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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. MTJ-17-1900. August 9, 2017]
(Formerly OCA IPI No. 13-2585-MTJ)

ARNEL MENDOZA, *complainant, vs.* **HON. MARCOS C. DIASEN, JR., Acting Presiding Judge, Metropolitan Trial Court, Br. 62, Makati City,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; DISCIPLINE OF JUDGES; WHEN GUILTY OF CONDUCT UNBECOMING A JUDGE; JUDGES MUST AT ALL TIMES CONDUCT THEMSELVES IN A MANNER BEYOND REPROACH TO ENSURE THE PUBLIC'S CONTINUED CONFIDENCE IN THE JUDICIARY; VIOLATION IN CASE AT BAR.—** The Code of Judicial Conduct instructs that judges "should avoid impropriety and the appearance of impropriety in all activities." Judges must at all times conduct themselves in a manner beyond reproach to ensure the public's continued confidence in the judiciary. x x x Judge Diasen's act of attempting to sell rice to his employees and to employees of other branches was highly improper. As a judge, he exercised moral ascendancy and supervision over these employees. If the sale had pushed through, he would have profited from his position. x x x For his improper acts, Judge Diasen is found guilty of conduct unbecoming a judge.

2. **ID.; ID.; ID.; IMPOSABLE PENALTY.—** Under Rule 140 of the Rules of Court, conduct unbecoming a judge is considered a light charge, punishable by the following sanctions: C. If the

respondent is guilty of a light charge, any of the following sanctions shall be imposed: 1. A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00 and/or 2. Censure; 3. Reprimand; 4. Admonition with warning. For violation of Rule 5.02, this Court has imposed a range of penalties from reprimand, a fine of ₱2,000.00, a fine of ₱5,000.00, a fine of ₱8,000.00 to a suspension for six (6) months. This appears to be Judge Diasen's first offense. He has also retired from the judiciary as of January 17, 2017; thus, a reprimand with warning would not serve its purpose. This Court hereby finds a fine of ₱5,000.00 to be sufficient penalty for his acts.

R E S O L U T I O N

LEONEN, *J.*:

This is an administrative case charging Acting Presiding Judge Marcos C. Diasen, Jr. (Judge Diasen), Metropolitan Trial Court, Branch 62, Makati City with violation of the Code of Judicial Conduct.

Arnel G. Mendoza (Mendoza) was a driver of a public utility vehicle, whose services were engaged several times by Cristy Flores (Flores). Mendoza alleged that he met Judge Diasen through Flores and that Judge Diasen hired his services to go to San Pedro and Sta. Rosa, Laguna.[1]

Mendoza alleged that on November 5, 2012, Judge Diasen called and asked him to assist Flores in looking for a rice retailer where he could purchase 50 sacks of rice.[2]

On November 6, 2012, he accompanied Flores and introduced her to the owner of Carolina Marketing. In order for Carolina Marketing to accept a post-dated check as payment, Mendoza agreed to guarantee the transaction. After, they proceeded to Makati City Hall to see Judge Diasen, who gave them a check for ₱70,000.00 to pay for the 50 sacks of rice. He also asked

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[1] *Rollo*, p. 1.

[2] *Id*.

to increase his order to 70 sacks, replacing his first check with a post-dated check for ₱112,000.00 dated November 16, 2012. Mendoza averred that the check was signed in his presence and was dated November 16, 2012.[3]

Mendoza alleged that when the check was presented for payment to Carolina Marketing, it was dishonored due to insufficiency of funds. Carolina Marketing then sought payment for the sacks of rice from Mendoza. Mendoza tried to inform Flores and Judge Diasen about the matter but Judge Diasen was never in his office and Flores was never at her residence. Thus, he was constrained to file this Complaint.[4]

In his Comment,[5] Judge Diasen denies that he personally knew Mendoza. As for Flores, he alleged that she was introduced to him sometime in 2010 by a common friend and she would often visit him at his office after work hours, sometimes accompanied by her relatives. He admitted knowing that Flores was single and unemployed.[6]

Judge Diasen alleged that sometime in 2012, Flores told him that she needed extra income and wanted to sell rice to employees of the Makati City Hall. Since she lacked the required capital, he agreed to lend her money out of pity. He claimed that the loan was on the condition that she would show him the rice she was planning to buy and she would pay the loan from the proceeds of the sale.[7]

On November 6, 2012, he issued and delivered a post-dated check to Flores in the amount of ₱112,000.00. Flores assured him that she would present the sacks of rice at the Makati City Hall on November 16, 2012.[8]

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[3] *Id*.

[4] *Id*.

[5] *Id*. at 11-12.

[6] *Id*. at 11.

[7] *Id*.

[8] *Id*.

He alleged that a few days after he issued the check, he came across an envelope given by Flores sometime in 2010. Inside the envelope were documents showing that Flores had been previously convicted of numerous charges of estafa.[9]

On November 16, 2012, he waited for Flores at the back of Makati City Hall but she did not show up with the sacks of rice. He surmised that Flores connived with Mendoza to encash the check at a discounted amount but he was able to prevent being defrauded by notifying the bank to stop payment on the check.[10]

In a Report[11] dated December 22, 2016, Makati City Executive Judge Elmo M. Alameda (Judge Alameda) recommended the dismissal of the Complaint. In the investigation conducted, Judge Alameda found that the submission of the photocopies of the sales invoice, check, and check return advice was insufficient to prove that Judge Diasen ordered 70 sacks of rice and refused to pay for them.[12] Judge Alameda noted that Carolina Anaya, the proprietor of Carolina Marketing, failed to appear in the investigation despite notice; thus, due execution of the sales invoice and the check was not proven.[13] He also noted that Mendoza did not file the appropriate civil or criminal case despite being allegedly issued a bouncing check.[14]

However, in a Memorandum[15] dated April 10, 2017, the Office of the Court Administrator recommended that Judge Diasen be found guilty of conduct unbecoming a judge.[16] The Office of

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[9] *Id*. at 11-12.

[10] *Id*. at 12.

[11] *Id*. at 38-43.

[12] *Id*. at 42.

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

[14] *Id*. at 43.

[15] *Id*. at 59-62. The Memorandum was penned by Deputy Court Administrator (OIC) Raul Bautista Villanueva and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino.

[16] *Id*. at 62.

the Court Administrator disagreed with the findings of Judge Alameda and noted that he arrived at his conclusion based only on the records since the parties failed to attend the scheduled hearing on November 28, 2016.[17]

The Office of the Court Administrator found that despite the unsubstantiated allegation that Judge Diasen issued a bouncing check, Judge Diasen had admitted that he would have profited from the sales of rice had it been delivered. Judge Diasen also admitted that he "took an active role in the prospective sale by notifying employees of the Makati City Hall, and he even had 'to advise would-be buyers to come back the following day, which [was] Saturday,' when Flores failed to arrive with the rice on the agreed date."[18]

The Office of the Court Administrator found that Judge Diasen's actions "disclose a deficiency in prudence and discretion that a member of the Judiciary must exercise in the performance of his official functions and of his activities as a private individual."[19] Thus, the Office of the Court Administrator recommended that:

1. Hon. Marcos C. Diasen, Jr., former Acting Presiding Judge, Metropolitan Trial Court, Branch 62, Makati City, be found GUILTY of conduct unbecoming a judge; and
2. Respondent Judge Diasen be REPRIMANDED to refrain from further acts of impropriety with a STERN WARNING that a repetition of the same or any similar act will be dealt with severely.[20]

This Court adopts the findings of fact and conclusions of law of the Office of the Court Administrator. The Code of Judicial Conduct instructs that judges "should avoid impropriety and

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[17] *Id*. at 60.

[18] *Id*. at 61.

[19] *Id*.

[20] *Id*. at 62.

the appearance of impropriety in all activities."[21] Judges must at all times conduct themselves in a manner beyond reproach to ensure the public's continued confidence in the judiciary.[22]

Under Canon 5, Rule 5.02:

Rule 5.02. – A judge shall refrain from financial and business dealings that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities or increase involvement with lawyers or persons likely to come before the court. A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualification.

As this Court explained in *Dionisio v. Hon. Escano*:[23]

The restriction enshrined under Rules 5.02 and 5.03 of the Code of Judicial Ethics on judges with regard to their own business interests is based on the possible interference which may be created by these business involvements in the exercise of their judicial duties which may tend to corrode the respect and dignity of the courts as the bastion of justice. Judges must not allow themselves to be distracted from the performance of their judicial tasks by other lawful enterprises. It has been a time-honored rule that judges and all court employees should endeavor to maintain at all times the confidence and high respect accorded to those who wield the gavel of justice.[24]

Judge Diasen's act of attempting to sell rice to his employees and to employees of other branches was highly improper. As a judge, he exercised moral ascendancy and supervision over these employees. If the sale had pushed through, he would have profited from his position. As the Office of the Court Administrator observed:

[Judge Diasen] cannot also deny that his position did not influence the "would-be buyers" to actually partake in the sale of rice. If

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[21] CODE OF JUDICIAL CONDUCT, Canon 2.

[22] See *Dionisio v. Hon. Escano*, 362 Phil. 46 (1999) [*Per Curiam, En Banc*].

[23] 362 Phil. 46 (1999) [*Per Curiam, En Banc*].

[24] *Id*. at 55-56 citing *Albos vs. Alaba*, 301 Phil. 70 (1994) [Per *J.* Vitug, *En Banc*] and *Re: Issuance of Subpoena to Prisoner Nicanor De Guzman, Jr.*, 343 Phil. 530 (1997) [Per *J*. Kapunan, *En Banc*].

employees of the other court branches and offices of the Makati City Hall could be persuaded to buy the subject rice because a judge asked them to, what more with the employees of his own branch[?][25]

For his improper acts, Judge Diasen is found guilty of conduct unbecoming a judge.

This Court, however, finds that a modification of the recommended penalty of reprimand is in order. Under Rule 140 of the Rules of Court, conduct unbecoming a judge is considered a light charge,[26] punishable by the following sanctions:

C. If the respondent is guilty of a light charge, any of the following sanctions shall be imposed:

1. A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00 and/or
2. Censure;
3. Reprimand;
4. Admonition with warning.[27]

For violation of Rule 5.02, this Court has imposed a range of penalties from reprimand,[28] a fine of ₱2,000.00,[29] a fine of ₱5,000.00,[30] a fine of ₱8,000.00[31] to a suspension for six (6) months.[32]

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[25] *Rollo,* p. 61.

[26] RULES OF COURT, Rule 140, Sec. 10 provides:

Section 10. Light Charges. — Light charges include:

1. Vulgar and unbecoming conduct[.]

[27] RULES OF COURT, Rule 140, Sec. 11.

[28] See *Miranda v. Judge Mangrobang, Sr.,* 422 Phil. 327 (2001) [Per *J.* Mendoza, Second Division].

[29] See *Berin v. Judge Barte*, 434 Phil. 772 (2002) [*Per J.* Mendoza, Second Division].

[30] See *Lumibao v. Judge Panal*, 377 Phil. 157(1999) [Per *J.* Buena, Second Division].

[31] See *Judge Misajon v. Feranil*, 483 Phil. 339 (2004) [Per *J.* Ynares-Santiago, First Division].

[32] See *Dionisio v. Hon. Escano*, 362 Phil. 46 (1999) [*Per Curiam, En Banc*].

This appears to be Judge Diasen's first offense. He has also retired from the judiciary as of January 17, 2017;[33] thus, a reprimand with warning would not serve its purpose. This Court hereby finds a fine of ₱5,000.00 to be sufficient penalty for his acts.

WHEREFORE, respondent Hon. Marcos C. Diasen, Jr., former Acting Presiding Judge, Metropolitan Trial Court, Branch 62, Makati City is found **GUILTY** of conduct unbecoming a judge and is hereby **FINED** the amount of ₱5,000.00.

The 1st Indorsement dated July 4, 2017 of Deputy Court Administrator Thelma C. Bahia and letter dated May 18, 2017 of Hon. Marcos C. Diasen, Jr. are **NOTED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 187160. August 9, 2017]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERLINDA A. SISON @ "MARGARITA S. AGUILAR,"** *appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995 (RA 8042); ILLEGAL RECRUITMENT; RA 8042 EXTENDED THE ACTIVITIES COVERED UNDER THE TERM ILLEGAL RECRUITMENT.— Under Article 13(b) of

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[33] *Rollo,* pp. 65-66, Letter dated May 18, 2017.

Presidential Decree No. 442, as amended, also known as the *Labor Code of the Philippines*, **recruitment and placement** refers to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contact 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." **Illegal recruitment**, on the other hand, is defined in Article 38: x x x RA 8042 or the *Migrant Workers and Overseas Filipinos Act of 1995*, approved on 7 June 1995, further strengthened the protection extended to those seeking overseas employment. Section 6, in particular, extended the activities covered under the term *illegal recruitment*: x x x Simply put, **illegal recruitment** is "committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes." Illegal recruitment may be undertaken by either non-license or license holders. Non-license holders are liable by the simple act of engaging in recruitment and placement activities, while license holders may also be held liable for committing the acts prohibited under Section 6 of RA 8042.

2. ID.; ID.; ID.; TWO WAYS WHEN A NON-LICENSEE OR NON-HOLDER OF AUTHORITY MAY COMMIT ILLEGAL RECRUITMENT FOR OVERSEAS EMPLOYMENT, ENUMERATED.— Under RA 8042, a non-licensee or non-holder of authority commits illegal recruitment for overseas employment in two ways: (1) by any 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; or (2) by undertaking any of the acts enumerated under Section 6 of RA 8042.

3. ID.; ID.; LABOR CODE; ILLEGAL RECRUITMENT COMMITTED BY A SYNDICATE; ELEMENTS.— On the other hand, illegal recruitment committed by a syndicate, as in the present case, has the following elements: (a) the offender does not have the valid license or authority required by law to engage in recruitment and placement of workers; (b) the offender undertakes any of the "recruitment and placement" activities

defined in Article 13(b) of the Labor Code, or engages in any of the prohibited practices enumerated under now Section 6 of RA 8042; and (c) the illegal recruitment is "carried out by a group of three or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme." In the third element, it "is not essential that there be actual proof that all the conspirators took a direct part in every act. It is sufficient that they acted in concert pursuant to the same objective."

4. **REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; DENIAL AS A DEFENSE; DENIAL DOES NOT PREVAIL OVER AN AFFIRMATIVE ASSERTION OF FACT.—** The courts do not look favorably at denial as a defense since "[d]enial, same as an alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted." Denial "does not prevail over an affirmative assertion of the fact."

5. **CRIMINAL LAW; REVISED PENAL CODE; ESTAFA; ELEMENTS.—** It is settled that a person, for the same acts, may be convicted separately for illegal recruitment under RA 8042 and estafa under Article 315(2)(a) of the RPC. x x x The elements of estafa by means of deceit under Article 315(2)(a) of the RPC are: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.

6. **ID.; ID.; ID.; IMPOSABLE PENALTY.—** The *Indeterminate Sentence Law* should be applied in determining the penalty for estafa. Under this law, the maximum term is "that which, in view of the attending circumstances, could be properly imposed under [the RPC]" and the minimum shall be "within the range of the penalty next lower to that prescribed by the [RPC] for the offense." Applying the *Indeterminate Sentence Law*, "the

minimum term is taken from the penalty next lower or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months). On the other hand, the maximum term is taken from the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum in its maximum period, adding 1 year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00, provided that the total penalty shall not exceed 20 years." x x x Based on the evidence and testimony of Castuera, he only paid ₱80,000 as down payment because, under their agreement, the balance of the placement fee was to be deducted from his salary when he starts working in Australia. Thus, there is no basis for the ₱160,000 awarded by the RTC. Based on the foregoing, the minimum penalty should be anywhere from 6 months and 1 day of *prision correccional* in its minimum period to 4 years and 2 months of *prision correccional* in its medium period. Thus, the RTC was correct in imposing the minimum penalty of 4 years and 2 months of *prision correccional*. However, the maximum period should be computed as the maximum period that could be properly imposed under the RPC, **plus the incremental penalty** resulting from each additional ₱10,000 in excess of ₱22,000 that was defrauded from the victim. In this case, the amount is ₱80,000, which means that there must be five more years of imprisonment added to the maximum period imposed by the RPC. Thus, the maximum period should be **13 years of *reclusion temporal***.

APPEARANCES OF COUNSEL

Office of the Solicitor for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is an appeal by Erlinda A. Sison (Sison) from the 6 November 2008 Decision[1] of the Court of Appeals

[1] *Rollo*, pp. 2-21. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr. concurring.

in CA-G.R. CR-H.C. No. 02833. The Court of Appeals affirmed the 8 May 2007 Joint Decision[2] of the Regional Trial Court of Mandaluyong City, Branch 211 (RTC) finding Sison guilty beyond reasonable doubt of (1) violation of Section 6, in relation to Section 7, of Republic Act No. 8042 (RA 8042), or illegal recruitment involving economic sabotage, and (2) estafa under Article 315 of the Revised Penal Code (RPC).

The Facts

Sometime in November or December 1999, Darvy[3] M. Castuera (Castuera) was introduced to Sison by her husband, a certain Col. Alex Sison (Col. Sison), a police officer assigned at Camp Crame, Quezon City. Castuera's aunt, Edna Magalona, was then teaching police officers at Camp Crame and Col. Sison was one of her students. Col. Sison happened to mention that his wife can facilitate papers for workers in Australia. Castuera and Magalona then proceeded to Col. Sison's home in Las Piñas. There, they met Sison and she briefed Castuera on the requirements for working as a fruit picker in Australia.[4]

During that meeting, Sison introduced Castuera to another man who related that he was able to go to Australia with Sison's help. She also showed Castuera pictures of other people she had supposedly helped to get employment in Australia. Sison further narrated that a couple she had helped had given her their car as payment. Because of Sison's representations, Castuera believed in her promise that she could send him to Australia.[5]

Sison asked Castuera for ₱180,000 for processing his papers. After some negotiations, Sison agreed to lower the fee to ₱160,000. Castuera was to pay half before he leaves the Philippines and the other half will be taken from his salary in Australia.[6]

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[2] CA *rollo*, pp. 22-35. Penned by Judge Paulita B. Acosta-Villarante.

[3] Referred to in some parts of the records as "Darby."

[4] *Rollo*, p. 5.

[5] *Id*.

[6] *Id*. at 6.

On 16 June 2000, Castuera met Sison at McDonald's nM Megamall to give the ₱80,000 down payment. Sison issued a signed document as proof of payment. Castuera's companions, his aunt Edna Magalona and cousin Mark Magalona, also signed the document as witnesses. Sison promised Castuera that she would personally process his visa application.[7]

Sison, however, failed to secure an Australian visa for Castuera. She told him that it was difficult to get an Australian visa in the Philippines so they had to go to Malaysia to get one. She also said that Castuera's Australian visa was already in Malaysia and his personal appearance was required there.[8]

On 28 June 2008, Sison and Castuera left Manila for Zamboanga City by plane and from there, rode a boat to Sandakan, Malaysia. Sison told Castuera that he only needed to stay in Malaysia for a week then he would proceed to Australia.[9]

Twice, they nearly overstayed in Malaysia. Each time, Sison and Castuera would leave for Brunei, stay there for three days, and then go back to Malaysia. The second time they returned to Malaysia, they met several of Sison's other recruits — other Filipinos who have come in through Thailand — as well as Sison's co-accused, Rea Dedales (Dedales) and Leonardo Bacomo (Bacomo). Castuera was told that the group would be proceeding to Indonesia to process their Australian visas there. The group then left for Indonesia. However, the day after arriving in Indonesia, Sison went back to the Philippines, leaving Castuera and the other recruits with Dedales and Bacomo.[10]

Subsequently, Castuera's application for an Australian visa in Indonesia was denied.[11] Dedales said it was harder to get an

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[7] *Id*.

[8] *Id*.

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

[10] *Id*. at 7; CA *rollo*, pp. 24-25.

[11] *Rollo*, p. 7.

Australian visa from Indonesia and told Castuera to apply for a U.S. visa instead. Dedales asked for US$1,000 for the processing of his U.S. visa, which he paid.[12] However, when his U.S. visa came, Castuera saw that it was in an Indonesian passport bearing an Indonesian name. Because of this, Castuera decided to just return to the Philippines. He asked for his US$1,000 back but Dedales would not return it. His Philippine passport was also not returned immediately causing him to overstay in Indonesia. He found out then that the extension papers that Dedales and Bacomo procured for him were fake.[13]

Castuera sought the help of the Philippine Embassy in Indonesia and was able to return to the Philippines using his own funds.[14]

Upon returning to the Philippines, Castuera filed a complaint against Sison, Dedales, and Bacomo at the Philippine Overseas Employment Administration (POEA). The agency verified that Sison, Dedales, and Bacomo did not have any license or permit to hire and recruit for overseas employment.[15]

During the trial, Sison denied that she recruited Castuera for employment. She maintained she was also a victim of illegal recruitment by Dedales.[16] She claimed that it was Dedales, then working for a travel agency, who was processing her visa and ticket to Australia. She further claimed that she accepted the down payment money from Castuera because Dedales was already in Malaysia at that time. When she and Castuera arrived in Malaysia, she gave the money to Dedales. Like Castuera, she found out when they arrived in Malaysia that her Australian visa application had been denied. She also said that Dedales asked her for an additional US$1,000, which she gave.

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[12] CA *rollo*, p. 25.

[13] *Rollo*, pp. 7-8.

[14] *Id*. at 8.

[15] *Id*.

[16] *Id*. at 10.

However, upon learning that it was difficult to get an Australian visa, Sison opted to go back to the Philippines. When Dedales and Bacomo informed her that Castuera had been issued a U.S. visa, Sison supposedly told them to apply the US$1,000 she paid to Castuera's payment.

The RTC's Joint Decision

In its 8 May 2007 Joint Decision, the RTC found Sison guilty of illegal recruitment constituting economic sabotage and estafa:

> WHEREFORE, the court finds the accused ERLINDA SISON guilty beyond reasonable doubt of the offenses charged and hereby sentences her, thus:
>
> 1) In Criminal Case No. MC01-4035-H for Violation of Section 6 in relation to Section 7 of R.A. 8042 (Illegal Recruitment-Economic Sabotage) to suffer the penalty of life imprisonment pursuant to Section 6 (m) of R.A. 8042 in relation to Section 7 (b) thereof and to pay a fine of One Million Pesos (Php1,000,000.00) as the illegal recruitment constitutes economic sabotage;
>
> 2) In Criminal Case No. MC01-4036 for Estafa under Article 315 (2) (a) of the Revised Penal Code (RPC), to suffer the penalty of four years, two (2) months of prision correccional as minimum to eight (8) years of prision mayor as maximum.
>
> The accused is ordered to indemnify the victim, Darby Castuera, the sum of Php160,000.00 as actual damages.
>
> In so far as accused Rea Dedales and Leonardo Bacomo are concerned, who have been fugitives from justice and are not yet arraigned, let bench warrants issue against them. Accordingly, the cases against them are ordered archived until such time that they shall have been arrested and arraigned.
>
> SO ORDERED.[17]

The RTC stated it was clear that Sison convinced Castuera to apply for employment as fruit picker in Australia and induced him to pay the fees needed for overseas employment.[18]

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[17] CA *rollo*, pp. 34-35.

[18] *Id*. at 30-31.

The RTC also held that Castuera was indeed "a victim of illegal recruitment committed by a syndicate"[19] since it was committed by a group of three persons acting "in conspiracy" with one another.[20] According to the RTC, the conduct of Sison and her co-accused showed that they acted "in concert towards the accomplishment of a common felonious purpose which was to recruit [Castuera] for overseas employment even though they had no license to do so."[21]

As to the estafa charge, the RTC held that Sison and her co-accused were also guilty of the same. The RTC pointed out that the element of deceit was evident in the "false pretenses by which accused deluded [Castuera] into believing that they ha[ve] the power and qualifications to send people abroad for employment" and which induced him to pay them ₱110,000 and US$1,000.[22]

The RTC also rejected Sison's claim that she was also a victim like Castuera. The RTC stated that if that were true, then Sison should have filed a case against the illegal recruiter, but she did not. It also held that Castuera's positive and categorical testimony prevailed over Sison's mere denials.[23]

The Decision of the Court of Appeals

Sison appealed the joint decision of the RTC to the Court of Appeals.

She maintained that she was also a victim of her co-accused Dedales[24] and that there was "no material and concrete proof that indeed [she] offered or promised for a fee employment abroad to two (2) or more persons."[25] According to Sison,

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[19] *Id*. at 32.

[20] *Id*. at 30.

[21] *Id*. at 32.

[22] *Id*. at 33.

[23] *Id*.

[24] *Id*. at 60.

[25] *Id*.

Castuera merely sought her out to "enable him to transact with accused Dedales"[26] who would facilitate his application for an Australian visa. She claimed that there was no proof beyond reasonable doubt that her transaction with Castuera was for recruitment or deployment to Australia.[27]

Sison did not dispute her lack of license or authority to conduct recruitment activities. However, she maintained that the transaction she facilitated between Castuera and Dedales was "only for the former to secure a visa, not a working visa." Further, she argued that the procurement of a visa did not qualify as a "recruitment activity."[28]

Sison also contested the ruling that she was guilty of estafa, claiming that she "did not fraudulently or falsely [represent] herself to possess the power, capacity or authority to recruit and deploy [Castuera] for overseas employment."[29]

In its assailed decision, the Court of Appeals upheld the RTC's joint decision:

> WHEREFORE, the instant appeal is DISMISSED for lack of merit. The decision of the court *a quo* dated May 8, 2007 is AFFIRMED. Costs against the accused-appellant.
>
> SO ORDERED.[30]

The Court of Appeals held that all the elements of illegal recruitment were sufficiently proven in the case.

First, Sison herself did not dispute that she is not licensed or authorized to engage in recruitment or placement activities. This fact was unknown to Castuera at the time of their transaction.[31]

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[26] *Id*. at 61.

[27] *Id*.

[28] *Rollo*, p. 10.

[29] CA *rollo*, p. 64.

[30] *Rollo*, p. 20.

[31] *Id*. at 12.

Second, the Court of Appeals held that even if Sison did not directly recruit Castuera, her actions led him to believe that she was engaged in the recruitment business.[32] Castuera was able to prove that it was Sison who promised him a job as fruit picker in Australia and even accompanied him to Malaysia, Brunei, and Indonesia in the guise of processing his visa application. However, the Court of Appeals noted that this process was actually part of "defrauding [Castuera] and inveigling him with false or fraudulent promises of employment in a foreign land."[33]

Further, the Court of Appeals found that Sison made representations about her purported power and authority to recruit for employment in Australia and, in the process, collected various amounts of money from Castuera as placement and processing fees.[34] The Court of Appeals stated that it was "enough that these recruiters give the impression that they have the ability to enlist workers for job placement abroad in order to induce the latter to tender payment of fees."[35]

The Court of Appeals further held that the illegal recruitment activities of Sison and her co-accused constituted economic sabotage. It underscored that "active participation of each [accused] in the various phases of the recruitment scam formed part of a series of machinations" which lured Castuera to part with his hard earned money in exchange for guaranteed employment in Australia.[36] The Court of Appeals noted that Castuera would not have gone along with traveling to Malaysia, Brunei, and Indonesia and complying with Sison's further demands without the repeated assurances of the latter.[37]

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[32] *Id*. at 14.

[33] *Id*.

[34] *Id*.

[35] *Id*. at 15.

[36] *Id*.

[37] *Id*. at 17.

The Court of Appeals also affirmed Sison's conviction for estafa. It held that the two elements of estafa were proven in the case. The Court of Appeals found that Sison's misrepresentations facilitated the commission of the crime. Sison deliberately misrepresented that she had the power, capacity, or means to send Castuera to Australia. The Court of Appeals concluded that Sison defrauded Castuera through deceit.[38]

Sison appealed the Court of Appeals' decision to this Court via a Notice of Appeal dated 25 November 2008.[39]

The Issue

The lone issue in this case is whether the guilt of Sison was established beyond reasonable doubt.

The Court's Ruling

The appeal has no merit. The assailed decision of the Court of Appeals is affirmed, with modification as to the penalty imposed in the estafa case.

Illegal Recruitment by a Syndicate – Economic Sabotage

Under Article 13(b) of Presidential Decree No. 442, as amended, also known as the *Labor Code of the Philippines*, **recruitment and placement** refers to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contact 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."

Illegal recruitment, on the other hand, is defined in Article 38:

Article 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

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[38] *Id*. at 18.

[39] CA *rollo*, p. 131.

of this Code. The Department of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

x x x x x x x x x

RA 8042 or the *Migrant Workers and Overseas Filipinos Act of 1995*, approved on 7 June 1995, further strengthened the protection extended to those seeking overseas employment. Section 6, in particular, extended the activities covered under the term *illegal recruitment*:

II. ILLEGAL RECRUITMENT

Sec. 6. DEFINITIONS. — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers and includes referring, contact services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-license or 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 **such non-license 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 persons, whether a non-licensee, non-holder, licensee or holder of authority.

(a) To charge or accept directly or indirectly any amount greater than the specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any persons or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment of placement of workers in jobs harmful to public health or morality or to dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittances of foreign exchange earnings, separations from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly on indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy without valid reasons as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the workers 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 as offense involving economic sabotage.**

Illegal recruitment is deemed committed by a syndicate carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable. (Emphasis supplied)

Simply put, **illegal recruitment** is "committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes."[40]

Illegal recruitment may be undertaken by either non-license or license holders. Non-license holders are liable by the simple act of engaging in recruitment and placement activities, while license holders may also be held liable for committing the acts prohibited under Section 6 of RA 8042.

Under RA 8042, a non-licensee or non-holder of authority commits illegal recruitment for overseas employment in two ways: (1) by any 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; or (2) by undertaking any of the acts enumerated under Section 6 of RA 8042.[41]

In this case, Sison herself admits that she has no license or authority to undertake recruitment and placement activities. The Court has held in several cases that an accused who represents to others that he or she could send workers abroad for employment, even without the authority or license to do so, commits illegal recruitment.[42]

It is the absence of the necessary license or authority to recruit and deploy workers that renders the recruitment activity unlawful. To prove illegal recruitment, it must be shown that "the accused

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[40] *People v. Arnaiz*, G.R. No. 205153, 9 September 2015, 770 SCRA 319.

[41] *People v. Tolentino*, G.R. No. 208686, 1 July 2015, 761 SCRA 332.

[42] *Id*., citing *People v. Inovero,* 737 Phil. 116, 126 (2014); *People v. Lalli,* 675 Phil. 126, 152 (2011); *People v. Abat,* 661 Phil. 127, 132-133 (2011).

gave the complainants the distinct impression that she had the power or ability to deploy the complainants abroad in a manner that they were convinced to part with their money for that end."[43]

On the other hand, illegal recruitment committed by a syndicate, as in the present case, has the following elements: (a) the offender does not have the valid license or authority required by law to engage in recruitment and placement of workers; (b) the offender undertakes any of the "recruitment and placement" activities defined in Article 13(b) of the Labor Code, or engages in any of the prohibited practices enumerated under now Section 6 of RA 8042; and (c) the illegal recruitment is "carried out by a group of three or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme."[44] In the third element, it "is not essential that there be actual proof that all the conspirators took a direct part in every act. It is sufficient that they acted in concert pursuant to the same objective."[45]

The acts of Sison, Dedales, and Bacomo show a common purpose and each undertook a part to reach their objective. Their concerted action is evident in that either Sison or Dedales was receiving payments from the recruits; that Dedales signed the acknowledgment receipt from Sison; and that the three accompanied their recruits together in seeking out their visas in Malaysia and Indonesia. Further, the impression given to Castuera and other recruits was that the three were indeed working together.

Since it was proven that the three accused were acting in concert and conspired with one another, their illegal recruitment activity is considered done by a syndicate, making the offense illegal recruitment involving economic sabotage.

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[43] *People v. Abat,* 661 Phil. 127, 132 (2011).

[44] *People v. Fernandez*, 735 Phil. 340, 345 (2014).

[45] *People v. Daud*, 734 Phil. 698, 717-718 (2014).

Section 7 of RA 8042 sets out the penalty for illegal recruitment involving economic sabotage:

SEC. 7. PENALTIES —

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine not less than two hundred thousand pesos (₱200,000.00) nor more than five hundred thousand pesos (₱500,000.00).

(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 the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority. (Emphasis supplied)

The RTC rejected Sison's claim that she was also a victim of illegal recruitment. The courts do not look favorably at denial as a defense since "[d]enial, same as an alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted."[46] Denial "does not prevail over an affirmative assertion of the fact."[47]

Sison's defense of denial is merely an attempt to avoid liability. The Court agrees with the RTC's assessment that Sison's claim that she is also a victim of illegal recruitment has no credence.

It is hard to believe that Castuera would deal with Sison in the manner that he had if he believed that she was also a mere recruit like himself. For one thing, there is no proof of Sison's transactions with Dedales, except for a handwritten

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[46] *Id*., citing *People v. Ocden,* 665 Phil. 268, 289 (2011).

[47] *People v. Inovero, supra* note 42, at 127 (2014).

acknowledgment receipt,[48] which is only backed up by her own testimony. Also, if she were a victim, she would have taken action against Dedales and Bacomo herself. Her husband was a member of the Philippine National Police. It would have been easy to seek help in apprehending the illegal recruiters. Sison also failed to explain why she took no action to recover the ₱100,000 she allegedly paid for her Australian visa, as well as the money to travel and stay in Malaysia, Brunei, and Indonesia. Lastly, why would she have allowed, as she claims, the US$1,000 she allegedly paid to be applied to the U.S. visa application of Castuera, someone she says she hardly knows, instead of trying to recover the same, considering that Dedales failed to procure the visa for which she paid? All these cast doubt on her claim of being only a victim of Dedales.

At the very least, Sison gave the impression that she had some sort of authority, whether or not Dedales is indeed the principal, which is enough to amount to illegal recruitment. In any case, the acknowledgment receipts[49] only serve to strengthen the case of conspiracy among Sison and her co-accused.

Estafa

We affirm Sison's conviction for estafa under Article 315(2)(a) of the RPC. It is settled that a person, for the same acts, may be convicted separately for illegal recruitment under RA 8042 and estafa under Article 315(2)(a) of the RPC. In *People v. Daud*, the Court explained:

> In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under par. 2(a) of Art. 315 of the Revised Penal Code. The offense of illegal recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while estafa is *malum in se* where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable

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[48] Records, p. 252.

[49] *Id*. at 252-253.

by other laws. Conversely, conviction for estafa under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and *vice versa*.[50] (Citations omitted)

The elements of estafa by means of deceit under Article 315(2)(a) of the RPC are:

(a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.[51]

All these elements are present in this case.

First, Sison misrepresented her qualifications and authority to send Castuera to work in Australia. She actively made Castuera believe that she had the ability to do so — she showed pictures of her "recruits," had one of them give a testimonial, and told him stories to convince him of such ability. It did not matter that "they had no agreement"[52] that their transaction was for recruitment or deployment. All her acts were calculated to convince Castuera that Sison was qualified to send him abroad for employment. It is enough that she "gave the impression that [she] had the power to send workers abroad for employment purposes."[53]

Second, Sison's false representation was made prior to or simultaneous to the commission of the fraud. Sison used these

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[50] *People v. Daud*, *supra* note 45, at 720, citing *People v. Yabut*, 374 Phil. 575, 586 (1999).

[51] *Suliman v. People*, 747 Phil. 719, 731 (2014). Citations omitted.

[52] *Rollo*, p. 10.

[53] *People v. Arnaiz*, *supra* note 40.

false representations to convince Castuera that he would be able to go to Australia and be a fruit picker, just like her other recruits. These representations were clearly mere devices to convince Castuera, whom she only met at that time, that she was a legitimate recruiter.

Third, Castuera relied on Sison's representations. He believed that she could send him to Australia because of the pictures and testimonials she showed him. He also relied on the fact that his aunt knew Sison's husband, a police officer, adding to her trustworthiness. Sison banked on that trust to convince Castuera to part with his money and be "recruited" into overseas employment. Castuera believed that Sison had the same ability to send him to Australia. He did not even ask for her authority or check for himself with the POEA, relying instead on her word. This tells us that he was fully convinced based on Sison's representations.

Fourth, Sison's misrepresentation resulted in damage to Castuera. He paid the ₱80,000 down payment that Sison required of him as processing fee, but the purpose for which it was paid never materialized. Likewise, said amount was never reimbursed to Castuera despite his demands for its return.

Penalty

The penalty for illegal recruitment is correct based on Section 7 of RA 8042. Since the illegal recruitment was committed by a non-licensee or non-holder of authority, the RTC may rightfully mete out the maximum penalty. Thus, the penalty imposed by the RTC stands.

The penalty for estafa, however, needs to be modified. Article 315 of the RPC provides:

> Art. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> *1st*. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each

additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

The *Indeterminate Sentence Law* should be applied in determining the penalty for estafa. Under this law, the maximum term is "that which, in view of the attending circumstances, could be properly imposed under [the RPC]" and the minimum shall be "within the range of the penalty next lower to that prescribed by the [RPC] for the offense."[54]

Applying the *Indeterminate Sentence Law*, "the minimum term is taken from the penalty next lower or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months). On the other hand, the maximum term is taken from the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum in its maximum period, adding 1 year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00, provided that the total penalty shall not exceed 20 years."[55]

In *People v. Tolentino*, the Court further explained:

The range of penalty under Article 315 is composed of only two periods. To compute the maximum period of the indeterminate sentence, the total number of years included in the two periods should be divided into three equal portions, with each portion forming a period. Following this computation, the minimum, medium, and maximum periods of the prescribed penalty are:

1. Minimum Period - 4 years, 2 months and 1 day to 5 years, 5 months and 10 days;

2. Medium Period - 5 years, 5 months and 11 days to 6 years, 8 months and 20 days;

3. Maximum Period - 6 years, 8 months and 21 days to 8 years.

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[54] Section 1, Act No. 4103, as amended (*Indeterminate Sentence Law*).

[55] *People v. Fernandez*, *supra* note 44, at 347.

Any incremental penalty, i.e. one year for every ₱10,000 in excess of ₱22,000, shall be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the court's discretion, provided the total penalty does not exceed 20 years.[56]

To arrive at the correct penalty, the Court must determine the actual amount defrauded from the victim.

Actual damages must be proven, not presumed.[57] It should be "actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable."[58]

Based on the evidence and testimony of Castuera, he only paid ₱80,000 as down payment because, under their agreement, the balance of the placement fee was to be deducted from his salary when he starts working in Australia. Thus, there is no basis for the ₱160,000 awarded by the RTC.

Based on the foregoing, the minimum penalty should be anywhere from 6 months and 1 day of *prision correccional* in its minimum period to 4 years and 2 months of *prision correccional* in its medium period. Thus, the RTC was correct in imposing the minimum penalty of 4 years and 2 months of *prision correccional*.

However, the maximum period should be computed as the maximum period that could be properly imposed under the RPC, **plus the incremental penalty** resulting from each additional ₱10,000 in excess of ₱22,000 that was defrauded from the victim.

In this case, the amount is ₱80,000, which means that there must be five more years of imprisonment added to the maximum period imposed by the RPC. Thus, the maximum period should be **13 years of *reclusion temporal***.

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[56] *People v. Tolentino*, *supra* note 41.

[57] *Republic v. Tuvera*, 545 Phil. 21, 57 (2007).

[58] *Spouses Quisumbing v. Manila Electric Company*, 429 Phil. 727, 747 (2002). Citations omitted.

Lastly, Sison is ordered to pay legal interest of 6% *per annum* on the amount adjudicated, to be reckoned from the finality of this Decision until full payment.

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02833 is **AFFIRMED with MODIFICATION**. In Criminal Case No. MC01-4036 for Estafa under Article 315(2)(a) of the Revised Penal Code, appellant Erlinda A. Sison is sentenced to suffer the penalty of four (4) years and two (2) months of *prision correccional* as minimum to thirteen (13) years of *reclusion temporal* as maximum. Sison is also **ORDERED** to pay Darvy M. Castuera the amount of ₱80,000 as actual damages, with legal interest at the rate of 6% *per annum* from the finality of this Decision until the amount is fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 187420. August 9, 2017]

POWER GENERATION EMPLOYEES ASSOCIATION-NPC, represented by RAUL M. DEL MUNDO and JIMMY D. SALMAN, in their official capacities as president and Vice-President, respectively, and in their own individual capacities and in behalf of all similarly situated officials and employees of National Power Corporation, ALVIN O. BORJA, ROBERT S. MAMAUAG, ROMEO B. DE MESA, JR., KENNETH M. SUSARNO, MANUEL R. CABELLO, NESTOR A. PANALIGAN, ARNEL A. CASIMIRO, JAIME C. GARGANERA, *petitioners, vs.* **NATIONAL POWER**

CORPORATION and NATIONAL POWER CORPORATION BOARD OF DIRECTORS, POWER SECTOR ASSETS & LIABILITIES MANAGEMENT and PSALM BOARD DIRECTORS, *respondents*.

SYLLABUS

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REPUBLIC ACT NO. 9136 (ELECTRIC POWER INDUSTRIAL REFORM ACT OF 2001 [EPIRA]); SECTION 78 OF EPIRA PROVIDES THAT NO RESTRAINT OR INJUNCTION WHETHER PERMANENT OR TEMPORARY CAN BE ISSUED BY ANY COURT EXCEPT BY THE SUPREME COURT; SUSTAINED IN CASE AT BAR.— The Operation and Maintenance Agreement is a contract that preserves the implementation of EPIRA. Thus, it is covered by Section 78. Under this provision, no restraint or injunction whether permanent or temporary, could be issued by any court except by this Court. However, in *Carpio-Morales v. Court of Appeals,* this Court invalidated the second paragraph of Republic Act No. 6770, Section 14 for being unconstitutional. The assailed provision prohibited any court, except this Court, to enjoin investigations of the Ombudsman. This Court explained in *Carpio-Morales* that provisional remedies found in the Rules of Court are within this Court's constitutional prerogative to promulgate rules on pleading, practice, and procedure. Under Rule 58 of the Rules of Court, all courts have the inherent power to issue temporary restraining orders or writs of preliminary injunction. When Congress passes a law that prohibits other courts from exercising this power, it encroaches upon this Court's power to promulgate rules of procedure, in violation of the separation of powers. x x x However, *Carpio-Morales* dealt only with temporary restraining orders, not permanent injunctions. The injunction contemplated in EPIRA is not a mere interlocutory action by a court but a permanent remedy. Thus, Section 78 of EPIRA can still apply to this case.

2. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES IN INTEREST; PETITIONERS, NOT BEING PRIVY TO THE CONTRACT INVOLVED, ARE NOT THE REAL PARTIES IN INTEREST TO QUESTION ITS VALIDITY; CASE AT

BAR.— Petitioners, not being privy to the Operation and Maintenance Agreement, have no cause of action against respondents. They are not the real parties in interest to question its validity. Provisional reliefs, such as a temporary restraining order or a writ of preliminary injunction, are ancillary writs issued by the court to protect the rights of a party during the pendency of the principal action. x x x Actions must be instituted by the real parties in interest. Otherwise, the action may be dismissed for lack of cause of action. A real party in interest is defined under Rule 3, Section 2 of the Rules of Court x x x Petitioners have not established how they will benefit by enjoining the implementation of the Operation and Maintenance Agreement. They have not established the injury they will suffer if this Agreement is not enjoined. Thus, this Petition is dismissed for lack of cause of action.

3. **POLITICAL LAW; STATUTES; IN THE INTERPRETATION OF LAWS, COURTS MUST ASCERTAIN THE LEGISLATIVE INTENT AND GIVE IT EFFECT.—** In the interpretation of laws, courts must ascertain the legislative intent and give it effect. Legislative intent is determined from the law itself, where each and every provision is considered in light of the purpose to which it was enacted. The interpretation of laws is inherently a judicial function, such that this Court's application and interpretation of laws becomes part of the law of the land. Thus, a legislator's opinion, be it stated in a letter or expressed during the deliberations of a bill, is not binding on courts.

APPEARANCES OF COUNSEL

V.V. Orocio and Associates Law Offices for petitioners.
Maria Florinia B. Binalay-Estilo, co-counsel for petitioners.
Office of Government Corporate Counsel for respondents.

D E C I S I O N

LEONEN, *J.*:

A petition for injunction under Section 78 of the Electric Power Industry Reform Act of 2001[1] (EPIRA) is filed only to restrain or enjoin the implementation of any provision of the law. It may not be invoked to enjoin the implementation of contracts alleged to be against the law. Moreover, the petition must be filed by a real party in interest. Otherwise, it may be dismissed for lack of cause of action.

This is a Petition for Injunction with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction[2] under Section 78 of EPIRA. This is filed by the Power Generation Employees Association-National Power Corporation (PGEA-NPC), Alvin O. Borja, Robert S. Mamauag, Romeo B. de Mesa, Jr., Kenneth M. Susarno, Manuel R. Cabello, Nestor A. Panaligan, Arnel A. Casimiro, and Jaime C. Garganera (petitioners) against the National Power Corporation (NAPOCOR), the Power Sector Assets and Liabilities Management (PSALM), and their respective Boards of Directors. Petitioners ask this Court to permanently enjoin the implementation of the Operation and Maintenance Agreement jointly executed by NAPOCOR and PSALM, and to declare this Agreement void for being contrary to EPIRA.[3]

On June 8, 2001, Republic Act No. 9136 or EPIRA was signed into law. Among its reforms was the privatization of NAPOCOR assets.[4] Pursuant to this objective, PSALM was created "to manage

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[1] Rep. Act No. 9136, Sec. 78. provides:

Section 78. Injunction and Restraining Order. – The implementation of the provisions of this Act shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

[2] *Rollo* (G.R. No. 187420), pp. 3-34.

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

[4] Rep. Act No. 9136, Sec. 47.

the orderly sale, disposition, and privatization of [NAPOCOR]'s generation assets, real estate and other disposable assets, and [Independent Power Producer] contracts with the objective of liquidating all [NAPOCOR] financial obligations and stranded contract costs in an optimal manner."[5]

Sometime in 2008, PSALM drafted the Operation and Maintenance Agreement[6] for NAPOCOR's acceptance.[7] The contract provided that NAPOCOR would perform "all functions and services necessary to successfully and efficiently operate, maintain, and manage"[8] power plants, generation assets, or facilities until its transfer or turnover to PSALM. It further provided that NAPOCOR must submit its proposed budget to PSALM for review and approval.[9] All revenues related to the maintenance and operation of power plants, generation assets, or facilities would be considered as PSALM's properties.[10]

Then NAPOCOR President Cyril C. Del Callar (Del Callar) wrote a letter dated August 6, 2008 to Representative Arnulfo P. Fuentebella (Rep. Fuentebella), one (1) of the authors of EPIRA. He inquired whether PSALM had the authority to take control over NAPOCOR's assets and revenues considering that its authority was limited only to the conservation and administration of these assets.[11]

In a letter[12] dated August 20, 2008, Rep. Fuentebella opined that PSALM "should not be meddling with how [NAPOCOR] operates and sells electricity from the undisposed generating

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[5] Rep. Act No. 9136, Sec. 50.

[6] *Rollo* (G.R. No. 187420), pp. 35-48.

[7] *Id*. at 13.

[8] *Id*. at 39.

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

[10] *Id*. at 44.

[11] *Id*. at 50.

[12] *Id*. at 51-55.

assets and [Independent Power Producer] contracts."[13] He further stated that:

In the main, PSALM was designed to act as a Special Purpose Vehicle for the purpose of bridging the financial requirements of [NAPOCOR] by assuming initially a portion of its liabilities to improve the books of accounts of [NAPOCOR] and thereby, provide additional value to its assets before disposal.

This is precisely why the EPIRA affirms the authority of [NAPOCOR] to generate and sell electricity from the undisposed generating assets and [Independent Power Producer] contracts of PSALM with the prohibition that [NAPOCOR] should not incur any new obligation to purchase power through bilateral contracts with generation companies or other suppliers. Congress intended [NAPOCOR] to continue exercising its authority to operate the undisposed assets pursuant to the powers granted by the Revised Charter of [NAPOCOR] or RA 6395. Corollary to such power is the authority of [NAPOCOR] to have full control over all its revenues derived from the operation of the undisposed assets and PSALM shall come into the picture only when such revenues [are] already declared by [NAPOCOR] as its net profits. In fact, [NAPOCOR] through your new [National Power] Board, may even create subsidiaries in order to carry out the business and purposes for which the [NAPOCOR] is established subject of course to the proscription laid down in Section 47 (j) of the EPIRA.

In closing, allow me to recapitulate my views on the matter. It is wrong for PSALM to assume that it has authority, as transferee of [NAPOCOR] assets and liabilities, to operate the undisposed generating assets and act as power generator. This is not the mandate the Congress gave them. The function of PSALM is limited and akin to that of a liquidator of [NAPOCOR] assets as stated in Section 50 of the EPIRA that the principal purpose of PSALM is to manage the orderly sale, disposition, and privatization of [NAPOCOR] generation assets, real estate and other disposable assets, and [Independent Power Producer] contracts with the end in view of liquidating all [NAPOCOR] financial obligations and stranded contract costs in an optimal manner.[14] (Citations omitted)

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[13] *Id*. at 53.

[14] *Id*. at 54.

Del Callar resigned as NAPOCOR President on September 30, 2008. Then President Gloria Macapagal-Arroyo appointed Froilan A. Tampinco (Tampinco) to replace Del Callar.[15]

On March 9, 2009, the Operation and Management Agreement[16] was signed by PSALM, represented by Jose F. Ibazeta, and NAPOCOR, represented by Tampinco. This Agreement was confirmed and ratified by NAPOCOR's Board of Directors on the same day.[17]

On April 21, 2009, NAPOCOR Employees Consolidated Union (NECU) and NAPOCOR Employees and Workers Union (NEWU) filed a Petition[18] with this Court, docketed as G.R. No. 187359, seeking to restrain the implementation and enforcement of the Operation and Maintenance Agreement, in relation to G.R. No. 187257. G.R. No. 187257 was a Petition for Certiorari filed by the Republic of the Philippines against the Regional Trial Court of Quezon City to restrain the latter's November 28, 2008 Decision awarding ₱6,496,055,339.98 with legal interest of ₱704,777,508.60 as Cost of Living Allowance and Amelioration Allowance to NECU and NEWU.[19]

In G.R. No. 187359, NECU and NEWU alleged that certain provisions of the Operation and Maintenance Agreement regarding the remittance of NAPOCOR's revenues to PSALM "thwart[ed]" the execution of the trial court's November 28, 2008 Decision.[20]

On April 28, 2009, petitioners filed this present Petition for Injunction with Prayer for Temporary Restraining Order or

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[15] *Id*. at 15.

[16] *Id*. at 35-48.

[17] *Id*. at 56.

[18] *Rollo* (G.R. No 187359), pp. 3-60.

[19] See *Republic v. Hon. Cortez,* G.R. Nos. 187257 and 187776, February 7, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/187257.pdf> [Per *J.* Leonen, *En Banc*].

[20] *Rollo* (G.R. No 187359), pp. 48-55.

Preliminary Injunction[21] seeking to restrain the implementation of the Operation and Management Agreement for contravening the provisions of EPIRA. In particular, they argue that PSALM's ownership extends only to net profits, and not to all revenues, of NAPOCOR under Section 55(e)[22] of EPIRA. Hence, NAPOCOR's revenues should not be billed for PSALM's account.[23]

On July 13, 2009, this Court issued a Resolution,[24] consolidating G.R. No. 187359 with G.R. Nos. 187257 and 187776. Upon motion of the Office of the Solicitor General, this Court, in its Resolution[25] dated September 9, 2009, also consolidated G.R. No. 187420 with these cases.

On February 17, 2011, NECU and NEWU filed an Omnibus Motion[26] seeking to withdraw the Petition in G.R. No. 187359 and to detach the Petition from G.R. No. 187420 and have it consolidated instead with G.R. No. 156208.[27] G.R. No. 156208 was then a pending case regarding the extent by which PSALM would answer for NAPOCOR's liabilities after the passing of EPIRA.

In its June 22, 2011 Resolution,[28] this Court granted the Motion to Withdraw the Petition in G.R. No. 187359; however, it denied

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[21] *Rollo* (G.R. No. 187420), pp. 3-34.

[22] Rep. Act No. 9136, Sec. 55 provides:

Section 55. Property of the PSALM Corp. – The following funds, assets, contributions and other property shall constitute the property of the PSALM Corp.:

. . . . . .

(e) Net profit of NPC[.]

[23] *Rollo* (G.R. No. 187420), pp. 23-24.

[24] *Rollo* (G.R. No. 187776), pp. 149-150.

[25] *Id*.

[26] *Rollo* (G.R. No. 187359), pp. 645-651.

[27] *Rollo* (G.R. No. 187359), p. 649. G.R. No. 156208 is entitled *NPC Drivers and Mechanics Association, et al. v. National Power Corporation, et al.*

[28] *Rollo* (G.R. No. 187257), pp. 1581-1582.

the prayer to consolidate G.R. No. 187420 with G.R. No. 156208. G.R. No. 187359 was then considered as closed and terminated.[29] In its Resolution[30] dated March 10, 2014, this Court, upon the motion of NECU and NEWU,[31] deconsolidated G.R. No. 187420 from G.R. Nos. 187257 and 187776. Only G.R. No. 187420 will be resolved by this Court in this Decision.

Petitioners argue that while EPIRA authorizes PSALM to take ownership of NAPOCOR's generation assets, liabilities, Independent Power Producer (IPP) contracts, real estate, and disposable assets, its ownership should be based on its mandate to privatize NAPOCOR's assets and to liquidate its liabilities. They submit that EPIRA did not authorize PSALM to enter into the Operation and Maintenance Agreement with NAPOCOR.[32]

Petitioners argue that the Operation and Maintenance Agreement "is a clear display of [the] arrogance of PSALM."[33] They maintain that PSALM merely holds NAPOCOR's assets as its "naked owner for the purposes of disposing [these assets] and use the proceeds thereof to liquidate [NAPOCOR's] liabilities."[34] They assert that since EPIRA did not give PSALM the authority to generate and sell electricity, it should not have entered into the Operation and Maintenance Agreement over the sale of the "undisposed generation assets."[35]

Petitioners further hold that the remittance of NAPOCOR's revenues to PSALM violates EPIRA since Section 55 of EPIRA and Section ll(a)(i) of its Implementing Rules and Regulations mandate that only the net profits shall be owned

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[29] *Id*. at 1582.

[30] *Rollo* (G.R. No. 187420), pp. 449-450.

[31] *Rollo* (G.R. No. 187776), pp. 422-425.

[32] *Rollo* (G.R. No. 187420), pp. 385-386, PGEA-NPC Memorandum.

[33] *Id*. at 386.

[34] *Id*. at 387, PGEA-NPC Memorandum.

[35] *Id*. at 388, PGEA-NPC Memorandum.

by PSALM.[36] They estimate that since the implementation of the Operation and Maintenance Agreement, revenue of "₱104 Billion, more or less . . . ha[s] been illegally transferred"[37] to PSALM.

Petitioners likewise assert that EPIRA did not grant PSALM the power to control and supervise the internal operations of

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[36] *Id*. at 392-393, PGEA-NPC Memorandum. Rep. Act No. 9136, Section 55 provides:

Section 55. Property of the PSALM Corp. — The following funds, assets, contributions and other property shall constitute the property of the PSALM Corp.:

(a) The generation assets, real estate, IPP contracts, other disposable assets of NPC, proceeds from the sale or disposition of such assets and the residual assets from B-O-T, R-O-T, and other variations thereof

(b) Transfers from the National Government

(c) Proceeds from loans incurred to restructure or refinance NPC's transferred liabilities: Provided, however, That all borrowings shall be fully paid for by the end of the life of the PSALM Corp.;

(d) Proceeds from the universal charge allocated for stranded contract costs and the stranded debts of NPC

(e) Net profit of NPC

(f) Net profit of TRANSCO

(g) Official assistance, grants, and donations from external sources; and

(h) Other sources of funds as may be determined by PSALM Corp. necessary for the above-mentioned purposes.

IMPLEMENTING RULES AND REGULATIONS of Rep. Act No. 9136, part IV, Rule 21, Sec. 11 provides: Section 11. Property of PSALM. The following funds, assets, contributions and other properties shall constitute the property of the PSALM:

(a) The generation assets, real estate, IPP Contracts, other disposable assets of NPC, proceeds from the operation or disposition of such assets and the residual assets from BOT, ROT, and other variations thereof. The proceeds from the operation and disposition of NPC assets shall include:

(i) Net profit of NPC[.]

[37] *Rollo* (G.R. No. 187420), p. 395, PGEA-NPC Memorandum. This estimate is based on the allegation that NAPOCOR has 352 customers, with MERALCO remitting ₱2.5 billion monthly and other customers remitting ₱5.5 billion monthly.

NAPOCOR. Thus, they argue that the provision in the Operation and Maintenance Agreement requiring NAPOCOR to submit its proposed budget to PSALM violates EPIRA since NAPOCOR's Charter grants the NAPOCOR Board of Directors the authority to adopt a budget without prior approval from PSALM.[38]

The Office of the Solicitor General, on the other hand, argues that the Operation and Maintenance Agreement merely recognized PSALM's ownership of NAPOCOR's generation assets and facilities, consistent with the mandate of EPIRA. It argues that under Sections 49 and 55 of EPIRA, PSALM became the owner of NAPOCOR's generation assets, real estate, IPP contracts, other disposable assets, residual assets, and its net profits. It avers that generation assets include all proceeds from the *operation* or disposition of the assets.[39]

The Office of the Solicitor General explains that EPIRA limited NAPOCOR's functions by stripping it of its generation and transmission assets and transferring them to PSALM. It argues that since PSALM now owns these generation assets, PSALM has the right over the proceeds derived from its operations.[40]

The Office of the Solicitor General further contends that there is nothing in EPIRA that qualifies or limits PSALM's ownership of these assets. Thus, PSALM may operate generation assets directly or indirectly through NAPOCOR[41] under Rule 21, Section 5(q) of EPIRA's Implementing Rules and Regulations.[42] It argues that the opinion of Rep. Fuentebella should not be controlling since it is the judiciary, and not the legislative branch, that interprets the law.[43]

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[38] *Id*. at 395-396, PGEA-NPC Memorandum.

[39] *Id*. at 332, OSG Consolidated Memorandum. The Office of the Solicitor General submitted a Consolidated Memorandum for G.R. Nos. 187257, 187776, 187359, and 187420. The portions were separated by sub-headings.

[40] *Id*. at 333-334, OSG Consolidated Memorandum.

[41] *Id*. at 334-335, OSG Consolidated Memorandum.

[42] *Id*. at 337, OSG Consolidated Memorandum.

[43] *Id*. at 335-336, OSG Consolidated Memorandum.

The Office of the Solicitor General likewise maintains that petitioners are not entitled to injunctive relief since they are neither the real parties in interest nor have they shown that they will suffer a grave and irreparable injury with the implementation of the Operation and Management Agreement.[44]

Respondent PSALM submits that Section 78 of EPIRA refers to this Court's jurisdiction to enjoin or restrain the implementation of the provisions of EPIRA and not those of any operation and management agreements entered into by NAPOCOR and PSALM. It further argues that this Court's jurisdiction over questions of law is appellate, not original; therefore, petitioners should have first filed the petition before a Regional Trial Court.[45]

Respondent PSALM attests that since petitioners were not privy to the Operation and Management Agreement, they are not the real parties in interest who could assail its validity. It also points out that petitioners Raul M. Del Mundo and Jimmy D. Salman, PGEA-NPC's President and Vice President, respectively, have not been authorized to file this Petition.[46]

Respondent PSALM explains that EPIRA "stripped-off [NAPOCOR's] generation and transmission assets" and "defined [NAPOCOR's] limited functions and role in the restructured electricity industry."[47] It argues that any income derived from the sale of electricity is income derived from operation of the generating assets owned by PSALM; hence, NAPOCOR's revenue from these generating assets should be remitted to PSALM.[48]

Respondent PSALM reiterates the Office of the Solicitor General's argument that Rep. Fuentebella's opinion does not express legislative intent. It argues that legislative intent is

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[44] *Id*. at 340-341, OSG Consolidated Memorandum.

[45] *Id*. at 361, PSALM Memorandum.

[46] *Id*. at 362, PSALM Memorandum.

[47] *Id*. at 366, PSALM Memorandum.

[48] *Id*.

ascertained by the statute itself and its Implementing Rules and Regulations, which was crafted by the Department of Energy and approved by the Joint Congressional Power Commission.[49] Respondent PSALM clarifies that under Section 47(j) of EPIRA, it is "vested by law with the sole discretion to decide on how the generation assets are to be operated and who will operate them prior to privatization."[50] Additionally, the Implementing Rules and Regulations of EPIRA provide that "PSALM exercised its sole discretion by choosing [NAPOCOR] as operator of its remaining undisposed generating assets."[51]

Finally, respondent PSALM holds that contrary to petitioners' allegation, the Operation and Maintenance Agreement does not require NAPOCOR to submit its entire corporate budget for approval. It argues that NAPOCOR is required to submit only its budget proposal concerning the undisposed generation assets, IPP contracts, real estate, and all other disposable assets consistent with its exercise of ownership over these assets.[52]

From the arguments of the parties in their pleadings, the following are the issues for this Court's resolution:

First, whether petitioners may file a Petition for Injunction under Section 78 of EPIRA to question the validity of the Operation and Maintenance Agreement between respondents PSALM and NAPOCOR;

Second, whether petitioners may question the validity of the Operation and Maintenance Agreement despite not being one (1) of the contracting parties; and

Finally, whether the Operation and Maintenance Agreement violated the provisions of EPIRA when it mandated the remittance of NAPOCOR's revenues to PSALM and when it required NAPOCOR to submit its proposed budget to PSALM for approval.

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[49] *Id*. at 369-370, PSALM Memorandum.

[50] *Id*. at 369.

[51] *Id*. at 371, PSALM Memorandum.

[52] *Id*. at 373, PSALM Memorandum.

I

Petitioners allege that Operation and Maintenance Agreement entered into by PSALM and NAPOCOR contravenes the provisions of EPIRA.[53] Petitioners filed this Petition directly with this Court pursuant to Section 78 of EPIRA to enjoin the implementation of the Operation and Maintenance Agreement. Section 78 provides:

> SECTION 78. Injunction and Restraining Order. — The implementation of the provisions of this Act shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

This Court explained in *NPC Drivers and Mechanics Association v. National Power Corporation:*[54]

> The provision vests upon the Supreme Court the jurisdiction to restrain or enjoin the implementation of the provisions of the EPIRA. In other words, the Court exercises jurisdiction on all questions involving the enforcement of the provisions of the EPIRA.[55]

The Operation and Maintenance Agreement is a contract that preserves the implementation of EPIRA. Thus, it is covered by Section 78. Under this provision, no restraint or injunction whether permanent or temporary, could be issued by any court except by this Court.

However, in *Carpio-Morales v. Court of Appeals,*[56] this Court invalidated the second paragraph of Republic Act No. 6770, Section 14[57] for being unconstitutional. The assailed provision prohibited any court, except this Court, to enjoin investigations

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[53] *Rollo,* p. 4, Petition.

[54] 737 Phil. 210 (2014) [Per *J.* Brion, Special Third Division].

[55] *Id.* at 250-251.

[56] G.R. Nos. 217126-27, November 10, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/217126-27.pdf> [Per *J.* Perlas-Bernabe, *En Banc*].

[57] Rep. Act No. 6770, Sec. 14 provides:

of the Ombudsman.[58] This Court explained in *Carpio-Morales* that provisional remedies found in the Rules of Court are within this Court's constitutional prerogative to promulgate rules on pleading, practice, and procedure.

Under Rule 58 of the Rules of Court, all courts have the inherent power to issue temporary restraining orders or writs of preliminary injunction.[59] When Congress passes a law that prohibits other courts from exercising this power, it encroaches upon this Court's power to promulgate rules of procedure,[60] in violation of the separation of powers. Thus:

[W]hen Congress passed the first paragraph of Section 14, RA 6770 and, in so doing, took away from the courts their power to issue a

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Section 14. Restrictions. — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a *prima facie* evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

[58] G.R. Nos. 217126-27, November 10, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/217126-27.pdf> 69 [Per *J.* Perlas-Bernabe, *En Banc*].

[59] RULES OF COURT, Rule 58, Sec. 2 provides:

Section 2. Who may grant preliminary injunction. — A preliminary injunction may be granted by the court where the action or proceeding is pending. If the action or proceeding is pending in the Court of Appeals or in the Supreme Court, it may be issued by said court or any member thereof.

[60] CONST., Art. VIII, Sec. 5. The Supreme Court shall have the following powers:

. . . . . .

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[Temporary Restraining Order] and/or [Writ of Preliminary Injunction] to enjoin an investigation conducted by the Ombudsman, it encroached upon this Court's constitutional rule-making authority. Clearly, these issuances, which are, by nature, provisional reliefs and auxiliary writs created under the provisions of the Rules of Court, are matters of procedure which belong exclusively within the province of this Court. Rule 58 of the Rules of Court did not create, define, and regulate a right but merely prescribed the means of implementing an existing right since it only provided for temporary reliefs to preserve the applicant's right in *esse* which is threatened to be violated during the course of a pending litigation ...

. . . . . .

That Congress has been vested with the authority to define, prescribe, and apportion the jurisdiction of the various courts under Section 2, Article VIII *supra,* as well as to create statutory courts under Section 1, Article VIII *supra,* does not result in an abnegation of the Court's own power to promulgate rules of pleading, practice, and procedure under Section 5 (5), Article VIII *supra.* Albeit operatively interrelated, these powers are nonetheless institutionally separate and distinct, each to be preserved under its own sphere of authority. When Congress creates a court and delimits its jurisdiction, the procedure for which its jurisdiction is exercised is fixed by the Court through the rules it promulgates. The first paragraph of Section 14, RA 6770 is not a jurisdiction-vesting provision, as the Ombudsman misconceives, because it does not define, prescribe, and apportion the subject matter jurisdiction of courts to act on *certiorari* cases; the *certiorari* jurisdiction of courts, particularly the CA, stands under the relevant sections of BP 129 which were not shown to have been repealed. Instead, through this provision, Congress interfered with a provisional remedy that was created by this Court under its duly promulgated rules of procedure, which utility is both integral and inherent to every court's exercise of judicial power. Without the Court's consent to the proscription, as may be manifested by an adoption of the same as part of the rules of procedure through an administrative circular issued therefor, there thus, stands to be a violation of the separation of powers principle.[61]

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[61] *Carpio-Morales v. Court of Appeals,* G.R. Nos. 217126-27, November 10, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/217126-27.pdf> 42-44 (2015) [Per *J.* Perlas-Bernabe,

However, *Carpio-Morales* dealt only with temporary restraining orders, not permanent injunctions. The injunction contemplated in EPIRA is not a mere interlocutory action by a court but a permanent remedy. Thus, Section 78 of EPIRA can still apply to this case.

II

Petitioners, not being privy to the Operation and Maintenance Agreement, have no cause of action against respondents. They are not the real parties in interest to question its validity.

Provisional reliefs, such as a temporary restraining order or a writ of preliminary injunction, are ancillary writs issued by the court to protect the rights of a party during the pendency of the principal action. Rule 58, Section 3 of the Rules of Court provides:

SECTION 3. Grounds for issuance of preliminary injunction. – A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring 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.

To issue an injunctive writ, the applicant must establish his or her right sought to be protected. Petitioners allege that while they were not privy to the Operation and Maintenance Agreement,

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En Banc] citing *Primicias v. Ocampo,* 93 Phil. 446, 452 (1953) [Per *J.* Bautista Angelo, *En Banc*]; *Bustos v. Lucero,* 81 Phil. 640 (1948) [Per *J.* Tuason, *En Banc*]; and 36 C.J. 27; 52 C.J. S. 1026.

they will be affected by its implementation as NAPOCOR employees since they are "the ones engaged in the operations and maintenance of the unsold generation plants."[62]

The Petition, however, fails to show how NAPOCOR employees will be affected by the Operation and Maintenance Agreement's implementation. While a provision of this Agreement mentions the status of NAPOCOR's employees upon its implementation,[63] petitioners' arguments center on Articles XVI and XVII of this Agreement, which read:

> XVI. Budget
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> . . . . . .
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> Within fifteen (15) calendar days from the Effectivity of this Agreement, OPERATOR shall submit its 2009 budget to OWNER. Every 1st week of March thereafter, OPERATOR shall submit to OWNER for review and approval the O&M Budget for the succeeding year. Such O&M Budget as approved shall be included in OWNER'S proposed Annual Corporate Operating Budget (COB).
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> . . . . . .
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> XVII. Receipts; Funding and Disbursements
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> All payments for and proceeds from power invoices and charges, all of which whether in the form of cash, checks or bank deposits/transfers related to the maintenance and operation of the Plants, Other Assets and Other Facilities, including those from the IPPs (the "Revenues"), are properties of OWNER. The Revenues shall be billed by OPERATOR for the account of OWNER using forms prescribed by OWNER.
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> . . . . . .

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[62] *Rollo* (G.R. No. 187420), p. 212, PGEA-NPC Consolidated Reply.

[63] *Id.* at 41. IX. Employees.

> OWNER shall not be deemed to be the employer of OPERATOR'S employees rendering service to OPERATOR for purposes of this Agreement. Any and all claims arising from and as a consequence of the employment of such employees, including separation pay, monetary benefits and other claims for damages arising out of or as a consequence of employment with OPERATOR, shall be the responsibility of and for the sole account of OPERATOR.

The Revenues shall be collected and monitored by OWNER. The customers will directly pay through or remit to OWNER'S designated bank account/s . . .

The Revenues from the IPPs traded energy shall be billed, monitored and collected by OWNER.[64]

Petitioners have not shown how, as NAPOCOR employees, they will be affected by respondent NAPOCOR's submission of its budget for respondent PSALM's approval. If there was indeed an encroachment of the NAPOCOR Board of Directors' prerogative under its Charter to approve its own budget,[65] the Board of Directors would be the proper party to question the validity of Article XVI of the Operation and Maintenance Agreement.

Petitioners have likewise failed to show how they, as NAPOCOR employees, will be affected by the remittance of respondent NAPOCOR's revenues to respondent PSALM. None of them has alleged how the remittance would affect their wages, salaries, and benefits or their working conditions. Otherwise stated, petitioners have not claimed any right sought to be protected or any direct injury they will suffer if the revenues are remitted.

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[64] *Rollo,* pp. 43-44.

[65] *See* Rep. Act No. 6395 (1971), Sec. 6, par. 8(b) provides:

Section 6. The National Power Board; Its Composition; Compensation of Members; Qualifications; Powers and Duties....

The Board shall, moreover, have the following specific powers and duties:

. . . . . .

(b) To adopt an annual and supplemental budget of receipts and expenditures of the Corporation according to its requirements, which may include financial assistance of not more than ten thousand pesos each to municipalities which are the site of or contiguous to watersheds, lakes or natural sources of hydroelectric power being utilized by the Corporation, subject to the approval of the Office of Economic Coordination: Provided, That copies of the budgets of receipts and expenditures herein referred to shall be submitted to the Committee on National Enterprises and Government Corporations of the Senate and the Committee on Government Enterprises of the House of Representatives within fifteen (15) days from the transmission thereof to the Office of Economic Coordination[.]

Actions must be instituted by the real parties in interest. Otherwise, the action may be dismissed for lack of cause of action.[66] A real party in interest is defined under Rule 3, Section 2 of the Rules of Court as:

> Section 2. Parties in interest. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Petitioners have not established how they will benefit by enjoining the implementation of the Operation and Maintenance Agreement. They have not established the injury they will suffer if this Agreement is not enjoined. Thus, this Petition is dismissed for lack of cause of action.

III

Even if this Petition was resolved on its substantial merits, it would still be dismissed. The assailed provisions of the Operation and Maintenance Agreement do not contravene the provisions of EPIRA.

The rationale of EPIRA has already been discussed in *Freedom from Debt Coalition v. Energy Regulatory Commission*:[67]

> One of the landmark pieces of legislation enacted by Congress in recent years is the EPIRA. It established a new policy, legal structure and regulatory framework for the electric power industry.
>
> The new thrust is to tap private capital for the expansion and improvement of the industry as the large government debt and the highly capital-intensive character of the industry itself have long been acknowledged as the critical constraints to the program. To attract private investment, largely foreign, the jaded structure of

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[66] See *Sustiguer v. Tamayo,* 257 Phil. 588, 598 (1989) [Per *C.J.* Fernan, Third Division] citing I F. REGALADO, *REMEDIAL LAW COMPENDIUM*, 51, 154 (5th Revised Edition) and *Casimiro v. Roque,* 98 Phil. 880 (1956) [Per *J.* Montemayor, First Division]. Fn 24

[67] 476 Phil. 134 (2004) [Per *J.* Tinga, *En Banc*].

the industry had to be addressed. While the generation and transmission sectors were centralized and monopolistic, the distribution side was fragmented with over 130 utilities, mostly small and uneconomic. The pervasive flaws have caused a low utilization of existing generation capacity; extremely high and uncompetitive power rates; poor quality of service to consumers; dismal to forgettable performance of the government power sector; high system losses; and an inability to develop a clear strategy for overcoming these shortcomings.

Thus, the EPIRA provides a framework for the restructuring of the industry, including the privatization of the assets of the National Power Corporation (NPC), the transition to a competitive structure, and the delineation of the roles of various government agencies and the private entities. The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply. Corollarily, the NPC generating plants have to privatized and its transmission business spun off and privatized thereafter.[68] (Citations omitted)

PSALM was created as a government-owned and -controlled corporation to take ownership over all of NAPOCOR's assets and liabilities for the sole purpose of managing its sale, disposition, and privatization. PSALM would have a corporate life of 25 years, after which all assets and remaining liabilities would revert back to the national government. Thus, in Sections 49 and 50 of EPIRA:

SECTION 49. Creation of Power Sector Assets and Liabilities Management Corporation. – There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation", hereinafter referred to as the "PSALM Corp.", which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

SECTION 50. Purpose and Objective, Domicile and Term of Existence. – The principal purpose of the PSALM Corp. is to manage the orderly

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[68] *Id*. at 183-184 *citing* Rep. Act No. 9136.

sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

The PSALM Corp. shall have its principal office and place of business within Metro Manila.

The PSALM Corp. shall exist for a period of twenty five (25) years from the effectivity of this Act, unless otherwise provided by law, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government.

Under EPIRA, PSALM acts as the conservator of NAPOCOR's assets. Until NAPOCOR's assets could be sold or disposed of, PSALM operates and maintains NAPOCOR's assets and manages its liabilities in trust for the national government, thus:

SECTION 51. Powers. – The PSALM Corp. shall, in the performance of its functions and for the attainment of its objective, have the following powers:

. . . . . .

(b) To take title to and possession of, administer and conserve the assets transferred to it; to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations[.]

To this end, EPIRA provides that NAPOCOR may generate and sell electricity only from PSALM's undisposed generating assets and is not allowed to incur any new obligations, signifying that PSALM exercises complete ownership over all of NAPOCOR's generating assets:

SECTION 51. Powers. – The PSALM Corp. shall, in the performance of its functions and for the attainment of its objective, have the following powers:

. . . . . .

(j) NPC may generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM Corp. and shall not

incur any new obligations to purchase power through bilateral contracts with generation companies or other suppliers.

As a corporation operating a necessary public utility, NAPOCOR continues to function in the course of its privatization. Under EPIRA, PSALM was given ownership over the generating assets but was not granted functions to operate these assets. Thus, it entered into the Operation and Maintenance Agreement with NAPOCOR to ensure NAPOCOR's continued operations.

EPIRA likewise states which assets PSALM owns. Section 55 provides:

Section 55. Property of the PSALM Corp. — The following funds, assets, contributions and other property shall constitute the property of the PSALM Corp.:

(a) The generation assets, real estate, IPP contracts, other disposable assets of NPC, proceeds from the sale or disposition of such assets and the residual assets from B-O-T, R-O-T, and other variations thereof;

(b) Transfers from the National Government;

(c) Proceeds from loans incurred to restructure or refinance NPC's transferred liabilities: Provided, however, That all borrowings shall be fully paid for by the end of the life of the PSALM Corp.;

(d) Proceeds from the universal charge allocated for stranded contract costs and the stranded debts of NPC;

(e) Net profit of NPC;

(f) Net profit of TRANSCO;

(g) Official assistance, grants, and donations from external sources; and

(h) Other sources of funds as may be determined by PSALM Corp. necessary for the above-mentioned purposes.

Citing Section 55(e) of EPIRA, petitioners argue that PSALM was only given ownership of NAPOCOR's net profits,[69] and

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[69] IMPLEMENTING RULES AND REGULATIONS of Rep. Act No. 9136, Rule 6, Sec. 8(c) defines "net profits" as Net Profit = Total Utility Revenue – (Total Operating Expenses – Other Income + Interest & Other Charges).

not of its revenues. Petitioners further cite Rule 21, Section 11(a)(i) of EPIRA's Implementing Rules and Regulations to reinforce their argument that only net profits were transferred to PSALM.[70] For reference, Rule 21, Section 11(a)(i) states:

> Section 11. Property of PSALM. —
>
> The following funds, assets, contributions and other properties shall constitute the property of the PSALM:
>
> (a) The generation assets, real estate, IPP Contracts, other disposable assets of NPC, proceeds from the operation or disposition of such assets and the residual assets from BOT, ROT, and other variations thereof. The proceeds from the operation and disposition of NPC assets shall include:
>
> (i) Net profit of NPC [.]

Petitioners assail Article XVII of the Operation and Maintenance Agreement for contravening these provisions. Pertinent portions of Article XVII state:

> XVII. Receipts; Funding and Disbursements
>
> All payments for and proceeds from power invoices and charges, all of which whether in the form of cash, checks or bank deposits/transfers, related to the maintenance and operation of the Plants, Other Assets and Other Facilities, including those from the IPPs (the "Revenues"), are properties of OWNER. The Revenues shall be billed by OPERATOR for the account of OWNER using forms prescribed by OWNER.
>
> . . . . . .
>
> The Revenues shall be collected and monitored by OWNER. The customers will directly pay through or remit to OWNER'S designated bank account/s . . .
>
> The Revenues from the IPPs traded energy shall be billed, monitored and collected by OWNER.[71]

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[70] *Rollo,* pp. 392-393, PGEA-NPC Memorandum.

[71] *Id*. at 44.

