. AAA's mother was away from home to tend to the latter's younger sister who gave birth. Like the other incidents, AAA did not tell her mother. Instead, AAA told her friend who advised her to tell their teacher. AAA then narrated the incident to her teacher, Mrs. Rafil, who summoned her mother and told her what happened. When her mother learned of her daughter's ordeal, she cried. AAA's aunt Elen accompanied the victim to the Barangay Captain and reported the rape incidents. Appellant was then fetched by the Barangay Captain and thereafter brought to the police station where the appellant was detained.

On February 7, 2000, AAA was examined by Dr. Medardo Estanda who made a written case report and anatomical sketch of the victim pursuant to the incidents that occurred. The report indicated that there were penetrations on the organ of the victim which had hymenal lacerations at 5, 6 and 12 o'clock positions.

Version of the Appellant

Accused-appellant Federico Gerola y Amar alias Fidel testified that he was married to MMM, the private complainant's mother, in the year 1996 and they begot four (4) children. The family which was composed of his wife and himself, their four children and a child of MMM by her first marriage were living in San Jose Valing, Barangay Libacao, Himamaylan City. The other child of MMM by her first husband, AAA, lived with her aunt Erlita Aguirre.

As a cane laborer, accused-appellant worked in the sugarcane field and sometimes in the rice field. Since 1998 up to 2000, AAA was living with the latter's aunt Erlita Aguirre in a separate house because she was going to school in San Jose.

Accused-appellant testified that he was not in good terms with Dodoy Puertas, the brother-in-law of his wife MMM, because Puertas was not in favor of their marriage. Accused-appellant recalled that when he and MMM asked permission from Dodoy Puertas about their plan to get married, Puertas did not give consent and merely said "I don't know." Appellant further testified that MMM and Dodoy Puertas initiated the filing of the criminal cases against him because MMM and Puertas have an illicit affair and both live together in Mirasol.[9]

Ruling of the RTC

After trial, the RTC rendered the Decision dated January 28, 2010, finding accused-appellant guilty of all charges filed against him and imposing the penalty of *reclusion perpetua* for each charge, without eligibility of parole. The dispositive portion reads:

WHEREFORE, in view of all the foregoing, the Court finds the accused Federico Gerola y Amar alias "Fidel" ***"GUILTY"*** beyond a (sic) reasonable doubt on the three counts of Rape as charged against him. Since the death penalty is suspended, the Court hereby sentences the accused to **three (3) penalties of Reclusion Perpetua, without eligibility of parole**.

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[9] *Id*. at 106-108.

The accused is further ordered to pay the private complainant, [AAA], moral damages in the amount of **Fifty Thousand Pesos (Php50,000.00)** for each case; civil indemnity in the amount of **Seventy-Five Thousand Pesos (Php75,000.00)** for each case; and exemplary damages in the amount of **Twenty-Five Thousand Pesos (Php25,000.00)** for each case.

SO ORDERED.[10]

Pleading his innocence, Federico filed a Notice of Appeal on April 28, 2010.[11] Briefs were then respectively filed by Federico and plaintiff-appellee on August 15, 2011 and May 28, 2012, pursuant to the Notice to File Brief dated January 14, 2011 issued by the CA.[12]

On appeal before the CA, Gerola assailed the RTC's appreciation of the testimonies of prosecution witnesses, which he claimed to be replete with inconsistencies and contradictions.[13] Gerola anchored his claim on the fact that AAA had difficulty recalling the specific dates when the incidents occurred and that she failed to promptly report the same to the proper authorities.[14]

Ruling of the CA

On September 25, 2014, the CA rendered the questioned Decision, affirming the judgment of the RTC *in toto*:

WHEREFORE, the appeal is hereby **DENIED**. The Decision of the Regional Trial Court of Himamaylan City, Negros Occidental Branch 55 in Criminal Case Nos. 1213, 1214 and 1215 dated January 28, 2010 is hereby **AFFIRMED** in its entirety.

SO ORDERED.[15]

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[10] *Id*. at 57.

[11] *Id*. at 109.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 110.

[15] *Id*. at 116-117.

Federico then elevated the case before the Court via Notice of Appeal[16] dated October 22, 2014. In lieu of supplemental briefs, plaintiff-appellee filed a Manifestation and Motion (in Lieu of Supplemental Brief)[17] dated September 1, 2015, while Federico filed a Manifestation (in Lieu of Supplemental Brief)[18] dated September 23, 2015.

Issue

The sole issue for resolution is whether the CA erred in affirming the RTC's conviction of Federico for three (3) counts of Rape.

The Court's Ruling

The Appeal is dismissed.

Federico's lone assignment of error rests on his claim that AAA "could not exactly determine what year x x x the first rape incident occurred," which purportedly creates doubt on the credibility of AAA.[19] Federico draws the same conclusion from AAA's failure to promptly disclose her repeated defilement to the proper authorities.[20] Such circumstances, Federico asserts, were not properly appreciated by the RTC when it handed out his conviction. The Court is not impressed.

The assessment of the credibility of witnesses is a task most properly within the domain of trial courts. In *People v. Gahi*,[21] the Court stressed that the findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand.[22]

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[16] *Id*. at 118-120.

[17] *Rollo*, pp. 28-30.

[18] *Id*. at 34-37.

[19] CA *rollo*, pp. 45-46.

[20] *Id*. at 46.

[21] 727 Phil. 642 (2014).

[22] *Id*. at 658.

Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case.[23] Said rule finds an even more stringent application where the said findings are sustained by the CA,[24] as in the case at hand:

> Time and again, we have held 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. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[25]

As well, that a witness' testimony contains inconsistencies or discrepancies does not, by such fact alone, diminish the credibility of such testimony. In *People v. Esquila*,[26] the accused

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[23] *Id*.

[24] *Id*.

[25] *Id*., citing *People v. Amistoso*, 701 Phil. 345, 356-357 (2013), further citing *People v. Aguilar*, 565 Phil. 233, 247-248 (2007).

[26] 324 Phil. 366 (1996).

therein similarly cited contradictions and discrepancies in the victim's testimony in questioning his conviction for rape.[27] Notably, as in the present Appeal, the purported discrepancies consisted of statements relating to date of the commission of the crime.[28] In affirming the findings of the lower courts, the Court brushed aside such inconsistencies and gave full weight and credit to the testimony of the victim, who was likewise a minor[29]:

> Thus, accused-appellant avers that the trial court erred in convicting him because the testimony of the victim, Maribeth, is uncertain, contradictory, and filled with inconsistencies and material discrepancies sufficient to destroy her credibility. He argues that in her direct testimony, Maribeth declared that the crime happened on October 15, 1991 at 12 o'clock midnight x x x while under cross-examination on August 3, 1992, she stated that she left accused-appellant's house on October 11, 1991 for Poblacion, Bansalan to look for work and stayed thereat for 1-l/2 months, from October 11, 1991 x x x. Thereafter she returned to Pananag, Managa, Bansalan but she did not go to accused-appellant's house. Instead she proceeded to her cousin's house x x x
>
> **Indeed, the statements are contradictory.** However, it should be remembered that the victim, Maribeth, was only 14 years old at the time she testified and, therefore, it is not unnatural should inconsistencies crop into her testimony as she is more prone to error than an adult person. In fact, minor inconsistencies may be expected of persons of such tender years.
>
> > The minor inconsistencies in Gloria's testimonies are to be expected. Protracted cross-examination of a 16-year old girl not accustomed to public trial would produce contradictions which nevertheless would not destroy her credibility. x x x
>
> We will not deviate from the rule that "testimonies of rape victims who are young and immature are credible; the revelation of an innocent child whose chastity was abused demands full credence." x x x

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[27] *Id*. at 371.

[28] See *id*.

[29] *Id*.

Too, the inconsistent statements Maribeth made as to the date and place of the commission of the crime are collateral or minor matters which do not at all touch upon the commission of the crime itself x x x nor affect Maribeth's credibility.

This Court has time and again held that inconsistencies in the testimony of witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony x x x.[30] (Citations omitted; emphasis supplied)

Time and again, the Court has held that the date or time of the commission of rape is not a material ingredient of the crime and need not be stated with absolute accuracy; where the time of commission is not an essential element of the crime charged, conviction may be had on proof of the commission of the crime, even if it appears that the crime was not committed at the precise time alleged.[31] It is well to stress that variance in minor details has the net effect of bolstering instead of diminishing the witness' credibility because they discount the possibility of a rehearsed testimony.[32] Instead, what remains paramount is the witness' consistency in relating the principal elements of the crime and the positive and categorical identification of the accused as the perpetrator of the same.[33]

Bearing the foregoing in mind, the Court finds that Federico's guilt was proven beyond reasonable doubt by the evidence of the prosecution.

In criminal cases, "[p]roof beyond reasonable doubt" does not mean such degree of proof, excluding possibility of error, that produces absolute certainty; only "moral certainty" is required, or that degree of proof which produces conviction in an unprejudiced mind.[34]

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[30] *Id.* at 371-372.

[31] *People v. Cinco*, 622 Phil. 858, 867-868 (2009); *People v. Ching*, 563 Phil. 433, 444 (2007).

[32] *People v. Gahi*, *supra* note 21, at 659.

[33] *People v. Appegu*, 429 Phil. 467, 477 (2002).

[34] RULES OF COURT, Rule 133, Sec. 2.

In the instant case, aside from harping on the alleged inconsistencies of AAA's testimony, Federico relies on his bare and uncorroborated refutations and nothing more.[35] No other testimonial or documentary evidence was offered by Federico during the course of the trial. Such counter evidence, when weighed against the positive identification and straightforward testimony of AAA, do little to affect the issue of Federico's carnal knowledge of AAA, the elements of which have been consistently narrated by the latter. Following established jurisprudence, denials, being self-serving negative evidence, cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.[36] All told, considering that the prosecution produced various testimonial and documentary evidence[37] on record, the Court is led to the unquestionable conclusion that Federico is indeed guilty of the crimes charged.

Anent the issue of delay, the Court agrees with the ruling of the CA that delay in the prosecution of an offense is not an *indicium* of a fabricated charge.[38] Such fact of delay was satisfactorily explained during trial, where it was revealed that the same was brought about by AAA's fear of Federico, who was her step-father.[39] In the same manner, the Court brushes aside Federico's desperate attribution of ill-motive against AAA and her mother for being self-serving and unsupported by the evidence on record.[40]

Finally, in light of prevailing jurisprudence, the Court modifies the award for damages. As charged in the three (3) Informations,

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[35] See CA *rollo*, pp. 114-115.

[36] *People v. Vergara*, 724 Phil. 702, 712 (2014).

[37] Testimony of AAA and her mother; Medical report of Dr. Medardo S. Estanda; Police blotter report; Notebook of AAA; see CA *rollo*, pp. 51-54.