This Court has previously stated that:

> EPIRA must not be read in separate parts [but] must be read in its entirety, because a statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot to be extracted from any single part thereof but from a general consideration of the statute as a whole.[72]

The enumeration of assets must be read together with the extent of PSALM's ownership over them. Section 49 of EPIRA provides that PSALM *"shall take ownership* of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets." This implies that PSALM exercises all the rights of an owner, albeit for a limited purpose: the conservation and liquidation of these assets.

Thus, in *NPC Drivers and Mechanics Association v. National Power Corporation,*[73] this Court confirmed that the intent and purpose of PSALM's creation was for it to privatize NAPOCOR. In order to achieve this purpose, EPIRA granted PSALM ownership over NAPOCOR's assets and liabilities for a limited period. Hence, respondent PSALM exercises all attributes of ownership over its assets during this limited period.

Among the attributes of ownership are that of the right to possess or enjoy *(jus utendi),* the right to the fruits *(jus fruendi),* the right to abuse or consume *(jus abutendi),* the right to dispose or alienate *(jus disponendi),* and the right to recover *(jus vindicandi)*.[74]

Under the law, respondent PSALM exercises all attributes of ownership over respondent NAPOCOR's generation assets, including the right to operate these assets if the operation prevents

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[72] *Freedom from Debt Coalition v. Energy Regulatory Commission,* 476 Phil. 134, 196 (2004) [Per *J.* Tinga, *En Banc*].

[73] 621 Phil. 376 (2009) [Per *J.* Chico-Nazario, Third Division].

[74] See *Hacienda Luisita v. Presidential Agrarian Reform Council,* 686 Phil. 377 (2012) [Per *J.* Velasco, Jr., *En Banc*] and *Samartino v. Raon,* 433 Phil. 173 (2002) [Per *J.* Ynares-Santiago, First Division].

its dissipation. PSALM was given a lifespan of 25 years, during which it would have ownership over all of NAPOCOR's generation assets. PSALM, thus, has right over all the fruits produced by the assets including its revenues.

Since PSALM is mandated to administer these generation assets, it has the correlative obligation to answer for the expenses of its operations. Whatever remains from the revenues would be NAPOCOR's net profits, over which PSALM has explicit ownership under the law.

Petitioners quote a letter written by one (1) of EPIRA's authors arguing that the law did not intend for respondent PSALM to exercise full ownership rights over respondent NAPOCOR's generation assets. The letter, in part, states:

> It is wrong for PSALM to assume that it has authority, as transferee of NPC assets and liabilities, to operate the undisposed generating assets and act as power generator. This is not the mandate the Congress gave them. The function of PSALM is limited and akin to that of a liquidator of NPC assets as stated in Section 50 of the EPIRA that the principal purpose of PSALM is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the end in view of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.[75]

Petitioners are reminded that this statement is a mere expression of an opinion by a representative of Congress. It does not reflect the intent of both the House of Representatives and the Senate, the chambers that actually passed the bill into law. Thus, in *Legaspi v. Executive Secretary:*[76]

> And as to the opinions expressed by Senator Salvador Laurel and Congressman Emilio Espinosa on the alleged intention of Congress in enacting Republic Act 6389, all that can be said is that individual statements made by Senators on the floor of the Senate do not

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[75] *Rollo,* p. 54.

[76] 160-A Phil. 905 (1975) [Per *J.* Martin, First Division].

necessarily reflect the view of the Senate; much less do they indicate the intent of the House of Representatives.[77]

In the interpretation of laws, courts must ascertain the legislative intent and give it effect.[78] Legislative intent is determined from the law itself, where each and every provision is considered in light of the purpose to which it was enacted.[79] The interpretation of laws is inherently a judicial function, such that this Court's application and interpretation of laws becomes part of the law of the land.[80] Thus, a legislator's opinion, be it stated in a letter or expressed during the deliberations of a bill, is not binding on courts.[81]

The submission for approval of respondent NAPOCOR's Operation and Maintenance Budget likewise does not violate respondent NAPOCOR's Charter.

Petitioners assail Article XVI of the Operation and Maintenance Agreement, which reads:

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[77] *Id*. at 913 citing *Resins, Inc. vs. Auditor General,* 134 Phil. 697 (1968) [Per *J.* Fernando, *En Banc*]; *Casco Philippine Chemical Co., Inc. vs. Gimenez,* 117 Phil. 363 (1963) [Per *J.* Concepcion, *En Banc*]; *Song Kiat Chocolate Factory vs. Central Bank,* 102 Phil. 477 (1957) [Per *J.* Bengzon, *En Banc*]; *Mayon Motors, Inc. vs. Acting Commissioner of Internal Revenue,* 111 Phil. 524 (1961) [Per *J.* Bautista Angelo, *En Banc*]; and *Philippine Association of Government Retirees, Inc. vs. GSIS,* 121 Phil. 1402 (1965) [Per *J.* Concepcion, *En Banc*].

[78] See *Macondray & Co. v. Eustaquio,* 64 Phil. 446 (1937) [Per *J.* Imperial, First Division]; *U. S. vs. Toribio,* 15 Phil. 85 (1910) [Per *J.* Carson, First Division]; *U. S. vs. Navarro,* 19 Phil. 134 (1911) [Per *J.* Carson, *En Banc*]; *De Jesus vs. City of Manila,* 29 Phil. 73 (1914) [Per *J.* Moreland, First Division]; *Borromeo vs. Mariano,* 41 Phil. 322 (1921) [Per *J.* Malcolm, *En Banc*]; and *People vs. Concepcion,* 44 Phil. 126 (1922) [Per *J.* Malcolm, *En Banc*].

[79] *Mangila v. Lantin,* 140 Phil. 471, 475 (1969) [Per *J.* Sanchez, *En Banc*] citing *Republic vs. Reyes,* 123 Phil. 1035 (1966) [Per *J.* Sanchez, *En Banc*] and Crawford, *Interpretation of Laws*, pp. 260-261.

[80] CIVIL CODE, Art. 8.

[81] *Song Kiat Chocolate Factory vs. Central Bank,* 102 Phil. 477, 480-481(1957) [Per *J.* Bengzon, *En Banc*].

XVI. Budget

. . . . . .

Within fifteen (15) calendar days from the Effectivity of this Agreement, OPERATOR shall submit its 2009 budget to OWNER. Every 1st week of March thereafter, OPERATOR shall submit to OWNER for review and approval the O&M Budget for the succeeding year. Such O&M Budget as approved shall be included in OWNER'S proposed Annual Corporate Operating Budget (COB).[82]

Under its Charter, respondent NAPOCOR's Board of Directors has the power to formulate and adopt a Corporate Operating Budget.[83] The assailed provision does not transfer the power to adopt a Corporate Operating Budget to PSALM. It merely mandates that its Operation and Maintenance Budget be included in the Corporate Operating Budget. Respondent PSALM's approval of the Operation and Maintenance Budget is within its authority to operate and administer respondent NAPOCOR's generation assets.

The Petition is not only procedurally infirm; it also failed to substantiate how the implementation of the assailed Operation

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[82] *Rollo,* pp. 43-44.

[83] *See* Rep. Act No. 6395 (1971), Sec. 6, par. 8 (b). Provides:

Section 6

. . . . . .

The Board shall, moreover, have the following specific powers and duties:

. . . . . .

(b) To adopt an annual and supplemental budget of receipts and expenditures of the Corporation according to its requirements, which may include financial assistance of not more than ten thousand pesos each to municipalities which are the site of or contiguous to watersheds, lakes or natural sources of hydroelectric power being utilized by the Corporation, subject to the approval of the Office of Economic Coordination: Provided, That copies of the budgets of receipts and expenditures herein referred to shall be submitted to the Committee on National Enterprises and Government Coiporations of the Senate and the Committee on Government Enterprises of the House of Representatives within fifteen (15) days from the transmission thereof to the Office of Economic Coordination[.]

and Maintenance Agreement between respondents contravenes respondent PSALM's mandate under EPIRA.

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

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 188027. August 9, 2017]

SWIRE REALTY DEVELOPMENT CORPORATION, *petitioner, vs.* **SPECIALTY CONTRACTS GENERAL AND CONSTRUCTION SERVICES, INC. and JOSE JAVELLANA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR REVIEW ON *CERTIORARI*; EXCEPTIONS; PRESENT IN CASE AT BAR.— Under the Rules of Court, only questions of law should be raised in a petition for review on *certiorari*. However, the rule admits of exceptions as recognized by the Court in the case of *Medina v. Mayor Asistio, Jr.*, namely (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures x x x; (2) When the inference made is manifestly mistaken, absurd or impossible x x x; (3) Where there is a grave abuse of discretion x x x; (4) When the judgment is based on a misapprehension of facts x x x; (5) When the findings of fact are conflicting x x x; (6) When the [CA], in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee x x x; (7) The findings of the [CA] are contrary to those of the trial court x x x; (8) When the

findings of fact are conclusions without citation of specific evidence on which they are based x x x; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents x x x; and (10) The finding of fact of the [CA] is premised on the supposed absence of evidence and is contradicted by the evidence on record x x x. In the instant controversy, a number of the foregoing exceptions obtain. Among these, the factual findings of the CA and the RTC vary as to whether the waterproofing of the swimming pool constitutes additional work, and since the conclusion of the CA in this regard is based on a misapprehension of facts, the Court can therefore pass upon and review the same in resolving this petition.

2. **CIVIL LAW; DAMAGES; LIQUIDATED DAMAGES; THE COURT MAY REDUCE THE EXORBITANT PENALTY; CASE AT BAR.—** Pursuant to settled jurisprudence and Article 1229, in relation to Article 2227, of the New Civil Code, the Court deems it proper to reduce the penalty involved. The respondents are obligated under the Agreement to complete the waterproofing works on April 6, 1997, but failed. The remaining work to be done had to be performed by Esicor, who accomplished the same on April 5, 1998. In light of these, the respondents are then liable for delay for a period of 365 days, which corresponds to the amount of Php 3,650,000.00 as penalty under the Agreement. Without doubt, taking into consideration that the respondents have completed 90% of the project and the absence of any showing of bad faith on their part, as well as the fact that the waterproofing works have already been completed at the respondents' expense, the amount of Php 3,650,000.00 as penalty is exorbitant under the premises. Therefore, the Court reduces the same and imposes the amount of Php 200,000.00 as liquidated damages, by way of penalty.

3. **ID.; ID.; ATTORNEY'S FEES; THE AWARD OF ATTORNEY'S FEES MUST BE DELETED BECAUSE OF INSUFFICIENT FACTUAL BASIS TO JUSTIFY THE AWARD.—** [O]n the matter of attorney's fees, the Court finds no basis for the award. In *Philippine National Construction Corporation (PNCC) v. APAC Marketing Corporation*, the Court ruled that: We have consistently held that an award of attorney's fees under Article 2208 demands factual, legal, and equitable justification to avoid speculation and conjecture surrounding the grant thereof. Due to the special nature of the award of attorney's fees, a rigid

standard is imposed on the courts before these fees could be granted. Hence, it is imperative that they clearly and distinctly set forth in their decisions the basis for the award thereof. x x x In the same case, the Court ruled that a mere statement that a party was forced to litigate to protect his or her interest, without further elaboration, is insufficient to justify the grant of attorney's fees. x x x Clearly, based on the guidance offered by *PNCC*, the same is insufficient and wanting of sufficient factual basis to justify the award of attorney's fees. The award of attorney's fees of the RTC must therefore be deleted.

APPEARANCES OF COUNSEL

Cortina & Buted Law Offices for petitioner.
The Law Firm of Donato T. Faylona for respondents.

D E C I S I O N

REYES, JR., *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 February 24, 2009 and Resolution[3] dated May 25, 2009 issued by the Court of Appeals (CA) in CA-G.R. CV No. 84706.

The controversy arose from a Complaint for Sum of Money and Damages filed by Swire Realty Development Corporation (petitioner) against Specialty Contracts General and Construction Services, Inc., represented by its President and General Manager Jose Javellana, Jr. (the respondents).

The Complaint alleges breach of an Agreement to Undertake Waterproofing Works[4] (the Agreement) entered into on December

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[1] *Rollo*, pp. 14-58.

[2] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Estela M. Perlas-Bernabe (now a Member of this Court) and Marlene Gonzales-Sison, concurring; *id*. at 62-68.

[3] *Id*. at 70.

[4] *Id*. at 104-111.

27, 1996 by the petitioner and the respondents. By virtue of this, the respondents undertook to perform waterproofing works on the petitioner's condominium project known as the Garden View Tower for the amount of Php 2,000,000.00 over a period of 100 calendar days from the execution of the Agreement or until April 6, 1997. The amount agreed upon is to be paid to the respondents as follows: 20% as down payment, and the balance of 80% payable through monthly progress billings based on accomplished work, subject to a 10% retention fee and 1% withholding tax. The Agreement likewise provided that the parties are liable for penalty in case of delay in the performance of their respective obligations and that retention fee shall be released to the respondents within 90 days from turnover and acceptance by the petitioner of the completed work.

After due proceedings, the Regional Trial Court (RTC) of Quezon City, Branch 224, on July 9, 2004, rendered its Decision,[5] *viz.*:

> WHEREFORE, judgment is hereby rendered ordering [the respondents] to pay [the petitioner] the following:
>
> 1.) ₱400,000.00 representing actual damages moneys advanced by defendant Specserve without completion of waterproofing works;
> 2.) ₱124,931.40 representing the contract price paid by [the petitioner] to Esicor for the unfinished works of Specserve;
> 3.) ₱100,000.00 as attorney's fees.
>
> SO ORDERED.[6]

The respondents filed a motion for reconsideration of the RTC decision, which the RTC denied in its Order[7] dated October 25, 2004.

The matter was elevated to the CA. Finding proof that additional works were performed by the respondents, the CA in its Decision dated February 24, 2009, reversed and set aside the RTC's decision, in this wise:

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[5] Rendered by Pairing Judge Ramon A. Cruz; *id*. at 72-78.

[6] *Id*. at 78.

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

IN VIEW OF THE FOREGOING, the decision appealed from is reversed, and a new one entered directing the [petitioner] to pay the defendant Specserv the amount of ₱157,702.06 with legal interest of six (6) percent per annum form October 10, 1997 until paid.[8] (Citation omitted)

In so ruling, the CA computed the outstanding liabilities in this manner:

Original project cost		₱2,000,000.00
Accomplishment rate		90%
		₱1,800,000.00
Additional works		57,702.06
		₱1,857,702.06
Less: Advances by Swire	₱400,000.00	
Paid Billings (inclusive of withholding tax)	1,260,000	
		1,660,000.00
Balance due Specserv for a 90% accomplishment rate		197,702.06
Less: Penalty claim by Swire for failure of Specserv to execute the remaining 10%		40,000.00
Balance due Specserv		₱157,702.06[9]

The petitioner sought a reconsideration of the CA decision, but it was denied by the CA in its Resolution[10] dated May 25, 2009.

In support of this petition for review on *certiorari*, the petitioner alleges the following grounds:

I.

THE CA GRAVELY MISAPPRECIATED THE FACTS WHEN IT RULED THAT THE RESPONDENTS' PURPORTED "ADDITIONAL WORKS" WERE NOT INCLUDED IN THE SCOPE OF WORKS UNDER THE PARTIES' AGREEMENT DESPITE THE PRESENCE OF CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY;

II.

THE CA COMPLETELY IGNORED AND DISREGARDED THE ESTABLISHED EVIDENCE OF ACTUAL DAMAGES WHICH THE

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

[9] *Id*. at 67.

[10] *Id*. at 70.

PETITIONER HAD SUFFERED ON ACCOUNT OF THE RESPONDENTS' BREACH OF THEIR CONTRACTUAL UNDERTAKING AND IN DISCOUNTING THE CLEAR AND EXPRESS PROVISIONS OF THE PARTIES' AGREEMENT IN DETERMINING AND CONSIDERING SUCH DAMAGES; and

III.

THE FINDINGS OF THE TRIAL COURT, WHICH IS IN A BETTER POSITION TO EVALUATE THE PARTIES' RESPECTIVE EVIDENCE AND TESTIMONIES, ARE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE, AND ARE THEREFORE DEEMED FINAL AND CONCLUSIVE.[11]

For their part, the respondents aver that the Court cannot review the findings of fact rendered by the CA especially since they are supported by the evidence on record. Thus, they submit that the petition must be dismissed outright.

The resolution of the instant case hinges on two issues. First, whether the Court in this petition for review on *certiorari* can review the findings of fact rendered by the CA, and if in the affirmative, whether the waterproofing of the swimming pool constitutes additional works for which the respondents must be compensated.

Ruling of the Court

The petition is meritorious.

Under the Rules of Court, only questions of law should be raised in a petition for review on *certiorari.* However, the rule admits of exceptions as recognized by the Court in the case of *Medina v. Mayor Asistio, Jr.,*[12] namely:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures x x x; (2) When the inference made is manifestly mistaken, absurd or impossible x x x; (3) Where there is a grave abuse of discretion x x x; (4) When the judgment is based on a misapprehension of facts x x x; (5) When the findings

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

[12] 269 Phil. 225 (1990).

of fact are conflicting x x x; (6) When the [CA], in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee x x x; (7) The findings of the [CA] are contrary to those of the trial court x x x; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based x x x; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents x x x; and (10) The finding of fact of the [CA] is premised on the supposed absence of evidence and is contradicted by the evidence on record x x x.[13] (Citations omitted)

In the instant controversy, a number of the foregoing exceptions obtain. Among these, the factual findings of the CA and the RTC vary as to whether the waterproofing of the swimming pool constitutes additional work, and since the conclusion of the CA in this regard is based on a misapprehension of facts, the Court can therefore pass upon and review the same in resolving this petition.[14]

The CA, in concluding that additional works were performed, relied on the testimony during trial that instructions were given to the respondent to waterproof the pool again as a result of its change in depth.[15] The CA then made reference to the *Site Instruction Form*[16] issued by the person in charge of the project Hector Gallegos as to the extent and scope of the works accomplished.[17]

The Court does not agree with the foregoing findings of the CA. A plain reading of the Agreement reveals that the works performed and accomplished are included in the Scope of Works therein agreed upon.

As correctly pointed out by the petitioner, a mere statement in the Site Information Form that *"2nd waterproofing after*

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[13] *Id*. at 232.

[14] See *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189.

[15] *Rollo*, p. 66.

[16] *Id*. at 168.

[17] *Id*. at 66.

lightweight concrete topping"[18] should be done on the swimming pool, does not automatically mean that the same constitutes additional work. In the absence of evidence to the contrary, it is implied that such work is deemed included in the enumeration of the Swimming Pool as a covered area in the Agreement. Article I enumerates the scope of works and covered area under the Agreement, *to wit*:

ARTICLE I
SCOPE OF WORKS

1.1 The **CONTRACTOR** hereby agree[s] to perform for the **OWNER** the following scope of works for the Waterproofing requirements of the PROJECT:

a. Supply of materials, tools and equipment, labor and supervision for the satisfactory completion of the Proj[e]ct.

b. Surface preparation by removal of dust, dirt, loose cement particles and other foreign material including acid etching.

c. Cleaning/floodtesting.

d. The covered [area] under this Agreement are as follows:

Level	Area Description	Approx. Area in (sq.m.)	System
x x x	x x x		x x x
Ground Floor	Entire Ground Floor	1087.88	Xypex
	Driveway above B-01	374.46	Xypex
	Ramps Down to B-01	215.00	Xypex
	Lagoon	112.70	Xypex
	Swimming Pool	**234.20**	**Xypex**
	Shower/Sauna/Filter Rm.	32.37	Xypex
	Slop Sink	0.76	Xypex
x x x	x x x		x x x

Note: The agreed price for the abovementioned covered area for Xypex is ₱246.776 per sq.m. and for Epoxy is ₱607.456 per sq.m.[19] (Emphasis Ours)

[18] *Id*. at 168.

[19] *Id*. at 105.

By entering into the Agreement and signifying their acceptance thereto, it is understood therefore that the respondents undertook to perform all works necessary to accomplish the waterproofing requirements in the entire 234.20 square meters of the swimming pool.

Had the respondent really believed the same to be an additional work to be performed, it should have, prior to performing the same, raised the matter with the petitioner and sought the implementation of Article VII of the Agreement which provides:

ARTICLE VII
CHANGE ORDERS

7.1 If the **OWNER** shall, upon written notice to the **CONTRACTOR**, order change or deviation from the plan or specification either by omitting or adding works, the corresponding charges for deductive works shall be based on the unit cost abovementioned. However, the unit prices for additive works shall be subject to further agreement between the **OWNER** and the **CONTRACTOR**.[20]

As to the other factual matters, there being no inconsistency between the findings of the RTC and the CA, the Court sees no reason to disturb the same, especially since they are supported by the evidence on record.

Therefore, the Court adopts the following facts which are affirmed by both the RTC and the CA:

a) the extent of work accomplished by the respondents is only at 90% and that despite demand they failed to deploy their workers, until the 100-day period for the works to finish has already expired;[21]

b) the respondents' allegation that they refused to continue with the works because the sum pit area was not free

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[20] *Id*. at 107.

[21] *Id*. at 67, 75.

from debris has not been substantiated[22] and, thus, cannot justify their non-performance nor absolve them from liability for damages; and

c) there is no basis for the respondents' claim for short payments considering that the records are replete with evidence establishing that all progressive billings are accepted by them; and that the alleged short payments are adjustments made by the petitioner to conform to the actual extent of the work accomplished.[23]

Evident from the foregoing facts, there being a clear breach of contract on the part of the respondents when they failed to fully comply with their obligation under the contract, having accomplished only 90% of the waterproofing works within the time agreed upon, and failing to perform the necessary repairs, they are liable for damages and are bound to refund the excess in payment made by the petitioner.

In determining whether refund is due to the petitioner, corresponding deductions on the contract price taking into consideration the extent of the respondents' project completion, taxes, charges, and fees would have to be taken into account. On this score, the Court agrees with the RTC, to wit:

> Moreover, the claim for "short payments" did not account for the reductions made in the 1% withholding tax and 10% retention fee. Simple mathematics would reveal that due to the unfinished work of 10% a corresponding 10% of the contract price or ₱200,000.00 is not payable to [the respondents]. Added to this is the 10% retention fee for another ₱200,000.00, and withholding tax for ₱20,000.00. All in all, the allowable deduction is at least ₱420,000.00 at the time that [the respondents] demanded payment of ₱378,237.82 in alleged "short payments."[24]

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[22] *Id*. at 75-76.

[23] *Id*. at 76.

[24] *Id*.

Curiously enough, despite such clear computation, the RTC merely awarded the amount of Php 400,000.00. The Court therefore modifies the same and accordingly orders the respondents to pay the petitioner the amount of Php 420,000.00, which shall take the form of actual damages.

Likewise, the respondents are liable for the costs incurred by the petitioner in hiring the services of Esicor to complete their unfinished work, amounting to Php 124,931.40, in consonance with Article 1167 of the New Civil Code, which provides:

> Article 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.
>
> This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

With respect to the penalty, the CA[25] and the RTC[26] both recognized that under the attendant circumstances, the petitioner is entitled to damages on account of the respondents' delay in the performance of their obligation. The amount of penalty is governed by Article V of the Agreement, which provides:

> **ARTICLE V**
> **TIME OF COMPLETION**
>
> 5.1 It is agreed that time is of the essence and therefore the **CONTRACTOR** shall not unjustly delay the completion of the **PROJECT** by delaying the performance of their contracted work. In case the **CONTRACTOR** fails to finish their undertakings within **100 calendar days** from date of the signing of this Agreement, the **CONTRACTOR** shall be liable to pay a penalty of ₱10,000.00 per day of delay incurred unless such delay is excused due to the fault of the **OWNER** or by fortuitous events or force majeure.[27]

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[25] *Id*. at 67.

[26] *Id*. at 77.

[27] *Id*. at 153-154.

Pursuant to settled jurisprudence and Article 1229,[28] in relation to Article 2227,[29] of the New Civil Code, the Court deems it proper to reduce the penalty involved.[30]

The respondents are obligated under the Agreement to complete the waterproofing works on April 6, 1997, but failed. The remaining work to be done had to be performed by Esicor, who accomplished the same on April 5, 1998.[31] In light of these, the respondents are then liable for delay for a period of 365 days, which corresponds to the amount of Php 3,650,000.00 as penalty under the Agreement. Without doubt, taking into consideration that the respondents have completed 90% of the project and the absence of any showing of bad faith on their part,[32] as well as the fact that the waterproofing works have already been completed at the respondents' expense, the amount of Php 3,650,000.00 as penalty is exorbitant under the premises. Therefore, the Court reduces the same and imposes the amount of Php 200,000.00 as liquidated damages, by way of penalty.

Finally, on the matter of attorney's fees, the Court finds no basis for the award. In *Philippine National Construction Corporation (PNCC) v. APAC Marketing Corporation,*[33] the Court ruled that:

We have consistently held that an award of attorney's fees under Article 2208 demands factual, legal, and equitable justification to

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[28] Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

[29] Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

[30] *MCMP Construction Corp. v. Monark Equipment Corporation*, 746 Phil. 383, 391-393 (2014); *Apo Fruits Corporation, et al. v. CA, et al.*, 622 Phil. 215 (2009); *Filinvest Land, Inc. v. CA*, 507 Phil. 259 (2005).

[31] *Rollo*, p. 143.

[32] *Cf. Urban Consolidated Constructors Philippines, Inc. v. The Insular Life Assurance Co., Inc.*, 614 Phil. 95, 106 (2009).

[33] 710 Phil. 389 (2013).

avoid speculation and conjecture surrounding the grant thereof. Due to the special nature of the award of attorney's fees, a rigid standard is imposed on the courts before these fees could be granted. Hence, it is imperative that they clearly and distinctly set forth in their decisions the basis for the award thereof. It is not enough that they merely state the amount of the grant in the dispositive portion of their decisions. It bears reiteration that the award of attorney's fees is an exception rather than the general rule; thus, there must be compelling legal reason to bring the case within the exceptions provided under Article 2208 of the Civil Code to justify the award.[34] (Citations omitted)

In the same case, the Court ruled that a mere statement that a party was forced to litigate to protect his or her interest, without further elaboration, is insufficient to justify the grant of attorney's fees. In this case, the RTC in awarding attorney's fees merely stated:

Finally, since it is clear that the [petitioner] was constrained to litigate the instant case through its retained counsel, an award of ₱100,00.00 as attorney's fees is reasonable under the circumstances. Article 2208 of the Civil Code states:

> 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
>
> 11. in any other case where the Court deems it just and equitable that attorney's fees and expenses of litigation must be recovered.
>
> x x x x x x x x x

Clearly, based on the guidance offered by *PNCC*,[35] the same is insufficient and wanting of sufficient factual basis to justify the award of attorney's fees. The award of attorney's fees of the RTC must therefore be deleted.

WHEREFORE, in view of the foregoing disquisitions, the petition for review on *certiorari* is hereby **GRANTED.** The

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[34] *Id*. at 396.

[35] *Supra* note 33.

Decision dated February 24, 2009 and Resolution dated May 25, 2009 issued by the Court of Appeals in CA-G.R. CV No. 84706 are **REVERSED and SET ASIDE**.

Respondents Specialty Contracts General and Construction Services, Inc. and Jose Javellana are hereby ordered to pay petitioner Swire Realty Development Corporation the amount of Php 420,000.00 as actual damages, Php 129,931.40 representing the contract price paid by the Petitioner to Esicor, and Php 200,000.00, as penalty or liquidated damages.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189526. August 9, 2017]

FGU INSURANCE CORPORATION, *petitioner, vs.* **SPOUSES FLORO ROXAS AND EUFEMIA ROXAS,** *respondents.*

[G.R. No. 189656. August 9, 2017]

SPOUSES FLORO ROXAS AND EUFEMIA ROXAS, *petitioners, vs.* **ROSENDO P. DOMINGUEZ, JR., PHILIPPINE TRUST COMPANY, AND FGU INSURANCE CORPORATION,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; INSURANCE; PRESIDENTIAL DECREE NO. 612 (INSURANCE CODE); CONTRACT OF SURETYSHIP; DEFINED; A PERFORMANCE BOND IS

A KIND OF SURETYSHIP AGREEMENT.— Under Section 175 of Presidential Decree No. 612 or the Insurance Code, a contract of suretyship is defined as an agreement where "a party called the surety guarantees the performance by another party called the principal or obligor of an obligation or undertaking in favor of a third party called the obligee." A performance bond is a kind of suretyship agreement. It is "designed to afford the project owner security that the . . . contractor, will faithfully comply with the requirements of the contract . . . and make good [on the] damages sustained by the project owner in case of the contractor's failure to so perform."

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; GUARANTY; SOLIDARY NATURE OF LIABILITY OF SURETY; THE SURETY IS DIRECTLY AND EQUALLY BOUND WITH THE PRINCIPAL; CASE AT BAR.— A surety's liability is joint and several with the principal. "Article 2047 of the Civil Code provides that suretyship arises upon the **solidary** binding of a person deemed the surety with the principal debtor for the purpose of fulfilling an obligation." Although the surety's obligation is merely secondary or collateral to the obligation contracted by the principal, this Court has nevertheless characterized the surety's liability to the creditor of the principal as "direct, primary, and absolute[;] [i]n other words, the surety is directly and equally bound with the principal." Moreover, Article 1216 in relation to Article 2047 of the Civil Code provides: The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. Pursuant to the foregoing provisions, FGU, as surety, may be sued by the creditor separately or together with Dominguez as principal, in view of the solidary nature of its liability.

3. MERCANTILE LAW; INSURANCE; PRESIDENTIAL DECREEE NO. 612 (INSURANCE CODE); CONTRACT OF SURETYSHIP; PROVISIONS IN SURETYSHIP AGREEMENT ARE INTERPRETED LIBERALLY IN FAVOR OF THE INSURED AND STRICTLY AGAINST THE INSURER; CASE AT BAR.— Liability under a surety bond is "limited to the amount of the bond" and is determined strictly in accordance with the particular terms and conditions

set out in this bond. It is, thus, necessary to look into the actual terms of the peformance bond. x x x FGU's contention that the ₱450,000.00 face amount simply indicates its maximum potential liability and that it should only be liable for actual damages or the cost overrun as a result, of the non-completion of the project is untenable. The terms of the bond were clear; hence, the literal meaning of its stipulation should control. The specific condition in the FGU Surety Bond did not clearly state the limitation of FGU's liability. From the terms of this bond, FGU guaranteed to pay the amount of ₱450,000.00 in the event of Dominguez's breach of his contractual undertaking. Hence, FGU was bound to pay the stipulated indemnity upon proof of Dominguez's default without the necessity of proof on the measure of damages caused by the breach. A stipulation not contrary to law, morals, or public order is binding upon the obligor. If FGU's intention was to limit its liability to the cost overrun or additional cost to the Spouses Roxas to complete the project up to the extent of ₱450,000.00, then it should have included in the Surety Bond specific words indicating this intention. Its failure to do so must be construed against it. A suretyship agreement is a contract of adhesion ordinarily prepared by the surety or insurance company. Therefore, its provisions are interpreted liberally in favor of the insured and strictly against the insurer who, as the drafter of the bond, had the opportunity to state plainly the terms of its obligation. It was undisputed that Dominguez failed to finish the construction work within the agreed time frame, triggering FGU's liability under the Surety Bond. Dominguez's breach of the Contract of Building Construction gave the Spouses Roxas and/or Philtrust Bank the immediate right to pursue FGU on the surety bond. Thus, FGU is duty-bound to perform what it has guaranteed—to pay ₱450,000.00 upon notice of Dominguez's default.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; GUARANTY; RIGHT TO INDEMNIFICATION OF A SURETY; THE SURETY WHO PAYS THE CREDITOR HAS THE RIGHT TO RECOVER THE FULL AMOUNT PAID FROM THE PRINCIPAL DEBTOR; EXPLAINED.— FGU, on the other hand, has the right to be indemnified for any payments made, both under the law and the indemnity agreement. In *Escaño v. Ortigas, Jr.,* this Court explained this right to full reimbursement by a surety: [E]ven as the surety is solidarity bound with the principal debtor to the creditor, the

surety who does pay the creditor has the right to recover the full amount paid, and not just any proportional share, from the principal debtor or debtors. Such right to full reimbursement falls within the other rights, actions and benefits which pertain to the surety by reason of the subsidiary obligation assumed by the surety. What is the source of this right to full reimbursement by the surety? We find the right under Article 2066 of the Civil Code, which assures that "[t]he guarantor who pays for a debtor must be indemnified by the latter," such indemnity comprising of, among others, "the total amount of the debt." Further, Article 2067 of the Civil Code likewise establishes that "[t]he guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor." Articles 2066 and 2067 explicitly pertain to guarantors, and one might argue that the provisions should not extend to sureties, especially in light of the qualifier in Article 2047 that the provisions on joint and several obligations should apply to sureties. We reject that argument, and instead adopt Dr. Tolentino's observation that "[t]he reference in the second paragraph of [Article 2047] to the provisions of Section 4, Chapter 3, Title I, Book IV, on solidary or several obligations, however, does not mean that suretyship is withdrawn from the applicable provisions governing guaranty." For if that were not the implication, there would be no material difference between the surety as defined under Article 2047 and the joint and several debtors, for both classes of obligors would be governed by exactly the same rules and limitations. Accordingly, the rights to indemnification and subrogation as established and granted to the guarantor by Articles 2066 and 2067 extend as well to sureties as defined under Article 2047.

5. ID.; ID.; "COMPLEMENTARY-CONTRACTS-CONSTRUED-TOGETHER"; DOCTRINE; MANDATES THAT THE STIPULATIONS, TERMS, AND CONDITIONS OF BOTH THE PRINCIPAL AND ACCESSORY CONTRACTS MUST BE CONSTRUED TOGETHER IN ORDER TO ARRIVE AT THE TRUE INTENTION OF PARTIES; CASE AT BAR.— Consequently, FGU is bound to pay the Spouses Roxas and Philtrust Bank as solidary creditors and not joint creditors.

6. ID.; DAMAGES; LIQUIDATED DAMAGES; A CLAUSE THEREON IS NORMALLY ADDED TO CONSTRUCTION CONTRACTS NOT ONLY TO PROVIDE INDEMNITY

FOR DAMAGES BUT ALSO TO ENSURE PERFORMANCE OF THE CONTACTOR BY THE THREAT OF GREATER RESPONSIBILITY IN THE EVENT OF BREACH; CASE AT BAR.— A clause on liquidated damages is normally added to construction contracts not only to provide indemnity for damages but also to ensure performance of the contractor "by the threat of greater responsibility in the event of breach." In *Philippine Economic Zone Authority v. Pilhino Sales Corp.*,this Court said: 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: Liquidated damages are those that the parties agree to be paid in case of a breach. As worded, the amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project. Under Philippine laws, these damages take the nature of penalties. A penal clause is an accessory undertaking to assume greater liability in case of a breach. It is attached to an obligation in order to ensure performance.

7. **REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF THE TRIAL COURT WHEN AFFIRMED BY THE COURT OF APPEALS ARE GENERALLY BINDING ON THE SUPREME COURT; CASE AT BAR.—** The Spouses Roxas ask this Court to review the records of the case and re-examine the evidence presented before the trial court. They contend that there was no factual basis for ordering them to pay Dominguez the sums of ₱90,000.00 and ₱73,136.75 with interests. FGU counters that the liability of the Spouses Roxas to pay Dominguez these amounts were sufficiently proven by the Agreement dated May 24, 1979, the checks and cash vouchers evidencing the loan, and the testimony and admissions of Eufemia. The foregoing amounts, together with accrued interest, should be set off against FGU's liability, if any, under the Surety Bond. As a rule, only questions of law may be appealed to this Court in a petition for review. This Court is not a trier of facts; its jurisdiction being limited to errors of law. Moreover, factual findings of the trial court, particularly when affirmed by the Court of Appeals, are generally binding on this Court. x x x The Regional Trial Court categorically ruled that the cash

installments were not given to Dominguez. Aside from this, the real properties promised were also different from those shown to him. It also found sufficient evidence showing the Spouses Roxas' debt to Dominguez in the amount of ₱73,136.75. In this case, the factual findings of the trial court, which were affirmed by the Court of Appeals, were based on substantial evidence and were not refuted with contrary proof by the Spouses Roxas. Therefore, this Court finds no cogent reason to disturb the consistent factual findings of the trial court and of the Court of Appeals.

8. CIVIL LAW; OBLIGATIONS AND CONTRACTS; GUARANTY; COMPENSATION; RULE THEREON APPLICABLE TO A CONTRACT OF SURETY; CASE AT BAR.— Article 1280 of the Civil Code provides: Article 1280. Notwithstanding the provisions of the preceding article, the guarantor may set up compensation as regards what the creditor may owe the principal debtor. While Article 1280 specifically pertains to a guarantor, the provision nonetheless applies to a surety. Contracts of guaranty and surety are closely related in the sense that in both, "there is a promise to answer for the debt or default of another." The difference lies in that "a guarantor is the insurer of the solvency of the debtor and thus binds himself to pay if the principal is *unable to pay* while a surety is the insurer of the debt, and he obligates himself to pay if the principal *does not pay*."

APPEARANCES OF COUNSEL

Jacinto Jimenez for petitioner FGU Insurance Corporation.
Rolando P. Quimbo for Spouses Roxas.
Feria Tantoco Robeniol Law Offices for Phil. Trust Company.

D E C I S I O N

LEONEN, *J.*:

The liability of a surety is determined strictly in accordance with the actual terms of the performance bond it issued. It may, however, set up compensation against the amount owed by the creditor to the principal.

The Petitions for Review in G.R. Nos. 189526[1] and 189656[2] seek to reverse and set aside the May 26, 2009 Decision[3] and the September 14, 2009 Resolution[4] of the Court of Appeals in CA-G.R. CV No. 30340. The May 26, 2009 Decision modified the Regional Trial Court September 4, 1990 Decision,[5] while the September 14, 2009 Resolution denied the motions for reconsideration separately filed by FGU Insurance Corporation (FGU), Spouses Floro and Eufemia Roxas (the Spouses Roxas), and Philippine Trust Company (Philtrust Bank).

The Spouses Roxas entered into a Contract of Building Construction[6] dated May 22, 1979 with Rosendo P. Dominguez, Jr. (Dominguez) and Philtrust Bank to complete the construction of their housing project known as "Vista Del Mar Executive Houses."[7] The project was located at Cabcaben, Mariveles, Bataan and was estimated to cost ₱1,200,000.00

From the terms of the Contract, Philtrust Bank would finance the cost of materials and supplies to the extent of ₱900,000.00, while Dominguez would undertake the construction works for ₱300,000.00.[8]

It was also stipulated that Philtrust Bank may only release the funds for materials upon Dominguez's request and with the Spouses Roxas' conformity. Invoices covering materials

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[1] *Rollo* (G.R. No. 189526), pp. 8-23.

[2] *Rollo* (G.R. No. 189656), pp. 9-26.

[3] *Rollo* (G.R. No. 189526), pp. 25-53. The Decision was penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Bienvenido L. Reyes and Isaias P. Dicdican of the Seventh Division, Court of Appeals, Manila.

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

[5] *Rollo* (G.R. No. 189656), pp. 67-73. The Decision, docketed as Civil Case No. 130783, was penned by Judge Felicidad Carandang-Villalon of Branch XI, Regional Trial Court, Manila.

[6] RTC Records (Vol. I), pp. 11-14.

[7] *Id*. at 11.

[8] *Id*. at 11-12.

previously purchased should also be submitted to Philtrust Bank before any subsequent releases of funds were made.[9]

The ₱300,000.00 cost of labor would be shouldered by the Spouses Roxas, but the Contract stated that:

> [W]hether or not the [Spouses Roxas] could provide/supply the funds to finance the labor costs as aforesaid, the Contractor binds himself to finish and complete the construction of the project within the stipulated period of One Hundred Fifty (150) working days [from April 25, 1979].[10]

Finally, it was provided that in case of Dominguez's non-compliance of the terms and conditions of the Contract, he would pay Philtrust Bank and/or the Spouses Roxas liquidated damages of ₱1,000.00 per day until he has complied with his obligation.[11]

On May 24, 1979, the Spouses Roxas and Dominguez entered into another Agreement,[12] which provided for the terms of payment of the ₱300,000.00 "cost of labor, supervision and engineering services"[13] as follows:

a) first cash payment of ₱30,000.00 — 45 working days from April 25, 1979, the start of the work on the project;

b) second cash payment of ₱30,000.00 — 30 working days from the first cash payment;

c) third cash payment of ₱30,000.00 — 30 working days from the second cash payment; and

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[9] RTC Records (Vol. I), p. 12.

[10] *Id*. Seventh Whereas Clause of the Contract for Building Construction. The Fifth Whereas Clause also states:

> 5. Whereas, the Contractor is willing and has expressed his willingness to do and perform all the labor and/or construction works mentioned in whereas 3 hereof for the total sum of THREE HUNDRED THOUSAND PESOS (₱300,000.00), Philippine Currency, which construction project the Contractor warrants and guarantees to finish and complete within a period of One Hundred Fifty (150) working days from April 25, 1979.

[11] *Id*. at 13.

[12] *Rollo* (G.R. No. 189526), pp. 71-73.

[13] *Id*. at 71.

d) last and final payment of ₱210,000.00 in the form of real properties, consisting of a 3,000-square-meter parcel of land in Mariveles, Bataan under Transfer Certificate of Title (TCT) Nos. 71591 and 77270 to 77273, and a 2,000-square-meter parcel of land in Limay, Bataan under TCT No. 2140, upon completion and acceptance of the project.[14]

It was also stipulated that an interest of 14% per annum would be paid by the Spouses Roxas in the event of non-payment of the amounts due to Dominguez.[15]

Also on May 24, 1979, pursuant to the Contract of Building Construction, Dominguez secured a performance bond, FIC Bond No. G(23) 5954[16] (Surety Bond), with face amount of ₱450,000.00, from FGU. FGU and Dominguez bound themselves to jointly and severally pay Floro Roxas (Floro) and Philtrust Bank the agreed amount in the event of Dominguez's non-performance of his obligation under the Contract.[17]

Dominguez averred that on September 20, 1979, he requested an upward adjustment of the contract price from the Spouses Roxas due to the rising costs of materials and supplies. But the Spouses Roxas did not heed his request.[18]

He added that the Spouses Roxas also failed to make the three (3) payments of ₱30,000.00 each as agreed upon. Thus, on October 22, 1979, he formally demanded that they pay the amounts due plus the stipulated interest of 14% per annum,[19] with a warning that he would stop further work and withdraw his workers unless payment was received on or before October 31, 1979.[20]

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[14] RTC Records (Vol. I), p. 16.

[15] *Rollo* (G.R. No. 189526), p. 28.

[16] *Id*. at 74.

[17] *Id*.

[18] *Id*. at 28.

[19] *Id*.

[20] RTC Records (Vol. I), p. 19.

On November 9, 1979, Dominguez sent another demand letter to the Spouses Roxas, this time, for the payment of ₱73,136.75,[21] which they allegedly borrowed from the funds allotted for the project for their personal use and benefit. The Spouses Roxas were required to pay the amount within seven (7) days from receipt of the letter. However, they refused to pay.[22]

Dominguez also asked Philtrust Bank to release the remaining balance of ₱24,000.00 but to no avail.[23]

On March 28, 1980, Dominguez filed a Complaint against the Spouses Roxas and Philtrust Bank before Branch 40, Court of First Instance of Manila. This was docketed as Civil Case No. 130783. In addition to the amounts claimed, he also sought the following: the annulment of the "Whereas Clause" providing for the completion of the construction project within 150 working days; the rescission/annulment of the Contract of Building Construction dated May 22, 1979 and the Agreement dated May 24, 1979; and the declaration of the FGU Surety Bond as unenforceable.[24]

In its Answer with Compulsory Counterclaim dated June 30, 1980,[25] Philtrust Bank claimed that it did not release the ₱24,000.00 because Dominguez failed to submit an accounting of the previous releases made. Philtrust Bank added that

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[21] *Rollo* (G.R. No. 189656), pp. 30-31. Footnote 8 itemized the amount of ₱73,136.75 as follows:

Personal loan to Mrs. Roxas	=	₱53,000.00
Advances to Mr. Domingo Castro for the painting of the Roxas residence	=	₱ 1,200.00
Advances to Architect Pablo Pestano for Mr. & Mrs. Roxas' account	=	₱ 7,356.75
Cost of labor repair works and improvements on Roxas residence	=	₱11,580.00
		₱73,136.75

[22] *Rollo* (G.R. No. 189526), pp. 28-29.

[23] *Id*. at 29.

[24] *Id*.

[25] RTC Records, pp. 71-81.

Dominguez failed to complete even 60% of the project despite its release of ₱876,000.00. As such, it asked Dominguez to pay ₱1,000.00 per day of delay as liquidated damages until fulfillment of his obligation.[26] Lastly, Philtrust Bank averred that it sent several demand letters[27] to FGU to pay ₱450,000.00 for non-performance of its principal, but the latter re/fused to pay. Hence, Philtrust Bank sought to implead FGU for non-payment of ₱450,000.00 under its Surety Bond.[28]

For their part, the Spouses Roxas claimed that:

a) "the upward adjustment of the stipulated contract price demanded by Dominguez, Jr. was without any legal or contractual basis";

b) "under the terms of the contract, he bound himself to finish and complete the construction of the project within 150 working days from April 25, 1979 'whether or not the [Spouses Roxas] could provide/supply the funds to finance the labor costs";

c) "of the amounts released by Philtrust [Bank], they only conformed to the release of [₱]450,000.00"; and

d) FGU failed to pay the ₱450,000.00 amount "stipulated in the [Surety] [B]ond."[29]

The Spouses Roxas further averred that Philtrust Bank's unjustified release of the funds to Dominguez had resulted in the non-completion of the housing project and consequent unrealized rental income from prospective lessees and delay in their amortization payments to Philtrust Bank.[30]

Hence, the Spouses Roxas "prayed for the reimbursement of the amount of ₱422,000.00 unjustifiably released by [Philtrust

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[26] *Rollo* (G.R. No. 189526), pp. 29-30.

[27] RTC Records (Vol. 1), p. 39. Demand letters dated November 8, 1979, November 28, 1979, December 10, 1979 and March 6, 1980.

[28] *Rollo* (G.R. No. 189526), p. 30.

[29] *Id*.

[30] RTC Records (Vol. I), p. 48.

Bank]" and damages of ₱48,000.00 monthly beginning October 1979, representing unearned rentals from the non-completion of the project.[31]

Philtrust Bank countered that all the funds released to Dominguez "were with the conformity of the [S]pouses [Roxas;] . . . the non-completion of the housing project was due to the failure of the [S]pouses [Roxas] to release the [₱]300,000,00 . . . [for the] costs of labor and other engineering services" and claimed that the Spouses Roxas had an unpaid loan of "[₱]3,053,739.50."[32] Hence, Philtrust Bank additionally prayed that the Spouses Roxas be ordered to pay their indebtedness in the total amount of "₱3,053,738.50 plus 19% yearly interest" from April 1, 1980 until fully paid and "₱245,720.00 stipulated in the various promissory notes as and for attorney's fees."[33] In default of these payments, Philtrust Bank prayed that the real estate mortgages be foreclosed.[34]

FGU argued that the Surety Bond was issued in favor of Floro and Philtrust Bank only, Eufemia Roxas (Eufemia) excluded; and recovery from this Surety Bond may be allowed to Floro only to the extent of one-half (½) of its face value. It prayed for reimbursement against Dominguez for any amount it may be adjudged to pay to the Spouses Roxas. It also filed a fourth-party complaint against Dominguez, Gloria Dominguez, Dominador Caiyod, Felicisima Caiyod, Rufino Andal, and Amada Caiyod under their May 29, 1979 Agreement of Counterguaranty "to secure the obligation of FGU [Insurance Corporation] under the surety bond."[35]

FGU later moved to strike the fourth-party complaint but it was denied by the trial court.[36]

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[31] *Rollo* (G.R. No. 189656), p. 69.

[32] *Rollo* (G.R. No. 189526), p. 30.

[33] *Rollo*, p. 69 (G.R. No. 189656); RTC Records (Vol. I), p. 80.

[34] RTC Records (Vol. I), pp. 80-81.

[35] *Rollo* (G.R. No. 189526), p. 31.

[36] *Id*.

Branch 40, Regional Trial Court, Manila found that the Spouses Roxas breached their obligation to Dominguez under the Contract of Building Construction and the May 24, 1979 Agreement. Likewise, it ruled that Dominguez's non-completion of the project within the stipulated period was justified because of the rising prices of materials and labor. Finally, it held that Dominguez was made to accept the construction contract due to the deceit and misrepresentation of the Spouses Roxas and Philtrust Bank. Hence, it rendered judgment in favor of Dominguez as follows:

> WHEREFORE, viewed in the light of the foregoing circumstances, this court hereby renders judgment in favor of plaintiff Rosendo Dominguez[, Jr.] as follows:
>
> (a) Declaring the "Whereas Clause" paragraph 7 of the Contract Building Construction dated May 22, 1979 as voided and cancelled, as well as the agreement dated May 24, 1979 between the plaintiffs and defendant Roxas spouses;
>
> (b) Ordering the cancellation of the Performance Bond of the FGU Insurance Corporation for ₱450,000.00 of no further force and effect;
>
> (c) Ordering the defendants Roxas spouses to pay Rosendo Dominguez[, Jr.] the sum of ₱90,000.00 with 14% yearly interest from due date until fully paid;
>
> (d) Ordering the defendants Roxas spouses to pay ₱73,146.75 with legal rate thereon from October 27, 1971 until fully paid;
>
> (e) Ordering the defendants Roxas spouses to pay Rosendo Dominguez[, Jr.] moral and exemplary damages in the amount of ₱50,000.00 and ordering them to pay [a]ttorney's fees in the amount of ₱50,000;
>
> (f) Denying other claims and counterclaims for lack of sufficient proof;
>
> This is without prejudice to the filing of the proper case for collection by the Philippine Trust Company against defendant Roxas spouses for their indebtedness to the Bank;

(g) Defendant spouses Roxases (sic) are ordered to pay the cost of this suit.[37]

The Court of Appeals modified the Decision of the Regional Trial Court. It held that the "Whereas Clause" of the Contract of Building Construction dated May 22, 1979 and the Agreement dated May 24, 1979 were valid. According to the Court of Appeals, the Spouses Roxas' non-payment of the stipulated ₱90,000.00 in three (3) equal installments and their offering of properties different from those stipulated in the May 24, 1979 Agreement did not constitute the kind of fraud that would give rise to the annulment of the contracts. It held that the parcels of land were not even mentioned in the May 22, 1979 Contract and that Dominguez agreed to finish the project within the 150-day period whether or not the Spouses Roxas could supply the funds to finance the labor costs.[38]

The Court of Appeals also found no basis for the upward adjustment of the contract price claimed by Dominguez. It held that no proof was presented by Dominguez to establish extraordinary inflation during the intervening period. In addition, the precedent conditions for the recovery of additional construction costs under Article 1724[39] of the Civil Code were not complied with.[40]

On the liability of the Spouses Roxas to Philtrust Bank, the Court of Appeals held that Philtrust Bank failed to prove that

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[37] *Rollo* (G.R. No. 189656), p. 73.

[38] *Rollo* (G.R. No. 189526), p. 39.

[39] CIVIL CODE, Art. 1724 provides:

Article 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

(1) Such change has been authorized by the proprietor in writing; and

(2) The additional price to be paid to the contractor has been determined in writing by both parties.

[40] *Rollo* (G.R. No. 189526), p. 46.

the requests for the release of the sum of ₱422,000.00 to Dominguez were with the conformity of the Spouses Roxas. Hence, Philtrust Bank had no one else to blame but itself.[41]

The Court of Appeals also reversed the Regional Trial Court decision to cancel the Surety Bond. It held that FGU, as surety under FGUIC Bond No. G(23) 5994 dated May 24,1979, was obligated to pay the Spouses Roxas and Philtrust Bank the amount of ₱450,000.00 for Dominguez's non-completion of the construction project within the stipulated period.[42]

Finally, the Court of Appeals found the award of damages in favor of Dominguez to be improper. It held that Dominguez failed to prove bad faith, fraud, or ill motive on the part of the Spouses Roxas that would justify the award of moral damages. Furthermore, without the award of moral damages, exemplary damages and attorney's fees could likewise not be awarded.[43]

On the other hand, it ruled that "the unjustified stoppage and abandonment of the construction works by Dominguez, Jr. constitute a breach of his contractual obligation characterized by bad faith."[44] Hence, the Court of Appeals adjudged Dominguez liable to the Spouses Roxas for ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as attorney's fees.[45]

The Court of Appeals May 26, 2009 Decision disposed as follows:

WHEREFORE, in view of all the foregoing, the appeal is partially GRANTED, Accordingly, the assailed decision of the Regional Trial Court of Manila dated September 4, 1990 is MODIFIED as follows:

> 1. Declaring the "Whereas Clause" in paragraph 7 of the Contract of Building Construction dated May 22, 1979 as well as the Agreement dated May 24, 1979 valid;

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

[42] *Id*. at 50.

[43] *Id*. at 51.

[44] *Id*.

[45] *Id*.

2. Declaring the FGU Insurance Corporation FIC Bond No. G(23) 5994 to be in full force and effect. Thus, FGUIC is solidarily liable with Rosendo Dominguez, Jr. to spouses Roxas to the extent of ₱450,000.00;

3. Ordering spouses Roxas to pay Dominguez, Jr. the sum of ₱90,000 with the stipulated 14% annual interest from due date until fully paid;

4. Ordering spouses Roxas to pay Dominguez, Jr. the amount of P73,136.75 with legal rate of interest from November 16, 1979 until fully paid;

5. Ordering Dominguez, Jr. to pay ₱100,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱50,000.00 as attorney's fees; and

6. Remanding the case to the trial court for the reception of evidence and proper computation of the other claims of Philtrust against spouses Roxas.

SO ORDERED.[46]

The separate motions for reconsideration of FGU, the Spouses Roxas, and Philtrust Bank were denied in the Court of Appeals September 14, 2009 Resolution.

FGU and the Spouses Roxas filed their separate Petitions for Review before this Court, docketed as G.R. Nos. 189526[47] and 189656,[48] respectively.

On November 26, 2009, the Spouses Roxas, through their counsel, filed a Manifestation and Motion to Dispense with Service upon Atty. Tomas Matic, Jr. (Atty. Matic) informing this Court that no appearance was made either by Dominguez or his counsel Atty. Matic before the Court of Appeals despite notice. Moreover, the counsel of the Spouses Roxas knew that Atty. Matic had already passed away.[49]

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[46] *Id*. at 52.

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

[48] *Rollo* (G.R. No. 189656), pp. 9-25.

[49] *Id*. at 153-154.

On March 17, 2010,[50] this Court resolved to consolidate these two (2) cases.

On February 23, 2011, this Court deemed as waived Dominguez's filing of his comment on the petitions for review as copies of this Court's resolutions requiring him to file comment, which were served on Dominguez's last known address, were returned unserved with notation "moved out."[51]

The issues for this Court's resolution are as follows:

First, whether or not the Court of Appeals erred in holding FGU Insurance Corporation liable for the full amount of ₱450,000.00 of its Surety Bond rather than the cost overrun on account of Rosendo P. Dominguez, Jr.'s non-completion of the project;

Second, whether or not the Spouses Floro and Eufemia Roxas are entitled to liquidated damages under the Contract for Building Construction;

Third, whether or not there is factual basis for the award of ₱90,000.00 with 14% stipulated interest and ₱73,146.75 with legal interest in favor of Rosendo P. Dominguez, Jr.;

Fourth, whether or not the liabilities of the Spouses Floro and Eufemia Roxas to Rosendo P. Dominguez, Jr. may be set off against any liability of FGU Insurance Corporation pursuant to Articles 1280[52] and 1283[53] of the Civil Code; and

Fifth, whether or not the Court of Appeals erred in remanding the case to the trial court for the reception of evidence and

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[50] *Rollo* (G.R. No. 189526), pp. 103-104.

[51] *Id*. at 135.

[52] CIVIL CODE, Art. 1280 provides:

Article 1280. Notwithstanding the provisions of the preceding article, the guarantor may set up compensation as regards what the creditor may owe the principal debtor.

[53] CIVIL CODE, Art. 1283 provides:

Article 1283. If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof.

computation of the other claims of the Philippine Trust Company against the Spouses Floro and Eufemia Roxas.

Finally, whether or not Philtrust Bank should be held liable for the unauthorized release of the remaining construction funds.

FGU questions the Court of Appeals Decision, which held it liable to the Spouses Roxas for the full amount of the Surety Bond.

First, it argues that the face amount of ₱450,000.00 only indicates its maximum potential liability in case Dominguez does not comply with its obligation under the Contract of Building Construction. FGU submits that it should only be liable for the actual damages that may have been sustained by the Spouses Roxas or the cost that may have been incurred by them to finish the contracted work. Since the Spouses Roxas failed to prove the added cost to them to finish the construction, FGU argues that their claim for damages cannot be granted.[54]

Second, FGU contends that under Article 2054 of the Civil Code, its liability cannot be greater than the liability of the principal. Thus, it was erroneous for the Court of Appeals to adjudge it liable for actual damages but without adjudging any liability upon Dominguez.[55]

Third, FGU submits that the Spouses Roxas may only claim up to one-half (½) of the face amount because Philtrust Bank is a joint creditor under the Surety Bond.

The Spouses Roxas counter that under the Contract of Building Construction, Dominguez's liability in case of non-completion of the project is not limited to the additional cost that the Spouses Roxas would have incurred to finish the project. They hold that his liability includes liquidated damages of ₱1,000.00 per day until the contractor shall have complied with his obligation. They add that the face amount of ₱450,000.00 would even be "grossly inadequate since the project remained uncompleted."[56]

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[54] *Rollo* (G.R. No. 189526), pp. 14-15.

[55] *Id*. at 15-16.

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

The Spouses Roxas further contend that the Contract of Building Construction refer to "the Bank and/or owner," which means that payment under the Surety Bond could be made either to both of them or to any of them.[57] Considering that Philtrust Bank was aptly found by the Court of Appeals to be at fault in releasing the funds to the contractor without their conformity and the supporting invoices, the Spouses Roxas maintain that they alone should be entitled to the entire proceeds of the Surety Bond.[58]

In its Reply,[59] FGU argues that the stipulation in the Contract of Building Construction providing for liquidated damages contemplates delay in construction, not abandonment of the project.[60] Hence, what applies is Article 1167 of the Civil Code, which states: "If a person obliged to do something fails to do it, the same shall be executed at his cost." Consequently, the liability of Dominguez "should be based on the additional cost to complete the project."[61]

FGU adds that contrary to the Spouses Roxas' claims, Philtrust Bank could file a claim to the extent of one-half (½) of the amount of the Surety Bond,[62] under which FGU bound itself in favor of "Floro Roxas and Philippine Trust Company," as joint, and not solidary, creditors.[63]

I

Under Section 175 of Presidential Decree No. 612 or the Insurance Code, a contract of suretyship is defined as an agreement where "a party called the surety guarantees the

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[57] *Id*. at 93.

[58] *Id*.

[59] *Id*. at 106-119.

[60] *Id*. at 108.

[61] *Id*. at 111.

[62] *Id*.

[63] *Id*. at 115.

performance by another party called the principal or obligor of an obligation or undertaking in favor of a third party called the obligee."

A performance bond is a kind of suretyship agreement. It is "designed to afford the project owner security that the . . . contractor, will faithfully comply with the requirements of the contract . . . and make good [on the] damages sustained by the project owner in case of the contractor's failure to so perform."[64]

A surety's liability is joint and several with the principal.[65] "Article 2047 of the Civil Code provides that suretyship arises upon the **solidary** binding of a person deemed the surety with the principal debtor for the purpose of fulfilling an obligation."[66]

Although the surety's obligation is merely secondary or collateral to the obligation contracted by the principal, this Court has nevertheless characterized the surety's liability to the creditor of the principal as "direct, primary, and absolute[;] [i]n other words, the surety is directly and equally bound with the principal."[67]

Moreover, Article 1216 in relation to Article 2047[68] of the Civil Code provides:

The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against

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[64] *Eastern Assurance & Surety Corp. v. Intermediate Appellate Court*, 259 Phil. 164, 171 (1989) [Per *J.* Feliciano, Third Division].

[65] INS. CODE, Sec. 176.

[66] *Prudential Guarantee and Assurance, Inc. v. Equinox Land Corp.*, 559 Phil. 672, 681 (2007) [Per *J.* Sandoval-Gutierrez, First Division].

[67] *Id*. at 682.

[68] CIVIL CODE, Art. 2047 provides:

Article 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.

one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

Pursuant to the foregoing provisions, FGU, as surety, may be sued by the creditor separately or together with Dominguez as principal, in view of the solidary nature of its liability.[69]

I.A

Liability under a surety bond is "limited to the amount of the bond" and is determined strictly in accordance with the particular terms and conditions set out in this bond.[70] It is, thus, necessary to look into the actual terms of the peformance bond.

FGUIC Bond No. G(23) 5954 states:

That we, ROSENDO P. DOMINGUEZ, JR. as PRINCIPAL, and THE FGU INSURANCE CORPORATION . . . as SURETY, are held and firmly bound unto the FLORO ROXAS AND PHILIPINE TRUST COMPANY, as the OBLIGEE, in the sum of FOUR HUNDRED FIFTY THOUSAND PESOS ONLY (₱450,000.00), Philippine Currency, for the payment of which well and truly to be made, we bind ourselves . . . jointly and severally firmly by these presents.

THE CONDITIONS OF THE OBLIGATION ARE AS FOLLOWS:

WHEREAS, the above bounden Principal . . . entered into a contact/agreement with the said OBLIGEE to fully and faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreement stipulated in said contract, for the supply of necessary labor, materials, supervision and other engineering service related for the completion and ready for occupancy of the proposed Vista Del Mar-Executive Houses at Cabcaben, Mariveles, Bataan;

. . . . . .

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[69] See *Gilat Satellite Networks, Ltd. v. United Coconut Planters Bank General Insurance Co., Inc.*, 731 Phil. 464 (2014) [Per *C.J.* Sereno, First Division]; *Stronghold Insurance Co., Inc. v. Republic-Asahi Glass Corp.*, 525 Phil. 270 (2006) [Per *C.J.* Panganiban, First Division].

[70] INS. CODE, Sec. 176. See *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corp.*, 511 Phil. 127 (2005) [Per *J.* Tinga, Second Division].

NOW, THEREFORE, if the PRINCIPAL shall well and trully perform and fulfill all the undertakings, covenants, terms, conditions, and agreements stipulated in said contract/agreement, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.[71]

The FGU Surety Bond is conditioned upon the full and faithful performance by Dominguez of his obligations under the Contract of Building Construction. Under the terms of this bond, FGU guaranteed to pay the amount of ₱450,000.00 should Dominguez be unable to faithfully comply with the contract for the completion of the Spouses Roxas' housing project. FGU's obligation to pay is solidary with Dominguez and is realized once the latter fails to perform his obligation under the Contract of Building Construction.

FGU's contention that the ₱450,000.00 face amount simply indicates its maximum potential liability and that it should only be liable for actual damages or the cost overrun as a result, of the non-completion of the project is untenable. The terms of the bond were clear; hence, the literal meaning of its stipulation should control.

The specific condition in the FGU Surety Bond did not clearly state the limitation of FGU's liability. From the terms of this bond, FGU guaranteed to pay the amount of ₱450,000.00 in the event of Dominguez's breach of his contractual undertaking. Hence, FGU was bound to pay the stipulated indemnity upon proof of Dominguez's default without the necessity of proof on the measure of damages caused by the breach. A stipulation not contrary to law, morals, or public order is binding upon the obligor.[72]

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[71] *Rollo* (G.R. No. 189526), p. 74.

[72] CIVIL CODE, Arts. 1306 and 1315 provide:

Article 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

Article 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly

If FGU's intention was to limit its liability to the cost overrun or additional cost to the Spouses Roxas to complete the project up to the extent of ₱450,000.00, then it should have included in the Surety Bond specific words indicating this intention. Its failure to do so must be construed against it.

A suretyship agreement is a contract of adhesion ordinarily prepared by the surety or insurance company. Therefore, its provisions are interpreted liberally in favor of the insured and strictly against the Insurer who, as the drafter of the bond, had the opportunity to state plainly the terms of its obligation.[73]

It was undisputed that Dominguez failed to finish the construction work within the agreed time frame, triggering FGU's liability under the Surety Bond. Dominguez's breach of the Contract of Building Construction gave the Spouses Roxas and/or Philtrust Bank the immediate right to pursue FGU on the surety bond. Thus, FGU is duty-bound to perform what it has guaranteed—to pay ₱450,000.00 upon notice of Dominguez's default.

FGU, on the other hand, has the right to be indemnified for any payments made, both under the law and the indemnity agreement. In *Escaño v. Ortigas, Jr.,*[74] this Court explained this right to full reimbursement by a surety:

> [E]ven as the surety is solidarity bound with the principal debtor to the creditor, the surety who does pay the creditor has the right to recover the full amount paid, and not just any proportional share, from the principal debtor or debtors. Such right to full reimbursement falls within the other rights, actions and benefits which pertain to the surety by reason of the subsidiary obligation assumed by the surety.
>
> What is the source of this right to full reimbursement by the surety? We find the right under Article 2066 of the Civil Code, which assures

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stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

[73] See *Luzon Surety Co., Inc. v. Quebrar*, 212 Phil. 275 (1984) [Per *J.* Makasiar, Second Division].

[74] 553 Phil. 24 (2007) [Per *J.* Tinga, Second Division].

that "[t]he guarantor who pays for a debtor must be indemnified by the latter," such indemnity comprising of, among others, "the total amount of the debt." Further, Article 2067 of the Civil Code likewise establishes that "[t]he guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor."

Articles 2066 and 2067 explicitly pertain to guarantors, and one might argue that the provisions should not extend to sureties, especially in light of the qualifier in Article 2047 that the provisions on joint and several obligations should apply to sureties. We reject that argument, and instead adopt Dr. Tolentino's observation that "[t]he reference in the second paragraph of [Article 2047] to the provisions of Section 4, Chapter 3, Title I, Book IV, on solidary or several obligations, however, does not mean that suretyship is withdrawn from the applicable provisions governing guaranty." For if that were not the implication, there would be no material difference between the surety as defined under Article 2047 and the joint and several debtors, for both classes of obligors would be governed by exactly the same rules and limitations.

Accordingly, the rights to indemnification and subrogation as established and granted to the guarantor by Articles 2066 and 2067 extend as well to sureties as defined under Article 2047.[75]

I.B

This Court disagrees with FGU's contention that it should only be liable to the Spouses Roxas for one-half (½) of the face amount of the Surety Bond.

Under the Surety Bond, FGU guaranteed Dominguez's fulfilment of the undertakings, terms, and conditions stipulated in the Contract of Building Construction. A copy of the contract was attached to and made a part of the Surety Bond.[76]

FGU's undertaking under the Surety Bond was that of a surety to the obligation of Dominguez, who is the principal under the construction contract. This bond expressly incorporated the Contract of Building Construction. Hence, in enforcing this

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[75] *Id*. at 43.

[76] *Rollo* (G.R. No. 189526), p. 74.

bond, its provisions must be read together with the Contract of Building Construction.

Jurisprudence refers to this rule as the "complementary-contracts-construed-together" doctrine, which mandates that the stipulations, terms, and conditions of both the principal and accessory contracts must be construed together in order to arrive at the true intention of the parties.[77]

This doctrine is consistent with Article 1374 of the Civil Code, which states:

> Article 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.

While FGU's Surety Bond indicates "Floro Roxas and Philippine Trust Company" as obligees, the Contract of Building Construction clearly refers to Philtrust Bank and the Spouses Roxas as solidary creditors of Dominguez, as can be gleaned from the following provisions:

> 6. In the event the Contractor fails to comply with its obligation under any of the aforementioned premises and the herein terms and conditions of this Contract, the Contractor shall pay to the *Bank and/or Owners* the sum of One Thousand Pesos (₱1,000.00), Philippine Currency, daily, as liquidated damages, until it shall have complied with its obligation;
>
> 7. To insure and guarantee the faithful performance of its obligation under this Contract, the Contractor binds himself to post and file a Performance Bond of ₱450,000.00 and a Contractor's All Risk Bond of ₱1,200,000.00 in favor of the *Bank and/or Owners* to be issued by a reputable insurance/surety firm approved by the Bank[.][78] (Emphasis supplied)

Consequently, FGU is bound to pay the Spouses Roxas and Philtrust Bank as solidary creditors and not joint creditors.

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[77] *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc*., 644 Phil. 634, 644 (2010) [Per *J*. Villarama, Jr., Third Division] citing *Velasquez v. Court of Appeals*, 368 Phil. 863 (1999) [Per *J*. Bellosillo, Second Division].

[78] RTC Records (Vol. I), p. 13.

II

Dominguez is liable to pay liquidated damages to the Spouses Roxas under the Contract of Building Construction from scheduled date of completion until the time he effectively abandoned the project.

The Contract of Building Construction contains the following stipulation for liquidated damages:

> 6. In the event the Contractor fails to comply with its obligation under any of the aforementioned premises and the herein terms and conditions of this Contract, the Contractor shall pay to the Bank and/or Owners the sum of One Thousand Pesos (₱1,000.00), Philippine Currency, daily, as liquidated damages, until it shall have complied with its obligation.[79]

Under the Contract, the liability for liquidated damages would start accruing daily from the stipulated date of completion until the date of the actual completion of the project.

However, FGU contends that this provision applies only where there is delay in the completion of the project and does not contemplate situations where the contractor abandoned the project.

This Court is not persuaded.

The parties have agreed and articulated on the payment of liquidated damages in case of breach. What is decisive for the recovery of liquidated damages in this case is the fact of delay in the completion of the works.

The law allows parties to stipulate on liquidated damages.[80] A clause on liquidated damages is normally added to construction contracts not only to provide indemnity for damages but also to ensure performance of the contractor "by the threat of greater

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[79] *Id*.

[80] CIVIL CODE, Art. 2226 provides:

> Article 2226. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

responsibility in the event of breach."[81] In *Philippine Economic Zone Authority v. Pilhino Sales Corp.*,[82] this Court said:

> 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:
>
> > Liquidated damages are those that the parties agree to be paid in case of a breach. As worded, the amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project. Under Philippine laws, these damages take the nature of penalties. A penal clause is an accessory undertaking to assume greater liability in case of a breach. It is attached to an obligation in order to ensure performance.[83] (Emphasis in the original)

If this Court goes by FGU's reasoning that the liquidated-damages clause does not apply in case of abandonment, then, in effect, this Court diminishes or disregards altogether the coercive force of this stipulation. Moreover, it is contrary to the intention of the parties because it was clearly provided that liquidated damages are recoverable for delay in the completion of the project; hence, there is more reason in case of non-completion.

Thus, this Court holds that Dominguez is bound to pay liquidated damages from September 23, 1979, the scheduled date of completion, until October 31, 1979,[84] when he effectively abandoned the project. FGU cannot be held liable for it because

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[81] *Atlantic Erectors, Inc. v. Court of Appeals*, 697 Phil. 342, 352 (2012) [Per *J.* Peralta, Third Division].

[82] G.R. No. 185765, September 28, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/185765.pdf> [Per *J.* Leonen, Second Division].

[83] *Id*. at 12 citing *H.L. Carlos Construction, Inc. v. Marina Properties Corp*., 466 Phil. 182, 205 (2004) [Per *J.* Panganiban, First Division].

[84] RTC Records (Vol. I), p. 19; TSN dated September 14, 1982, pp. 118-125.

it is not a party to the Contract of Building Construction. Neither does the Surety Bond contain any stipulation for liquidated damages on top of FGU's liability to pay the face amount in case of Dominguez' s non-performance.

III

The Spouses Roxas ask this Court to review the records of the case and re-examine the evidence presented before the trial court. They contend that there was no factual basis for ordering them to pay Dominguez the sums of ₱90,000.00 and ₱73,136.75 with interests.[85]

FGU counters that the liability of the Spouses Roxas to pay Dominguez these amounts were sufficiently proven by the Agreement dated May 24, 1979, the checks and cash vouchers evidencing the loan, and the testimony and admissions of Eufemia.[86] The foregoing amounts, together with accrued interest, should be set off against FGU's liability, if any, under the Surety Bond.[87]

As a rule, only questions of law may be appealed to this Court in a petition for review. This Court is not a trier of facts; its jurisdiction being limited to errors of law. Moreover, factual findings of the trial court, particularly when affirmed by the Court of Appeals, are generally binding on this Court.[88]

The Regional Trial Court held:

This court has gone over the evidence presented in this case which included the testimonial and documentary exhibits . . . The evidence do not show that the defendants spouses complied with the agreement with Rosendo Dominguez with regards to the three (3) payments for ₱30,000.00 each. The parcels of land mentioned in

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[85] *Rollo* (G.R. No. 189656), pp. 15 and 18.

[86] *Id*. at 166-173.

[87] *Rollo* (G.R. No. 189526), p. 16.

[88] *American Home Insurance Co. of New York v. F.F. Cruz & Co., Inc.*, 671 Phil. 1, 14 (2011) [Per *J.* Peralta, Third Division].

the agreement were different from what was later shown the plaintiff. It should be noted that Mrs. Eufemia Roxas did not rebutt this. This court believes that the defendant spouses reneged in their obligations . . . ***Moreover, the defendant spouses borrowed sums of money which should be used for the project but instead, were diverted to their personal benefits . . .*** This court has assessed the sincerity of Rosendo Doming[u]ez to make good his commitment but there was no rec[i]procity with regards to the spouses Roxases. ***There was no attempt to comply with their agreement and moreover, they got money from Rosendo Dominguez for their personal benefit.*** The failure of the defendant Philipine Trust Company to release the balance of ₱24,000 to Rosendo Dominguez was because of his failure to submit the invoices and receipts of the previous releases other than the ₱450,000.00. However, there is no proof that the subsequent releases were diverted from the use they were intended. ***Only the amount of ₱73,136.75 went to the spouses Roxases.*** To require Rosendo Dominguez to return these amounts to the [Philtrust] Bank would be unfair to the plaintiff in the absence of proof that he spent the amount for other purposes. The indebtedness of the spouses Roxases to the Philippine Trust Company was not refuted.[89]

The Regional Trial Court categorically ruled that the cash installments were not given to Dominguez. Aside from this, the real properties promised were also different from those shown to him. It also found sufficient evidence showing the Spouses Roxas' debt to Dominguez in the amount of ₱73,136.75.

In this case, the factual findings of the trial court, which were affirmed by the Court of Appeals, were based on substantial evidence and were not refuted with contrary proof by the Spouses Roxas. Therefore, this Court finds no cogent reason to disturb the consistent factual findings of the trial court and of the Court of Appeals.

IV

On the issue of judicial compensation, this Court finds for FGU.

Article 1280 of the Civil Code provides:

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[89] *Rollo* (G.R. No. 189656), pp. 71-72.

Article 1280. Notwithstanding the provisions of the preceding article, the guarantor may set up compensation as regards what the creditor may owe the principal debtor.

While Article 1280 specifically pertains to a guarantor, the provision nonetheless applies to a surety.[90] Contracts of guaranty and surety are closely related in the sense that In both, "there is a promise to answer for the debt or default of another."[91] The difference lies in that "a guarantor is the insurer of the solvency of the debtor and thus binds himself to pay if the principal is *unable to pay* while a surety is the insurer of the debt, and he obligates himself to pay if the principal *does not pay*."[92]

Hence, FGU could offset its liability under the Surety Bond against Dominguez's collectibles from the Spouses Roxas. His collectibles include the unpaid contractor's fee of ₱90,000.00 plus 14% interest per annum from October 31, 1979 until fully paid. Additionally, his collectibles cover the Spouses Roxas' advances from the construction funds in the amount of ₱73,136.75 plus 6% legal interest from November 16, 1979 until fully paid.

In the event of compensation, the Spouses Roxas shall be liable to Philtrust Bank for the latter's share in the obligation.[93]

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[90] See *Abad v. Court of Appeals*, 260 Phil. 200 (1990) [Per *J.* Griño-Aquino, First Division]. *See also Escaño v. Ortigas, Jr.*, 553 Phil. 24 (2007) [Per *J.* Tinga, Second Division], wherein the Court ruled to the effect that the provisions of the Civil Code on guaranty are applicable and available to the surety. In that case, the rights to indemnification and subrogation granted to the guarantor under Articles 2066 and 2067 of the Civil Code were held to extend as well to sureties under Article 2047.

[91] *Phil. Export & Foreign Loan Guarantee Corp. v. V.P. Eusebio Construction, Inc.*, 478 Phil. 269, 285 (2004) [Per *C.J.* Davide, Jr., First Division].

[92] *E. Zobel Inc. v. Court of Appeals*, 352 Phil. 608, 615 (1998) [Per *J.* Martinez, Second Division].

[93] CIVIL CODE, Art. 1215 provides:

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

V

Philtrust Bank, for its part, assails the Court of Appeals Decision and submits that there is no need to remand the case to the trial court because it has already presented several pieces of evidence to prove its other claims against the Spouses Roxas.[94] Philtrust Bank adds that during the proceedings in the trial court, the Spouses Roxas did not deny the existence of their loan obligations and the mortgage of several of their properties to secure these loan obligations.[95]

Philtrust Bank further disputes the Court of Appeals' findings that the release of the construction funds was without the conformity of the Spouses Roxas. Philtrust Bank points to two (2) promissory notes executed by the Spouses Roxas dated April 11, 1979 and July 16, 1979 for ₱450,000.00 each, which the Spouses Roxas allegedly admitted in their Answer. They also referred to the testimony of Penafrancia Gabriel (Gabriel), the Senior Loan Clerk of Philtrust Bank-Limay Branch in charge of the Spouses Roxas' account. These promissory notes and Gabriel's testimony explained that "Philtrust [Bank] released the proceeds of the loan as the need arose and [these] releases were reflected in a record to keep track of the account."[96]

Finally, Philtrust Bank avers that the claim of the Spouses Roxas for unrealized rentals has not been proven and is "highly speculative."[97]

Philtrust Bank prays for the following reliefs:

1. To include Philtrust as one of the parties-obligees to whom FGU [Insurance Corporation] and Mr. Dominguez are solidarity liable under FIC Bond No. G(23)5994.

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

[94] *Rollo* (G.R. No. 189656), p. 206.

[95] *Id*. at 207.

[96] *Id*. at 214.

[97] *Id*. at 216.

2. To order Mr. Dominguez to pay Philtrust liquidated damages in the amount of ₱1,000.00 per day from the time he was supposed to finish the contract, *i.e.*, 22 September 1979, until the project is fully completed.