[38] CA *rollo*, pp. 112-113.

[39] See *id*. at 112.

[40] *Id*. at 114.

the crimes of rape are punishable by death under Section 11[41] of Republic Act (RA) No. 7659,[42] given the confluence of the following elements: (i) that the victim was below eighteen (18) years of age at the time all three rape incidents occurred, and (ii) that the offender is the step-parent of the victim.

In *People v. Jugueta*,[43] the Court held that for those crimes where the penalty imposed is death but reduced to *reclusion perpetua* because of RA No. 9346,[44] the civil indemnity as well as the award for moral and exemplary damages shall each be set at One Hundred Thousand Pesos (₱100,000.00).

WHEREFORE, in view of the foregoing, the Appeal is **DISMISSED** for lack of merit and the Decision dated September 25, 2014 of the Court of Appeals in CA-G.R. CR. HC. No. 01277 is **AFFIRMED** with **MODIFICATION**.

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[41] SEC. 11. Article 335 of the same Code is hereby amended to read as follows:

"Art. 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.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. **when the victim is under eighteen (18) years of age and the offender** is a parent, ascendant, **step-parent**, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.["] (Emphasis supplied)

[42] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES.

[43] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[44] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

Accused-appellant Federico Gerola y Amar is hereby found **GUILTY** beyond reasonable doubt of three (3) counts of Rape as defined under Article 266-A, paragraph 1 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count.

The amount of damages awarded is likewise increased, ordering accused-appellant to pay the amount of One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, One Hundred Thousand Pesos (₱100,000.00) as moral damages, and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages for each count of Rape. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 221424. July 19, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBELYN CABANADA *y* ROSAURO,** *accused-appellant.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; THE *MIRANDA DOCTRINE*; CONSTRUED; REQUIREMENTS, CITED.— Section 12, paragraphs 1 and 3, Article III (Bill of Rights) of the 1987 Constitution embodies what jurisprudence has termed as "*Miranda rights.*" The *Miranda*

doctrine requires that: (a) any person under custodial investigation has the right to remain silent; (b) anything he says can and will be used against him in a court of law; (c) he has the right to talk to an attorney before being questioned and to have his counsel present when being questioned; and (d) if he cannot afford an attorney, one will be provided before any questioning if he so desires. The said rights are guaranteed to preclude the slightest use of coercion by the State as would lead the accused to admit something false, not to prevent him from freely and voluntarily telling the truth. x x x This Court elucidated that the *Miranda rights* are intended to protect ordinary citizens from the pressure of custodial setting. In the case of *Luz v. People* citing *Berkemer v. McCarty*, it was explained that: The purposes of the **safeguards prescribed by Miranda** are to ensure that the police do not coerce or trick captive suspects into confessing, **to relieve the "inherently compelling pressures" "generated by the custodial setting itself," "which work to undermine the individual's will to resist,"** and as much as possible to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; CUSTODIAL INVESTIGATION; DEFINED.— The "investigation" in Section 12, paragraph 1 of the Bill of Rights pertains to "custodial investigation." Custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission.

3. ID.; ID.; ID.; REPUBLIC ACT NO. 7438 REINFORCED THE CONSTITUTIONAL MANDATE AND EXPANDED THE DEFINITION OF CUSTODIAL INVESTIGATION; NOT APPLICABLE WHEN THE INVESTIGATION WAS STILL A GENERAL INQUIRY OF THE CRIME AND HAS NOT FOCUSED ON A PARTICULAR SUSPECT; CASE AT BAR.— Republic Act (*R.A.*) No. 7438 reinforced the constitutional mandate and expanded the definition of custodial investigation. This means that even those who voluntarily surrendered before a police officer must be apprised of their *Miranda rights*. The same pressures of a custodial setting exist

in this scenario. A portion of Section 2 of R.A. No. 7438 reads: SEC. 2. *Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers.* x x x As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law. Applying the foregoing, Cabanada was not under custodial investigation when she made the confession, without counsel, to PO2 Cotoner that she took the missing ₱20,000.00. The prosecution established that the confession was elicited during the initial interview of the police after Catherine called to report the missing money and personal effects. The investigation was still a general inquiry of the crime and has not focused on a particular suspect. Also, she admitted to the crime while at the residence of her employer, thus, she was not yet taken into custody or otherwise deprived of her freedom.

4. ID.; ID.; ID.; ID.; ANY STATEMENT OBTAINED IN VIOLATION OF THE CONSTITUTIONAL PROVISION, WHETHER EXCULPATORY OR INCULPATORY, IN WHOLE OR IN PART, SHALL BE INADMISSIBLE IN EVIDENCE; CASE AT BAR.— The circumstances surrounding Cabanada's appearance before the police station falls within the definition of custodial investigation. Despite the claim that she was not considered as a suspect at that time, the fact remains that she confessed to having committed the crime and was able to produce the money from her room. The investigation, therefore, ceased to be a general inquiry even if they contemplated that she was covering for someone. The subsequent confession of Cabanada at the CIU office can be considered as having been done in a custodial setting because (1) after admitting the crime, Cabanada was brought to the police station for further investigation; (2) the alleged confession happened in the office of the chief; (3) PO2 Cotoner was present during Cabanada's apology and admission to Catherine. The compelling pressures of custodial setting were present when the accused was brought to the police station along with Catherine. In *People v. Javar*, it was ruled that any statement obtained in violation of the constitutional provision, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence. Even if the confession contains a grain

of truth, if it was made without the assistance of counsel, it becomes inadmissible in evidence, regardless of the absence of coercion or even if it had been voluntarily given. Cabanada's confession without counsel at the police station, which led to the recovery of the other items at her house, is inadmissible.

5. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED THEFT; ELEMENTS.—** Theft is qualified under Article 310 of the RPC, when it is, among others, committed with grave abuse of confidence, x x x The elements of Qualified Theft committed with grave abuse of confidence are as follows: 1. Taking of personal property; 2. That the said property belongs to another; 3. That the said taking be done with intent to gain; 4. That it be done without the owner's consent; 5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; 6. **That it be done with grave abuse of confidence**. x x x Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain. The taking was also clearly done with grave abuse of confidence. Cabanada was working as a housemaid of the Victoria family since 2002.

6. **ID.; ID.; ID.; IMPOSABLE PENALTY.—** A modification is called for as regards the imposable penalty. Article 310 of the Revised Penal Code provides that Qualified Theft "shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article," x x x The case of *Cruz v. People* is instructive as to the proper penalty for qualified theft if the value of the property stolen is more than ₱12,000.00 but does not exceed ₱22,000.00. x x x In this case, the value of the property stolen is ₱20,000.00. Applying the above pronouncement, Cabanada should be sentenced to suffer the penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to sixteen (16) years, five (5) months and eleven (11) days of *reclusion temporal,* as maximum.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before Us for review is the August 29, 2014 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 05585, which affirmed the Decision[2] dated April 24, 2012 of the Regional Trial Court (*RTC*), Branch 214, Mandaluyong City in Criminal Case No. MC-09-12269 finding accused-appellant Robelyn Cabanada y Rosauro (*Cabanada*) guilty beyond reasonable doubt of the crime of Qualified Theft.

The antecedent facts are as follows:

Accused-appellant Cabanada was charged with the crime of Qualified Theft, the accusatory portion of the Information reads:

That on or about the 13th day of April 2009, in the City of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being then employed as housemaid of complainant Catherine Victoria y Tulfo, with grave abuse of confidence and taking advantage of the trust reposed upon her with intent to gain, did then and there willfully, unlawfully and feloniously take, steal and carry away the following to wit:

a) cash amounting to [₱]20,000.00;
b) one (1) Pierre Cardin lady's watch worth [₱]10,000.00;
c) one (1) white gold ring with diamonds and white gold earring with diamonds worth [₱]90,000.00;
d) one (1) Technomarine lady's watch worth [₱]15,000.00;
e) one (1) Santa Barbara [lady's] watch worth [₱]6,000.00;
f) one (1) Relic lady's watch worth [₱]3,000.00;
g) one (1) pair of white gold with briliantitos earrings worth [₱]10,000.00
h) assorted ATM cards

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[1] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Andres B. Reyes, Jr. (now a member of this Court) and Apolinario D. Bruselas, Jr., concurring, *rollo*, pp. 2-12.

[2] Penned by Acting Presiding Judge Ofelia L. Calo; CA *rollo*, pp. 22-28.

in the aggregate amount of [₱]154,000.00 belonging to one Catherine Victoria y Tulfo, without her knowledge and consent, to her damage and prejudice in the aforementioned amount.

Contrary to law."[3]

Cabanada pleaded not guilty at her arraignment. Subsequently, the trial on the merits ensued.

The prosecution established that: at about 9:00 a.m. on April 12, 2009, an Easter Sunday, private complainant Catherine Victoria (*Catherine*) and her family visited her mother in Bulacan. Cabanada was left at the house since she was not feeling well and would rather clean the house. The family returned at 9:30 p.m. of the same day.[4]

On April 13, 2009, Catherine asked her husband Victor Victoria (*Victor*) for the ₱47,000.00 he was supposed to give for their household expenses. Victor went to his service vehicle to get the money he kept in the glove compartment, and was surprised that ₱20,000.00 was missing. When Victor informed her, Catherine checked their room and discovered that several pieces of her jewelry were also missing. She immediately called the Mandaluyong Police Station to report the incident.[5]

In the course of the interview at the Victoria's residence, Cabanada admitted to PO2 Maximo Cotoner, Jr. (*PO2 Cotoner)* that she took the money. She led them to her room and took a pouch (white envelope) containing ₱16,000.00 cash. She also showed a white leather wallet containing the missing master key of Victor's vehicle. Thereafter, Cabanada was brought at the Criminal Investigation Unit (*CIU*) for further investigation. Cabanada apologized to Catherine, and admitted that she still had some of the missing jewelry in her house at Panatag Compound, Welfareville, Mandaluyong City. The police went to her house and recovered the Technomarine, Pierre Cardin,

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[3] CA *rollo*, pp. 13-14.

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

[5] *Id.* at 24.

Relic and Santa Barbara watches and a pair of earrings with diamonds placed in a tool box.[6]

On the other hand, the defense narrated a different set of events. At around 9:00 a.m. on April 12, 2009, Cabanada went to Catherine's house to work as a stay-out housemaid, and left around 9:00 p.m. upon arrival of the Victoria family. On the same date, the *plantsadora* came around 9:00 a.m. and left at 3:00 p.m. In the morning of April 13, 2009, Cabanada returned to the house to resume her work. She was washing clothes at around 9:00 a.m. when Catherine called her and asked about the missing items. She denied any knowledge of the same. The police came and asked her and her sister Rose to board the police mobile. For half an hour, Catherine was talking with the police, while Cabanada and her sister stayed in the mobile. Thereafter, they were brought to the police station, and while in a small room, she was asked thrice if she mortgaged the missing jewelry, to which she denied any knowledge. She was not assisted by a lawyer at the police station nor was allowed to call her relatives.

The RTC found Cabanada guilty beyond reasonable doubt of the crime of qualified theft. It held that the prosecution was able to establish the continuous series of events which undoubtedly point to Cabanada as the perpetrator of the crime charged. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the Court finds the accused Robelyn Cabanada y Rosauro GUILTY beyond reasonable doubt of the crime of Qualified Theft and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*.
>
> SO ORDERED.[7]

On appeal, the CA affirmed the decision of the RTC. The CA ruled that Cabanada's admissions were not obtained under custodial investigation as it was established that she was not

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[6] *Id.*

[7] *Id.* at 28.

yet arrested at that time. The "uncounselled admissions" were given freely and spontaneously during a routine inquiry. The CA considered the testimony of PO2 Cotoner that they contemplated that Cabanada might have been covering for someone else. The *fallo* of the decision states:

> WHEREFORE, premises considered, the assailed Decision is hereby AFFIRMED.
>
> SO ORDERED.[8]

Hence, the instant appeal was instituted.

The Office of the Solicitor General (*OSG*), in its Manifestation,[9] informed this Court of its intention not to file a supplemental brief since its Brief[10] dated July 23, 2013 has exhaustively discussed and refuted the issues in the case. For her part, Cabanada, through the Public Attorney's Office, asserted that she adopts all her defenses and arguments in her Appellant's Brief, and asks for the said Manifestation be considered as substantial compliance in lieu of supplemental brief.[11]

Cabanada alleges that her alleged admissions cannot be considered as done in an ordinary manner, spontaneously, fully and voluntarily as it was elicited through the questions of PO2 Cotoner. She was patently treated as a suspect when she was being interviewed at the Victoria's residence. Thus, her uncounselled admissions are inadmissible in evidence for having been obtained without a valid waiver on her part.[12]

On the other hand, the OSG argues that although Cabanada's confession may have been obtained through PO2 Cotoner's interview, the same was given freely and spontaneously during a routine inquiry and not while she was under custodial

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[8] *Rollo*, p. 11.

[9] *Id.* at 20.

[10] CA *rollo,* pp. 77-89.

[11] *Rollo,* pp. 33-34.

[12] CA *rollo,* pp. 53-54.

investigation. She made the said admission in her employer's residence wherein she was neither deprived of her liberty nor considered a suspect. The OSG emphasizes that since the investigation had just begun, it was entirely within the authority and discretion of the police officers to question any person within the household who could have related any unusual events that occurred on the day the Victoria family went to Bulacan.[13]

This Court finds the appeal partly meritorious.

Section 12, paragraphs 1 and 3, Article III (Bill of Rights) of the 1987 Constitution provide that:

> SEC. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> x x x x x x x x x
>
> (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

The above provision in the Constitution embodies what jurisprudence has termed as "*Miranda rights.*" The *Miranda* doctrine requires that: (a) any person under custodial investigation has the right to remain silent; (b) anything he says can and will be used against him in a court of law; (c) he has the right to talk to an attorney before being questioned and to have his counsel present when being questioned; and (d) if he cannot afford an attorney, one will be provided before any questioning if he so desires.[14] The said rights are guaranteed to preclude the slightest use of coercion by the State as would lead the accused to admit something false, not to prevent him from freely and voluntarily telling the truth.[15]

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[13] *Id.* at 84.

[14] *People v. Mojello,* 468 Phil. 944, 952-953 (2004).

[15] *People v. Andan*, 336 Phil. 91, 106 (1997).

The "investigation" in Section 12, paragraph 1 of the Bill of Rights pertains to "custodial investigation." Custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission.[16]

This Court expounded in *People v. Marra*:[17]

> Custodial investigation involves any questioning initiated by law enforcement officers *after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way*. It is only after the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect, *the suspect is taken into custody, and the police carries out a process of interrogations that lends itself to eliciting incriminating statements* that the rule begins to operate.[18]

Republic Act (*R.A.*) No. 7438 reinforced the constitutional mandate and expanded the definition of custodial investigation. This means that even those who voluntarily surrendered before a police officer must be apprised of their *Miranda rights*.[19] The same pressures of a custodial setting exist in this scenario. A portion of Section 2 of R.A. No. 7438 reads:

> SEC. 2. *Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers.*
>
> x x x x x x x x x
>
> As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without

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[16] *People v. Guting y Tomas,* G.R. No. 205412, September 9, 2015, 770 SCRA 334, 341.

[17] 306 Phil. 586 (1994).

[18] *People v. Marra, supra*, at 594. (Citation omitted).

[19] *People v. Chavez*, G.R. No. 207950, September 22, 2014, 735 SCRA 728, 751.

prejudice to the liability of the "inviting" officer for any violation of law.[20]

Applying the foregoing, Cabanada was not under custodial investigation when she made the confession, without counsel, to PO2 Cotoner that she took the missing ₱20,000.00. The prosecution established that the confession was elicited during the initial interview of the police after Catherine called to report the missing money and personal effects. The investigation was still a general inquiry of the crime and has not focused on a particular suspect. Also, she admitted to the crime while at the residence of her employer, thus, she was not yet taken into custody or otherwise deprived of her freedom. As PO2 Cotoner's testified:

Q: **Why did you start your interview with accused Robelyn Cabanada**
A: **Because she's only the person left in that house during that time, ma'am.**

Q: You said that you started interview with Robelyn Cabanada, what was her reaction if you can remember when you started to interview her?
A: At first she was crying and later she was talking and talking and admitted that she was the one who took the money, ma'am.

Q: How according to her were she able to get the money, you mentioned earlier that private complainant in this case Catherine Victoria told you that she discovered [₱]20,000 out of [₱]47,000.00 inside a white envelope which white envelope was inside her car. How did accused tell you how she got the money?
A: She said that she also stole the master key of the car prior to that time she stole the money, ma'am.

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[20] *AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF, approved on May 15, 1992.*

Q: When you were interviewing accused Ms. Robelyn Cabanada, who were present?
A: The complainant, ma'am.

Q: Aside from the complainant who else were present?
A: PO3 Rodel Samaniego, ma'am.

Q: How did complainant react when accused told you or related information that she knows the stolen master key of the car, who open the same?
A: The complainant revealed that she lost the key several months ago, ma'am.

Q: What happened after this information was given to you?
A: Together the complainant the accused led us in her room and in a cabinet she took from there the white envelope which consists of [₱]16,000.00 and after that she also get the leather wallet which contained the master key of the car which she stole several months ago, ma'am.

x x x x x x x x x[21]

The records of the case reveal that Cabanada was brought to the CIU office for further investigation after she admitted the crime and after Catherine expressed her desire to pursue the case against her. However, prosecution witness PO2 Cotoner admitted that Cabanada was not apprised of her constitutional rights. He insisted that their investigation has not yet concluded and that the accused was not yet arrested. Thus, in his direct testimony:

PROSEC. LALUCES:

x x x x x x x x x

Q: How did the complainant react when the accused actually presented this [₱]16,000.00 as well as the leather wallet which the wallet (*sic*) contained the key of the car?
A: **She was so angry and she told us that she would pursue the case and we brought the accused to our office together with the complainant, ma'am.**

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[21] TSN, August 25, 2009, pp. 6-7.

Q: **For what purpose?**
A: **For further investigation, ma'am.**

Q: **After bringing the accused to the CIU for further investigation as you said, what happened next?**
A: **The accused continued talking, talking, crying and afterwards she told us that there were more pieces of jewelry in their house at Panatag Compound Welfareville, Mandaluyong City, ma'am.**

Q: Where did she actually tell you this?
A: Inside our office, ma'am.

Q: Which particular part of your office, was she already inside the detention cell?
A: No, ma'am, office of our chief, ma'am.

x x x x x x x x x[22]

Q: The accused practically admitted to you while she was still in the house of Catherine Victoria who having taken the cash belonging to the complainant and reported to you by said Catherine Victoria. **Why did you not give her the rights at that time she made the admission so that she can secure the services of counsel?**

A: **Because at that time she was not arrested yet, ma'am.**

Q: **Why did you not arrest her at that time when she practically admitted to you of this thing?**

A: **Because we thought that the accused was covering up for someone we have not yet finished our investigation, ma'am.**

Q: You have not concluded your investigation?
A: Yes, ma'am.

x x x x x x x x x[23]

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

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

This Court elucidated that the *Miranda rights* are intended to protect ordinary citizens from the pressure of custodial setting.[24] In the case of *Luz v. People*[25] citing *Berkemer v. McCarty*,[26] it was explained that:

> The purposes of the **safeguards prescribed by Miranda** are to ensure that the police do not coerce or trick captive suspects into confessing, **to relieve the "inherently compelling pressures" "generated by the custodial setting itself," "which work to undermine the individual's will to resist,"** and as much as possible to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary. Those purposes are implicated as much by in-custody questioning of persons suspected of misdemeanors as they are by questioning of persons suspected of felonies.[27]

The circumstances surrounding Cabanada's appearance before the police station falls within the definition of custodial investigation. Despite the claim that she was not considered as a suspect at that time, the fact remains that she confessed to having committed the crime and was able to produce the money from her room. The investigation, therefore, ceased to be a general inquiry even if they contemplated that she was covering for someone.

The subsequent confession of Cabanada at the CIU office can be considered as having been done in a custodial setting because (1) after admitting the crime, Cabanada was brought to the police station for further investigation; (2) the alleged confession happened in the office of the chief; (3) PO2 Cotoner was present during Cabanada's apology and admission to Catherine. The compelling pressures of custodial setting were present when the accused was brought to the police station along with Catherine.

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[24] *People v. Chavez, supra* note 19, at 750.

[25] 683 Phil. 399 (2012).

[26] 468 U.S. 420 (1984).

[27] *Luz v. People, supra* note 25, at 410. (Emphasis ours).

In *People v. Javar*,[28] it was ruled that any statement obtained in violation of the constitutional provision, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence. Even if the confession contains a grain of truth, if it was made without the assistance of counsel, it becomes inadmissible in evidence, regardless of the absence of coercion or even if it had been voluntarily given.[29] Cabanada's confession without counsel at the police station, which led to the recovery of the other items at her house, is inadmissible.

Nevertheless, the inadmissibility of Cabanada's admission made in CIU does not necessarily entitle her to a verdict of acquittal. Her admission during the general inquiry is still admissible.

Theft is qualified under Article 310 of the RPC, when it is, among others, committed with grave abuse of confidence, thus:

> ART. 310. *Qualified Theft.* – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, **or with grave abuse of confidence**, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis supplied.)