3. To order Spouses Roxas to pay Philtrust [Bank] their loan obligations, plus interest, penalty and attorney[']s fees until fully paid, which as of 15 March 1990 amounts to ₱13,761,400.56.

4. In default of such payments, the mortgaged real properties be ordered sold and the proceeds thereof applied to the payment of the various sums due Philtrust [Bank]; that Spouses Roxas and all persons and/or entities holding claims under them subsequent to the execution of the mortgages, either as purchasers, encumbrances, or otherwise, be barred and foreclosed forever of all rights, claims and equity of redemption in said mortgaged properties; and that Philtrust [Bank] may have execution against Spouses Roxas for any deficiency which may remain unpaid after applying the proceeds of the sale of said properties to the satisfaction of said judgment.[98]

The Regional Trial Court dismissed without prejudice the counterclaims of Philtrust Bank. However, this was effectively reversed by the Court of Appeals when it ordered the remand of the case to the trial court for reception of evidence and proper computation of the other claims of Philtrust Bank.

This Court agrees with Philtrust Bank that remand is improper and unnecessary because it has already presented its evidence to prove the loans it extended to the Spouses Roxas.

Eufemia admitted the consolidation of their previous credit accommodations from Philtrust Bank to ₱2,000,000.00 on February 22, 1978[99] and the due execution of the mortgages executed by them in favor of Philtrust Bank.[100] She also admitted

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[98] *Id*. at 216-217.

[99] TSN, May 20, 1986, pp. 8-9.

[100] *Id*. at 6-8.

that their loan accommodation was further increased to ₱2,523,200.00 on July 17, 1979.[101] She likewise admitted that out of the ₱2,000,000.00 credit accommodation, Philtrust Bank was able to release ₱1,557,200.00, covered by promissory notes, which they were not able to pay on their maturity dates.[102] The details of the promissory notes are as follows:

Promissory Note No.	Promissory Note Date	Amount (₱)
253	March 3, 1978	100,000.00
255	March 6, 1978	625,000.00
257	March 10, 1978	175,000.00
277	March 22, 1978	20,000.00
294	March 31, 1978	35,000.00
315	April 18, 1978	45,000.00
356	May 19, 1978	25,000.00
371	June 16, 1978	100,000.00
392	July 13,1978	40,800.00
414	July 27, 1978	86,400.00
445	August 24, 1978	10,000.00
505	November 15, 1978	228,000.00
536	December 19, 1978	12,500.00
586	January 17, 1979	25,000.00
591	January 23, 1979	10,000.00
610	February 15, 1979	17,000.00
615	February 19, 1979	2,500.00
	TOTAL	1,557,200.00[103]

[101] *Id*. at 30.

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

[103] RTC records, pp. 51-67.

It is stipulated in the promissory notes that the principal amount would be subject to interest at the rate of 19% per annum payable in advance. While the Spouses Roxas averred that the advance interests were immediately deducted from the releases of the proceeds on the note,[104] they did not present any supporting proof. It is a rule that the party who alleges a fact, in this case, the prepayment of interest, has the burden of proving it.[105] This Court cannot accept their affirmative defense for failure to present any evidence to prove such payment.

Furthermore, the Spouses Roxas' contention on prepaid interest was belied by Eufemia's admission that a total sum of ₱1,557,200.00 was released to them. Hence, this Court rules that the stipulated interest on the principal amounts has not yet been paid.

Under the terms of the promissory notes, in case of non-payment at maturity, the Spouses Roxas further bound themselves to pay:

1) 19% on the outstanding obligation until fully paid as penalty for delinquency; and

2) 10% of the promissory note amount as attorney's fees and expenses of collection.

The Spouses Roxas do not dispute the validity of these penalty charges and attorney's fees. Therefore, these stipulations in the promissory notes must be upheld as the law between the parties, and are, thus, binding on them.[106]

The amounts due on each promissory note including the stipulated 19% interest, as of June 30, 1980, the date of Philtrust Bank's Answer with Counterclaim, are as follows:

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[104] RTC Records (Vol. I), p. 102.

[105] RULES OF COURT, Rule 131, Sec. 1. See *Co v. Admiral Savings Bank*, 574 Phil. 609 (2008) [Per *J.* Nachura, Third Division].

[106] CIVIL CODE, Art. 1159.

PN No.	PN Date	Date Due	No. of Days	Principal (₱)	Accrued Interest(₱)[107]	Total (₱)
253	3-Mar-78	30-Jun-80	850	100,000.00	44,246.58	144,246.58
255	6-Mar-78	30-Jun-80	847	625,000.00	275,565.07	900,565.07
257	10-Mar-78	30-Jun-80	843	175,000.00	76,793.84	251,793.84
277	22-Mar-78	30-Jun-80	831	20,000.00	8,651.51	28,651.51
294	31-Mar-78	30-Jun-80	822	35,000.00	14,976.16	49,976.16
315	18-Apr-78	30-Jun-80	804	45,000.00	18,833.42	63,833.42
356	19-May-78	30-Jun-80	773	25,000.00	10,059.59	35,059.59
371	16-Jun-78	30-Jun-80	745	100,000.00	38,780.82	138,780.82
392	13-Jul-78	30-Jun-80	718	40,800.00	15,249.14	56,049.14
414	27-Jul-78	30-Jun-80	704	86,400.00	31,662.64	118,062.64
445	24-Aug-78	30-Jun-80	676	10,000.00	3,518.90	13,518.90
505	15-Nov-78	30-Jun-80	593	228,000.00	70,380.16	298,380.16
536	19-Dec-78	30-Jun-80	559	12,500.00	3,637.33	16,137.33
586	17-Jan-79	30-Jun-80	530	25,000.00	6,897.26	31,897.26
591	23-Jan-79	30-Jun-80	524	10,000.00	2,727.67	12,727.67
610	15-Feb-79	30-Jun-80	501	17,000.00	4,433.51	21,433.51
615	19-Feb-79	30-Jun-80	497	2,500.00	646.78	3,146.78
				1,557,200.00	**62,7060.38**	**2,184,269.38**

The total amount of ₱2,184,260.38 shall further be subject to 19% penalty interest from June 30, 1980 until fully paid in accordance with the stipulations of the parties. The Spouses Roxas would also be liable to attorney's fees equivalent to 10% of the principal amount of their obligation.

With respect to the ₱900,000.00 loan subject of the Contract of Building Construction, the Court of Appeals found that of the ₱876,000.00 construction funds released by Philtrust Bank, the release of ₱426,000.00[108] to Dominguez was not approved by the Spouses Roxas. Despite this, the trial court found no evidence showing that these unauthorized releases were diverted

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[107] The accrued interest is computed as follows: (No. of days lapsed)* (.19/365)*(principal).

[108] The Court of Appeals Decision stated ₱422,000.00 (*see rollo* (G.R. No. 189656, p. 48), but this should be ₱426,000.00 considering the undisputed fact found in other parts of the *Rollo* and RTC Records that of the additional loan of ₱900,000.00 obtained by the Spouses Roxas from Philtrust Bank, the remaining balance of ₱24,000.00 was not released by Philtrust Bank and only ₱450,000.00 of the released funds were approved by the Spouses Roxas.

to other uses.[109] Thus, this Court holds the Spouses Roxas liable for the loaned amount of ₱876,000.00, with payment of stipulated interest of 19% from judicial demand until fully paid.

VI

The Spouses Roxas contend that Philtrust Bank's unauthorized releases to Dominguez of the construction funds paved the way for the latter's diversion of the funds,[110] which resulted in the non-completion of the project.[111] Thus, they add that the rental payments, which they should have earned from the houses had they been completed, should be offset against their liability to Philtrust Bank.[112]

The Spouses Roxas' contention is untenable.

For one, the Regional Trial Court found no evidence to prove the alleged diversion of funds.[113] If at all, it was only the amount of ₱73,136.75 that was advanced to the Spouses Roxas for their personal use and benefit.

On Philtrust Bank's liability under the Contract of Building Construction for the unauthorized release of ₱426,000.00 construction fund, this Court takes judicial notice of the facts in a related case involving Philtrust Bank and the Spouses Roxas, docketed as G.R. No. 171897.[114] That case involved the execution of the final and executory December 26, 1988 Decision of the Regional Trial Court of Bataan, with the dispositive portion as follows:

WHEREFORE, the Court hereby renders judgment (a) Ordering the issuance of a writ of permanent injunction perpetually enjoining

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[109] *Rollo* (G.R. No. 189656), p. 72.

[110] *Id*. at 225.

[111] *Id*. at 226-227.

[112] *Id*. at 22.

[113] *Id*. at 72.

[114] *Philippine Trust Co. v. Spouses Roxas*, 771 Phil. 98 (2015) [Per *J.* Jardeleza, Third Division].

defendant Philippine Trust Company and defendant provincial sheriff of Bataan or any of his deputies from foreclosing extrajudicially the real estate mortgage(s) executed in its favor by plaintiffs covering the real properties subject of this action;

(b) Condemning said defendant bank to pay to plaintiffs: (1) Ordinary damages for breach of the provisions of the contract of building construction (Exhs. "B" & "26"), in the sum of One Hundred Thousand Pesos (₱100,000.00); (2) Moral damages for the improvident extrajudicial foreclosure of plaintiffs' mortgage(s) after it had elected judicial foreclosure thereof, in the amount of Three Hundred Thousand Pesos (₱300,000.00) for both plaintiffs; (3) Exemplary damages by way of example or correction for the public good in the sum of Fifty Thousand Pesos (₱50,000.00); (4) Attorney's fees in the amount of Fifty Thousand Pesos (₱50,000.00); and (5) Double costs of suit[ ].

SO ORDERED.[115]

It appears from the narration of facts in GR. No. 171897 that while this case was pending in the trial court, Philtrust Bank sought to extra-judicially foreclose the mortgaged properties of the Spouses Roxas. Consequently, the Spouses Roxas filed a complaint against Philtrust Bank for damages with preliminary injunction in the Regional Trial Court of Bataan docketed as Civil Case No. 4809. The Regional Trial Court of Bataan eventually ruled in favor of the Spouses Roxas. Upon the finality of the decision, the Spouses Roxas sought and were granted a writ of execution. Philtrust Bank opposed the issuance of the writ all the way up to this Court in G.R. No. 171897 mainly setting up the defense of legal compensation to offset the judgment debt due to the Spouses Roxas against the latter's loan obligation to Philtrust Bank. This Court rejected Philtrust Bank's contention on several grounds. This Court ruled that this defense of legal compensation to offset Philtrust Bank's judgment debt against the Spouses Roxas' loan obligation was belatedly raised. Additionally, legal compensation could not take place because the amount and demandibility of the loan obligation are still being disputed, and hence, could not be

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[115] *Id*. at 103.

considered liquidated. Finally, this Court found Philtrust Bank guilty of forum shopping.

The question of Philtrust Bank's liability for unauthorized release of the funds has already been settled in Civil Case No. 4809, Philtrust Bank has been adjudged liable by the Regional Trial Court of Bataan to the Spouses Roxas for damages of ₱100,000.00 for breach of the provisions of the Contract of Building Construction in a decision that has already attained finality. The principle of *res judicata* bars the relitigation in a subsequent case of the same facts and issues actually and directly resolved in a former case between the same parties.[116] Hence, this Court shall no longer pass upon the issue of the liability of Philtrust Bank with regard to the unauthorized release of the remaining construction funds.

WHEREFORE, the Petitions are **PARTIALLY GRANTED**. The May 26, 2009 Decision of the Court of Appeals in CA-G.R. CV. No. 30340 is **AFFIRMED WITH MODIFICATION** as follows:

1. Ordering Rosendo P. Dominguez, Jr. and FGU Insurance Corporation to jointly and severally pay the Spouses Floro and Eufemia Roxas and/or Philippine Trust Company the amount of ₱450,000.00 with 12% legal interest from March 6, 1980, the date of Philippine Trust Company's extrajudicial demand, until June 30, 2013 and six percent (6%) legal interest from July 1, 2013 until fully paid, pursuant to this Court's ruling in *Nacar v. Gallery Frames*;[117]
2. Ordering Rosendo P. Dominguez, Jr. to pay the Spouses Floro and Eufemia Roxas and/or Philippine Trust Company:

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[116] *Pilipinas Shell Foundation, Inc. v. Fredeluces*, G.R. No. 174333, April 20, 2016 [Per *J.* Leonen, Second Division]; *Aboitiz Equity Ventures, Inc. v. Chiongbian*, 738 Phil. 773 (2014) [Per *J.* Leonen, Third Division]; *Union Bank of the Philippines v. Development Bank of the Philippines*, 725 Phil. 94 (2014) [Per *J.* Perlas-Bernabe, Second Division].

[117] 716 Phil. 267 (2013) [Per *J.* Peralta, *En Banc*].

a. liquidated damages in the total amount of ₱38,000.00 (₱1,000.00 x 38 days [September 23, 1979 to October 31, 1979]);

b. ₱100,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱50,000.00 as attorney's fees.

The foregoing amounts shall earn interest at the legal rate of six percent (6%) from finality of this Decision until fully paid;

3. Ordering the Spouses Floro and Eufemia Roxas to pay Rosendo P. Dominguez, Jr. the amounts of:

a. ₱90,000,00 with the stipulated fourteen percent (14%) annual interest from October 31, 1979 until fully paid;

b. ₱73,136.75 with interest at the legal rate of 12% per annum from November 16, 1979 up to June 30, 2013 and six percent (6%) per annum from July 1, 2013 until full payment.

FGU Insurance Corporation shall be allowed to offset its liability against the foregoing amounts.

The Spouses Floro and Eufemia Roxas, in turn, are liable to Philippine Trust Company for the latter's share in the obligation.

4. Ordering the Spouses Floro and Eufemia Roxas to pay Philippine Trust Company the amounts of:

a. ₱876,000.00 with stipulated nineteen percent (19%) annual interest from June 30, 1980 until fully paid;

b. ₱2,184,260.38 with nineteen percent (19%) annual interest as penalty for delinquency from June 30, 1980 until fully paid; and

c. Attorney's fees of ₱243,320.00.

5. In default of such payments, the mortgaged real properties shall be sold at a public auction to pay off the various

sums due the Philippine Trust Company. The latter may have execution against the Spouses Floro and Eufemia Roxas for any deficiency which may remain unpaid after applying the proceeds of the sale of said properties to the satisfaction of this Decision;

6. This case is remanded to the Regional Trial Court for execution.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189942. August 9, 2017]

ADTEL, INC. and/or REYNALDO T. CASAS, *petitioners, vs.* **MARIJOY A. VALDEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IN FILING PETITIONS FOR *CERTIORARI* UNDER RULE 65, A MOTION FOR EXTENSION IS A PROHIBITED PLEADING, HOWEVER, IN EXCEPTIONAL OR MERITORIOUS CASES, THE COURT MAY GRANT AN EXTENSION ANCHORED ON SPECIAL OR COMPELLING REASONS.— A.M. No. 07-7-12-SC states that in cases where a motion for reconsideration was timely filed, the filing of a petition for certiorari questioning the resolution denying the motion for reconsideration ***must be made not later than sixty (60) days from the notice of the denial of the motion***. In *Laguna Metts Corporation v. Court of Appeals*, this Court held that following A.M. No. 07-7-12-SC, petitions for certiorari must be filed strictly within 60 days from the notice of judgment or

from the order denying a motion for reconsideration. x x x In *Laguna Metts Corporation*, this Court ruled that the 60-day period was non-extendible and the CA no longer had the authority to grant the motion for extension in view of A.M. No. 07-7-12-SC which amended Section 4 of Rule 65. However, in *Domdom v. Third and Fifth Divisions of the Sandiganbayan,* this Court held that the strict observance of the 60-day period to file a petition for certiorari is not absolute. This Court ruled that absent any express prohibition under Rule 65, a motion for extension is still permitted, subject to the Court's sound discretion. Similarly, in *Labao v. Flores*, this Court recognized that the extension of the 60-day period may be granted by the Court in the presence of special or compelling circumstances provided that there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his or her failure to comply with the rules. Likewise, in *Mid-Islands Power Generation v. Court of Appeals*, this Court held that a motion for extension was allowed in petitions for certiorari under Rule 65 subject to the Court's sound discretion **and only** under exceptional or meritorious cases. x x x ***Therefore, the rule is that in filing petitions for certiorari under Rule 65, a motion for extension is a prohibited pleading. However in exceptional or meritorious cases, the Court may grant an extension anchored on special or compelling reasons.***

2. ID.; ID.; ID.; THE HEAVY WORKLOAD OF COUNSEL IS HARDLY A COMPELLING OR MERITORIOUS REASON FOR AVAILING A MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR *CERTIORARI*.— In *Yutingco v. Court of Appeals*, this Court held that the circumstance of ***heavy workload alone***, absent a compelling or special reason, is not a sufficient justification to allow an extension of the 60-day period to file a petition for certiorari, x x x In *Thenamaris Philippines, Inc. v. Court of Appeals*, this Court held that the heavy workload of counsel is hardly a compelling or meritorious reason for availing a motion for extension of time to file a petition for certiorari. Similarly, in *Mid-Islands Power*, this Court ruled that the heavy workload and the resignation of the lawyer handling the case are insufficient reasons to justify the relaxation of the procedural rules under Rule 65. In both *Thenamaris and Mid-Islands Power*, this Court denied the motions for extension of time to file a petition for certiorari and held that the heavy

workload of counsel was not a compelling reason contemplated by the Rules of Court. As previously stated in *Labao*, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his or her failure to comply with Rule 65. Accordingly, in the absence of a more compelling reason cited in the motion for extension of time other than the "undersigned counsel's heavy volume of work," the CA did not commit a reversible error in dismissing the petition for certiorari.

APPEARANCES OF COUNSEL

De Leon & Desiderio for petitioners.
Franklin M. Canto for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on certiorari[1] assailing the 28 May 2009 Resolution[2] and the 8 October 2009 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 108169.

The Facts

Adtel, Inc. (Adtel) is a domestic corporation engaged in the distribution of telephone units, gadgets, equipment, and allied products. On 9 September 1996, Adtel hired Marijoy A. Valdez (respondent) to work as an accountant for the company. Adtel promoted respondent as the company's purchasing and logistics

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[1] *Rollo,* pp. 6-27. Under Rule 45 of the Rules of Court.

[2] *Id*. at 34-35. Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Rosmari D. Carandang and Marlene Gonzales-Sison concurring.

[3] *Id*. at 29-31. Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Rosmari D. Carandang and Marlene Gonzales-Sison concurring.

supervisor.[4] Adtel then entered into a dealership agreement with respondent's husband, Angel Valdez (Mr. Valdez), to distribute Adtel's wideband VHF-UHF television antennas. The dealership agreement was for twelve (12) months and the agreement was extended for another three (3) months.[5] On 3 February 2006, Mr. Valdez filed a civil case against Adtel for specific performance and damages for the execution of the terms of the dealership agreement.[6] On 10 May 2006, Mr. Valdez also instituted a criminal complaint for libel against Adtel's chairman, president, and officers.[7]

On 22 May 2006, Adtel issued a memorandum[8] directing respondent to show cause in writing why she should not be terminated for conflict of interest and/or serious breach of trust and confidence.[9] The memorandum stated that the filing of cases by respondent's husband created a conflict of interest since respondent had access to vital information that can be used against Adtel.[10] Respondent was placed under preventive suspension by Adtel. On 23 May 2006, respondent denied the charges of Adtel. Respondent contended that the cases had nothing to do with her being an employee of Adtel and had not affected her performance in the company.[11]

On 29 May 2006, Adtel terminated respondent from the company. Respondent filed a complaint for illegal dismissal with the Labor Arbiter. In her Position Paper,[12] respondent alleged that she did not violate any company rule or policy;

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[4] *Id*. at 135.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 136.

[8] *Id*. at 69-70.

[9] *Id*. at 136.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 75-90.

neither was she guilty of fraud, nor willful breach of trust. Respondent contended that she was illegally dismissed without just cause and was entitled to separation pay, backwages, and damages.

The Decision of the Labor Arbiter

In a Decision[13] dated 24 May 2007, the Labor Arbiter dismissed respondent's complaint for illegal dismissal. The Labor Arbiter found that there existed a conflict of interest between respondent and Adtel. The Labor Arbiter ruled that respondent was not an ordinary rank-and-file employee but a managerial employee with a fiduciary duty to protect the interest of Adtel. The Labor Arbiter held that the civil and criminal cases initiated by respondent's husband indubitably created a conflict of interest that was a just cause for her dismissal by Adtel.

The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaint for utter lack of merit.

SO ORDERED.[14]

The Decision of the National Labor Relations Commission

In a Decision[15] dated 21 May 2008, the National Labor Relations Commission (NLRC) reversed the decision of the Labor Arbiter. The NLRC ruled that Adtel illegally dismissed respondent. The NLRC held that Adtel failed to substantially prove the existence of an act or omission personally attributable to the respondent to serve as a just cause to terminate her employment.

The dispositive portion of the NLRC's decision states:

WHEREFORE, the appeal is GRANTED and the assailed Decision is hereby REVERSED and SET ASIDE. A new one is hereby rendered

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[13] *Id*. at 91-101. Penned by Labor Arbiter Fatima Jambaro-Franco.

[14] *Id*. at 101.

[15] *Id.* at 135-144.

ordering the respondent company to pay to the complainant the following amounts:

1. ₱283,000.00 – representing her separation pay for her almost ten years of service to the company;
2. ₱684,600.58 – representing her backwages from May 29, 2006 up to the date of this Decision;

Plus ten percent (10%) of the total monetary awards, as and for attorney's fees.

Other claims and charges are dismissed for lack of merit.

SO ORDERED.[16]

Adtel filed a Motion for Reconsideration which was denied by the NLRC on 24 December 2008. Adtel received the NLRC Resolution on 5 February 2009. On 7 April 2009, the last day for filing its petition for certiorari with the CA, Adtel filed a motion for extension of time with the CA. On 22 April 2009, fifteen (15) days after the last day for filing or the 75th day, Adtel filed its petition for certiorari with the CA.[17]

The Decision of the CA

On 28 May 2009, the CA denied the motion for extension and dismissed Adtel's petition for certiorari for being filed beyond the reglementary period. The CA ruled that Adtel had until 7 April 2009 to file its petition for certiorari. Instead of filing the petition for certiorari, Adtel filed a motion for extension of time on 7 April 2009 and subsequently filed its petition for certiorari on 22 April 2009, the last day of the extended period prayed for by Adtel. The CA held that the reglementary period to file a petition for certiorari can no longer be extended pursuant to A.M. No. 07-7-12-SC which amended Section 4, Rule 65 of the Rules of Court.[18]

The dispositive portion of the CA's Resolution states:

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[16] *Id.* at 143.

[17] *Id*. at 34.

[18] *Id*.

WHEREFORE, the Motion is DENIED. Instead, the petition is DISMISSED for being filed beyond the reglementary period.

SO ORDERED.[19]

Adtel filed a motion for reconsideration which was denied on 8 October 2009.[20]

The Issues

Adtel presented the following issues in this petition:

A. The Court of Appeals committed a reversible error in denying the petitioners' motion for reconsideration and in dismissing the petition for certiorari on the sole basis of technicality.

B. Technicalities should give way to a judgment on the merits considering that the Labor Arbiter justly and correctly ruled that the complaint for illegal dismissal against petitioner was baseless and unmeritorious only to be later reversed by the NLRC upon respondent's appeal.[21]

The Decision of this Court

We deny the petition.

A.M. No. 07-7-12-SC which amended Section 4, Rule 65 of the Rules of Court states:

Sec. 4. *When and where to file the petition*. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed

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[19] *Id*. at 35.

[20] *Id*. at 13.

[21] *Id*.

with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction.

A.M. No. 07-7-12-SC states that in cases where a motion for reconsideration was timely filed, the filing of a petition for certiorari questioning the resolution denying the motion for reconsideration ***must be made not later than sixty (60) days from the notice of the denial of the motion***. In *Laguna Metts Corporation v. Court of Appeals*,[22] this Court held that following A.M. No. 07-7-12-SC, petitions for certiorari must be filed strictly within 60 days from the notice of judgment or from the order denying a motion for reconsideration. In *Laguna Metts Corporation*, this Court stated the rationale for the strict observance of the 60-day period to file a petition for certiorari, to wit:

The 60-day period is deemed reasonable and sufficient time for a party to mull over and to prepare a petition asserting grave abuse of discretion by a lower court. The period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of the parties to a speedy disposition of their case.[23]

In *Laguna Metts Corporation,* this Court ruled that the 60-day period was non-extendible and the CA no longer had the authority to grant the motion for extension in view of A.M. No. 07-7-12-SC which amended Section 4 of Rule 65.

However, in *Domdom v. Third and Fifth Divisions of the Sandiganbayan*,[24] this Court held that the strict observance of

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[22] 611 Phil. 530 (2009).

[23] *Id*. at 535, citing *De Los Santos v. Court of Appeals*, 522 Phil. 313 (2006).

[24] 627 Phil. 341 (2010).

the 60-day period to file a petition for certiorari is not absolute. This Court ruled that absent any express prohibition under Rule 65, a motion for extension is still permitted, subject to the Court's sound discretion. Similarly, in *Labao v. Flores*,[25] this Court recognized that the extension of the 60-day period may be granted by the Court in the presence of special or compelling circumstances provided that there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his or her failure to comply with the rules. Likewise, in *Mid-Islands Power Generation v. Court of Appeals*,[26] this Court held that a motion for extension was allowed in petitions for certiorari under Rule 65 subject to the Court's sound discretion **and only** under exceptional or meritorious cases.

The exception to the 60-day rule to file a petition for certiorari under Rule 65 was also applied by this Court in a more recent case in *Republic of the Philippines v. St. Vincent de Paul Colleges, Inc.*,[27] to wit: "[u]nder exceptional circumstances, however, and subject to the sound discretion of the Court, [the] said period may be extended pursuant to [the] *Domdom, Labao and Mid Islands Power* cases."[28]

Therefore, the rule is that in filing petitions for certiorari under Rule 65, a motion for extension is a prohibited pleading. However in exceptional or meritorious cases, the Court may grant an extension anchored on special or compelling reasons.

Adtel's motion for extension filed with the CA on 7 April 2009 reads:

MOTION FOR EXTENSION OF TIME
TO FILE PETITION FOR CERTIORARI

1. Petitioner's Petition for Certiorari was due for filing yesterday, 06 April 2009 or sixty (60) days from 05 February 2009, the date of

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[25] 649 Phil. 213 (2010).

[26] 683 Phil. 325 (2012).

[27] 693 Phil. 145 (2012).

[28] *Id*. at 156-157.

receipt of the Resolution dated 24 December 2008 issued by the National Labor Relations Commission (NLRC). Considering that yesterday was a holiday, the petition in effect is due today, 07 April 2009.

2. While a draft of the pleading had already been prepared, final revisions have yet to be completed. **However, due to the undersigned counsel's heavy volume of work, petitioner is constrained to request for an additional period of fifteen (15) days from today or up to 22 April 2009 within which to file the Petition for Certiorari.**

3. This motion is not intended to delay the proceedings but is prompted solely by the above-stated reason.

PRAYER

WHEREFORE, petitioner respectfully prays for an extension of fifteen (15) days from 07 April 2009 or up to 22 April 2009 within which to file its Petition for Certiorari.

Petitioner prays for such other relief which may be deemed just and equitable under the circumstances.[29] (Boldfacing and underscoring supplied)

In *Yutingco v. Court of Appeals*,[30] this Court held that the circumstance of ***heavy workload alone***, absent a compelling or special reason, is not a sufficient justification to allow an extension of the 60-day period to file a petition for certiorari, to wit:

Heavy workload, which is relative and often self serving, ought to be coupled with more compelling reasons such as illness of counsel or other emergencies that could be substantiated by affidavits of merit. Standing alone, heavy workload is not sufficient reason to deviate from the 60-day rule. Thus, we are constrained to state that the Court of Appeals did not err in dismissing the petition for having been filed late.[31]

In *Thenamaris Philippines, Inc. v. Court of Appeals*,[32] this Court held that the heavy workload of counsel is hardly a

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[29] *Rollo*, pp. 161-162.

[30] 435 Phil. 83 (2002).

[31] *Id.* at 92.

[32] 725 Phil. 590 (2014).

compelling or meritorious reason for availing a motion for extension of time to file a petition for certiorari. Similarly, in *Mid-Islands Power*, this Court ruled that the heavy workload and the resignation of the lawyer handling the case are insufficient reasons to justify the relaxation of the procedural rules under Rule 65. In both *Thenamaris and Mid-Islands Power*, this Court denied the motions for extension of time to file a petition for certiorari and held that the heavy workload of counsel was not a compelling reason contemplated by the Rules of Court.

As previously stated in *Labao*,[33] there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his or her failure to comply with Rule 65. Accordingly, in the absence of a more compelling reason cited in the motion for extension of time other than the "undersigned counsel's heavy volume of work," the CA did not commit a reversible error in dismissing the petition for certiorari.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Resolutions of the Court of Appeals dated 28 May 2009 and 8 October 2009 in CA-G.R. SP No. 108169.

SO ORDERED.

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

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[33] *Supra* note 25.

THIRD DIVISION

[G.R. No. 190995. August 9, 2017]

BENJAMIN A. KO, EDUARDO A. KO, ALEXANDER A. KO, MA. CYNTHIA K. AZADA-CHUA, GARY A. KO, ANTHONY A. KO, FELIX A. KO, and DANTON C. KO, *petitioners, vs.* **VIRGINIA DY ARAMBURO, VICKY ARAMBURO, JULY ARAMBURO, JESUS ARAMBURO, JOSEPHINE ARAMBURO, MARY JANE ARAMBURO, AUGUSTO ARAMBURO, JR., JAIME ARAMBURO, JULIET ARAMBURO, JACKSON ARAMBURO, JOCELYN ARAMBURO, AILEEN ARAMBURO, JUVY ARAMBURO, CORAZON ROTAIRO ARAMBURO, and NEIL VINCENT ARAMBURO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AS A RULE, FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY IF AFFIRMED BY THE APPELLATE COURT, ARE BINDING AND CONCLUSIVE UPON THE SUPREME COURT.— [The Court finds] no cogent reason to depart from the the courts *a quo*'s findings as to the existence and effectivity of the April 13, 1970 Deed of Cession giving rights to Augusto's children over the one-third portion of the subject property. For one, basic is the rule that factual findings of the trial court, especially if affirmed by the appellate court, are binding and conclusive upon this Court absent any clear showing of abuse, arbitrariness, or capriciousness committed by the trial court. In addition, We are not convinced of Corazon's bare assertion that the said document was cancelled merely because she and her brother Simeon decided not to implement it anymore. Moreover, as can be gleaned from the testimony of respondent July Aramburo, one of Augusto's heirs, which was notably quoted by the petitioners in this petition, it is clear that he, together with his co-heirs, are co-owners of the subject properties along with Spouses Simeon and Virginia and Spouses Felix and Corazon, by virtue of the Deed of Cession executed

in their favor. The said testimony clearly stated that Simeon was also merely administering the subject properties.

2. **ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; PRESUMPTION IN FAVOR OF CONJUGALITY IS REBUTTABLE, BUT ONLY WITH A STRONG, CLEAR AND CONVINCING EVIDENCE; CASE AT BAR.—** Article 160 of the Old Civil Code, which is the applicable provision since the property was acquired prior to the enactment of the Family Code as stated above, provides that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." This presumption in favor of conjugality is rebuttable, but only with a strong, clear and convincing evidence; there must be a strict proof of exclusive ownership of one of the spouses, and the burden of proof rests upon the party asserting it. Thus, in this case, the subject properties, having been acquired during the marriage, are still presumed to belong to Simeon and Virginia's conjugal properties. Unfortunately, Corazon, or the petitioners for that matter, failed to adduce ample evidence that would convince this Court of the exclusive character of the properties.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF SALE; TO BE VALID, OBJECT MUST BE OWNED BY THE SELLER.—** As for the one-third portion of the subject properties pertaining to Augusto's heirs, We are one with the CA in ruling that the Deed of Absolute Sale is void as the said portion is owned by Augusto's heirs as above-discussed and thus, Simeon had no right to sell the same. It is basic that the object of a valid sales contract must be owned by the seller. *Nemo dat quod non habet*, as an ancient Latin maxim says, One cannot give what one does not have.

4. **ID.; ID.; ID.; VOIDABLE CONTRACT; UNDER THE OLD CIVIL CODE, ALIENATION OF ANY REAL PROPERTY OF THE CONJUGAL PARTNERSHIP WITHOUT THE CONSENT OF THE WIFE IS MERELY VOIDABLE; CASE AT BAR.—** [A]s to the one-third portion commonly-owned by Spouses Simeon and Virginia, Simeon's alienation of the same through sale without Virginia's conformity is merely voidable. Article 166 of the Old Civil Code explicitly requires the consent of the wife before the husband may alienate or encumber any real property of the conjugal partnership except

when there is a showing that the wife is incapacitated, under civil interdiction, or in like situations. In this case, Virginia vehemently denies having conformed to the December 14, 1974 sale in favor of Corazon. In fact, during trial, it has already been satisfactorily proven, through the NBI's findings as upheld by the trial court, that Virginia's signature appearing on the said Deed of Absolute Sale is a forgery. Concedingly, a finding of forgery does not depend entirely on the testimonies of handwriting experts as even this Court may conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity. We, however, do not have any means to evaluate the questioned signature in this case as even the questioned Deed of Absolute Sale is not available in the records before Us. Hence, We are constrained to the general rule that the factual findings of the RTC as affirmed by the CA should not be disturbed by this Court unless there is a compelling reason to deviate therefrom.

5. ID.; ID.; PRESCRIPTION OF ACTIONS; ACTION TO NULLIFY A VOID CONTRACT IS IMPRESCRIPTIBLE.— For the share of Augusto's heirs sold by Simeon in the December 14, 1974 Deed of Absolute Sale, the sale of the same is void as the object of such sale, not being owned by the seller, did not exist at the time of the transaction. Being a void contract, thus, the CA correctly ruled that the action to impugn the sale of the same is imprescriptible pursuant to Article 1410 of the New Civil Code (NCC).

6. ID.; ID.; ID.; PRESCRIPTIVE PERIOD TO ANNUL VOIDABLE CONTRACT UNDER THE OLD CIVIL CODE APPLIES IN THE CASE AT BAR.— As for the share pertaining to Simeon and Virginia, We must emphasize that the governing law in this case is the Old Civil Code. Under the said law, while the husband is prohibited from selling the commonly-owned real property without his wife's consent, still, such sale is not void but merely voidable. Article 173 thereof gave Virginia the right to have the sale annulled during the marriage within ten years from the date of the sale. Failing in that, she or her heirs may demand, after dissolution of the marriage, only the value of the property that Simeon erroneously sold. Thus: Art. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act

or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband. x x x As this case, as far as Virginia is concerned, falls under the provisions of the Old Civil Code, the CA erred in ruling that the subject Deed of Absolute Sale is void for the lack of the wife's conformity thereto and thus, applying Article 1410 of the NCC stating that the action to question a void contract is imprescriptible. Again, Simeon's sale of their conjugal property without his wife's conformity under the Old Civil Code is merely voidable *not* void. The imprescriptibility of an action assailing a void contract under Article 1410 of the NCC, thus, does not apply in such case. The 10-year prescriptive period under Article 173 of the Old Civil Code, therefore, should be applied in this case.

APPEARANCES OF COUNSEL

Brotamonte Law Office for petitioners.
Jose Marino Madrilejos for respondents.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45, assailing the Decision[2] dated September 22, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 89611, affirming the Decision dated February 16, 2006 of the Regional Trial Court (RTC) of Tabaco City, Branch 15, in Civil Case No. T-1693.

Factual and Procedural Antecedents

Respondent Virginia Dy Aramburo (Virginia) is Corazon Aramburo Ko's (Corazon) sister-in-law, the former being the

[1] *Rollo*, pp. 11-40.

[2] Penned by Associate Justice Marlene B. Gonzales-Sison, concurred in by Presiding Justice Andres B. Reyes, Jr. (now a Member of the Court) and Associate Justice Vicente S.E. Veloso; *id*. at 42-58.

wife of the latter's brother, Simeon Aramburo (Simeon). Corazon and Simeon have another sibling, Augusto Aramburo (Augusto), who predeceased them. Virginia's co-respondents herein are the heirs of Augusto, while the petitioners in the instant case are the heirs of Corazon who substituted the latter after she died while the case was pending before the CA.[3]

On November 26, 1993, Virginia, together with her co-respondents herein, filed a Complaint for Recovery of Ownership with Declaration of Nullity and/or Alternatively Reconveyance and Damages with Preliminary Injunction against Corazon, docketed as Civil Case No. T-1693.[4]

Subject of this case are seven parcels of land located in Tabaco City, Albay, to wit: (1) Transfer Certificate of Title (TCT) No. T-41187 with an area of 176,549 square meters, more or less; (2) TCT No. T-41183 with an area of 217,732 sq m, more or less; (3) TCT No. T-41184 with an area of 39,674 sq m, more or less; (4) TCT No. T-28161 with an area of 86,585 sq m, more or less; (5) TCT No. T-41186 with an area of 4,325 sq m, more or less; (6) TCT No. 49818 with an area of 27,281 sq m, more or less; and (7) TCT No. 49819 with an area of 35,760 sq m, more or less (subject properties), now all under the name of Corazon.[5]

The complaint alleged that Virginia and her husband Simeon (Spouses Simeon and Virginia), together with Corazon and her husband Felix (Spouses Felix and Corazon), acquired the subject properties from Spouses Eusebio and Epifania Casaul (Spouses Eusebio and Epifania) through a Deed of Cession dated April 10, 1970.[6]

On April 13, 1970, Spouses Simeon and Virginia and Spouses Felix and Corazon executed a Deed of Cession in favor of

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

[4] *Id*. at 44.

[5] *Id*. at 44-46.

[6] *Id*. at 44.

Augusto's heirs, subject of which is the one-third *pro-indiviso* portion of the subject properties.[7]

However, allegedly with the use of falsified documents, Corazon was able to have the entire subject properties transferred exclusively to her name, depriving her co-owners Virginia and Augusto's heirs of their *pro-indiviso* share, as well as in the produce of the same.[8]

For her part, Corazon admitted having acquired the subject properties through cession from their uncle and auntie, Spouses Eusebio and Epifania. She, however, intimated that although the said properties were previously registered under Spouses Eusebio and Epifania's name, the same were, in truth, owned by their parents, Spouses Juan and Juliana Aramburo (Spouses Juan and Juliana). Hence, when her parents died, Spouses Eusebio and Epifania allegedly merely returned the said properties to Spouses Juan and Juliana by ceding the same to their children, Corazon and Simeon. She further averred that the said properties were ceded only to her and Simeon, in that, her husband Felix's name and Virginia's name appearing in the Deed were merely descriptive of her and Simeon's civil status, being married to Felix and Virginia, respectively.[9]

Corazon alleged that she and Simeon thought of sharing a third of the subject properties with the heirs of their brother Augusto who predeceased them, hence they executed a Deed of Cession on April 13, 1970 but later on decided to recall and not implement the same. In fine, thus, Corazon insisted that only she and Simeon share one-half portion each of the subject properties.[10]

Corazon further alleged that on December 14, 1974, Simeon sold and conveyed his entire one-half share in the co-owned

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[7] *Id*. at 45.

[8] *Id*. at 46.

[9] *Id*. at 47-48.

[10] *Id*.

properties in her favor. Hence, Corazon became the sole owner thereof and consequently, was able to transfer the titles of the same to her name. Corazon argued that the subject properties belong to Simeon's exclusive property, hence, Virginia's conformity to such sale was not necessary.[11]

Corazon also raised in her Answer to the complaint, that respondents' action was barred by prescription.[12]

Ruling of the RTC

During trial, it was established that Simeon and Virginia's marriage had been on bad terms. In fact, since February 4, 1973 Simeon and Virginia had lived separately. Simeon lived with his sister Corazon in Tabaco City, Albay, while Virginia and their children lived in Paco, Manila. From these circumstances, the trial court deduced that it is highly suspicious that thereafter, Virginia would sign a deed of sale, consenting to her husband's decision to sell their conjugal assets to Corazon. Virginia vehemently disowned the signature appearing in the December 14, 1974 Deed of Absolute Sale. Verily, the National Bureau of Investigation (NBI) examination report concluded that the questioned signature and the specimen signatures of Virginia were not written by one and the same person and thus, the former is a forgery.[13]

Without the conformity of Virginia, according to the trial court, Simeon cannot alienate or encumber any real property of the conjugal partnership.[14]

The trial court concluded, thus, that the December 14, 1974 Deed of Absolute Sale, being falsified, is not a valid instrument to transfer the one-third share of the subject properties.[15]

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[11] *Id*. at 47 and 54.

[12] *Id*. at 48.

[13] *Id*. at 53-55.

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

[15] *Id*. at 56.

The trial court also did not accept Corazon's allegation that the April 13, 1970 Deed of Cession in favor of Augusto's heirs as to the other one-third portion of the subject properties, was cancelled and not implemented. The trial court noted Corazon's testimony during trial that she was merely administering the said portion for Augusto's heirs, her nephews and nieces, who were still minors at that time.[16]

On February 16, 2006, the trial court rendered a Decision in favor of herein respondents, thus:

WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of the plaintiffs:

(1) Declaring the plaintiffs Virginia Dy-Arambulo and Vicky Aramburo-Lee together with the interested parties the owner of ONE-THIRD (1/3) portion of the property subject mater of this case;

(2) Declaring the co-plaintiffs (heirs of Augusto Aramburo) likewise the owners of One-third (1/3) portion of the property subject matter of this case;

(3) Ordering the Cancellation of [TCT] Nos. T-41187, T-41183, T-41184, T-41185, T-41186, T-48918[4] [sic] and T-49819 and another ones issued upon proper steps taken in the names of the plaintiffs and interested parties; and the other plaintiffs, Heirs of Augusto Aramburo, conferring ownership over TWO-THIRDS (2/3) PORTION of the properties subject matter of this case;

(4) Ordering the defendant to reimburse the plaintiffs TWO THIRDS (2/3) of the produce of the properties, subject matter of this case from the time she appropriated it to herself in 1974 until such time as the 2/3 share are duly delivered to them; and

(5) Ordering the defendant to pay plaintiffs by way of damages the amount of Fifty Thousand (₱50,000.00) as attorney's fees; and

(6) To pay the cost of suit.

SO ORDERED.[17]

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[16] *Id*. at 53.

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

Ruling of the CA

On appeal, Corazon maintained that the subject properties are not part of Spouses Simeon and Virginia's conjugal properties. This, according to her, is bolstered by the fact that the subject properties are not included in the case for dissolution of conjugal partnership docketed as Special Proceeding No. 67, and in the separation of properties case docketed as Civil Case No. T-1032 between Simeon and Virginia.[18]

Respondents argued otherwise. Particularly, Virginia insisted that only a third portion of the subject properties is owned by Simeon and that the same is conjugally-owned by her and Simeon since it was acquired during their marriage. As such, the disposition by Simeon of the one-half portion of the subject properties in favor of Corazon is not only void but also fictitious not only because Simeon does not own the said one-half portion, but also because Virginia's purported signature in the December 14, 1974 Deed of Absolute Sale as the vendor's wife was a forgery as found by the NBI, which was upheld by the trial court.[19]

In its September 22, 2009 assailed Decision,[20] the CA affirmed the trial court's findings and conclusion in its entirety, thus:

WHEREFORE, the present appeal is **DISMISSED.** Consequently, the Decision of the [RTC], Branch 15, Tabaco City, in Civil Case No. T-1693 is hereby **AFFIRMED** *in toto*.

SO ORDERED.[21]

Petitioners then, substituting deceased Corazon, filed a Motion for Reconsideration,[22] which was likewise denied by the CA in its Resolution[23] dated January 13, 2010:

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

[19] *Id*. at 51.

[20] *Id*. at 42-58.

[21] *Id*. at 57.

[22] *Id*. at 59-70.

[23] *Id*. at 73-74.

WHEREFORE, there being no cogent reason for US to depart from Our assailed Decision, WE hereby **DENY** the Motion for Partial Reconsideration.

SO ORDERED.[24]

Hence, this petition.

Issue

Did the CA correctly sustain the RTC decision, declaring the parties as co-owners of the subject properties? In the affirmative, may the subject titles be nullified and transferred to the parties as to their respective portions?

This Court's Ruling

The petition is partly meritorious.

At the outset, let it be stated that the law which governs the instant case is the Old Civil Code, not the Family Code, as the circumstances of this case all occurred before the effectivity of the Family Code on August 3, 1988.

Proceeding, thus, to the issue of ownership, We find no reason to depart from the RTC's ruling as affirmed by the CA.

Augusto's heirs own one-third pro-indiviso share in the subject properties

Respondents' (Augusto's heirs) claim concerning one-third of the subject properties, is anchored upon the April 13, 1970 Deed of Cession executed by Spouses Felix and Corazon and Spouses Simeon and Virginia in favor of Augusto's children. Petitioners, however, maintain that the said deed was never given effect as it was recalled by the said spouses.

The courts *a quo* found that the said deed, ceding a third of the subject properties to Augusto's heirs, was in fact implemented as evidenced by Corazon's testimony that she was merely

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[24] *Id*. at 73.

administering the said properties for Augusto's heirs as her nephews and nieces were still minors at that time.

We find no cogent reason to depart from the the courts *a quo*'s findings as to the existence and effectivity of the April 13, 1970 Deed of Cession giving rights to Augusto's children over the one-third portion of the subject property. For one, basic is the rule that factual findings of the trial court, especially if affirmed by the appellate court, are binding and conclusive upon this Court absent any clear showing of abuse, arbitrariness, or capriciousness committed by the trial court.[25] In addition, We are not convinced of Corazon's bare assertion that the said document was cancelled merely because she and her brother Simeon decided not to implement it anymore. Moreover, as can be gleaned from the testimony of respondent July Aramburo, one of Augusto's heirs, which was notably quoted by the petitioners in this petition, it is clear that he, together with his co-heirs, are co-owners of the subject properties along with Spouses Simeon and Virginia and Spouses Felix and Corazon, by virtue of the Deed of Cession executed in their favor. The said testimony clearly stated that Simeon was also merely administering the subject properties.[26]

Simeon's heirs, which include Virginia, also own one-third pro-indiviso share in the subject properties

Respondent Virginia's claim as to the other one-third portion of the subject properties is ultimately anchored upon the April 10, 1970 Deed of Cession. Corazon, however, countered that inasmuch as her husband Felix's name in the said Deed of Cession was merely descriptive of her status as being married to the latter, Virginia's name likewise appeared in the said Deed of Cession merely to describe Simeon's status as being married to Virginia. In fine, Corazon argued that the properties subject of the said Deed were given exclusively to her and Simeon.

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[25] *Uybuco v. People of the Philippines*, 749 Phil. 987, 992 (2014).

[26] *Rollo*, pp. 30-31.

Consequently, the one-half portion thereof pertains to Simeon's exclusive property and does not belong to Simeon and Virginia's conjugal property. This, according to Corazon, was bolstered by the fact that Simeon's share in the subject properties was not included in the petition for separation of properties between Virginia and Simeon. Petitioners maintain this argument.

We uphold the courts *a quo*'s conclusion that one-third portion of the subject properties is indeed part of Simeon and Virginia's conjugal properties.

It is undisputed that the subject properties were originally registered in the name of Spouses Eusebio and Epifania. It is also undisputed that in a Deed of Cession dated April 10, 1970, these parcels of land were ceded to Spouses Felix and Corazon, and Spouses Simeon and Virginia. There is likewise no question that the subject properties were ceded to the said spouses during Spouses Simeon and Virginia's marriage.

Article 160 of the Old Civil Code, which is the applicable provision since the property was acquired prior to the enactment of the Family Code as stated above, provides that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife."[27] This presumption in favor of conjugality is rebuttable, but only with a strong, clear and convincing evidence; there must be a strict proof of exclusive ownership of one of the spouses,[28] and the burden of proof rests upon the party asserting it.[29]

Thus, in this case, the subject properties, having been acquired during the marriage, are still presumed to belong to Simeon and Virginia's conjugal properties.

Unfortunately, Corazon, or the petitioners for that matter, failed to adduce ample evidence that would convince this Court of the exclusive character of the properties.

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[27] *Francisco v. CA*, 359 Phil. 519, 526 (1998).

[28] *Id*.

[29] *Spouses Tarrosa v. De Leon, et al.,* 611 Phil. 384, 395 (2009).

Petitioners' argument that Virginia's name was merely descriptive of Simeon's civil status is untenable. It bears stressing that if proof obtains on the acquisition of the property during the existence of the marriage, as in this case, then the presumption of conjugal ownership remains unless a strong, clear and convincing proof was presented to prove otherwise. In fact, even the registration of a property in the name of one spouse does not destroy its conjugal nature. What is material is the time when the property was acquired.[30]

We also give scant consideration on petitioners' bare allegation that the subject properties were actually from the estate of Simeon and Corazon's parents, intimating that the same were inherited by Simeon and Corazon, hence, considered their exclusive properties. The records are bereft of any proof that will show that the subject properties indeed belonged to Simeon and Corazon's parents. Again, what is established is that the subject properties were originally registered under Spouses Eusebio and Epifania's name and thus, ceded by the latter. Petitioners' bare allegation on the matter is so inadequate for the Court to reach a conclusion that the acquisition of the subject properties was in a nature of inheritance than a cession.

Likewise, the fact that the subject properties were not included in the cases for separation of properties between Simeon and Virginia does not, in any way, prove that the same are not part of Simeon and Virginia's conjugal properties. Such fact cannot be considered as a strong, clear and convincing proof that the said properties exclusively belong to Simeon. Besides, We note respondents' allegation in their Comment to this petition that the case for separation of properties between Simeon and Virginia was not resolved by the trial court on the merits as Simeon died during the pendency thereof, and also because there was actually a disagreement as to the inventory the properties included therein. This could mean that precisely, other properties may be part of the said spouses' conjugal properties and were not included in the said case. Notably, such allegation was not denied by the petitioners.

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[30] *Id*. at 395.

At any rate, the question of whether petitioners were able to adduce proof to overthrow the presumption of conjugality is a factual issue best addressed by the trial court. It cannot be over-emphasized that factual determinations of the trial courts, especially when confirmed by the appellate court, are accorded great weight by the Court and, as a rule, will not be disturbed on appeal, except for the most compelling reasons, which We do not find in the case at bar.[31]

Simeon could not have validly sold the one-third share of Augusto's heirs, as well as the one-third portion of his and Virginia's conjugal share without the latter's consent, to Corazon

We now proceed to determine the validity of the December 14, 1974 Deed of Absolute Sale executed by Simeon in favor of Corazon, covering one-half of the subject properties which was his purported share.

As for the one-third portion of the subject properties pertaining to Augusto's heirs, We are one with the CA in ruling that the Deed of Absolute Sale is void as the said portion is owned by Augusto's heirs as above-discussed and thus, Simeon had no right to sell the same. It is basic that the object of a valid sales contract must be owned by the seller.[32] *Nemo dat quod non habet*, as an ancient Latin maxim says. One cannot give what one does not have.[33]

However, as to the one-third portion commonly-owned by Spouses Simeon and Virginia, Simeon's alienation of the same through sale without Virginia's conformity is merely voidable.

Article 166[34] of the Old Civil Code explicitly requires the consent of the wife before the husband may alienate or encumber

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[31] *Id*.

[32] *Cabrera v. Ysaac*, 747 Phil. 187, 206 (2014).

[33] *Cavite Development Bank v. Spouses Lim*, 381 Phil. 355, 365 (2000).

[34] Art. 166. Unless the wife has been declared a *non compos mentis* or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the

any real property of the conjugal partnership except when there is a showing that the wife is incapacitated, under civil interdiction, or in like situations.

In this case, Virginia vehemently denies having conformed to the December 14, 1974 sale in favor of Corazon. In fact, during trial, it has already been satisfactorily proven, through the NBI's findings as upheld by the trial court, that Virginia's signature appearing on the said Deed of Absolute Sale is a forgery. Concedingly, a finding of forgery does not depend entirely on the testimonies of handwriting experts as even this Court may conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity. We, however, do not have any means to evaluate the questioned signature in this case as even the questioned Deed of Absolute Sale is not available in the records before Us. Hence, We are constrained to the general rule that the factual findings of the RTC as affirmed by the CA should not be disturbed by this Court unless there is a compelling reason to deviate therefrom.

In addition, as correctly observed by the courts *a quo*, We cannot turn a blind eye on the circumstances surrounding the execution of the said Deed of Absolute Sale. The CA, quoting the RTC, held thus:

> [T]he dubiety of its execution at a time that [Virginia] and her husband's marital relationship was already stale is not to be taken for granted. It is a fact that [Virginia] had lived separately from bed and board with her husband [Simeon] as of February 4, 1973. It is, therefore, highly suspicious that [later on], x x x she would consent to her husband's decision selling their conjugal assets to [Corazon]. Precisely, her signature appearing in said Deed of Absolute Sale dated December 14, 1974 x x x is being disowned by her as being a forgery. Undoubtedly, the NBI Examination report anent this x x x conducted by Sr. Document Examiner Rhoda B. Flores gave the conclusion

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husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same.

x x x x x x x x x

that the questioned and the standard/sample signatures of "[Virginia]" was not written by one and the same person. x x x.[35]

The CA also correctly observed that the forgery, as found by the RTC, is evident from the admitted fact of strained marital relationship between Simeon and Virginia and the fact that at the time the question Deed of Absolute Sale was executed, Simeon had been living with Corazon in Tabaco City, Albay, while Virginia and her children were living in Paco, Manila.[36]

Accordingly, without Virginia's conformity, the Deed of Absolute Sale executed on December 14, 1974 between Simeon and Corazon purportedly covering one-half of the subject properties is voidable.

As for Augusto's heirs, the action to nullify the sale of their share, being void is imprescriptible; as for Virginia, the action to nullify the sale of her share, being merely voidable, is susceptible to prescription

At this juncture, We differ from the CA's pronouncement that since the deed of sale involved is a void contract, the action to nullify the same is imprescriptible.

We qualify.

For the share of Augusto's heirs sold by Simeon in the December 14, 1974 Deed of Absolute Sale, the sale of the same is void as the object of such sale, not being owned by the seller, did not exist at the time of the transaction.[37] Being a void contract,

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[35] *Id*. at 55.

[36] *Id*. at 56.

[37] Art. 1409. The following contracts are inexistent and void from the beginning:

x x x x x x x x x

(3) Those whose cause or object did not exist at the time of the transaction;

x x x x x x x x x

thus, the CA correctly ruled that the action to impugn the sale of the same is imprescriptible pursuant to Article 1410[38] of the New Civil Code (NCC).

As for the share pertaining to Simeon and Virginia, We must emphasize that the governing law in this case is the Old Civil Code. Under the said law, while the husband is prohibited from selling the commonly-owned real property without his wife's consent, still, such sale is not void but merely voidable.[39] Article 173 thereof gave Virginia the right to have the sale annulled during the marriage within ten years from the date of the sale. Failing in that, she or her heirs may demand, after dissolution of the marriage, only the value of the property that Simeon erroneously sold.[40] Thus:

> Art. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property.
>
> Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband.

In contrast, the Family Code does not provide a period within which the wife who gave no consent may assail her husband's sale of real property. It simply provides that without the other spouse's written consent or a court order allowing the sale, the same would be void.[41] Thus, the provisions of the NCC governing

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These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[38] Art. 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.

[39] *Fuentes, et al. v. Roca, et al.,* 633 Phil. 9, 18 (2010).

[40] *Id*.

[41] Art. 124. x x x In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other

contracts is applied as regards the issue on prescription. Under the NCC, a void or inexistent contract has no force and effect from the very beginning, and this rule applies to contracts that are declared void by positive provision of law as in the case of a sale of conjugal property without the other spouse's written consent.[42] Under Article 1410 of the NCC, the action or defense for the declaration of the inexistence of a contract does not prescribe.

As this case, as far as Virginia is concerned, falls under the provisions of the Old Civil Code, the CA erred in ruling that the subject Deed of Absolute Sale is void for the lack of the wife's conformity thereto and thus, applying Article 1410 of the NCC stating that the action to question a void contract is imprescriptible. Again, Simeon's sale of their conjugal property without his wife's conformity under the Old Civil Code is merely voidable *not* void. The imprescriptibility of an action assailing a void contract under Article 1410 of the NCC, thus, does not apply in such case. The 10-year prescriptive period under Article 173 of the Old Civil Code, therefore, should be applied in this case.

Here, the invalid sale was executed on December 14, 1974 while the action questioning the same was filed in 1993, which is clearly way beyond the 10-year period prescribed under Article 173 of the Old Civil Code. Virginia's recourse is, therefore, to demand only the value of the property, *i.e.*, the one-third portion of the subject properties invalidly sold by Simeon without Virginia's conformity pursuant to the same provision.

In fine, while We uphold the courts *a quo*'s findings that the parties herein are co-owners of the subject properties, We reverse and set aside the said courts' ruling, ordering the

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spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. x x x

[42] *Fuentes, et al. v. Roca, et al.*, *supra* note 40, at 20.

cancellation of titles of the entire subject properties and the transfer of the two-thirds portion of the same to the respondents. While Augusto's heirs are entitled to the recovery of their share in the subject properties, Virginia is only entitled to demand the value of her share therefrom pursuant to Article 173 of the Old Civil Code above-cited.

WHEREFORE, premises considered, the petition is **PARTLY GRANTED**. The Decision dated September 22, 2009 of the Court of Appeals in CA-G.R. CV No. 89611, affirming the Decision dated February 16, 2006 of the Regional Trial Court of Tabaco City, Branch 15, in Civil Case No. T-1693 is hereby **AFFIRMED** in all aspects **EXCEPT** insofar as it ordered the cancellation of the titles of the entire subject properties.

Accordingly, petitioners Heirs of Corazon Aramburo Ko, respondents Virginia Dy Aramburo and all persons claiming under her, as Heirs of Simeon Aramburo, and respondents Heirs of Augusto Aramburo are deemed co-owners *pro-indiviso* of the subject properties in equal one-third (1/3) share. As such, the titles over the subject properties are **ORDERED** cancelled insofar as the heirs of Augusto Aramburo's share is concerned. Virginia Dy Aramburo and all persons claiming under her have the right to demand for the value of their one-third (1/3) share in a proper case.

SO ORDERED.

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

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[*] Designated additional Member per Raffle dated August 7, 2017 *vice* Associate Justice Andres B. Reyes, Jr.

FIRST DIVISION

[G.R. No. 191914. August 9, 2017]

AGNES V. GUISON, *petitioner, vs.* **HEIRS OF LOREÑO TERRY, JOSE U. ALBERTO III, SPOUSES MEDIN M. FRANCISCO AND FRANCIA M. FRANCISCO, FE M. ALBERTO AND ELISA B. SARMIENTO,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF SALE; ELEMENTS; NO PERFECTED CONTRACT OF SALE DUE TO LACK OF CONSENSUS AS TO THE PURCHASE PRICE; CASE AT BAR.— Article 1458 of the Civil Code describes a contract of sale as a transaction by which "one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent." The elements of a perfected contract of sale are the following: (1) the meeting of the minds of the parties or their consent to a transfer of ownership in exchange for a price; (2) the determinate object or subject matter of the contract; and (3) the price certain in money or its equivalent as consideration for the sale. The absence of any of these elements renders a contract void. In this case, the Revocation Agreement and the Partition Agreement are silent on the matter of consideration. Neither instrument mentions the purchase price for the sale of the lot. x x x After carefully studying the records, we conclude that not all the elements of a perfected contract of sale were present. In particular, we find no sufficient evidence that the parties ever agreed on a specific purchase price for the property. x x x Given that both the Revocation Agreement and the Partition Agreement are silent on the issue of consideration, and further considering the conflicting accounts of the parties themselves as to the exact amount of the purchase price, this Court agrees with the finding of the RTC that the parties did not reach any agreement as to the amount of monetary consideration for the property.

2. ID.; ID.; LACHES; DEFINED; DOES NOT MERELY CONCERN THE LAPSE OF TIME; EXPLAINED.— [T]he Court does not agree that the doctrine of laches is applicable here. The interval of six years between the date of execution of the Partition Agreement and that of the institution of the Complaint in this case does not, by itself, render the demands of petitioner stale. We emphasize that laches does not merely concern the lapse of time. As we explained in *Heirs of Nieto v. Municipality of Meycauayan*: Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert his right has either abandoned or declined to assert it. Here, petitioner did not exhibit any conduct that would warrant the presumption that she had abandoned or declined to assert her right over the property. It was her initial belief that the lot was truly sold by her father to Terry, albeit pending the determination of the consideration and the specific location of the subject portion. Moreover, the latter's repeated assurances that he would pay for the lot explained the delay in the institution of the case. For this reason, this Court does not find the delay unreasonable.

3. ID.; ID.; ESTOPPEL *IN PAIS*; WHEN ONE, BY HIS ACTS, REPRESENTATIONS OR ADMISSIONS, OR BY HIS OWN SILENCE WHEN HE OUGHT TO SPEAK OUT, INTENTIONALLY OR THROUGH CULPABLE NEGLIGENCE, INDUCES ANOTHER TO BELIEVE CERTAIN FACTS TO EXIST AND SUCH OTHER RIGHTFULLY RELIES AND ACTS ON SUCH BELIEF, SO THAT HE WILL BE PREJUDICED IF THE FORMER IS PERMITTED TO DENY THE EXISTENCE OF SUCH FACTS.— [The Court] we does find sufficient basis to utilize the doctrine of estoppel *in pais* to bar the claims of petitioner against respondents Sarmiento and Alberto. In *GE Money Bank, Inc. v. Spouses Dizon*, the Court clarified the meaning of this doctrine: Estoppel *in pais* arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be

prejudiced if the former is permitted to deny the existence of such facts. The principle of estoppel would step in to prevent one party from going back on his or her own acts and representations to the prejudice of the other party who relied upon them. It is a principle of equity and natural justice, expressly adopted in Article 1431 of the New Civil Code and articulated as one of the conclusive presumptions in Rule 131, Section 2 (a) of our Rules of Court.

4. ID.; ID.; ID.; ID.; ELEMENTS THEREOF; ESTABLISHED IN CASE AT BAR.— For the principle to apply, certain elements must be present in respect of both the party sought to be estopped and the party claiming estoppel: The essential elements of estoppel *in pais*, in relation to the party sought to be estopped, are: 1) a clear conduct amounting to false representation or concealment of material facts or, at least, calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; 2) an intent or, at least, an expectation, that this conduct shall influence, or be acted upon by, the other party; and 3) the knowledge, actual or constructive, by him of the real facts. With respect to the party claiming the estoppel, the conditions he must satisfy are: 1) lack of knowledge or of the means of knowledge of the truth as to the facts in question; 2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and 3) action or inaction based thereon of such character as to change his position or status calculated to cause him injury or prejudice. It has not been shown that respondent intended to conceal the actual facts concerning the property; more importantly, petitioner has been shown not to be totally unaware of the real ownership of the subject property. All the foregoing requisites have been fulfilled in this case. When petitioner signed the Partition Agreement, she clearly recognized Terry's right as absolute owner of the portion of the property assigned to him, with no reservation whatsoever. She recognized that right despite her doubts about the validity of the sale made by her father and the knowledge that Terry had not yet paid for the land. Moreover, she could not have been oblivious to the fact that the document might be used to influence others to buy the land, because she knew that Terry had previously sold portions of the property to third persons. Respondents Sarmiento and Alberto, on the other hand, clearly relied in good faith on the Partition Agreement. Since there was no evidence that they

knew of the true state of the transaction between petitioner and Terry, it was reasonable for them to rely on the statement of petitioner alone, who unconditionally recognized Terry's right to the property. To allow her to now adopt a contrary position would cause respondents undue injury and prejudice. This Court is thus compelled to rule that petitioner is estopped from asserting her right to the property as against Sarmiento and Alberto. In this respect, the CA ruling is affirmed.

5. ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; PRESENT WHEN A PERSON UNJUSTLY RETAINS A BENEFIT TO THE LOSS OF ANOTHER, OR WHEN A PERSON RETAINS MONEY OR PROPERTY OF ANOTHER AGAINST THE FUNDAMENTAL PRINCIPLES OF JUSTICE, EQUITY AND GOOD CONSCIENCE; CASE AT BAR.— Given our conclusions on the nullity of the sale and the applicability of the principle of estoppel, we deem it proper to order the Heirs of Terry to remit to petitioner all the payments received by their predecessor-in-interest from Sarmiento and Alberto in connection with the sale of the property. Based on the Deeds of Absolute Sale executed by the two purchasers, Sarmiento and Alberto paid Terry ₱2000 and ₱10,000, respectively, for their portions of the lot. The Heirs of Terry must now turn over the proceeds of these sale transactions to petitioner. This ruling is demanded by the equitable principle of unjust enrichment. We have declared that "[t]here is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." Since Terry never paid any consideration and the property was never validly conveyed to him, he and his heirs should not be allowed to benefit from the sale thereof.

APPEARANCES OF COUNSEL

Ioanes J. Infante and *Villanueva Gabionza & Dy Law Offices* for petitioner.

Arnel C. Sarmiento for respondents Terry, *et al.*

D E C I S I O N

SERENO, *C.J.*:

This resolves the Petition[1] filed by Agnes V. Guison to assail the Court of Appeals (CA) Decision[2] and Resolution[3] in CA-G.R. CV No. 90319. Reversing the earlier Decision[4] of the Regional Trial Court (RTC), the CA sustained the validity of certain instruments of conveyance in favor of respondent Loreño Terry.[5] These instruments pertained to a 3,000-square-meter parcel of land located in Virac, Catanduanes, and covered by Transfer Certificate of Title No. (TCT) 12244.[6]

FACTUAL ANTECEDENTS

The facts, as culled from the records, are as follows.

On 14 March 1995, a Deed of Absolute Sale[7] was executed in favor of respondent Terry by Angeles Vargas, the father of petitioner. The subject of the sale was a parcel of agricultural land located in Moonwalk, Danicop, Catanduanes, with an area of 1.3894 hectares and identified as Lot No. 10628-pt. In the deed, Vargas acknowledged receipt of the payment for the lot in the amount of ₱5,557.60.

Between September and December 1995, Terry sold certain parts of the lot to third parties, namely, Jose U. Alberto III

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[1] Petition dated 3 June 2010 and filed under Rule 45 of the Rules of Court; *rollo*, pp. 9-22.

[2] Decision dated 19 March 2009; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Fernanda Lampas-Peralta and Ramon R. Garcia; *rollo*, pp. 23-43.

[3] Resolution dated 29 March 2010; *rollo*, pp. 44-46

[4] Decision dated 31 July 2007 in Civil Case No. 2112; penned by Presiding Judge Genie F. Gapas-Agbada; Records (Vol. I), pp. 285-302.

[5] "Lorenio Terry" in some parts of the record.

[6] Transfer Certificate of Title No. (TCT) 12244; Records (Vol. I), pp. 9-10.

[7] Deed of Absolute Sale of Real Property dated 14 March 1995; Records (Vol. I), p. 120.

(583 square meters),[8] Alona M. Guerrero (400 square meters)[9] and respondent Lino Gianan (200 square meters).[10] Gianan is a respondent in this case.

On 22 January 1996, Vargas and Terry executed an Agreement of Revocation of Sale[11] (Revocation Agreement) relating to the same parcel of land. The instrument stated that Vargas had erroneously sold the entire area of Lot 10628-pt to Terry. The parties, however, averred that their true intention was only to convey a 3,000-square-meter portion of the land to Terry, considering that there was no monetary consideration for the transaction. Consequently, they agreed to revoke the earlier Deed of Absolute Sale to the extent of 1.0894 hectares, while affirming the validity of the conveyance to Terry of a 3,000-square-meter potion, whose actual location would later be determined by both parties in a separate document. The agreement states:

> WHEREAS, a Deed of Absolute Sale of Real Property was executed by [Angeles S. Vargas] on March 14, 1995, in Manila, whereby a 1.3894 has. of land in Moonwalk & Danicop, Virac, Catanduanes was erroneously sold to [Loreño Terry];
>
> WHEREAS, the intention of both parties was the transfer of only Three Thousand (3,000) square meters [sic] portion thereof, considering that there was not even any monetary consideration in the sale;
>
> NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto hereby REVOKE the sale said parties executed on March 14, 1995 to the extent of 1.0894 has. while retaining as valid the transfer to [Loreño Terry] the area of Three Thousand (3,000) square meters.

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[8] Deed of Absolute Sale dated 28 September 1995; Records (Vol. I), p. 126.

[9] Deed of Absolute Sale dated 30 December 1995; Records (Vol. I), p. 134.

[10] Deed of Absolute Sale dated 31 December 1995; Records (Vol. I), p. 132.

[11] Agreement of Revocation of Sale dated 22 January 1996; Records (Vol. I), pp. 121-122.

That the actual location of said 3,000 square meters shall be determined by both parties in a separate document consonant with this agreement but forming part hereof.

Vargas died on 10 June 1998[12] with no agreement executed regarding the actual location of the land conveyed to Terry.

On 3 May 2000, a Partition Agreement[13] was entered into by the Heirs of Angeles Vargas, represented by petitioner, and respondent Terry. The instrument, which was executed for the purpose of physically segregating the 3,000-square-meter portion allotted to Terry, provides:

1. WHEREAS, the late Angeles Vargas left a parcel of land more particularly described as follows:

A parcel of agricultural land situated in Moonwalk, Virac, Catanduanes designated as Lot No. 10628-portion containing an area of 1.3894 hectares, more or less, declared under A.R.P. No. 011-0723 in the name of Angeles S. Vargas and bounded as follows:

North - - - - - - -	Lot No. 10628-part
East - - - - - - - -	Lot No. 10627; Lot No. 12438 and Lot No. 10649;
South - - - - - - -	Lot No. 10630
West - - - - - - -	Lot No. 10628-part

2. WHEREAS, Lorenio Terry is entitled to a portion of said land with an area of Three Thousand (3,000) Square Meters;

3. WHEREAS, it is the mutual agreement of all parties to partition the said land in order to physically segregate the 3,000 square meter portion belonging to Lorenio Terry from the bigger remaining portion;

WHEREFORE, the parties do hereby [p]artition the abovesaid property in accordance with the attached Subdivision Plan as follows:

TO LORENIO TERRY:

The Southwestern portion of Lot No. 10628-part with an area of Two Thousand Six Hundred (2,600) Square Meters as indicated in the attached Subdivision Plan;

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[12] See Extrajudicial Settlement of Estate Among Heirs dated 8 September 2000; Records (Vol. I), pp. 147-151.

[13] Partition Agreement dated 3 May 2000, Records (Vol. I), pp. 124-125.

The Western portion of Lot No. 10628-part with an area of Four Hundred (400) Square Meters as indicated in the attached Subdivision Plan; and

The Three Thousand (3,000) Square Meters portion which is hereby adjudicated to Lorenio Terry, already INCLUDES the portion which he sold to third persons prior to the execution of the Revocation of Deed of Sale;

TO THE HEIRS OF ANGELES VARGAS:

The entire remaining portion of Lot 10628-part with an area of Ten Thousand Eight Hundred Ninety Four (10,894) Square Meters more or less, as show[n] in the attached Subdivision Plan;

The undersigned parties do hereby respect and recognize each other's rights as absolute owners of the portion respectively adjudicated to them by virtue of this Partition Agreement, and they hereby request the Assessor's Office to effect the transfer of the A.R.P. to the names of the corresponding party in accordance with this Partition Agreement and the attached Subdivision Plan.

Thereafter, Terry sold other portions of the property to third parties, specifically, Alex Laynes (500 square meters),[14] Elisa Sarmiento (400 square meters),[15] Fe Alberto (400 square meters),[16] Medin Francisco (200 square meters),[17] Eddie Alcantara (100 square meters),[18] and Oswaldo de Leon (200 square meters).[19] All the foregoing transactions left Terry with ownership of only 17 square meters of the lot.[20]

On 8 May 2000, the heirs of Vargas executed an Extrajudicial Settlement of Estate Among Heirs.[21] In that instrument, Lot

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[14] Deed of Absolute Sale dated 20 September 2000; Records (Vol. I), p. 133.

[15] Deed of Absolute Sale dated 22 May 2000; Records (Vol. I), pp. 130-131.

[16] Deed of Absolute Sale dated 12 May 2000; Records (Vol. I), p. 129.

[17] Deed of Absolute Sale dated 10 April 2001; Records (Vol. I), p. 127.

[18] Deed of Absolute Sale dated 18 September 2002; Records (Vol. I), p. 128.

[19] Deed of Absolute Sale dated 12 June 2001; Records (Vol. I), p. 135.

[20] RTC Decision dated 31 July 2007, *supra* note 4 at 288.

[21] *Supra* note 12.

10628-pt was allotted to petitioner as part of her share of the estate.[22]

On 16 November 2006, petitioner filed a Complaint[23] for annulment of contracts, *accion publiciana,* and damages against Terry and all those who had allegedly purchased portions of Lot 10628-pt from him, i.e. Jose U. Alberto III, Spouses Medin M. Francisco and Francia M. Francisco, Eddie Alcantara, Fe M. Alberto, Elisa B. Sarmiento, Lino S. Gianan, Alex Laynes, Alona Guerrero and Oswaldo de Leon.

The instruments sought to be annulled were the following: (a) the original Deed of Absolute Sale executed by Vargas in favor of Terry; (b) the Agreement of Revocation of Sale signed by Vargas and Terry; (c) the Partition Agreement entered into by petitioner and Terry; and (d) the Deeds of Absolute Sale executed by Terry in favor of third parties.

Petitioner argued that the original Deed of Absolute Sale and the Agreement of Revocation of Sale should be considered void for lack of consideration. She then contended that the nullity of those earlier instruments led to the invalidity of the Partition Agreement, because it was signed in the mistaken belief that Terry had a right to the property.

On 11 January 2007, Terry filed his Answer[24] before the RTC. Refuting the assertions in the Complaint, he insisted that the 3,000-square-meter lot was conveyed to him by Vargas. Terry explained that the property was in fact originally owned by his grandfather, but incorrectly registered in the name of Fernando Vargas, who was petitioner's predecessor-in-interest. The original Deed of Absolute Sale was purportedly executed to rectify the error in registration and restore the property to its rightful owner. Terry further alleged that he had only signed

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[22] *Id*.

[23] Complaint dated 11 November 2006; Records (Vol. I), pp. 1-8.

[24] Answer with Compulsory Counterclaim with Answer to all Cross-Claims; Records (Vol. I), pp. 81-86.

the Agreement of Revocation of Sale in consideration of his closeness to the Vargas family and in order to avoid litigation. He pointed out that petitioner herself confirmed the validity of the instruments of sale by executing the Partition Agreement after the death of Vargas.

For their part, respondents Laynes, Spouses Francisco, Alcantara, Gianan, De Leon, Sarmiento and Fe Alberto all claimed to be buyers in good faith. In their respective Answers[25] before the RTC, they insisted that they had merely relied upon the Partition Agreement; in particular, the statements made by petitioner acknowledging Terry's entitlement to the property. These declarations, it was argued, estopped petitioner from now seeking recovery of the portions of the property sold to third persons.

Respondents Guerrero and Jose Alberto III did not file Answers with the RTC. Petitioner later withdrew her Complaint against them.[26]

RTC RULING

After trial, the RTC rendered a Decision[27] in favor of petitioner. Citing the absence of certain elements of a sale, the trial court declared that the Deed of Absolute Sale, Revocation Agreement, and Partition Agreement were invalid contracts:

The following belies defendant's claim of ownership over the 3,000 sq. m. lot.

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[25] Answer (of Defendant Alex V. Laynes) with Compulsory Counterclaim and Crossclaim; Records (Vol. I), pp. 36-40; Answer with Compulsory Counterclaim and Cross-Claim against Defendant Loreño Terry filed by Spouses Medin M. Francisco and Francia M. Francisco, Eddie Alcantara, Lino S. Gianan and Oswaldo C. de Leon; Records (Vol. I), pp. 53-57; Answer filed by Elisa B. Sarmiento; Records (Vol. I), pp. 61-65; Answer with Compulsory Counterclaim and Cross-Claim filed by Fe M. Alberto; Records (Vol. I), pp. 72-77.

[26] Pre-Trial Order dated 13 February 2007; Records (Vol. I), pp. 187-203.

[27] Decision dated 31 July 2007, *supra* note 4.

1. Vargas and defendant Terry revoked the Deed of [A]bsolute Sale dated March 14, 1995 because of want of monetary consideration and failure of the contract to reflect the true intention of the parties. Thus, there was no sale at all of any portion of Lot No. 10628.

2. The Agreement of Revocation of [S]ale merely affirms the intention of the parties to transfer the 3,000 sq. m. lot to defendant Terry as gleaned from the parties[']promise to specify the actual location of the 3,000 sq. m. lot in a separate document and the absence of agreement as to the price of the 3,000 sq. m. lot and the absence of [any] statement that defendant Terry had already paid therefor.

Verily, the allege[d] conveyance of the 3,000 sq. m. lot to defendant Terry under the Agreement of Revocation of Sale was also without valuable consideration.

As it was, defendant Terry capitalized on the Agreement of Revocation of Sale and lured the heirs of Vargas into signing the Partition Agreement dated May 3, 2000. The Court gives credence to the testimony of the plaintiff that she signed the Partition Agreement only because of the promise of defendant Terry that he shall cause the approval of the draft of the subdivision plan that he had shown to plaintiff and that he shall pay the heirs of Vargas the prevailing price for the 3,000 sq. m. lot upon the approval of the subdivision plan (Exh. "D"). But defendant Terry failed to make good his promise to cause the approval of the subdivision plan nor pay for [the] lot. Indeed, defendant Terry miserably failed to present any receipt or proof of payment for the said 3,000 sq. m. lot nor produce the approved subdivision plan as stipulated in the Partition Agreement.[28]

With respect to the other respondents, the RTC declared that they were not purchasers in good faith, as they had failed to exercise the required diligence before buying the property:

Facts and circumstances surrounding this case debunk the presumption of good faith on the part of defendants. To elucidate, it was clear to them that, at the time of sale, defendant Terry [had] no certificate of title to prove ownership over the lot being sold, instead, they merely relied on several documents which they did not

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[28] *Id*. at 293-295.

verify and [the] genuineness of which were doubtful at the beginning. The lots sold by defendant Terry to his co-respondents are part of the lot registered in the name of Angeles Vargas under TCT No. 8193 and later in the name of the plaintiff under TCT No. 1224. The herein buyers of defendant Terry simply failed to exercise the diligence of investigating the ownership of the vendor.