The elements of Qualified Theft committed with grave abuse of confidence are as follows:

1. Taking of personal property;
2. That the said property belongs to another;
3. That the said taking be done with intent to gain;
4. That it be done without the owner's consent;
5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things;
6. **That it be done with grave abuse of confidence**.[30]

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[28] 297 Phil. 111 (1993).

[29] *People v. Javar, supra,* at 118.

[30] *People v. Mirto,* 675 Phil. 895, 906 (2011). (Emphasis supplied)

The following circumstances are established during the trial: Victor, who had the habit of leaving valuables inside his car, left ₱47,000.00 in the glove compartment; he hid the car keys in the filing cabinet; Catherine's car keys were missing since 2005; Cabanada worked as Victoria's housemaid for several years; she has unrestricted access to all parts of the house including the master bedroom; on April 12, 2009, she was left alone at the house when the family went to Bulacan; the *plantsadora*, who only reported for work every Sunday, had no access to the house and the car; Cabanada was alone from 3:00 p.m. until 9:00 p.m. after the *plantsadora* left at 3:00 p.m.; the next day, on April 13, 2009, Victor discovered that the money was missing; and there was no sign of forced entry or of an intruder entering the house. In addition to the said circumstances, Cabanada admitted to the police in the presence of Catherine that she stole the money and led them to her room where they recovered the ₱16,0000.00 cash and white leather wallet containing the master key of Victor's car.

The above circumstances and Cabanada's admission, coupled with presentation of the money, albeit less than the missing amount, establish the presence of the element of unlawful taking. The fact that the money was taken without authority and consent of Victor and Catherine, and that the taking was accomplished without the use of violence or intimidation against persons, nor force upon things, were also proven during the trial. Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain.[31] The taking was also clearly done with grave abuse of confidence. Cabanada was working as a housemaid of the Victoria family since 2002.[32]

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[31] *Matrido v. People,* 610 Phil. 203, 212 (2009).

[32] TSN, December 13, 2011, p. 4. Victor Victoria

Q:If you can remember, sir, when did she start to work for your family as part of your household?

A:It was sometime I think in year 2002, ma'am.

From the foregoing, a modification is called for as regards the imposable penalty. Article 310 of the Revised Penal Code provides that Qualified Theft "shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article," while Article 309 of the RPC states:

> Art. 309. *Penalties*. – Any person guilty of theft shall be punished by:
>
> 1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

The case of *Cruz v. People*[33] is instructive as to the proper penalty for qualified theft if the value of the property stolen is more than ₱12,000.00 but does not exceed ₱22,000.00. Thus:

> x x x In this case, the amount stolen was ₱15,000.00. Two degrees higher than *prision mayor* minimum and medium is *reclusion temporal* in its medium and maximum periods. Applying the Indeterminate Sentence Law, the minimum shall be *prision mayor* in its maximum period to *reclusion temporal* in its minimum period or within the range of 10 years and 1 day to 14 years and 8 months. There being neither aggravating nor mitigating circumstance in the commission of the offense, the maximum period of the indeterminate sentence shall be within the range of 16 years, 5 months and 11 days to 18 years, 2 months and 20 days. The minimum penalty imposed by the RTC is correct. However, the maximum period imposed by RTC should be increased to 16 years, 5 months and 11 days.[34]

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[33] 586 Phil. 89 (2008).

[34] *Cruz v. People, supra*, at 102-103.

In this case, the value of the property stolen is ₱20,000.00. Applying the above pronouncement, Cabanada should be sentenced to suffer the penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to sixteen (16) years, five (5) months and eleven (11) days of *reclusion temporal,* as maximum.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 05585, affirming the Decision dated April 24, 2012 of the Regional Trial Court, Branch 214, Mandaluyong City in Criminal Case No. MC-09-12269, which found accused-appellant Robelyn Cabanada y Rosauro guilty beyond reasonable doubt of the crime of Qualified Theft, is hereby **AFFIRMED with MODIFICIATION**. Cabanada is **SENTENCED** to suffer the penalty of Ten (10) years and One (1) day of *prision mayor*, as minimum, to Sixteen (16) years, Five (5) months and Eleven (11) days of *reclusion temporal*, as maximum.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza,* and *Martires, JJ.,* concur

Leonen, J., on wellness leave.

SECOND DIVISION

[G.R. No. 225051. July 19, 2017]

DEPARTMENT OF FOREIGN AFFAIRS (DFA), *petitioner, vs.* **BCA INTERNATIONAL CORPORATION & AD HOC ARBITRAL TRIBUNAL, COMPOSED OF CHAIRMAN DANILO L. CONCEPCION AND MEMBERS, CUSTODIO O. PARLADE AND ANTONIO P. JAMON, JR.,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; *LEX LOCI CONTRACTUS*; AS THE PARTIES DID NOT DESIGNATE THE APPLICABLE LAW AND THE AGREEMENT WAS PERFECTED IN THE PHILIPPINES, THE PHILIPPINE ARBITRATION LAWS SHALL APPLY; CASE AT BAR.—** Under Article 33 of the UNCITRAL Arbitration Rules governing the parties, "the arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute." "Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable." Established in this jurisdiction is the rule that the law of the place where the contract is made governs, or *lex loci contractus*. As the parties did not designate the applicable law and the Agreement was perfected in the Philippines, our Arbitration laws, particularly, RA No. 876, RA No. 9285 and its IRR, and the Special ADR Rules apply. The IRR of RA No. 9285 provides that "[t]he arbitral tribunal shall decide the dispute in accordance with such law as is chosen by the parties. In the absence of such agreement, Philippine law shall apply."

2. **REMEDIAL LAW; REPUBLIC ACT NO. 9285 (ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004); THE STATE SHALL ENCOURAGE AND ACTIVATELY PROMOTE THE USE OF ALTERNATIVE DISPUTE RESOLUTION AS AN IMPORTANT MEANS TO ACHIEVE SPEEDY AND IMPARTIAL JUSTICE AND DECLOG COURT DOCKETS; INSTANCES WHERE THE COURT INTERVENTION IS ALLOWED BY RA 9285, CITED.—** RA No. 9285 declares the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution as an important means to achieve speedy and impartial justice and declog court dockets. Court intervention is allowed under RA No. 9285 in the following instances: (1) when a party in the arbitration proceedings requests for an interim measure of protection; (2) judicial review of arbitral awards by the Regional Trial Court (RTC); and (3) appeal from the RTC decisions on arbitral awards to the Court of Appeals.

3. ID.; ID.; SPECIAL ADR RULES (SPECIAL RULES OF COURT ON ALTERNATIVE DISPUTE RESOLUTION); THE EXTENT OF COURT INTERVENTION IN DOMESTIC ARBITRATION IS SPECIFIED UNDER THE SPECIAL ADR RULES.— The extent of court intervention in domestic arbitration is specified in the IRR of RA No. 9285, thus: Art. 5.4. Extent of Court Intervention. In matters governed by this Chapter, no court shall intervene except in accordance with the Special ADR Rules. Court intervention in the Special ADR Rules is allowed through these remedies: (1) Specific Court Relief, which includes Judicial Relief Involving the Issue of Existence, Validity and Enforceability of the Arbitral Agreement, Interim Measures of Protection, Challenge to the Appointment of Artbitrator, Termination of Mandate of Arbitrator, Assistance in Taking Evidence, Confidentiality/ Protective Orders, Confirmation, Correction or Vacation of Award in Domestic Arbitration, all to be filed with the RTC; (2) a motion for reconsideration may be filed by a party with the RTC on the grounds specified in Rule 19.1; (3) an appeal to the Court of Appeals through a petition for review under Rule 19.2 or through a special civil action for *certiorari* under Rule 19.26; and (4) a petition for *certiorari* with the Supreme Court from a judgment or final order or resolution of the Court of Appeals, raising only questions of law.

4. ID.; ID.; ID.; IT IS CLEAR THAT AN APPEAL BY *CERTIORARI* TO THE SUPREME COURT IS FROM A JUDGMENT OR FINAL ORDER OR RESOLUTION OF THE COURT OF APPEALS AND ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTION; NOT APPLICABLE IN CASE AT BAR.— Under the Special ADR Rules, review by the Supreme Court of an appeal by *certiorari* is not a matter of right, x x x It is clear that an appeal by *certiorari* to the Supreme Court is from a judgment or final order or resolution of the Court of Appeals and only questions of law may be raised. There have been instances when we overlooked the rule on hierarchy of courts and took cognizance of a petition for *certiorari* alleging grave abuse of discretion by the Regional Trial Court when it granted interim relief to a party and issued an Order assailed by the petitioner, considering the transcendental importance of the issue involved therein or to better serve the ends of justice when the case is determined on the merits rather on technicality. However, in this case, the appeal by *certiorari*

is not from a final Order of the Court of Appeals or the Regional Trial Court, but from an interlocutory order of the Arbitral Tribunal; hence, the petition must be dismissed.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Castillo Laman Tan Pantaleon & San Jose for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for *certiorari* under Rule 65 of the Rules of Court, seeking to annul and set aside Procedural Order No. 11 dated February 15, 2016 and Procedural Order No. 12 dated June 8, 2016, both issued by the UNCITRAL *Ad Hoc* Arbitral Tribunal in the arbitration proceedings between petitioner Department of Foreign Affairs (*DFA*) and respondent BCA International Corporation.

The facts are as follows:

In an Amended Build-Operate-Transfer (*BOT*) Agreement[1] dated April 5, 2002 (*Agreement*), petitioner DFA awarded the Machine Readable Passport and Visa Project (*MRP/V Project*) to respondent BCA International Corporation. In the course of implementing the MRPN Project, conflict arose and petitioner sought to terminate the Agreement.

Respondent opposed the termination and filed a Request for Arbitration on April 20, 2006. The Arbitral Tribunal was constituted on June 29, 2009.[2]

In its Statement of Claims[3] dated August 24, 2009, respondent sought the following reliefs against petitioner: (a) a judgment

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[1] *Rollo*, pp. 273-297.

[2] Composed of Atty. Danilo Concepcion as Chairman, and Dean Custodio O. Parlade and Atty. Antonio P. Jamon, Jr., as members.

[3] *Rollo*, pp. 377-385.

nullifying and setting aside the Notice of Termination dated December 9, 2005 of the DFA, including its demand to BCA to pay liquidated damages equivalent to the corresponding performance security bond posted by BCA; (b) a judgment confirming the Notice of Default dated December 22, 2005 issued by BCA to the DFA and ordering the DFA to perform its obligation under the Amended BOT Agreement dated April 5, 2002 by approving the site of the Central Facility at the Star Mall Complex in Shaw Boulevard, Mandaluyong City, within five days from receipt of the Arbitral Award; (c) a judgment ordering the DFA to pay damages to BCA, reasonably estimated at ₱100,000,000.00 as of this date, representing lost business opportunities; financing fees, costs and commissions; travel expenses; legal fees and expenses; and cost of arbitration, including the fees of the members of the Arbitral Tribunal; and (d) other just or equitable relief.