Thus on the issue on whether Terry's co-defendants are buyers in good faith, the Court rules in the negative.[29]

Based on the above findings, the RTC ordered respondents to vacate the land and surrender possession to petitioner within 15 days from notice of the Decision. Respondents were likewise held solidarily liable to petitioner for (a) ₱50,000 as attorney's fees and (b) ₱5,000 per appearance of counsel before the trial court.

Respondents Alcantara, De Leon, Gianan and Spouses Francisco sought reconsideration[30] of the Decision, but their motion was denied.[31] They no longer appealed the Order denying their Motion for Reconsideration.

Meanwhile, respondents Terry, Alberto, and Sarmiento opted to file a Notice of Appeal[32] instead of a motion for reconsideration. The RTC gave due course to the appeal and ordered the elevation of the records of the case to the CA.[33]

THE CA RULING

In its Decision[34] dated 19 March 2009, the CA reversed the ruling of the RTC. While recognizing the nullity of the Deed

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[29] *Id*. at 299-300.

[30] Motion for Reconsideration dated 9 August 2007 filed by Spouses Medin and Francia Francisco, Eddie Alcantara, Oswaldo de Leon and Lino Gianan; Records (Vol. I), pp. 303-304.

[31] Order dated 28 September 2007; Records (Vol. I), pp. 315-316.

[32] Records (Vol. I), pp. 305-306.

[33] Order dated 24 October 2007; Records (Vol. I), pp. 317.

[34] *Supra* note 2.

of Absolute Sale given the parties' admission that there was no consideration for the transaction, the appellate court found no reason to invalidate the Revocation Agreement. It ruled that this independent document proved the true intent of the parties to transfer 3,000 square meters of the disputed property to Terry, even without consideration. The CA also declared that the claims of petitioner were barred by *laches*, considering that she had allowed more than six years to elapse before asserting her rights against respondents.

The appellate court further noted that petitioner was estopped from refuting the validity of the instruments, because she was equally to blame for the predicament of those who had purchased the property from Terry. In particular, the CA referred to the representations made by petitioner in the Partition Agreement, as well as her contemporaneous and subsequent acts, as sufficient bases for respondents to believe that the property had been validly sold to Terry.

Petitioner sought reconsideration of the Decision, but her motion was denied by CA.[35] She then elevated the matter to this Court via the instant Petition for Review.

PROCEEDINGS BEFORE THIS COURT

In her Petition filed before this Court, petitioner persists in her claim that the Revocation Agreement and the Partition Agreement are invalid. She maintains that Vargas and Terry never gave effect to the Revocation Agreement, since they never executed the document needed for the segregation of the portion allegedly conveyed to Terry. As to the Partition Agreement, she insists that the instrument was not supported by any consideration.

Petitioner also asserts that her claim was not barred by either estoppel or laches. In her view, the six-year delay incurred in asserting the claim was not sufficient to constitute laches. She also claims that estoppel cannot be applied in favor of respondents, because they have likewise been negligent.

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[35] Resolution dated 29 March 2010, *supra* note 3.

In their Comment,[36] respondents reiterate that petitioner was estopped from asserting her claim over the land, given her statements in the Partition Agreement. They further emphasize their status as buyers in good faith, citing their awareness of all the transactions involving the property. Finally, they allege that Terry paid Vargas the amounts of ₱5,557.60 and ₱3,000 as consideration for the lot.

On 7 July 2012, Terry died[37] and his heirs were substituted as respondents in this case.

In her Reply,[38] petitioner insists that no consideration was ever paid for the transactions. She points out that the assertion that payment was made was a mere afterthought, as Terry never alleged payment as a defense when he filed his Answer. He also allegedly failed to submit proof of his assertion.

ISSUES

The following issues are presented to this Court for resolution:

1. Whether or not the CA erred when it refused to annul the Revocation Agreement and the Partition Agreement subject of this case;

2. Whether or not the CA erred when it ruled that petitioner's claims were barred by estoppel and laches.

OUR RULING

The Petition for Review is **PARTLY GRANTED**.

After a judicious consideration of the merits of the case, we reverse the ruling of the CA insofar as it upheld Terry's right to the property. We find sufficient basis to declare the Revocation Agreement and the Partition Agreement null and void because of the absence of the required meeting of the minds regarding the consideration for the sale. Consequently, we are compelled to conclude that the property was never validly conveyed to Terry.

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[36] Dated 21 October 2010; *rollo*, pp. 101-105.

[37] Certificate of Death dated 9 July 2012; *rollo*, p. 185.

[38] Dated 20 July 2015; *rollo,* pp. 139-155.

Nevertheless, we agree with the conclusion of the CA that petitioner is estopped from questioning the title of those who purchased the lot from Terry and relied upon petitioner's representations in the Partition Agreement.

The CA committed a grave error when it upheld the validity of the Revocation Agreement and the Partition Agreement.

The principal issue in this case pertains to the validity of two instruments — the Revocation Agreement and the Partition Agreement — purporting to convey a portion of the subject lot to Terry.

Before proceeding to discuss the validity of the contract, however, a clarification must be made. Based on the provisions of the Revocation Agreement and the Partition Agreement, we conclude that the two instruments must be read as part of a single contract of sale. In the Revocation Agreement, the parties recognized the transfer of a 3,000-square meter portion of Lot No. 10628-pt to Terry. However, instead of identifying the specific segment of the property allegedly conveyed, they stipulated that "the actual location of the said 3,000 square meters shall be determined by both parties in a separate document consonant with this agreement, but forming a part hereof."[39] That separate document was the Partition Agreement subsequently executed by the parties to physically segregate the portion of the property sold to Terry.

It is therefore evident that the two instruments in question are not separate contracts, but are mere components of the same sales transaction. Accordingly, we must examine both documents together to determine whether a valid contract of sale exists.

Article 1458 of the Civil Code describes a contract of sale as a transaction by which "one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or

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[39] Agreement of Revocation of Sale, *supra* note 11.

its equivalent." The elements of a perfected contract of sale are the following: (1) the meeting of the minds of the parties or their consent to a transfer of ownership in exchange for a price; (2) the determinate object or subject matter of the contract; and (3) the price certain in money or its equivalent as consideration for the sale.[40] The absence of any of these elements renders a contract void.

In this case, the Revocation Agreement and the Partition Agreement are silent on the matter of consideration. Neither instrument mentions the purchase price for the sale of the lot. The CA, however, sustained the validity of both instruments. It held that the true intent of the parties was to transfer 3,000 square meters of the disputed property to Terry without reserving his right to consideration. Petitioner, on the other hand, insists that the RTC correctly declared both contracts void — the Revocation Agreement, because of the absence of consideration and the failure of Vargas and Terry to execute the document needed to segregate the portion allegedly conveyed; and the Partition Agreement for lack of consideration.

Given the contradictory findings of the CA and the RTC in this case, we have been compelled to look into the records of the case in order to arrive upon our own factual determinations.[41] After carefully studying the records, we conclude that not all the elements of a perfected contract of sale were present. In particular, we find no sufficient evidence that the parties ever agreed on a specific purchase price for the property.

We note the competing allegations of the parties on this point. While the purchase price for the property was not indicated on either of the instruments,[42] respondents insist that consideration

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[40] See *Riosa v. Tabaco La Suerte Corp.,*720 Phil. 586 (2013).

[41] Generally, questions of fact are beyond the scope of a petition for review on *certiorari* under Rule 45 of the Rules of Court. An exception to this rule, however, is when the findings of fact of the Court of Appeals are contrary to those of the trial court. See *Sealoader Shipping Corp. v. Grand Cement Manufacturing Corp*., 653 Phil. 155 (2010).

[42] See Agreement of Revocation of Sale, *supra* note 11; Partition Agreement, *supra* note 13.

was paid twice for the same lot (₱5,557.60 upon the execution of the original Deed of Absolute Sale and 3,000 upon the signing of the Revocation Agreement).[43] On the other hand, petitioner contends that there was no consideration stated in the Revocation Agreement, because the parties agreed to determine the price of the property in a separate document.[44] She then asserts that an agreement was reached on the sale of the property to Terry at the prevailing market price.[45]

As stated above, we find no evidence that the parties ever agreed upon a "price certain" as consideration for the property.

This Court considers Terry's claim of payment untenable considering his failure to present any evidence of his assertion other than his bare testimony. We also note significant inconsistencies in his allegations before the trial court. He insisted during his testimony that he had paid for the property. In his Answer, however, he never asserted the payment of consideration as a defense.[46] Instead, he emphasized that the Deed of Absolute Sale was executed by Vargas to return the land to him as the heir of the true owner of the property.[47]

Further, Terry did not mention any form of consideration in connection with the Revocation Agreement. In fact, he admitted in his Answer that no consideration was given to him in exchange

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[43] See Transcript of Stenographic Notes [TSN], 16 April 2007, pp. 6-7, 11; Also *rollo,* p. 104.

[44] See TSN, 26 March 2007, p. 12.

[45] *Id*. at 45.

[46] See Answer with Compulsory Counterclaim with Answer to all Cross-Claims, *supra* note 24.

[47] Paragraph 5 of the Answer states:

> 5. The land in question was originally owned by Sotero Arcilla, grandfather of defendant Lorenio Terry, but the land was declared in the name of Fernando Vargas, grandfather of plaintiff Agnes Guison and father of Angeles Vargas (plaintiff's father) without any sufficient legal basis. In consideration of this fact, Angeles Vargas executed a Deed of Sale in favor of Lorenio Terry wherein his (Angeles Vargas') intention was to return the land to the heir of the true owner Sotero Arcilla.

for his consent to the revocation of the earlier contract. He supposedly agreed to the revocation only because of his closeness to the Vargas family and in order to avoid litigation.[48] This statement directly contradicts his later assertion that there was monetary consideration for the sale.

In the same manner, the allegation made by petitioner that the parties agreed to the sale of the lot at the prevailing market price is bereft of factual basis. Other than her own bare allegation, there was no evidence submitted to support her claim that the sale was agreed upon by the parties upon the execution of the Partition Agreement. In fact, that instrument did not refer to any supposed agreement as to the price for the lot.

Given that both the Revocation Agreement and the Partition Agreement are silent on the issue of consideration, and further considering the conflicting accounts of the parties themselves as to the exact amount of the purchase price, this Court agrees with the finding of the RTC that the parties did not reach any agreement as to the amount of monetary consideration for the property.[49]

This lack of consensus as to the price prevented the perfection of the sale. We emphasize that the law requires a definite agreement as to a "price certain"; otherwise, there is no true meeting of the minds between the parties.[50] In *Villanueva v. Court of Appeals*,[51] this Court stated:

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[48] Paragraph 7 of the Answer states:

7. Later on, plaintiff Agnes Guison (daughter of Angeles Vargas), insisted to herein defendant Lorenio Terry that the land transferred to him be reduced to 3,000 square meters so that she and her siblings would have some share in the land also. At first, the defendant hesitated, but in consideration of his closeness to the family of Angeles Vargas, and to avoid litigation, he agreed, and the land validly transferred to the defendant was reduced to 3,000 square meters. But is worth emphasizing that at the time of the execution of the said Agreement of Revocation of Sale, the defendant was already in possession of the entire land and his possession was legal and with the acquiescence of Angeles Vargas.

[49] RTC Decision, *supra* note 4, at 294.

[50] *Swedish Match, AB v. Court of Appeals*, 483 Phil. 735 (2004).

[51] 334 Phil. 750, 760-761 (1997).

The price must be certain, otherwise there is no true consent between the parties. There can be no sale without a price. In the instant case, however, what is dramatically clear from the evidence is that there was no meeting of mind as to the price, expressly or impliedly, directly or indirectly.

Sale is a consensual contract. He who alleges it must show its existence by competent proof. Here, the very essential element of price has not been proven.

As there was no sufficient evidence of a meeting of the minds between the parties with regard to the consideration for the sale, we are compelled to declare the transaction null and void.

Typically, the foregoing ruling would likewise invalidate all of Terry's subsequent transactions involving the property, pursuant to the principle that the spring cannot rise higher than its source.[52] Nevertheless, we come to a different conclusion in this case as regards the rights of respondents Sarmiento and Alberto given the applicability of the equitable principle of estoppel *in pais*.

Petitioner is estopped from assailing the sale transactions in favor of respondents Alberto and Sarmiento.

The CA ruled in the assailed Decision that by virtue of the principles of estoppel and laches, petitioner was barred from questioning the sale of the property to respondents:

[A]ppellee waited more than six (6) years from the time she executed said Partition Agreement before asserting her supposed claim. Thus, even assuming, for the sake of argument, that appellee has a valid claim against appellant Terry, laches has ineluctably set in.

The doctrine of laches or of "stale demands" is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not merely a question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.

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[52] See *Republic v. Mangotara* (Resolution), 638 Phil. 353 (2010).

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Indeed, it would be [iniquitous] to allow appellee to assert her supposed claim under the present circumstances, especially when all of appellant Terry's co-defendants relied on the strength of appellee's representation in the Partition Agreement which she executed allotting the disputed portion to appellant Terry. The error in appellee's line of argument is that she is merely tucking (sic) the alleged bad faith on the part of appellant Terry's co-defendants to appellant Terry's alleged bad faith in acquiring the disputed portion, such that any and all rights acquired by appellant Terry's co-defendants cannot be better than those of appellant Terry himself. Appellee failed to realize that she herself is equally at fault as appellant Terry's co-defendants relied on her representations in the Partition Agreement which she voluntarily and freely executed.[53]

This Court does not agree that the doctrine of laches is applicable here. The interval of six years between the date of execution of the Partition Agreement and that of the institution of the Complaint in this case does not, by itself, render the demands of petitioner stale.

We emphasize that laches does not merely concern the lapse of time.[54] As we explained in *Heirs of Nieto v. Municipality of Meycauayan*:[55]

Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert his right has either abandoned or declined to assert it.[56]

Here, petitioner did not exhibit any conduct that would warrant the presumption that she had abandoned or declined to assert her right over the property. It was her initial belief that the lot

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[53] CA Decision dated 19 March 2009, *supra* note 2, at 39-40.

[54] *Akang v. Municipality of Isulan*, 712 Phil. 420 (2013).

[55] 564 Phil. 674 (2007).

[56] *Id*. at 680.

was truly sold by her father to Terry, albeit pending the determination of the consideration and the specific location of the subject portion. Moreover, the latter's repeated assurances that he would pay for the lot explained the delay in the institution of the case. For this reason, this Court does not find the delay unreasonable.

However, we do find sufficient basis to utilize the doctrine of estoppel *in pais* to bar the claims of petitioner against respondents Sarmiento and Alberto. In *GE Money Bank, Inc. v. Spouses Dizon*,[57] the Court clarified the meaning of this doctrine:

> Estoppel in pais arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. The principle of estoppel would step in to prevent one party from going back on his or her own acts and representations to the prejudice of the other party who relied upon them. It is a principle of equity and natural justice, expressly adopted in Article 1431 of the New Civil Code and articulated as one of the conclusive presumptions in Rule 131, Section 2 (a) of our Rules of Court.[58]

For the principle to apply, certain elements must be present in respect of both the party sought to be estopped and the party claiming estoppel:

> The essential elements of estoppel *in pais,* in relation to the party sought to be estopped, are: 1) a clear conduct amounting to false representation or concealment of material facts or, at least, calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; 2) an intent or, at least, an expectation, that this conduct shall influence, or be acted upon by, the other party; and 3) the knowledge, actual or constructive, by him of the real facts. With respect to the

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[57] G.R. No. 184301, 23 March 2015, 754 SCRA 74.

[58] *Id*. at 95.

party claiming the estoppel, the conditions he must satisfy are: 1) lack of knowledge or of the means of knowledge of the truth as to the facts in question; 2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and 3) action or inaction based thereon of such character as to change his position or status calculated to cause him injury or prejudice. It has not been shown that respondent intended to conceal the actual facts concerning the property; more importantly, petitioner has been shown not to be totally unaware of the real ownership of the subject property. [59]

All the foregoing requisites have been fulfilled in this case. When petitioner signed the Partition Agreement, she clearly recognized Terry's right as absolute owner of the portion of the property assigned to him, with no reservation whatsoever. She recognized that right despite her doubts about the validity of the sale made by her father and the knowledge that Terry had not yet paid for the land. Moreover, she could not have been oblivious to the fact that the document might be used to influence others to buy the land, because she knew that Terry had previously sold portions of the property to third persons.

Respondents Sarmiento and Alberto, on the other hand, clearly relied in good faith on the Partition Agreement. Since there was no evidence that they knew of the true state of the transaction between petitioner and Terry, it was reasonable for them to rely on the statement of petitioner alone, who unconditionally recognized Terry's right to the property. To allow her to now adopt a contrary position would cause respondents undue injury and prejudice. This Court is thus compelled to rule that petitioner is estopped from asserting her right to the property as against Sarmiento and Alberto. In this respect, the CA ruling is affirmed.

The Heirs of Terry must remit to petitioner the payments received by their predecessor-in-interest from Sarmiento and Alberto.

Given our conclusions on the nullity of the sale and the applicability of the principle of estoppel, we deem it proper to

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[59] *Shopper's Paradise Realty & Development Corp. v. Roque,* 464 Phil. 116, 124 (2004).

order the Heirs of Terry to remit to petitioner all the payments received by their predecessor-in-interest from Sarmiento and Alberto in connection with the sale of the property. Based on the Deeds of Absolute Sale executed by the two purchasers, Sarmiento and Alberto paid Terry ₱2000[60] and ₱10,000,[61] respectively, for their portions of the lot. The Heirs of Terry must now turn over the proceeds of these sale transactions to petitioner.

This ruling is demanded by the equitable principle of unjust enrichment. We have declared that "[t]here is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience."[62] Since Terry never paid any consideration and the property was never validly conveyed to him, he and his heirs should not be allowed to benefit from the sale thereof.

Moreover, while petitioner is barred by *estoppel* from recovering the lot from Sarmiento and Alberto, her right to enforce claims against Terry remained unaffected. Under the circumstances, it is only fair and reasonable to allow her to recover the payments received by Terry for the lot. Given that Terry died in 2012, his heirs are liable for the reimbursement of these amounts.[63]

WHEREFORE, the Petition for Review is **PARTLY GRANTED**. The Court of Appeals Decision dated 19 March 2009 and its Resolution dated 29 March 2010 are **AFFIRMED** insofar as the rights of Fe M. Alberto and Elisa B. Sarmiento are concerned. However, in respect of the Heirs of Loreño Terry, the Decision and the Resolution are **MODIFIED** as follows:

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[60] Deed of Absolute Sale dated 12 May 2000, *supra* note 16.

[61] Deed of Absolute Sale dated 22 May 2000, *supra* note 15.

[62] *Gaisano v. Development Insurance and Surety Corp.,* G.R. No. 190702, 7 February 2017.

[63] See *Abella v. Heirs of San Juan* (G.R. No. 182629, 24 February 2016), in which this Court ordered the heirs of the parties to a void agreement to return amounts received on the basis of the principle of unjust enrichment.

1. The Revocation Agreement dated 22 January 1996 and the Partition Agreement dated 3 May 2000 are hereby declared NULL and VOID.

2. The Heirs of Loreño Terry are ORDERED to vacate the property and surrender the peaceful possession thereof to Agnes Guison.

3. The Heirs of Loreño Terry are likewise ORDERED to remit to Agnes Guison the payments received by their predecessor-in-interest from Fe M. Alberto and Elisa B. Sarmiento in the amounts of ₱2,000 and ₱10,000, respectively.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191937. August 9, 2017]

ORIENT FREIGHT INTERNATIONAL, INC., *petitioner, vs.* **KEIHIN-EVERETT FORWARDING COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; RULE ON THE CONTENTS OF THE PETITION; NOT VIOLATED IN CASE AT BAR.— The petition does not violate Rule 45, Section 4 of the Rules of Court for failing to state the names of the parties in the body. The names of the parties are readily discernable from the caption of the petition, clearly showing the appealing party as the petitioner and the adverse party as the respondent.

The Court of Appeals had also been erroneously impleaded in the petition. However, this Court in *Aguilar v. Court of Appeals, et al.* ruled that inappropriately impleading the lower court as respondent does not automatically mean the dismissal of the appeal. This is a mere formal defect.

2. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT; *CULPA AQUILIANA*; DEFINED.— Negligence may either result in *culpa aquiliana* or *culpa contractual*. *Culpa aquiliana* is the "the wrongful or negligent act or omission which creates a *vinculum juris* and gives rise to an obligation between two persons not formally bound by any other obligation," and is governed by Article 2176 of the Civil Code.

3. ID.; OBLIGATIONS AND CONTRACTS; *CULPA CONTRACTUAL*; DEFINED.— Negligence in *culpa contractual*, x x x, is "the fault or negligence incident in the performance of an obligation which already-existed, and which increases the liability from such already existing obligation." This is governed by Articles 1170 to 1174 of the Civil Code.

4. ID.; ID.; ID.; DISTINGUISHED FROM *CULPA AQUILIANA*.— Actions based on contractual negligence and actions based on quasi-delicts differ in terms of conditions, defenses, and proof. They generally cannot co-exist. Once a breach of contract is proved, the defendant is presumed negligent and must prove not being at fault. In a quasi-delict, however, the complaining party has the burden of proving the other party's negligence. In *Huang v. Phil. Hoteliers, Inc.*: [T]his Court finds it significant to take note of the following differences between quasi-delict (*culpa aquilina*) and breach of contract (*culpa contractual*). In *quasi-delict*, negligence is direct, substantive and independent, while in breach of contract, negligence is merely incidental to the performance of the contractual obligation; there is a pre-existing contract or obligation, In quasi-delict, the defense of "good father of a family" is a complete and proper defense insofar as parents, guardians and employers are concerned, while in breach of contract, such is not a complete and proper defense in the selection and supervision of employees. In *quasi-delict*, there is no presumption of negligence and it is incumbent upon the injured party to prove the negligence of the defendant, otherwise, the former's complaint will be dismissed, while in breach of contract, negligence is presumed so long as it can be

proved that there was breach of the contract and the burden is on the defendant to prove that there was no negligence in the carrying out of the terms of the contract; the rule of *respondeat superior* is followed.

5. ID.; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT; LIABILITY FOR A QUASI-DELICT OR TORT MAY ARISE EVEN WHEN THERE IS A PRE-EXISTING CONTRACTUAL RELATION; EXPLAINED.— [T]here are instances when Article 2176 may apply even when there is a pre-existing contractual relation. A party may still commit a tort or quasi-delict against another, despite the existence of a contract between them. In *Cangco v. Manila Railroad*, this Court explained why a party may be held liable for either a breach of contract or an extra-contractual obligation for a negligent act: It is evident, therefore, that in its decision in the Yamada case, the court treated plaintiff's action as though founded in tort rather than as based upon the breach of the contract of carriage, and an examination of the pleadings and of the briefs shows that the questions of law were in fact discussed upon this theory. Viewed from the standpoint of the defendant the practical result must have been the same in any event. The proof disclosed beyond doubt that the defendant's servant was grossly negligent and that his negligence was the proximate cause of plaintiff's injury. It also affirmatively appeared that defendant had been guilty of negligence in its failure to exercise proper discretion in the direction of the servant. *Defendant was, therefore, liable for the injury suffered by plaintiff, whether the breach of the duty were to be regarded as constituting culpa aquilina or culpa contractual*. x x x If a contracting party's act that breaches the contract would have given rise to an extra-contractual liability had there been no contract, the contract would be deemed breached by a tort, and the party may be held liable under Article 2176 and its related provisions.

6. ID.; ID.; LIABILITY FOR DAMAGES ARISES WHEN THOSE IN THE PERFORMANCE OF THEIR OBLIGATIONS ARE GUILTY OF NEGLIGENCE; NEGLIGENCE, DEFINED; ESTABLISHED IN CASE AT BAR.— Under Article 1170 of the Civil Code, liability for damages arises when those in the performance of their obligations are guilty of negligence, among others. Negligence here has been defined as "the failure to observe that degree of care,

precaution and vigilance that the circumstances just demand, whereby that other person suffers injury." If the law or contract does not provide for the degree of diligence to be exercised, then the required diligence is that of a good father of a family. The test to determine a party's negligence is if the party used "the reasonable care and caution which an ordinarily prudent person would have used in the same situation" when it performed the negligent act. If the party did not exercise reasonable care and caution, then it is guilty of negligence. In this case, both the Regional Trial Court and the Court of Appeals found that petitioner was negligent in failing to adequately report the April 17, 2002 hijacking incident to respondent and not conducting a thorough investigation despite being directed to do so. The trial court's factual findings, when affirmed by the Court of Appeals, are binding on this Court and are generally conclusive.

7. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; AMOUNT OF THE AWARD OF DAMAGES IS A FACTUAL MATTER GENERALLY NOT REVIEWABLE IN A RULE 45 PETITION.— As regards the amount of damages, this Court cannot rule on whether the Regional Trial Court erred in using the Profit and Loss Statement submitted by respondent for its computation. The amount of the award of damages is a factual matter generally not reviewable in a Rule 45 petition, The damages awarded by the Regional Trial Court, as affirmed by the Court of Appeals, were supported by documentary evidence such as respondent's audited financial statement. The trial court clearly explained how it reduced the respondent's claimed loss of profit and arrived at the damages to be awarded: The difference between the total gross revenue of plaintiff for 2002 as reported in the monthly profit and loss statement of [₱]14,801,744.00 and the audited profit and loss statement of the amount of [₱]10,434,144.00 represents 1/3 of the total gross revenues of the plaintiff for the six months period. Accordingly, the net profit loss of [₱]2.5 million pesos as reported in the monthly profit and loss statement of the plaintiff should be reduced by 1/3 or the amount of [₱]833,333.33. Therefore, the net profit loss of the plaintiff for the remaining period of six months should only be the amount of [₱]1,666,667.70 and not [₱]2.5 million as claimed. Petitioner has not sufficiently shown why the computation made by the trial court should be disturbed.

APPEARANCES OF COUNSEL

Mangaoil Law Office for petitioner.
Dela Cruz Nague & Associates Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

Article 2176 of the Civil Code does not apply when the party's negligence occurs in the performance of an obligation. The negligent act would give rise to a quasi-delict only when it may be the basis for an independent action were the parties not otherwise bound by a contract.

This resolves a Petition for Review[1] on Certiorari under Rule 45 of the Rules of Court, assailing the January 21, 2010 Decision[2] and April 21, 2010 Resolution[3] of the Court of Appeals, which affirmed the Regional Trial Court February 27, 2008 Decision.[4] The Regional Trial Court found that petitioner Orient Freight International, Inc.'s (Orient Freight) negligence caused the cancellation of Keihin-Everett Forwarding Company, Inc.'s (Keihin-Everett) contract with Matsushita Communication Industrial Corporation of the Philippines (Matsushita).[5]

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[1] *Rollo*, pp. 8-30.

[2] *Id*. at 32-43. The Decision, docketed as CA-G.R. CV No. 91889, was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Estela M. Perlas-Bernabe (now an Associate Justice of this Court) and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

[3] *Id*. at 45-46. The Resolution was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Estela M. Perlas-Bernabe (now an Associate Justice of this Court) and Jane Aurora C. Lantion of the Former Sixth Division, Court of Appeals, Manila.

[4] *Id*. at 70-92. The Decision, docketed as Civil Case No. 02-105018, was rendered by Judge Virgilio M. Alameda of Branch 10, Regional Trial Court, Manila.

[5] The Court of Appeals Decision refers to it as "Matsuhita."

On October 16, 2001, Keihin-Everett entered into a Trucking Service Agreement with Matsushita. Under the Trucking Service Agreement, Keihin-Everett would provide services for Matsushita's trucking requirements. These services were subcontracted by Keihin-Everett to Orient Freight, through their own Trucking Service Agreement executed on the same day.[6]

When the Trucking Service Agreement between Keihin-Everett and Matsushita expired on December 31, 2001, Keihin-Everett executed an In-House Brokerage Service Agreement for Matsushita's Philippine Economic Zone Authority export operations. Keihin-Everett continued to retain the services of Orient Freight, which sub-contracted its work to Schmitz Transport and Brokerage Corporation.[7]

In April 2002, Matsushita called Keihin-Everett's Sales Manager, Salud Rizada, about a column in the April 19, 2002 issue of the tabloid newspaper Tempo. This news narrated the April 17, 2002 interception by Caloocan City police of a stolen truck filled with shipment of video monitors and CCTV systems owned by Matsushita.[8]

When contacted by Keihin-Everett about this news, Orient Freight stated that the tabloid report had blown the incident out of proportion. They claimed that the incident simply involved the breakdown and towing of the truck, which was driven by Ricky Cudas (Cudas), with truck helper, Rubelito Aquino[9] (Aquino). The truck was promptly released and did not miss the closing time of the vessel intended for the shipment.[10]

Keihin-Everett directed Orient Freight to investigate the matter. During its April 20, 2002 meeting with Keihin-Everett and Matsushita, as well as in its April 22, 2002 letter addressed

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[6] *Rollo*, p. 33.

[7] *Id*.

[8] *Id*.

[9] Referred to as "Rudelito Aquino" in the Court of Appeals Decision.

[10] *Id*. at 33.

to Matsushita, Orient Freight reiterated that the truck merely broke down and had to be towed.[11]

However, when the shipment arrived in Yokohama, Japan on May 8, 2002, it was discovered that 10 pallets of the shipment's 218 cartons, worth US$34,226.14, were missing.[12]

Keihin-Everett independently investigated the incident. During its investigation, it obtained a police report from the Caloocan City Police Station. The report stated, among others, that at around 2:00 p.m. on April 17, 2002, somewhere in Plaza Dilao, Paco Street, Manila, Cudas told Aquino to report engine trouble to Orient Freight. After Aquino made the phone call, he informed Orient Freight that the truck had gone missing. When the truck was intercepted by the police along C3 Road near the corner of Dagat-Dagatan Avenue in Caloocan City, Cudas escaped and became the subject of a manhunt.[13]

When confronted with Keihin-Everett's findings, Orient Freight wrote back on May 15, 2002 to admit that its previous report was erroneous and that pilferage was apparently proven.[14]

In its June 6, 2002 letter, Matsushita terminated its In-House Brokerage Service Agreement with Keihin-Everett, effective July 1, 2002. Matsushita cited loss of confidence for terminating the contract, stating that Keihin-Everett's way of handling the April 17, 2002 incident and its nondisclosure of this incident's relevant facts "amounted to fraud and signified an utter disregard of the rule of law."[15]

Keihin-Everett, by counsel, sent a letter dated September 16, 2002 to Orient Freight, demanding ₱2,500,000.00 as indemnity for lost income. It argued that Orient Freight's

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[11] *Id*. at 34.

[12] *Id*.

[13] *Id*.

[14] *Id*.

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

mishandling of the situation caused the termination of Keihin-Everett's contract with Matsushita.[16]

When Orient Freight refused to pay, Keihin-Everett filed a complaint dated October 24, 2002 for damages with Branch 10, Regional Trial Court, Manila. The case was docketed as Civil Case No. 02-105018.[17] In its complaint, Keihin-Everett alleged that Orient Freight's "misrepresentation, malice, negligence and fraud" caused the termination of its In-House Brokerage Service Agreement with Matsushita. Keihin-Everett prayed for compensation for lost income, with legal interest, exemplary damages, attorney's fees, litigation expenses, and the costs of the suit.[18]

In its December 20, 2002 Answer, Orient Freight claimed, among others, that its initial ruling of pilferage was in good faith as manifested by the information from its employees and the good condition and the timely shipment of the cargo. It also alleged that the contractual termination was a prerogative of Matsushita. Further, by its own Audited Financial Statements on file with the Securities and Exchange Commission, Keihin-Everett derived income substantially less than what it sued for. Along with the dismissal of the complaint, Orient Freight also asserted counterclaims for compensatory and exemplary damages, attorney's fees, litigation expenses, and the costs of the suit.[19]

The Regional Trial Court rendered its February 27, 2008 Decision,[20] in favor of Keihin-Everett. It found that Orient Freight was "negligent in failing to investigate properly the incident and make a factual report to Keihin[-Everett] and Matsushita," despite having enough time to properly investigate the incident.[21]

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[16] *Id*. at 35.

[17] *Id*. at 70.

[18] *Id*. at 35.

[19] *Id*.

[20] *Id*. at 70-92.

[21] *Id*. at 86.

The trial court also ruled that Orient Freight's failure to exercise due diligence in disclosing the true facts of the incident to Keihin-Everett and Matsushita caused Keihin-Everett to suffer income losses due to Matsushita's cancellation of their contract.[22] The trial court ordered Orient Freight "to pay [Keihin-Everett] the amount of [₱]1,666,667.00 as actual damages representing net profit loss incurred" and ₱50,000.00 in attorney's fees.[23] However, it denied respondent's prayer for exemplary damages, finding that petitioner did not act with gross negligence.[24]

Orient Freight appealed the Regional Trial Court Decision to the Court of Appeals. On January 21, 2010, the Court of Appeals issued its Decision[25] affirming the trial court's decision. It ruled that Orient Freight "not only had knowledge of the foiled hijacking of the truck carrying the . . . shipment but, more importantly, withheld [this] information from [Keihin-Everett]."[26]

The Court of Appeals ruled that the oral and documentary evidence has established both the damage suffered by Keihin-Everett and Orient Freight's fault or negligence. Orient Freight was negligent in not reporting and not thoroughly investigating the April 17, 2002 incident despite Keihin-Everett's instruction to do so.[27] It further ruled that while Keihin-Everett sought to establish its claim for lost income of ₱2,500,000.00 by submitting its January 2002 to June 2002 net income statement,[28] this was refuted by Orient Freight by presenting Keihin-Everett's own audited financial statements. The Court of Appeals held that

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[22] *Id*. at 89.

[23] *Id*. at 92.

[24] *Id*. at 91.

[25] *Id*. at 32-43.

[26] *Id*. at 38.

[27] *Id*. at 39. The Court of Appeals Decision mentioned "August 17, 2002" but meant "April 17, 2002."

[28] *Id*. at 41.

the trial court correctly arrived at the amount of ₱1,666,667.00 as the award of lost income.[29]

The Court of Appeals denied Orient Freight's Motion for Reconsideration in its April 21, 2010 Resolution.[30]

On June 9, 2010, Orient Freight filed this Petition for Review on Certiorari under Rule 45 with this Court, arguing that the Court of Appeals incorrectly found it negligent under Article 2176 of the Civil Code.[31] As there was a subsisting Trucking Service Agreement between Orient Freight itself and Keihin-Everett, petitioner avers that there was a pre-existing contractual relation between them, which would preclude the application of the laws on quasi-delicts.[32]

Applying the test in *Far East Bank and Trust Company v. Court of Appeals*,[33] petitioner claims that its failure to inform respondent Keihin-Everett about the hijacking incident could not give rise to a quasi-delict since the Trucking Service Agreement between the parties did not include this obligation. It argues that there being no obligation under the Trucking Service Agreement to inform Keihin-Everett of the hijacking incident, its report to Keihin-Everett was done in good faith and did not constitute negligence. Its representations regarding the hijacking incident were a sound business judgment and not a negligent act.[34] Finally, it claims that the Court of Appeals incorrectly upheld the award of damages, as the trial court had based its computation on, among others, Keihin-Everett's profit and loss statement.[35]

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[29] *Id*.

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

[31] *Id*. at 15.

[32] *Id*. at 17-18.

[33] 311 Phil. 783 (1995) [Per *J.* Vitug, *En Banc*].

[34] *Rollo*, pp. 19-20.

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

On August 2, 2010, Keihin-Everett filed its Comment,[36] arguing that the petition does not contain the names of the parties in violation of Rule 45, Section 4 of the Rules of Court. It contends that the issues and the arguments raised in this petition are the same issues it raised in the Regional Trial Court and the Court of Appeals.[37] It claims that the findings of fact and law of the Court of Appeals are in accord with this Court's decisions.[38]

On October 7, 2010, Orient Freight filed its Reply.[39] It notes that a cursory reading of the petition would readily show the parties to the case. It claims that what is being contested and appealed is the application of the law on negligence by lower courts and, while the findings of fact by the lower courts are entitled to great weight, the exceptions granted by jurisprudence apply to this case. It reiterates that the pre-existing contractual relation between the parties should bar the application of the principles of quasi-delict. Because of this, the terms and conditions of the contract between the parties must be applied. It also claimed that the Regional Trial Court's computation of the award included figures from respondent's Profit and Loss Statement, which the trial court had allegedly rejected. It rendered the computation unreliable.[40]

This Court issued a Resolution[41] dated February 16, 2011, requiring petitioner to submit a certified true copy of the Regional Trial Court February 27, 2008 Decision.

On March 31, 2011, petitioner filed its Compliance,[42] submitting a certified true copy of the Regional Trial Court Decision.

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

[37] *Id*. at 53.

[38] *Id*. at 55.

[39] *Id*. at 59-62.

[40] *Id*. at 60.

[41] *Id*. at 65.

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

The issues for this Court's resolution are:

First, whether the failure to state the names of the parties in this Petition for Review, in accordance with Rule 45, Section 4 of the Rules of Court, is a fatal defect;

Second, whether the Court of Appeals, considering the existing contracts in this case, erred in applying Article 2176 of the Civil Code;

Third, whether Orient Freight, Inc. was negligent for failing to disclose the facts surrounding the hijacking incident on April 17, 2002, which led to the termination of the Trucking Service Agreement between Keihin-Everett Forwarding Co., Inc. and Matsushita Communication Industrial Corporation of the Philippines; and

Finally, whether the trial court erred in the computation of the awarded actual and pecuniary loss by basing it on, among others, the Profit and Loss Statement submitted by Keihin-Everett Forwarding Co., Inc.

The petition is denied.

I

The petition does not violate Rule 45, Section 4 of the Rules of Court[43] for failing to state the names of the parties in the body. The names of the parties are readily discernable from the caption of the petition, clearly showing the appealing party as the petitioner and the adverse party as the respondent. The Court of Appeals had also been erroneously impleaded in the petition. However, this Court in *Aguilar v. Court of Appeals, et al.*[44]

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[43] Section 4 of Rule 45 of the Rules of Court states, in part:

Section 4. *Contents of petition*. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) *state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents*[.] (Emphasis supplied)

[44] 617 Phil. 543 (2009) [Per *J.* Brion, *En Banc*].

ruled that inappropriately impleading the lower court as respondent does not automatically mean the dismissal of the appeal. This is a mere formal defect.[45]

II

Negligence may either result in *culpa aquiliana* or *culpa contractual*.[46] *Culpa aquiliana i*s the "the wrongful or negligent act or omission which creates a *vinculum juris* and gives rise to an obligation between two persons not formally bound by any other obligation,"[47] and is governed by Article 2176 of the Civil Code:

> Article 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.

Negligence in *culpa contractual*, on the other hand, is "the fault or negligence incident in the performance of an obligation which already-existed, and which increases the liability from such already existing obligation."[48] This is governed by Articles 1170 to 1174 of the Civil Code:[49]

> 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.
>
> Article 1171. Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void.
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> Article 1172. Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.

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[45] *Id*. at 552-553.

[46] *Spouses Batal v. Spouses Tominaga*, 534 Phil. 798, 804 (2006) [Per *J.* Austria-Martinez, First Division].

[47] *Id*.

[48] *Id*.

[49] *Id*. at 804-805.

Article 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

Article 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.

Actions based on contractual negligence and actions based on quasi-delicts differ in terms of conditions, defenses, and proof. They generally cannot co-exist.[50] Once a breach of contract is proved, the defendant is presumed negligent and must prove not being at fault. In a quasi-delict, however, the complaining party has the burden of proving the other party's negligence.[51] In *Huang v. Phil. Hoteliers, Inc.*:[52]

[T]his Court finds it significant to take note of the following differences between quasi-delict (*culpa aquilina*) and breach of contract (*culpa contractual*). In *quasi-delict*, negligence is direct, substantive and independent, while in breach of contract, negligence is merely incidental to the performance of the contractual obligation; there is a pre-existing contract or obligation, In quasi-delict, the defense of "good father of a family" is a complete and proper defense insofar as parents, guardians and employers are concerned, while in breach of contract, such is not a complete and proper defense in the selection and supervision of employees. In *quasi-delict*, there is no presumption of negligence and it is incumbent upon the injured party to prove

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[50] *Fores v. Miranda*, 105 Phil. 266, 275 (1959) [Per *J.* Reyes, J.B.L., *En Banc*].

[51] *Consolidated Bank and Trust Corp. v. Court of Appeals*, 457 Phil. 688, 708 (2003) [Per *J.* Carpio, First Division].

[52] 700 Phil. 327 (2012) [Per *J.* Perez, Second Division].

the negligence of the defendant, otherwise, the former's complaint will be dismissed, while in breach of contract, negligence is presumed so long as it can be proved that there was breach of the contract and the burden is on the defendant to prove that there was no negligence in the carrying out of the terms of the contract; the rule of *respondeat superior* is followed.[53] (Emphasis in the original, citations omitted)

In *Government Service Insurance System v. Spouses Labung-Deang*,[54] since the petitioner's obligation arose from a contract, this Court applied the Civil Code provisions on contracts, instead of those of Article 2176:

The trial court and the Court of Appeals treated the obligation of GSIS as one springing from *quasi-delict*. We do not agree. Article 2176 of the Civil Code defines *quasi-delict a*s follows:

> "Whoever by act or omission causes damages 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 (*italics ours*)."

Under the facts, there was a pre-existing contract between the parties. GSIS and the spouses Deang had a loan agreement secured by a real estate mortgage. The duty to return the owner's duplicate copy of title arose as soon as the mortgage was released. GSIS insists that it was under no obligation to return the owner's duplicate copy of the title immediately. This insistence is not warranted. Negligence is obvious as the owners' duplicate copy could not be returned to the owners. Thus, the more applicable provisions of the Civil Code are:

> "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."
>
> "Article 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen

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[53] *Id*. at 357-358.

[54] 417 Phil. 662 (2001) [Per *J*. Pardo, First Division].

> or could have reasonably foreseen at the time the obligation was constituted . . ."

Since good faith is presumed and bad faith is a matter of fact which should be proved, we shall treat GSIS as a party who defaulted in its obligation to return the owners' duplicate copy of the title. As an obligor in good faith, GSIS is liable for all the "natural and probable consequences of the breach of the obligation." The inability of the spouses Deang to secure another loan and the damages they suffered thereby has its roots in the failure of the GSIS to return the owners' duplicate copy of the title.[55] (Citations omitted)

Similarly, in *Syquia v. Court of Appeals,*[56] this Court ruled that private respondent would have been held liable for a breach of its contract with the petitioners, and not for quasi-delict, had it been found negligent:

> With respect to herein petitioners' averment that private respondent has committed *culpa aquiliana*, the Court of Appeals found no negligent act on the part of private respondent to justify an award of damages against it. Although a pre-existing contractual relation between the parties does not preclude the existence of a *culpa aquiliana*, We find no reason to disregard the respondent's Court finding that there was no negligence.
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> . . . . . .
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> In this case, it has been established that the Syquias and the Manila Memorial Park Cemetery, Inc., entered into a contract entitled "Deed of Sale and Certificate of Perpetual Care" on August 27, 1969. That agreement governed the relations of the parties and defined their respective rights and obligations. Hence, had there been actual negligence on the part of the Manila Memorial Park Cemetery, Inc., it would be held liable not for a *quasi-delict* or *culpa aquiliana*, but for *culpa contractual* as provided by Article 1170 of the Civil Code[.][57]

However, there are instances when Article 2176 may apply even when there is a pre-existing contractual relation. A party

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[55] *Id*. at 670-671.

[56] 291 Phil. 653 (1993) [Per *J*. Campos, Jr., Second Division].

[57] *Id*. at 659-660.

may still commit a tort or quasi-delict against another, despite the existence of a contract between them.[58]

In *Cangco v. Manila Railroad*,[59] this Court explained why a party may be held liable for either a breach of contract or an extra-contractual obligation for a negligent act:

> It is evident, therefore, that in its decision in the Yamada case, the court treated plaintiff's action as though founded in tort rather than as based upon the breach of the contract of carriage, and an examination of the pleadings and of the briefs shows that the questions of law were in fact discussed upon this theory. Viewed from the standpoint of the defendant the practical result must have been the same in any event. The proof disclosed beyond doubt that the defendant's servant was grossly negligent and that his negligence was the proximate cause of plaintiff's injury. It also affirmatively appeared that defendant had been guilty of negligence in its failure to exercise proper discretion in the direction of the servant. *Defendant was, therefore, liable for the injury suffered by plaintiff, whether the breach of the duty were to be regarded as constituting* culpa aquilina or culpa contractual. *As Manresa points out . . . whether negligence occurs as an incident in the course of the performance of a contractual undertaking or is itself the source of an extra-contractual obligation, its essential characteristics are identical. There is always an act or omission productive of damage due to carelessness or inattention on the part of the defendant.* Consequently, when the court holds that a defendant is liable in damages for having failed to exercise due care, either directly, or in failing to exercise proper care in the selection and direction of his servants, the practical result is identical in either case . . .
>
> The true explanation of such cases is to be found by directing the attention to the relative spheres of contractual and extra-contractual obligations. The field of non-contractual obligation is much more broader [sic] than that of contractual obligation, comprising, as it does, the whole extent of juridical human relations. *These two fields, figuratively speaking, concentric; that is to say, the mere fact that*

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[58] *Singson v. Bank of the Philippine Islands*, 132 Phil. 597, 599-600 (1968) [Per *J.* Concepcion, *En Banc*].

[59] 38 Phil. 768 (1918) [Per *J.* Fisher, *En Banc*].

a person is bound to another by contract does not relieve him from extra-contractual liability to such person. When such a contractual relation exists the obligor may break the contract under such conditions that the same act which constitutes a breach of the contract would have constituted the source of an extra-contractual obligation had no contract existed between the parties.[60] (Emphasis supplied, citation omitted)

If a contracting party's act that breaches the contract would have given rise to an extra-contractual liability had there been no contract, the contract would be deemed breached by a tort,[61] and the party may be held liable under Article 2176 and its related provisions.[62]

In *Singson v. Bank of the Philippine Islands*,[63] this Court upheld the petitioners' claim for damages based on a quasi-delict, despite the parties' relationship being contractual in nature:

After appropriate proceedings, the Court of First Instance of Manila rendered judgment dismissing the complaint upon the ground that plaintiffs cannot recover from the defendants upon the basis of a quasi-delict, because the relation between the parties is contractual

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[60] *Id*. at 779-781.

[61] The general formulation of this principle is "the act that breaks the contract may also be a tort" (*Air France v. Carrascoso*, 124 Phil. 722, 739 (1966) [Per *J.* Sanchez, *En Banc*]). The use of the word "tort" instead of "quasi-delict" is significant since this Court has noted that a "quasi-delict, as defined in Article 2176 of the Civil Code ... is homologous but not identical to tort under the common law, which includes not only negligence, but also intentional criminal acts, such as assault and battery, false imprisonment, and deceit." (*Coca-Cola Bottlers Philippines, Inc. v. Court of Appeals*, 298 Phil. 52, 61 (1993) [Per *J*. Davide, Jr., First Division], citing the Report of the Code Commission on the Proposed Civil Code of the Philippines).

[62] See *American Express International, Inc. v. Cordero*, 509 Phil. 619 (2005) [Per *J*. Sandoval-Gutierrez, Third Division]; *Singson v. Bank of the Philippine Islands*, 132 Phil. 597 (1968) [Per *J.* Concepcion, *En Banc*]; *Coca-Cola Bottlers Philippines, Inc. v. Court of Appeals*, 298 Phil. 52 (1993) [Per *J*. Davide, Jr., First Division]; *Light Rail Transit Authority v. Navidad*, 445 Phil. 31 (2003) [Per *J*. Vitug, First Division].

[63] 132 Phil. 597 (1968) [Per *J*. Concepcion, *En Banc*].

in nature; because this case does not fall under Article 2219 of our Civil Code, upon which plaintiffs rely; and because plaintiffs have not established the amount of damages allegedly sustained by them.

The lower court held that plaintiffs' claim for damages cannot be based upon a tort or quasi-delict, their relation with the defendants being contractual in nature. We have repeatedly held, however, that the existence of a contract between the parties does not bar the commission of a tort by the one against the order and the consequent recovery of damages therefor. Indeed, this view has been in effect, reiterated in a comparatively recent case. Thus, in *Air France vs. Carrascoso*, involving an airplane passenger who, despite his first-class ticket, had been illegally ousted from his first-class accommodation, and compelled to take a seat in the tourist compartment, was held entitled to recover damages from the air-carrier, upon the ground of tort on the latter's part, for, although the relation between a passenger and the carrier is "contractual both in origin and nature . . . the act that breaks the contract may also be a tort."[64] (Citations omitted)

However, if the act complained of would not give rise to a cause of action for a quasi-delict independent of the contract, then the provisions on quasi-delict or tort would be inapplicable.[65]

In *Philippine School of Business Administration v. Court of Appeals,*[66] petitioner's obligation to maintain peace and order on campus was based on a contract with its students. Without this contract, the obligation does not exist. Therefore, the private respondents' cause of action must be founded on the breach of contract and cannot be based on Article 2176:

Because the circumstances of the present case evince a contractual relation between the PSBA and Carlitos Bautista, the rules on quasi-delict do not really govern. A perusal of Article 2176 shows that obligations arising from quasi-delicts or tort, also known as extra-contractual obligations, arise only between parties not otherwise bound

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[64] *Id*. at 599-600.

[65] *Far East Bank and Trust Company v. Court of Appeals*, 311 Phil. 783, 792-793 (1995) [Per *J.* Vitug, *En Banc*].

[66] 282 Phil. 759 (1992) [Per *J.* Padilla, Second Division].

by contract, whether express or implied. However, this impression has not prevented this Court from determining the existence of a tort even when there obtains a contract. In *Air France vs. Carroscoso* (124 Phil. 722), the private respondent was awarded damages for his unwarranted expulsion from a first-class seat aboard the petitioner airline. It is noted, however, that the Court referred to the petitioner-airline's liability as one arising from tort, not one arising from a contract of carriage. In effect, *Air France* is authority for the view that liability from tort may exist even if there is a contract, for the act that breaks the contract may be also a tort. (*Austro-America S.S. Co. vs. Thomas*, 248 Fed. 231).

This view was not all that revolutionary, for even as early as 1918, this Court was already of a similar mind. In *Cangco vs. Manila Railroad* (38 Phil. 780), Mr. Justice Fisher elucidated thus:

> "The field of non-contractual obligation is much more broader [sic] than that of contractual obligation, comprising, as it does, the whole extent of juridical human relations. These two fields, figuratively speaking, concentric; that is to say, the mere fact that a person is bound to another by contract does not relieve him from extra-contractual liability to such person. When such a contractual relation exists the obligor may break the contract under such conditions that *the same act which constitutes a breach of the contract would have constituted the source of an extra-contractual obligation had no contract existed between the parties*."

Immediately what comes to mind is the chapter of the Civil Code on Human Relations, particularly Article 21, which provides:

> "Any person who *wilfully* 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." (Italics supplied)

Air France penalized the racist policy of the airline which emboldened the petitioner's employee to forcibly oust the private respondent to cater to the comfort of a white man who allegedly "had a better right to the seat." In *Austro-American, supra,* the public embarrassment caused to the passenger was the justification for the Circuit Court of Appeals, (Second Circuit), to award damages to the latter. From the foregoing, it can be concluded that should the act which breaches a contract be done in bad faith and be violative of

Article 21, then there is a cause to view the act as constituting a quasi-delict.

In the circumstances obtaining in the case at bar, however, there is, as yet, no finding that the contract between the school and Bautista had been breached thru the former's negligence in providing proper security measures. This would be for the trial court to determine. And, even if there be a finding of negligence, the same could give rise generally to a breach of contractual obligation only. Using the test of *Cangco, supra*, the negligence of the school would not be relevant absent a contract. In fact, that negligence becomes material only because of the contractual relation between PSBA and Bautista. In other words, a contractual relation is a condition *sine qua non* to the school's liability. The negligence of the school cannot exist independently on the contract, unless the negligence occurs under the circumstances set out in Article 21 of the Civil Code.[67] (Citations omitted)

In situations where the contractual relation is indispensable to hold a party liable, there must be a finding that the act or omission complained of was done in bad faith and in violation of Article 21 of the Civil Code to give rise to an action based on tort.[68]

In *Far East Bank and Trust Company v. Court of Appeals*,[69] as the party's claim for damages was based on a contractual relationship, the provisions on quasi-delict generally did not apply. In this case, this Court did not award moral damages to the private respondent because the applicable Civil Code provision was Article 2220,[70] not Article 21, and neither fraud nor bad faith was proved:

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

[68] *Id*.

[69] 311 Phil. 783 (1995) [Per *J.* Vitug, *En Banc*].

[70] CIVIL CODE, Art. 2220 states:

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.

We are not unaware of the previous rulings of this Court, such as in *American Express International, Inc. vs. Intermediate Appellate Court* (167 SCRA 209) and *Bank of [the] Philippine Islands vs. Intermediate Appellate Court* (206 SCRA 408), sanctioning the application of Article 21, in relation to Article 2217 and Article 2219 of the Civil Code to a contractual breach similar to the case at bench. Article 21 states:

> "Art. 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."

Article 21 of the Code, it should be observed, contemplates a conscious act to cause harm. Thus, even if we are to assume that the provision could properly relate to a breach of contract, its application can be warranted only when the defendant's disregard of his contractual obligation is so deliberate as to approximate a degree of misconduct certainly no less worse [sic] than fraud or bad faith. Most importantly, Article 21 is a mere declaration of a general principle in human relations that clearly must, in any case, give way to the specific provision of Article 2220 of the Civil Code authorizing the grant of moral damages in *culpa contractual* solely when the breach is due to fraud or bad faith.

. . . . . .

The Court has not in the process overlooked another rule that a quasi-delict can be the cause for breaching a contract that might thereby permit the application of applicable principles on tort even where there is a pre-existing contract between the plaintiff and the defendant (*Phil. Airlines vs. Court of Appeals*, 106 SCRA 143; *Singson vs. Bank of the Phil. Islands*, 23 SCRA 1117; and *Air France vs. Carrascoso*, 18 SCRA 155). This doctrine, unfortunately, cannot improve private respondents' case for it can aptly govern only where the act or omission complained of would constitute an actionable tort independently of the contract. The test (whether a quasi-delict can be deemed to underlie the breach of a contract) can be stated thusly: Where, without a pre-existing contract between two parties, an act or omission can nonetheless amount to an actionable tort by itself, the fact that the parties are contractually bound is no bar to the application of quasi-delict provisions to the case. Here, private respondents' damage claim is predicated solely on their contractual relationship; without such agreement, the act or omission complained

of cannot by itself be held to stand as a separate cause of action or as an independent actionable tort.[71] (Citations omitted)

Here, petitioner denies that it was obliged to disclose the facts regarding the hijacking incident since this was not among the provisions of its Trucking Service Agreement with respondent. There being no contractual obligation, respondent had no cause of action against petitioner:

> Applying said test, assuming for the sake of argument that petitioner indeed failed to inform respondent of the incident where the truck was later found at the Caloocan Police station, would an independent action prosper based on such omission? Assuming that there is no contractual relation between the parties herein, would petitioner's omission of not informing respondent that the truck was impounded gives [sic] rise to a quasi-delict? Obviously not, because the obligation, if there is any in the contract, that is to inform plaintiff of said incident, could have been spelled out in the very contract itself duly executed by the parties herein specifically in the Trucking Service Agreement. It is a fact that no such obligation or provision existed in the contract. Absent said terms and obligations, applying the principles on tort as a cause for breaching a contract would therefore miserably fail as the lower Court erroneously did in this case.[72]

The obligation to report what happened during the hijacking incident, admittedly, does not appear on the plain text of the Trucking Service Agreement. Petitioner argues that it is nowhere in the agreement. Respondent does not dispute this claim. Neither the Regional Trial Court nor the Court of Appeals relied on the provisions of the Trucking Service Agreement to arrive at their respective conclusions. Breach of the Trucking Service Agreement was neither alleged nor proved.

While petitioner and respondent were contractually bound under the Trucking Service Agreement and the events at the crux of this controversy occurred during the performance of

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[71] *Far East Bank and Trust Company v. Court of Appeals*, 311 Phil. 783, 788-793 (1995) [Per *J.* Vitug, *En Banc*].

[72] *Rollo*, pp. 17-18.

this contract, it is apparent that the duty to investigate and report arose subsequent to the Trucking Service Agreement. When respondent discovered the news report on the hijacking incident, it contacted petitioner, requesting information on the incident.[73] Respondent then requested petitioner to investigate and report on the veracity of the news report. Pursuant to respondent's request, petitioner met with respondent and Matsushita on April 20, 2002 and issued a letter dated April 22, 2002, addressed to Matsushita.[74] Respondent's claim was based on petitioner's negligent conduct when it was required to investigate and report on the incident:

> The defendant claimed that it should not be held liable for damages suffered by the plaintiff considering that the proximate cause of the damage done to plaintiff is the negligence by employees of Schmitz trucking. This argument is untenable because the defendant is being sued in this case not for the negligence of the employees of Schmitz trucking but based on defendant's own negligence in failing to disclose the true facts of the hijacking incident to plaintiff Keihin and Matsushita.[75]

Both the Regional Trial Court and Court of Appeals erred in finding petitioner's negligence of its obligation to report to be an action based on a quasi-delict Petitioner's negligence did not create the *vinculum juris* or legal relationship with the respondent, which would have otherwise given rise to a quasi-delict. Petitioner's duty to respondent existed prior to its negligent act. When respondent contacted petitioner regarding the news report and asked it to investigate the incident, petitioner's obligation was created. Thereafter, petitioner was alleged to have performed its obligation negligently, causing damage to respondent.

The doctrine "the act that breaks the contract may also be a tort," on which the lower courts relied, is inapplicable here.

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[73] *Id*. at 76.

[74] *Id*. at 33-34.

[75] *Id*. at 88.

Petitioner's negligence, arising as it does from its performance of its obligation to respondent, is dependent on this obligation. Neither do the facts show that Article 21 of the Civil Code applies, there being no finding that petitioner's act was a conscious one to cause harm, or be of such a degree as to approximate fraud or bad faith:

> To be sure, there was inaction on the part of the defendant which caused damage to the plaintiff, but there is nothing to show that the defendant intended to conceal the truth or to avoid liability. When the facts became apparent to defendant, the latter readily apologized to Keihin and Matsushita for their mistake.[76]

Consequently, Articles 1170, 1172, and 1173 of the Civil Code on negligence in the performance of an obligation should apply.

III

Under Article 1170 of the Civil Code, liability for damages arises when those in the performance of their obligations are guilty of negligence, among others. Negligence here has been defined as "the failure to observe that degree of care, precaution and vigilance that the circumstances just demand, whereby that other person suffers injury."[77] If the law or contract does not provide for the degree of diligence to be exercised, then the required diligence is that of a good father of a family.[78] The test to determine a party's negligence is if the party used "the reasonable care and caution which an ordinarily prudent person would have used in the same situation"[79] when it performed the negligent act. If the party did not exercise reasonable care and caution, then it is guilty of negligence.

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[76] *Id*. at 91.

[77] *Filinvest Land, Inc. v. Flood-Affected Homeowners of Meritville Alliance*, 556 Phil. 622, 628 (2007) [Per *J.* Sandoval-Gutierrez, First Division].

[78] CIVIL CODE, Art. 1173.

[79] *United Coconut Planters Bank v. Ramos,* 461 Phil. 277, 295 (2003) [Per *J.* Callejo, Second Division].

In this case, both the Regional Trial Court and the Court of Appeals found that petitioner was negligent in failing to adequately report the April 17, 2002 hijacking incident to respondent and not conducting a thorough investigation despite being directed to do so. The trial court's factual findings, when affirmed by the Court of Appeals, are binding on this Court and are generally conclusive.[80]

The Regional Trial Court found that petitioner's conduct showed its negligent handling of the investigation and its failure to timely disclose the facts of the incident to respondent and Matsushita:

> [Orient Freight] was clearly negligent in failing to investigate properly the incident and make a factual report to Keihin and Matsushita. [Orient Freight] claimed that it was pressed for time considering that they were given only about one hour and a half to investigate the incident before making the initial report. They claimed that their employees had no reason to suspect that the robbery occurred considering that the seal of the van remained intact. Moreover, the priority they had at that time was to load the cargo to the carrying vessel on time for shipment on April 19, 200[2]. They claimed that they made arrangement with the Caloocan Police Station for the release of the truck and the cargo and they were able to do that and the objective was achieved. This may be true but the Court thinks that [Orient Freight] had enough time to investigate properly the incident. The hijacking incident happened on April 17, 200[2] and the tabloid Tempo published the hijacking incident only on April 19, 200[2]. This means that [Orient Freight] had about two (2) days to conduct a diligent inquiry about the incident. It took them until May 15, 200[2] to discover that a robbery indeed occurred resulting in the loss of ten pallets or 218 cartons valued at US $34,226.14. They even denied that there was no police report only to find out that on May 15, 200[2] that there was such a report. It was [Orient Freight]'s duty to inquire from the Caloocan Police Station and to find out if they issued a police report, Yet, it was plaintiff Keihin which furnished them a copy of the police report. The failure of [Orient Freight] to investigate properly the incident and make a timely report constitutes negligence.

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[80] *Garcia, Jr. v. Salvador*, 547 Phil. 463, 469-470 (2007) [Per *J.* Ynares-Santiago, Third Division].

Evidently, [Orient Freight] failed to exercise due diligence in disclosing the true facts of the incident to plaintiff Keihin and Matsushita. As a result, plaintiff Keihin suffered income losses by reason of Matsushita's cancellation of their contract which primarily was caused by the negligence of [Orient Freight].[81]

The Court of Appeals affirmed the trial court's finding of negligence:

From the foregoing account, it is evident that [Orient Freight] not only had knowledge of the foiled hijacking of the truck carrying the subject shipment but, more importantly, withheld said information from [Keihin-Everett], Confronted with the April 19, 2002 tabloid account thereof, [Orient Freight] appears to have further compounded its omission by misleading [Keihin-Everett] and Matsu[s]hita into believing that the subject incident was irresponsibly reported and merely involved a stalled vehicle which was towed to avoid obstruction of traffic. Given that the police report subsequently obtained by [Keihin-Everett] was also dated April 17, 2002, [Orient Freight's insistence on its good faith on the strength of the information it gathered from its employees as well as the timely shipment and supposed good condition of the cargo clearly deserve scant consideration.[82]

Petitioner's argument that its acts were a "sound business judgment which the court cannot supplant or question nor can it declare as a negligent act"[83] lacks merit. The Regional Trial Court found that the circumstances should have alerted petitioner to investigate the incident in a more circumspect and careful manner:

On this score, [Orient Freight] itself presented the circumstances which should have alerted [Orient Freight] that there was more to the incident than simply a case of mechanical breakdown or towing of the container truck to the police station. [Orient Freight] pointed to specific facts that would naturally arouse suspicion that something

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[81] *Rollo*, p. 86. While this paragraph stated that the year was 2001, the trial court indicated 2002 throughout the Decision.

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

[83] *Id*. at 20.

was wrong when the container was found in the premises of the Caloocan Police Station and that driver Ricky Cudas was nowhere to be found. The police does [sic] not ordinarily impound a motor vehicle if the problem is merely a traffic violation. More important, driver Ricky Cudas disappeared and was reported missing. When the Caloocan Police chanced upon the container van, it was found straying at C-3 which is outside its usual route. All these circumstances should have been enough for [Orient Freight] to inquire deeper on the real circumstances of the incident.

. . . . . .

[Orient Freight] talked to Rubelito Aquino and apparently failed to listen closely to the statement given by their truck helper to the Caloocan Police. The truck helper recounted how the engine of the truck stalled and the driver was able to start the engine but thereafter, he was nowhere to be seen. By this circumstance alone, it should have become apparent to [Orient Freight] that the truck driver gypped the truck helper into calling the company and had a different intention which was to run away with the container van. It readily shows that Ricky Cudas intended to hijack the vehicle by feigning or giving the false appearance of an engine breakdown. Yet, [Orient Freight] dismissed the incident as a simple case of a unit breakdown and towing of vehicle allegedly due to traffic violation. Under the circumstances, therefore, the defendant failed to exercise the degree of care, precaution and vigilance which the situation demands.[84]

Despite the circumstances which would have cautioned petitioner to act with care while investigating and reporting the hijacking incident, petitioner failed to do so. Petitioner is responsible for the damages that respondent incurred due to the former's negligent performance of its obligation.

IV

Articles 2200 and 2201 of the Civil Code provide for the liability for damages in contractual obligations:

Article 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.

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[84] *Id*. at 84-86.

Article 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

In *Central Bank of the Philippines v. Court of Appeals*,[85] this Court explained the principles underlying Articles 2200 and 2201:

Construing these provisions, the following is what this Court held in *Cerrano vs. Tan Chuco*, 38 Phil. 392:

> ". . . Article 1106 (now 2200) of the Civil Code establishes the rule that prospective profits may be recovered as damages, while article 1107 (now 2201) of the same Code provides that the damages recoverable for the breach of obligations not originating in fraud (*dolo*) are those which were or might have been foreseen at the time the contract was entered into. Applying these principles to the facts in this case, we think that it is unquestionable that defendant must be deemed to have foreseen at the time he made the contract that in the event of his failure to perform it, the plaintiff would be damaged by the loss of the profit he might reasonably have expected to derive from its use.
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> "When the existence of a loss is established, absolute certainty as to its amount is not required. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied all remedy for that reason alone. He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover. As stated in Sedgwick on Damages (Ninth Ed., par. 177):

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[85] 159-A Phil. 21 (1975) [Per *J.* Barredo, Second Division].

> 'The general rule is, then, that a plaintiff may recover compensation for any gain which he can make it appear with reasonable certainty the defendant's wrongful act prevented him from acquiring, . . .' (See also *Algarra vs. Sandejas*, 27 Phil. Rep., 284, 289; *Hicks vs. Manila Hotel Co.*, 28 Phil, Rep., 325.)" (At pp. 398-399.)[86]

The lower courts established that petitioner's negligence resulted in Matsushita's cancellation of its contract with respondent. The Regional Trial Court found:

> In the letter dated June 6, 2002, Matsushita pre-terminated its In-House Brokerage Service Agreement with plaintiff Keihin for violation of the terms of said contract. Its President, KenGo Toda, stated that because of the incident that happened on April 17, 2002 involving properties which the plaintiff failed to inform them, Matsushita has lost confidence in plaintiff's capability to handle its brokerage and forwarding requirements. There was clearly a breach of trust as manifested by plaintiff's failure to disclose facts when it had the duty to reveal them and it constitutes fraud. Moreover, the negligence of plaintiff personnel cannot be tolerated as Matsushita is bound to protect the integrity of the company.[87]

It could be reasonably foreseen that the failure to disclose the true facts of an incident, especially when it turned out that a crime might have been committed, would lead to a loss of trust and confidence in the party which was bound to disclose these facts. Petitioner caused the loss of trust and confidence when it misled respondent and Matsushita into believing that the incident had been irresponsibly reported and merely involved a stalled truck.[88] Thus, petitioner is liable to respondent for the loss of profit sustained due to Matsushita's termination of the In-House Brokerage Service Agreement.

As regards the amount of damages, this Court cannot rule on whether the Regional Trial Court erred in using the Profit

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

[87] *Rollo*, p. 83.

[88] *Id*. at 38.

and Loss Statement submitted by respondent for its computation. The amount of the award of damages is a factual matter generally not reviewable in a Rule 45 petition,[89] The damages awarded by the Regional Trial Court, as affirmed by the Court of Appeals, were supported by documentary evidence such as respondent's audited financial statement. The trial court clearly explained how it reduced the respondent's claimed loss of profit and arrived at the damages to be awarded:

> The difference between the total gross revenue of plaintiff for 2002 as reported in the monthly profit and loss statement of [₱]14,801,744.00 and the audited profit and loss statement of the amount of [₱]10,434,144.00 represents 1/3 of the total gross revenues of the plaintiff for the six months period. Accordingly, the net profit loss of [₱]2.5 million pesos as reported in the monthly profit and loss statement of the plaintiff should be reduced by 1/3 or the amount of [₱]833,333.33. Therefore, the net profit loss of the plaintiff for the remaining period of six months should only be the amount of [₱]1,666,667.70 and not [₱]2.5 million as claimed.[90]

Petitioner has not sufficiently shown why the computation made by the trial court should be disturbed.

WHEREFORE, the petition is **DENIED**. The January 21, 2010 Decision and April 21, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 91889 are **AFFIRMED**.

SO ORDERED.

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

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[89] *Spouses Lam v. Kodak Philippines, Ltd.*, G.R. No. 167615, January 11, 2016, 778 SCRA 96, 126 [Per *J.* Leonen, Second Division].

[90] *Rollo*, p. 90.

FIRST DIVISION

[G.R. No. 192442. August 9, 2017]

BENEDICT N. ROMANA, *petitioner, vs.* **MAGSAYSAY MARITIME CORPORATION/EDUARDO U. MANESE and/or PRINCESS CRUISE LINES, LTD.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); PRESUMPTION OF WORK-RELATEDNESS; ILLNESSES NOT LISTED IN SECTION 32 THEREOF ARE DISPUTABLY PRESUMED AS WORK-RELATED UNLESS EMPLOYER'S REFUTATION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.— Under the 2000 POEA-SEC, "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied" is deemed to be a "work-related illness." On the other hand, Section 20 (B) (4) of the 2000 POEA-SEC declares that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related." The legal presumption of work-relatedness was borne out from the fact that the said list cannot account for all known and unknown illnesses/diseases that may be associated with, caused or aggravated by such working conditions, and that **the presumption is made in the law to signify that the non-inclusion in the list of occupational diseases does not translate to an absolute exclusion from disability benefits**. Given the legal presumption in favor of the seafarer, he *may rely on and invoke such legal presumption to establish a fact in issue*. "The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, thereby which, if no contrary proof is offered, will prevail." Thus, in *Racelis v. United Philippine Lines, Inc.* and *David v. OSG Shipmanagement Manila, Inc.*, the Court held that **the legal presumption of work-relatedness of a non-listed illness should be overturned only when the employer's refutation is found to be supported**

by substantial evidence, which, as traditionally defined, is "such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion."

2. **ID.; ID.; ID.; ID.; PRESUMPTION OF "WORK RELATEDNESS" OF AN ILLNESS DOES NOT EXTEND TO A PRESUMPTION OF COMPENSABILITY.—** Nonetheless, the presumption provided under Section 20 (B) (4) is only limited to the "work-relatedness" of an illness. It **does not cover and extend to *compensability***. **In this sense, there exists a fine line between the work-relatedness of an illness and the matter of compensability**. The former concept merely relates to the assumption that the seafarer's illness, albeit not listed as an occupational disease, may have been contracted during and in connection with one's work, whereas compensability pertains to the entitlement to receive compensation and benefits upon a showing that his work conditions caused or at least increased the risk of contracting the disease. This can be gathered from Section 32-A of the 2000 POEA-SEC which already qualifies the listed disease as an "occupational disease" (in other words, a "work-related disease"), but nevertheless, mentions certain conditions for said disease to be compensable. x x x As differentiated from the matter of work-relatedness, no legal presumption of compensability is accorded in favor of the seafarer. As such, he bears the burden of proving that these conditions are met.

3. **ID.; ID.; ID.; ID.; ID.; IN DISABILITY COMPENSATION PROCEEDINGS, SUBSTANTIAL EVIDENCE IS REQUIRED TO SHOW REASONABLE PROBABILITY, NOT MERE POSSIBILITY, THAT THE EMPLOYMENT CAUSED THE DISEASE; CASE AT BAR.—** As records show, the company-designated physician, after due assessment of petitioner's condition, found that his illness was caused by an abnormal growth of tissue in the brain's blood vessels (brain tumor) and therefore **not work-related**. To refute the same, petitioner argued that he accidentally injured his head when a metal ceiling fell on his head that caused lesion and bleeding. However, as correctly pointed out by the CA, no evidence was presented to substantiate the said incident. For another, petitioner asserted that the nature of his work may have contributed to his illness having been previously employed on board the same vessel under two (2) contracts, and that as a fitter, he was

constantly exposed to inhalation of and direct contact to harmful chemicals, formaldehyde, hydrocarbons, fumes, and other deleterious emissions, changes of temperature of extreme hot and freezing colds at the engine room and deck areas and as the vessel crossed ocean boundaries. However, there is no showing that the foregoing work conditions increased the risk of contracting his illness. While petitioner pointed out that brain tumors are linked to a genetic syndrome called Von Hippel-Lindau disease (the risk factors of which include radiation or chemical exposure), and in such regard, had been recommended by the Neurosurgeon specialist to undergo screening for said illness, petitioner failed to establish that he underwent such screening. It is therefore speculative to conclude that his exposure to "benzene, formaldehyde, hydrocarbons, chemicals, crude oil, gasoline, lubricants and other harmful cleaning solutions" may have caused, aggravated, or contributed to his brain tumor. Probability, not the ultimate degree of certainty, is the test of proof in disability compensation proceedings. Nevertheless, probability must be reasonable; **hence it should, at least, be anchored on *credible information***. **A *mere possibility will not suffice*, and a claim will fail if there is only a possibility that the employment caused the disease**.

SERENO, *C.J., concurring and dissenting*:

1. LABOR AND SOCIAL LEGISLATION; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS (PEOA-SEC); FOUR REQUISITES OF COMPENSABILITY UNDER SECTION 32-A THEREOF, NOT ESTABLISHED IN CASE AT BAR.— I concur with the majority that petitioner is not entitled to disability benefits for failing to establish the four requisites of compensability under Section 32-A of the 2000 Philippine Overseas Employment Administration Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-going Ships (POEA-SEC). Notably, the initial theory of petitioner was that his illness was caused by an accident while he was on board, when a piece of metal ceiling fell and hit his head. In his appeal before the National Labor Relations Commission (NLRC), he modified his theory by arguing anew

that his brain tumor was probably aggravated by his constant exposure to different chemicals and dust particles. He has not, however, supplied any proof of the accident, much less the details of his supposed exposure to carcinogens and other harmful chemicals. We would be hard put to conclude that the brain tumor of petitioner was caused or aggravated by his work on the basis of his bare declaration that his duties as mechanical fitter constantly exposed him to carcinogens and other harmful chemicals. Mere allegations do not constitute evidence.

2. ID.; ID.; IN COMPENSATION PROCEEDINGS, THE BURDEN IS ON THE SEAFARER TO PROVE THAT HE SUFFERED FROM A WORK-RELATED INJURY OR ILLNESS DURING THE TERM OF HIS CONTRACT.— I cannot agree, though, with the approach employed by the *ponencia* and the subsequent clarification that the majority now proposes with respect to the rulings in *Quizora v. Denholm Crew Management (Phils.), Inc., Magsaysay Maritime Services v. Laurel,* and *Dohle-Philman Manning Agency, Inc. v. Gazzingan.* My misgivings stem from the established rule in compensation proceedings that whoever claims the benefits provided by law should prove the entitlement by substantial evidence. Hence, the burden is on the seafarer to prove that he suffered from a work-related injury or illness during the term of his contract. Besides, the proffered technical demarcation between work-relatedness and compensability diverges from the clear provisions of the 2000 POEA-SEC, Section 20(B) of which provides: B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows: x x x 4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related. Applying the above provisions, we ruled in a number of cases that for an illness to be compensable under the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must have been work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

3. ID.; ID.; ID.; FOR AN ILLNESS TO BE COMPENSABLE, THERE MUST BE A REASONABLE LINKAGE BETWEEN THE DISEASE SUFFERED BY THE EMPLOYEE AND HIS WORK TO LEAD A RATIONAL

MIND TO CONCLUDE THAT HIS WORK MAY HAVE CONTRIBUTED TO THE ESTABLISHMENT OR AGGRAVATION OF ANY PRE-EXISTING CONDITION HE MIGHT HAVE HAD.— In the recent case *Madridejos v. NYK-FIL Ship Management,* x x x the illness sought to be compensated was a sebaceous cyst, which was not listed as an occupational disease under Section 32 of the 2000 POEA-SEC. While we conceded that the disputable presumption of work-relatedness under Section 20(B)(4) worked in favor of the seafarer, his claim had to be denied for failure to establish causality. We ruled thus: Even assuming that Madridejos was medically repatriated, he still cannot claim for disability benefits since his sebaceous cyst was not work-related. x x x Madridejos was diagnosed with sebaceous cyst to the right of his umbilicus during the effectivity of his contract as evinced by the findings of Dr. Byrne. Conformably, Labor Arbiter Demaisip affirmed that Madridejos' illness was acquired during the term of his employment contract. Disputed, however, is whether Madridejos' sebaceous cyst was work-related. x x x Madridejos insists that his sebaceous cyst was work-related and compensable since the risk of acquiring it increased due to his working conditions. NYK-FIL opposes, claiming that Madridejos' cyst was not attributable to the nature of his job. It asserts that Madridejos failed to show "even a single realistic connection" between his illness and his employment. NYK-FIL says that Madridejos never met any accident and there was no medical or accident report to prove its occurrence. A work-related illness is "any sickness resulting to disability or death as a result of an occupational disease listed under ***Section 32-A*** with the conditions set therein satisfied." [F]or an illness to be compensable, "it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer." It is enough that there is "a ***reasonable linkage*** between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had." x x x Section 32-A, therefore, sets the parameters of **causality or reasonable linkage** between the injury or illness suffered and the work conditions of the claimant. Accordingly, case law provides that the legal presumption of work-relatedness in favor of the claimant holds only to the extent that it allows compensation even for

a non-occupational disease, as long the four conditions under Section 32-A are established. It is my view that this principle finds basis in the plain text of the 2000 POEA-SEC and settled evidentiary rules in compensation proceedings.

APPEARANCES OF COUNSEL

Romulo P. Valmores for petitioner.
Del Rosario & Del Rosario Law Offices for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 11, 2010 and the Resolution[3] dated May 27, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 108036, which affirmed the Decision[4] dated March 28, 2008 and the Resolution[5] dated November 28, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 049079-06 / NLRC NCR OFW (M) 04-12-03296-00, dismissing petitioner Benedict N. Romana's (petitioner) claim for disability benefits.

The Facts

Petitioner was employed[6] by respondents Magsaysay Maritime Corporation, Eduardo Manese and/or Princess Cruise Lines, Ltd. (respondents) as a Mechanical Fitter and boarded the vessel

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[1] *Rollo*, pp. 9-38.

[2] *Id*. at 246-258. Penned by Associate Justice Ramon R. Garcia with Associate Justices Rosalinda Asuncion-Vicente and Rodil V. Zalameda concurring.

[3] *Id*. at 273-274.

[4] *Id*. at 158-164. Penned by Commissioner Romeo L. Go with Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco.