On October 5, 2013, respondent manifested that it shall file an Amended Statement of Claims so that its claim may conform to the evidence they have presented.[4]

Petitioner opposed respondent's manifestation, arguing that such amendment at the very late stage of the proceedings will cause undue prejudice to its interests. However, the Arbitral Tribunal gave respondent a period of time within which to file its Amended Statement of Claims and gave petitioner time to formally interpose its objections.[5]

In the Amended Statement of Claims[6] dated October 25, 2013, respondent interposed the alternative relief that, in the event specific performance by petitioner was no longer possible, petitioner prayed that the Arbitral Tribunal shall render judgment ordering petitioner to pay respondent ₱1,648,611,531.00, representing the net income respondent is expected to earn under the Agreement, and ₱100,000,000.00 as exemplary, temperate or nominal damages.[7]

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[4] *Id.* at 17.

[5] *Id.*

[6] *Id.* at 318-328.

[7] *Id.* at 328.

In an Opposition dated December 19, 2013, petitioner objected to respondent's Amended Statement of Claims, averring that its belated filing violates its right to due process and will prejudice its interest and that the Tribunal has no jurisdiction over the alternative reliefs sought by respondent.[8]

On August 6, 2014, respondent filed a Motion to Withdraw Amended Statement of Claims[9] in the light of petitioner's opposition to the admission of the Amended Statement of Claims and to avoid further delay in the arbitration of its claims, without prejudice to the filing of such claims for liquidated and other damages at the appropriate time and proceeding. Thereafter, respondent filed a motion to resume proceedings.

However, on May 4, 2015, respondent filed anew a Motion to Admit Attached Amended Statement of Claims dated April 30, 2015, increasing the actual damages sought to ₱390,000,000.00, plus an additional ₱10,000,000.00 for exemplary, temperate or nominal damages.[10]

On November 6, 2015, petitioner filed an Opposition to the Motion to Admit Attached Amended Statement of Claims.

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[8] *Id.* at 17.

[9] *Id.* at 371.

[10] BCA seeks the following relief against the DFA: (a) a judgment nullifying and setting aside the Notice of Termination dated December 9, 2005 of DFA, including its demand to BCA to pay liquidated damages equivalent to the correspondent performance security bond posted by BCA; (b) a judgment confirming the Notice of Default dated December 22, 2005 issued by BCA to DFA and ordering DFA to perform its obligation under the Amended BOT Agreement dated April 5, 2002 by approving the site of the Central Facility and proceeding with the implementation of Phase 2 of the MRP/V Project, within thirty (30) days from receipt of the Arbitral Award; (c) a judgment ordering DFA to pay actual damages to BCA, reasonably estimated at ₱390,000,000.00 as of this date, representing lost business opportunities; legal fees and expenses, including attorney's fees that BCA has incurred as a result of DFA's unlawful attempted termination of the Amended BOT Agreement; and cost of arbitration, including the fees of the members of the Honorable Tribunal, plus an additional ₱10,000,000.00 for exemplary, temperate or nominal damages; and (d) other just or equitable relief.

In Procedural Order No. 11[11] dated February 15, 2016, the Arbitral Tribunal granted respondent's Motion to Admit Attached Amended Statement of Claims dated April 30, 2015 on the premise that respondent would no longer present any additional evidence in-chief. Petitioner was given a period of 20 days from receipt of the Order to file its Answer to the Amended Statement of Claims and to manifest before the Tribunal if it will present additional evidence in support of its Amended Answer in order for the Tribunal to act accordingly.

Procedural Order No. 11 reads:

> For resolution by the Tribunal is BCA's Motion to Admit the Amended Statement of Claim dated 30 April2015 objected to by DFA in its Opposition dated 6 November 2015.
>
> BCA's Counsel made representations during the hearings that the Amendment is for the simple purpose of making the Statement of Claim conform with what BCA believes it was able to prove in the course of the proceedings and that the Amendment will no longer require the presentation of any additional evidence-in-chief.
>
> Without ruling on what BCA was able to prove, the Tribunal hereby grants the Motion to Admit on the premise that BCA will no longer present any additional evidence-in-chief to prove the bigger claim in the Amended Statement.
>
> For the additional claim of 300 million pesos, BCA should pay the additional fee of 5% or 15 million pesos. Having paid 12 million pesos, the balance of 3 million pesos shall be payable upon submission of this case for resolution. No award shall be issued and promulgated by the Tribunal unless the balance of 40% in the Arbitrators' fees for the original Claim and Counterclaim, respectively, and the balance of 3 million for the Amended Claim, are all fully paid by the parties.
>
> DFA is hereby given the period of 20 days from receipt of this Order to file its Answer to the Amended Statement of Complaint, and to manifest before this Tribunal if it will present additional evidence in support of its Amended Answer in order for the Tribunal to act accordingly.[12]

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[11] *Rollo*, p. 39.

[12] *Id.* at 39.

On February 18, 2016, respondent filed a Motion for Partial Reconsideration[13] of Procedural Order No. 11 and prayed for the admission of its Amended Statement of Claims by the Arbitral Tribunal without denying respondent's right to present evidence on the actual damages, such as attorney's fees and legal cost that it continued to incur.

On February 19, 2016, petitioner filed a Motion for Reconsideration of Procedural Order No. 11 and, likewise, filed a Motion to Suspend Proceedings dated February 19, 2016. Further, on February 29, 2016, petitioner filed its Comment/ Opposition to respondent's Motion for Partial Reconsideration of Procedural Order No. 11.

The Arbitral Tribunal, thereafter, issued Procedural Order No. 12 dated June 8, 2016, which resolved respondent's Motion for Partial Reconsideration of Procedural Order No. 11, disallowing the presentation of additional evidence-in-chief by respondent to prove the increase in the amount of its claim as a limitation to the Tribunals' decision granting respondent's Motion to Amend its Statement of Claims. In Procedural Order No. 12, the Tribunal directed the parties to submit additional documentary evidence in support of their respective positions in relation to the Amended Statement of Claims and to which the other party may submit its comment or objections.

Procedural Order No. 12 reads:

> For resolution is the partial Motion for Reconsideration of the Tribunal's Procedural Order No. 11 disallowing the presentation of additional evidence-in-chief by Claimant to prove the increase in the amount of its Claim as a limitation to this Tribunal's decision granting Claimant's Motion to Amend its Statement of Claims.
>
> After a careful consideration of all the arguments presented by the Parties in their pleadings, the Tribunal hereby decides to allow the submission of additional documentary evidence by any Party in support of its position in relation to the Amended Statement of Claims and to which the other may submit its comments or objections. The

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[13] Dated February 17, 2016.

Tribunal, however, will still not allow the taking of testimonial evidence from any witness by any Party. The Tribunal allowed the amendment of the Statement of Claims but only for the purpose of making the Statement of Claims conform with the evidence that had already been presented, assuming that, indeed, it was the case. In resting its case, Respondent must have already dealt with and addressed the evidence that had already been presented by Claimant and that allegedly supports the amended Claim. However, in order to give the Parties more opportunity to prove their respective positions, additional evidence shall be accepted by the Tribunal, but only documentary evidence.

Wherefore, Procedural Order No. 11 is modified accordingly. The Claimant is given until 25 June 2016 to submit its additional documentary evidence in support of the Amended Statement of Claims. Respondent is given until 15 July 2016 to file its Answer to the Amended Statement of Claims, together with all the documentary evidence in support of its position. Claimant is given until 30 July 2016 to comment or oppose the Answer and the supporting documentary evidence, while Respondent is given until 14 August 2016 to file its comment or opposition to the Claimant's submission, together with any supporting documentary evidence. Thereafter, hearing of the case shall be deemed terminated. The periods allowed herein are non-extendible and the Tribunal will not act on any motion for extension of time to comply.

The Parties shall submit their Formal Offer of Evidence, in the manner previously agreed upon, on 20 September 2016 while their respective Memorandum shall be filed on 20 October 2016. The Reply Memoranda of the Parties shall be filed on 20 November 2016. Thereafter, with or without the foregoing submissions, the case shall be deemed submitted for Resolution.[14]

As Procedural Order No. 12 denied petitioner's motion for reconsideration of Procedural Order No. 11, petitioner filed this petition for *certiorari* under Rule 65 of the Rules of Court with application for issuance of a temporary restraining order and/or writ of preliminary injunction, seeking to annul and set aside Procedural Order No. 11 dated February 15, 2016 and Procedural Order No. 12 dated June 8, 2016.

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[14] *Rollo*, p. 40.

Petitioner stated that it opted to file the petition directly with this court in view of the immensity of the claim concerned, significance of the public interest involved in this case, and the circumvention of the temporary restraining order issued by this Court in *Department of Foreign Affairs v. BCA International Corporation*, docketed as G.R. No. 210858. It cited *Department of Foreign Affairs, et al. v. Hon. Judge Falcon*,[15] wherein the Court overlooked the rule on hierarchy of courts and took cognizance of the petition for *certiorari*.

Petitioner raised these issues:

THE AD HOC ARBITRAL TRIBUNAL COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ADMITTED THE AMENDED STATEMENT OF CLAIMS DATED 30 APRIL 2015 NOTWITHSTANDING THAT:

I. THE AMENDMENT CAUSES UNDUE DELAY AND PREJUDICE TO PETITIONER DFA;

II. THE ALTERNATIVE RELIEF IN THE AMENDED STATEMENT OF CLAIMS FALLS OUTSIDE THE SCOPE OF THE ARBITRATION CLAUSE; HENCE, OUTSIDE THE JURISDICTION OF THE AD HOC ARBITRAL TRIBUNAL;

III. THE AMENDMENT CIRCUMVENTS THE TEMPORARY RESTRAINING ORDER DATED 02 APRIL 2014 ISSUED BY THIS HONORABLE COURT IN G.R. NO. 210858; AND

IV. PROCEDURAL ORDER NO. 12 DATED 8 JUNE 2016 VIOLATES PETITIONER DFA'S RIGHT TO DUE PROCESS.[16]

Petitioner states that Article 20 of the 1976 UNCITRAL Arbitration Rules grants a tribunal the discretion to deny a motion to amend where the tribunal "considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances." It further

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[15] 644 Phil. 105 (2010).

[16] *Rollo*, pp. 19-20.

proscribes an amendment where "the amended claim falls outside the scope of the arbitral clause or separate arbitration agreement."

Petitioner contends that respondent's Motion to Admit Attached Amended Statement of Claims dated April 30, 2015 should have been denied by the Arbitral Tribunal as there has been delay and prejudice to it. Moreover, other circumstances such as fair and efficient administration of the proceedings should have warranted the denial of the motion to amend. Finally, the Arbitral Tribunal did not have jurisdiction over the amended claims.

Petitioner prays that a temporary restraining order and/or writ of preliminary injunction be issued enjoining the Arbitral Tribunal from implementing Procedural Order No. 11 dated February 15, 2016 and Procedural Order No. 12 dated June 8, 2016; that the said Procedural Orders be nullified for having been rendered in violation of the 1976 UNCITRAL Arbitration Rules and this Court's Resolution dated April 2, 2014 rendered in G.R. No. 210858; that respondent's Amended Statement of Claims dated April 30, 2015 be denied admission; and, if this Court affirms the admission of respondent's Amended Statement of Claims, petitioner be allowed to present testimonial evidence to refute the allegations and reliefs in the Amended Statement of Claims and to prove its additional defenses or claims in its Answer to the Amended Statement of Claims or Amended Statement of Defense with Counterclaims.

Petitioner contends that the parties in this case have agreed to refer any dispute to arbitration under the 1976 UNCITRAL Arbitration Rules and to compel a party to be bound by the application of a different rule on arbitration such as the Alternative Dispute Resolution (*ADR*) Act of 2004 or Republic Act (*RA*) No. 9285 transgresses such vested right and amounts to vitiation of consent to participate in the arbitration proceedings.

In its Comment, respondent contends that this Court has no jurisdiction to intervene in a private arbitration, which is a special proceeding governed by the ADR Act of 2004, its Implementing Rules and Regulations (*IRR*) and the Special Rules of Court on Alternative Dispute Resolution (*Special ADR Rules*).

Respondent avers that petitioner's objections to the admission of its Amended Statement of Claims by the Arbitral Tribunal, through the assailed Procedural Order Nos. 11 and 12, are properly within the competence and jurisdiction of the Arbitral Tribunal to resolve. The Arbitral Tribunal derives their authority to hear and resolve the parties' dispute from the contractual consent of the parties expressed in Section 19.02 of the Agreement.

In a Resolution dated July 25, 2016, the Court resolved to note the Office of the Solicitor General's Very Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction dated July 5, 2016.

In regard to the allegation that the Amended Statement of Claims circumvents the temporary restraining order dated April 2, 2014 issued by the Court in *DFA v. BCA International Corporation*, docketed as G.R. No. 210858, it should be pointed out that the said temporary restraining order has been superseded by the Court's Decision promulgated on June 29, 2016, wherein the Court resolved to partially grant the petition and remand the case to the RTC of Makati City, Branch 146, to determine whether the documents and records sought to be subpoenaed are protected by the deliberative process privilege as explained in the Decision.

The issues to be resolved at the outset are which laws apply to the arbitration proceedings and whether the petition filed before the Court is proper.

The Agreement provides for the resolution of dispute between the parties in Section 19.02 thereof, thus:

> If the Dispute cannot be settled amicably within ninety (90) days by mutual discussion as contemplated under Section 19.01 herein, the Dispute shall be settled with finality by an arbitrage tribunal operating under International Law, hereinafter referred to as the "*Tribunal*," under the UNCITRAL Arbitration Rules contained in Resolution 31/98 adopted by the United Nations General Assembly on December 15, 1976, and entitled "*Arbitration Rules on the United Nations Commission on the International Trade Law*." The DFA and BCA undertake to abide by and implement the arbitration award.

The place of arbitration shall be Pasay City, Philippines, or such other place as may mutually be agreed upon by both parties. The Arbitration proceeding shall be conducted in the English language.

Under Article 33 of the UNCITRAL Arbitration Rules governing the parties, "the arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute." "Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable." Established in this jurisdiction is the rule that the law of the place where the contract is made governs, or *lex loci contractus*.[17] As the parties did not designate the applicable law and the Agreement was perfected in the Philippines, our Arbitration laws, particularly, RA No. 876,[18] RA No. 9285[19] and its IRR, and the Special ADR Rules apply.[20] The IRR of RA No. 9285 provides that "[t]he arbitral tribunal shall decide the dispute in accordance with such law as is chosen by the parties. In the absence of such agreement, Philippine law shall apply."[21]

In another earlier case filed by petitioner entitled *Department of Foreign Affairs v. BCA International Corporation*,[22] docketed as G.R. No. 210858, petitioner also raised as one of its issues that the 1976 UNCITRAL Arbitration Rules and the Rules of Court apply to the present arbitration proceedings, not RA No. 9285 and the Special ADR Rules. We ruled therein thus:

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[17] *Department of Foreign Affairs v. BCA International Corporation*, G.R. No. 210858, June 29, 2016.

[18] *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.*

[19] *An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and For Other Purposes.*

[20] *Department of Foreign Affairs v. BCA International Corporation*, G.R. No. 210858, June 29, 2016.

[21] Art. 5.28, Department Circular No. 98 or IRR of RA No. 9285.

[22] *Supra* note 17.

Arbitration is deemed a special proceeding and governed by the special provisions of RA 9285, its IRR, and the Special ADR Rules. RA 9285 is the general law applicable to all matters and controversies to be resolved through alternative dispute resolution methods. While enacted only in 2004, we held that RA 9285 applies to pending arbitration proceedings since it is a procedural law, which has retroactive effect.

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The IRR of RA 9285 reiterate that RA 9285 is procedural in character and applicable to all pending arbitration proceedings. Consistent with Article 2046 of the Civil Code, the Special ADR Rules were formulated and were also applied to all pending arbitration proceedings covered by RA 9285, provided no vested rights are impaired. Thus, contrary to DFA's contention, RA 9285, its IRR, and the Special ADR Rules are applicable to the present arbitration proceedings. The arbitration between the OFA and BCA is still pending, since no arbitral award has yet been rendered. Moreover, DFA did not allege any vested rights impaired by the application of those procedural rules.

RA No. 9285 declares the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes.[23] Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution as an important means to achieve speedy and impartial justice and declog court dockets.[24]

Court intervention is allowed under RA No. 9285 in the following instances: (1) when a party in the arbitration proceedings requests for an interim measure of protection;[25]

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[23] RA No. 9285, Section 2.

[24] *Id.*

[25] SECTION 28. *Grant of Interim Measure of Protection*. – (a) It is not incompatible with an arbitration agreement for a party to request, before constitution of the tribunal, from a Court (RTC) an interim measure of protection and for the Court to grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection, or modification thereof, may be made with the arbitral

(2) judicial review of arbitral awards[26] by the Regional Trial Court (RTC); and (3) appeal from the RTC decisions on arbitral

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tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the Court. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.

(b) The following rules on interim or provisional relief shall be observed:
(1) Any party may request that provisional relief be granted against the adverse party.
(2) Such relief may be granted
(i) to prevent irreparable loss or injury;
(ii) to provide security for the performance of any obligation;
(iii) to produce or preserve any evidence; or
(iv) to compel any other appropriate act or omission
(3) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.
(4) Interim or provisional relief is requested by written application transmitted by reasonable means to the Court or arbitral tribunal as the case may be and the party against whom the relief is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and the evidence supporting the request.
(5) The order shall be binding upon the parties.
(6) Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.
(7) A party who does not comply with the order shall be liable for all damages resulting from noncompliance, including all expenses, and reasonable attorney's fees, paid in obtaining the order's judicial enforcement

[26] SECTION 40. *Confirmation of Award*. – The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. No. 876.

A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.

The recognition and enforcement of an award in an international commercial arbitration shall be governed by Article 35 of the Model Law.

The confirmation of a domestic award shall be made by the Regional Trial Court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.

SECTION 41. *Vacation Award*. – A party to a domestic arbitration may question the arbitral award with the appropriate Regional Trial Court in accordance with rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876.

awards to the Court of Appeals.[27]

The extent of court intervention in domestic arbitration is specified in the IRR of RA No. 9285, thus:

> Art. 5.4. Extent of Court Intervention. In matters governed by this Chapter, no court shall intervene except in accordance with the Special ADR Rules.

Court intervention in the Special ADR Rules is allowed through these remedies: (1) Specific Court Relief, which includes Judicial Relief Involving the Issue of Existence, Validity and Enforceability of the Arbitral Agreement,[28] Interim Measures of Protection,[29] Challenge to the Appointment of Arbitrator,[30] Termination of Mandate of Arbitrator,[31] Assistance in Taking Evidence,[32] Confidentiality/Protective Orders,[33] Confirmation, Correction or Vacation of Award in Domestic Arbitration,[34] all to be filed with the RTC; (2) a motion for reconsideration may be filed by a party with the RTC on the grounds specified in Rule 19.1; (3) an appeal to the Court of Appeals through a

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Any other ground raised against a domestic arbitral award shall be disregarded by the Regional Trial Court.

[27] SECTION 46. *Appeal from Court Decisions on Arbitral Awards*. – A decision of the Regional Trial Court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court.

The losing party who appeals from the judgment of the court confirming an arbitral award shall be required by the appellate court to post a counterbond executed in favor of the prevailing party equal to amount of the award in accordance with the rules to be promulgated by the Supreme Court.

[28] Rule 3.

[29] Rule 5.

[30] Rule 7.

[31] Rule 8.

[32] Rule 9.

[33] Rule 10.

[34] Rule 11.

petition for review under Rule 19.2 or through a special civil action for *certiorari* under Rule 19.26; and (4) a petition for *certiorari* with the Supreme Court from a judgment or final order or resolution of the Court of Appeals, raising only questions of law.

Under the Special ADR Rules, review by the Supreme Court of an appeal by *certiorari* is not a matter of right, thus:

RULE 19.36. *Review Discretionary*. – A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted only for serious and compelling reasons resulting in grave prejudice to the aggrieved party. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, when the Court of Appeals:

a. Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules in arriving at its decision resulting in substantial prejudice to the aggrieved party;

b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision;

c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and

d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction.

The mere fact that the petitioner disagrees with the Court of Appeals' determination of questions of fact, of law or both questions of fact and law, shall not warrant the exercise of the Supreme Court's discretionary power. The error imputed to the Court of Appeals must be grounded upon any of the above prescribed grounds for review or be closely analogous thereto.

A mere general allegation that the Court of Appeals has committed serious and substantial error or that it has acted with grave abuse of discretion resulting in substantial prejudice to the petitioner without indicating with specificity the nature of such error or abuse of discretion

and the serious prejudice suffered by the petitioner on account thereof, shall constitute sufficient ground for the Supreme Court to dismiss outright the petition.

RULE 19.37. *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 issued pursuant to these Special ADR Rules 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.

It is clear that an appeal by *certiorari* to the Supreme Court is from a judgment or final order or resolution of the Court of Appeals and only questions of law may be raised. There have been instances when we overlooked the rule on hierarchy of courts and took cognizance of a petition for *certiorari* alleging grave abuse of discretion by the Regional Trial Court when it granted interim relief to a party and issued an Order assailed by the petitioner, considering the transcendental importance of the issue involved therein[35] or to better serve the ends of justice when the case is determined on the merits rather on technicality.[36] However, in this case, the appeal by *certiorari* is not from a final Order of the Court of Appeals or the Regional Trial Court, but from an interlocutory order of the Arbitral Tribunal; hence, the petition must be dismissed.