[5] *Id*. at 172-173.

[6] See Contract of Employment dated July 8, 2003; *id*. at 41.

M/V Golden Princess[7] on August 7, 2003.[8] He claimed that while he and fellow shipmates Alexander Mapa and Rogelio Acdal were walking along the ship alley on April 20, 2004, the metal ceiling fell and wounded his head.[9] A few days thereafter, he experienced persisting headache and blurring of vision and consulted the ship's doctor who prescribed him medicines.[10] As his condition did not improve, he was referred to a specialist in Barbados, West Indies, and was found to have a tumor (or *hemangioblastoma*) at the left side of his brain, for which he underwent left *posterior fossa craniectomy*.[11]

He was repatriated on May 23, 2004 and the company-designated physician, in a medical report[12] dated May 24, 2004, issued a finding that petitioner's illness is not work-related[13] given that the same is an "abnormal growth of tissues in the brain's blood vessels."[14] He was later cleared and discharged on May 27, 2004.[15] No further consultations were made. On October 12, 2004, petitioner consulted an independent physician, who on the other hand, declared his illness to be work-related and gave him a Grade 1 impediment after finding him unfit to resume work as a seaman and incapable of landing a gainful employment because of his medical background.[16] As a result, petitioner filed a complaint,[17] seeking payment of his disability benefits, illness allowance, reimbursement of medical expenses,

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[7] "Golden Princes (NAV)" in the Contract of Employment; *id*.

[8] See *id*. at 136-137.

[9] *Id*. at 137.

[10] *Id*.

[11] See *id*. at 137-138. See also *id*. at 47-49.

[12] Not attached to the *rollo*.

[13] *Rollo*, p. 159.

[14] See *id*. at 148.

[15] See *id*. at 52.

[16] See *id*. at 54-55.

[17] *Id*. at 56-57.

damages, and attorney's fees,[18] docketed as NLRC NCR OFW Case No. (M) 04-12-03296-00.

For their part, respondents denied petitioner's claim, contending that brain tumor is not listed as an occupational disease under Section 32-A of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract (2000 POEA-SEC), and that the company-designated physician declared said illness to be not work-related, hence, not compensable.[19]

The Labor Arbiter's Ruling

In a Decision[20] dated March 30, 2006, the Labor Arbiter (LA) dismissed the complaint, finding that petitioner failed to establish that his illness is work-related.[21] In so ruling, the LA gave more credence to the findings of the company-designated physician that his employment did not increase the risk of contracting his illness, nor did his working conditions contribute to his illness.[22]

Thus, petitioner appealed[23] the LA ruling, contending that Section 20 (B) (4)[24] of the 2000 POEA-SEC expressly provides that his illness shall be disputably presumed to be work-related, and that it is compensable since the nature of his work constantly

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[18] *Id*.

[19] *Id*. at 75.

[20] *Id*. at 136-144. Penned by LA Fedriel S. Panganiban.

[21] *Id*. at 144.

[22] *Id*. at 143.

[23] See Memorandum of Appeal dated May 2, 2006; *id*. at 145-156.

[24] **SECTION 20. COMPENSATION AND BENEFITS**

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS

x x x x x x x x x

4. Those illnesses not listed in Section 32 of this contract are ***disputably presumed as work related***. (Emphasis supplied)

exposed him to harmful chemicals, extreme changes of temperature in the engine room, as well as to harsh sea weather conditions.[25] He likewise maintained that his injury on the head after having been hit by a falling metal ceiling on board the vessel may have contributed to his brain tumor.[26]

The NLRC Ruling

In a Decision[27] dated March 28, 2008, the NLRC affirmed the LA ruling, holding that there was no evidence to support petitioner's claim that the nature of his work exposed him to risks of contracting a brain tumor.[28]

Petitioner moved for reconsideration,[29] but the same was denied in a Resolution[30] dated November 28, 2008. Hence, petitioner elevated his case to the CA via a petition for *certiorari*.[31]

The CA Ruling

In a Decision[32] dated February 11, 2010, the CA dismissed the *certiorari* petition, finding no grave abuse of discretion on the part of the NLRC. It debunked petitioner's claims that he was hit on the head by a falling metal while on board the vessel, and that he was exposed to different chemicals that aggravated his condition, for lack of substantiation.[33] The CA likewise did not give credence to the independent physician's finding that petitioner's illness is work-related, noting that said physician

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[25] *Rollo*, pp. 150-151.

[26] *Id*. at 151-152.

[27] *Id*. at 158-164.

[28] *Id*. at 161-162.

[29] See motion for reconsideration dated May 22, 2008; *id*. at 165-171.

[30] *Id*. at 172-173.

[31] Dated March 27, 2009. *Id*. at 174-194.

[32] *Id*. at 246-258.

[33] *Id*. at 256.

is a specialist in internal medicine and not in diseases of the brain.[34] Besides, petitioner failed to observe the conflict resolution procedure on the appointment of a third doctor as provided under the 2000 POEA-SEC.[35]

Aggrieved, petitioner filed a motion for reconsideration,[36] which was, however, denied in a Resolution[37] dated May 27, 2010; hence this petition.

The Issue Before the Court

The main issue in this case is whether or not petitioner is entitled to disability benefits pursuant to the 2000 POEA-SEC.

The Court's Ruling

The petition is denied.

The Court affirms the CA's ruling that the NLRC did not gravely abuse its discretion as it, in fact, correctly dismissed petitioner's claim for disability benefits. Nonetheless, the Court finds it opportune to elucidate on certain principles relevant to the matter of seafarers' compensation.

Under the 2000 POEA-SEC, "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied" is deemed to be a "work-related illness."[38] On the other hand, Section 20 (B) (4) of the 2000 POEA-SEC declares that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related." The legal presumption of work-relatedness was borne out from the fact that the said list cannot account for all known and unknown illnesses/diseases that may be associated with, caused or

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[34] *Id*. at 257.

[35] See *id*. at 256-257.

[36] Dated March 4, 2010. *Id*. at 259-271.

[37] *Id*. at 273-274.

[38] See Item 12, Definition of Terms, 2000 POEA-SEC.

aggravated by such working conditions, and that **the presumption is made in the law to signify that the non-inclusion in the list of occupational diseases does not translate to an absolute exclusion from disability benefits**.[39] Given the legal presumption in favor of the seafarer, he *may rely on and invoke such legal presumption to establish a fact in issue*. "The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, thereby which, if no contrary proof is offered, will prevail."[40]

Thus, in *Racelis v. United Philippine Lines, Inc.*[41] and *David v. OSG Shipmanagement Manila, Inc.*,[42] the Court held that **the legal presumption of work-relatedness of a non-listed illness should be overturned only when the employer's refutation is found to be supported by substantial evidence**, which, as traditionally defined, is "such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion."[43]

Nonetheless, the presumption provided under Section 20 (B) (4) is only limited to the "work-relatedness" of an illness. It **does not cover and extend to *compensability***. **In this sense, there exists a fine line between the work-relatedness of an illness and the matter of compensability**. The former concept merely relates to the assumption that the seafarer's illness, albeit not listed as an occupational disease, may have been contracted during and in connection with one's work, whereas compensability pertains to the entitlement to receive compensation and benefits upon a showing that his work conditions caused or at least increased the risk of contracting the disease. This can be gathered

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[39] See *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 387-388 (2014).

[40] *Bautista v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 206032, August 19, 2015, 767 SCRA 657, 669-670; emphasis supplied.

[41] G.R. No. 198408, November 12, 2014, 740 SCRA 122, 133.

[42] 695 Phil. 906, 921 (2012).

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

from Section 32-A of the 2000 POEA-SEC which already qualifies the listed disease as an "occupational disease" (in other words, a "work-related disease"), but nevertheless, mentions certain conditions for said disease to be compensable:

> SECTION 32-A OCCUPATIONAL DISEASES
>
> For an ***occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied***:
>
> 1. The seafarer's work must involve the risks described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
> 4. There was no notorious negligence on the part of the seafarer.
>
> (Emphasis and underscoring supplied)

As differentiated from the matter of work-relatedness, no legal presumption of compensability is accorded in favor of the seafarer. As such, he bears the burden of proving that these conditions are met.

Thus, in *Tagle v. Anglo-Eastern Crew Management, Phils., Inc.*,[44] the Court ruled that while work-relatedness is indeed presumed, "**the legal presumption in Section 20 (B) (4) of the [2000] POEA-SEC should be read together with the requirements specified by Section 32-A of the same contract**."[45]

Similarly, in *Licayan v. Seacrest Maritime Management, Inc.*,[46] it was explicated that the disputable presumption does not signify an automatic grant of compensation and/or benefits claim, and that while the law disputably presumes an illness not found in

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[44] 738 Phil. 871 (2014).

[45] *Id*. at 888, citing *Leonis Navigation Co., Inc. v. Villamater*, 628 Phil. 81, 96 (2010); emphasis and underscoring supplied.

[46] G.R. No. 213679, November 25, 2015, 775 SCRA 586.

Section 32-A to be also work-related, the seafarer/claimant nonetheless is burdened to present substantial evidence that his *work conditions caused or at least increased the risk of contracting the disease* and only a reasonable proof of work-connection, not direct causal relation is required **to establish its compensability**.[47] The proof of work conditions referred thereto effectively equates with the conditions for compensability imposed under Section 32-A of the 2000 POEA-SEC.

In *Jebsen Maritime, Inc. v. Ravena*,[48] it was likewise elucidated that there is a need to satisfactorily show the four (4) conditions under Section 32-A of the 2000 POEA-SEC in order for the disputably presumed disease resulting in disability to be compensable.[49]

To note, while Section 32-A of the 2000 POEA-SEC refers to conditions for compensability of an occupational disease and the resulting disability or death, it should be pointed out that the conditions stated therein **should also apply to non-listed illnesses** given that: (***a***) the legal presumption under Section 20 (B) (4) accorded to the latter is limited only to "work-relatedness"; and (***b***) for its compensability, a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated must be shown.[50]

The absurdity of not requiring the seafarer to prove compliance with compensability for non-listed illnesses, when proof of compliance is required for listed illnesses, was pointed out by the Court in *Casomo v. Career Philippines Shipmanagement, Inc.*,[51] to wit:

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[47] *Id*. at 597.

[48] *Supra* note 39.

[49] See *id*. at 391-392.

[50] See *Nonay v. Bahia Shipping Services, Inc.*, G.R. No. 206758, February 17, 2016, 784 SCRA 292, 308-311.

[51] 692 Phil. 326 (2012).

A quick perusal of Section 32 of the [2000 POEA-SEC], in particular the Schedule of Disability or Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illnesses Contracted, and the List of Occupational Diseases, easily reveals the serious and grave nature of the injuries, diseases and/or illnesses contemplated therein, which are clearly specified and identified.

We are hard pressed to adhere to Casomo's position as it would result in a preposterous situation where a seafarer, claiming an illness not listed under Section 32 of the [2000 POEA-SEC] which is then disputably presumed as work-related and is ostensibly not of a serious or grave nature, need not satisfy the conditions mentioned in Section 32-A of the [2000 POEA-SEC]. In stark contrast, a seafarer suffering from an occupational disease would still have to satisfy four (4) conditions before his or her disease may be compensable.

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Government Service Insurance System (GSIS) v. Cuntapay [576 Phil. 482, 492 (2008)] iterates that the burden of proving the causal link between a claimant's work and the ailment suffered rests on a claimant's shoulder:

> The claimant must show, at least, by substantial evidence that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. And probability must be reasonable; hence it should, at least, be anchored on credible information. Moreover, a mere possibility will not suffice; a claim will fail if there is only a possibility that the employment caused the disease.[52] (Emphasis supplied)

Therefore, it is apparent that for both listed occupational disease and a non-listed illness and their resulting injury to be compensable, the seafarer must sufficiently show by substantial evidence compliance with the conditions for compensability.

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[52] *Id*. at 339-350, citations omitted.

At this juncture, it is significant to point out that the delineation between work-relatedness and compensability in relation to the legal presumption under Section 20 (B) (4) has been often overlooked in our jurisprudence. **This gave rise to the confusion that despite the presumption of work-relatedness already accorded by law, certain cases confound that the seafarer still has the burden of proof to show that his illness, as well as the resulting disability is work-related**.

Among these cases is *Quizora v. Denholm Crew Management (Phils.), Inc.*,[53] wherein the Court failed to discern that the presumption of work-relatedness *did not extend or equate to presumption of compensability*, and concomitantly, that the burden of proof required from the seafarer was to establish its compensability not the work-relatedness of the illness:

> At any rate, granting that the provision of the 2000 POEA-SEC apply, the disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. **He has to prove that the illness he suffered was work-related and that it must have existed during the term of his contract**. He cannot simply argue that the burden of proof belongs to the respondent company.[54] (Emphasis and underscoring supplied)

Later, in *Magsaysay Maritime Services v. Laurel*,[55] Section 20 (B) (4) (which pertains to a presumption of work-relatedness) was mischaracterized as a *presumption of compensability* which stands absent contrary proof:

> Anent the issue as to who has the burden to prove entitlement to disability benefits, the petitioners argue that the burden is placed upon Laurel to prove his claim that his illness was work related and compensable. Their posture does not persuade the Court.

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[53] 676 Phil. 313 (2011).

[54] *Id*. at 327.

[55] 707 Phil. 210 (2013).

True, hyperthyroidism is not listed as an occupational disease under Section 32-A of the 2000 POEA-SEC. Nonetheless, Section 20(B), paragraph (4) of the said POEA-SEC states that "those illnesses not listed in Section 32 of this contract are disputably presumed work-related." The said provision explicitly establishes a **presumption of compensability** although disputable by substantial evidence. The presumption operates in favor of Laurel as the burden rests upon the employer to overcome the statutory presumption. Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands.[56] (Emphasis and underscoring supplied)

Similarly, in *Dohle-Philman Manning Agency, Inc. v. Gazzingan*,[57] a "presumption of compensability" was declared for illnesses not listed as an occupational disease:

More importantly, the 2000 POEA-SEC has created a ***presumption of compensability*** for those illnesses which are not listed as an occupational disease. Section 20 (B), paragraph (4) states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Concomitant with this presumption is the burden placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of illnesses not included in the list of occupational diseases.[58] (Emphasis supplied)

To address this apparent confusion, the Court thus clarifies that there lies a technical demarcation between work-relatedness and compensability relative to how these concepts operate in the realm of disability compensation. As discussed, work-relatedness of an illness is presumed; hence, the seafarer does not bear the initial burden of proving the same. Rather, it is the employer who bears the burden of disputing this presumption. If the employer successfully proves that the illness suffered by

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[56] *Id*. at 227-228.

[57] G.R. No. 199568, June 17, 2015, 759 SCRA 209.

[58] *Id*. at 226.

the seafarer was contracted outside of his work (meaning, the illness is pre-existing), or that although the illness is pre-existing, none of the conditions of his work affected the risk of contracting or aggravating such illness, then there is no need to go into the matter of whether or not said illness is compensable. As the name itself implies, work-relatedness means that the seafarer's illness has a *possible* connection to one's work, and thus, allows the seafarer to claim disability benefits therefor, albeit the same is not listed as an occupational disease.

The established work-relatedness of an illness does not, however, mean that the resulting disability is automatically compensable. As also discussed, the seafarer, while not needing to prove the work-relatedness of his illness, bears the burden of proving compliance with the conditions of compensability under Section 32 (A) of the 2000 POEA-SEC. Failure to do so will result in the dismissal of his claim.

Notably, it must be pointed out that the seafarer will, in all instances, have to prove compliance with the conditions for compensability, whether or not the work-relatedness of his illness is disputed by the employer:

On the one hand, when an employer attempts to discharge the burden of disputing the presumption of work-relatedness (*i.e.*, by either claiming that the illness is pre-existing or, even if pre-existing, that the risk of contracting or aggravating the same has nothing do with his work), the burden of evidence now shifts to the seafarer to prove otherwise (*i.e.*, that the illness was not pre-existing, or even if pre-existing, that his work affected the risk of contracting or aggravating the illness). In so doing, the seafarer *effectively* discharges his own burden of proving compliance with the first three (3) conditions of compensability under Section 32-A of the 2000 POEA-SEC, *i.e.*, that (1) the seafarer's work must involve the risks described herein; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; and (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it. Thus, when the presumption of work-relatedness is contested by the employer, the factors which the seafarer needs

to prove to rebut the employer's contestation would **necessarily overlap** with some of the conditions which the seafarer needs to prove to establish the compensability of his illness and the resulting disability. **In this regard, the seafarer, therefore, addresses the refutation of the employer against the work-relatedness of his illness and, at the same time, discharges his burden of proving compliance with certain conditions of compensability**.

On the other hand, when an employer does not attempt to discharge the burden of disputing the presumption of work-relatedness, the seafarer must still discharge his own burden of proving compliance with the conditions of compensability, which does not only include the three (3) conditions above-mentioned, but also, the distinct fourth condition, *i.e.*, that there was no notorious negligence on the part of the seafarer. Thereafter, the burden of evidence shifts to the employer to now disprove the veracity of the information presented by the seafarer. The employer may also raise any other affirmative defense which may preclude compensation, such as concealment under Section 20 (E)[59] of the 2000 POEA-SEC or failure to comply with the third-doctor referral provision under Section 20 (B) (3)[60] of the same Contract.

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[59] E. A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions.

[60] B. Compensation and Benefits for Injury and Illness

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

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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.

Subsequently, if the work-relatedness of the seafarer's illness is not successfully disputed by the employer, and the seafarer is then able to establish compliance with the conditions of compensability, the matter now shifts to a determination of the nature and, in turn, the amount of disability benefits to be paid to the seafarer.

In this case, petitioner's illness, *hemangioblastoma* or brain tumor, is a benign tumor, slow-growing and well-defined. Medical studies show that brain tumors arise from cells in the linings of blood vessels. The most common symptoms include headache, nausea and vomiting, gait disturbances, and poor coordination of the limbs.[61] Its exact cause is unknown and no risk factor accounting for the majority of brain tumors has been identified. However, exposure to ionizing radiation increases the risk of developing brain tumor.[62]

As records show, the company-designated physician, after due assessment of petitioner's condition, found that his illness was caused by an abnormal growth of tissue in the brain's blood vessels (brain tumor) and therefore **not work-related**. To refute the same, petitioner argued that he accidentally injured his head when a metal ceiling fell on his head that caused lesion and

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> 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.

[61] Hemangioma, 2014, available at <http://www.abta.org/brain-tumor-information/types-of-tumors/hemangioma.html> (visited August 1, 2017).

[62] About Brain Tumors: A Primer for Patients and Caregivers, 2015, available at <http://www.abta.org/secure/about-brain-tumors-a-primer.pdf> (visited January 25, 2017).

bleeding.[63] However, as correctly pointed out by the CA, no evidence was presented to substantiate the said incident.[64]

For another, petitioner asserted that the nature of his work may have contributed to his illness having been previously employed on board the same vessel under two (2) contracts, and that as a fitter, he was constantly exposed to inhalation of and direct contact to harmful chemicals, formaldehyde, hydrocarbons, fumes, and other deleterious emissions, changes of temperature of extreme hot and freezing colds at the engine room and deck areas and as the vessel crossed ocean boundaries.[65] However, there is no showing that the foregoing work conditions increased the risk of contracting his illness. While petitioner pointed out that brain tumors are linked to a genetic syndrome called Von Hippel-Lindau disease (the risk factors of which include radiation or chemical exposure),[66] and in such regard, had been recommended by the Neurosurgeon specialist to undergo screening for said illness,[67] petitioner failed to establish that he underwent such screening. It is therefore speculative to conclude that his exposure to "benzene, formaldehyde, hydrocarbons, chemicals, crude oil, gasoline, lubricants and other harmful cleaning solutions"[68] may have caused, aggravated, or contributed to his brain tumor. Probability, not the ultimate degree of certainty, is the test of proof in disability compensation proceedings. Nevertheless, probability must be reasonable; **hence it should, at least, be anchored on *credible information*. A *mere possibility will not suffice*, and a claim will fail if there is only a possibility that the employment caused the disease**.[69]

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[63] *Rollo*, pp. 59-60.

[64] See *id*. at 256.

[65] See *id*. at 21-24.

[66] See *id*. at 21-22.

[67] See *id*. at 49.

[68] *Id*. at 23.

[69] See *Status Maritime Corporation v. Delalamon*, G.R. No. 198097, July 30, 2014, 731 SCRA 390, 410.

In fine, petitioner's claim for disability benefits should be denied, considering that respondents were able to successfully debunk the presumption of work-relatedness and concomitantly, petitioner failed to prove by substantial evidence his compliance with the conditions for compensability set forth under Section 32-A of the 2000 POEA-SEC.

WHEREFORE, the petition is **DENIED**. The Decision dated February 11, 2010 and the Resolution dated May 27, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 108036 are hereby **AFFIRMED**.

SO ORDERED.

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

Sereno, C.J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

SERENO, *C.J.*:

I concur with the majority that petitioner is not entitled to disability benefits for failing to establish the four requisites of compensability under Section 32-A of the 2000 Philippine Overseas Employment Administration Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-going Ships (POEA-SEC). Notably, the initial theory of petitioner was that his illness was caused by an accident while he was on board, when a piece of metal ceiling fell and hit his head.[1] In his appeal before the National Labor Relations Commission (NLRC), he modified his theory by arguing anew that his brain tumor was probably aggravated by his constant exposure to different chemicals and dust particles.[2] He has not, however, supplied any proof of the accident, much less the details of his supposed exposure to carcinogens and other harmful chemicals.

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[1] *Rollo,* pp. 58-67.

[2] CA *rollo,* pp. 128-140 (Memorandum of Appeal dated 2 May 2006).

We would be hard put to conclude that the brain tumor of petitioner was caused or aggravated by his work on the basis of his bare declaration that his duties as mechanical fitter constantly exposed him to carcinogens and other harmful chemicals. Mere allegations do not constitute evidence.[3]

I cannot agree, though, with the approach employed by the *ponencia* and the subsequent clarification that the majority now proposes with respect to the rulings in *Quizora v. Denholm Crew Management (Phils.), Inc.,*[4] *Magsaysay Maritime Services v. Laurel,*[5] and *Dohle-Philman Manning Agency, Inc. v. Gazzingan.*[6]

My misgivings stem from the established rule in compensation proceedings that whoever claims the benefits provided by law should prove the entitlement by substantial evidence. Hence, the burden is on the seafarer to prove that he suffered from a work-related injury or illness during the term of his contract.[7]

Besides, the proffered technical demarcation between work-relatedness and compensability diverges from the clear provisions of the 2000 POEA-SEC, Section 20(B) of which provides:

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

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[3] *Dela Llana v. Biong,* G.R. No. 182356, 4 December 2013, 711 SCRA 522.

[4] 676 Phil. 313 (2011).

[5] 707 Phil. 210 (2013).

[6] G.R. No. 199568, 17 June 2015, 759 SCRA 209.

[7] *Dizon v. Naess Shipping Philippines, Inc.,* G.R. No. 201834, 1 June 2016 citing *Philippine Transmarine Carriers, Inc. v. Aligway*, G.R. No. 201793, 16 September 2015; *Talosig v. United Philippine Lines, Inc.,* G.R. No. 198388, 28 July 2014; *Jebsen Maritime, Inc. v. Ravena,* G.R. No. 200566, 17 September 2014; *Gabunas v. Scanmar Maritime Services,* 653 Phil. 457 (2010) citing *Spouses Aya-ay v. Arpaphil Shipping Corporation,* 516 Phil. 628 (2006); *Sante v. Employees Compensation Commission,* 256 Phil. 219 (1989) citing *Raro v. Employees Compensation Commission,* 254 Phil. 846 (1989).

x x x x x x x x x

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.[8]

Applying the above provisions, we ruled in a number of cases[9] that for an illness to be compensable under the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must have been work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

On the issue of whether or not the illness is work-related, *Estate of Ortega v. Court of Appeals*[10] is instructive:

> Under the Definition of Terms found in the Standard Contract, a work-related illness is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied". An illness not otherwise listed in Section 32-A is disputably presumed work-related. This presumption works in favor of petitioner, because it then becomes incumbent upon respondents to dispute or overturn this presumption.
>
> Lung cancer is not one of the occupational diseases listed in the Standard Contract. In fact, the only types of cancer on the list are "cancer of the epithelial lining of the bladder (papilloma of the bladder), and "cancer, epithellomatous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound product." At most, there is only a disputable presumption that lung cancer is work-related. In determining whether an illness is indeed work-related, we will still use the requisites laid down by Section 32-A of the Standard Contract, to wit:
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> 1. The seafarer's work must involve the risks described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;

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[8] Underscoring supplied.

[9] *Jebsens Maritime v. Undag*, 678 Phil. 938 (2011); *Magsaysay Maritime Corporation and/or Cruise Ships Catering International, N.V. v. National Labor Relations Commission*, 630 Phil. 352 (2010); *Nisda v. Sea Serve Maritime Agency,* 611 Phil. 291 (2009).

[10] 576 Phil. 601 (2008).

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.[11]

In *Jebsen Maritime, Inc. v. Ravena,*[12] we explained the interplay between the two requisites of compensability and the disputable presumption of work-relatedness under Section 20 (B)(4) as follows:

As we pointed out above, Section 20-B of the POEA-SEC governs the compensation and benefits for the work-related injury or illness that a seafarer on board sea-going vessels may have suffered during the term of his employment contract. This section should be read together with Section 32-A of the POEA-SEC that enumerates the various diseases deemed occupational and therefore compensable. Thus, for a seafarer to be entitled to the compensation and benefits under Section 20-B, the disability causing illness or injury must be one of those listed under Section 32-A.

Of course, the law recognizes that under certain circumstances, certain diseases not otherwise considered as an occupational disease under the POEA-SEC may nevertheless have been caused or aggravated by the seafarer's working conditions. In these situations, the law recognizes the inherent paucity of the list and the difficulty, if not the outright improbability, of accounting for all the known and unknown diseases that may be associated with, caused or aggravated by such working conditions.

Hence, the POEA-SEC provides for a disputable presumption of work-relatedness for non-POEA-SEC-listed occupational disease and the resulting illness or injury which he may have suffered during the term of his employment contract.

This disputable presumption is made in the law to signify that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits. In other words, the disputable presumption does not signify an automatic grant of compensation and/or benefits claim; the seafarer must still prove

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[11] *Supra.* Underscoring supplied.

[12] G.R. No. 200566, 17 September 2014, 735 SCRA 494.

his entitlement to disability benefits by substantial evidence of his illness' work-relatedness.

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The LA and the CA may have correctly afforded Ravena the benefit of the legal presumption of work-relatedness. The legal correctness of the CA's appreciation of Ravena's claim, however, ends here for as we pointed out above, Section 20-B (4) affords only a disputable presumption that should be read together with the conditions specified by Section 32-A of the POEA-SEC. Under Section 32-A, for the disputably-presumed disease resulting in disability to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks describe therein;

2. The disease was contracted as a result of the seafarer's exposure to the described risks;

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

4. There was no notorious negligence on the part of the seafarer.

Ravena failed to prove the work-relatedness of his *ampullary* cancer as he failed to satisfy these conditions.[13]

In the recent case *Madridejos v. NYK-FIL Ship Management,*[14] we applied a similar framework of analysis. In that case, the illness sought to be compensated was a sebaceous cyst, which was not listed as an occupational disease under Section 32 of the 2000 POEA-SEC. While we conceded that the disputable presumption of work-relatedness under Section 20(B)(4) worked in favor of the seafarer, his claim had to be denied for failure to establish causality. We ruled thus:

Even assuming that Madridejos was medically repatriated, he still cannot claim for disability benefits since his sebaceous cyst was not work-related.

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[13] *Supra*. Underscoring supplied.

[14] G.R. No. 204262, 7 June 2017.

Madridejos was diagnosed with sebaceous cyst to the right of his umbilicus during the effectivity of his contract as evinced by the findings of Dr. Byrne. Conformably, Labor Arbiter Demaisip affirmed that Madridejos' illness was acquired during the term of his employment contract. Disputed, however, is whether Madridejos' sebaceous cyst was work-related.

x x x x x x x x x

Madridejos insists that his sebaceous cyst was work-related and compensable since the risk of acquiring it increased due to his working conditions. NYK-FIL opposes, claiming that Madridejos' cyst was not attributable to the nature of his job. It asserts that Madridejos failed to show "even a single realistic connection" between his illness and his employment. NYK-FIL says that Madridejos never met any accident and there was no medical or accident report to prove its occurrence.

A work-related illness is "any sickness resulting to disability or death as a result of an occupational disease listed under ***Section 32-A*** with the conditions set therein satisfied."

Section 32-A provides:

Section 32-A. OCCUPATIONAL DISEASES

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

1. The seafarer's work must involve the risks described herein;

2. The disease was contracted as a result of the seafarer's exposure to the described risks;

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

4. There was no notorious negligence on the part of the seafarer.

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

A sebaceous cyst is not included under Section 32 or 32-A of the 2000 Philippine Overseas Employment Agency Standard

Employment Contract. However, the guidelines expressly provide that those illnesses not listed in Section 32 "are ***disputably presumed*** as work[-]related."

Similarly, for an illness to be compensable, "it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer." It is enough that there is "a ***reasonable linkage*** between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had."

The disputable presumption implies "that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits." Similarly, "the disputable presumption does not signify an automatic grant of compensation and/or benefits claim." There is still a need for the claimant to establish, through substantial evidence, that his illness is work-related.[15]

Section 32-A, therefore, sets the parameters of **causality or reasonable linkage** between the injury or illness suffered and the work conditions of the claimant. Accordingly, case law provides that the legal presumption of work-relatedness in favor of the claimant holds only to the extent that it allows compensation even for a non-occupational disease, as long the four conditions under Section 32-A are established. It is my view that this principle finds basis in the plain text of the 2000 POEA-SEC and settled evidentiary rules in compensation proceedings.

WHEREFORE, I vote to **DENY** the Petition for Review and **AFFIRM** the Court of Appeals Decision dated 11 February 2010 and Resolution dated 27 May 2010 in CA-G.R. SP No. 108306.

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[15] *Supra.* Underscoring supplied.

SECOND DIVISION

[G.R. No. 192725. August 9, 2017]

CE CONSTRUCTION CORPORATION, *petitioner, vs.* **ARANETA CENTER INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; EXECUTIVE ORDER NO. 1008 (CONSTRUCTION INDUSTRY ARBITRATION LAW); CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); A QUASI-JUDICIAL AGENCY CREATED WITH THE SPECIFIC PURPOSE OF AN EARLY AND EXPEDITIOUS SETTLEMENT OF DISPUTES INVOLVING CONSTRUCTION CONTRACTS IN THE PHILIPPINES.— The Construction Industry Arbitration Commission was a creation of Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law. At inception, it was under the administrative supervision of the Philippine Domestic Construction Board which, in turn, was an implementing agency of the Construction Industry Authority of the Philippines (CIAP). The CIAP is presently attached to the Department of Trade and Industry. The CIAC was created with the specific purpose of an "early and expeditious settlement of disputes" cognizant of the exceptional role of construction to "the furtherance of national development goals." x x x The CIAC does not only serve the interest of speedy dispute resolution, it also facilitates *authoritative* dispute resolution. Its authority proceeds not only from juridical legitimacy but equally from technical expertise. The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields. The CIAC has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as "referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment." Jurisprudence has characterized the CIAC as a quasi-judicial, administrative agency equipped with technical

proficiency that enables it to efficiently and promptly resolve conflicts.

2. ID.; ID.; ID.; ARBITRAL AWARDS OF THE COMMISSION MAY NOT BE ASSAILED EXCEPT ON PURE QUESTIONS OF LAW.— Consistent with CIAC's technical expertise is the primacy and deference accorded to its decisions. There is only a very narrow room for assailing its rulings. Section 19 of the Construction Industry Arbitration Law establishes that CIAC arbitral awards may not be assailed, except on pure questions of law: Section 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court. Rule 43 of the 1997 Rules of Civil Procedure standardizes appeals from quasi-judicial agencies. Rule 43, Section 1 explicitly lists CIAC as among the quasi-judicial agencies covered by Rule 43. Section 3 indicates that appeals through Petitions for Review under Rule 43 are to "be taken to the Court of Appeals . . . whether the appeal involves questions of fact, of law, or mixed questions of fact and law." This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enabled questions of law, and there were those that enabled mixed questions fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law, any appeal from CIAC arbitral tribunals must remain limited to questions of law.

3. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF CONSTRUCTION ARBITRATORS ARE FINAL AND EXCLUSIVE AND NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTIONS.— Factual findings of CIAC arbitral tribunals may be revisited not merely because arbitral tribunals may have erred, not even on the already exceptional grounds traditionally available in Rule 45 Petitions. Rather, factual findings may be reviewed only in cases where

the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled. In *Spouses David v. Construction Industry and Arbitration Commission*: We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

4. ID.; ID.; QUESTIONS OF LAW DISTINGUISED FROM QUESTIONS OF FACT; AN INQUIRY INTO THE TRUE INTENTION OF THE CONTRACTING PARTIES IS A LEGAL, RATHER THAN A FACTUAL ISSUE.— *F.F. Cruz v. HR Construction* distinguished questions of law, properly cognizable in appeals from CIAC arbitral awards, from questions of fact: A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the 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. It further explained that an inquiry into the true intention of the contracting parties is a legal, rather than a factual, issue: On the surface, the instant petition appears to merely raise factual questions as it mainly puts in issue the appropriate amount that is due to HRCC. However, a more thorough analysis of the issues raised by FFCCl would show that it actually asserts questions of law. x x x [T]he main question advanced by FFCCI is this: in the absence of the joint measurement agreed upon in

the Subcontract Agreement, how will the completed works of HRCC be verified and the amount due thereon be computed? *The determination of the foregoing question entails an interpretation of the terms of the Subcontract Agreement vis-a-vis* the respective rights of the parties herein. On this point, it should be stressed that *where an interpretation of the true agreement between the parties is involved in an appeal, the appeal is in effect an inquiry of the law between the parties, its interpretation necessarily involves a question of law*.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTENT; REQUIREMENT OF ABSOLUTE AND UNQUALIFIED ACCEPTANCE, NOT SATISFIED IN CASE AT BAR.— By delivering tender documents to bidders, ACI made an offer. By these documents, it specified its terms and defined the parameters within which bidders could operate. These tender documents, therefore, guided the bidders in formulating their own offers to ACI, or, even more fundamentally, helped them make up their minds if they were even willing to consider undertaking the proposed project. In responding and submitting their bids, contractors, including CECON, did not peremptorily become subservient to ACI's terms. Rather, they made their own representations as to their own willingness and ability. They adduced their own counter offers, although these were already tailored to work within ACI's parameters. x x x The mere occurrence of these exchanges of offers fails to satisfy the Civil Code's requirement of absolute and unqualified acceptance: Article 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. *The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.* Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made. Subsequent events do not only show that there was no meeting of minds on CECON's initial offered contract sum of ₱1,449,089,174.00 as stated in its August 30, 2002 bid. They also show that there was never any meeting of minds on the contract sum at all.

6. ID.; EXECUTIVE ORDER NO. 1008 (CONSTRUCTION INDUSTRY ARBITRATION LAW); CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC);

JURISDICTION; INTERPRETATION AND/OR APPLICATION OF CONTRACTUAL TIME AND DELAYS; A CASE OF.— The CIAC Arbitral Tribunal did not act in excess of its jurisdiction. Contrary to the Court of Appeals' and ACI's assertions, it did not draw up its own terms and force these terms upon ACI and CECON. The CIAC Arbitral Tribunal was not confronted with a barefaced controversy for which a fomulaic resolution sufficed. More pressingly, it was confronted with a state of affairs where CECON rendered services to ACI, with neither definitive governing instruments nor a confirmed, fixed remuneration for its services. Thus, did the CIAC Arbitral Tribunal go about the task of ascertaining the sum properly due to CECON. This task was well within its jurisdiction. This determination entailed the full range of subjects expressly stipulated by Section 4 of the Construction Industry Arbitration Law to be within the CIAC's subject matter jurisdiction. Section 4. Jurisdiction. — . . . The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost. CECON raised the principal issue of the payment due to it on account, not only of fluctuating project costs but more so because of ACI's inability to timely act on many contingencies, despite proper notice and communication from and by CECON. Therefore, at the heart of the controversy was the "interpretation and/or application of contractual time and delays." ACI's counter-arguments, too, directly appealed to CIAC's subject matter jurisdiction. ACI countered by asserting that sanctioning CECON's claims was tantamount to violating the terms of their agreement. It further claimed liability on CECON's part for "maintenance and defects," and for "violation of specifications for materials and workmanship.

7. **ID.; OBLIGATIONS AND CONTRACTS; IMMUTABILITY OF PRICES; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.—** Contrary to ACI's oft-repeated argument, the CIAC Arbitral Tribunal correctly found that ACI had gained no solace in statutory provisions on the immutability of prices *stipulated* between a contractor and a landowner. x x x Article 1724 demands two (2) requisites in order that a price may become immutable: first, there must be an actual, stipulated price; and

second, plans and specifications must have definitely been agreed upon. Neither requisite avails in this case. Yet again, ACI is begging the question. It is precisely the crux of the controversy that no price has been set. Article 1724 does not work to entrench a disputed price and make it sacrosanct. Moreover, it was ACI which thrust itself upon a situation where no plans and specifications were immediately agreed upon and from which no deviation could be made. It was ACI, not CECON, which made, revised, and deviated from designs and specifications.

8. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; ADMISSIONS OF A PARTY; RULE THEREON APPLIES TO ADMINISTRATIVE OR QUASI-JUDICIAL PROCEEDINGS; CASE AT BAR.— The CIAC Arbitral Tribunal also merely held ACI to account for its voluntarily admitted adjustments. The CIAC Rules of Procedure permit deviations from technical rules on evidence, including those on admissions. Still, common sense dictates that the principle that "[t]he act, declaration or omission of a party as to a relevant fact may be given in evidence against him" must equally hold true in administrative or quasi-judicial proceedings as they do in court actions. Certainly, each must be held to account for his or her own voluntary declarations. It would have been plainly absurd to disregard ACI's reneging on its own admissions: Respondent has agreed to the price increase in structural steel and after some negotiation paid the agreed amount. Respondent also agreed to the price increase in the reinforcing bars and instructed the Claimant to bill it accordingly. To the Tribunal, such action is an acknowledgment of the price increase. Respondent can make the case that said agreement is conditional, i.e., the Complaint must be withdrawn. To the Tribunal, the conditionality falls both ways. The Claimant has as much interest to agree to a negotiated price increase so that it can collect payments for the claims. The conditionalities do not change the basis for the quantity and the amount. The process of the negotiation has arrived at the price difference and quantities. The Tribunal finds the process in arriving at the Joint Manifestation, a fair determination of the unit price increase. This holding will render the discussions on Exhibit JJJJ, and the demand of the burden of proof of the Respondent superfluous.

9. ID.; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; ABSENT A SHOWING OF ANY OF THE

EXCEPTIONAL CIRCUMSTANCES JUSTIFYING FACTUAL REVIEW, IT IS NOT THE COURT'S COMPETENCE TO POINTIFICATE ON TECHNICAL MATTERS; ARBITRAL AWARDS' REINSTATEMENT, PROPER IN CASE AT BAR.— In appraising the CIAC Arbitral Tribunal's awards, it is not the province of the present Rule 45 Petition to supplant this Court's wisdom for the inherent technical competence of and the insights drawn by the CIAC Arbitral Tribunal throughout the protracted proceedings before it. The CIAC Arbitral Tribunal perused each of the parties' voluminous pieces of evidence. Its members personally heard, observed, tested, and propounded questions to each of the witnesses. Having been constituted solely and precisely for the purpose of resolving the dispute between ACI and CECON for 19 months, the CIAC Arbitral Tribunal devoted itself to no other task than resolving that controversy. This Court has the benefit neither of the CIAC Arbitral Tribunal's technical competence nor of its irreplaceable experience of hearing the case, scrutinizing every piece of evidence, and probing the witnesses. True, the inhibition that impels this Court admits of exceptions enabling it to embark on its own factual inquiry. Yet, none of these exceptions, which are all anchored on considerations of the CIAC Arbitral Tribunal's integrity and not merely on mistake, doubt, or conflict, is availing. x x x Without a showing of any of the exceptional circumstances justifying factual review, it is neither this Court's business nor in this Court's competence to pontificate on technical matters. These include things such as fluctuations in prices of materials from 2002 to 2004, the architectural and engineering consequences — with their ensuing financial effects — of shifting from reinforced concrete to structural steel, the feasibility of rectification works for defective installations and fixtures, the viability of a given schedule of rates as against another, the audit of changes for every schematic drawing as revised by construction drawings, the proper mechanism for examining discolored and mismatched tiles, the minutiae of installing G.I. sheets and sealing cracks with epoxy sealants, or even unpaid sums for garbage collection. The CIAC Arbitral Tribunal acted in keeping with the law, its competence, and the adduced evidence; thus, this Court upholds and reinstates the CIAC Arbitral Tribunal's monetary awards.

10. CIVIL LAW; DAMAGES; AWARD OF ARBITRATION COSTS, SUSTAINED IN CASE AT BAR.— Even if this Court

were to ignore the delays borne by ACI's procedural posturing, this Court is compelled to hearken to ACI's original faults. These are, after all, what begot these proceedings. These are the same original faults which so exasperated CECON; it was left with no recourse but to seek the intervention of CIAC. x x x This Court commenced its discussion by underscoring that arbitration primarily serves the need of expeditious dispute resolution. This interest takes on an even greater urgency in the context of construction projects and the national interest so intimately tied with them. ACI's actions have so bogged down its contractor. Nearing 13 years after the Gateway Mall's completion, its contractor has yet to be fully and properly compensated. Not only have ACI's actions begotten this dispute, they have hyper-extended arbitration proceedings and dragged courts into the controversy. The delays have virtually bastardized the hopes at expeditious and effective dispute resolution which are supposedly the hallmarks of arbitration proceedings. For these, in addition to sustaining each of the awards due to CECON arising from the facets of the project, this Court also sustains the CIAC Arbitral Tribunal's award to CECON of arbitration costs. Further, this Court imposes upon respondent Araneta Corporation, Inc. the burden of bearing the costs of what have mutated into a full-fledged litigation before this Court and the Court of Appeals.

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison for petitioner.

Angara Abello Concepcion Regala & Cruz for Araneta Center Inc.

D E C I S I O N

LEONEN, *J.*:

A tribunal confronted not only with ambiguous contractual terms but also with the total absence of an instrument which definitively articulates the contracting parties' agreement does not act in excess of jurisdiction when it employs aids in interpretation, such as those articulated in Articles 1370 to 1379

of the Civil Code. In so doing, a tribunal does not conjure its own contractual terms and force them upon the parties.

In addressing an iniquitous predicament of a contractor that actually renders services but remains inadequately compensated, arbitral tribunals of the Construction Industry Arbitration Commission (CIAC) enjoy a wide latitude consistent with their technical expertise and the arbitral process' inherent inclination to afford the most exhaustive means for dispute resolution. When their awards become the subject of judicial review, courts must defer to the factual findings borne by arbitral tribunals' technical expertise and irreplaceable experience of presiding over the arbitral process. Exceptions may be availing but only in instances when the integrity of the arbitral tribunal itself has been put in jeopardy. These grounds are more exceptional than those which are regularly sanctioned in Rule 45 petitions.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the assailed April 28, 2008 Decision[2] and July 1, 2010 Amended Decision[3] of the Court of Appeals in CA-G.R. SP No. 96834 be reversed and set aside. It likewise prays that the October 25, 2006 Decision[4] of the CIAC Arbitral Tribunal be reinstated.

The CIAC Arbitral Tribunal October 25, 2006 Decision awarded a total sum of ₱217,428,155.75 in favor of petitioner CE Construction Corporation (CECON). This sum represented adjustments in unit costs plus interest, variance in take-out costs,

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[1] *Rollo*, pp. 153-268.

[2] *Id*. at 11-85. The Decision was penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo of the Sixteenth Division, Court of Appeals, Manila.

[3] *Id*. at 87-137. The Amended Decision was penned by Presiding Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Hakim S. Abdulwahid, Francisco P. Acosta, and Michael P. Elbinias, and dissented in by Associate Justice Sesinando E. Villon of the Former Special Sixteenth Division of Five, Court of Appeals, Manila.

[4] *Id*. at 3762-4029. The Arbitral Tribunal is composed of Ernesto S. De Castro as Chairman and James S. Villafranca and Reynaldo T. Viray as members.

change orders, time extensions, attendance fees, contractor-supplied equipment, and costs of arbitration. This amount was net of the countervailing awards in favor of respondent Araneta Center, Inc. (ACI), for defective and incomplete works, permits, licenses and other advances.[5]

The assailed Court of Appeals April 28, 2008 Decision modified the CIAC Arbitral Tribunal October 25, 2006 Decision by awarding a net amount of ₱82,758,358.80 in favor of CECON.[6] The Court of Appeals July 1, 2010 Amended Decision adjusted this amount to ₱93,896,335.71.[7]

Petitioner CECON was a construction contractor, which, for more than 25 years, had been doing business with respondent ACI, the developer of Araneta Center, Cubao, Quezon City.[8]

In June 2002, ACI sent invitations to different construction companies, including CECON, for them to bid on a project identified as "Package #4 Structure/Mechanical, Electrical, and Plumbing/Finishes (excluding Part A Substructure)," a part of its redevelopment plan for Araneta Center Complex.[9] The project would eventually be the Gateway Mall. As described by ACI, "[t]he Project involved the design, coordination, construction and completion of all architectural and structural portions of Part B of the Works[;] and the construction of the architectural and structural portions of Part A of the Works known as Package 4 of the Araneta Center Redevelopment Project."[10]

As part of its invitation to prospective contractors, ACI furnished bidders with Tender Documents, consisting of:

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[5] *Id*. at 4028-4029.

[6] *Id*. at 84-85.

[7] *Id*. at 136-137.

[8] *Id*. at 6221, CECON's Memorandum; and *rollo*, p. 6372, ACI's Memorandum.

[9] *Id*. at 12.

[10] *Id*. at 6373, ACI's Memorandum.

Volume I: Tender Invitation, Project Description, Instructions to Tenderers, Form of Tender, Dayworks, Preliminaries and General Requirements, and Conditions of Contract;

Volume II: Technical Specifications for the Architectural, Structural, Mechanical, Plumbing, Fire Protection and Electrical Works; and

Addenda Nos. 1, 2, 3, and 4 relating to modifications to portions of the Tender Documents.[11]

The Tender Documents described the project's contract sum to be a "lump sum" or "lump sum fixed price" and restricted cost adjustments, as follows:

6 TYPE OF CONTRACT

6.1 This is a Lump Sum Contract and the price is a fixed price not subject to measurement or recalculation should the actual quantities of work and materials differ from any estimate available at the time of contracting, except in regard to Cost-Bearing Changes which may be ordered by the Owner which shall be valued under the terms of the Contract in accordance with the Schedule of Rates, and with regard to the Value Engineering Proposals under Clause 27. The Contract Sum shall not be adjusted for changes in the cost of labour, materials or other matters.[12]

TENDER AND CONTRACT

Fixed Price Contract

1. The Contract Sum payable to the Contactor is a Lump Sum Fixed Price and will not be subject to adjustment, save only where expressly provided for within the Contract Documents and the Form of Agreement.

2. The Contract Sum shall not be subject to any adjustment "in respect of rise and fall in the cost of materials[,] labor, plant, equipment, exchange rates or any other matters affecting the cost of execution of Contract, save only where expressly

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[11] *Id*.

[12] *Id*. at 6374, Conditions of Contract, Clause 6.0. Reproduced in ACI's Memorandum.

provided for within the Contract Documents or the Form of Agreement.

3. The Contract Sum shall further not be subject to any change in subsequent legislation, which causes additional or reduced costs to the Contractor.[13]

The bidders' proposals for the project were submitted on August 30, 2002. These were based on "design and construct" bidding.[14]

CECON submitted its bid, indicating a tender amount of ₱1,449,089,174.00. This amount was inclusive of "both the act of designing the building and executing its construction." Its bid and tender were based on schematic drawings, i.e., conceptual designs and suppositions culled from ACI's Tender Documents. CECON's proposal "specifically stated that its bid was valid for only ninety (90) days, or only until 29 November 2002." This tender proposed a total of 400 days, or until January 10, 2004, for the implementation and completion of the project.[15]

CECON offered the lowest tender amount. However, ACI did not award the project to any bidder, even as the validity of CECON's proposal lapsed on November 29, 2002. ACI only subsequently informed CECON that the contract was being awarded to it. ACI elected to inform CECON verbally and not in writing.[16]

In a phone call on December 7, 2002, ACI instructed CECON to proceed with excavation works on the project. ACI, however, was unable to deliver to CECON the entire project site. Only half, identified as the Malvar-to-Roxas portion, was immediately available. The other half, identified as the Roxas-to-Coliseum portion, was delivered only about five (5) months later.[17]

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[13] *Id*. Preliminaries and General Requirements, Section 4.0. Reproduced in ACI's Memorandum.

[14] *Id*. at 3773.

[15] *Id*. at 6222, CECON's Memorandum.

[16] *Id*. at 6223, CECON's Memorandum.

[17] *Id*.

As the details of the project had yet to be finalized, ACI and CECON pursued further negotiations. ACI and CECON subsequently agreed to include in the project the construction of an office tower atop the portion identified as Part A of the project. This escalated CECON's project cost to ₱1,582,810,525.00.[18]

After further negotiations, the project cost was again adjusted to ₱1,613,615,244.00. Still later, CECON extended to ACI a ₱73,615,244.00 discount, thereby reducing its offered project cost to ₱1,540,000,000.00.[19]

Despite these developments, ACI still failed to formally award the project to CECON. The parties had yet to execute a formal contract. This prompted CECON to write a letter to ACI, dated December 27, 2002,[20] emphasizing that the project cost quoted to ACI was "based upon the prices prevailing at December 26, 2002" price levels.[21]

By January 2003 and with the project yet to be formally awarded, the prices of steel products had increased by 5% and of cement by ₱5.00 per bag. On January 8, 2003, CECON again wrote ACI notifying it of these increasing costs and specifically stating that further delays may affect the contract sum.[22]

Still without a formal award, CECON again wrote to ACI on January 21, 2003[23] indicating cost and time adjustments to its original proposal. Specifically, it referred to an 11.52% increase for the cost of steel products, totalling ₱24,921,418.00 for the project; a ₱5.00 increase per bag of cement, totalling ₱3,698,540.00 for the project; and costs incurred because of changes to the project's structural framing, totalling ₱26,011,460.00. The contract sum, therefore, needed to be increased to ₱1,594,631,418.00.

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[18] *Id*.

[19] *Id*. at 6224 CECON's Memorandum.

[20] *Id*. at 549-553, Annex D to CECON's Petition.

[21] *Id*. at 549.

[22] *Id*. at 554-555, Annex E to CECON's Petition.

[23] *Id*. at 556 557, Annex "F" to CECON's Petition.

CECON also specifically stated that its tender relating to these adjusted prices were valid only until January 31, 2003, as further price changes may be forthcoming. CECON emphasized that its steel supplier had actually already advised it of a forthcoming 10% increase in steel prices by the first week of February 2003. CECON further impressed upon ACI the need to adjust the 400 days allotted for the completion of the project.[24]

On February 4, 2003, ACI delivered to CECON the initial tranche of its down payment for the project. By then, prices of steel had been noted to have increased by 24% from December 2002 prices. This increase was validated by ACI.[25]

Subsequently, ACI informed CECON that it was taking upon itself the design component of the project, removing from CECON's scope of work the task of coming up with designs.[26]

On June 2, 2003, ACI finally wrote a letter[27] to CECON indicating its acceptance of CECON's August 30, 2002 tender for an adjusted contract sum of ₱1,540,000,000.00 only:

> Araneta Center, Inc. (ACI) hereby accepts the C-E Construction Corporation (CEC) tender dated August 30, 2002, submitted to ACI in the adjusted sum of One Billion Five Hundred Forty Million Pesos Only (₱1,540,000,000.00), which sum includes all additionally quoted and accepted items within this acceptance letter and attachments, Appendix A, consisting of one (1) page, and Appendix B, consisting of seven (7) pages plus attachments, which sum of One Billion Five Hundred Forty Million Pesos Only (₱1,540,000,000.00) is inclusive of any Government Customs Duty and Taxes including Value Added Tax (VAT) and Expanded Value Added Tax (EVAT), and which sum is hereinafter referred to as the Contract Sum.[28]

Item 4, Appendix B of this acceptance letter explicitly recognized that "all design except support to excavation sites,

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[24] *Id.* at 556.

[25] *Id*. at 3786 and 6225.

[26] *Id*. at 6225.

[27] *Id*. at 558-560, Annex G of CECON's Petition.

[28] *Id*. at 558.

is now by ACI."[29] It thereby confirmed that the parties were not bound by a design-and-construct agreement, as initially contemplated in ACI's June 2002 invitation, but by a construct-only agreement. The letter stated that "[CECON] acknowledge[s] that a binding contract is now existing."[30] However, consistent with ACI's admitted changes, it also expressed ACI's corresponding undertaking: "This notwithstanding, formal contract documents embodying these positions will shortly be prepared and forwarded to you for execution."[31]

Despite ACI's undertaking, no formal contract documents were delivered to CECON or otherwise executed between ACI and CECON.[32]

As it assumed the design aspect of the project, ACI issued to CECON the construction drawings for the project. Unlike schematics, these drawings specified "the kind of work to be done and the kind of material to be used."[33] CECON laments, however, that "ACI issued the construction drawings in piecemeal fashion at times of its own choosing."[34] From the commencement of CECON's engagement until its turnover of the project to ACI, ACI issued some 1,675 construction drawings. CECON emphasized that many of these drawings were partial and frequently pertained to revisions of prior items of work.[35] Of these drawings, more than 600 were issued by ACI well after the intended completion date of January 10, 2004: Drawing No. 1040 was issued on January 12, 2004, and the latest, Drawing No. 1675, was issued on November 26, 2004.[36]

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[29] *Id*. at 641.

[30] *Id*. at 560, Annex G to CECON's Petition.

[31] *Id*.

[32] *Id*. at 6227, CECON's Memorandum.

[33] *Id*.

[34] *Id*.

[35] *Id*.

[36] *Id*. at 6228, CECON's Memorandum.

Apart from shifting its arrangement with CECON from design-and-construct to construct-only, ACI introduced other changes to its arrangements with CECON. CECON underscored two (2) of the most notable of these changes which impelled it to seek legal relief.

First, on January 30, 2003, ACI issued Change Order No. 11,[37] which shifted the portion identified as Part B of the project from reinforced concrete framing to structural steel framing. Deleting the cost for reinforced concrete framing meant removing ₱380,560,300.00 from the contract sum. Nevertheless, replacing reinforced concrete framing with structural steel framing "entailed substitute cost of Php217,585,000, an additional Php44,281,100 for the additional steel frames due to revisions, and another Php1,950,000 for the additional pylon."[38]

Second, instead of leaving it to CECON, ACI opted to purchase on its own certain pieces of equipment—elevators, escalators, chillers, generator sets, indoor substations, cooling towers, pumps, and tanks—which were to be installed in the project. This entailed "take-out costs"; that is, the value of these pieces of equipment needed to be removed from the total amount due to CECON. ACI considered a sum totalling ₱251,443,749.00 to have been removed from the contract sum due to CECON. This amount of ₱251,443,749.00 was broken down, as follows:

(a) For elevators/escalators, PhP106,000,000
(b) For Chillers, PhP41,152,900
(c) For Generator Sets, PhP53,040,000
(d) For Indoor Substation, PhP23,024,150
(e) For Cooling Towers, PhP5,472,809; and
(f) For Pumps and Tanks, PhP22,753,890.[39]

CECON avers that in removing the sum of ₱251,443,749.00, ACI "simply deleted the amount in the cost breakdown

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[37] *Id*. at 663-669, Annex H to CECON's Petition; and, 6228, CECON's Memorandum.

[38] *Id*. at 6229, CECON's Memorandum.

[39] *Id*.

corresponding to each of the items taken out in the contract documents."[40] ACI thereby disregarded that the corresponding stipulated costs pertained not only to the acquisition cost of these pieces of equipment but also to so-called "builder's works" and other costs relating to their preparation for and installation in the project. Finding it unjust to be performing auxiliary services practically for free, CECON proposed a reduction in the take-out costs claimed by ACI. It instead claimed ₱26,892,019.00 by way of compensation for the work that it rendered.[41]

With many changes to the project and ACI's delays in delivering drawings and specifications, CECON increasingly found itself unable to complete the project on January 10, 2004. It noted that it had to file a total of 15 Requests for Time Extension from June 10, 2003 to December 15, 2003, all of which ACI failed to timely act on.[42]

Exasperated, CECON served notice upon ACI that it would avail of arbitration. On January 29, 2004, it filed with the CIAC its Request for Adjudication.[43] It prayed that a total sum of ₱183,910,176.92 representing adjusted project costs be awarded in its favor.[44]

On March 31, 2004, CECON and ACI filed before the CIAC a Joint Manifestation[45] indicating that some issues between them had already been settled. Proceedings before the CIAC were then suspended to enable CECON and ACI to arrive at an amicable settlement.[46] On October 14, 2004, ACI filed a motion before the CIAC noting that it has validated ₱85,000,000.00

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[40] *Id*. at 6229.

[41] *Id*. at 6230, CECON's Memorandum.

[42] *Id*.

[43] *Id*. at 670-673, Annex 1 to CECON's Petition.

[44] *Id*. at 673.

[45] *Id*. at 3763.

[46] *Id*. at 6231, CECON's Memorandum.

of the total amount claimed by CECON. It prayed for more time to arrive at a settlement.[47]

In the meantime, CECON completed the project and turned over Gateway Mall to ACI.[48] It had its blessing on November 26, 2004.[49]

As negotiations seemed futile, on December 29, 2004, CECON filed with the CIAC a Motion to Proceed with arbitration proceedings. ACI filed an Opposition.[50]

After its Opposition was denied, ACI filed its Answer dated January 26, 2005.[51] It attributed liability for delays to CECON and sought to recover counterclaims totalling ₱180,752 297.84. This amount covered liquidated damages for CECON's supposed delays, the cost of defective works which had to be rectified, the cost of procuring permits and licenses, and ACI's other advances.[52]

On February 8, 2005, ACI filed a Manifestation and Motion seeking the CIAC's clearance for the parties to enter into mediation. Mediation was then instituted with Atty. Sedfrey Ordonez acting as mediator.[53]

After mediation failed, an arbitral tribunal was constituted through a March 16, 2005 Order of the CIAC. It was to be composed of Dr. Ernesto S. De Castro, who acted as Chairperson with Engr. Reynaldo T. Viray and Atty. James S. Villafranca as members.[54]

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[47] *Id*. at 3764.

[48] *Id*. at 6231.

[49] *Id*. at 3764.

[50] *Id*. at 3765.

[51] *Id*.

[52] *Id*.

[53] *Id*. at 3765, CECON's Memorandum

[54] *Id*. at 3765 and 4029,

ACI filed a Motion for Reconsideration of the CIAC March 16, 2005 Order. This was denied in the Order dated March 30, 2005.[55]

In the Order dated April 1, 2005, the CIAC Arbitral Tribunal set the preliminary conference on April 13, 2005.[56]

At the preliminary conference, CECON indicated that, the total sum it was entitled to recover from ACI needed to be adjusted to ₱324,113,410.08. The CIAC Arbitral Tribunal, thus, directed CECON to file an Amended Request for Adjudication/ Amended Complaint.[57]

Following the filing of CECON's Amended Request for Adjudication/Amended Complaint and the ensuing responsive pleadings, another preliminary conference was set on May 13, 2005. The initial hearing of the case was then set on June 10, 2005.[58]

At the initial hearing, the CIAC Arbitral Tribunal resolved to exclude the amount of ₱20,483,505.12 from CECON's claims as these pertained to unpaid accomplishments that did not relate to the issue of cost adjustments attributed to ACI, as originally pleaded by CECON.[59]

Following the conduct of hearings, the submission of the parties' memoranda and offers of exhibits, the CIAC Arbitral Tribunal rendered its Decision on October 25, 2006. It awarded a total of ₱229,223,318.69 to CECON, inclusive of the costs of arbitration. It completely denied ACI's claims for liquidated damages, but awarded to ACI a total of ₱11,795,162.93 on account of defective and rectification works, as well as permits, licenses, and other advances.[60] Thus, the net amount due to CECON was determined to be ₱217,428,155.75.

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[55] *Id*. at 3766, CECON's Memorandum.

[56] *Id*.

[57] *Id*.

[58] *Id*. at 3767-3769.

[59] *Id*. at 3768-3769.

[60] *Id*. at 4028-4029.

The CIAC Arbitral Tribunal noted that while ACI's initial invitation to bidders was for a lump-sum design-and-construct arrangement, the way that events actually unfolded clearly indicated a shift to an arrangement where the designs were contingent upon ACI itself. Considering that the premise for CECON's August 30, 2002 lump-sum offer of ₱1,540,000,000.00 was no longer availing, CECON was no longer bound by its representations in respect of that lump-sum amount. It may then claim cost adjustments totalling ₱16,429,630.74, as well as values accruing to the various change orders issued by ACI, totalling ₱159,827,046.94.[61]

The CIAC Arbitral Tribunal found ACI liable for the delays. This entitled CECON to extended overhead costs and the ensuing extension cost of its Contractor's All Risk Insurance. For these costs, the CIAC Arbitral Tribunal awarded CECON the total amount of ₱16,289,623.08. As it was ACI that was liable for the delays, the CIAC Arbitral Tribunal ruled that ACI was not entitled to liquidated damages.[62]

The CIAC Arbitral Tribunal ruled that CECON was entitled to a differential in take out costs representing builder's works and related costs with respect to the equipment purchased by ACI. This differential cost was in the amount of ₱15,332,091.47.[63] The CIAC Arbitral Tribunal further noted that while ACI initially opted to purchase by itself pumps, tanks, and cooling towers and removed these from CECON's scope of work, it subsequently elected to still obtain these through CECON. Considering that the corresponding amount deducted as take-out costs did not encompass the overhead costs and profits under day work, which should have accrued to CECON because of these equipment, the CIAC Arbitral Tribunal ruled that CECON was entitled to 18% day work rate or a total of ₱21,267,908.00.[64]

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[61] *Id*. at 3811-3813, and 3882-3888.

[62] *Id*. at 3940-3943.

[63] *Id*. at 3832-3833.

[64] *Id*. at 3954-3955.

The CIAC Arbitral Tribunal also found that, apart from adjusted costs incurred on account of ACI's own activities, it also became necessary for CECON, as main contractor, to continue extending auxiliary services to the project's subcontractors because of the delays. Thus, the CIAC Arbitral Tribunal awarded CECON attendance fees—the main contractor's mark-up for auxiliary services extended to subcontractors — totalling ₱14,335,674.88. This amount was lower than the original amount prayed for by CECON (i.e., ₱19,544,667.81)[65] as the CIAC Arbitral Tribunal ruled that CECON may not claim attendance fees pertaining to subcontractors which directly dealt with ACI.[66]

Considering that CECON's predicament was borne by ACI's fault, the CIAC Arbitral Tribunal saw it fit to award to CECON the costs of arbitration totalling ₱1,083,802.58.[67]

While mainly ruling in CECON's favor, the CIAC Arbitral Tribunal found CECON liable for discolored and mismatched tiles. It noted that CECON had engaged the services of a subcontractor for the installation of tiles, for which it claimed attendance fees. Thus, it awarded ₱7,980,000.00 to ACI.[68] In addition, it found CECON liable to ACI for amounts paid in advance for permits and licenses for the additional office tower, electrical consumption, and garbage collection. Thus, it awarded another ₱3,815,162.93 to ACI.[69]

The dispositive portion of the CIAC Arbitral Tribunal Decision read:

WHEREFORE, Respondent is hereby ordered to pay the Claimant the amount of PESOS TWO HUNDRED SEVENTEEN MILLION, FOUR HUNDRED TWENTY-EIGHT THOUSAND, ONE HUNDRED FIFTY[-]FIVE PESOS AND SEVENTY[-]FIVE CENTAVOS

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[65] *Id*. at 3768.

[66] *Id*. at 3980-3990.

[67] *Id*. at 4027-4028.

[68] *Id*. at 3997-3998.

[69] *Id*. at 4012-4014.

(Php217,428,155.75) within thirty (30) days upon promulgation of the award. Interest 6% per annum shall be imposed on the award for any balance remaining from the promulgation of the award up to the time the award becomes final and executory. Thereafter, interest of 12% per annum shall be imposed on any balance of the award until fully paid.

SO ORDERED.[70]

On December 4, 2006, ACI filed before the Court of Appeals a Petition for Review[71] under Rule 43 of the 1997 Rules of Civil Procedure.

In the meantime, on December 28, 2006, the CIAC Arbitral Tribunal issued an Order[72] acknowledging arithmetical errors in its October 25, 2006 Decision, Thus, it modified its October 25, 2006 Decision, indicating that the net amount due to CECON was ₱231,357,136.72, rather than ₱217,428,155.75.[73]

In its assailed April 28, 2008 Decision,[74] the Court of Appeals reduced the award in favor of CECON to ₱114,324,605.00 and increased the award to ACI to ₱31,566,246.20.[75]

The Court of Appeals held as inviolable the lump-sum fixed price arrangement between ACI and CECON. It faulted the CIAC Arbitral Tribunal for acting in excess of jurisdiction as it supposedly took it upon itself to unilaterally modify the arrangement between ACI and CECON.[76]

Thus, the Court of Appeals deleted the CIAC Arbitral Tribunal's award representing cost adjustments. However, the Court of Appeals also noted that in ACI's and CECON's March

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[70] *Id*. at 4029.

[71] *Id*. at 4030-4881.

[72] *Id*. at 4882-4887.

[73] *Id*. at 4886.

[74] *Rollo*, pp. 11-85.

[75] *Id*. at 85.

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

30, 2004 Joint Manifestation before CIAC, ACI conceded that ₱10,266,628.00 worth of cost adjustments was due to CECON and undertook to pay CECON that amount. The Court of Appeals, hence, maintained a ₱10,266,628.00 award of cost adjustment in favor of CECON.[77]

On the cost increases borne by Change Order No. 11—the shift from reinforced concrete to structural steel framing—and by transitions from schematic diagrams to construction drawings, the Court of Appeals dismissed the CIAC Arbitral Tribunals award to CECON as arising from "pity" and unwarranted by the lump-sum, fixed-price arrangement.[78]

The Court of Appeals held ACI liable to CECON for the sum of ₱12,672,488.36 for miscellaneous change orders, which it construed to be "separate contracts that have been entered into at the time [ACI] required them."[79] It likewise held ACI liable for ₱1,132,946.17 representing the balance of 12 other partially paid change orders.[80]

The Court of Appeals noted that CECON was not entitled to time extensions because the arrangement between ACI and CECON had never been altered. Consequently, it was not entitled to acceleration costs, additional overhead, and reimbursement for extending the Contractor's All Risk Insurance.[81] Conversely, the Court of Appeals held CECON liable for delays thereby entitling ACI to liquidated damages corresponding to 10% of the supposed contract sum of ₱1,540,000,000.00, or ₱15,400,000.00.[82]

Also on account of the supposed lump-sum arrangement, the Court of Appeals held that CECON was not entitled to attendance fees on contract amounts increased by change order

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[77] *Id*. at 84-85.

[78] *Id*. at 50.

[79] *Id*. at 50.

[80] *Id*. at 52.

[81] *Id*. at 54-56.

[82] *Id*. at 56-59.

works.[83] It also stated that the rate for attendance fees, overhead, and profit for subcontractors' works remained subject to the original contract documents based on ACI's original invitation to bidders and had never been altered.[84]

Regarding attendance fees, the Court of Appeals proffered that the work attributed to subcontractors was merely work done by CECON itself, thereby negating the need for attendance fees.[85]

Concerning take-out costs, the Court of Appeals stated that CECON was in no position to propose its own take-out costs as the tender documents issued along with ACI's invitation to bidders stated that take-out costs must be based exclusively on the rates provided in the Contract Cost Breakdown. Nevertheless, as ACI had previously undertaken to pay the variance in take-out costs amounting to ₱3,811,289.70, the Court of Appeals concluded that an award for take-out costs in that amount was proper.[86]

On the CIAC Arbitral Tribunal's award for overhead costs and profits under day work, the Court of Appeals held that it was improper to grant this award based on stipulations on day works pertaining "only to 'materials' and not to equipment."[87]

Finally, the Court of Appeals held that CECON was not entitled to costs of litigation considering that "no premium is to be placed on the right to litigate"[88] and since ACI could not be faulted for delays.

The dispositive portion of the assailed Court of Appeals April 28, 2008 Decision read:

WHEREFORE, based on all the foregoing, the Decision of the Arbitral Tribunal is modified as follows:

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

[84] *Id*. at 70-72.

[85] *Id*. at 69.

[86] *Id*. at 42-45.

[87] *Id*. at 62-63.

[88] *Id*. at 83.

a. AWARD TO CECON

NO.	ISSUE		Pesos (PHP)
1	Cost Adjustment		10,266,628.00
2	Take Out Cost of Equipment		3,811,289.70
3	Change Orders		99,119,200.09
	a. Approved Change Orders	1,132,946.17	
	b. [Schematic Drawings] to [Construction Drawings]	80,108,761.60	
[4]	c. Miscellaneous Change Orders	12,672,488.30	
	d. Change Order No. 11	5,205,004.02	
	Equipment Supplied by		1,127,486.50
	Owner Total		114,324,605.00 (sic)

b. AWARD TO ARANETA

NO.	ISSUE		Pesos (PHP)
[5]	Liquidated Damages		15,400,000.00
[6]	Defective and Incomplete Works		3,000,000.00
	Bookmarking Granite Tiles		6,980,000.00
[7]	Permits, Licenses and Other Advances		6,186,246.23
	Total		31,566,246.20 (sic)

In addition, CECON is directed to submit all required. close-out documents within thirty (30) days from receipt of this Decision.

The parties shall bear their own costs of arbitration and litigation.

SO ORDERED.[89]

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[89] *Id*. at 84-85.

Acting on CECON's Motion for Reconsideration, the Court of Appeals issued its Amended Decision on July 1, 2010.[90] This Amended Decision increased the award for miscellaneous change orders to ₱27,601,469.32; reinstated awards for undervalued works in supplying and installing G.I. sheets worth ₱1,209,782.50[91] and for the drilling of holes and application of epoxy worth ₱4,543,450.00;[92] and deleted the award for take-out costs.[93]

The dispositive portion of the assailed Court of Appeals July 1, 2010 Amended Decision read:

WHEREFORE, *Our Decision* dated 28 April 2008 is hereby modified as follows:

I - AWARD:

a. AWARD TO CE CONSTRUCTION, INC.

NO.	ISSUE	PESOS (PhP)
1	Additional costs spent on rebars.	10,266,628.00
2	Increase in the costs of cement and formworks falling under cost-bearing change.	5,205,004.02
3	Representing undervaluation of respondent's works in the supply and installation of G.I. sheets.	1,209,782.50
4	Representing Miscellaneous Change Orders.	27,601,469.32
5	Drilling of Holes	4,543,450.00
6	[Schematic Drawings] to [Construction Drawings]	80,108,761.60
[7]	Installation of equipment supplied by owner.	1,127,486.50
	TOTAL	130,062,581.94

[90] *Id*. at 87-137.

[91] *Id*. at 105-106.

[92] *Id*. at 107.

[93] *Id*. at 104.

b. AWARD TO ARANETA CENTER, INC.

1	Liquidated Damage (sic)	20,000,000.00
2	Defective and Incomplete Works	3,000,000.00
3	Bookmarking Granite Tiles	6,980,000.00
4	Permits, Licenses and other Advances	6,186,246.23
	TOTAL	36,166,246.23

II – COMPUTATION:

AWARD TO CE CONSTRUCTION, INC.	130,062,581.94
LESS	
AWARD TO ARANETA CENTER, INC.	36,166,246.23
BALANCE PAYABLE BY ARANETA TO CECON	93,896,335.71

SO ORDERED.[94]

Aggrieved at the Court of Appeals' ruling, CECON tiled the present Petition insisting on the propriety of the CIAC Arbitral Tribunal's conclusions and findings.[95] It prays that the assailed Court of Appeals decisions be reversed and that the CIAC Arbitral Tribunal October 25, 2006 Decision, as modified by its December 28, 2006 Order, be reinstated.[96]

ACI counters that the Court of Appeals July 1, 2010 Amended Decision must be upheld.[97]

ACI insists on the inviolability of its supposed agreement with CECON, as embodied in the contract documents delivered to contractors alongside the original offer to bid. It cites specific provisions of these documents such as valuation rules and required notices for extensions and changes, reckoning of losses and expenses, the ensuing liquidated damages for defects, cost-bearing changes and provisional sums,[98] which define parameters

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[94] *Id*. at 136-137.

[95] *Id*. at 153-268.

[96] *Id*. at 263-264.

[97] *Id*. at 6098.

[98] *Id*. at 5914-5929 and 5934-5936.

for permissible changes and for reckoning corresponding costs and liabilities. However, it did not attach any of these documents to its Comment or Memorandum. It also cites statutory provisions-Articles 1715[99] and 1724[100] of the Civil Code—on CECON's liabilities and the primacy of stipulated contract prices.[101]

By the inviolability of their agreement, ACI insists on the supposed immutability of the stipulated contract sum and on the impropriety of the CIAC Arbitral Tribunal in writing its own terms for ACI and CECON to follow.[102] It faults the CIAC Arbitral Tribunal for erroneously reckoning the sums due to CECON, particularly in relying on factual considerations that run afoul of contractual stipulations and on bases such as industry practices and standards, which supposedly should not have even been considered as the parties have already adduced their

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[99] CIVIL CODE, Art. 1715 provides:

Article 1715. The contractor shall execute the work in such a manner that it has the qualities agreed upon and has no defects which destroy or lessen its value or fitness for its ordinary or stipulated use. Should the work be not of such quality, the employer may require that the contractor remove the defect or execute another work. If the contractor fails or refuses to comply with this obligation, the employer may have the defect removed or another work executed, at the contractor's cost.

[100] CIVIL CODE, Art. 1724 provides:

Article 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

(1) Such change has been authorized by the proprietor in writing; and

(2) The additional price to be paid to the contractor has been determined in writing by both parties.

[101] *Rollo* pp. 5930-5933.

[102] *Id.* at 5893. ACI's Comment states, "the Arbitral Tribunal significantly modified and amended the clear terms of the parties' contract documents by rewriting their construction agreement and unilaterally imposing upon ACI newly-created obligations, notwithstanding that there was no issue on the exact terms of the contract documents and the intent of the parties in executing the same."

respective evidence.[103] It insists upon CECON's fault for delays and defects, making it liable for liquidated damages.[104]

Though nominally modifying the CIAC Arbitral Tribunal October 25, 2006 Decision, the Court of Appeals actually reversed it on the pivotal matter of the characterization of the contract between CECON and ACI. Upon its characterization of the contract as one for a lump-sum fixed price, the Court of Appeals deleted much of the CIAC Arbitral Tribunal's monetary awards to CECON and awarded liquidated damages to ACI.

On initial impression, what demands resolution is the issue of whether or not the Court of Appeals erred in characterizing the contractual arrangement between petitioner CE Construction Corporation and respondent Araneta Center, Inc. as immutably one for a lump-sum fixed price.

However, this is not merely a matter of applying and deriving conclusions from cut and dried contractual provisions. More accurately, what is on issue is whether or not the Court of Appeals correctly held that the CIAC Arbitral Tribunal acted beyond its jurisdiction in holding that the price of ₱1,540,000,000.00 did not bind the parties as an immutable lump-sum. Subsumed in this issue is the matter of whether or not the Court of Appeals correctly ruled that CECON was rightfully entitled to time extensions and that intervening circumstances had made ACI liable for cost adjustments, increases borne by change orders, additional overhead costs, extended contractor's all risk insurance coverage, increased attendance fees vis-a-vis subcontractors, and arbitration costs which it awarded to CECON.

This Court limits itself to the legal question of the CIAC Arbitral Tribunal's competence. Unless any of the exceptional circumstances that warrant revisiting the factual matter of the accuracy of the particulars of every item awarded to the parties is availing, this Court shall not embark on its own audit of the amounts owing to each.

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[103] *Id*. at 5894-5895.

[104] *Id*. at 5897-5898.

I

This Court begins by demarcating the jurisdictional and technical competence of the CIAC and of its arbitral tribunals.

I.A

The Construction Industry Arbitration Commission was a creation of Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.[105] At inception, it was under the administrative supervision of the Philippine Domestic

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[105] Though nominally an "executive order" the Construction Industry Arbitration Law is a statute.

Jurisprudence has clarified that, in exercising legislative powers, then President Marcos did not only use the modality of presidential decrees, but also of executive orders and letters of instruction. Though, this is not to say that all executive orders and letters of intruction issued by him are statutes.

In *Parong, et al. v. Enrile*, 206 Phil. 392, 428 (1983) [Per *J*. De Castro, *En Banc*]:

To form part of the law of the land, the decree, order or [letter of instruction] must be issued by the President in the exercise of his extraordinary power of legislation as contemplated in Section 6 of the 1976 amendments to the Constitution, whenever in his judgment, there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasan[g] Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action.

In Irene B. Cortes, Executive Legislation: The Philippine Experience; 55 PHIL. L.J. 1, 27-29 (1979) Associate Justice Irene Cortes noted that certain executive orders and letters of instruction have indeed been on par with President Marcos' more commonly used mode of legislation (i.e., presidential decrees):

Another problem arises from lack of precision in the appropriate use of one form of issuance as against another. A presidential decree is equivalent to a statute enacted by the legislature, and is thus superior to implementing mles issued as executive orders or letter of instructions. But, it is not unheard of for an executive order to amend or repeal a presidential decree or a letter of instructions to amend an executive order, or lay down a rule of law.

Associate Justice Cortes specifically cited as an example Exec. Order No. 543 (1979), which abolished the Philippine Center for Advanced Studies, a creation of Pres. Decree No. 342 (1973). In disproving that Exec. Order No. 543 was issued merely as an implementing rule, she explained that its object a state university – could not have fallen under the scope of the President's reorganization powers, for which an executive order issued merely as an implementing rule was sufficient.