WHEREFORE, the Court resolves to **DISMISS** the petition for failure to observe the rules on court intervention allowed by RA No. 9285 and the Special ADR Rules, specifically Rule 19.36 and Rule 19.37 of the latter, in the pending arbitration proceedings of the parties to this case.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza*, and *Martires, JJ.*, concur.

Leonen, J., on wellness leave.

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[35] *Department of Foreign Affairs, et al. v. Hon. Judge Falcon, supra* note 15.

[36] *Department of Foreign Affairs v. BCA International Corporation, supra* note 17.

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party is deprived of reason or otherwise unconscious; (iii) by means of fraudulent machination or grave abuse of authority; and *(iv)* when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and *(c)* that the offended party is another person of either sex. (*Id.*)

— The mere fact of squeezing the private part of a child, a young girl 12 years of age, could not have signified any other intention but one having lewd or indecent design. (*Id.*)

ADMINISTRATIVE LAW

Administrative proceedings — A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the petitioner has committed acts stated in the complaint or formal charge; substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently. (Fajardo *vs.* Corral, G.R. No. 212641, July 5, 2017) p. 149

— The quantum of proof necessary for a finding of guilt is only substantial evidence or such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. (Security and Sheriff Division, Sandiganbayan *vs.* Cruz, A.M. No. SB-17-24-P [Formerly A.M. No. 14-12-07-SB], July 11, 2017) p. 555

— The quantum of proof necessary for a finding of guilt is substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion; it must be stressed that the burden of substantiating the charges in an administrative proceeding falls on the complainant, who must be able to prove the allegations in the complaint with substantial evidence. (*Re*: Letter of Rafael Dimaano Requesting Investigation of the Alleged Illegal Activities Purportedly Perpetrated by Associate Justice Jane Aurora C. Lantion of the Court

arbitration proceedings requests for an interim measure of protection; (2) judicial review of arbitral awards by the Regional Trial Court (RTC); and (3) appeal from the RTC decisions on arbitral awards to the Court of Appeals. (*Id.*)

— Under the Special ADR Rules, review by the Supreme Court of an appeal by *certiorari* is not a matter of right. (*Id.*)

PPEALS

Factual findings of administrative agencies — Courts generally accord great respect, if not finality, to factual findings of administrative agencies because of their special knowledge and expertise over matters falling under their jurisdiction. (Summit One Condominium Corp. *vs.* Pollution Adjudication Board and Environmental Mgmt. Bureau - NCR, G.R. No. 215029, July 5, 2017) p. 178

Factual findings of quasi-judicial bodies — Factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter and, if supported by substantial evidence, are accorded respect and even finality by the Supreme Court. (Philippine National Bank *vs.* Dalmacio, G.R. No. 202308, July 5, 2017) p. 127

Factual findings of the lower courts — That factual findings of the lower courts are conclusive is not cast in stone since accruing jurisprudence continuously reiterate the exceptions to the limitation of an appeal by certiorari to only questions of law, *viz*: (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 fact 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 those of the trial court; (8) when the findings are conclusions

— Clerks of court are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon; even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. (*Id.*)

— Failure of a clerk of court to turn over money deposited with him and adequately explain and present evidence thereon constituted gross dishonesty, grave misconduct, and even malversation of public funds, and even the restitution of the whole amount would not exculpate him from liability. (*Id.*)

COMPREHENSIVE AGRARIAN REFORM PROGRAM

Just compensation — The taking of property under R.A. No. 6657 has been consistently characterized as the State's exercise of the power of eminent domain; the concept of just compensation likewise bears the consistent and settled meaning as the full and fair equivalent of the property taken from its owner by the expropriator, the measure is not the taker's gain, but the owner's loss. (Land Bank of the Phils. *vs.* Omengan, G.R. No. 196412, July 19, 2017) p. 901

— The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody — It is 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 and the presentation in court for identification and destruction. (People *vs.* Diputado, G.R. No. 213922, July 5, 2017) p. 160

CONTEMPT

Contempt of court — Defined as a willful disregard or disobedience of a public authority; (2) kinds of contempt of court, namely: direct and indirect; indirect contempt or constructive contempt is that which is committed out of the presence of the court. (Rizal Commercial Banking Corp. *vs.* Serra, G.R. No. 216124, July 19, 2017) p. 1013

CONTRACTS

Breach of — It is fundamental in the law on damages that the one injured by a breach of contract, or by a wrongful or negligent act or omission shall have a fair and just compensation commensurate to the loss sustained as a consequence of the defendant's act; in building contracts, it has been held that the measure of damages for breach is the amount expended by the owner in completing the project and in correcting defects. (Ka Kuen Chua *vs.* Colorite Marketing Corp., G.R. Nos. 193969-193970, July 5, 2017) p. 73

— When there is no bad faith and in the absence of proof that breach was attended by deliberate intent, the same can only be regarded as simple negligence. (*Id.*)

Construction of — 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. (Ka Kuen Chua *vs.* Colorite Marketing Corp., G.R. Nos. 193969-193970, July 5, 2017) p. 73

Formalities of — The law does not relieve a party from the effects of an unwise, foolish or disastrous contract, entered into with all the required formalities and with full awareness of what he was doing, and courts have no power to relieve parties from obligations voluntarily assumed, simply because their contracts turned out to be disastrous deals or unwise investments. (Ka Kuen Chua *vs.* Colorite Marketing Corp., G.R. Nos. 193969-193970, July 5, 2017) p. 73

(2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law. (*Id.*)

— To be valid, a deed of release, waiver or quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is sufficient and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law. (Arlo Aluminum, Inc. *vs.* Piñon, Jr., G.R. No. 215874, July 5, 2017) p. 188

— When a quitclaim is declared invalid, the recipient thereto must return or offset the compensation received. (*Id.*)

— Where there is clear proof that a waiver was obtained from an unsuspecting or a gullible person, or where the agreement or settlement was unconscionable on its face, quitclaim may be invalidated; a quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. (*Id.*)

Reciprocal contracts — Both the doctrine of strained relations and the policy against involuntary servitude are concepts, which only apply to situations where one is in the service of another, respectively, by virtue of an employment contract or by force or compulsion; they cannot apply in reciprocal contracts such as contracts for a piece of work, lest we run afoul with the principle of autonomy and obligatory nature of contracts evenly guaranteed. (Ka Kuen Chua *vs.* Colorite Marketing Corp., G.R. Nos. 193969-193970, July 05, 2017) p. 73

Validity of — The freedom to contact is not absolute; one of the more general restrictions thereon is enshrined in Art. 1306 of the Civil Code which precludes the contracting parties from establishing stipulations, clauses, terms,

control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and (3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of. (*Id.*)

Intra-corporate controversies — A complaint for inspection of books of the corporation filed by the stockholder falls within the jurisdiction of the RTC. (San Jose *vs.* Ozamiz, G.R. No. 190590, July 12, 2017) p. 669

— A conflict between a stockholder and corporation which involves the enforcement of the right of the stockholder to inspect the books of the corporation and obligation of the latter to allow its stockholder to inspect its books is an intra-corporate dispute. (*Id.*)

— To determine whether or not a case involves an intra-corporate dispute, two tests are applied, the relationship test and the nature of the controversy test; under the relationship test, there is an intra-corporate controversy when the conflict is: (1) between the corporation, partnership, or association and the public; (2) between the corporation, partnership, or association and the State insofar as its franchise, permit, or license to operate is concerned; (3) between the corporation, partnership, or association and its stockholders, partners, members, or officers; and (4) among the stockholders, partners, or associates themselves; on the other hand, in accordance with the nature of controversy test, an intra-corporate controversy arises when the controversy is not only rooted in the existence of an intra-corporate relationship, but also in the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. (*Id.*)

Liability of — A corporation is invested by law with a personality separate and distinct from that of the persons composing it as well as from that of any other legal entity to which it may be related; obligations incurred by the corporation,

rights; custodial investigation shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law. (*Id.*)

DAMAGES

Attorney's fees — In all cases, the attorney's fees and expenses of litigation must be reasonable. (Virata *vs.* Ng Wee, G.R. No. 220926, July 5, 2017) p. 252

Award of — For the award of damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. (People *vs.* Cosgafa *y* Clamocha, G.R. No. 218250, July 10, 2017) p. 454

Exemplary damages — Connotes that the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. (Ka Kuen Chua *vs.* Colorite Marketing Corp., G.R. Nos. 193969-193970, July 5, 2017) p. 73

Injured party — Art. 2203 of the Civil Code clearly obligates the injured party to undertake measures that will alleviate and not aggravate his condition after the infliction of the injury, and places upon him the burden of explaining why he could not do so. (Ka Kuen Chua *vs.* Colorite Marketing Corp., G.R. Nos. 193969-193970, July 5, 2017) p. 73

Interests — An interest on the balance or the difference between the amount already paid and the final just compensation is proper; while the debt incurred by the government on account of the taking of the property subject of an expropriation constitutes a forbearance, nevertheless, in line with the recent circular of the Monetary Board of the Bangko Sentral ng Pilipinas No. 799, Series of 2013, effective July 1, 2013, the prevailing rate of interest for loans or forbearance of money is six percent (6%) *per*

— Possibility of irreparable damage without proof of an actual existing right is not a ground for the issuance of an injunctive relief. (*Id.*)

INVESTMENT HOUSE LAW (P.D. NO. 129)

Investment contract — Just as in any other contracts of sale, the vendor of securities is likewise bound by certain warranties, including those contained in Art. 1628 of the New Civil Code on assignment of credits, to wit: Art. 1628**;** the vendor in good faith shall be responsible for the existence and legality of the credit at the time of the sale; the vendor in bad faith shall always be answerable for the payment of all expenses, and for damages. (Virata *vs.* Ng Wee, G.R. No. 220926, July 5, 2017) p. 252

— Refers to a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others; it is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits. (*Id.*)

— To determine whether or not the security being offered takes the form of an investment contract, under the Howey test, the following must concur for an investment contract to exist: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others. (*Id.*)

Investment house — License to perform investment house functions does not excuse them from complying with the security registration requirements under the law; the license requirement to operate as an investment house is separate and distinct from the registration requirement for the securities they are offering, if any. (Virata *vs.* Ng Wee, G.R. No. 220926, July 5, 2017) p. 252

Powers of an investment house — An enterprise that engages in the underwriting of securities of other corporations; securities underwriting, in turn, refers to the process by which underwriters raise capital investments on behalf