Construction Board[106] which, in turn, was an implementing agency of the Construction Industry Authority of the Philippines (CIAP).[107] The CIAP is presently attached to the Department of Trade and Industry.[108]

The CIAC was created with the specific purpose of an "early and expeditious settlement of disputes"[109] cognizant of the exceptional role of construction to "the furtherance of national development goals."[110]

Section 4 of the Construction Industry Arbitration Law spells out the jurisdiction of the CIAC:

Section 4. Jurisdiction. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion

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The Construction Industry Arbitration Law's own nomenclature reveals the intent that it be a statute. Its whereas clauses and declaration of policy reveal the urgency that impelled immediate action for the President to exercise his concurrent legislative powers.

Any doubt on the statutory efficacy of the Construction Industry Arbitration Law is addressed by Congress' own, voluntary and repeated reference to and affirmation of it as such a law. (*See* Rep. Act No. 9184 and Rep. Act No. 9285). Rep. Act No. 9285 did not only validate the Construction Industry Arbitration Law, it also incorporated it into the general statutory framework of alternative dispute resolution.

Jurisprudence, too, has repeatedly and consistently referred to it as such a "law." See, for example, *National Irrigation Administration v. Court of Appeals*, 376 Phil. 362 (1999) [Per *C.J.* Davide, Jr., First Division]; *Metropolitan Cebu Water District v. Mactan Rock Industries, Inc.*, 690 Phil. 163 (2012) [Per *J.* Mendoza, Third Division]; and *The Manila Insurance Co., Inc. v. Spouses Amurao*, 701 Phil. 557 (2013) [Per *J.* Del Castillo, Second Division].

[106] Exec. Order No. 1008, Sec. 3.

[107] *Id.*, 4th Whereas Clause.

[108] See Department of Trade and Industry, *Attached Agencies*, <http://www.dti.gov.ph/about/the-organization/attached-agencies> (last visited on August 8, 2017).

[109] Exec. Order No. 1008, Sec. 2.

[110] Exec. Order No. 1008, 3rd Whereas Clause.

of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Though created by the act of a Chief Executive who then exercised legislative powers concurrently with the Batasang Pambansa, the creation, continuing existence, and competence of the CIAC have since been validated by acts of Congress,

Republic Act No. 9184 or the Government Procurement Reform Act, enacted on January 10, 2003, explicitly recognized and confirmed the competence of the CIAC:

Section 59. Arbitration. — Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": *Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto*. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: Provided, That by mutual agreement, the patties may agree in writing to resort to alternative modes of dispute resolution. (Emphasis supplied)

Arbitration of construction disputes through the CIAC was formally incorporated into the general statutory framework on alternative dispute resolution through Republic Act No. 9285, the Alternative Dispute Resolution Act of 2004 (ADR Law). Chapter 6, Section 34 of ADR Law made specific reference to the Construction Industry Arbitration Law, while Section 35 confirmed the CIAC's jurisdiction:

CHAPTER 6
ARBITRATION OF CONSTRUCTION DISPUTES

Section 34. Arbitration of Construction Disputes: Governing Law. — The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

Section 35. Coverage of the Law. — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

I.B

The CIAC does not only serve the interest of speedy dispute resolution, it also facilitates *authoritative* dispute resolution. Its authority proceeds not only from juridical legitimacy but equally from technical expertise. The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields. The CIAC has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as "referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment."[111]

Jurisprudence has characterized the CIAC as a quasi-judicial, administrative agency equipped with technical proficiency that enables it to efficiently and promptly resolve conflicts;

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[111] *Fort Bonifacio Development Corp. v. Sorongon*, 605 Phil. 689, 696 (2009) [Per *J.* Tinga, Second Division].

[The CIAC] is a quasi-judicial agency. A quasi-judicial agency or body has been defined as an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. The CIAC's primary function is that of a quasi-judicial agency, which is to adjudicate claims and/or determine rights in accordance with procedures set forth in E.O. No. 1008.[112]

The most recent jurisprudence maintains that the CIAC is a quasi-judicial body. This Court's November 23, 2016 Decision in *Fruehauf Electronics v. Technology Electronics Assembly and Management Pacific*[113] distinguished construction arbitration, as well as voluntary arbitration pursuant to Article 219(14) of the Labor Code,[114] from commercial arbitration. It ruled that commercial arbitral tribunals are not quasi-judicial agencies,

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[112] *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 202-203 (2001) [Per *C.J.* Davide, Jr., First Division], citing *The Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 253 Phil. 344 (1989) [Per *J.* Sarmiento, *En Banc*]; *Tropical Homes v. National Housing Authority*, 236 Phil. 580 (1987) [Per *J.* Gutierrez, Jr., *En Banc*]; *Antipolo Realty Corp. v. NHA*, 237 Phil. 389 (1987) [Per *J.* Feliciano, *En Banc*]; and *Solid Homes, Inc. v. Payawal*, 257 Phil. 914 (1989) [Per *J.* Cruz, First Division).

[113] G.R. No. 204197, November 23, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?flle=/jurisprudence/2016/november2016/204197.pdf> [Per *J.* Brion, Second Division].

[114] LABOR CODE, Art. 219 provides:

Article 219. Definitions. – . . .

14. "Voluntary Arbitrator" means any person accredited by the Board as such, or any person named or designated in the Collective Bargaining Agreement by the parties to act as their Voluntary Arbitrator, or one chosen with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the Collective Bargaining Agreement, or any official that may be authorized by the Secretary of Labor and Employment to act as Voluntary Arbitrator upon the written request and agreement of the parties to a labor dispute.

as they are purely ad hoc bodies operating through contractual consent and as they intend to serve private, proprietary interests.[115] In contrast, voluntary arbitration under the Labor Code and construction arbitration operate through the statutorily vested jurisdiction of government instrumentalities that exist independently of the will of contracting parties and to which these parties submit. They proceed from the public interest imbuing their respective spheres:

> Voluntary Arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining Agreements. These disputes were specifically excluded from the coverage of both the Arbitration Law and the ADR Law.

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[115] *Fruehauf Electronics v. Technology Electronics Assembly and Management Pacific*, G.R. No. 204197, November 23, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/204197.pdf> 11-12 [Per *J*. Brion, Second Division]. It stated:

> Quasi-judicial or administrative adjudicatory power is the power: (1) to hear and determine questions of fact to which legislative policy is to apply, and (2) to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. Quasi-judicial power is only exercised by administrative agencies — legal organs of the government.
>
> Quasi-judicial bodies can only exercise such powers and jurisdiction as are expressly or by necessary implication conferred upon them by their enabling statutes. Like courts, a quasi-judicial body's jurisdiction over a subject matter is conferred by law and exists independently from the will of the parties. As government organs necessary for an effective legal system, a quasi-judicial tribunal's legal existence continues beyond the resolution of a specific dispute. In other words, quasi-judicial bodies are creatures of law.
>
> As a contractual and consensual body, the arbitral tribunal does not have any inherent powers over the parties. It has no power to issue coercive writs or compulsory processes. Thus, there is a need to resort to the regular courts for interim measures of protection and for the recognition or enforcement of the arbitral award.
>
> The arbitral tribunal acquires jurisdiction over the parties and the subject matter through stipulation. Upon the rendition of the final award, the tribunal becomes functus officio and — save for a few exceptions — ceases to have any further jurisdiction over the dispute. The tribunal's powers (or in the case of ad hoc tribunals, their very existence) stem from the obligatory force of the arbitration agreement and its ancillary stipulations. Simply put, an arbitral tribunal is a creature of contract. (Citations omitted)

Unlike purely commercial relationships, the relationship between capital and labor are heavily impressed with public interest. Because of this, Voluntary Arbitrators authorized to resolve labor disputes have been clothed with quasi-judicial authority.

On the other hand, commercial relationships covered by our commercial arbitration laws are purely private and contractual in nature. Unlike labor relationships, they do not possess the same compelling state interest that would justify state interference into the autonomy of contracts. Hence, commercial arbitration is a purely private system of adjudication facilitated by private citizens instead of government instrumentalities wielding quasi-judicial powers.

Moreover, judicial or quasi-judicial jurisdiction cannot be conferred upon a tribunal by the parties alone. The Labor Code itself confers subject-matter jurisdiction to Voluntary Arbitrators.

Notably, the other arbitration body listed in Rule 43 — the Construction Industry Arbitration Commission (CIAC) — is also a government agency attached to the Department of Trade and Industry. Its jurisdiction is likewise conferred by statute. By contrast, the subject-matter jurisdiction of commercial arbitrators is stipulated by the parties.[116] (Emphasis supplied, citations omitted)

Consistent with the primacy of technical mastery, Section 14 of the Construction Industry Arbitration Law on the qualification of arbitrators provides:

Section 14. Arbitrators. — A sole arbitrator or three arbitrators may settle a dispute.

. . . . . .

Arbitrators shall be men of distinction in whom the business sector and the government can have confidence. They shall not be permanently employed with the CIAC. Instead, thy shall render services only when called to arbitrate. For each dispute they settle, they shall be given fees.

Section 8.1 of the Revised Rules of Procedure Governing Construction Arbitration establishes that the foremost qualification of arbitrators shall be technical proficiency. It explicitly enables

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[116] *Id*. at 15-16.

not only lawyers but also "engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry" to serve as arbitrators:

> Section 8.1 General Qualification of Arbitrators. — The Arbitrators shall be men of distinction in whom the business sector and the government can have confidence. *They shall be technically qualified to resolve any construction dispute expeditiously and equitably.* The Arbitrators shall come from different professions. They may include engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry and lawyers who are experienced in construction disputes. (Emphasis supplied)

Of the 87 CIAC accredited arbitrators as of January 2017, only 33 are lawyers. The majority are experts from construction-related professions or engaged in related fields.[117]

Apart from arbitrators, technical experts aid the CIAC in dispute resolution. Section 15 of the Construction Industry Arbitration Law provides:

> Section 15. Appointment of Experts. — The services of technical or legal experts may be utilized in the settlement of disputes if requested by any of the parties or by the Arbitral Tribunal. If the request for an expert is done by either or by both of the parties, it is necessary that the appointment of the expert be confirmed by the Arbitral Tribunal.
>
> Whenever the parties request for the services of an expert, they shall equally shoulder the expert's fees and expenses, half of which shall be deposited with the Secretariat before the expert renders service. When only one party makes the request, it shall deposit the whole amount required.

II

Consistent with CIAC's technical expertise is the primacy and deference accorded to its decisions. There is only a very narrow room for assailing its rulings.

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[117] *Construction Arbitration and Mediation*, CONSTRUCTION INDUSTRY AUTHORITY OF THE PHILIPPINES, available at <http://www.ciap.dti.gov.ph/content/construction-arbitrationmediation> (last visited on August 8, 2017).

Section 19 of the Construction Industry Arbitration Law establishes that CIAC arbitral awards may not be assailed, except on pure questions of law:

> Section 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.

Rule 43 of the 1997 Rules of Civil Procedure standardizes appeals from quasi-judicial agencies.[118] Rule 43, Section 1 explicitly lists CIAC as among the quasi judicial agencies covered by Rule 43.[119] Section 3 indicates that appeals through Petitions for Review under Rule 43 are to "be taken to the Court of Appeals . . . whether the appeal involves questions of fact, of law, or mixed questions of fact and law."[120]

This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of

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[118] See *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176 (2001) [Per *C.J.* Davide, Jr., First Division].

[119] RULES OF COURT, Rule 43, Sec. 1 provides:

> Section 1. Scope. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

[120] RULES OF COURT, Rule 43, Sec. 3 provides:

> Section 3. Where to appeal. — An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enabled questions of law, and there were those that enabled mixed questions fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law, any appeal from CIAC arbitral tribunals must remain limited to questions of law.

Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.[121] explained the wisdom underlying the limitation of appeals to pure questions of law:

> Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable.
>
> Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. [The Construction Industry Arbitration Law] created an arbitration facility to which the construction industry in the Philippines can have recourse. The [Construction Industry Arbitration Law] was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.[122]

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[121] 298-A Phil. 361 (1993) [Per *J.* Feliciano, Third Division].

[122] *Id*. at 372.

Consistent with this restrictive approach, this Court is duty-bound to be extremely watchful and to ensure that an appeal does not become an ingenious means for undermining the integrity of arbitration or for conveniently setting aside the conclusions arbitral processes make. An appeal is not an artifice for the parties to undermine the process they voluntarily elected to engage in. To prevent this Court from being a party to such perversion, this Court's primordial inclination must be to uphold the factual findings of arbitral tribunals:

> Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. *The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions."* The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. *The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal*, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. *Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.*[123] (Emphasis supplied, citations omitted)

Thus, even as exceptions to the highly restrictive nature of appeals may be contemplated, these exceptions are only on the nanowest of grounds. Factual findings of CIAC arbitral tribunals may be revisited not merely because arbitral tribunals may have erred, not even on the already exceptional grounds traditionally

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[123] *Id*. at 373-374.

available in Rule 45 Petitions.[124] Rather, factual findings may be reviewed only in cases where the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled. In *Spouses David v. Construction Industry and Arbitration Commission*:[125]

We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to

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[124] In *Marasigan v. Fuentes*, G.R. No. 201310, January 11, 2016 <http://sc.judiciary.gov,ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/201310.pdf> 5-6 [Per *J.* Leonen, Second Division];

It is basic that petitions for review on *certiorari* under Rule 45 may only raise pure questions of law and that findings of fact are generally binding and conclusive on this court. Nevertheless, there are recognized exceptions that will allow this court to overturn the factual findings confronting it. These exceptions are the following:

(1) When the conclusion is a finding grounded entirety on speculation, surmises and conjectures;
(2) When the inference made is manifestly mistaken, absurd or impossible;
(3) Where there is a grave abuse of discretion;
(4) When the judgment is based on a misapprehension of facts;
(5) When the findings of fact are conflicting;
(6) When the Court of Appeals, in making findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
(7) When the findings are contrary to those of the trial court;
(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (Citations omitted)

[125] 479 Phil. 578 (2004) [Per *J.* Puno, Second Division].

postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[126] (Citation omitted)

Guided by the primacy of CIAC's technical competence, in exercising this Court's limited power of judicial review, this Court proceeds to rule on whether or not the Court of Appeals erred in its assailed decisions.

III

Properly discerning the issues in this case reveals that what is involved is not a mere matter of contractual interpretation but a question of the CIAC Arbitral Tribunal's exercise of its powers.

III. A

F.F. Cruz v. HR Construction[127] distinguished questions of law, properly cognizable in appeals from CIAC arbitral awards, from questions of fact:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the 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.[128]

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[126] *Id*. at 590.

[127] 684 Phil. 330 (2012). [Per *J.* Reyes, Second Division].

[128] *Id*. at 346, *citing Vda. De Formoso v. Philippine National Bank*, 665 Phil. 174 (2011) [Per *J*. Mendoza, Second Division].

It further explained that an inquiry into the true intention of the contracting parties is a legal, rather than a factual, issue:

> On the surface, the instant petition appears to merely raise factual questions as it mainly puts in issue the appropriate amount that is due to HRCC. However, a more thorough analysis of the issues raised by FFCCl would show that it actually asserts questions of law.
>
> FFCCI primarily seeks from this Court a determination of whether [the] amount claimed by HRCC in its progress billing may be enforced against it in the absence of a joint measurement of the former's completed works. Otherwise stated, the main question advanced by FFCCI is this: in the absence of the joint measurement agreed upon in the Subcontract Agreement, how will the completed works of HRCC be verified and the amount due thereon be computed?
>
> *The determination of the foregoing question entails an interpretation of the terms of the Subcontract Agreement* vis-a-vis the respective rights of the parties herein. On this point, it should be stressed that *where an interpretation of the true agreement between the parties is involved in an appeal, the appeal is in effect an inquiry of the law between the parties, its interpretation necessarily involves a question of law*.
>
> Moreover, we are not called upon to examine the probative value of the evidence presented before the CIAC. Rather, *what is actually sought from this Court is an interpretation of the terms of the Subcontract Agreement as it relates to the dispute between the parties*.[129] (Emphasis supplied)

Though similarly concerned with "an interpretation of the true agreement between the parties,"[130] this case is not entirely congruent with *F.F. Cruz*.

In *F.F. Cruz*, the parties' agreement had been clearly set out in writing. There was a definitive instrument which needed only to be consulted to ascertain the parties' intent:

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[129] *Id*. at 346-347, citing *Philippine National Construction Corporation v. Court of Appeals*, 541 Phil. 658 (2007) [Per *J*. Chico-Nazario, Third Division].

[130] *Id*.

In resolving the dispute as to the proper valuation of the works accomplished by HRCC, the primordial consideration should be the terms of the Subcontract Agreement. It is basic 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.[131]

Thus, this Court concluded:

Pursuant to the terms of payment agreed upon by the parties, FFCCI obliged itself to pay the monthly progress billings of HRCC within 30 days from receipt of the same. Additionally, the monthly progress billings of HRCC should indicate the extent of the works completed by it, the same being essential to the valuation of the amount that FFCCI would pay to HRCC.[132]

III.B

In this case, there is no established contract that simply required interpretation and application.

The assailed Court of Appeals April 28, 2008 Decision implies that all that had to be done to resolve the present controversy was to apply the supposedly clear and unmistakable terms of the contract between ACI and CECON. It even echoes the words of *F.F. Cruz:*

It is a legal principle of long standing that when the language of the contract is explicit, leaving no doubt as to the intention of the parties, the courts may not read into it any other intention that would contradict its plain import. The clear terms of the contract should never be the subject matter of interpretation. Neither abstract justice nor the rule of liberal interpretation justifies the creation of a contract for the parties which they did not make themselves or the imposition upon one party to a contract or obligation not assumed simply or merely to avoid seeming hardships. Their true meaning must be enforced, as it is to be presumed that the contracting parties know their scope and effects.

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[131] *Id*. at 347-348, *citing* CIVIL CODE, Art. 1370.

[132] *Id*. at 349.

. . . . . .

The Contract Documents expressly characterize the construction contract between [ACI] and CECON as "lump-sum" and "fixed price" in nature. As a consequence, the Contract Documents expressly prohibit any adjustment of the contract sum due to any changes or fluctuations in the cost of labor, materials or other matters.[133] (Citations omitted)

Upon its characterization of the contract as one for the lump-sum, fixed price of ₱1,540,000,000.00, the Court of Appeals faulted the CIAC Arbitral Tribunal for acting in excess of jurisdiction as it supposedly countermanded the parties' agreement, or worse, conjured its own terms for the parties' compliance.[134]

It was the Court of Appeals, not the CIAC Arbitral Tribunal, that committed serious error.

To rule that the CIAC Arbitral Tribunal modified the parties' agreement because it was indisputably one for a lump-sum, fixed price of ₱1,540,000,000.00 is begging the question. The Court of Appeals used a conclusion as a premise to support itself. It erroneously jumped to a conclusion only to plead this conclusion in support of points that should have made up its anterior framework, points that would have been the ones to lead to a conclusion. It then used this abortive conclusion to injudiciously dispose of the case.

The Court of Appeals took the parties' contractual relation as a revealed and preordained starting point. Then, it dismissed every prior or subsequent detail that contradicted this assumption. It thereby conveniently terminated the discussion before it even began.

III.C

There was never a meeting of minds on the price of ₱1,540,000,000.00. Thus, that stipulation could not have been the basis of any obligation.

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[133] *Rollo*, pp. 32-37.

[134] *Id*. at 32-33.

The only thing that ACI has in its favor is its initial delivery of tender documents to prospective bidders. Everything that transpired after this delivery militates against ACI's position.

Before proceeding to a consideration of the circumstances that negate a meeting of minds, this Court emphasizes that ACI would have this Court sustain claims premised on supposed inviolable documents. Yet, it did not annex copies of these documents either to its Comment or to its Memorandum.

ACI leaves this Court compelled to rely purely on their packaged presentation and in a bind, unable to verify even the accuracy of the syntax of its citations. This Court cannot approve of this predicament. To cursorily acquiesce to ACI's overtures without due diligence and substantiation is being overly solicitous, even manifestly partisan.

ACI and its counsel must have fully known the importance of equipping this Court with a reliable means of confirmation, especially in a case so steeped in the sway of circumstances. ACI's omission can only work against its cause.

By delivering tender documents to bidders, ACI made an offer. By these documents, it specified its terms and defined the parameters within which bidders could operate. These tender documents, therefore, guided the bidders in formulating their own offers to ACI, or, even more fundamentally, helped them make up their minds if they were even willing to consider undertaking the proposed project. In responding and submitting their bids, contractors, including CECON, did not peremptorily become subservient to ACI's terms. Rather, they made their own representations as to their own willingness and ability. They adduced their own counter-offers, although these were already tailored to work within ACI's parameters.

These exchanges were in keeping with Article 1326 of the Civil Code:

> Article 1326. Advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears.

The mere occurrence of these exchanges of offers fails to satisfy the Civil Code's requirement of absolute and unqualified acceptance:

> Article 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. *The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.*
>
> Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made. (Emphasis supplied)

Subsequent events do not only show that there was no meeting of minds on CECON's initial offered contract sum of ₱1,449,089,174.00 as stated in its August 30, 2002 bid. They also show that there was never any meeting of minds on the contract sum at all.

In accordance with Article 1321 of the Civil Code,[135] an offeror may fix the time of acceptance. Thus, CECON's August 30, 2002 offer of ₱1,449,089,174.00 "specifically stated that its bid was valid for only ninety (90) days, or only until 29 November 2002."[136] November 29, 2002 lapsed and ACI failed to manifest its acceptance of CECON's offered contract sum.

It was only sometime after November 29, 2002 that ACI verbally informed CECON that the contract was being awarded to it. Through a telephone call on December 7, 2002, ACI informed CECON that it may commence excavation works. However, there is no indication that an agreement was reached on the contract sum in any of these conversations. ACI, CECON, the CIAC Arbitral Tribunal, and the Court of Appeals all concede that negotiations persisted.

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[135] CIVIL CODE, Art. 1321 provides:

> Article 1321. The person making the offer may fix the time, place, and manner of acceptance, all of which must be complied with.

[136] *Rollo*, p. 6222, CECON's Memorandum.

Still without settling on a contract sum, even the object of the contract was subjected to multiple modifications. Absent a concurrence of consent and object, no contract was perfected.[137]

An office tower atop Part A was included in CECON's scope of works and the contract sum increased to ₱1,582,810,525.00. Price fluctuations were conceded after this and the project cost was again adjusted to ₱1,613,615,244.00. Thereafter, CECON agreed to extend a discount and reduced its offered project cost to ₱1,540,000,000.00.[138]

After all these, ACI demurred on the terms of its own tender documents and changed the project from one encompassing both design and construction to one that was limited to construction.

Though not pertaining to the object of the contract itself but only to one (1) of its many facets, ACI also removed from CECON's scope of works the acquisition of elevators, escalators, chillers, generator sets, indoor substations, cooling towers, pumps, and tanks. However, much later, ACI reneged on its own and opted to still obtain pumps, tanks, and cooling towers through CECON.

It is ACI's contention that the offered project cost of ₱1,540,000,000.00 is what binds the parties because its June 2, 2003 letter indicated acceptance of this offered amount.

This is plain error.

CECON was never remiss in impressing upon ACI that the ₱1,540,000,000.00 offer was not perpetually availing. Without ACI's timely acceptance, on December 27, 2002, CECON wrote

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[137] CIVIL CODE, Art. 1318 provides:

Article 1318. There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

[138] *Rollo*, pp. 6224-6225 and 6383.

to ACI emphasizing that the quoted sum of ₱1,540,000,000.00 was "based [only] upon the prices prevailing at December 26, 2002" levels.[139] On January 8, 2003, CECON notified ACI of further increases in costs and specifically stated that "[f]urther delay in the acceptance of the revised offer and release of the down payment may affect the revised lump sum amount."[140] Finally, on January 21, 2003, CECON wrote again to ACI,[141] stating that the contract sum had to be increased to ₱1,594,631,418.00. CECON also specifically stated, consistent with Article 1321 of the Civil Code, that its tender of this adjusted price was valid only until January 31, 2003, as further price changes may be forthcoming. CECON also impressed upon ACI that the 400 days allotted for the completion of the project had to be adjusted.[142]

When ACI indicated acceptance, CECON's ₱1,540,000,000.00 offer had been superseded. Even CECON's subsequent offer of ₱1,594,631,418.00 had, by then, lapsed by more than four (4) months. Apparently totally misinformed, ACI's acceptance letter did not even realize or remotely reference CECON's most recent ₱1,594,631,418.00 stipulation but insisted on the passé offer of ₱1,540,000,000.00 from the past year.

ACI's supposed acceptance was not an effective, unqualified acceptance, as contemplated by Article 1319 of the Civil Code. At most, it was a counter-offer to revert to ₱1,540,000,000.00.

ACI's June 2, 2003 letter stated an undertaking: "This notwithstanding, formal contract documents embodying these positions will shortly be prepared and forwarded to you for execution."[143] Through this letter, ACI not only undertook to deliver documents, it also admitted that the final, definitive terms between the parties had yet to be articulated in writing.

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[139] *Id*. at 549 and 6224.

[140] *Id*. at 3773 and 6225.

[141] *Id*. at 556-557.

[142] *Id*. at 556 and 6224-6225.

[143] *Id*. at 560.

ACI's delivery CECON's review, and both parties' final act of formalizing their respective consent and affixing their respective signatures would have established a clear point in which the contract between ACI and CECON has been perfected. These points, i.e. ACI's delivery, CECON's review, and parties' formalization, too, would have validated the Court of Appeals' assertion that all that remained to be done was to apply unequivocal contractual provisions.

ACI would fail on its own undertaking.

III. D

Without properly executed contract documents, what would have been a straightforward exercise, akin to the experience in *F.F. Cruz*, became a drawn-out fact-finding affair. The situation that ACI engendered made it necessary for the CIAC Arbitral Tribunal to unravel the terms binding ACI to CECON from sources other than definitive documents.

It is these actions of the CIAC Arbitral Tribunal that raise an issue, purely as a matter of law, now the subject of this Court's review; that is, faced with the lacunae confronting it, whether or not the CIAC Arbitral Tribunal acted within its jurisdiction.

IV

The CIAC Arbitral Tribunal did not act in excess of its jurisdiction. Contrary to the Court of Appeals' and ACI's assertions, it did not draw up its own terms and force these terms upon ACI and CECON.

IV. A

The CIAC Arbitral Tribunal was not confronted with a barefaced controversy for which a formulaic resolution sufficed. More pressingly, it was confronted with a state of affairs where CECON rendered services to ACI, with neither definitive governing instruments nor a confirmed, fixed remuneration for its services. Thus, did the CIAC Arbitral Tribunal go about the task of ascertaining the sum properly due to CECON.

This task was well within its jurisdiction. This determination entailed the full range of subjects expressly stipulated by Section 4 of the Construction Industry Arbitration Law to be within the CIAC's subject matter jurisdiction.

> Section 4. Jurisdiction. — . . .
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.

CECON raised the principal issue of the payment due to it on account, not only of fluctuating project costs but more so because of ACI's inability to timely act on many contingencies, despite proper notice and communication from and by CECON. Therefore, at the heart of the controversy was the "interpretation and/or application of contractual time and delays." ACI's counter-arguments, too, directly appealed to CIAC's subject matter jurisdiction. ACI countered by asserting that sanctioning CECON's claims was tantamount to violating the terms of their agreement. It further claimed liability on CECON's part for "maintenance and defects," and for "violation of specifications for materials and workmanship."

ACI and CECON *voluntarily* submitted themselves to the CIAC Arbitral Tribunal's jurisdiction. The contending parties' own volition is at the inception of every construction arbitration proceeding.[144] Common sense dictates that by the parties' voluntary submission, they acknowledge that an arbitral tribunal constituted under the CIAC has full competence to rule on the dispute presented to it. They concede this not only with respect to the literal issues recited in their terms of reference, as ACI suggests,[145] but also with respect to their necessary incidents. Accordingly, in delineating the authority of arbitrators, the CIAC

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[144] Exec. Order No. 1008, Section 4 states, among others, that, "the parties to a dispute must agree to submit the same to voluntary arbitration."

[145] *Rollo*, pp. 6454-6461.

Rules of Procedure speak not only of the literally recited issues but also of "related matters":

> SECTION 21.3 Extent of power of arbitrator — The Arbitral Tribunal shall decide only such issues and related matters as are submitted to them for adjudication. They have no power to add, to subtract from, modify, or amend any of the terms of the contract or any supplementary agreement thereto, or any rule, regulation or policy promulgated by the CIAC.

To otherwise be puritanical about cognizable issues would be to cripple CIAC arbitral tribunals. It would potentially be to condone the parties' efforts at tying the hands of tribunals through circuitous, trivial recitals that fail to address the complete extent of their claims and which are ultimately ineffectual in dispensing an exhaustive and dependable resolution. Construction arbitration is not a game of guile which may be left to ingenious textual or technical acrobatics, but an endeavor to ascertain the truth and to dispense justice "by every and all reasonable means without regard to technicalities of law or procedure."[146]

IV. B

Two (2) guiding principles steered the CIAC Arbitral Tribunal in going about its task. First was the basic matter of fairness. Second was effective dispute resolution or the overarching principle of arbitration as a mechanism relieved of the encumbrances of litigation. In Section 1.1 of the CIAC Rules of Procedure:

> SECTION 1.1 Statement of policy and objectives — It is the policy and objective of these Rules to provide a *fair and expeditious resolution* of construction disputes as an alternative to judicial proceedings, which may restore the disrupted harmonious and friendly relationships between or among the parties. (Emphasis supplied)

CECON's predicament demanded compensation. The precise extent may yet to have been settled; yet, as the exigencies that prompted CECON to request for arbitration unraveled, it became

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[146] CIAC RULES OF PROCEDURE, Sec. 1.3.

clear that it was not for the CIAC Arbitral Tribunal to turn a blind eye to CECON's just entitlement to compensation.

Jurisprudence has settled that even in cases where parties enter into contracts which do not strictly confirm to standard formalities or to the typifying provisions of nominate contracts, when one renders services to another, the latter must compensate the former for the reasonable value of the services rendered. This amount shall be fixed by a court. This is a matter so basic, this Court has once characterized it as one that "springs from the fountain of good conscience":

> As early as 1903, in *Perez v. Pomar*, this Court ruled that where one has rendered services to another, and these services are accepted by the latter, in the absence of proof that the service was rendered gratuitously, it is but just that he should pay a reasonable remuneration therefor because "it is a well known principle of law, that no one should be permitted to enrich himself to the damage of another." Similary in 1914, this Court declared that in this jurisdiction, even in the absence of statute, ". . . under the general principle that one person may not enrich himself at the expense of another, a judgment creditor would not be permitted to retain the purchase price of land sold as the property of the judgment debtor after it has been made to appear that the judgment debtor had no title to the land and that the purchaser had failed to secure title thereto . . ." The foregoing equitable principle which springs from the fountain of good conscience are applicable to the case at bar.[147]

Consistent with the Construction Industry Arbitration Law's declared policy,[148] the CIAC Arbitral Tribunal was specifically charged with "ascertain[ing] the facts in each case by every and all reasonable means."[149] In discharging its task, it was

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[147] *Pacific Merchandising Corp. v. Consolacion Insurance & Surety Co., Inc.*, 165 Phil. 543, 553-554 (1976) [Per *J*. Antonio, Second Division] citing *Perez v. Pomar*, 2 Phil. 682 (1903) [Per *J.* Torres, *En Banc*]; and *Bonzon v. Standard Oil Co. and Osorio*, 27 Phil. 141 (1914) [Per *J.* Carson, First Division]. Fn 16

[148] Exec. Order No. 1008, Sec. 2.

[149] CIAC RULES OF PROCEDURE, Rule 1, Sec. 1.3 provides:

permitted to even transcend technical rules on admissibility of evidence.[150]

IV. C

The reality of a vacuum where there were no definite contractual terms, coupled with the demands of a "fair and expeditious resolution" of a dispute centered on contractual interpretation, called into operation Article 1371 of the Civil Code:

Article 1371. In order to judge the intention of the contracting parties, *their contemporaneous and subsequent acts shall be principally considered*. (Emphasis supplled)

Article 1379 of the Civil Code invokes principles from the Revised Rules on Evidence. By invoking these principles, Article 1379 makes them properly applicable in every instance of contractual interpretation, even those where the need for interpretation arises outside of court proceedings:

Article 1379. The principles of interpretation stated in Rule 123 of the Rules of Court shall likewise be observed in the construction of contracts.

As with Article 1371, therefore, the following principles from the Revised Rules on Evidence equally governed the CIAC Arbitral Tribunal's affairs:

4. Interpretation of Documents

Section 12. Interpretation according to intention; general and particular provisions. — *In the construction of an instrument, the intention of the parties is to be pursued*; and when a general and a particular provision are inconsistent, the latter is paramount to the former. So

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Section 1.3 Judicial rules not controlling — In any arbitration proceedings under these Rules, the judicial rules of evidence need not be controlling, and it is the spirit and intention of these Rules to ascertain the facts in each case by every and all reasonable means without regard to technicalities of law or procedure.

[150] CIAC RULES OF PROCEDURE, Rule 1, Sec. 1.3.

a particular intent will control a general one that is inconsistent with it.

Section 13. Interpretation according to circumstances. — For the proper construction of an instrument, *the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown*, so that the judge may be placed in the position of those whose language he is to interpret.

Within its competence and in keeping with basic principles on contractual interpretation, the CIAC Arbitral Tribunal ascertained the true and just terms governing ACI and CECON. Thus, the CIAC Arbitral Tribunal did not conjure its own contractual creature out of nothing. In keeping with this, the CIAC Arbitral Tribtmal found it proper to sustain CECON's position. There having been no meeting of minds on the contract sum, the amount due to CECON became susceptible to reasonable adjustment, subject to proof of legitimate costs that CECON can adduce.

V

Unravelling the CIAC Arbitral Tribunal's competence and establishing how it acted consistent with law resolves the principal legal issue before us. From this threshold, the inquiry transitions to the matter of whether or not the conclusions made by the CIAC Arbitral Tribunal were warranted.

They were. Far from being capricious, the CIAC Arbitral Tribunal's conclusions find solid basis in law and evidence.

V. A

The tender documents may have characterized the contract sum as fixed and lump-sum, but the premises for this arrangement have undoubtedly been repudiated by intervening circumstances.

When CECON made its offer of ₱1,540,000,000.00, it proceeded from several premises. First, ACI would timely respond to the representations made in its bid. Second, CECON could act on the basis of prices prevailing then. Third, the subject matter of the contract was the entire expanse of design and construction covering all elements disclosed in the tender

documents, nothing more and nothing less. Fourth, the basic specifications for designing and building the Gateway Mall, as stated in the tender documents, would remain consistent. Lastly, ACI would timely deliver on its concomitant obligations.

Contrary to CECON's reasonable expectations, ACI failed to timely act either on CECON's bid or on those of its competitors. Negotiations persisted for the better part of two (2) calendar years, during which the quoted contract sum had to be revised at least five (5) times. The object of the contract and CECON's scope of work widely varied. There were radical changes like the addition of an entire office tower to the project and the change in the project's structural framing. There was also the undoing of CECON's freedom to design, thereby rendering it entirely dependent on configurations that ACI was to unilaterally resolve, It turned out that ACI took its time in delivering construction drawings to CECON, with almost 38% of construction drawings being delivered after the intended completion date. There were many other less expansive changes to the project, such as ACI's fickleness on which equipment it would acquire by itself. ACI even failed to immediately deliver the project site to CECON so that CECON may commence excavation, the most basic task in setting up a structure's foundation. ACI also failed to produce definite instruments articulating its agreement with CECON, the final contract documents.

With the withering of the premises upon which a lump-sum, fixed price arrangement would have been founded, such an arrangement must have certainly been negated:

> [T]he contract is fixed and lump sum when it was tendered and contracted as a design and construct package. The contract scope and character significantly changed when the design was taken over by the Respondent. At the time of the negotiation and agreement of the amount of Php1.54 billion, there were no final plans for the change to structural steel, and all the [mechanical, electrical and plumbing] drawings were all schematics.
>
> [I]t is apparent to the Tribunal that the quantity and materials at the time of the ₱1.54B agreement are significantly different from the

original plans to the finally implemented plans. The price increases in the steel products and cement were established to have already increased by 11.52% and by ₱5.00 per bag respectively by January 21, 2003. The Tribunal finds agreement with the Claimant that it is fairer to award the price increase.

. . . . . .

It should also be mentioned that Respondent had changed the scope and character of the agreement. First, there were major changes in the plans and specifications. Originally, the contract was for design and construct. The design was deleted from the scope of the Claimant. It was changed to a straight construction contract. As a straight construction contract, there were no final plans to speak of at the time of the instructions to change. Then there was a verbal change to structural steel frame. No plans were available upon this instruction to change. Next, the [mechanical, electrical and plumbing] plans were all schematics. It is therefore expected that changes of plans are forthcoming, and that changes in costs would follow . . .

. . . . . .

It has been established that the original tender, request for proposal and award is for a design and construct contract. The contract documents are therefore associated for said system of construction. When Respondent decided to change and take over the design, such as the change from concrete to structural steel framing, "take-out" equipment from the contract and modify the [mechanical, electrical and plumbing w]orks, the original scope of work had been drastically changed. To tie down the Claimant to the tmit prices for the proposal for a different scope of work would be grossly unfair. This Tribunal will hold that unit price adjustment could be allowed but only for change orders that were not in the original scope of work, such as the change order from concrete to structural framing, the [mechanical, electrical and plumbing w]orks, [schematic drawings to construction drawings] and the Miscellaneous Change Order Works.[151]

V. B

Contrary to ACI's oft-repeated argument,[152] the CIAC Arbitral Tribunal correctly found that ACI had gained no solace in

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[151] *Rollo* pp. 3812-3813 and 3884.

[152] *Id*. at 6483-6487.

statutory provisions on the immutability of prices *stipulated* between a contractor and a landowner.

Article 1724 of the Civil Code reads:

> Article 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:
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> (1) Such change has been authorized by the proprietor in writing; and
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> (2) The additional price to be paid to the contractor has been determined in writing by both parties.

Article 1724 demands two (2) requisites in order that a price may become immutable: first, there must be an actual, stipulated price; and second, plans and specifications must have definitely been agreed upon.

Neither requisite avails in this case. Yet again, ACI is begging the question. It is precisely the crux of the controversy that no price has been set. Article 1724 does not work to entrench a disputed price and make it sacrosanct. Moreover, it was ACI which thrust itself upon a situation where no plans and specifications were immediately agreed upon and from which no deviation could be made. It was ACI, not CECON, which made, revised, and deviated from designs and specifications.

V. C

The CIAC Arbitral Tribunal also merely held ACI to account for its voluntarily admitted adjustments. The CIAC Rules of Procedure permit deviations from technical rules on evidence, including those on admissions. Still, common sense dictates that the principle that "[t]he act, declaration or omission of a party as to a relevant fact may be given in evidence against him"[153]

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[153] RULES OF COURT, Rule 130, Sec. 26.

must equally hold true in administrative or quasi-judicial proceedings as they do in court actions. Certainly, each must be held to account for his or her own voluntary declarations. It would have been plainly absurd to disregard ACI's reneging on its own admissions:

> Respondent has agreed to the price increase in structural steel and after some negotiation paid the agreed amount. Respondent also agreed to the price increase in the reinforcing bars and instructed the Claimant to bill it accordingly. To the Tribunal, such action is an acknowledgment of the price increase. Respondent can make the case that said agreement is conditional, i.e., the Complaint must be withdrawn. To the Tribunal, the conditionality falls both ways. The Claimant has as much interest to agree to a negotiated price increase so that it can collect payments for the claims. The conditionalities do not change the basis for the quantity and the amount. The process of the negotiation has arrived at the price difference and quantities. The Tribunal finds the process in arriving at the Joint Manifestation, a fair determination of the unit price increase. This holding will render the discussions on Exhibit JJJJ, and the demand of the burden of proof of the Respondent superfluous.[154]

This absurdity is so patent that the Court of Appeals was still compelled to uphold awards premised on ACI's admissions, even as it reversed the CIAC Arbitral Tribunal decision on the primordial issue of the characterization of the contractual arrangement between CECON and ACI:

> As stated, the contract between [ACI] and CECON has not been amended or revised. The Arbitral Tribunal had no power to amend the contract to provide that there be allowed price and/or cost adjustment removing the express stipulation that the Project is for a lump sum or fixed price consideration. Accordingly, this Court removes the award for additional costs spent by CECON on cement and formworks due to price increases or removing the award for these items in the total amount of PhP5,598,338.20. Since CECON is not entitled to its claim for price increase, it is likewise not entitled to the award of the interest rate of 6% per annum.

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[154] *Id*. at 3812.

With regard however to the additional costs for the rebars due to price increases. this Court finds that CECON is entitled to the amount of PhP10,266,628.00 representing the additional costs spent by CECON for rebars due to price increases, notwithstanding the Arbitral Tribunal's excess of jurisdiction in amending the contract between the parties because [ACI] and CECON had in fact agreed that CECON was entitled to such an amount and that [ACI] would pay the same. This agreement was made in the parties' Joint Manifestation of Compliance dated March 30, 2004 which they filed with the Arbitral Tribunal ("Joint Manifestation").[155]

No extraordinary technical or legal proficiency is required to see that it would be the height of absurdity and injustice to insist on the payment of an amount the consideration of which has been reduced to a distant memory. ACI's invocation of Article 1724 is useless as the premises for its application are absent. ACI's position is an invitation for this Court to lend its imprimatur to unjust enrichment enabled by the gradual wilting of what should have been a reliable contractual relation. Basic decency impels this Court to not give in to ACI's advances and instead sustain the CIAC Arbitral Tribunal's conclusion that the amount due to CECON has become susceptible to reasonable adjustment.

VI

The Arbitral Tribunal's award must be reinstated.

VI. A

With the undoing of the foundation for the Court of Appeal's fallacious, circular reasoning, its monetary awards must also necessarily give way to the reinstatement of the CIAC Arbitral Tribunal's awards.

The inevitable changes borne by ACI's own trifling actions justify, as a consequence, compensation for cost adjustments and the ensuing change orders, additional overhead costs for the period of extension, extended coverage for contractor's all-risk insurance, and attendance fees for auxiliary services

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

to subcontractors whose functions were also necessarily prolonged. ACI's frivolity on the acquisition of elevators, escalators, chillers, generator sets, indoor substations, cooling towers, pumps, and tanks also vindicates compensation for the works that remained under CECON's account. ACI's authorship of the causes of delay supports time extensions favoring CECON and, conversely, discredits liquidated damages benefitting ACI.

This Court upholds the Arbitral Tribunal's awards on each of the items due to CECON, as well as on its findings relating to CECON's countervailing liabilities.

In fulfilling its task, the CIAC Arbitral Tribunal was equipped with its technical competence, adhered to the rigors demanded by the CIAC Rules of Procedure, and was endowed with the experience of exclusively presiding over 19 months of arbitral proceedings, examining object and documentary evidence, and probing witnesses.

VI. B

Within the CIAC Arbitral Tribunal's technical competence was its reference to prevailing industry practices, a much-bewailed point by ACI.[156] This reference was made not only desirable but even necessary by the absence of definitive governing instruments. Moreover, this reference was made feasible by the CIAC Arbitral Tribunars inherent expertise in the construction industry.

This reference was not only borne by practical contingencies and buttressed by recognized proficiency, it was also sanctioned by the statutory framework of contractual interpretation within which the CIAC Arbitral Tribunal operated. Thus, the following principles governed the interpretation of the change orders, requests, and other communications, which had effectively been surrogates of a single definite instrument executed by the parties.

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[156] *Id*. at 5894-5895.

From the Civil Code:

Article 1375. Words which may have different significations shall be understood in that which is most in keeping with the nature and object of the contract.

Article 1376. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.

From the Revised Rules on Evidence, the following have been made applicable even outside regular litigation by Article 1379 of the Civil Code:

Section 14. Peculiar signification of terms.— The terms of a writing are presumed to have been used in their primary and general acceptation, but *evidence is admissible to show that they have a local, technical, or otherwise peculiar signification*, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.

. . . . . .

Section 19. Interpretation according to usage. — An instrument may be construed according to usage, in order to determine its true character.[157] (Emphasis supplied)

Equally availing is the following principle. This is especially tlue of the remuneration due to CECON, considering that stipulations for remuneration are devised for the benefit of the person rendering the service:

Section 17. Of two constructions, which preferred. — When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it, and when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made.[158]

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[157] RULES OF COURT, Rule 130, Secs. 14 and 19.

[158] RULES OF COURT, Rule 130, Sec. 17.

VI. C

In appraising the CIAC Arbitral Tribunal's awards, it is not the province of the present Rule 45 Petition to supplant this Court's wisdom for the inherent technical competence of and the insights drawn by the CIAC Arbitral Tribunal throughout the protracted proceedings before it. The CIAC Arbitral Tribunal perused each of the parties' voluminous pieces of evidence.[159] Its members personally heard, observed, tested, and propounded questions to each of the witnesses. Having been constituted solely and precisely for the purpose of resolving the dispute between ACI and CECON for 19 months, the CIAC Arbitral Tribunal devoted itself to no other task than resolving that controversy. This Court has the benefit neither of the CIAC Arbitral Tribunal's technical competence nor of its irreplaceable experience of hearing the case, scrutinizing every piece of evidence, and probing the witnesses.

True, the inhibition that impels this Court admits of exceptions enabling it to embark on its own factual inquiry. Yet, none of these exceptions, which are all anchored on considerations of the CIAC Arbitral Tribunal's integrity and not merely on mistake, doubt, or conflict, is availing.

This Court finds no basis for casting aspersions on the integrity of the CIAC Arbitral Tribunal. There does not appear to have been an undisclosed disqualification for any of its three (3) members or proof of any prejudicial misdemeanor. There is nothing to sustain an allegation that the parties' voluntarily selected arbitrators were corrupt, fraudulent, manifestly partial, or otherwise abusive. From all indications, it appears that the CIAC Arbitral Tribunal extended every possible opportunity for each of the parties to not only plead their case but also to arrive at a mutually beneficial settlement. This Court has ruled, precisely, that the arbitrators acted in keeping with their lawful competencies. This enabled them to come up with an otherwise definite and reliable award on the controversy before it.

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[159] *Rollo*, p. 3771. Exhibits were so voluminous, markings such as "BBBBB" and "MMMMM" were necessary.

Inventive, hair-splitting recitals of the supposed imperfections in the CIAC Arbitral Tribunal's execution of its tasks will not compel this Court to supplant itself as a fact-finding, technical expert.

ACI's refutations on each of the specific items claimed by CECON and its counterclaims of sums call for the point by point appraisal of work, progress, defects and rectifications, and delays and their causes. They are, in truth, invitations for this Court to engage in its own audit of works and corresponding financial consequences. In the alternative, its refutations insist on the application of rates, schedules, and other stipulations in the same tender documents, copies of which ACI never adduced and the efficacy of which this Court has previously discussed to be, at best, doubtful.

This Court now rectifies the error made by the Court of Appeals. By this rectification, this Court does not open the doors to an inordinate and overzealous display of this Court's authority as a final arbiter.

Without a showing of any of the exceptional circumstances justifying factual review, it is neither this Court's business nor in this Court's competence to pontificate on technical matters. These include things such as fluctuations in prices of materials from 2002 to 2004, the architectural and engineering consequences — with their ensuing financial effects — of shifting from reinforced concrete to structural steel, the feasibility of rectification works for defective installations and fixtures, the viability of a given schedule of rates as against another, the audit of changes for every schematic drawing as revised by construction drawings, the proper mechanism for examining discolored and mismatched tiles, the minutiae of installing G.I. sheets and sealing cracks with epoxy sealants, or even unpaid sums for garbage collection.

The CIAC Arbitral Tribunal acted in keeping with the law, its competence, and the adduced evidence; thus, this Court upholds and reinstates the CIAC Arbitral Tribunal's monetary awards.

VII

It does not escape this Court's attention that this controversy has dragged on for more than 13 years since CECON initially sought to avail of arbitration.

The CIAC Arbitral Tribunal noted that ACI consumed a total of 840 days filing several motions and manifestations, including at least eight (8) posturings at pursuing settlement.[160] It added, however, that ACI repeatedly failed to respond to CECON's claims during meetings thereby constraining CECON to file motions to proceed after repeatedly being dangled hope of an early resolution.[161] It appeared that ACI was more interested in buying time than in effecting a consummate voluntary settlement.

The CIAC Arbitral Tribunal October 25, 2006 Decision should have long brought this matter to an end. This Court does not fault ACI for availing of remedies. Yet, this Court also notes that even in proceedings outside of the CIAC Arbitral Tribunal, ACI seems to not have been sufficiently conscientious of time.

In this Court alone, ACI sought extensions to file its Comment no less than five (5) times.[162] It sought several other extensions in the filing of its Memorandum.[163]

It also does not escape this Court's attention that while ACI's arguments have perennially pleaded the supposed primacy and itnmutability of stipulations originally articulated in the tender documents, it never bothered to annex any of these documents either to its Comment or to its Memorandum. Without these and other supporting materials, this Court is left in the uneasy predicament of merely relying on ACI's self-stated assertions and without means of verifying even the syntax of its citations.

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[160] *Id*. at 4027.

[161] *Id*. at 4027-4028.

[162] *Id*. at 6127.

[163] *Id*. at 6656.

While presumptions of good faith may be indulged, the repercussions of ACI's vacillation cannot be denied.

Even if this Court were to ignore the delays borne by ACI's procedural posturing, this Court is compelled to hearken to ACI's original faults. These are, after all, what begot these proceedings. These are the same original faults which so exasperated CECON; it was left with no recourse but to seek the intervention of CIAC.

These faults began as soon as bidders responded to ACI's invitation. In CECON's case, its communicated time for the validity of its offer lapsed without confirmation from ACI. ACI only verbally responded and only after CECON's communicated timeframe. It told CECON to commence excavation works but failed to completely deliver the project site until five (5) months later. It engaged in protracted negotiations, never confirming acceptance until the tenth month, after bidders had submitted their offers. By then, ACI's supposed acceptance could not even identify CECON's most recent quoted price. It undertook to process and deliver formal documents, yet this controversy already reached this Court and not a single page of those documents has seen the light of day. It has repeatedly added and taken from CECON's scope of works but vigorously opposed adjustments that should have at least been given reasonable consideration, only to admit and partially stipulate on them. In taking upon itself the task of designing, it took its time in delivering as many as 1,675 construction drawings to CECON, more than 600 of which were not delivered until well after the project's intended completion date.

This Court commenced its discussion by underscoring that arbitration primarily serves the need of expeditious dispute resolution. This interest takes on an even greater urgency in the context of construction projects and the national interest so intimately tied with them. ACI's actions have so bogged down its contractor. Nearing 13 years after the Gateway Mall's completion, its contractor has yet to be fully and properly compensated. Not only have ACI's actions begotten this dispute, they have hyper-extended arbitration proceedings and dragged

courts into the controversy. The delays have virtually bastardized the hopes at expeditious and effective dispute resolution which are supposedly the hallmarks of arbitration proceedings.

For these, in addition to sustaining each of the awards due to CECON arising from the facets of the project, this Court also sustains the CIAC Arbitral Tribunal's award to CECON of arbitration costs. Further, this Court imposes upon respondent Araneta Corporation, Inc. the burden of bearing the costs of what have mutated into a full-fledged litigation before this Court and the Court of Appeals.

WHEREFORE, the Petition is **GRANTED**. The assailed April 28, 2008 Decision and July 1, 2010 Amended Decision of the Court of Appeals in CA-G.R. SP No. 96834 are **REVERSED and SET ASIDE**. The Construction Industry Arbitration Commission Arbitral Tribunal October 25, 2006 Decision in CIAC Case No. 01-2004 is **REINSTATED**.

Legal interest at the rate of six percent (6%) per annum is imposed on the award from the finality of this Decision until its full satisfaction.

Costs against respondent.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 197433 and 197435. August 9, 2017]

EDWARD THOMAS F. JOSON, *petitioner, vs*. **THE OFFICE OF THE OMBUDSMAN, AURELIO M. UMALI, GIOVANNI AGTAY, ALEJANDRO R. ABESAMIS, EDILBERTO M. PANCHO, AND JAIME P. PALLANAN,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; LIBERAL CONSTRUCTION THEREOF MAY BE ALLOWED TO ENSURE THE REALIZATION OF SUBSTANTIAL JUSTICE; EXPOUNDED.— This Court has allowed the relaxation of procedural rules to ensure the realization of substantial justice in several instances. In *Barnes v. Hon. Quijano Padilla*: [T]he Rules of Court itself calls for its liberal construction, with the view of promoting their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard. In numerous cases, the Court has allowed liberal construction of the Rules of Court with respect to the rules on the manner and periods for perfecting appeals, when to do so would serve the demands of substantial justice and in the exercise of equity jurisdiction of the Supreme Court.

2. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; A MOTION FOR RECONSIDERATION IS NECESSARY BEFORE THE SUPREME COURT CAN ENTERTAIN A PETITION FOR *CERTIORARI*; EXCEPTIONS.— Although a motion for reconsideration is required before this Court can entertain a petition for *certiorari*,

this rule admits of certain exceptions, which were enumerated in *Tan v. Court of Appeals*; (a) [W]here the order is a patent nullity, as where the Court a quo had no jurisdiction; (b) *where the questions raised in the certiorari proceeding have been duly raised and passed upon by [the] lower court, or are the same as those raised and passed upon in the lower court*; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial [c]ourt is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

3. ID.; APPEALS; PETITION FOR REVIEW TO THE COURT OF APPEALS UNDER RULE 43 OF THE RULES OF COURT; PROPER REMEDY TO ASSAIL THE DECISION OF THE OFFICE OF THE OMBUDSMAN IN THE ADMINISTRATIVE CASE; EXPLAINED.— Private and public respondents argue that petitioner should have appealed the assailed decisions of the Office of the Ombudsman by filing a Rule 43 petition. Petitioner insists that he availed of the correct remedy. This Court finds for the respondents. In administrative complaints, the Office of the Ombudsman's decision may be appealed to the Court of Appeals via Rule 43. Judicial review of decisions of the Office of the Ombudsman in administrative cases was previously directed to this Court as provided in Section 27 of Republic Act No. 6770 or The Ombudsman Act of 1989: x x x However, in *Fabian v. Hon. Desierto*, this Court declared Section 27 unconstitutional for increasing this Court's appellate jurisdiction in violation of the proscription under Article VI, Section 30 of the Constitution. This Court further held in *Fabian* that "appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43."

4. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; REMEDY OF THE AGGRIEVED PARTY IN CRIMINAL COMPLAINT BEFORE THE OFFICE OF THE OMBUDSMAN WHERE THERE IS AN ALLEGATION OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. — [A] party may elevate the Office of the Ombudsman's dismissal of a criminal complaint to this Court via a special civil action under Rule 65 of the 1997 Rules of Civil Procedure if there is an allegation of "grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law[.]" In *Acuña v. Deputy Ombudsman for Luzon*: The remedy of an aggrieved party in criminal complaints before the Ombudsman is to file with this Court a petition for *certiorari* under Rule 65, Thus, we held in ***Tirol, Jr. v. Del Rosario***: The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases, As we ruled in *Fabian* [*v. Desierto*], the aggrieved party (in administrative cases) is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons. However, an aggrieved party is not without recourse where the finding of the Ombudsman . . . is tainted with grave abuse of discretion, amounting to lack (or) excess of jurisdiction. *An aggrieved party may file a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.*

5. ID.; ID.; ID.; ALLEGATION OF GRAVE ABUSE OF DISCRETION MUST BE SUBSTANTIATED BEFORE THE SUPREME COURT CAN EXERCISE ITS POWER OF JUDICIAL REVIEW.— At the onset, this Court reiterates the policy of non-interference with the Office of the Ombudsman's determination of probable cause. Probable cause is defined as "the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted." Thus, an allegation of grave abuse of discretion must be substantiated before this Court can exercise its power of judicial review. As held in *Tetangco v. Ombudsman*: It is well-settled that the Court will not ordinarily interfere with the Ombudsman's

determination of whether or not probable cause exists except when it commits grave abuse of discretion. Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law.

APPEARANCES OF COUNSEL

Paul Michael J. Cuñano for respondents Umali, Abesamis, and Pancho.

Marrack Valdez Marrack & Associates Law Office for petitioner.

Mario R. Benitez for respondent Pallanan.

D E C I S I O N

LEONEN, *J.*:

The suspension of rules of procedure may only be considered under a very narrow band of compelling reasons and always in consideration that due process of law must be accorded to both parties—the prosecution and the accused.

This is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure, assailing the December 4, 2009 Joint Resolution[2] and May 9, 2011 Order[3] of the Office of the

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[1] *Rollo*, pp. 3-19.

[2] *Id*. at 20-33. The Joint Resolution was penned by Graft Investigation and Prosecution Officer I Francis Euston R. Acero and reviewed by Director Mary Antonette Yalao of the Preliminary Investigation, Administrative Adjudication and Review Bureau. Overall Deputy Ombudsman Orlando C. Casimiro recommended the approval of the Joint Resolution, which was subsequently approved by Ombudsman Ma. Merceditas N. Gutierrez.

[3] *Id*. at 34-40. The Order was penned by Graft Investigation and Prosecution Officer I Francis Euston R. Acero and recommended for approval by Director Mary Antonette P. Yalao of the Preliminary Investigation, Administrative Adjudication and Review Bureau. Acting Ombudsman Orlando C. Casimiro approved the Order.

Ombudsman in OMB-C-C-08-0343-H and OMB-C-A-08-0383-H. The Office of the Ombudsman dismissed petitioner Edward Thomas F. Joson's (Joson) administrative and criminal complaints against Aurelio M. Umali (Umali), Giovanni G. Agtay (Agtay), Alejandro R. Abesamis (Abesamis), Edilberto M. Pancho (Pancho), and Jaime P. Pallanan (Pallanan) (collectively, private respondents) for graft and corruption, malversation, fraud, and grave misconduct, among others.[4]

This case arose from the alleged payment to a caterer that did not provide meals for an event and the consequent misappropriation of the amount paid.

In his Affidavit-Complaint[5] (Complaint) dated August 6, 2008, petitioner Joson charged private respondents before the Office of the Ombudsman with the following:

> 2.a GROSS VIOLATION OF [REPUBLIC ACT NO.] 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT), particularly Section 3 thereof; and/or
>
> 2.b VIOLATION OF ART. 213 OF THE REVISED PENAL CODE; and/or
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> 2.c VIOLATION OF ART. 215 OF THE REVISED PENAL CODE; and/or
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> 2.d VIOLATION OF ART. 216 OF THE REVISED PENAL CODE; and/or
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> 2.e VIOLATION OF ART. 217 OF THE REVISED PENAL CODE; and/or
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> 2.f VIOLATION OF [REPUBLIC] ACT NO. 6713; and/or
>
> 2.g GRAVE ABUSE OF DISCRETION, MISCONDUCT IN OFFICE, AND IRREGULARITY IN THE PERFORMANCE OF DU[T]IES, and/or
>
> 2.h COMMISSION OF A CRIME INVOLVING MORAL T[U]RPITUDE, and/or

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[4] *Id*. at 31.

[5] *Id*. at 41-52.

2.i SUCH OTHER CRIMES OR ADMINISTRATIVE OFFENSES AS THIS HONORABLE OFFICE MAY DEEM APPROPRIATE IN THE PREMISES.[6]

The criminal case was docketed as OMB-C-C-08-0343-H, while the administrative case was docketed as OMB-C-A-08-0383-H.[7]

At the time of filing the Complaint, Joson was then Nueva Ecija's Vice Governor and its Sangguniang Panlalawigan's Presiding Officer, while Umali was Nueva Ecija's Governor. Agtay, Abesamis, and Pancho served as Nueva Ecija's Provincial Trade and Industry Officer, OIC-Provincial Administrator, and Treasurer, respectively. Pallanan was the former Provincial Administrator of Nueva Ecija.[8]

Joson alleged that on September 21, 2006, a Memorandum of Agreement was executed by the Provincial Government of Nueva Ecija and Ryan Angelo Sweets and Catering Services (Ryan Angelo Catering), which was owned by Cleopatra Gervacio (Cleopatra). Under this Agreement, Ryan Angelo Catering's services for two (2) years "shall include regular serving of meals for breakfast, lunch, dinner, and snacks at the canteen and the convention center, special meals and catering services shall be provided as may be required."[9]

Joson claimed that another caterer was hired during Umali's oath-taking ceremony on July 4, 2007. However, Agtay asked Ryan Angelo Catering, through Cleopatra, for a receipt of ₱1,272,000.00 under the name of the Provincial Government of Nueva Ecija, Joson claimed that Agtay made this request to make it appear that Ryan Angelo Catering actually catered and to justify the withdrawal of ₱1,344,000.00 from the treasury of Nueva Ecija's provincial government.[10]

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

[7] *Id*. at 20.

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

[9] *Id*. at 43.

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

According to Joson, the misrepresentations committed by Agtay caused the issuance of a ₱1,272,000.00 check to Ryan Angelo Catering. The check was received by Cleopatra's daughter-in-law, Jocelyn R. Gervacio (Jocelyn).[11]

Joson cited Cleopatra's Sworn Statement,[12] where she stated that after the ₱1,272,000.00 check was cleared, Jocelyn gave the proceeds of the check to Agtay.[13] Joson stated that Jocelyn deposited ₱734,000.00 in Agtay's account with Equitable-PCI Bank, Cabanatuan City branch and delivered the remaining amount to him personally. In depositing the ₱734,000.00, Jocelyn used a Banco San Juan check under the account name of Cleopatra.[14]

Joson contended that the fraudulent transaction committed by Agtay "was consummated with the knowledge and participation of, and in conspiracy with"[15] Umali, Pallanan, and Pancho, through the following acts:

> 13.a Respondent Gov. Aurelio M. Umali made it appear that he ordered meals from Ryan Angelo Catering as shown by the Purchase Order. . .
>
> 13.b An Obligation Request was issued and signed by respondent Jaime Pallanan for the meals eaten during the oath-taking ceremonies of respondent Gov. Aurelio M, Umali certifying that the supporting documents thereof are valid, proper and legal . . .
>
> 13.c A Resolution was rendered by the Bids and Awards Committee fraudulently stating that "*the pronouncement of meals was directly procured from Ryan Angelo Sweets and Catering Services*" and recommended the use of Direct Contracting Method for the procurement of meals worth ₱1,244,000.00 . . .
>
> 13.d A Disbursement Voucher was issued and signed by the following officials of the provincial government of Nueva Ecija:

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[11] *Id*. at 44.

[12] *Id*. at 56-57.

[13] *Id*. at 56.

[14] *Id*. at 44-45, Affidavit-Complaint.

[15] *Id*. at 45.

(a) respondent Edilberto Pancho who certified that "*Funds (are) available*"; and (b) respondent Governor Aurelio M. Umali who signed under the caption "*Approved for Payment*". This disbursement voucher was issued in favor of Ryan Angelo Catering as "*payment of meals during the Oath Taking Ceremony for the use of Governor's Office*" . . .

13.e DBP Check No. 23570768-69 in the amount of ONE MILLION TWO HUNDRED SEVENTY TWO THOUSAND (₱1,272,000.00) was issued by respondents Jaime P. Pallanan and Edilberto M. Pancho in favor of Ryan Angelo Catering . . .[16] (Emphasis in the original)

Copies of the Purchase Order,[17] the Obligation Request,[18] the Resolution[19] of the Bids and Awards Committee, and the Disbursement Voucher[20] were attached to Joson's Complaint.

Joson alleged that Abesamis persuaded Cleopatra to agree with the Memorandum of Agreement's early termination in exchange for the immediate payment of the provincial government's outstanding obligations with Ryan Angelo Catering. Despite this condition, the provincial government failed to pay Ryan Angelo Catering.[21]

Joson maintained that the acts of Agtay and Abesamis and the documents that Umali, Pallanan, and Pancho issued in their official capacities facilitated the illegal disbursement of public funds.[22]

Joson also mentioned that the number of packed lunches that was allegedly delivered to the Nueva Ecija Convention Center

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

[17] *Id*. at 58.

[18] *Id*. at 59.

[19] *Id*. at 60.

[20] *Id*. at 61.

[21] *Id*. at 46.

[22] *Id*. at 47.

was about 7,000 units more than the number of persons that the center could accommodate.[23]

Finally, he alleged that the disbursement voucher did not have the provincial accountant's signature, which would have certified that an allotment from the public funds was made and that the documents were complete.[24]

Pallanan, Umali, Agtay, and Abesamis filed their respective counter-affidavits while Pancho failed to submit his counter-affidavit despite receiving notice.[25]

In his Counter-Affidavit dated September 11, 2008, Pallanan stated that the receipt under the name of Nueva Ecija's provincial government was evidence that Ryan Angelo Catering supplied the food for Umali's oath-taking ceremony. Likewise, he pointed out that neither Joson nor Cleopatra had personal knowledge regarding the deposit of the proceeds of the alleged check to Agtay's account.[26]

In his Counter-Affidavit[27] dated October 8, 2008, Umali argued that his signing of the Purchase Order and related papers was justified considering that "the documents had been certified to be in order and no discrepancy was apparent therein, and [he] had no reason to doubt the validity of the bidding process and subsequent disbursement of funds."[28]

In his Counter-Affidavit[29] dated October 16, 2008, Agtay denied the allegations of Joson against him. He countered that he was not yet an employee of the Provincial Government of

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[23] *Id*.

[24] *Id*.

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

[26] *Id*. at 23.

[27] *Id*. at 63-69.

[28] *Id*. at 23, Office of the Ombudsman's Joint Resolution.

[29] *Id*. at 82-84.

Nueva Ecija when it secured the services of Ryan Angelo Catering,[30] He attached to his Counter-Affidavit his appointment paper,[31] showing that it was only on August 1, 2007 that he assumed office as Provincial Trade and Industry Officer. Agtay also denied receiving any amount from Jocelyn or maintaining a bank account with Equitable-PCI Bank. Lastly, he noted that Cleopatra's sworn statement did not state the amount allegedly deposited nor did it mention the Banco San Juan check.[32]

In his Counter-Affidavit[33] dated October 20, 2008, Abesamis denied having knowledge of the Memorandum of Agreement between the Provincial Government of Nueva Ecija and Ryan Angelo Catering. However, he knew that Ryan Angelo Catering operated the canteen inside the new provincial capitol compound. Abesamis also noted that the copy of the Memorandum of Agreement attached to Joson's Complaint contained Cleopatra's signature only and was not notarized.[34]

Abesamis further averred that after being appointed as provincial administrator in February 2008, Cleopatra asked for his help regarding her catering's collectibles from the provincial government. Upon inquiry with the accounting department, he found out that they had already told Cleopatra to submit the required documents. He advised her to complete the requirements as requested by the accounting department.[35]

Abesamis claimed that he did not persuade Cleopatra to prematurely terminate the Memorandum of Agreement. He narrated that due to Ryan Angelo Catering's non-payment of electricity, the power supply of the canteen was cut off. Cleopatra told him that she could not open the canteen since she could

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[30] *Id*. at 24.

[31] *Id*. at 85.

[32] *Id*. at 24.

[33] *Id*. at 70-77.

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

[35] *Id*. at 73-74.

not afford to pay the bills. She also informed him to get another canteen operator as she no longer wanted to operate it. The Provincial General Services Office told Abesamis that it could negotiate the situation with the power supplier. However, Abesamis realized that if the result of the negotiation were favorable to the power supplier, the existence of the Memorandum of Agreement would present a legal issue. Abesamis discussed the situation with Cleopatra, who stated that she was amenable to prematurely terminate the Memorandum of Agreement. She also requested Abesamis to prepare the termination notice, which he did. Cleopatra presented the notice to her lawyer and gave the signed copy back to Abesamis.[36]

Abesamis contended that prior to his appointment on October 19, 2007, he had neither known nor met Agtay. For the charges imputed against him, Abesamis charged Joson with malicious prosecution and perjury.[37]

Joson filed his Reply-Affidavits dated October 24, 2008[38] and November 11, 2008,[39] where he denied the allegations of Umali, Pallanan, and Abesamis. He noted that there was no denial from Umali or Pallanan that Ryan Angelo Catering did not supply the packed food for the event. According to Joson, Pallanan blamed Agtay alone, while Umali shifted the blame to his subordinates. There was also no denial from Umali, Pallanan, Agtay, or Abesamis that the number of food provided was not proportional to the maximum capacity of the oath-taking ceremony venue. Furthermore, Umali and Pallanan's signing of the Purchase Order, Obligation Request, and Disbursement Voucher showed that they participated and prepared the documents.[40]

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

[37] *Id*. at 77.

[38] *Id*. at 87-92.

[39] *Id*. at 93-100.

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

On December 4, 2009, Graft Investigation and Prosecution Officer I Francis Euston R. Acero (Prosecutor Acero) of the Office of the Ombudsman issued a Joint Resolution[41] dismissing all charges against Umali, Abesamis, Agtay, Pancho, and Pallanan. He cited lack of probable cause for dismissing the criminal charges and lack of merit for dismissing the administrative charge.[42] Prosecutor Acero found that Joson's allegations were not supported by evidence and were merely based on conjectures and suppositions.[43]

On the violation of Section 3(e) and (g) of Republic Act No. 3019, Prosecutor Acero held that the evidence was insufficient to prove undue injury on Cleopatra or on the Provincial Government of Nueva Ecija.[44] Likewise, Joson's allegation on the terms of the Purchase Order being "grossly disadvantageous to the government" was unsubstantiated.[45] Prosecutor Acero noted that the subject Purchase Order complied with the standard Purchase Order form.[46]

On the violation of Article 213 of the Revised Penal Code, Prosecutor Acero found that there was not enough evidence to prove that private respondents committed fraud to use public funds for their personal benefit. Joson failed to establish the existence of the other catering supplier that supposedly provided the food during the event, and of deposit slips proving that the proceeds of the check were deposited to Agtay's account.[47]

On the violations of Section 3(h) of Republic Act No. 3019, Section 7 of Republic Act No. 6713, and Article 215 of the Revised Penal Code, Prosecutor Acero held that there was no

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[41] *Id*. at 20-33.

[42] *Id*. at 31.

[43] *Id*. at 26-31.

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

[45] *Id*. at 28.

[46] *Id*.

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

sufficient evidence that could establish private respondents' prohibited material or pecuniary interest in the unnamed caterer. Again, aside from the uncorroborated allegation of Joson, there was no indication that another caterer served the meals in the convention center.[48]

On the allegation of grave misconduct, Prosecutor Acero found that Joson was not able "to demonstrate that [private] respondents, in the performance of their functions, have engaged in intentional wrongdoing or have committed a deliberate violation of a rule of law or standard of behavior."[49]

On Abesamis' counter-charge of perjury against Joson, Prosecutor Acero held that there was no sufficient basis to conclude that Joson's statements on Abesamis and Agtay's conspiracy was "a deliberate assertion of a falsehood."[50] Joson did not mention in his complaint any circumstance which could show that Cleopatra and Abesamis met before the latter assumed office. Cleopatra also stated in her sworn affidavit that her meeting with Abesamis occurred when he was already serving as an officer in the provincial government.[51]

The dispositive portion of the Joint Resolution read:

WHEREFORE, premises considered, the undersigned Graft Investigation and Prosecution Officer respectfully recommends that:

1. The charges against respondents Aurelio M. Umali, Alejandro R. Abesamis, Giovanni G. Agtay, Edilberto M. Pancho, and Jaime P. Pallanan for *Violation of Secs. 3 (e), (g), and (h), Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act; Frauds on the Public Treasury; Prohibited Transactions; Possession of a Prohibited Interest; Malversation; and Violation of Republic Act No. 6713*, be **DISMISSED** for lack of probable cause;

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[48] *Id*.

[49] *Id*. at 31.

[50] *Id*. at 30.

[51] *Id*. at 30-31.

2. The [charge] against respondents Aurelio M. Umali, Alejandro R. Abesamis, Giovanni G. Agtay, Edilberto M. Pancho, and Jaime P. Pallanan for *Grave Misconduct* be **DISMISSED** for lack of merit; and

3. The counter-charge against complainant Edward Thomas F. Joson for *Perjury* be **DISMISSED** for lack of merit.

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

Joson moved for reconsideration,[53] which was denied by Prosecutor Acero in his May 9, 2011 Order for being filed out of time.[54] Even if the Motion for Reconsideration would be given due course, it would still be denied for lack of merit.[55]

Hence, on July 15, 2011, Joson filed this Petition for Certiorari[56] against the Office of the Ombudsman, Umali, Agtay, Abesamis, Pancho, and Pallanan. He prays that the December 4, 2009 Joint Resolution and the May 9, 2011 Order of the Office of the Ombudsman be set aside.[57]

Petitioner argues that Cleopatra's testimony "remained rock solid."[58] There was no denial from respondents Umali and Pallanan on the truthfulness of Cleopatra's allegations in her sworn statement. Both respondents evaded responsibility by blaming their subordinates or fellow private respondents. Moreover, respondent Umali was "not only a mere signatory to the documents but a principal who acted in conspiracy with his co-respondents to commit fraud and corruption against the coffers of the provincial government."[59]

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[52] *Id*. at 31.

[53] *Id*. at 119-126.

[54] *Id*. at 37-38.

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

[56] *Id*. at 3-19.

[57] *Id*. at 16-17.

[58] *Id*. at 9.

[59] *Id*. at 10.

Petitioner also stresses the excessive quantity of packed lunches that was allegedly delivered to the Nueva Ecija Convention Center for the oath-taking ceremony.[60]

With respect to private respondent Abesamis, petitioner claims that he made contradicting statements in his Counter-Affidavit. Private respondent Abesamis stated that the Memorandum of Agreement was legally defective for not being signed by the former governor and the witnesses and for not being notarized, yet he recognized its validity when he was trying to arrange a new canteen operator.[61] Further, respondent Abesamis admitted that he talked to Cleopatra several times regarding the early termination of the Memorandum of Agreement and that he prepared the termination notice for Cleopatra's signature.[62]

Petitioner points out that private respondent Agtay's acknowledgment of his lack of participation to the catering transaction and of the documents' lack of his signature implies that the private respondents who signed these documents were principals of the complained acts.[63]

Lastly, petitioner avers that Cleopatra had no motive to implicate private respondents Abesamis and Agtay.[64] Thus, the allegations in her sworn statement are "the truth and nothing else."[65]

On October 14, 2011, private respondents Umali, Abesamis, Pancho, and Pallanan filed their consolidated Comment.[66] They argue that petitioner's Motion for Reconsideration filed with the Ombudsman was not timely filed.[67] Also, petitioner lacked

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[60] *Id*. at 11.

[61] *Id*. at 13.

[62] *Id*. at 14.

[63] *Id*.

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

[65] *Id*. at 13.

[66] *Id*. at 288-305.

[67] *Id*. at 290-292.

personality to sue considering that Cleopatra was the one allegedly prejudiced.[68] Furthermore, petitioner should have appealed the Decision of the Office of the Ombudsman, regarding the administrative case, to the Court of Appeals under Rule 43 of the Rules of Court instead of filing a Petition for Certiorari under Rule 65.[69]

Private respondents assert, that the re-election of Umali as governor of Nueva Ecija for the second time "operated as a condonation of his purported administrative infractions and the right to remove him from office."[70] Private respondents Umali, Pancho, and Pallanan add that they merely performed their usual duties when they signed the documents.[71]

On November 14, 2011, public respondent Office of the Ombudsman filed its Comment.[72] It maintains that petitioner should have elevated the administrative case to the Court of Appeals under Rule 43 of the Rules of Court.[73] It argues that the dismissal of private respondents' cases was based on sufficient basis; hence, it did not commit grave abuse of discretion.[74]

On February 3, 2012, private respondent Agtay filed his Comment.[75] He contends that petitioner's Motion for Reconsideration was filed out of time and that the Office of the Ombudsman did not commit grave abuse of discretion when it dismissed the cases against private respondents.[76]

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[68] *Id*. at 292-293.

[69] *Id*. at 294.

[70] *Id*.

[71] *Id*. at 297-298.

[72] *Id*. at 306-320.

[73] *Id*. at 312-313.

[74] *Id*. at 313-318.

[75] *Id*. at 330-336.

[76] *Id*. at 331-335.

On October 22, 2012, petitioner filed his Consolidated Reply,[77] He asserts that his Motion for Reconsideration before the Office of the Ombudsman and the Petition for Certiorari before this Court were both filed on time.[78] He also argues that the Petition for Certiorari under Rule 65 is proper since the remedy under Rule 43 "can only be availed of in all other cases except in the case when the respondent is absolved of the charge, among others."[79] Petitioner insists that the Office of the Ombudsman committed grave abuse of discretion when it dismissed the charges considering that "[t]he evidence on hand sufficiently supports a finding of probable cause."[80] He notes that private respondents did not deny the existence of another caterer; thus, they impliedly admitted that another caterer provided the meals in the event.[81]

On January 30, 2013, this Court issued a Resolution,[82] giving due course to the petition and requiring the parties to file their respective memoranda.

Respondents (1) Office of the Ombudsman; (2) Umali, Abesamis, and Pancho; (3) Agtay; and (4) Pallanan filed their respective Memoranda on May 15, 2013,[83] May 24, 2013,[84] May 27, 2013,[85] and October 1, 2013,[86] respectively. Petitioner submitted his Memorandum[87] on June 18, 2013. All Memoranda

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[77] *Id*. at 348-353.

[78] *Id*. at 348-349.

[79] *Id*. at 349.

[80] *Id*. at 350.

[81] *Id*.

[82] *Id*. at 368-369.

[83] *Id*. at 379-390.

[84] *Id*. at 402-427.

[85] *Id*. at 428-433.

[86] *Id*. at 464-468.

[87] *Id*. at 440-456.

contained a rehash of the parties' arguments in their previous pleadings.

This Court resolves the following issues:

First, whether or not petitioner Edward Thomas F. Joson's late filing of his motion for reconsideration bars him from instituting a Petition for Certiorari under Rule 65;

Second, whether or not petitioner Edward Thomas F. Joson's resort to Rule 65 instead of Rule 43 is proper; and

Finally, whether or not public respondent Office of the Ombudsman committed grave abuse of discretion in dismissing the charges against private respondents Aurello M. Umali, Giovanni G. Agtay, Alejandro R. Abesamis, Edilberto M. Pancho, and Jaime P. Pallanan.

I

Ombudsman Administrative Order No. 07, as amended by Ombudsman Administrative Order No. 09, provides for the procedure to be followed by an aggrieved party when moving for reconsideration of the Office of the Ombudsman's criminal or administrative decisions. Rule II, Section 7 and Rule III, Section 8 of the Rules of Procedure of the Office of the Ombudsman provide:

Rule II
PROCEDURE IN CRIMINAL CASES

. . . . . .

Section 7. Motion for reconsideration —

a) Only one motion for reconsideration or reinvestigation of an, approved order or resolution shall be allowed, the same to be filed *within five (5) days from notice thereof* with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, . . .

. . . . . .

RULE III
PROCEDURE IN ADMINISTRATIVE CASES

. . . . . .

Section 8. Motion for reconsideration or reinvestigation; Grounds. — Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed *within ten (10) days from receipt of the decision or order by the party* . . . (Emphasis supplied)

Under the Office of the Ombudsman's Rules of Procedure, an aggrieved party may file a motion for reconsideration (a) within five (5) days from receipt of notice of the assailed decision in a criminal case or (b) within 10 days from receipt of notice of the Office of the Ombudsman's decision in an administrative case.

Petitioner's Motion for Reconsideration was filed beyond the required period. Petitioner received a copy of the December 4, 2009 Joint Resolution on February 8, 2011.[88] He could have filed a motion for reconsideration of the decision in the criminal case within five (5) days from receipt or until February 13, 2011, or that in the administrative case within 10 days from receipt or until February 18, 2011. However, he filed his Motion for Reconsideration only on February 23, 2011,[89] which was 10 days late with respect to the criminal case and five (5) days late with respect to the administrative case.

The Office of the Ombudsman was correct in holding that it lost jurisdiction over the case as a result of the late filing of the motion and that its December 4, 2009 Joint Resolution had become final.

In *Asia United Bank v. Goodland Company, Inc.*,[90] this Court clarified:

The emerging trend of jurisprudence is more inclined to the liberal and flexible application of the Rules of Court. However, we have not been remiss in reminding the bench and the bar that zealous

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[88] *Rollo*, p. 4.

[89] *Id*. at 119.

[90] 650 Phil. 174 (2010) [Per *J.* Nachura, Second Division].

compliance with the rules is still the general course of action. Rules of procedure are in place to ensure the orderly, just, and speedy dispensation of cases; to this end, inflexibility or liberality must be weighed. The relaxation or suspension of procedural rules or the exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it.

As early as 1998, in *Hon. Fortich v. Hon. Corona*, we expounded on these guiding principles:

> Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that "all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies." The adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. There have been some instances wherein this Court allowed a relaxation in the application of the rules, but this flexibility was "never intended to forge a bastion for erring litigants to violate the rules with impunity," A liberal interpretation and application of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances.

In *Sebastian v. Hon. Morales*, we straightened out the misconception that the enforcement of procedural rules should never be permitted if it would prejudice the substantive rights of litigants:

> Under Rule 1, Section 6 of the 1997 Rules of Civil Procedure, liberal construction of the rules is the controlling principle to effect substantial justice. Thus, litigations should, as much as possible, be decided on their merits and not on technicalities. This does not mean, however, that procedural rules are to be ignored or disdained at will to suit the convenience of a party. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement

> of disputes. Hence, it is a mistake to suppose that substantive law and procedural law are contradictory to each other, or as often suggested, that enforcement of procedural rules should never be permitted if it would result in prejudice to the substantive rights of the litigants.
>
> . . . Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. . .

Indeed, the primordial policy is a faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Further, a bare invocation of "the interest of substantial justice" will not suffice to override a stringent implementation of the rules.[91] (Emphasis in the original, citations omitted)

Nonetheless, this Court has allowed the relaxation of procedural rules to ensure the realization of substantial justice in several instances.[92] In *Barnes v. Hon. Quijano Padilla*:[93]

[T]he Rules of Court itself calls for its liberal construction, with the view of promoting their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural

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[91] *Id*. at 183-185. See also *Lazaro v. Court of Appeals*, 386 Phil. 412, 417-418 (2000) [Per *J*. Panganiban, Third Division] and *Building Care Corporation/Leopard Security & Investigation Agency, et al. v. Macaraeg*, 700 Phil. 749, 755-756 (2012) [Per *J*. Peralta, Third Division].

[92] *Barnes v. Hon. Quijano Padilla*, 500 Phil. 303, 309-311 (2005) [Per *J*. Austria-Martinez, Second Division]; *Abaigar v. Abaigar*, 535 Phil. 860, 864 (2006) [Per *J*. Carpio Morales, Third Division]; *City of Dagupan v. Maramba*, 738 Phil. 71, 87-89 (2014) [Per *J*. Leonen, Third Division].

[93] 500 Phil. 303 (2005) [Per *J*. Austria-Martinez, Second Division].

rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard. In numerous cases, the Court has allowed liberal construction of the Rules of Court with respect to the rules on the manner and periods for perfecting appeals, when to do so would serve the demands of substantial justice and in the exercise of equity jurisdiction of the Supreme Court, As the Court has expounded in *Aguam vs. Court of Appeals*:

> . . . The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." *Litigations must be decided on their merits and not on technicality*. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. *It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.*
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> . . . . . .

In the *Ginete* case, the Court held:

> . . . . . .
>
> Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of

> justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, as we are now constrained to do in the instant case.
>
> *The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.*[94] (Emphasis in the original, citations omitted)

Although a motion for reconsideration is required before this Court can entertain a petition for certiorari,[95] this rule admits of certain exceptions, which were enumerated in *Tan v. Court of Appeals*;[96]

> (a) [W]here the order is a patent nullity, as where the Court a quo had no jurisdiction; (b) *where the questions raised in the certiorari proceeding have been duly raised and passed upon by [the] lower court, or are the same as those raised and passed upon in the lower court*; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for

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[94] *Id*. at 309-311.

[95] *Office of the Ombudsman v. Laja*, 522 Phil. 532, 538 (2006) [Per *J*. Ynares-Santiago, First Division]; *Metro Transit Organization, Inc., et al. v. PIGLAS NFWU-KMU, et al*., 574 Phil. 481, 490-491 (2008) [Per *J*. Chico-Nazario, Third Division]; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto, et al*., 603 Phil. 18, 31 (2009) [Per *J*. Carpio Morales, Second Division]; *Republic v. Pantranco North Express, Inc., et al.*, 682 Phil. 186, 193 (2012) [Per *J*. Villarama, Jr., First Division]; *Abdulrahman v. Office of the Ombudsman for Mindanao, et al*., 716 Phil. 592, 603 (2013) [Per *C.J*. Sereno, First Division]; *Sen. Estrada v. Office of the Ombudsman, et al*., 751 Phil. 821, 877- 878 (2015) [Per *J*. Carpio, *En Banc*].

[96] 341 Phil. 570 (1997) [Per *J*. Francisco, Third Division].

reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial [c]ourt is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[97] (Emphasis supplied, citations omitted)

Even if this Court grants an exception to this case, the petition will still fail on other procedural grounds and on its merits.

II

Private and public respondents argue that petitioner should have appealed the assailed decisions of the Office of the Ombudsman by filing a Rule 43 petition. Petitioner insists that he availed of the correct remedy.

This Court finds for the respondents.

In administrative complaints, the Office of the Ombudsman's decision may be appealed to the Court of Appeals via Rule 43. Judicial review of decisions of the Office of the Ombudsman in administrative cases was previously directed to this Court as provided in Section 27 of Republic Act No. 6770 or The Ombudsman Act of 1989:

> Section 27. Effectivity and Finality of Decisions. — (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory.
>
> A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds;
>
> (1) New evidence has been discovered which materially affects the order, directive or decision;

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[97] *Id*. at 576-578.

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require. (Emphasis supplied)

However, in *Fabian v. Hon. Desierto*,[98] this Court declared Section 27 unconstitutional for increasing this Court's appellate jurisdiction in violation of the proscription under Article VI, Section 30[99] of the Constitution.[100] This Court further held in *Fabian* that "appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43."[101]

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[98] 356 Phil. 787 (1993) [Per *J.* Regalado. *En Banc*].

[99] CONST., Art. VI, Sec. 30 provides:

Article VI. The Legislative Department

. . . . . .

Section 30. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

[100] *Fabian v. Hon. Desierto*, 356 Phil. 787, 810 (1998) [Per *J.* Regalado, *En Banc*].

[101] *Id.* at 808.

In the recent case of *Joson v. Office of the Ombudsman*,[102] the same petitioner in this case filed a petition for certiorari under Rule 65 before this Court assailing the Office of the Ombudsman's Joint Resolution and Joint Order in OMB-L-C-08-0315-D and OMB-L-A-08-0245-D.[103] The Ombudsman dismissed the administrative and criminal charges against respondents in that case, namely, Aurelio M. Umali, Alejandro R. Abesamis, Ferdinand R. Abesamis (Ferdinand), Edilberto M. Pancho, and Ma. Christina G. Roxas.[104] These respondents were allegedly involved in the invalid appointment of Ferdinand as Consultant-Technical Assistant in Nueva Ecija's provincial government.[105]

In the criminal case, this Court found no grave abuse of discretion on the part of the Office of the Ombudsman.[106] In the administrative case, this Court held:

> With respect to the dismissal of the administrative charge for gross misconduct, the Court finds that the same has already attained finality because Joson failed to file a petition for *certiorari* before the Court of Appeals (*CA*).
>
> The assailed ruling of the Ombudsman absolving the private respondents of the administrative charge possesses the character of finality and, thus, not subject to appeal. Section 7, Rule III of the Ombudsman Rules provides:
>
> > SECTION 7. *Finality of decision*.— Where the respondent is *absolved of the charge*, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be *final and unappealable*. In all other cases, the decision shall become final after the expiration of ten

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[102] G.R. Nos. 210220-21, April 6, 2016, 783 SCRA 647 [Per *J*. Mendoza, Second Division].

[103] *Id*. at 651.

[104] *Id*. at 656-657.

[105] *Id*. at 651-653.

[106] *Id*. at 657-664.

(10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him as prescribed in Section 27 of RA 6770.

In *Reyes, Jr. v. Belisario*, the Court wrote:

> The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or fine a[n] equivalent to one-month salary.

Though final and unappealable in the administrative level, the decisions of administrative agencies are still subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law, or when such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion. *Specifically, the correct procedure is to file a petition for certiorari before the CA to question the Ombudsman's decision of dismissal of the administrative charge. Joson, however, failed to do this. Hence, the decision of the Ombudsman exonerating the private respondents from the charge of grave misconduct had already become final.* In any event, the subject petition failed to show any grave abuse of discretion or any reversible error on the part of the Ombudsman to compel this Court to overturn its assailed administrative ruling.[107] (Emphasis supplied, citations omitted)

Incidentally, in *Carpio-Morales v. Court of Appeals*,[108] this Court also declared the first paragraph of Section 14 of Republic Act No. 6770 as ineffective and its second paragraph as unconstitutional.[109] Section 14 states:

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[107] *Id*. at 664-665.

[108] 772 Phil. 672 (2015) [Per *J*. Perlas-Bernabe, *En Banc*].

[109] *Id*. at 781.

Section 14. Restrictions. — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a *prima facie* evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law. (Emphasis supplied)

In *Carpio-Morales*, Ombudsman Conchita Carpio-Morales filed a petition for certiorari and prohibition before this Court assailing the Court of Appeals Resolutions, which issued a Temporary Restraining Order in favor of Jejomar Erwin S. Binay, Jr. and directed the Ombudsman to file her Comment.[110] She argued that under the second paragraph of Section 14 of Republic Act No. 6770, only this Court has "the sole jurisdiction to conduct a judicial review of [the Ombudsman's] decisions or findings[.]"[111]

This Court held that the second paragraph of Section 14 is similar to the fourth paragraph of Section 27, in that it "limits the remedy against 'decision or findings' of the Ombudsman to a Rule 45 appeal[.]"[112] Since the provision "attempts to effectively increase the Supreme Court's appellate jurisdiction without its advice and concurrence, it is therefore . . . unconstitutional and perforce, invalid."[113]

Nonetheless, a party may elevate the Office of the Ombudsman's dismissal of a criminal complaint to this Court via a special civil action under Rule 65 of the 1997 Rules of Civil Procedure if there is an allegation of "grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the

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[110] *Id*. at 694-695.

[111] *Id*. at 695.

[112] *Id*. at 716.

[113] *Id*.

ordinary course of law[.]"[114] In *Acuña v. Deputy Ombudsman for Luzon*:[115]

> The remedy of an aggrieved party in criminal complaints before the Ombudsman is to file with this Court a petition for *certiorari* under Rule 65, Thus, we held in ***Tirol, Jr. v. Del Rosario***:
>
> > The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases, As we ruled in *Fabian* [*v. Desierto*], the aggrieved party (in administrative cases) is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.
> >
> > However, an aggrieved party is not without recourse where the finding of the Ombudsman ... is tainted with grave abuse of discretion, amounting to lack (or) excess of jurisdiction. *An aggrieved party may file a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure*.[116] (Emphasis in the original, citations omitted)

Here, petitioner's failure to avail of the correct procedure with respect to the administrative case renders the Office of the Ombudsman's decision final. Furthermore, the present case fails even on its merits.

III

Petitioner charges private respondents of violating the following provisions of Republic Act No. 3019:

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[114] RULES OF COURT, Rule 65, Sec. 1. See also *Enemecio v. Office of the Ombudsman*, 464 Phil. 102, 113 (2004) [Per *J.* Carpio, First Division], *Joson v. Office of the Ombudsman*, G.R. Nos. 210220-21, April 6, 2016, 788 SCRA 647 [Per *J.* Mendoza, Second Division]; and *Artex Development Co., Inc. v. Office of the Ombudsman*, G.R. No. 203538, June 27, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/203538.pdf> [Per *J.* Brion, Second Division].

[115] 490 Phil. 640 (2005) [Per *J.* Carpio, First Division].

[116] *Id*. at 649, citing *Tirol, Jr. v. Justice Del Rosario*, 376 Phil. 115, 122 (1999) [Per *J.* Pardo, First Division].

REPUBLIC ACT NO. 3019
(Anti-Graft and Corrupt Practices Act)

. . . . . .

Section 3. *Corrupt practices of public officers*. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

. . . . . .

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

. . . . . .

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

(h) Directly or indirectly having financing or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

Likewise, petitioner charges them with the following provisions under the Revised Penal Code:

REVISED PENAL CODE

. . . . . .

Article 213. *Frauds Against the Public Treasury and Similar Offenses*. — The penalty of prision correccional in its medium period to prision mayor in its minimum period, or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

1. In his official capacity, in dealing with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds, shall enter into an agreement with any interested party or speculator or make use of any other scheme, to defraud the Government[.]

. . . . . .

Article 215. *Prohibited Transactions*. — The penalty of prision correccional in its minimum period or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any appointive public officer who, during his incumbency, shall directly or indirectly become interested in any transaction of exchange or speculation within the territory subject to his jurisdiction.

Article 216. *Possession of Prohibited Interest by a Public Officer*. — The penalty of arresto mayor in its medium period to prision correccional in its minimum period, or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon a public officer who, directly or indirectly, shall become interested in any contract or business in which it is his official duty to intervene.

. . . . . .

Article 217. *Malversation of Public Funds or Property — Presumption of Malversation*. — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

. . . . . .

4. The penalty of reclusion temporal in its minimum and medium periods, if the amount involved is more than 12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its medium and maximum periods.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine ranging from one-half to the total value of the funds or property embezzled.

Petitioner also alleges that private respondents violated Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. This Code "punishes any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, who violates the provisions of said code."[117] Petitioner asserts that they should be held liable for "grave abuse of discretion, misconduct in office, and irregularity in the performance of duties."[118]

For dismissing the criminal and administrative charges against private respondents, petitioner maintains that the Office of the Ombudsman committed grave abuse of discretion.

Petitioner's contention has no merit.

At the onset, this Court reiterates the policy of non-interference with the Office of the Ombudsman's determination of probable cause.[119] Probable cause is defined as "the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted."[120] Thus, an allegation of grave abuse of

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[117] *Rollo*, p. 16.

[118] *Id*.

[119] *Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, December 7, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf > 16-17 [Per *J*. Leonen, Second Division]; *Joson v. Office of the Ombudsman*, G.R. Nos. 210220-21, April 6, 2016, 788 SCRA 647, 663 [Per *J*. Mendoza, Second Division]; *Tetangco v. Ombudsman*, 515 Phil. 230, 234 (2006) [Per *J*. Quisumbing, Third Division]; *Casing v. Hon. Ombudsman, et al.*, 687 Phil. 468, 475-476 (2012) [Per *J*. Brion, Second Division].

[120] *Metropolitan Bank & Trust Co. v. Gonzales*, 602 Phil. 1000, 1009 (2009) [Per *J*. Chico-Nazario, Third Division].

discretion must be substantiated before this Court can exercise its power of judicial review. As held in *Tetangco v. Ombudsman*:[121]

> It is well-settled that the Court will not ordinarily interfere with the Ombudsman's determination of whether or not probable cause exists except when it commits grave abuse of discretion. Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law. Thus, we held in *Roxas v. Vasquez,*
>
> > . . . this Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the Court will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[122] (Citations omitted)

In this case, petitioner Joson foiled to show that the Office of the Ombudsman acted in an "arbitrary, capricious, whimsical or despotic manner."[123] The Office of the Ombudsman laboriously discussed each and every charge of petitioner by enumerating the elements of each law and pointing out where petitioner fell short in evidence. As correctly held by the Office of the Ombudsman:

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[121] 515 Phil. 230 (2006) [Per *J.* Quisumbing, Third Division].

[122] *Id*. at 234-235.

[123] *Id*. at 234.

There is insufficient evidence to prove undue injury, which, in contemplation of Sec. 3 (e) of the Anti-Graft and Corrupt Practices Act, has been defined as equivalent to actual damages in civil law, on either Cleopatra G. Gervacio or the Provincial Government of Nueva Ecija. The evidence shows that there was, for the benefit of the Provincial Government of Nueva Ecija, a catered reception in the Nueva Ecija Convention Center, for which payment was made by the Provincial Government of Nueva Ecija to Ryan Angelo Sweets & Catering pursuant to a Purchase Order dated 4 July 2007, and under the terms specified therein.

On the other hand, the assertions of complainant (1) that there was another catering service actually providing catering services that day; and (2) that respondent Agtay received any of the proceeds of DBP Check . . . both remain uncorroborated. In other words, there has been no showing of a cause of action on the part of Cleopatra G. Gervacio sufficient for her to claim actual damages by the acts or omissions of respondents, aside from the bare say-so of complainant. For these reasons, the evidence submitted is also insufficient to show precisely what actual damages on the part of Provincial Government of Nueva Ecija were caused by the acts or omissions of respondents.

. . . . . .

As regards the grant of unwarranted benefit, advantage, or preference to a private party, the evidence is insufficient to support a finding that a caterer other than Ryan Angelo Sweets & Catering provided the meals, as to assume otherwise would be to delve in surmise and speculation.

. . . . . .

As regards the Purchase Order dated 4 July 2007, complainant has offered no evidence to support [his] assertion why the terms of the Purchase Order dated 4 July 2007 is grossly disadvantageous to the government. It is noted that the terms of the Purchase Order were made through the standard Purchase Order form[.]

. . . . . .

The evidence is insufficient to establish fraud on the part of respondents. Although the reception for respondent Umali's induction as Governor has been established, the existence of a catering service provider other than Ryan Angelo Sweets & Catering at the Nueva Ecija Convention Center on 4 July 2007 has not been established by

the evidence. What the evidence supports is a finding that it was Ryan Angelo Sweets & Catering that provided the meals on that day. What is more, the deposit and/or constructive receipt of respondent Agtay of the proceeds of DBP Check . . . remains uncorroborated by a person with personal knowledge that the proceeds of the said check have been deposited into an account of respondent Agtay, or by deposit slips indicating that such a deposit has in fact been made.

. . . . . .

A finding that respondents have violated [Article 215 of the Revised Penal Code, Section 3(h) of Republic Act No. 3019, and Section 7 of Republic Act No. 6713] cannot be made because such undue interest is an essential element for criminal liability under these provisions of law. The evidence bears no indication of the existence of a caterer other than Ryan Angelo Sweets & Catering operating in the Nueva Ecija Convention Center at the induction of respondent Umali, save from barefaced supposition of complainant based on an alleged transaction between Cleopatra G. Gervacio and respondent Agtay. Bare suppositions, without more, cannot support a finding that respondents have an undue interest in the said unknown caterer necessary to sustain criminal charges.

. . . . . .

There is no evidence in the case at bar that demonstrates that respondent had either such manifest or clear intent to violate the law or exhibit a flagrant disregard for established rule, save for the bare suppositions and surmises of complainant, which by itself is not substantial evidence to support a finding in an administrative adjudication. Neither has complainant been able to demonstrate that respondents, in the performance of their functions, have engaged in intentional wrongdoing or have committed a deliberate violation of a rule of law or standard of behavior.[124] (Citations omitted)

Upon its finding that there is no sufficient evidence to support the charges against private respondents, the Office of the Ombudsman dismissed them in conformity with Rule II, Section 2[125] and

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[124] *Rollo*, pp. 26-31.

[125] RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule II, Sec. 2 provides:

Rule III, Section 4[126] of the Rules of Procedure of the Office of the Ombudsman. Thus, no grave abuse of discretion can be attributed to the Office of the Ombudsman.

WHEREFORE, the Petition for Certiorari is **DISMISSED**. The December 4, 2009 Joint Resolution and May 9, 2011 Order of the Office of the Ombudsman in OMB-C-C-08-0343-H and OMB-C-A-08-0383-H are **AFFIRMED**.

SO ORDERED.

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

Section 2. Evaluation – Upon evaluating the complaint, the investigating officer shall recommend whether it may be:

a) *dismissed outright for want of palpable merit*;

b) referred to respondent for comment;

c) indorsed to the proper government office or agency which has jurisdiction over the case;

d) forwarded to the appropriate office or official for fact-finding investigation;

e) referred for administrative adjudication; or

f) subjected to a preliminary investigation. (Emphasis supplied)

[126] RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule in, Sec. 4 provides:

Section 4. Evaluation. – Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be:

a) *dismissed outright for any of the grounds stated under Section 20 of RA 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;*

b) treated as a grievance/request for assistance which may be referred to the Public Assistance Bureau, this Office, for appropriate action under Section 2, Rule IV of this Rules;

c) referred to other disciplinary authorities under paragraph 2, Section 23, RA 6770 for the taking of appropriate administrative proceedings;

d) referred to the appropriate office/agency or official for the conduct of further fact-finding investigation; or

e) docketed as an administrative case for the purpose of administrative adjudication by the Office of the Ombudsman. (Emphasis supplied)

FIRST DIVISION

[G.R. No. 197797. August 9, 2017]

HEIRS OF JOSE PEÑAFLOR, namely: JOSE PEÑAFLOR, JR. and VIRGINIA P. AGATEP, represented by JESSICA P. AGATEP, *petitioners, vs.* **HEIRS OF ARTEMIO and LYDIA DELA CRUZ, namely: MARILOU, JULIET, ROMEO, RYAN, and ARIEL, all surnamed DELA CRUZ,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; ACT 3135, AS AMENDED (AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES); EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; ISSUANCE OF WRIT OF POSSESSION TO THE PURCHASER IN A FORECLOSURE SALE IS A MINISTERIAL DUTY OF THE TRIAL COURT UPON MERE *EX-PARTE* MOTION; DISCUSSED.— "It is well-settled that the purchaser in an extrajudicial foreclosure of real property becomes the *absolute* owner of the property if no redemption is made within one [(1)] year from the registration of the certificate of sale by those entitled to redeem. As absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, not least of which is possession, or *jus possidendi*[.]" "Possession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership, after consolidation of title[,] the purchaser in a foreclosure sale may demand possession as a matter of right. This is why Section 7 of Act No. 3135, as amended by Act No. 4118 imposes upon the RTC a ministerial duty to issue a writ of possession to the new owner upon a mere *ex parte* motion.

2. ID.; ID.; ID.; ID.; ADVERSE POSSESSION AS AN EXCEPTION THERETO CONTEMPLATES A SITUATION IN WHICH A THIRD PARTY HOLDS THE PROPERTY BY ADVERSE TITLE OR RIGHT; THE PROCEDURE IS FOR THE TRIAL COURT TO ORDER A HEARING TO

DETERMINE THE NATURE OF ADVERSE POSSESSION. — Section 33, Rule 39 of the Rules of Court — which is applied to extrajudicial foreclosure of mortgages per Section 6 of Act No. 3135 — provides that upon the expiration of the redemption period, the possession of the property shall be given to the purchaser or last redemptioner, **unless a third party is actually holding the property adversely to the judgment obligor**. "In *China Banking Corporation v. Spouses Lozada*, it was held that for the court's ministerial duty to issue a writ of possession to cease, it is not enough that the property be held by a third party, but rather the said possessor **must have a claim thereto adverse to the debtor/mortgagor**: x x x Specifically, the Court held that to be considered in adverse possession, **the third party possessor must have done so in his own right and not merely as a successor or transferee of the debtor or mortgagor**: The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. x x x. Thus, in *BPI Family*, the Court ruled that it was an error to issue an *ex parte* writ of possession to the purchaser in an extrajudicial foreclosure, or to refuse to abate one already granted, **where a third party has raised in an opposition to the writ or in a motion to quash the same, his actual possession thereof upon a claim of ownership or a right adverse to that of the debtor or mortgagor. The procedure, according to *Unchuan v. CA*, is for the trial court to order a hearing to determine the nature of the adverse possession, conformably with the time-honored principle of due process.**"

3. CIVIL LAW; PROPERTY; MODES OF ACQUIRING OWNERSHIP; WAIVER OF CIVIL RIGHTS IS NOT A DERIVATIVE MODE OF OWNERSHIP.— By virtue of the May 3, 1989 waiver, Nicolasa *supposedly* waived, renounced, transferred, and quitclaimed all her rights, interests, and participation over the subject property to Artemio. **However, a mere waiver of rights is not an effective mode of transferring ownership under our Civil Code.** In *Acap v.*

CA (Acap), it was ruled that "[u]nder Article 712 of the Civil Code, the modes of acquiring ownership are generally classified into two (2) classes, namely, the **original mode** (*i.e.*, through occupation, acquisitive prescription, law or intellectual creation) and the **derivative mode** (*i.e.*, through succession *mortis causa* or tradition as a result of certain contracts, such as sale, barter, donation, assignment or *mutuum*). By its terms, the May 3, 1989 Waiver cannot be classified as any of these kinds of contracts from which Artemio could derive ownership of the subject property. It cannot be classified as a sale (because there is no price certain in money or its equivalent); as a barter (because of the lack of any other thing given as consideration); a donation (because of the lack of *animus donandi* and even a formal acceptance) an assignment (because of the lack of price); and/or a *mutuum* (because it is not a loan). Neither can it be considered as an assignment either by onerous or gratuitous title so as to conclude that Nicolasa had already lost her right to possess the subject property to Artemio prior to its mortgage. Notably, in *Acap*, the Court debunked the lower court's characterization of a certain Declaration of Heirship and Waiver of Rights to a contract of sale, holding that the private respondent therein cannot conclusively claim ownership of the property subject of that case on the sole basis of a waiver document which neither recites the elements of either a sale or a donation, or any other derivative mode of acquiring ownership.

SERENO, *C.J., dissenting opinion*:

1. MERCANTILE LAW; ACT 3135, AS AMENDED (AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES); EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; ISSUANCE OF WRIT OF POSSESSION IS MINISTERIAL UPON THE COURT AFTER THE FORECLOSURE SALE AND DURING THE REDEMPTION PERIOD.— The well-settled rule is that in the extrajudicial foreclosure of real estate mortgage under Act No. 3135, the issuance of a writ of possession is ministerial upon the court after the foreclosure sale and during the redemption period. In the latter period, the court may issue an order for a writ of possession upon the mere filing of an *ex parte* motion and the

approval of the corresponding bond. A writ of possession also issues as a matter of course without need of a bond or of a separate and independent action after the lapse of the period of redemption and the consolidation of ownership in the purchaser's name.

2. **ID.; ID.; ID.; ID.; AN EXCEPTION THERETO IS WHEN A THIRD PARTY IN POSSESSION OF THE PROPERTY CLAIMS A RIGHT ADVERSE TO THAT OF THE DEBTOR-MORTGAGOR IN A FORECLOSURE SALE.—** There are, x x x, several exceptions to this ministerial duty established by law and jurisprudence. One of the exceptions is that which was first enunciated in *Barican v. Intermediate Appellate Court* in line with Section 33, Rule 39 of the Rules of Court: when a third party in possession of the property claims a right adverse to that of the debtor-mortgagor in a foreclosure case. The threshold issue in this case revolves around this particular exception. x x x [T]here are three requisites that must concur for the exception to apply: 1. The claimant must be a third party. 2. The claimant must be in actual possession of the subject property. 3. The third party in possession must claim a right adverse to that of the debtor or mortgagor in the foreclosure proceedings. The vast body of case law on the exception provides an insight into the specifics of each requisite. Under the *first requisite*, to be considered a third party means that the claimant was a stranger to the foreclosure proceedings. *Villanueva v. Cherdan Lending Investors Corporation* defines a third party in a more specific manner as one who was a stranger to the mortgage, and who did not participate in the foreclosure proceedings. Under the *second requisite*, possession is to be understood in its ordinary meaning. That is, the claimant must hold actual possession of the property in a certain and undisputed manner. The *last requisite* must be understood in light of possession by a third party. To put it simply, the possession must be under a claim adverse to that of the debtor/mortgagor; he third party must be asserting a hold on the property in litigation under a title adverse to that of the debtor/mortgagor. Under this requisite, **a claim or an assertion of an adverse nature is sufficient.**

3. **ID.; ID.; ID.; ID.; ID.; A COURT HEARING IS REQUIRED TO DETERMINE THE NATURE OF POSSESSION; PURPOSE.—** The **concurrence of the three requisites** x x x

would result in the application of the exception. Consequently, the ministerial duty of the court to issue an *ex parte* writ of possession ceases. Instead, it is mandated to conduct a hearing to determine the nature of the possession; *i.e.,* whether or not the third party is in possession of the subject property under a claim adverse to that of the judgment debtor. It is in this manner that the issuance of a writ of possession ceases to be *ex parte* and non-adversarial. x x x **If the possession is adverse within the definition of the law, the court shall defer or quash the issuance of a writ of possession; otherwise, it shall proceed to issue the writ.**

4. **ID.; ID.; ID.; ID.; ID.; ADVERSE POSSESSION; THIRD-PARTY CLAIMANT NEED NOT PROVE OWNERSHIP BUT MUST SHOW WITH A PREPONDERANCE OF EVIDENCE THAT HE OR SHE IS IN POSSESSION OF THE PROPERTY AND IS ASSERTING A RIGHT ADVERSE TO THAT OF THE DEBTOR/MORTGAGOR.—** In determining whether or not possession is indeed adverse, the court must look into the nature of the possession by the third-party claimant and determine if the latter's claim is indeed adverse, as defined above, and is *bona fide* and in good faith. To provide a better understanding of when possession is adverse, jurisprudence on who is *not* an adverse claimant is informative. In *Planas v. Madrigal & Co*., the Court held that an adverse claimant must not be a mere transferee or possessor *pendente lite* of the property in question. *Roxas v. Buan* held that a successor-in-interest of the judgment obligor cannot be considered an adverse claimant. In *Rivero de Ortega*, the Court stated that an adverse possessor must be one who did not acquire possession from a person who was bound by the decree; rather, the adverse claimant must be a mere stranger who entered into possession before the foreclosure suit began. x x x In other words, in order not to be ousted by the *ex parte* issuance of a writ of possession, the third party must have possession that proceeds from a right independent of and even superior to that of the judgment debtor/mortgagor. Not only must the property be possessed by a third party; it must also be adversely held by the third party *adversely to the judgment obligor.* In light of these rulings, it is apparent that the third-party claimant need not prove ownership in the proceedings. All that needs to be shown with a preponderance of evidence is that the third-

party claimant is in possession of the property and is asserting a right adverse to that of the debtor/mortgagor with respect to the possession as discussed above. **Once such evidence is shown, the court must defer the issuance of a writ of possession and let the parties file the proper judicial action. The matter of whether or not the third-party claimant is indeed the lawful owner or better possessor of the property is a matter that must be threshed out in a separate proceeding.**

APPEARANCES OF COUNSEL

Lourdes I. De Dios for petitioners.
Karaan and Karaan Law Office for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 18, 2011 and the Resolution[3] dated July 8, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 110392, which annulled and set aside the Writ of Possession[4] dated June 27, 2008 and Notice to Vacate[5] dated June 18, 2009 issued by the Regional Trial Court of Olongapo City, Branch 72 in Other Case No. 38-0-93, thereby reinstating herein respondents heirs of Artemio and Lydia dela Cruz, namely: Marilou, Juliet, Romeo, Ryan, and Ariel, all surnamed dela Cruz (respondents), to the possession of the subject property.

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[1] *Rollo*, pp. 10-48.

[2] *Id*. at 55-68. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Hakim S. Abdulwahid and Samuel H. Gaerlan concurring.

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

[4] *Id*. at 122-124. Issued by Judge Richard A. Paradeza.

[5] *Id*. at 128. Signed by Sheriff IV Leandro R. Madarang.

The Facts

Respondents are the successors-in-interest of the late Artemio dela Cruz (Artemio), who is the son of Nicolasa dela Cruz, the original owner of a parcel of land situated at No. 11, Ifugao St., Brgy. Barretto, Olongapo City, including a two-storey building erected thereon (subject property).[6]

On April 15, 1991, Nicolasa authorized her daughter, Carmelita C. Guanga (Carmelita), Artemio's sister, to mortgage[7] the subject property to Jose R. Peñaflor (Peñaflor), the predecessor-in-interest of herein petitioners, Jose Peñaflor, Jr. and Virginia P. Agatep (represented by Jessica P. Agatep; collectively, petitioners) in order to secure a loan in the amount of ₱112,000.00.[8] As Nicolasa failed to settle her loan obligation when it fell due, Peñaflor filed an application for extra-judicial foreclosure of mortgage[9] before the Regional Trial Court of Olongapo City, Branch 72 (RTC), docketed as Case No. 07-0-91.[10] After the requirements of posting, notices, and publication were complied with, the subject property was sold at a public auction, where Peñaflor emerged as the highest bidder.[11] A Certificate of Sale[12] was thus issued in his favor. The period of redemption expired without the subject property being redeemed; hence, a Final Bill of Sale[13] was issued and registered in Peñaflor's name. Thereafter, the latter executed an Affidavit of Consolidation of Ownership.[14] This notwithstanding, Nicolasa persisted in her

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[6] *Id*. at 56.

[7] Real Estate Mortgage; *id*. at 77-78.

[8] See *id*. at 56.

[9] Not attached to the *rollo*.

[10] See *rollo*, p. 15.

[11] *Id*. at 87.

[12] Dated November 21, 1991. *Id*. at 83-84.

[13] Dated December 14, 1992. *Id*. at 85-86.

[14] Not attached to the *rollo*.

occupancy of the subject property and refused to deliver possession to Peñaflor.[15]

The RTC Proceedings

Seeking to enforce his right to possess the subject property, Peñaflor filed a petition for the *ex parte* issuance of a writ of possession[16] before the RTC, docketed as Other Case No. 38-0-93.[17] On November 19, 1993, the RTC granted[18] the petition for the issuance of a writ of possession. Nicolasa and Carmelita did not appeal the decision;[19] thus, the same lapsed into finality.[20]

However, the writ of possession was not enforced as Artemio filed a complaint for annulment of judgment[21] before the same trial court, docketed as Civil Case No. 15-0-94 (annulment of judgment case), claiming to be the lawful owner and possessor of the subject property even prior to the mortgage.[22] Artemio's complaint was eventually dismissed without prejudice on the ground of lack of jurisdiction.[23]

In April 1998 (and thus after the mortgage of the subject property in April 1991), Artemio filed a separate complaint for ejectment against Carmelita before the Municipal Trial Court in Cities of Olongapo City, Branch 5 (MTCC), docketed as Civil Case No. 4065 (ejectment case).[24] In support of his

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[15] See *rollo*, p. 88.

[16] Not attached to the *rollo*.

[17] "Civil Case No. 38-0-93" in the Decision. See *rollo*, p. 87.

[18] See Decision dated November 19, 1993 penned by Judge Jaime P. Dojillo; *id*. at 87-88.

[19] *Id*. at 57.

[20] See Entry of Judgment dated December 17, 1993 issued by Clerk of Court VI Andrew M. Penullar; *id*. at 89.

[21] Not attached to the *rollo*.

[22] See *rollo*, pp. 90-91.

[23] See Decision dated March 4, 1998, penned by Judge Ellodoro G. Ubiadas; *id*. at 90-95.

[24] See *id*. at 41 and 58.

complaint, he submitted: (1) Miscellaneous Sales Application No. (1-4) 3407 filed with the Bureau of Lands, Olongapo City; (2) Deeds of Real Estate Mortgage signed by Artemio, mortgaging the said property to one "Rosita Bonilla"; and (3) Certifications attesting that he had declared the subject property in his name for taxation purposes.[25] Also, he submitted a notarized deed dated May 3, 1989 denominated as "Waiver and Transfer of Possessory Rights"[26] (May 3, 1989 Waiver) executed by Nicolasa, waiving and transferring all her rights and interests over the subject property in favor of Artemio.[27] The MTCC granted Artemio's ejectment complaint against Carmelita, which was eventually affirmed by the Court in G.R. No. 150187.[28]

In the meantime, the proceedings in Other Case No. 38-0-93 continued. On June 27, 2008, the RTC issued an Amended Order[29] granting Peñaflor's application for a writ of possession anew.[30] On even date, the RTC issued the Writ of Possession.[31] Thereafter, the RTC issued a Notice to Vacate[32] dated July 11, 2008, ordering Artemio to vacate the subject property.[33] However, on July 23, 2008, Artemio and his wife, Lydia dela Cruz (Sps. dela Cruz), filed a motion to quash the writ of possession and notice to vacate,[34] claiming that the said writ could not be enforced against them as they are strangers to Other Case No. 38-0-93 who are holding the subject property adversely to the judgment obligor,[35]

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[25] *Id*. at 58.

[26] *Id*. at 170.

[27] *Id*. at 59.

[28] See *id*. at 59-60. See also *Guanga v. Dela Cruz*, 519 Phil. 764 (2006).

[29] *Id*. at 120-121. Penned by Judge Richard A. Paradeza.

[30] *Id*. at 61.

[31] *Id*. at 122-124.

[32] Not attached to the *rollo*.

[33] *Rollo*, p. 25.

[34] Not attached to the *rollo*.

[35] See *rollo*, pp. 25 and 125.

i.e., Nicolasa. Artemio's siblings, Sotero, Mario, and Clarita, all surnamed dela Cruz, and Charlie Guanga (Carmelita's son)[36] likewise filed separate motions to quash the aforesaid writ and notice, claiming their rights over the subject property.[37] Their motions were, however, denied by the RTC in an Order[38] dated December 5, 2008. Consequently, Sotero, Mario, and Charlie filed a joint motion for reconsideration[39] of the said Order, which was likewise denied by the RTC.[40] Subsequently, the RTC issued another Notice to Vacate[41] dated June 18, 2009, ordering the children of Nicolasa to vacate the subject property. Said motions having been denied, herein respondents, in substitution of their parents, filed another motion[42] praying that the implementation of the writ of possession be held in abeyance as they are third persons in actual possession of the subject property who are asserting rights adverse to the judgment obligor.[43] The RTC likewise denied respondents' motion in an Order[44] dated August 14, 2009; hence, prompting them to elevate this case to the CA via a petition for *certiorari*,[45] docketed as CA-G.R. SP No. 110392.

The CA Ruling

In a Decision[46] dated February 18, 2011, the CA annulled and set aside the writ of possession and notice to vacate issued

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[36] See *id*. at 25.

[37] *Id*. at 125.

[38] *Id*.

[39] Not attached to the *rollo*.

[40] See Order dated May 27, 2009; *id*. at 126-127.

[41] *Id*. at 128.

[42] Not attached to the *rollo*.

[43] *Rollo*, p. 62.

[44] *Id*. at 129.

[45] Not attached to the *rollo*.

[46] *Rollo*, pp. 55-68.

by the RTC.[47] It held that respondents are holding the subject property adverse to Nicolasa, the judgment obligor.[48] As basis, it pointed out that the evidence submitted by Artemio in the ejectment case, all indicate that he was claiming ownership of the subject property, which was in his possession at that time.[49] Further, the CA gave credence to the May 3, 1989 Waiver, which showed that Nicolasa had already renounced all her rights over the subject property in 1989, or two (2) years before she authorized Carmelita to mortgage the subject property.[50] Hence, finding that Artemio's claim of ownership as against Nicolasa is "at the very least, bona fide and made in good faith," the CA ruled that the RTC should have desisted from enforcing the writ of possession against Artemio's heirs, herein respondents.[51] The remedy, according to the CA, "is not the implementation of the writ of possession but for the purchaser or the redemptioner to institute ejectment proceedings or a reinvindicatory action."[52]

Dissatisfied, petitioners filed a motion for reconsideration,[53] which was, however, denied in a Resolution[54] dated July 8, 2011; hence, this petition.

The Issue Before the Court

The main issue for the Court's resolution is whether or not the CA erroneously set aside the Writ of Possession and Notice to Vacate issued by the RTC in favor of herein petitioners.

The Court's Ruling

The petition is meritorious.

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[47] *Id*. at 64.

[48] *Id*.

[49] *Id*.

[50] See *id*. at 64-65.

[51] See *id*. at 65-67.

[52] *Id*. at 67.

[53] Not attached to the *rollo*.

[54] *Rollo*, pp. 70-71.

"It is well-settled that the purchaser in an extrajudicial foreclosure of real property becomes the *absolute* owner of the property if no redemption is made within one [(1)] year from the registration of the certificate of sale by those entitled to redeem. As absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, not least of which is possession, or *jus possidendi*[.]"[55]

"Possession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership, after consolidation of title[,] the purchaser in a foreclosure sale may demand possession as a matter of right. This is why Section 7 of Act No. 3135,[56] as amended by Act No. 4118,[57] imposes upon the RTC a ministerial duty to issue a writ of possession to the new owner upon a mere *ex parte* motion. Section 7 reads:

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under Section 194 of the Administrative Code, or of any other real property

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[55] See *Spouses Gallent, Sr. v. Velasquez*, G.R. Nos. 203949 and 205071, April 6, 2016, 788 SCRA 518, 529-530.

[56] Entitled "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES" (March 6, 1924).

[57] Entitled "AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED 'AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES'" (December 7, 1933).

encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph 11 of Section 114 of Act No. 496, as amended by Act No. 2866, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

In *Spouses Arquiza v. CA*,[58] it was reiterated that simply on the basis of the purchaser's ownership of the foreclosed property, there is no need for an ordinary action to gain possession thereof:

Indeed, it is well-settled that an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. The basis of this right to possession is the purchaser's ownership of the property. The mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required."[59]

In *Asia United Bank v. Goodland Company, Inc.*,[60] the Court observed that the *ex parte* application for [a] writ of possession is a non-litigious summary proceeding without need to post a bond, except when possession is being sought even during the redemption period:

It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial

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[58] 498 Phil. 793 (2005).

[59] *Id*. at 804. See also *Spouses Gallent*, *Sr. v. Velasquez*, *supra* note 54, at 531.

[60] 650 Phil. 174 (2010).

duty of the courts to issue the same upon proper application and proof of title. To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.

The nature of an *ex parte* petition for issuance of the possessory writ under Act No. 3135 has been described as a non-litigious proceeding and summary in nature. As an *ex parte* proceeding, it is brought for the benefit of one party only, and without notice to or consent by any person adversely interested.[61] (Emphasis and underscoring supplied)

Further, in *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*[62] (*BPI Family*), the Court remarked that not even a pending action to annul the mortgage or the foreclosure sale will by itself stay the issuance of the writ of possession:

> Furthermore, it is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.[63]

However, Section 33, Rule 39 of the Rules of Court – which is applied to extrajudicial foreclosure of mortgages per Section 6 of Act No. 3135 – provides that upon the expiration of the redemption period, the possession of the property shall be given to the purchaser or last redemptioner, **unless a third party is actually holding the property adversely to the judgment obligor**.

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[61] *Id*. at 185-186. See also *Spouses Gallent*, *Sr. v. Velasquez*, *supra* note 54, at 532.

[62] 654 Phil. 382 (2011).

[63] *Id*. at 394. See also *Spouses Gallent, Sr. v. Velasquez*, *supra* note 54, at 532-533.

"In *China Banking Corporation v. Spouses Lozada*,[64] it was held that for the court's ministerial duty to issue a writ of possession to cease, it is not enough that the property be held by a third party, but rather the said possessor **must have a claim thereto adverse to the debtor/mortgagor**:

> Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession. Similarly, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/mortgagor.[65]

Specifically, the Court held that to be considered in adverse possession, **the third party possessor must have done so in his own right and not merely as a successor or transferee of the debtor or mortgagor**:

> The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. x x x.[66]

Thus, in *BPI Family*, the Court ruled that it was an error to issue an *ex parte* writ of possession to the purchaser in an extrajudicial foreclosure, or to refuse to abate one already granted, **where a third party has raised in an opposition to the writ or in a motion to quash the same, his actual possession thereof**

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[64] 579 Phil. 454 (2008).

[65] *Id*. at 474-475.

[66] *Id*. at 478-480.

upon a claim of ownership or a right adverse to that of the debtor or mortgagor. **The procedure, according to *Unchuan v. CA*,**[67] **is for the trial court to order a hearing to determine the nature of the adverse possession, conformably with the time-honored principle of due process**."[68]

In this case, respondents, in their Comment and/or Opposition[69] submitted before this Court, claim that "**Artemio Dela Cruz validated his ownership of the subject property**, including the [two-storey] house erected thereon and other improvements, **through a deed of waiver and transfer of possessory rights executed by his mother, Nicolasa Dela Cruz in May 3, 1989** which is attached and made [an] integral part hereof."[70]

However, it is apparent from the face of this document that the same was not an effective mode of transferring Nicolasa's ownership to Artemio, which could have thus given the latter an independent right over the subject property prior to its mortgage to Peñaflor. The May 3, 1989 Waiver reads:

> That I, NICOLASA DELA CRUZ, of legal age x x x and residing at No. 11, Ifugao St., Barretto, Olongapo City, Philippines, do hereby by these presents, freely and irrevocably WAIVE, RENOUNCE, TRANSFER and QUITCLAIM all my rights, interests and participation over a parcel of residential lot including all the existing improvements thereon, more particularly described as follows:
>
> > A parcel of residential lot situated at No. 11, Ifugao St., Barretto, Olongapo City, containing an area of 450 square meters more or less, x x x
>
> in favor of my son ARTEMIO DELA CRUZ, likewise of legal age x x x and residing at No. 11, Ifugao St., Barretto, Olongapo City, Philippines, the above-described property free from all liens and encumbrances.

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[67] 244 Phil. 733, 738 (1988).

[68] *Spouses Gallent, Sr. v. Velasquez*, *supra* note 54, at 535-536; emphases and underscoring supplied.

[69] Dated December 5, 2011. *Rollo*, pp. 158-169.

[70] *Id*. at 160; emphases supplied.

That I hereby warrant peaceful possession of the above-described property herein waived, binding myself to defend him, his heirs, successors, assigns from any lawful claims of any person whomsoever.

x x x x x x x x x[71]

By virtue thereof, Nicolasa *supposedly* waived, renounced, transferred, and quitclaimed all her rights, interests, and participation over the subject property to Artemio. **However, a mere waiver of rights is not an effective mode of transferring ownership under our Civil Code.**

In *Acap v. CA* (*Acap*),[72] it was ruled that "[u]nder Article 712 of the Civil Code, the modes of acquiring ownership are generally classified into two (2) classes, namely, **the original mode** (*i.e.*, through occupation, acquisitive prescription, law or intellectual creation) and **the derivative mode** (*i.e.*, through succession *mortis causa* or tradition as a result of certain contracts, such as sale, barter, donation, assignment or *mutuum*).[73]

By its terms, the May 3, 1989 Waiver cannot be classified as any of these kinds of contracts from which Artemio could derive ownership of the subject property. It cannot be classified as a sale (because there is no price certain in money or its equivalent);[74]

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[71] *Id*. at 170.

[72] 321 Phil. 381 (1995).

[73] *Id*. at 390; emphases supplied.

[74] "Art. 1458 [of the Civil Code reads:] By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

x x x x x x x x x

Sale, by its very nature, is a consensual contract because it is perfected by mere consent. The essential elements of a contract of sale are the following:

a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;
b) Determinate subject matter; and
c) Price certain in money or its equivalent." (*Reyes v. Tuparan*, 665 Phil. 425, 440 [2011].)

as a barter (because of the lack of any other thing given as consideration);[75] a donation (because of the lack of *animus donandi* and even a formal acceptance);[76] an assignment (because of the lack of price);[77] and/or a *mutuum* (because it is not a loan).[78] Neither can it be considered as an assignment either by onerous or gratuitous title[79] so as to conclude that Nicolasa had already lost her right to possess the subject property to Artemio prior to its mortgage.

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[75] Article 1638 of the Civil Code reads:

Art. 1638. By the contract of barter or exchange one of the parties binds himself to give one thing in consideration of the other's promise to give another thing.

[76] "The essential elements of donation are as follows: (a) the essential reduction of the patrimony of the donor; (b) the increase in the patrimony of the donee; and (c) the intent to do an act of liberality or *animus donandi*. When applied to a donation of an immovable property, the law further requires that the donation be made in a public document and that the acceptance thereof be made in the same deed or in a separate public instrument; in cases where the acceptance is made in a separate instrument, it is mandated that the donor be notified thereof in an authentic form, to be noted in both instruments." (*Heirs of Florencio v. Heirs of de Leon*, 469 Phil. 459, 474 [2004].)

[77] Article 1624 of the Civil Code reads:

Art. 1624. An assignment of credits and other incorporeal rights shall be perfected in accordance with the provisions of Article 1475.

Article 1475 of the Civil Code reads:

Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

x x x x x x x x x

[78] Article 1933 of the Civil Code reads:

Art. 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a *commodatum*; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or *mutuum*.

x x x x x x x x x

[79] Article 555 of the Civil Code reads:

Art. 555. A possessor may lose his possession:
(1) By the abandonment of the thing;

Notably, in *Acap*, the Court debunked the lower court's characterization of a certain Declaration of Heirship and Waiver of Rights to a contract of sale, holding that the private respondent therein cannot conclusively claim ownership of the property subject of that case on the sole basis of a waiver document which neither recites the elements of either a sale or a donation, or any other derivative mode of acquiring ownership:

> In the case at bench, the trial court was obviously confused as to the nature and effect of the Declaration of Heirship and Waiver of Rights, equating the same with a contract (deed) of sale. They are not the same.
>
> In a Contract of Sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other party to pay a price certain in money or its equivalent.
>
> Upon the other hand, a declaration of heirship and waiver of rights operates as a public instrument when filed with the Registry of Deeds whereby the intestate heirs adjudicate and divide the estate left by the decedent among themselves as they see fit. It is in effect an extrajudicial settlement between the heirs under Rule 74 of the Rules of Court.
>
> Hence, there is a marked difference between a *sale* of hereditary rights and a *waiver* of hereditary rights. **The first presumes the existence of a contract or deed of sale between the parties**. The second is, technically speaking, a mode of extinction of ownership where there is an abdication or intentional relinquishment of a known right with knowledge of its existence and intention to relinquish it, *in favor of other persons who are co-heirs in the succession*. Private respondent, being then a stranger to the succession of Cosme Pido, **cannot conclusively claim ownership over the subject lot on the sole basis of the waiver document which neither recites the elements**

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(2) By an assignment made to another either by onerous or gratuitous title;
(3) By the destruction or total loss of the thing, or because it goes out of commerce;
(4) By the possession of another, subject to the provisions of Article 537, if the new possession has lasted longer than one year. But the real right of possession is not lost till after the lapse of ten years.

of either a sale, or a donation, or any other derivative mode of acquiring ownership.

Quite surprisingly, both the trial court and public respondent Court of Appeals concluded that a "sale" transpired between Cosme Pido's heirs and private respondent and that petitioner acquired actual knowledge of said sale when he was summoned by the Ministry of Agrarian Reform to discuss private respondent's claim over the lot in question. This conclusion has no basis both in fact and in law.[80] (Emphases and underscoring supplied)

Indeed, while the nature of the document in *Acap* is different from the May 3, 1989 Waiver, the principle remains the same. Artemio cannot claim any independent right over the subject property by virtue of a document that does not even purport to be an effective mode of transfer.

According to the CA, the totality of evidence shows that Artemio is an adverse third party-possessor of the subject property.[81] Aside from the May 3, 1989 Waiver, the evidence consist of the following:

(1) Miscellaneous Sales Application No. (1-4) 3407 over the subject property filed with the Bureau of Lands, Olongapo City on October 2, 1968;

(2) Deeds of Real Estate Mortgage dated May 30, 1973 and October 30, 1968, signed by Artemio and mortgaging the subject property and the parcel of land on which it stands to one "Rosita Bonilla"; and

(3) Certifications dated January 7, 1969 and May 22, 1989 of the Office of the City Assessor, Olongapo City, attesting that respondent had declared the subject property in his name for taxation purposes.[82]

After much reflection, the Court finds that these pieces of evidence are actually **inadmissible** to prove Artemio's independent

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[80] *Acap*, *supra* note 71, at 390-392.

[81] See *rollo*, pp. 64-65.

[82] See *id*. at 58.

right of ownership in this case against the mortgagee, Peñaflor and his heirs, as **they were never submitted as evidence before the RTC in Other Case No. 38-0-93**. These pieces of evidence were those submitted and considered in **Civil Case No. 4065**, which is the **ejectment case against his sister, Carmelita**. Therefore, Peñaflor was not given an opportunity to contest the genuineness and authenticity of these documents in these proceedings and also, with his own evidence, to rebut the same. Hence, to consider these documents against him in this case would surely violate his right to due process.

Moreover, it should be highlighted that these pieces of evidence were offered to prove one thing, and one thing alone: that Artemio had the better right to possess the subject property only as against his sister, Carmelita. The Court, in G.R. No. 150187, entitled "*Carmelita Guanga v. Artemio dela Cruz*," which stemmed from Civil Case No. 4065, recognized that "the only question to resolve in ejectment suits such as in this case is who between the parties has the better right of possession *de facto* over the disputed property."[83] While the Court did inquire into the question of the property's ownership, it explicitly clarified that it did so "only for the limited purpose of determining prior possession."[84] Thus, with this established limitation on ejectment cases in mind, it cannot be denied that the aforementioned evidence cannot bind even Carmelita — the opposing party herself in Civil Case No. 4065 — on issues regarding ownership and much more, Peñaflor and his heirs, in a totally different case, *i.e.*, Other Case No. 38-0-93, from which the present petition emanated. At the very least, the fundamental right of due process demands that Peñaflor (and now, his heirs) be given an opportunity to challenge such evidence before they may be considered in any respect against him. In fact, the RTC in Other Case No. 38-0-93 implicitly touched on this conundrum in its Order dated August 14, 2009 when it held that:

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[83] See *Guanga v. Dela Cruz*, *supra* note 28.

[84] *Id*. at 773.

Oppositors Heirs of Artemio and Lydia dela Curz cited case pertains to an unlawful [detainer] case filed against them by Carmelita Guanga which issue of possession had been ruled in favor of the said heirs and herein petitioners is not a party to the said case. Hence, said Decision of the Supreme Court in that G.R. No. 150187 does not affect yet herein petitioners not being in possession of the property then.[85]

In any event, none of those pieces of evidence submitted in Civil Case No. 4065 would even satisfactorily show that Artemio had an independent title to the subject property enough to dispossess the mortgagee, Peñaflor, who had already consolidated his own title over the same. First, Miscellaneous Sales Application No. (1-4) 3407 is only a sales patent application, which was not clearly shown to have been granted so as to vest in him title over the property. Second, the Deeds of Real Estate Mortgage are not documents which show the original source of the mortgagor's own title; on the contrary, these documents already assume that the mortgagor is the owner of the property and thus, could mortgage the same. And finally, the Certifications attesting that Artemio had declared the subject property in his name for taxation purposes (*i.e.*, tax declarations) only constitute "proof that the holder has a claim of title over the property,"[86] and are therefore, not valid documents which would show his source of title. In fact, Nicolasa too had tax declarations in her name, showing that she had a claim of title over the same property.[87] To note, these documents were her own proof of ownership through which she was able to mortgage the subject property (appearing to be an unregistered land) in favor of Peñaflor.

As above-discussed, where a third party has raised in an opposition to the writ of possession or in **a motion to quash the same** his actual possession thereof **upon a claim of ownership or a right adverse to that of the debtor or mortgagor** — as

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[85] *Rollo*, p. 129.

[86] *The Director of Lands v. CA*, 367 Phil. 597, 604 (1999).

[87] *Rollo*, pp. 34, 81, and 82.

in this case — **the procedure is for the trial court to order a hearing to determine the nature of the adverse possession, conformably with the time-honored principle of due process**. Notably, when this opposition is made, the proceeding for the issuance of a writ of possession loses its nature of being an *ex parte*, and instead, turns adversarial, so as to give:

On the one hand, the third party claimant the opportunity to present evidence of his title showing his independent right over the subject property adverse to the judgment obligor/mortgagor; and

On the other hand, the mortgagee the opportunity to rebut said evidence in order to sustain the issuance of the writ and gain possession of the subject property pursuant to his consolidated title.

Jurisprudence describes that "[a]n ***ex parte*** **proceeding** merely means that it is taken or granted at the instance and for the benefit of one party, and **without notice to or contestation by any party adversely affected**."[88] Clearly, this is not the case when an opposition is made by a third party claimant against the issuance of a writ of possession, from which the court is compelled to now order a hearing to determine the nature of the former's adverse possession.

In this case, the CA improperly considered the evidence submitted in a totally different proceeding (*i.e.*, the ejectment case) taken against an entirely different party (Carmelita) in reversing the RTC's issuance of a writ of possession in favor of Peñaflor. In fact, even if we were to feign ignorance of this clear due process violation, such evidence were, nonetheless, **ostensibly insufficient** to prove that Artemio has an independent right over the subject property adverse to Nicolasa, the judgment obligor/mortgagor. Thus, whether the May 3, 1989 Waiver is the true source of title of Artemio or merely one which fortifies his claim of independent title, the "totality of evidence" is still not enough to prove the same.

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[88] *Spouses Arquiza v. CA*, 498 Phil. 793, 806 (2005); emphases supplied.

In addition, records are replete with circumstances which diminish the veracity of Artemio's claim against Peñaflor:

(1) In the annulment of judgment case, Artemio claimed that he applied for a sales patent in 1960 which was allegedly approved in 1968 by the Bureau of Lands, per the Miscellaneous Sales Application No. (1-4) 3407 dated October 2, 1968;[89] he likewise claimed in that same case that his mother Nicolasa does not own the property.[90]

(2) Yet, Artemio (and herein respondents) asserted that Nicolasa transferred her rights over the property in 1989 by virtue of the May 3, 1989 Waiver.[91]

(3) Sotero, Mario, and Clarita (siblings of Artemio), and Charlie Guanga (Carmelita's son) filed two (2) separate motions to quash the writ of possession, wherein they claimed that they, with Artemio and Nicolasa, co-owned the subject property. They alleged that said property was part of the conjugal partnership of Sps. dela Cruz. When Ireneo died in 1985, they became pro-indiviso heirs of Ireneo's share to the property.[92]

(4) Mario, however, testified for Artemio in the annulment of judgment case, stating that Nicolasa does not own the subject property.[93]

Taken together, these events would show that: (*a*) Artemio's claim over the subject property is riddled with material inconsistencies; and (*b*) Nicolasa's children (among others, Artemio) appear to have been taking several steps to prevent Peñaflor from taking possession of the subject property and defeating his consolidated ownership rights thereto, thus further casting doubt on Artemio's claim of ownership. In fact, it deserves

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[89] See *rollo*, pp. 92-93.

[90] *Id*. at 90.

[91] See *id*. at 64-65 and 160.

[92] See *id*. at 125-126.

[93] *Id*. at 94.

mentioning that Artemio filed the ejectment suit in Civil Case No. 4065 only in April 1998, or seven (7) long years after the property had already been mortgaged to Peñaflor in April 1991; thus, it is equally doubtful that he even had possession of the subject property at the time it was mortgaged to Peñaflor. In addition, the RTC had already granted the petition for the issuance of writ of possession in favor of Peñaflor on November 19, 1993, or almost five (5) years prior to the filing of the ejectment suit in April 1998, which decision therein respondents Nicolasa and Carmelita did not appeal.[94]

Hence, for all these reasons, Artemio cannot be considered as a "third party who is actually holding the property adversely to the judgment obligor," *i.e.*, Nicolasa, so as to defeat Peñaflor's right to possess the subject property, which is but an incident to the consolidation of his ownership over the same.

As a final word, it should be clarified that the purpose of a petition for the issuance of a writ of possession under Act No. 3135, as amended by Act No. 4118, is to expeditiously accord the mortgagee **who has already shown a *prima facie* right of ownership over the subject property (based on his consolidated title over the same)** his incidental right to possess the foreclosed property. To reiterate, "[p]ossession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership, after consolidation of title[,] the purchaser in a foreclosure sale may demand possession as a matter of right."[95] **Thus, it is only upon a credible showing by a third party claimant of his independent right over the foreclosed property that the law's *prima facie* deference to the mortgagee's consolidated title should not prevail**. **Verily, a mere claim of ownership would not suffice**. As jurisprudence prescribes, the demonstration by the third party-claimant should be made within the context of an adversarial hearing, where the basic principles of Evidence and Civil Procedure ought to be followed, such as: (1) it is the claimant

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[94] See *id*. at 57.

[95] See *Spouses Gallent v. Velasquez*, *supra* note 54, at 530.

who has the burden of proving his claim; (2) the claim must be established through a preponderance of evidence; and (3) evidence not presented or formally offered cannot be admitted against the opposing party. In this case, none of these principles were followed for the CA considered evidence that were not only submitted in a totally different case against an entirely different party, but are also innately inadequate to — at least — *prima facie* show the source of the third party-claimant's independent title, all to the detriment of the mortgagee who had already consolidated his title to the contested property. The reversal of its ruling is therefore in order.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 18, 2011 and the Resolution dated July 8, 2011 of the Court of Appeals in CA-G.R. SP No. 110392 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Writ of Possession dated June 27, 2008 and Notice to Vacate dated June 18, 2009 issued by the Regional Trial Court of Olongapo City, Branch 72 through its Decision dated November 19, 1993 in Other Case No. 38-0-93 in favor of petitioners heirs of Jose Peñaflor, namely: Jose Peñaflor, Jr. and Virginia P. Agatep, represented by Jessica P. Agatep, are **REINSTATED**.

SO ORDERED.

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

Sereno, C.J., see dissenting opinion.

DISSENTING OPINION

SERENO, *C.J.*:

The threshold issue in this case is whether or not Artemio dela Cruz (Artemio) is a third party in possession of the subject property who claims a right adverse to that of the debtor/mortgagor in the foreclosure proceedings, therefore warranting the quashal of the Writ of Possession.

The Court of Appeals (CA) annulled the assailed Writ of Possession[1] and Notice to Vacate,[2] which the Regional Trial Court (RTC), Branch 72, Olongapo City, had issued to petitioners' predecessor-in-interest, Jose R. Peñaflor (Peñaflor). The CA found that respondents' predecessor-in-interest, Artemio, was a third party who was in adverse possession of the subject property as against Nicolasa dela Cruz (Nicolasa), the judgment obligor in the *ex parte* possession case. Thus, the RTC had no authority to issue the Writ of Possession and Notice to Vacate.

This finding was based on this Court's Decision in an ejectment case submitted by Artemio (second SC judgment). This Court affirmed therein his lawful possession over the subject property.[3] The CA found that the pieces of evidence that were given probative value by this Court in that case all indicated that Artemio was claiming ownership of the subject property, which was also in his possession.

The CA also took note of a notarized deed dated 3 May 1989 denominated as "Waiver and Transfer of Possessory Rights."[4] The deed was executed by Nicolasa, who thereby waived and transferred all her rights and interests over the subject property in favor of Artemio. To the appellate court, this notarized waiver fortified his adverse claim which, at the very least, was *bona fide* and in good faith.[5]

The CA then held that because Artemio was a third person in possession of the property, the RTC should have desisted from issuing and enforcing a Writ of Possession. It further held that pursuant to law and jurisprudence, a trial court's otherwise ministerial duty to issue a writ of possession in an extrajudicial foreclosure sale ceases when the subject property is in the

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[1] *Rollo*, pp. 122-124; dated 27 June 2008.

[2] *Id*. at 128; dated 18 June 2009.

[3] See *Guanga v. Dela Cruz,* 519 Phil. 764 (2006).

[4] *Rollo,* p. 170.

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

possession of a third party who claims ownership.[6] To dispossess the third party on the strength of a mere *ex parte* possessory writ would be tantamount to a violation of due process.[7]

The *ponencia* now reverses the CA's ruling and affirms the RTC's issuance of a Writ of Possession. It holds that Artemio was not able to sufficiently prove that he was a third party in possession of the subject property.[8]

I respectfully register my dissent.

The legal and jurisprudential basis of the exception.

The legal and jurisprudential antecedents of the issue would facilitate an understanding of the conclusions I have arrived at as discussed below.

The well-settled rule is that in the extrajudicial foreclosure of real estate mortgage under Act No. 3135, the issuance of a writ of possession is ministerial upon the court after the foreclosure sale and during the redemption period. In the latter period, the court may issue an order for a writ of possession upon the mere filing of an *ex parte* motion and the approval of the corresponding bond. A writ of possession also issues as a matter of course without need of a bond or of a separate and independent action after the lapse of the period of redemption and the consolidation of ownership in the purchaser's name.[9]

There are, however, several exceptions to this ministerial duty established by law and jurisprudence.[10] One of the exceptions is that which was first enunciated in *Barican v. Intermediate Appellate Court*[11] in line with Section 33, Rule 39

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[6] *Id*. at 67.

[7] *Id*. at 65-66.

[8] *Ponencia*, p. 14.

[9] *Cabling v. Lumapas,* 736 Phil. 582 (2014).

[10] See *Nagtalon v. UCPB,* 715 Phil. 595 (2013).

[11] 245 Phil. 316 (1988).

of the Rules of Court: when a third party in possession of the property claims a right adverse to that of the debtor-mortgagor in a foreclosure case. The threshold issue in this case revolves around this particular exception.

The exception was explained further by the Court in *Philippine National Bank v. Court of Appeals*[12] as follows:

> Thus, in *Barican v. Intermediate Appellate Court, we held that the obligation of a court to issue an ex-parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor. The same principle was inversely applied in a more recent case, where we ruled that a writ of possession may be issued in an extrajudicial foreclosure of real estate mortgage, **only if the debtor is in possession and no third party had intervened.** Although the factual nuances of this case may slightly differ from the aforecited cases, the availing circumstances are undeniably similar — **a party in possession of the foreclosed property is asserting a right adverse to the debtor/mortgagor and is a stranger to the foreclosure proceedings in which the *ex-parte* writ of possession was applied for.** (Emphases supplied)

From the foregoing, it is apparent that there are three requisites that must concur for the exception to apply:

1. The claimant must be a third party.
2. The claimant must be in actual possession of the subject property.
3. The third party in possession must claim a right adverse to that of the debtor or mortgagor in the foreclosure proceedings.

The vast body of case law on the exception provides an insight into the specifics of each requisite.

Under the *first requisite*, to be considered a third party means that the claimant was a stranger to the foreclosure proceedings.[13]

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[12] 424 Phil. 757, 769 (2002).

[13] *Id*.

Villanueva v. Cherdan Lending Investors Corporation[14] defines a third party in a more specific manner as one who was a stranger to the mortgage, and who did not participate in the foreclosure proceedings.

Under the *second requisite*, possession is to be understood in its ordinary meaning. That is, the claimant must hold actual possession of the property in a certain and undisputed manner.[15]

The *last requisite* must be understood in light of possession by a third party. To put it simply, the possession must be under a claim adverse to that of the debtor/mortgagor;[16] the third party must be asserting a hold on the property in litigation under a title adverse to that of the debtor/mortgagor.[17] Under this requisite, **a claim or an assertion of an adverse nature is sufficient.**

The **concurrence of the three requisites** as discussed above would result in the application of the exception. Consequently, the ministerial duty of the court to issue an *ex parte* writ of possession ceases. Instead, it is mandated to conduct a hearing to determine the nature of the possession; *i.e.,* whether or not the third party is in possession of the subject property under a claim adverse to that of the judgment debtor.[18] It is in this manner that the issuance of a writ of possession ceases to be *ex parte* and non-adversarial. [19]

The purpose of the hearing was explained in the early case *Saavedra v. Siari Valley Estates*,[20] as follows:

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[14] 647 Phil. 494 (2010).

[15] *Hernandez v. Ocampo,* G.R. No. 181268, 15 August 2016.

[16] *Development Bank of the Phils. v. Prime Neighborhood Association,* 605 Phil. 660 (2009).

[17] *Bank of the Philippine Islands v. Icot,* 618 Phil. 3210 (2009).

[18] *Hernandez v. Ocampo, supra* note 5.

[19] *Okabe v. Saturnino,* G.R. No. 196040, 26 August 2014, 733 SCRA 652.

[20] 106 Phil. 432, 437 (1959); see *Santiago v. Sheriff of Manila*, 77 Phil. 740, 743-44.

There may be cases when the actual possessor may be claimed to be a privy to any of the parties to the action, or his bona-fide possession may be disputed, or where it is alleged, as in the instant case; that such possession has been taken in connivance with the defeated litigant with a view of frustrating the judgment. In any of these events, **the proper procedure would be to order a hearing on the matter of such possession and to deny or accede to the enforcement of a writ of possession as the finding shall warrant**.

The aforecited rulings of the Court would indicate that a hearing is conducted only to determine **whether or not possession by a third-party claimant is really adverse** for purposes of issuing a writ of possession. **If the possession is adverse within the definition of the law, the court shall defer or quash the issuance of a writ of possession; otherwise, it shall proceed to issue the writ.**

This rule is explained in *Rivero de Ortega v. Natividad,*[21] which reads in relevant part as follows:

But where a party in possession was not a party to the foreclosure, and did not acquire his possession from a person who was bound by the decree, but who is a mere stranger and who entered into possession before the suit was begun, the court has no power to deprive him of possession by enforcing the decree. Thus, it was held that only parties to the suit, persons who came in under them *pendente lite*, and trespassers or intruders without title, can be evicted by a writ of possession. **The reason for this limitation is that the writ does not issue in case of doubt, nor will a question of legal title be tried or decided in proceedings looking to the exercise of the power of the court to put a purchaser in possession. xxx The petitioner, it is held, should be required to establish his title in a proceeding directed to that end**.[22] (Emphases supplied, citations omitted)

Clearly, **the court cannot dispossess the current possessor of the property** who posits an adverse claim through its issuance of a Writ of Possession in the same foreclosure proceedings.

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[21] 71 Phil. 340 (1941).

[22] *Id*. at 342-343.

In determining whether or not possession is indeed adverse, the court must look into the nature of the possession by the third-party claimant and determine if the latter's claim is indeed adverse, as defined above, and is *bona fide* and in good faith. To provide a better understanding of when possession is adverse, jurisprudence on who is *not* an adverse claimant is informative. In *Planas v. Madrigal & Co*.,[23] the Court held that an adverse claimant must not be a mere transferee or possessor *pendente lite* of the property in question. *Roxas v. Buan* held that a successor-in-interest of the judgment obligor cannot be considered an adverse claimant.[24] In *Rivero de Ortega*,[25] the Court stated that an adverse possessor must be one who did not acquire possession from a person who was bound by the decree; rather, the adverse claimant must be a mere stranger who entered into possession before the foreclosure suit began.

China Banking Corporation v. Spouses Lozada[26] likewise held as follows:

> The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property **by adverse title or right**, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary **possess the property in their own right**, and they are not merely the successor or transferee of the **right of possession** of another co-owner or the owner of the property. (Emphases supplied)

In other words, in order not to be ousted by the *ex parte* issuance of a writ of possession, the third party must have possession that proceeds from a right independent of and even superior to that of the judgment debtor/mortgagor.[27] Not only must the property be possessed by a third party; it must also be

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[23] 94 Phil. 754 (1954).

[24] 249 Phil. 41(1988).

[25] *Rivero de Ortega v. Natividad, supra* note 21.

[26] 579 Phil. 454 (2008).

[27] *Id*.

adversely held by the third party *adversely to the judgment obligor.*[28]

In light of these rulings, it is apparent that the third-party claimant need not prove ownership in the proceedings.[29] All that needs to be shown with a preponderance of evidence is that the third-party claimant is in possession of the property and is asserting a right adverse to that of the debtor/mortgagor with respect to the possession as discussed above. **Once such evidence is shown, the court must defer the issuance of a writ of possession and let the parties file the proper judicial action. The matter of whether or not the third-party claimant is indeed the lawful owner or better possessor of the property is a matter that must be threshed out in a separate proceeding.**[30]

It bears to emphasize that the mandated separate proceeding is founded on the underpinnings of the exception in substantive law, particularly Art. 433 of the Civil Code. Under this provision, as explained in *Philippine National Bank v. Court of Appeals,*[31] one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. Art. 433 requires **nothing less than an ejectment or *reivindicatory* action** to be brought even by the true owner. After all, the actual possessors of a property enjoy in their favor the legal presumption of a just title, which must be overcome by the party claiming otherwise. An *ex parte* petition for the issuance of a possessory writ under Section 7 of Act No. 3135 is not, strictly speaking, a "judicial process" as contemplated above. Even if the petition may be considered a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit filed

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[28] *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, 654 Phil. 382 (2011).

[29] *Royal Savings Bank v. Asia,* 708 Phil. 485 (2013)*; Development Bank of the Phils. v. Prime Neighborhood Association, supra* note 16.

[30] *Development Bank of the Phils. v. Prime Neighborhood Association, id*.

[31] *Supra* note 12.

in court.[32] In an ordinary lawsuit, one party "sues another for the enforcement or protection of a right, or the prevention or redress of a wrong."

Pursuant to the foregoing discussion, it has been held that the jurisdiction of the court over the proceedings discussed above is limited to the issuance of a writ of possession. It has no jurisdiction to determine who between the parties is the rightful owner and lawful possessor of the property.[33]

The Writ of Possession and the Notice to Vacate were not issued in compliance with law.

The question now is whether Artemio, as substituted by respondents, is a third party in adverse possession of the subject property who is claiming a right adverse to that of Nicolasa, the debtor/mortgagor in the *ex parte* possession case.

The RTC found that he was not. On the other hand, the CA found that he was an adverse possessor and ordered the quashal of the issued writ.

It is submitted that the CA ruling, when tested against the law and jurisprudence cited above, was not in error.

First, Artemio was definitely a third party within the contemplation of the exception. Nowhere in the records does it appear that he was a party to the foreclosure proceedings, from which sprung the petition for the issuance of an *ex parte* writ of possession. In fact, the records indicate that he was apprised of the mortgage only when the sheriff first attempted to implement the Writ of Possession and Notice to Vacate.[34] This attempt supposedly prompted him to file an action for Annulment of Judgment in the *ex parte* writ of possession case.[35]

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[32] *Dayot v. Shell Chemical Co. (Phils.), Inc.,* 552 Phil. 602 (2007).

[33] *Development Bank of the Phils. v. Prime Neighborhood Association, supra* note 16.

[34] *Rollo*, p. 91.

[35] *Id*.

However, the RTC dismissed without prejudice that action for the Annulment of Judgment for lack of jurisdiction.[36]

Second, the actual possession of the subject property by Artemio is undisputed, as it was affirmed by no less than the second SC judgment.

In the aforementioned Decision, which concerns the ejectment case Artemio had filed against Carmelita, this Court affirmed his possessory rights over the subject property after he was found to be in prior possession thereof.[37] Likewise noted is the issuance of the second SC judgment in 2006, or during the pendency of Peñaflor's application for a writ of possession pursuant to the judgment in the *ex parte* possession case. This simply means that Artemio's possession of the subject property was already subsisting at the time it was extrajudicially foreclosed. The RTC should have noted this fact.

Lastly, Artemio possessed the property under an adverse claim against Nicolasa, the debtor/mortgagor in the foreclosure proceedings, as affirmed by the evidence available before the Court.

The second SC judgment[38] specifically found the following:

1. Artemio had been in long-term possession of the property since 1968.
2. He had a Sales Patent Application over the property in his name dated 2 October 1968.
3. He had Tax Declarations over the property in his name dated 7 January 1969 and 22 May 1989, or prior to the execution of the mortgage and the foreclosure thereof.
4. He had executed mortgages over the property in 1968 and 1973, also prior to the execution of the mortgage and the foreclosure thereof.[39]

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[36] *Id*. at 95.

[37] *Guanga v. Dela Cruz, supra* note 3.

[38] *Id*.

[39] *Rollo*, p. 60.

The CA was thus correct in ruling as follows:

> We find that petitioners are holding the property adverse to Nicolasa, the judgment obligor. Nowhere is this made clearer than in the evidence submitted by Artemio in Civil Case No. 4605 [ejectment case], which were given probative value by no less than the Supreme Court. The evidence, consisting of Artemio's sales application, the deeds of real estate mortgage and payment of taxes on the property, all indicate that Artemio is claiming ownership of the subject property, which was in his possession at the time.[40]

Likewise noted is the notarized Waiver[41] executed in 1989 by Nicolasa, who thereby renounced all her rights, interests, and participation in favor of Artemio. This Waiver, which strengthened Artemio's adverse claim of ownership, especially against Nicolasa, was executed prior to the bank's mortgage lien.

All these facts indicate that the claim of Artemio was not derived from his relationship with Nicolasa as her heir or successor-in-interest. **Therefore, he was holding the property *in his own right*.**

Under the above circumstances, the RTC was without authority to grant the Writ of Possession. It should have desisted from enforcing the writ until a determination as to who, between petitioners and respondents, had the better right to possess the property. **To enforce the writ against an unwitting third-party possessor, who took no part in the foreclosure proceedings, would be tantamount to the taking of real property without the benefit of proper judicial intervention.**[42]

Petitioners cannot invoke Peñaflor's title in the *ex parte* proceeding; they must resort to the appropriate judicial process in order to recover the property. As correctly concluded by the CA, the correct remedy is not the implementation of the Writ of Possession, but petitioners' institution of ejectment proceedings or a *reivindicatory* action.[43]

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[40] *Id*. at 64.

[41] *Id*. at 170.

[42] *Philippine National Bank v. Court of Appeals, supra* note 12.

[43] *Rollo,* p. 67.