— Includes the administrative responsibility of organizing and supervising the court personnel to secure a prompt and efficient dispatch of business; it is his responsibility to see to it that the clerk of court performs his duties and observes the circulars issued by the Supreme Court. (*Id.*)

— Should exercise judicial temperament in all dealings and must maintain composure and equanimity at all times. (*Id.*)

— The judge must, at all times, remain in full control of the proceedings in his sala and should adopt a firm policy against improvident postponements; importantly, he should follow the time limit set for deciding cases. (Sps. Sibay *vs.* Sps. Bermudez, G.R. No. 198196, July 17, 2017) p. 807

Gross ignorance of the law — Gross ignorance of the law is a serious charge under Sec. 8, Rule 140 of the Rules of Court; under Sec. 11(A) thereof, it is punishable by: (*1*) dismissal from the service, forfeiture of benefits except accrued leave credits and disqualification from reinstatement or appointment to any public office; (*2*) suspension from office without salary or other benefits for more than three (3) months but not exceeding six (6) months; or (*3*) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. (Alfelor *vs.* Hon. Diaz, A.M. No. MTJ-16-1883 [formerly OCS IPI No. 12-2497-MTJ], July 11, 2017) p. 544

— The fact that he had served more than 21 years in the judiciary meant that he should have known better than to haphazardly render a decision in a criminal case without regard to the specific allegations in the offense charged and his jurisdiction, or lack thereof, to take cognizance of the case. (*Id.*)

— There is gross ignorance of the law when an error committed by the judge was gross or patent, deliberate or malicious; it may also be committed when a judge ignores, contradicts or fails to apply settled law and jurisprudence because of bad faith, fraud, dishonesty or

— There are three essential elements that must be established by an accused claiming self-defense: (1) the victim committed unlawful aggression amounting to actual and imminent threat to the life of the accused; (2) there was reasonable necessity of the means employed by the accused to prevent or repel the attack; and (3) there was lack of sufficient provocation on the part of the accused claiming self-defense. (People *vs.* Gallanosa, Jr., G.R. No. 219885, July 17, 2017) p. 850

— When self-defense is pleaded, the accused thereby admits being the author of the death of the victim, that it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court; the accused must discharge the burden of proving his affirmative allegation with certainty by relying on the strength of his own evidence, not on the weakness of that of the prosecution, considering that the prosecution's evidence, even if weak, cannot be disbelieved in view of the admission of the killing. (*Id.*)

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Commission of — Elements of Kidnapping and Serious Illegal Detention under Art. 267 of the Revised Penal Code, as amended, are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; or (b) it is committed by simulating public authority; or (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer; if the victim of kidnapping and serious illegal detention is a minor, the duration of his detention is immaterial. (People *vs.* Fabro, G.R. No. 208441, July 17, 2017) p. 831

— Where the victim is a minor, lack of consent is presumed. (*Id.*)

victim must be identifiable. (Mla. Bulletin Publishing Corp. *vs.* Domingo, G.R. No. 170341, July 5, 2017) p. 37

— An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt, or which tends to blacken the memory of one who is dead; in determining whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural, and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense. (*Id*.)

— Good intention and justifiable motives are defenses for a defamatory imputation even if it be true. (*Id*.)

— Malice connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm. (*Id*.)

— There is publication if the material is communicated to a third person; it is not required that the person defamed has read or heard about the libelous remark; what is material is that a third person has read or heard the libelous statement, for a man's reputation is the estimate in which others hold him, not the good opinion which he has of himself. (*Id*.)

— To satisfy the element of identifiability, it must be shown that at least a third person or a stranger was able to identify him as the object of the defamatory statement; it is enough if by intrinsic reference the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know the person alluded to; or if the latter is pointed out by extraneous circumstances so that those knowing such person could and did understand that he was the person referred to. (*Id*.)

MANDAMUS

Petition for — Employed to compel the performance of a ministerial duty by a tribunal, board, officer, or person; case law requires that the petitioner should have a right to the thing demanded and that it must be the imperative duty of the respondent to perform the act required; such duty need not be absolutely expressed, so long as it is clear. (Valmores *vs.* Dr. Achacoso, G.R. No. 217453, July 19, 2017) p. 1032

MARRIAGE

Annulment of — Proceedings for church annulment which is in accordance with the norms of Canon law is not binding upon the state as the couple is still considered married to each other in the eyes of the Civil law. (Tilar *vs.* Tilar, G.R. No. 214529, July 12, 2017) p. 734

— Regional Trial Courts shall exercise exclusive original jurisdiction in all actions involving the contract of marriage and marital relations. (*Id.*)

As a contract — A special contract, their terms and conditions are not merely subject to the stipulations of the contracting parties but are governed by law; the Family Code provides for the essential as well as formal requisites for the validity of marriage; absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Art. 35 (2); defect in any of the essential requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable. (Tilar *vs.* Tilar, G.R. No. 214529, July 12, 2017) p. 734

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Illegal recruitment — Recruitment becomes illegal when undertaken by non-licensees or non--holders of authority as provided for under Art. 38 of the Labor Code. (People *vs.* Abellanosa, G.R. No. 214340, July 19, 2017) p. 1000

cash basis method; (2) accrual method; (3) installment method; (4) percentage of completion method; and (5) other accounting methods; any of the foregoing methods may be employed by any taxpayer so long as it reflects its income properly and such method is used regularly. (Commissioner of Internal Revenue *vs.* Lancaster Phils., Inc., G.R. No. 183408, July 12, 2017) p. 622

— The matching concept, which is one of the generally accepted accounting principles, directs that the expenses are to be reported in the same period that related revenues are earned; it attempts to match revenue with expenses that helped earn it. (*Id.*)

— Where there is conflict between the NIRC including its implementing rules and regulations, on accounting methods and the Generally Accepted Accounting Principles (GAAP), the former shall prevail. (*Id.*)

Assessment — Audit process normally commences with the issuance by the CIR of a Letter of Authority; the LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period. (Commissioner of Internal Revenue *vs.* Lancaster Phils., Inc., G.R. No. 183408, July 12, 2017) p. 622

Taxable income — The crop method recognizes that the harvesting and selling of crops do not fall within the same year that they are planted or grown; this method is especially relevant to farmers or those engaged in the business of producing crops who, pursuant to RAM No. 2-95, would then be able to compute their taxable income on the basis of their crop year. (Commissioner of Internal Revenue *vs.* Lancaster Phils., Inc., G.R. No. 183408, July 12, 2017) p. 622

— Absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent. (*Id.*)

— Even if a seafarer's contract expired, it does not release the employer from its obligations under the POEA-SEC when there is a claim for disability benefits due to an injury suffered during the term of the employment contract. (*Id.*)

— It is illogical that a seafarer would seek treatment from other doctors immediately after his disembarkation when he could avail of the services of the company-designated physician. (*Id.*)

— The *onus* of establishing that the seafarer was referred to a company-designated physician is on the employer; the burden to prove with evidence whether the seafarer was referred to a company-designated doctor rests on the employer as the latter has custody of the documents, and not the seafarer. (*Id.*)

PRESCRIPTION

Acquisitive prescription — A mode of acquiring ownership of a real or immovable property by a possessor through the requisite lapse of time; in order to ripen into ownership, possession must be in the concept of an owner, public, peaceful and uninterrupted; the possession contemplated as foundation for prescriptive right must be one under claim of title or adverse to or in prescription. (Narcise *vs.* Valbueco, Inc., G.R. No. 196888, July 19, 2017) p. 923

Prescription of actions — An action for reconveyance based on an implied trust generally prescribes in ten years; however, if the plaintiff remains in possession of the property, the prescriptive period to recover title of possession does not run against him; in such case, his action is deemed in the nature of a quieting of title, an action that is imprescriptible. (Ocampo *vs.* Ocampo, Sr., G.R. No. 227894, July 5, 2017) p. 390

decision that the intestate court would render on the title of the properties would at best be merely provisional in character and would yield to a final determination in a separate action. (*Id.*)

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Application of — Certificates of title issued pursuant to emancipation patents acquire the same protection accorded to other titles and become indefeasible and incontrovertible upon the expiration of one year from the date of the issuance of the order for the issuance of the patent; lands so titled may no longer be the subject matter of a cadastral proceeding; nor can they be decreed to other individuals. (Berboso *vs.* Cabral, G.R. No. 204617, July 10, 2017) p. 405

— Proscribes a collateral attack to a certificate of title and allows only a direct attack thereof; a Torrens title cannot be altered, modified or cancelled except in a direct proceeding in accordance with law; when the Court says direct attack, it means that the object of an action is to annul or set aside such judgment, or enjoin its enforcement; the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceeding is nevertheless made as an incident thereof. (*Id.*)

PUBLIC OFFICERS AND EMPLOYEES

Conduct prejudicial to the best interest of service — Deals with a demeanor of a public officer which tarnished the image and integrity of his/her public office. (Fajardo *vs.* Corral, G.R. No. 212641, July 5, 2017) p. 149

Dishonesty — Defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth; under CSC Resolution No. 06-0538, dishonesty may be classified as serious, less serious or simple. (Fajardo *vs.* Corral, G.R. No. 212641, July 5, 2017) p. 149

female offender inserts any instrument or object into the genital or anal orifice of another person, whether a man or a woman, under any of the attendant circumstances in par. 1 of Art. 266-A. (*Id.*)

— Rape is committed by a man who shall have carnal knowledge of a woman under any of the following circumstances: a) through force, threat or intimidation; b) when the offended party is deprived of reason or is otherwise unconscious; c) by means of fraudulent machination or grave abuse of authority; and d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (People *vs.* Carillo *y* Pabello *alias* "Nanny", G.R. No. 212814, July 12, 2017) p. 705

— Rape is no respecter of time or place as it can be committed in small, confined places or in places which many would consider as unlikely and inappropriate, or even in the presence of other family members. (People *vs.* Gunsay *y* Tolentino, G.R. No. 223678, July 5, 2017) p. 381

— The elements of rape (under par. 1, subpar. a) are as follows: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force, threat or intimidation. (*Id.*)

— The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent; the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) such act was accomplished through the use of force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve (12) years of age, or is demented. (*Id.*)

— Two classifications of rape punished in Art. 266-A; rape can be committed either through sexual intercourse or sexual assault; rape under par. 1 of Art. 266-A is rape through sexual intercourse; often denominated as "organ rape" or "penile rape," carnal knowledge is its central

assessment of the probative weight thereof, and its conclusions anchored on said findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case. (*Id.*)

— Where there is no evidence to show any dubious or improper motive why a prosecution witness should bear false witness against the accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit. (*Id.*)

Testimony of — In a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing and consistent with human nature and the normal course of things. (People *vs.* Amar *y* Montano, G.R. No. 223513, July 5, 2017) p. 369

— Testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. (People *vs.* Primavera *y* Remodo, G.R. No. 223138, July 5, 2017) p. 355

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