Whatever arguments petitioners have raised to prove their supposed rightful possession or ownership of the property are matters that should be threshed out in an appropriate action filed specifically for their resolution.[44] In the writ of possession case, the RTC had no jurisdiction to determine who between the parties was entitled to ownership and possession of the foreclosed property.[45]

The Waiver was not Artemio's source of title over the subject property.

One of the arguments raised in the *ponencia* is that a mere waiver of rights is not an effective mode of transferring ownership under the law.[46] This argument is premised on the position that the Waiver executed by Nicolasa in favor of Artemio back in 1989 was the source of his claim of ownership.

However, the Waiver was not the basis of the claim of Artemio. The CA ruled that the Waiver simply fortified his claim over the property, especially against Nicolasa. It was the totality of evidence, as appreciated by the CA, that showed that he was clearly an adverse third-party possessor of the subject property. The evidence included the second SC judgment itself affirming his possession over the subject property.

In fact, this Court found in that case that "[Artemio] presented enough evidence proving his prior possession of the Property independent of the Waiver."[47] To put it simply, his adverse claim — specifically one of ownership — was founded on his long-term possession of the subject property together with his other acts of ownership executed over it.

It must also be emphasized that Nicolasa could not have possibly been Artemio's source of claim of ownership over

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[44] *Royal Savings Bank v. Asia, supra* note 29.

[45] *Philippine National Bank v. Court of Appeals, supra* note 12.

[46] *Ponencia*, pp. 8-10.

[47] *Guanga v. Dela Cruz, supra* note 3 at 773.

the subject property, as she herself had no title thereto in her name. Further, she was never shown to have actually possessed the subject property at any time. Her supposed right thereto was based on (1) a Sales Patent Application, which in the ejectment case was found by this Court to be undated; and (2) Tax Declarations which, however, failed to clearly indicate that it was Nicolasa, not Artemio, who had first declared the property for tax purposes.[48]

Further, the assailed Waiver[49] reads as follows:

> That I, NICOLASA DELA CRUZ, of legal age, Filipino, widow and residing at No. 11 Ifugao St. Barretto, Olongapo City, Philippines, do hereby by these presents, freely and irrevocably WAIVE, RENOUNCE, TRANSFER and QUITCLAIM all my rights, interests and participation over a parcel of residential lot including all the existing improvements thereon, x x x:
>
> x x x x x x x x x
>
> x x x in favor of my son ARTEMIO DELA CRUZ, xxx the above-described property free from all liens and encumbrances;
>
> That I hereby warrant peaceful possession of the above-described property herein waived, binding myself to defend him, his heirs, successors, assigns from any lawful claims of any person whomsoever.[50]

Nowhere in the Waiver was it stated that Nicolasa owned the subject property, and that she was transferring ownership thereof to Artemio. Rather, she simply renounced all her rights, interests, and participation in his favor. It is understood that she did so on account of the finding in the ejectment case that she had previously attempted to apply for a sales patent for herself. It was also found that she even had Tax Declarations in her name over the subject property, but that these were insufficient to debunk the documents of Artemio proving his

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[48] *Id*.

[49] *Rollo*, p. 170.

[50] *Id*.

claim over the property. The Waiver simply indicates that Nicolasa had previously laid claim over the subject property, but that she is now letting go of her claim in favor of Artemio. Therefore, at the very least, the Waiver establishes his claim of ownership specifically against that of Nicolasa, the debtor/mortgagor in the foreclosure proceedings.

The factual findings in the ejectment case were properly considered.

While the documentary evidence under consideration (*i.e.* the Sales Patent Application, Deeds of Real Estate Mortgage, Tax Declarations, and Waiver) do not, on their own, conclusively prove the ownership of Artemio over the subject property, together they indicate his adverse claim thereto, especially against Nicolasa.

As has been said, all that third-party claimants in foreclosure proceedings need to show is that they are in possession, and that their possession is adverse to the claim of the judgment obligor. In other words, they simply have to show that they have a valid claim of ownership together with their possession, not that they in fact have ownership.[51]

Here, the second SC judgment itself shows, at the very least, that Artemio has indisputably been in possession of the subject property since 1968. The *ponencia* points out that the second SC judgment was limited to the issue of possession against his sister, Carmelita. Nevertheless, possession of the property by Artemio gives him a presumptive title over it, considering that the debtor/mortgagor (Nicolasa) did not have any title in her name and was not in possession of the property at the time she mortgaged it. *Development Bank of the Philippines v. Prime Neighborhood Association*[52] has ruled that **a third party's possession of the property is legally presumed to be pursuant to a just title**. It must be borne in mind that the foregoing

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[51] *Development Bank of the Phils. v. Prime Neighborhood Association, supra* note 16.

[52] *Id*.

legal presumption may be overcome by the purchaser only in a judicial proceeding for recovery of the property.

It is noteworthy that the second SC judgment case involves the same property. The ejectment case therein was also filed against the sister of Artemio, who is involved in the present case as the one who mortgaged the property on behalf of their mother, Nicolasa. Lastly, the ruling in favor of Artemio, while primarily focused on his right of possession, was based on a set of documents asserting his claim of ownership over the subject property. Consequently, the relevance of the ejectment case to the one presently before us cannot be denied.

It is not surprising, therefore, for the CA to find that this act of filing the ejectment case and pursuing it through four different courts establishes, to a large extent, that Artemio's claim of ownership is "far from being a mere ruse to prevent the implementation of the writ of possession and frustrate the effects of the mortgage executed in favor of [Peñaflor]."[53]

On this note, it is worthy to address the due process arguments raised.[54] Indeed, the documents that formed the basis of the second SC judgment were not submitted and considered before the court *a quo*. Rather, what was submitted to the lower court was the second SC judgment itself.

A review of the facts would show that, through a Very Urgent Omnibus Motion,[55] Artemio presented before the RTC the second SC judgment to prove his status as a third-party claimant. The facts also show that Peñaflor, through counsel, was able to oppose that motion.[56]

Thus, contrary to the *ponencia's* concern, the right of Penaflor to due process was not violated in the course of the proceedings

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[53] *Rollo*, p. 65.

[54] *Ponencia*, p. 11.

[55] *Rollo*, p. 28.

[56] *Id*.

below. He was able to examine, object to, and set up his defense as against that particular Decision of the Court, the implications of which could have guided the trial court in determining the status of Artemio as an adverse possessor of the subject property.

The records affirm the veracity of Artemio's adverse claim.

The *ponencia* points out certain parts of the records that supposedly diminish the veracity of Artemio's claim.[57]

At the outset, it cannot be emphasized enough that a third party claiming ownership of the subject property need not prove the validity of the claim in the proceedings for the issuance of a writ of possession. What needs to be shown is simply possession of an adverse character as against the claim of the debtor/mortgagor in the foreclosure case. In other words, what needs to be shown is a *bona fide* claim, not proof of ownership *per se.* The veracity or truth of that claim must be threshed out in a separate proceeding, as discussed above.

At any rate, it is submitted that the circumstances pointed out do not diminish the adverse nature of Artemio's claim over the property.

First, in his case for Annulment of Judgment, Artemio's claim that Nicolasa did not own the subject property was not inconsistent with respondents' claim in the present case that Nicolasa transferred her rights over the property through a Waiver. As discussed above, the Waiver was not the primary source of the right of Artemio over the property. Also, nowhere in the Waiver is it mentioned that Nicolasa owned the property or was transferring ownership thereof to him.

Second, the separate Motions to Quash filed by the siblings of Artemio cannot be taken against him, as he did not join them in their motions for the reason that his own Motion to Quash was founded on a different ground. Instead of banking on his father's share in the subject property, he grounded his motion

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[57] *Ponencia*, pp. 13-14.

on his own claim of ownership.[58] It is this claim that he has been asserting since Day One; that is, through the filing of his action for Annulment of Judgment.

Third, there was a reason why it took Artemio seven years from the mortgage of the subject property to file the ejectment complaint. Prior to filing that case, he had filed the earlier Complaint for Annulment of Judgment in the *ex parte* possession case decided in Penaflor's favor. Unfortunately, that Complaint was dismissed only in March 1998,[59] prompting Artemio to immediately file an ejectment case against his sister in April 1998. Instead of engendering doubt, these events further affirm the CA's conclusion that his unwavering acts to defend his claim over the property, including the "filing of [the ejectment case] and seeing it through four different courts xxx establishes to a large extent that his claim of ownership is far from being a mere ruse to prevent the implementation of the writ of possession and frustrate the effects of the mortgage executed in favor of [Peñaflor]."[60]

CONCLUSION

There is no dispute that the law puts a premium to the mortgagee who has already consolidated the title to the subject property. But the law also protects the actual possessor of a property under a claim of ownership[61] as clearly articulated in Art. 433 of the Civil Code. This provision underpins the issue involved in the present case. Artemio has been shown to be such a possessor.

I submit that it would be premature, unwarranted, and, ultimately unjust if, on the basis of doubts as to the source of his ownership over the subject property, Artemio were to be deprived of the right to defend his claim over it in a separate action. This is a matter that must be properly threshed out in a separate judicial proceeding as required by Art. 433.

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[58] *Rollo*, p. 61.

[59] *Id*. at 90-95.

[60] *Id*. at 65.

[61] *Unchuan v. CA*, 244 Phil. 733 (1988).

It must be emphasized that all that the exception does is make the RTC defer the issuance of a writ of possession and allow the parties to thresh out their claim in a proper judicial proceeding. The exception does not in any way nullify or affect the mortgagee's consolidated title.

WHEREFORE, I vote to **DENY** the Petition. The Court of Appeals Decision[62] and Resolution[63] in CA-G.R. SP No. 110392 should be **AFFIRMED.**

SECOND DIVISION

[G.R. No. 201306. August 9, 2017]

LYDIA LAO, JEFFREY ONG, HENRY SY, SY TIAN TIN, SY TIAN TIN, JR., AND PAUL CHUA, *petitioners, vs.* **YAO BIO LIM AND PHILIP KING,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; RULE THAT FACTUAL FINDINGS OF THE COURT OF APPEALS ARE NOT REVIEWABLE BY THE SUPREME COURT IS SUBJECT TO CERTAIN EXCEPTIONS.— The rule that factual findings of the Court of Appeals are not reviewable by this Court is subject to certain exceptions, such as when the inference made is manifestly mistaken and when the "findings of fact are conclusions without citation of specific evidence on which they are based."

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[62] Dated 18 February 2011.

[63] Dated 8 July 2011.

2. MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; REGULAR MEETINGS OF STOCKHOLDERS OR MEMBERS; RULE THEREON, NOT VIOLATED IN CASE AT BAR.— Section 50 of Batas Pambansa Blg. 68 or the Corporation Code prescribes that "regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws." Respondents do not dispute that Article VIII (3) of the PSI's by-laws fixed the annual meeting of stockholders on the third Friday of March of every year. This Court takes judicial notice that March 15, 2002 was the third Friday of March 2002. Furthermore, the agenda for the meeting, which includes the elections of the new board of directors and ratification of acts of the incumbent board of directors and management, was the standard order of business in a regular annual meeting of stockholders of a corporation. Thus, this Court holds that the March 15, 2002 annual stockholders' meeting was a regular meeting. Hence, the requirement to state the object and purpose in case of a special meeting as provided for in Article VIII (5) of the PSI's by-laws does not apply to the Notice for the March 15, 2002 annual stockholders' meeting. Regarding the time for serving notice of the meeting to all the stockholders, Section 50 of Batas Pambansa Blg. 68 reads in part: Section 50. *Regular and Special Meetings of Stockholders or Members*. x x x That written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, *unless a different period is required by the by-laws*. Under PSI's by-laws, notice of every regular or special meeting must be mailed or personally delivered to each stockholder not less than five (5) days prior to the date set for the meeting. x x x In this case, the PSI's by-laws providing only for a five (5)-day prior notice must prevail over the two (2)-week notice under the Corporation Code. By its express terms, the Corporation Code allows "the shortening (or lengthening) of the period within which to send the notice to call a special (or regular) meeting." Thus, the mailing of the Notice to respondents on March 5, 2002 calling for the annual stockholders' meeting to be held on March 15, 2002 is not irregular, since it complies with what was stated in PSI's by-laws.

3. CIVIL LAW; DAMAGES; MORAL DAMAGES; RECOVERABLE IN CASE OF WILLFUL INJURY TO PROPERTY; AWARD THEREOF, SUSTAINED IN CASE AT BAR.— [T]he Court finds no reason to reverse the award of damages. The award of moral damages finds legal basis in Articles 2217 and 2220 of

the New Civil Code, which allow recovery of moral damages in case of willful injury to property. A stockholder's right to vote is inherent in and incidental to the ownership of a capital stock. Here, petitioners unjustifiably and obstinately refused to recognize respondents' shareholdings in PSI and to allow them to participate in the 2002 stockholders' meeting and elections of the corporation's directors. They did this despite the previous Orders of the Securities and Exchange Commission and of the Regional Trial Court; thus, depriving respondents of their property rights. The Court of Appeals found that "the acts of the [petitioners] have caused mental anguish, serious anxiety and social humiliation to [respondents]."

4. **ID.; ID.; ATTORNEY'S FEES AND LITIGATION EXPENSES; AWARD, PROPER IN CASE AT BAR.—** [T]he award of attorney's fees and litigation expenses is proper because respondents were compelled to litigate to protect or vindicate their stockholders' rights against the unlawful acts of the petitioners.

5. **ID.; ID.; TEMPERATE DAMAGES; MAY BE RECOVERED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED AS IN CASE AT BAR.—** The Court of Appeals likewise correctly sustained the award of temperate damages. Petitioners contest the award on the ground that respondents have not prayed for it. While this may be true, it is also true that respondents have prayed for actual damages in their complaint. Under the law, courts may award other kinds of damages in lieu of actual damages x x x. In several cases, this Court has sustained the award of temperate damages where the amount of actual damages was not sufficiently proven. Here, in sustaining the Regional Trial Court Decision, the Court of Appeals found that respondents have suffered some pecuniary loss. Petitioners' wrongful acts have prevented respondents from exercising their rights as legitimate stockholders of the corporation. Under the circumstances of this case, this Court finds the amount of ₱100,000.00 awarded by the lower court to be fair and reasonable.

APPEARANCES OF COUNSEL

R & S Law Offices for petitioners.

Carag Zaballero San Pablo Calica & Abiera Law Offices for respondents.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] seeking to annul and set aside the Decision[2] dated August 3, 2011 and Resolution[3] dated March 21, 2012 of the Court of Appeals in CA-G.R. CV. No. 90314. The Court of Appeals affirmed the March 20, 2007 Decision of Branch 90, Regional Trial Court, Quezon City.[4] This trial court Decision annulled the elections of the board of directors of Philadelphia School, Inc. (PSI) held on March 15, 2002 and the issuance of stock dividends and transfer of shares of stock, and awarded damages to Yao Bio Lim and Philip King (respondents).[5]

This case is a continuation of a dispute between two (2) groups of stockholders for the control and management of PSI. One group was headed by Lydia Lao (Lao) and the other was led by Philip King (King). Their dispute eventually reached this Court in G.R. No. 160358, entitled *Lydia Lao, William Chua Lian, Jeffrey Ong and Henry Sy v. Philip King*.[6] The relevant facts in that case were as follows:

PSI was organized in 1970 with an authorized capital stock of ₱2,000,000.00, divided into 20,000 shares with a par value

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[1] *Rollo*, pp. 8-39.

[2] *Id*. at 41-53. The Decision was penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Marlene Gonzales-Sison and Manuel M. Barrios of the Special Eleventh Division, Court of Appeals, Manila.

[3] *Id*. at 55-56. The Resolution was penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Marlene Gonzales-Sison and Manuel M. Barrios of the Former Special Eleventh Division, Court of Appeals, Manila.

[4] *Id*. at 53.

[5] *Id*. at 45.

[6] 532 Phil. 305 (2006) [Per *J*. Garcia, Second Division].

of ₱100 per share. Out of this authorized capital stock, 4,600 shares were subscribed and paid up.[7]

Ong Y. Seng, King's father, had the most number of subscribed shares, holding 1,200 shares. Before his death in 1994, he sought, and was granted, the approval of the PSI board of directors to transfer his shares to King. Since then, King had been consistently elected as a member of the PSI board of directors.[8]

During the special stockholders' meeting on May 23, 1998, a new set of directors and officers was elected. Yao Bio Lim was elected President and King was Vice President.[9]

Lao, the former president, refused to acknowledge the newly elected directors and officers as well as King's ownership of 1,200 PSI shares. On August 15, 1998, Lao issued a Secretary's Certificate stating that a board meeting was held on the same date wherein the board of directors resolved to nullify the transfer to King of the shares owned by his father.[10]

In April 1999, King discovered that a stockholders' meeting was conducted on March 19, 1999, wherein Lao, William Chua Lian (Chua Lian), Jeffrey Ong (Ong), and Henry Sy were elected as new members of the board of directors.[11]

King filed a petition before the Securities and Exchange Commission "to enjoin [Lao, Chua Lian, Ong, and Henry Sy] from representing themselves as officers and members of the board of directors of the Philadelphia School, Inc. and to nullify all acts done and resolutions passed by them. The petition was docketed as SEC Case No. 05-99-6297."[12]

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[7] *Rollo*, p. 12.

[8] *Lao v. King*, 532 Phil. 305, 307 (2006) [Per *J.* Garcia, Second Division].

[9] *Id*. at 308.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 308-309.

When Republic Act No. 8799[13] took effect, the case was transferred to Branch 93, Regional Trial Court, Quezon City and was docketed as Civil Case No.Q-01-42972.[14]

On September 25, 2002, Judge Apolinario D. Bruselas, Jr. rendered a decision granting King's petition. It disposed as follows:

> WHEREFORE, the foregoing premises considered, the court finds for [King] and as prayed for, hereby orders as follows:
>
> 1) The meetings held by the [petitioners] on 15 August 1998 and all acts performed by them as the alleged officers and Board of Directors of the corporation are declared null and void;
>
> 2) The alleged election of [petitioner] Lydia Lao as president and other [petitioners] as members of the Board of Directors of the corporation during the aforementioned meeting, declared null and void;
>
> 3) The reduction in the shareholdings of [King] from 1,200 shares to only 500 shares, declared null and void; the shares of [King] should be restored to 1,200 and which number he is entitled to vote;
>
> 4) The increase in the number of the shares of Mr. Sy Tian Ting and Dy Siok Bee, declared null and void;
>
> 5) The [petitioners] to account for the funds of the corporation disbursed by them during the period they took control;
>
> 6) The new elections of the corporate directors and officers should be based on the shareholdings reflected in the Articles of Incorporation modified only by such transfers as may be shown to be valid and legitimate.
>
> SO ORDERED.[15]

King filed a motion for execution, which was granted by the Regional Trial Court.[16] Lao's group questioned the order of

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[13] The Securities Regulation Code.

[14] *Lao v. King*, 532 Phil. 305, 309 (2006) [Per *J*. Garcia, Second Division].

[15] *Id*. at 309-310.

[16] *Id*. at 310.

the trial court granting execution through a petition for certiorari filed before the Court of Appeals.[17] The Court of Appeals upheld the validity of the order,[18] which this Court eventually sustained on August 31, 2006 in G.R. No. 160358.[19]

Meanwhile, on March 15, 2002, a general stockholders' meeting was held wherein Lao, Ong, Henry Sy, Sy Tian Tin, Sy Tian Tin, Jr. and Paul Chua (petitioners) were elected as members of the board of directors, with Chua Lian as chairman of the board.[20]

On March 26, 2002, Yao Bio Lim and King filed a Petition[21] before Branch 90, Regional Trial Court, Quezon City against petitioners, the newly elected board of directors. They sought, among others, to annul: (1) "the elections held on March 15, 2002 and all corporate acts of the supposedly new board of directors and officers of [PSI]," (2) the "issuance of stock dividends," and (3) the "illegal transfer of shares of stock."[22] They also prayed that petitioners, together with Chua Lian, be ordered to account for damages and for the funds and assets of the corporation since August 1998.[23]

Yao Bio Lim and King averred that on March 10, 2002, they received the Notice of meeting informing them about the general stockholders' meeting to be held on March 15, 2002 at 9:00 a.m. at the PSI's board room. "The notice, however, did not state the agenda or the purpose of the meeting."[24] Moreover, they alleged that the Notice sent to King was still in the name

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[17] *Id*. at 311.

[18] *Id*.

[19] *Id*. at 317.

[20] *Rollo*, p. 20.

[21] *Id*. at 41.

[22] *Id*. at 42.

[23] *Id*. at 44.

[24] *Id*. at 43.

of his father, Ong Y. Seng, while that sent to Yao Bio Lim included the name of his deceased father, Yao Chek.[25]

Yao Bio Lim claimed that he acquired his PSI shares from his father, who owned 300 PSI shares during his lifetime. Specifically, in 1995, Yao Chek transferred one (1) share to him and 100 shares to his brother, Yao Tok Lim. After Yao Chek's death in 1999, his remaining shares were divided among his five (5) children. Yao Bio Lim's brothers, in turn, agreed to assign their corresponding shares to Yao Bio Lim and Yao Juan Lim.[26]

During the meeting, "Philip King and a certain Atty. Garaygay were asked to leave the board room because they were allegedly not stockholders."[27] On the other hand, Yao Bio Lim was allowed to vote for only one (1) share during the elections despite the proxies he held for his brothers, Yao Tok Lim and Yao Juan Lim.[28]

Yao Bio Lim and King further attested that the Securities and Exchange Commission and the Regional Trial Court had previously ordered that the stockholders listed in the 1997 General Information Sheet be used as basis for the 2000 and 2001 elections of PSI board of directors. Lao, Chua Lian, Ong, and Henry Sy allegedly violated these orders when they used a different list of stockholders during the elections held on March 15, 2002. Moreover, they had purportedly previously issued 300% stock dividends to some stockholders without the required approval of stockholders representing two-thirds (2/3) of the outstanding capital stock of PSI.[29]

Finally, Yao Bio Lim and King assailed the transfer of the following shares of stocks without the required prior notice to

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[25] *Id*.

[26] *Id*. at 42.

[27] *Id*. at 43. Atty. Garaygay acted as proxy of stockholder Lucia Cheng.

[28] *Id*.

[29] *Id*. at 43.

all stockholders, which allegedly deprived them of "the opportunity to exercise their option to buy the shares"[30]:

SELLER	TRANSFEREE	NUMBER OF SHARES
David Lio	Betty Lao/Lydia Lao	200 shares
Ong Giok King	Lydia Lao/Sy Tian Tin	99 shares
William Chua Lian	Paul Chua	1 shares [sic][31]

On the other hand, petitioners claimed that the stockholders' meeting and the elections held on March 15, 2002 were conducted in accordance with the PSI's by-laws and the Corporation Code.[32]

On March 20, 2007, the trial court rendered its decision in favor of Yao Bio Lim and King. The dispositive portion of this decision read:

IN VIEW OF THE FOREGOING, judgment is rendered in favor of [respondents] and against [petitioners] as follows:

(a) Declaring the March 15, 2002 general stockholders' meeting and elections null and void and the results thereof invalid;

(b) Declaring the issuance of 300% stock dividend[s] by [petitioners]/Philadelphia School, Inc. in 199[7][33] null and void;

(c) Declaring the sale/transfer of shares of stocks of David Lao, Ong Giok King and William Chua Lian illegal and void;

(d) Ordering [petitioners] to pay [respondents]: (i) PhP100,000.00 as temperate damages, (ii) PhP50,000.00 as moral damages, (iii) PhP100,000 as reasonable attorney's fees and expenses of litigation plus costs of suit.

All other claims are dismissed fort (sic) lack of factual/legal basis.[34]

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[30] *Id*. at 44.

[31] *Id*.

[32] *Id*.

[33] The Court of Appeals Decision mistakenly stated 1999, *rollo*, p. 45.

[34] *Rollo*, p. 45.

The Court of Appeals affirmed the Regional Trial Court Decision. It held that there were valid grounds to nullify the March 15, 2002 stockholders' meeting. First, the Notice of meeting did not state the purpose of the stockholders' meeting as required by Article VIII (5) of PSI's by-laws.[35] Additionally, it was not sent to the stockholders at least two (2) weeks prior to the meeting as required under Section 50 of the Corporation Code.[36] Finally, petitioners used a schedule of stockholders different from the list contained in the 1997 General Information Sheet, contrary to previous orders of the Securities and Exchange Commission and of the Regional Trial Court.[37]

The Court of Appeals further found that the issuance of 300% stock dividends was not approved by stockholders representing two-thirds (2/3) of the outstanding capital stock in violation of Section 43 of the Corporation Code.[38]

Petitioners filed a motion for reconsideration, which was likewise denied by the Court of Appeals in its March 21, 2012 Resolution.[39]

Hence, this Petition was filed[40] anchored on the following grounds:

I. [The Court of Appeals] seriously erred in concluding that the March 15, 2002 General Stockholders['] Meeting was a special meeting, despite th[e] fact that it was a regular meeting which does not require that the notice of the meeting shall state its object and purpose;

II. [The Court of Appeals] seriously erred in ruling that [the] notice of regular meetings should be sent to all stockholders

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[35] The Court of Appeals erroneously stated Articles of Incorporation, instead of by-laws.

[36] *Rollo*, pp. 46-47.

[37] *Id*. at 50.

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

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

[40] *Id*. at 8-39.

at least two (2) weeks prior to the meeting, despite th[e] fact that the by-laws of [PSI] specifically provide that the notice should be sent not less than five (5) days prior to the meeting;

III. [The Court of Appeals] seriously erred in ruling that. . . Yao Bio Lim was not properly notified of the March 15, 2002 General Stockholders['] [Meeting] . . . because the notice sent to him also included the name of his father, Yao Check, despite the fact that he actually received the notice and personally attended the meeting;

IV. [The Court of Appeals] seriously erred in concluding that Philip King was a stockholder of PSI in the year 2002 as the determination of the true ownership of shares of stock left by the late Ong Y. Seng was then still pending before the Regional Trial Court of Quezon City, Branch 93 (SEC Case No. 05-099-6297, Civil Case No. Q-01-42972)

V. [The Court of Appeals] seriously erred in ruling that the distribution in the year 2002 of the previously approved and declared 300% stock dividends in the year 1997 is invalid . . .

VI. [The Court of Appeals] erred in ruling that petitioners defied a purported order of the Securities and Exchange Commission

. . . . . .

VII. [The Court of Appeals] erred in ruling that petitioners should be ordered to pay moral and temporary damages, attorney's fees, and litigation expenses in favor of [respondents] . . .[41]

The petition is denied.

I

On the first and second assigned errors, petitioners contend that the Court of Appeals erred in considering the March 15, 2002 stockholders' meeting as a special meeting. They aver that the Court of Appeals erred in ruling that the meeting was not properly called due to the Notice's failure to state the meeting's purpose and to meet the two (2)-week notice requirement under Section 50 of the Corporation Code. They

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

maintain that the Notice of the March 15, 2002 stockholders' meeting was sent to the stockholders at least five (5) days before the meeting in compliance with the PSI's by-laws.

Respondents counter that the issue of whether or not the March 15, 2002 meeting was a special meeting is a factual issue that is not proper in a Rule 45 petition. Furthermore, they argue that petitioners are estopped from raising this issue for the first time on their appeal.

This Court finds for petitioners on this issue.

The rule that factual findings of the Court of Appeals are not reviewable by this Court is subject to certain exceptions, such as when the inference made is manifestly mistaken[42] and when the "findings of fact are conclusions without citation of specific evidence on which they are based."[43]

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[42] *Locsin v. Hizon,* September 17, 2014, 743 Phil. 420, 428 (2014) [Per *J.* Velasco, Jr., Third Division].

[43] INTERNAL RULES OF THE SUPREME COURT, Rule 3, Sec. 4 provides:

Section 4. Cases When the Court May Determine Factual Issues. — The Court shall respect the factual findings of lower courts, unless any of the following situations is present:

(a) the conclusion is a finding grounded entirely on speculation, surmise and conjecture;

(b) the inference made is manifestly mistaken;

(c) there is grave abuse of discretion;

(d) the judgment is based on a misapprehension of facts;

(e) the findings of fact are conflicting;

(f) the collegial appellate courts went beyond the issues of the case, and their findings are contrary to the admissions of both appellant and appellee;

(g) the findings of fact of the collegial appellate courts are contrary to those of the trial court;

(h) said findings of fact are conclusions without citation of specific evidence on which they are based;

(i) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents;

(j) the findings of fact of the collegial appellate courts are premised on the supposed evidence, but are contradicted by the evidence on record; and

Here, the Court of Appeals, in ruling that the Notice of the March 15, 2002 meeting sent to the stockholders did not comply with the requirement set forth in Article VIII (5) of the PSI's by-laws,[44] explained:

> [T]he notice of meeting sent to the stockholders did not comply with the requirement set forth in Article VIII (5) of the [By-Laws] of Philadephia School, Inc., which expressly provides that:
>
> > [5]. — NOTICE OF MEETINGS: Notice of the meetings, which shall be written or printed, for every regular or special meeting of the stockholders, shall be mailed or personally delivered to each stockholder, at their respective addresses as they appear in the book of the corporation, not less than five (5) days prior to the date set for such meeting; and in case of special meeting the notice shall state the object and purpose of the same . . .
>
> *Clearly, in case of a special meeting, the corporate by-laws require that the notice shall state the object and purpose for which the meeting is called. This, however, was transgressed as there was no mention in the notice as to the purpose for calling the March 15, 2002 stockholders' meeting*.[45] (Emphasis supplied)

The Court of Appeals sweepingly considered the March 15, 2002 stockholders' meeting as a special meeting without discussing the factual bases for its conclusion.

Furthermore, although raised for the first time on appeal as respondents argued, this Court resolves to pass on these issues as their resolution would not require presentation of further evidence by the adverse party. An exception to the rule that a

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(k) all other similar and exceptional cases warranting a review of the lower courts' findings of fact.

Treñas v. People, 680 Phil. 368 (2012) [Per *J*. Sereno, Second Division]; *Bank of the Philippine Islands v. Suarez*, 629 Phil. 305 (2010) [Per *J*. Carpio, Second Division]; *Dee v. Court of Appeals*, 382 Phil. 352 (2000) [Per *J*. Quisumbing, Second Division].

[44] *Rollo*, pp. 23 and 96. The Court of Appeals erroneously stated Articles of Incorporation, instead of by-laws.

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

party may not change his or her theory on appeal was recognized in *Lianga Lumber Co. v. Lianga Timber Co., Inc.*,[46] wherein this Court said:

> [I]n the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.[47]

In this case, the issues raised do not involve any disputed evidentiary matter.

A copy of the Notice dated March 4, 2002 for the March 15, 2002 stockholders' meeting that was sent to respondents specifically stated:

> March 4, 2002
>
> N O T I C E
>
> TO: ALL STOCKHOLDERS:
>
> This is to inform you that the *annual Meeting of the Stockholders* of Philadelphia School, Inc. is scheduled on March 15, 2002 at 9:00 a.m. to be held at the school board room.
>
> Any proxy should be presented to the Corporation at least three (3) days before the meeting or on or before March 12, 2002.
>
> [sgd.] JEFFREY ONG
> Corporate Secretary[48]
> (Emphasis supplied)

Section 50 of Batas Pambansa Blg. 68 or the Corporation Code prescribes that "regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws." Respondents do not dispute that Article VIII (3) of the PSI's

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[46] 166 Phil. 661 (1977) [Per *J.* Antonio, Second Division].

[47] *Id*. at 688. See also *Canlas v. Tubil*, 616 Phil. 915 (2009) [Per *J.* Ynares-Santiago, Third Division].

[48] *Rollo*, pp. 57-58.

by-laws fixed the annual meeting of stockholders on the third Friday of March of every year.[49] This Court takes judicial notice that March 15, 2002 was the third Friday of March 2002.

Furthermore, the agenda[50] for the meeting, which includes the elections of the new board of directors and ratification of acts of the incumbent board of directors and management, was the standard order of business in a regular annual meeting of stockholders of a corporation.

Thus, this Court holds that the March 15, 2002 annual stockholders' meeting was a regular meeting. Hence, the requirement to state the object and purpose in case of a special meeting as provided for in Article VIII (5) of the PSI's by-laws does not apply to the Notice for the March 15, 2002 annual stockholders' meeting.

Regarding the time for serving notice of the meeting to all the stockholders, Section 50 of Batas Pambansa Blg. 68 reads in part:

> Section 50. *Regular and Special Meetings of Stockholders or Members.* — Regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors or trustees: *Provided*, That written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, *unless a different period is required by the by-laws*. (Emphasis supplied)

Under PSI's by-laws, notice of every regular or special meeting must be mailed or personally delivered to each stockholder not less than five (5) days prior to the date set for the meeting. Article VIII (5) of PSI's by-laws expressly provides:

> 5. — NOTICE OF MEETINGS: Notice of the meetings, which shall be written or printed, for every regular or special meeting of the stockholders, shall be mailed or personally delivered to each stockholder, at their respective addresses as they appear in the book

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[49] *Id*. at 23.

[50] *Id*. at 59.

of the corporation, *not less than five (5) days prior to the date set for such meeting*; and in case of special meeting the notice shall state the object and purpose of the same. Provided, however, that any irregularity either in calling the meeting or in serving notice shall not invalidate any act duly voted upon in such meeting or any proceeding held thereafter, provided that all stockholders are present at the meeting.[51] (Emphasis supplied)

In this case, the PSI's by-laws providing only for a five (5)-day prior notice must prevail over the two (2)-week notice under the Corporation Code. By its express terms, the Corporation Code allows "the shortening (or lengthening) of the period within which to send the notice to call a special (or regular) meeting."[52] Thus, the mailing of the Notice to respondents on March 5, 2002[53] calling for the annual stockholders' meeting to be held on March 15, 2002 is not irregular, since it complies with what was stated in PSI's by-laws.

II

Despite the foregoing circumstances, there were other grounds to nullify the March 15, 2002 annual stockholders' meeting. As found by the Court of Appeals, petitioners did not recognize respondents' rights as stockholders, making the proceedings and elections during the March 15, 2002 meeting void. The Court of Appeals discussed:

[D]uring the same meeting, [petitioners] made use of a schedule of stockholders which was different from the list contained in the 1997 [General Information Sheet]. Obviously, [petitioners] defied the previously issued *Order* of both the SEC and the RTC requiring the use of the 1997 [General Information Sheet], it being the last, official and recorded submission by the Philadelphia School in keeping with its reportorial requirement with the SEC. As disclosed in the records,

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[51] *Id*. at 47.

[52] *Guy v. Guy*, G.R. No, 184068, April 19, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/184068.pdf > 8 [Per *C.J.* Sereno, First Division].

[53] *Rollo*, p. 26.

the 1997 [General Information Sheet] specified the stockholders of Philadelphia School and their respective shareholdings. Since the composition in 1997 [General Information Sheet] was not changed up to the time the March 15, 2002 meeting was called, the same should have been used as the basis for the schedule of stockholders and their respective shareholdings relative to the election of its board of directors. By so defying the *Order* of both the SEC and the RTC as regards the use of the 1997 [General Information Sheet], [petitioners], in effect, refused to recognize [respondents'] shareholdings and their right to vote, thus, rendering void all the acts done during the meeting, particularly the holding of the election of the officers and the declaration and issuance of the 300% stock dividend.[54]

The foregoing disquisitions of the Court of Appeals render untenable and irrelevant petitioners' contention that King could not be considered a legitimate stockholder of PSI during the stockholders' meeting in 2002. This is because the validity of Ong Y. Seng's transfer of shares to his son was still at issue and King's ownership of PSI stocks was finally resolved by this Court only on April 28, 2011.[55]

Petitioners also fault the Court of Appeals for not specifying which orders of the Securities and Exchange Commission and of the Regional Trial Court they allegedly violated. Respondents counter that had petitioners been mindful to search the records of the case, they would have easily known that the Court of Appeals was referring to the following Orders:

(1) the March 13, 2000 Order of the Securities and Exchange Commission issued relative to **SEC Case No. 05-99-6297**, which recognized the 1997 General Information Sheet as reference of stockholders' names to be used in any stockholders' meeting and elections for the members of the board of directors of PSI; and

(2) the March 23, 2001 Order issued by Judge Apolinario Bruselas of Branch 93, Regional Trial Court, Quezon City in

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[54] *Rollo*, p. 50.

[55] *Id*. at 28-29, 128-129.

Civil Case No. Q-01-42972, where he instructed that the 1997 General Information Sheet be the basis for the schedule of stockholders and their respective shareholdings.[56]

Nonetheless, petitioners harp on the self-serving nature of the 1997 General Information Sheet, which they assert was prepared by Yao Bio Lim. Furthermore, they insist that the issue of King's rightful ownership of the stocks was resolved with finality only on April 28, 2011.

This Court is not persuaded.

Petitioners cannot unilaterally disobey or disregard the Orders of the Securities and Exchange Commission and of the Regional Trial Court despite their own views of the correctness or propriety thereof. In *Republic Commodities Corporation v. Oca*,[57] the president and general manager of Republic Commodities Corporation were held in contempt for their refusal to comply with the order of the trial court, then Court of First Instance, to redeliver the seized air-conditioning units to Salustiano Oca. This Court, in affirming the lower court, said:

> The theory espoused by appellants that a party may, at his own choice, directly disobey a court order which said party believes to be erroneous or beyond the court's authority is fraught with serious consequences. This Court, speaking through Mr. Justice Enrique Fernando, has had occasion to condemn a similar attitude in another case:
>
> > . . . The failure to abide by the orders and processes of judicial . . . agencies . . . gives, rise to a serious concern. It engenders at the very least the well-founded suspicion that such an attitude betrays an absence of good faith. It is indicative of a belief at war with all that adjudication stands for.
> >
> > No one may be permitted to take the law into his own hands. No one, much less the party immediately concerned, should have the final say on the validity or lack of it of one's course of conduct. Centuries of reliance on the judicial process repel such a notion . . .

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[56] *Id*. at 100-101.

[57] 144 Phil. 26 (1970) [Per *J.* Makalintal, *En Banc*].

> . . . Such refusal to accord due respect and yield obedience to what a court or administrative tribunal ordains is fraught with much gravel [sic] consequences . . . If such a conduct were not condemned, some other group or groups emboldened by the absence of any reproof or disapproval may conduct themselves similarly. The injury to the rule of law may well-nigh be irreparable.
>
> Law stands for order, for the peaceful and systematic adjustment of frictions and conflicts unavoidable in a modern society with his complexities and clashing interests, The instrumentality for such balancing or harmonization is the judiciary and other agencies exercising quasi-judicial powers. When judicial or quasi-judicial tribunals speak, what they decree must be obeyed; what they ordain must be followed. A party dissatisfied may ask for reconsideration and, if denied, may go on to higher tribunal. As long as the orders stand unmodified, however, they must, even if susceptible to well-founded doubts on jurisdictional grounds, be faithfully complied with.[58]

While it may be true that SEC Case No. 05-99-6297 and Civil Case No. Q-01-42972 were finally resolved only on April 28, 2011, the Orders mentioned in the Court of Appeals Decision were issued before the March 15, 2002 annual stockholders' meeting. Hence, petitioners were obliged to use the list of stockholders indicated in the 1997 General Information Sheet in compliance with the Orders dated March 13, 2000 and March 23, 2001 issued by the Securities and Exchange Commission and by the Regional Trial Court, respectively.

III

On the issue of the validity of the 300% stock dividends declaration, petitioners insist that the 300% stock dividends were validly declared by the PSI board of directors. They claim that these were ratified by the stockholders owning two-thirds (2/3) of the outstanding capital stock in the meeting held on

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[58] *Id.* at 29-30 *citing PAFLU vs. Salvador*, 135 Phil. 496 (1968) [Per *J.* Fernando, *En Banc*].

March 22, 1997, although its distribution was implemented only on February 28, 2002.[59]

The Court of Appeals rejected this stance. It held that the handwritten minutes of the March 22, 1997 meeting offered by petitioners as proof that the declaration and issuance of stock dividends were valid was questionable because "it [did] not even indicate the number of stock dividends to be declared."[60]

This Court agrees with the Court of Appeals.

The handwritten minutes of the March 22, 1997 stockholders' meeting recorded the following:

> Quorum established.
> Ratified all acts and proceedings of the Board of Directors and Management
> *Declaration of stock dividends*
> Nomination and the election of same Board and Officers in the preceding years as new Board
> Meeting adjourned. 1:05 P.M.[61] (Emphasis supplied)

Clearly, the foregoing minutes alone would be insufficient to prove petitioners' claim that the 300% stock dividends were approved by the board of directors and ratified by the stockholders in the March 22, 1997 meeting. The minutes did not provide any other detail that would convincingly show that the 300% stock, dividends distributed in 2002 were the same stock dividends that were ratified by the stockholders in 1997.

Furthermore, while the minutes contain the names and signatures of stockholders who were present at the meeting, the shares held by each were not indicated. On its face, the minutes did not readily confirm how many shares were represented and voted at the meeting, particularly on the stock dividends declaration.

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[59] *Rollo*, p. 30.

[60] *Id*. at 99.

[61] *Id*. at 70.

This Court finds no reversible error on the part of the Court of Appeals in nullifying the 300% stock dividends, a declaration on the basis of the following findings of the Regional Trial Court:

> [O]n the declaration, issuance and distribution of a three hundred percent (300%) stock dividend by [petitioners] in favor of certain stockholders, the evidence shows that the action or actions of the [petitioners] with respect to the 300% stock dividends was or were done without the approval of. . . Yao Bio Lim, . . . Philip King and Lucia Cheng who own and/or are entitled to vote one thousand nine hundred fifty (1,950) shares of stocks of the outstanding capital stock of the School of 4,600 shares, or approximately forty-two percent (42%) of the outstanding capital stock of the School. The act/s of the [petitioners] violated Section 43 of the Corporation Code which provides that ". . . no stock dividend shall be issued without the approval of stockholders representing not less than two-thirds (2/3) of the capital stock[.]"[62]

Petitioners have not presented any cogent reason for this Court to set aside these findings. Without respondents' and Lucia Cheng's approval, who held 42% of the outstanding capital stock of PSI collectively, the required two-thirds (2/3) or 67% vote for stock dividends declaration prescribed under Section 43[63] of the Corporation Code clearly could not have been met.

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[62] *Id*. at 48.

[63] CORP. CODE, Sec. 43 provides:

> Section 43. *Power to declare dividends*.— The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings which shall be payable in cash, in property, or in stock to all stockholders on the basis of outstanding stock held by them; Provided, That any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expenses, while stock dividends shall be withheld from the delinquent stockholder until his unpaid subscription is fully paid; Provided, further, That no stock dividend shall be issued without the approval of stockholders representing not less than two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose.

IV

Finally, this Court finds no reason to reverse the award of damages. The award of moral damages finds legal basis in Articles 2217[64] and 2220[65] of the New Civil Code, which allow recovery of moral damages in case of willful injury to property. A stockholder's right to vote is inherent in and incidental to the ownership of a capital stock.[66] Here, petitioners unjustifiably and obstinately refused to recognize respondents' shareholdings in PSI and to allow them to participate in the 2002 stockholders' meeting and elections of the corporation's directors. They did this despite the previous Orders of the Securities and Exchange Commission and of the Regional Trial Court; thus, depriving respondents of their property rights. The Court of Appeals found that "the acts of the [petitioners] have caused mental anguish, serious anxiety and social humiliation to [respondents]."[67]

Similarly, the award of attorney's fees and litigation expenses is proper because respondents were compelled to litigate to protect or vindicate their stockholders' rights[68] against the unlawful acts of the petitioners.

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[64] CIVIL CODE, Art. 2217 provides:

Article 2217. 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.

[65] CIVIL CODE, Art. 2220 provides:

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.

[66] *Tan v. Sycip*, 530 Phil. 609 (2006) [Per *C.J.* Panganiban, First Division]; *Castillo v. Balinghasay*, 483 Phil. 470 (2004) [Per *J.* Quisumbing, First Division].

[67] *Rollo*, p. 52.

[68] 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:

The Court of Appeals likewise correctly sustained the award of temperate damages. Petitioners contest the award on the ground that respondents have not prayed for it.[69] While this may be true, it is also true that respondents have prayed for actual damages in their complaint.[70] Under the law, courts may award other kinds of damages in lieu of actual damages:

> Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered ***when the court finds*** that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty. (Emphasis supplied)

In several cases,[71] this Court has sustained the award of temperate damages where the amount of actual damages was not sufficiently proven.

> (1) When exemplary damages are awarded;
> *(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;*
> (3) In criminal cases of malicious prosecution against the plaintiff;
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
> (6) In actions for legal support;
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
> (8) In actions for indemnity under workmen's compensation and employer's liability laws;
> (9) in a separate civil action to recover civil liability arising from a crime;
> (10) When at least double judicial costs are awarded;
> (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.
>
> In all cases, the attorney's fees and expenses of litigation must be reasonable. (Emphasis supplied)

[69] *Rollo*, p. 35.

[70] *Id*. at 44.

[71] *Lorenzo Shipping Corp. v. National Power Corp*., 770 Phil. 612 (2015) [Per *J*. Leonen, Second Division]; *Seven Brothers Shipping Corp. v. DMC-*

Here, in sustaining the Regional Trial Court Decision, the Court of Appeals found that respondents have suffered some pecuniary loss.[72] Petitioners' wrongful acts have prevented respondents from exercising their rights as legitimate stockholders of the corporation. Under the circumstances of this case, this Court, finds the amount of ₱100,000.00 awarded by the lower court to be fair and reasonable.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 205128. August 9, 2017]

HEIRS OF ELIZA Q. ZOLETA, namely: SERGIO RENATO Q. ZOLETA, *a.k.a.*, CARLOS ZOLETA, VENANCIO Q. ZOLETA, and MILAGROS Q. ZOLETA-GARCIA, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES AND DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD,** *respondents*.

Construction Resources, Inc., November 26, 2014, 748 Phil. 692 (2014) [Per *C.J.* Sereno, First Division]; *Snow Mountain Dairy Corp. v. GMA Veterans Force, Inc.*, 747 Phil. 417 (2014) [Per *J.* Peralta, Third Division]; *Orix Metro Leasing and Finance Corporation v. Mangalinao y Dizon*, 680 Phil. 89 (2012) [Per *J.* Del Castillo, First Division]; *Philippine Hawk Corporation v. Lee*, 626 Phil. 483 (2010) [Per *J.* Peralta, Third Division]; *Premiere Development Bank v. Court of Appeals*, 471 Phil. 704 (2004) [Per *J.* Ynares-Santiago, First Division].

[72] *Rollo*, p. 52.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); AS AN ADMINISTRATIVE AGENCY EXERCISING QUASI-JUDICIAL BUT NOT CONSUMMATE JUDICIAL POWER, DARAB (DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD) IS INHERENTLY INCAPABLE OF ISSUING WRITS OF *CERTIORARI*; RATIONALE.— Jurisprudence has settled that DARAB possesses no power to issue writs of certiorari. x x x This Court calibrates the pronouncements made in *Department of Agrarian Reform Adjudication Board v. Lubrica.* It is true that the lack of an express constitutional or statutory grant of jurisdiction disables DARAB from exercising *certiorari* powers. Apart from this, however, is a more fundamental reason for DARAB's disability. As an administrative agency exercising quasi-judicial but not consummate judicial power, DARAB is inherently incapable of issuing writs of *certiorari.* This is not merely a matter of statutorily stipulated competence but a question that hearkens to the separation of government's tripartite powers: executive, legislative, and judicial. x x x Administrative agencies are created to aid the government in the regulation of the country's "ramified activities." The creation of these agencies has become necessary because of "the growing complexity of the modern society." These agencies are considered specialists, which "can deal with the problems [in their respective fields] with more expertise and dispatch than can be expected from the legislature or the courts of justice." Administrative agencies are part of the executive branch of the government. However, due to their highly specialized nature, they are not only vested executive powers but also with quasi-legislative and quasi-judicial powers. Quasi-judicial power is "the power to hear and determine *questions of fact* to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law." It is limited to the adjudication of the rights of the parties that are *incidental* to the agency's functions under the law. Its exercise does not amount to the executive's overreach into or appropriation of actual judicial competence: x x x Quasi-judicial power is vested in administrative agencies because complex issues call for "technical knowledge and speed in countless

controversies which cannot possibly be handled by regular courts." Congress may, by law, grant administrative agencies the exclusive original jurisdiction over cases within their competence. Consistent with their specialized but narrowly limited competencies, the scope of the quasi-judicial power vested in administrative agencies is delineated in an agency's enabling statute: x x x Determining whether an act of an officer or state organ exercising judicial or quasi-judicial powers was made without or in excess of jurisdiction demands an examination of the law delimiting that officer's or organ's jurisdiction. It is an exercise in legal interpretation. It is an exercise that only courts, and not administrative agencies, are competent to engage in.

2. POLITICAL LAW; JUDICIAL DEPARTMENT; THE 1987 CONSTITUTION IDENTIFIES TWO (2) DIMENSIONS OF JUDICIAL POWER; EXPLAINED.— Article VIII, Section 1 of the 1987 Constitution exclusively vests judicial power in this Court "and in such lower courts as may be established by law." It identifies two (2) dimensions of judicial power. First is "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable." Second is these courts' same duty "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." To effect the second dimension and pursuant to this Court's power to "[promulgate rules concerning . . . pleading, practice, and procedure in all courts," Rule 65 of the 1997 Rules of Civil Procedure defines the parameters for availing the writ of certiorari: x x x A lower court or tribunal is deemed to have acted "without jurisdiction" when it decides a case even if no law gives it the jurisdiction over its subject matter. The decision of a lower court or tribunal can also be overturned by *certiorari* when it acts "in excess of jurisdiction" or when it was given jurisdiction over the subject matter under the law but it "has transcended the same or acted without any statutory authority." A petition for review on *certiorari* under Rule 45 should not be confused with a petition for *certiorari* under Rule 65. The first is a mode of appeal; the latter is an extraordinary remedy used to correct errors of jurisdiction. It is through the latter that a writ of *certiorari* is issued. Precisely, for the writ to issue, there must be "no appeal, or any plain, speedy and adequate remedy" available. x x x The second dimension of judicial power

under Article VIII, Section 1 of the 1987 Constitution settles the *certiorari* power as an incident of judicial review. Thus, judicial power includes the power of the courts to declare the acts of the executive and legislative branches of the government void, when they act beyond the powers conferred to them by law. This second dimension does not operate independently of, but within the parameters delimited by, the first dimension. The first dimension of judicial power under Article VIII, Section 1 of the 1987 Constitution delimits the subject of judicial inquiry, that is, to "actual controversies involving rights which are legally demandable and enforceable." The exercise of this power, then, is proper only when a judicial question is raised, as opposed to a matter that is better left to the competence of the other branches of the government.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUSITIES.— The requisites for the issuance of a writ of *certiorari* are settled: (a) the petition must be directed against a tribunal, Board, or officer exercising judicial or quasi-judicial functions; (b) the tribunal, Board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (c) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. x x x The basic nature of the *certiorari* power as an incident of judicial review—an exercise which must be limited to judicial questions that are beyond the competence of administrative agencies—necessarily means that administrative agencies have no *certiorari* powers.

APPEARANCES OF COUNSEL

David Feliciano Gatmaytan for petitioners.
LBP Legal Services Group for respondent Land Bank of the Philippines.

D E C I S I O N

LEONEN, *J.*:

A perceived abuse cannot be cured by an abuse. Administrative agencies, such as the Department of Agrarian Reform Adjudication

Board (DARAB), are not courts of law exercising judicial power. The power to issue writs of certiorari is an incident of judicial review. Thus, administrative agencies may not issue writs of certiorari to annul acts of officers or state organs even when they exercise supervisory authority over these officers or organs.

This resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed July 23, 2012 Decision[2] and January 9, 2013 Resolution[3] of the Court of Appeals be reversed and set aside. It is prayed that in lieu of them, judgment be rendered directing respondent DARAB to dismiss the Petition for Certiorari filed before it by respondent Land Bank of the Philippines (Landbank).

The assailed July 23, 2012 Decision denied the Petition for Certiorari and Prohibition filed by Sergio Renato Q. Zoleta, Venancio Q. Zoleta, and Milagros Q. Zoleta-Garcia (petitioners). This Decision found no grave abuse of discretion on the part of DARAB in issuing a resolution granting Landbank's Petition for Certiorari against an order and alias writ of execution issued by Regional Agrarian Reform Adjudicator (RARAD) Conchita C. Miñas (Regional Adjudicator Miñas).[4] The assailed January 9, 2013 Resolution denied petitioners' Motion for Reconsideration.[5]

On September 29, 1996, Eliza Zoleta (Eliza), through Venancio Q. Zoleta, voluntarily offered for sale to the government, under the Comprehensive Agrarian Reform Program, a parcel of land

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[1] *Rollo,* pp. 13-37.

[2] *Id*. at 133-148. The Decision, docketed as CA-G.R. Sp No. 113235, was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Abraham B. Borreta of the Fifteenth Division, Court of Appeals, Manila.

[3] *Id*. at 150-151. The Resolution was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Mario V. Lopez of the Special Former Fifteenth Division, Court of Appeals, Manila.

[4] *Id*. at 147.

[5] *Id.* at 151.

covered by Transfer Certificate of Title No. T-87673. This lot was located in Barangay Casay, San Francisco, Quezon and had an area of approximately 136 hectares.[6]

Pursuant to Executive Order No. 405,[7] Landbank made a valuation of the land and determined that only 125.4704 hectares of the property's 136 hectares were covered by the Comprehensive Agrarian Reform Program.[8] It valued the covered portion at ₱3,986,639.57.[9] Landbank then deposited this amount in the name of Eliza.[10]

Eliza rejected Landbank's valuation. Thus, the matter was endorsed to the Office of the Provincial Agrarian Reform Adjudicator (PARAD) of Quezon II.[11] However, upon Eliza's manifestation that the amount involved was beyond the jurisdiction of PARAD, the case was transferred to the Office of RARAD.[12] The Office of RARAD then conducted summary administrative proceedings pursuant to Section 16(d)[13] of

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[6] *Id*. at 55, Office of the Regional Agrarian Reform Adjudicator Decision.

[7] Vesting in the Land Bank of the Philippines the Primary Responsibility to Determine the Land Valuation and Compensation for All Lands Covered under Republic Act No. 6657, Known as the Comprehensive Agrarian Reform Law of 1988 (1990).

[8] *Rollo,* p. 56, Office of the Regional Agrarian Reform Adjudicator Decision.

[9] *Id*.

[10] *Id*. at 57, Office of the Regional Agrarian Reform Adjudicator Decision.

[11] *Id*.

[12] *Id*.

[13] Rep. Act No. 6657, Sec. 16 provides:

Section 16. *Procedure for Acquisition of Private Lands*. — For purposes of acquisition of private lands, the following procedures shall be followed:

. . . . . .

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days

Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988.[14]

On October 3, 2000, Regional Adjudicator Miñas rendered a Decision[15] fixing just compensation at ₱8,938,757.72.[16]

Not satisfied with the amount, Landbank filed a Petition for Just Compensation before the Regional Trial Court, Branch 56, Lucena City, acting as Special Agrarian Court, on November 7, 2000.[17]

On November 9, 2000, Eliza filed a Motion for Execution of Judgment before the Office of Regional Adjudicator Miñas. This was unsuccessfully opposed by Landbank.[18]

On January 16, 2001, Regional Adjudicator Miñas granted Eliza's motion for execution and issued an order directing the issuance of a writ of execution. The writ of execution, however, was returned unsatisfied. Thus, Regional Adjudicator Miñas issued an alias writ of execution on February 15, 2001. The following day, the DARAB Sheriff issued a Notice of Garnishment and a Notice of Levy on Personal Property.[19]

Landbank sought from the Special Agrarian Court the quashal of the alias writ of execution and, in the interim, the issuance of a temporary restraining order against its implementation. In the Resolution dated March 27, 2001, the Special Agrarian Court

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from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

[14] *Rollo,* pp. 58-59, Office of the Regional Agrarian Reform Adjudicator Decision.

[15] *Id.* at 55-65. The Decision was penned by Regional Adjudicator Conchita C. Miñas.

[16] *Id.* at 65.

[17] *Id.* at 46, Department of Agrarian Reform Adjudication Board Resolution.

[18] *Id.*

[19] *Id.*

denied Landbank's plea as DARAB had never been impleaded by Landbank as respondent, thereby failing to vest the Special Agrarian Court with jurisdiction over DARAB.[20]

Unable to obtain relief from the Special Agrarian Court, Landbank, on April 2, 2001, filed before DARAB a "petition for certiorari pursuant to paragraph 2, Section 3, Rule VIII of the [1994] DARAB New Rules of Procedure."[21] It ascribed "grave abuse of discretion amounting to lack or in excess of jurisdiction"[22] on the part of Regional Adjudicator Miñas in issuing the January 16, 2001 Order and the February 15, 2001 Alias Writ of Execution.[23]

In the Resolution[24] dated May 12, 2006, DARAB granted Land Bank's petition for certiorari and "annulled" the January 16, 2001 Order and the February 15, 2001 Alias Writ of Execution:

> WHEREFORE, in view of the foregoing, the petition is hereby GRANTED. The Order dated 16 January 2001 and an Alias Writ of Execution dated 15 February 2001 pursuant to the Decision in DARAB Case No. V-0412-0339-98 dated 03 October 2000 is hereby ANNULLED and herein public respondent is hereby ordered to withdraw the same.
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> SO ORDERED.[25]

DARAB faulted Regional Adjudicator Miñas for relying on Rule XIV, Section 1 of the 1994 DARAB New Rules of Procedure

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[20] *Id*. at 66, Special Agrarian Court Resolution.

[21] *Id*. at 135. The petition for *certiorari* was docketed as DSCA 0219.

[22] *Id*. at 45.

[23] *Id*.

[24] *Id*. at 45-54. The Resolution, docketed as DSCA 0219, was penned by Assistant Secretary Edgar A. Igano and concurred in by OIC Secretary Nasser C. Pangandaman, Assistant Secretary Augusto P. Quijano, Acting Assistant Secretary Ma. Patricia Rualo-Bello, and Assistant Secretary Delfin B. Samson. OIC-Undersecretary Narciso B. Nieto and Undersecretary Nestor R. Acosta did not take part.

[25] *Id*. at 53.

(1994 Rules),[26] which allows for 15 days for petitions for certiorari from DARAB rulings involving agrarian disputes to be brought to the Court of Appeals, in concluding that her October 3, 2000 Decision had attained finality. It noted that she should have instead relied on Rule XIII, Section 11[27] regarding the specific course of relief from adjudicators' decisions on just compensation or valuation cases.[28]

Petitioners[29] then filed a Petition for Certiorari and Prohibition under Rule 65 of the 1997 Rules of Civil Procedure before the Court of Appeals alleging that DARAB exceeded its authority when it granted Landbank's Petition for Certiorari under Rule VIII, Section 3 of the 1994 Rules.[30]

In its assailed July 23, 2012 Decision,[31] the Court of Appeals held that DARAB's actions were sustained by its general

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[26] 1994 DARAB NEW RULES OF PROCEDURE, Rule XIV, Sec. 1 provides:

Section 1. *Certiorari to the Court of Appeals.*— Any decision, order, resolution, award or ruling of the Board on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, interpretation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals by *certiorari.* Notwithstanding an appeal to the Court of Appeals, the decision of the Board appealed from shall be immediately executory pursuant to Section 50, Republic Act No. 6657.

[27] 1994 DARAB NEW RULES OF PROCEDURE, Rule XIII, Sec. 11 provides:

Section 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation.* — The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

[28] *Id*. at 50.

[29] Eliza Zoleta died in the interim; thus, her heirs substituted her.

[30] *Id*. at 139.

[31] *Id*. at 133-148.

"supervisory authority" and appellate jurisdiction over rulings of RARADs and PARADs.[32]

In its assailed January 9, 2013 Resolution, the Court of Appeals denied petitioners' Motion for Reconsideration.[33]

Hence, the present Petition was filed.

For resolution is the issue of whether it was proper for respondent DARAB to issue its May 12, 2006 Resolution, which granted respondent Landbank's "petition for certiorari pursuant to paragraph 2, Section 3, Rule VIII of the [1994] DARAB New Rules of Procedure."[34]

It was not.

I

Jurisprudence has settled that DARAB possesses no power to issue writs of certiorari.

This Court's 2005 Decision in *Department of Agrarian Reform Adjudication Board v. Lubrica*[35] concerned a controversy over the amount of just compensation due to a landowner, which was initially brought before RARAD. RARAD decided in favor of the landowner and ordered Landbank to pay an amount that was greater than its initial valuation.[36] Landbank then filed a petition for just compensation before the Regional Trial Court, acting as a Special Agrarian Court.[37] This petition was dismissed as Landbank failed to timely pay docket fees.[38] RARAD then considered its ruling on the amount of just compensation final

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[32] *Id*. at 144-145.

[33] *Id*. at 152-156.

[34] *Id*. at 135.

[35] 497 Phil. 313 (2005) [Per *J.* Tinga, Second Division].

[36] *Id*. at 318.

[37] *Id*. at 318-319.

[38] *Id*. at 319.

and executory, and issued a writ of execution.[39] Landbank filed a Petition for *Certiorari* before DARAB, under Rule VIII, Section 3 of its 1994 Rules.[40] DARAB ruled for Landbank and prevented the Regional Adjudicator from implementing her ruling.[41] This prompted the landowner to file a Petition for Prohibition before the Court of Appeals, asking that DARAB be enjoined from proceeding with the case, as it did not have jurisdiction over special civil actions for *certiorari*.[42] The Court of Appeals ruled that DARAB had no jurisdiction over petitions for *certiorari*.[43]

This Court sustained the ruling of the Court of Appeals. In doing so, this Court emphasized that jurisdiction over the subject matter must be provided by law. It noted that there was no law that vested DARAB with jurisdiction over petitions for *certiorari.* Rather than finding constitutional or statutory basis, DARAB's supposed *certiorari* power was provided only by its own rules of procedure:

> Jurisdiction, or the legal power to hear and determine a cause or causes of action, must exist as a matter of law. It is settled that the authority to issue writs of certiorari, prohibition, and mandamus involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law. It is never derived by implication. Indeed, while the power to issue the writ of certiorari is in some instance conferred on all courts by constitutional or statutory provisions, ordinarily, the particular courts which have such power are expressly designated.
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> . . . . . .
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> In general, the quantum of judicial or quasi-judicial powers which an administrative agency may exercise is defined in the enabling act of such agency. In other words, the extent to which an administrative entity may exercise such powers depends largely, if not wholly, on

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[39] *Id*. at 319.

[40] *Id*. at 319-320.

[41] *Id*. at 320.

[42] *Id*.

[43] *Id*. at 321.

the provisions of the statute creating or empowering such agency. The grant of original jurisdiction on a quasi-judicial agency is not implied. There is no question that the legislative grant of adjudicatory powers upon the DAR, as in all other quasi-judicial agencies, bodies and tribunals, is in the nature of a limited and special jurisdiction, that is, the authority to hear and determine a class of cases within the DAR's competence and field of expertise. In conferring adjudicatory powers and functions on the DAR, the legislature could not have intended to create a regular court of justice out of the DARAB, equipped with all the vast powers inherent in the exercise of its jurisdiction. The DARAB is only a quasi-judicial body, whose limited jurisdiction does not include authority over petitions for certiorari, in the absence of an express grant in R.A. No. 6657, E.O. No. 229 and E.O. No. 129-A.[44] (Citations omitted)

This Court calibrates the pronouncements made in *Department of Agrarian Reform Adjudication Board v. Lubrica.* It is true that the lack of an express constitutional or statutory grant of jurisdiction disables DARAB from exercising *certiorari* powers. Apart from this, however, is a more fundamental reason for DARAB's disability.

As an administrative agency exercising quasi-judicial but not consummate judicial power, DARAB is inherently incapable of issuing writs of *certiorari.* This is not merely a matter of statutorily stipulated competence but a question that hearkens to the separation of government's tripartite powers: executive, legislative, and judicial.[45]

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[44] *Id*. at 322-324.

[45] *DARAB v. Lubrica* did indicate that the DARAB's nature as an administrative agency lacking complete judicial powers prevented it from issuing writs of *certiorari*. However, *DARAB v. Lubrica's* intimations regarding the intrinsic reasons for the DARAB's inability to exercise *certiorari* powers appear to be tentative. In place of an emphatic declaration that the DARAB, by its very nature, could not exercise *certiorari* powers, *DARAB v. Lubrica's* pronouncements weigh more heavily on the lack of an express grant of jurisdiction as basis for the DARAB's disability. *DARAB v. Lubrica* must thus be calibrated and any lingering doubt on administrative impotence to issue writs of *certiorari* must be settled. In addition to the previously quoted portions, *DARAB v. Lubrica* also stated:

II

Conceived in England, transplanted into our jurisdiction during American occupation, and presently existing under the 1987 Constitution, the remedy of the writ of certiorari was and remains a means for superior *judicial* bodies to undo the excesses of inferior tribunals.

The writ of *certiorari* was a prerogative writ "issued by the King by virtue of his position as fountain of justice and supreme head of the whole judicial administration."[46]

The function of a writ of *certiorari* is to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction. In the instant case, the RARAD issued the order of finality and the writ of execution upon the belief that its decision had become final and executory, as authorized under Section 1, Rule XII of the DARAB Rules of Procedure. It is worth noting that in its petition, DARAB maintains that in preventing the RARAD from implementing its decision, it merely "exercised its residual power of supervision, to insure that the RARAD acted within the bounds of delegated authority and/or prevent/avoid her from committing grave and serious disservice to the Program." DARAB's action, therefore, is a rectification of what it perceived as an abuse of the RARAD's jurisdiction. By its own admission, DARAB took upon itself the power to correct errors of jurisdiction which is ordinarily lodged with the regular courts by virtue of express constitutional grant or legislative enactments. This Court recognizes the supervisory authority of the DARAB over its delegates, namely, the RARADs and PARADs, but the same should be exercised within the context of administrative supervision and/or control. In the event that the RARADs or PARADs act beyond its adjudicatory functions, nothing prevents the aggrieved party from availing of the extraordinary remedy of *certiorari*, which is ordinarily within the jurisdiction of the regular courts.

That the statutes allowed the DARAB to adopt its own rules of procedure does not permit it with unbridled discretion to grant itself jurisdiction ordinarily conferred only by the Constitution or by law. Procedure, as distinguished from jurisdiction, is the means by which the power or authority of a court to hear and decide a class of cases is put into action. Rules of procedure are remedial in nature and not substantive. They cover only rules on pleadings and practice. (Citations omitted)

[46] Frank *J.* Goodnow, *The Writ of Certiorari,* 6 POLITICAL SCIENCE QUARTERLY 493, 493 (1891).

The King of England was considered the "supreme head of the nation with power over life, limb, and property."[47] However, this status did not initially give him the absolute power to pronounce judgment.[48] By the tradition carried over in the transition of Anglo-Saxon chieftains "from the ducal to the royal dignity,"[49] the power to pronounce judgment was reserved to the members of the community themselves, "in accordance with the Teutonic institution of popular courts."[50] The power that the King held was the appointment of persons, called sheriffs, "who[,] as royal representatives[,] called the popular courts together; to see that justice was rendered in case of its denial; personally to judge those powerful litigants who could not be controlled by the popular courts; and to execute or have executed the sentences of the courts."[51]

Despite these limitations on his right to pronounce judgment, the King reserved the power to decide on certain cases: first, those which affected the crown, such as criminal cases for violation of the King's peace; and second, cases involving the revenue. The King and his advisers, known as the Curia Regis or the King's Council, decided these cases. Its members were later on referred to as "justices" with a select member being referred to as the "justitiar" or chief justice.[52]

Over time, the ways of popular courts—grounded as they were in custom, rather than on standardized mechanisms—and evidence of sheriffs' partiality required the intervention of the King's Council, in order that cases may be "decided by such new methods as the wisdom of the King and his counsellors

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[47] *Id*.

[48] *Id*.

[49] *Id*.

[50] *Id*.

[51] *Id. citing* Gneist, *Constitutional History of England* (English translation, G. P. Putnam's Sons), Vol. I, p. 23.

[52] *Id*. at 494.

might invent."[53] Thus, the King's council began to issue writs, to serve as "expedients by which *the jus honorarium* of the King as fountain of justice was enabled to remedy the defects of *the jus civile* or *commune* as applied in the local popular courts."[54]

In 1178, King Henry II realized that "there were too many justices in the Curia Regis to do the work effectively."[55] Hence, he selected five (5) of his immediate personnel "before whom he ordered the complaints of the people to be brought."[56] This group of five (5) people became known as the King's Bench. This was called as such because its members were to sit *"in banco*."[57] In addition to these five (5) members, "the King was supposed always to sit in the King's Bench."[58] With the King sitting in it, the King's Bench "was regarded as the highest court in the land."[59] Even then, the King "reserved the most difficult cases for his own hearing."[60]

With the subsequent adoption of the Magna Carta, it was settled that "free persons and free property were to be judged according to the law of the land."[61] To effect this precept, royal courts were established, such as the Court of Common Pleas, where civil suits were litigated.[62]

With the King still "reserv[ing] to himself the decision of the most difficult cases,"[63] his complete formal judicial supremacy

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[53] *Id*.

[54] *Id*. at 495.

[55] *Id*.

[56] *Id*.

[57] *Id*.

[58] *Id*. at 497.

[59] *Id*.

[60] *Id*. at 495.

[61] *Id*.

[62] *Id*. at 495-496.

[63] *Id*. at 496.

emerged. "From his office proceeded all the writs which were formulated by the King and his advisers, and by which actions were commenced."[64] Over time, and owing to sheer multiplicity, many writs ceased to be "writs of grace, granted by the King in his good pleasure"[65] but came to be issued to litigants *"de cursu"* or as a matter of course.[66]

While most writs were issued *de cursu* and upon proper demand, there remained writs reserved only for the King's Bench: *certiorari, mandamus, prohibition, and quo warranto.* Consistent with the status of the King's Bench as "the highest court in the land,"[67] it "controlled the action of the other courts" through these writs.[68] Nevertheless, the King's Bench issued these writs "only in extraordinary cases . . . and only when some gross injustice was being done by other authorities."[69] They were used only sparingly and in the most urgent of circumstances: "It remained the function of the King, through his court of King's Bench, to [be the] judge of the necessity for their issue, and they accordingly came to be known as prerogative writs."[70]

Spouses Delos Santos v. Metropolitan Bank and Trust Company[71] recounted the purposes of and circumstances under which writs of *certiorari were issued by the King's Bench*:

> In the common law, from which the remedy of *certiorari* evolved, the writ of *certiorari* was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the

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[64] *Id.* at 497, *citing* Palgrave, Essay on the Authority of the King's Council, p. 8. Among these writs were summonses: "'The defendant in the cases in the royal courts was summoned into court by writ original under the King's seal,' which was kept in the office of the Chancellor."

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.* at 497.

[70] *Id.* at 497-498.

[71] 698 Phil. 1 (2012) [Per *J.* Bersamin, First Division].

record of a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority. The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available. If the inferior court acted without authority, the record was then revised and corrected in matters of law. The writ of *certiorari* was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.[72] (Citations omitted)

The United States of America carried this English tradition. There, historically, only the courts which "have inherited the jurisdiction of the English court of King's Bench" could issue a writ of *certiorari.*[73]

The writ of *certiorari,* as a means of judicially rectifying a jurisdictional error, was adopted by the Philippines from the California Code of Civil Procedure.[74] Our 1901 Code of Civil Procedure provided:

Section 220. *Final Proceedings in Certiorari.* — When the proceedings complained of have been fully certified, the court shall hear the parties and determine whether the inferior tribunal, Board, or officer has regularly pursued its authority; and if it finds that such inferior tribunal, Board, or officer has not regularly pursued its authority, it shall thereupon give final judgment, either affirming, or annulling, or modifying the proceedings below, as the law requires.

As *Spouses Delos Santos v. Metropolitan Bank and Trust Company*[75] further explained:

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[72] *Id*. at 14.

[73] Frank *J.* Goodnow, *The Writ of Certiorari,* 6 POLITICAL SCIENCE QUARTERLY 493, 503 (1891) further explains, "What courts have inherited this jurisdiction is usually determined by the constitutions or statutes of the separate commonwealths."

[74] *Tuason v. Concepcion,* 54 Phil. 408, 415 (1930) [Per *J.* Ostrand, *En Banc*].

[75] 698 Phil. 1 (2012) [Per *J.* Bersamin, First Division].

The concept of the remedy of *certiorari* in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of *certiorari* is largely regulated by laying down the instances or situations in the Rules of Court in which a superior court may issue the writ of certiorari to an inferior court or officer.[76]

Article VIII, Section 1 of the 1987 Constitution exclusively vests judicial power in this Court "and in such lower courts as may be established by law." It identifies two (2) dimensions of judicial power. First is "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable." Second is these courts' same duty "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[77]

To effect the second dimension and pursuant to this Court's power to "[promulgate rules concerning . . . pleading, practice, and procedure in all courts,"[78] Rule 65 of the 1997 Rules of Civil Procedure defines the parameters for availing the writ of certiorari:

SECTION 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification

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[76] *Id*. at 14.

[77] CONST., Art. VIII, Sec. 1.

[78] CONST., Art. VIII, Sec. 5(5).

of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

The requisites for the issuance of a writ of *certiorari* are settled:

(a) the petition must be directed against a tribunal, Board, or officer exercising judicial or quasi-judicial functions;

(b) the tribunal, Board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and

(c) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[79] (Citation omitted)

The second and third requisites remain consistent with the original, Common Law conception of certiorari as availing when "the inferior court's judgment was rendered without authority," such that it "exceed[ed] its jurisdiction," and only when "no other remedy [is] available."[80]

A lower court or tribunal is deemed to have acted "without jurisdiction" when it decides a case even if no law gives it the jurisdiction over its subject matter.[81] The decision of a lower court or tribunal can also be overturned by *certiorari* when it acts "in excess of jurisdiction" or when it was given jurisdiction over the subject matter under the law but it "has transcended the same or acted without any statutory authority.[82]

"Grave abuse of discretion" has been defined as:

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised

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[79] *Philippine Airlines Employees Association (PALEA) v. Cacdac,* 645 Phil. 494, 501 (2010) [Per. *J.* Bersamin, Third Division].

[80] *Spouses Delos Santos v. Metropolitan Bank and Trust Co.,* 698 Phil. 1, 14 (2012) [Per *J.* Bersamin, First Division].

[81] *Spouses Manila v. Spouses Manzo,* 672 Phil. 460, 473 (2011) [Per *J.* Villarama, First Division].

[82] *Alafriz v. Nable,* 72 Phil. 278, 280 (1941) [Per *J.* Moran, First Division].

in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts.[83] (Citations omitted)

A petition for review on *certiorari* under Rule 45 should not be confused with a petition for *certiorari* under Rule 65. The first is a mode of appeal; the latter is an extraordinary remedy used to correct errors of jurisdiction. It is through the latter that a writ of *certiorari* is issued. Precisely, for the writ to issue, there must be "no appeal, or any plain, speedy and adequate remedy" available.[84]

III

The second dimension of judicial power under Article VIII, Section 1 of the 1987 Constitution settles the *certiorari* power as an incident of judicial review. Thus, judicial power includes the power of the courts to declare the acts of the executive and legislative branches of the government void, when they act beyond the powers conferred to them by law.[85] This second dimension does not operate independently of, but within the parameters delimited by, the first dimension.

The first dimension of judicial power under Article VIII, Section 1 of the 1987 Constitution delimits the subject of judicial inquiry, that is, to "actual controversies involving rights which are legally demandable and enforceable." The exercise of this

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[83] *United Coconut Planters Bank v. Looyuko,* 560 Phil. 581, 591 (2007) [Per *J.* Austria-Martinez, Third Division].

[84] RULES OF COURT, Rule 65, Sec. 1.

[85] *Luz Farms v. Secretary of the Department of Agrarian Reform,* 270 Phil. 151, 161 (1990) [Per *J.* Paras, *En Banc*].

power, then, is proper only when a judicial question is raised, as opposed to a matter that is better left to the competence of the other branches of the government.

Gonzales v. Climax Mining Ltd.[86] explained the concept of a judicial question, provided an illustration of a controversy that involved a judicial question, and distinguished that example from another controversy that did not involve a judicial question:

> A judicial question is a question that is proper for determination by the courts, as opposed to a moot question or one properly decided by the executive or legislative branch. *A judicial question is raised when the determination of the question involves the exercise of a judicial function; that is, the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy.*
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> . . . . . .
>
> [W]hether the case involves void or voidable contracts is still a judicial question. It may, in some instances, involve questions of fact especially with regard to the determination of the circumstances of the execution of the contracts. But the resolution of the validity or voidness of the contracts remains a legal or judicial question as it requires the exercise of judicial function. *It requires the ascertainment of what laws are applicable to the dispute, the interpretation and application of those laws, and the rendering of a judgment based thereon.* Clearly, the dispute is not a mining conflict. It is essentially judicial. The complaint was not merely for the determination of rights under the mining contracts since the very validity of those contracts is put in issue.[87] (Emphasis supplied, citations omitted)

The non-judicial "mining conflict" which *Gonzales* referenced was explained to be a factual or technical dispute that was more properly considered an "administrative matter," rather than a judicial question:

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[86] 492 Phil. 682 (2005) [Per *J.* Tinga, Second Division].

[87] *Id.* at 692-695.

On the other hand, a mining dispute is a dispute involving (a) rights to mining areas, (b) mineral agreements, FTAAs, or permits, and (c) surface owners, occupants and claimholders/concessionaires. Under Republic Act No. 7942 (otherwise known as the Philippine Mining Act of 1995), the Panel of Arbitrators has exclusive and original jurisdiction to hear and decide these mining disputes. The Court of Appeals, in its questioned decision, correctly stated that the Panel's jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience.

In *Pearson v. Intermediate Appellate Court,* this Court observed that the trend has been to make the adjudication of mining cases a purely administrative matter. Decisions of the Supreme Court on mining disputes have recognized a distinction between (1) the primary powers granted by pertinent provisions of law to the then Secretary of Agriculture and Natural Resources (and the bureau directors) of an executive or administrative nature, such as granting of license, permits, lease and contracts, or approving, rejecting, reinstating or canceling applications, or deciding conflicting applications, and (2) controversies or disagreements of civil or contractual nature between litigants which are questions of a judicial nature that may be adjudicated only by the courts of justice.[88] (Citations omitted)

Administrative agencies are created to aid the government in the regulation of the country's "ramified activities."[89] The creation of these agencies has become necessary because of "the growing complexity of the modern society."[90] These agencies are considered specialists, which "can deal with the problems [in their respective fields] with more expertise and dispatch than can be expected from the legislature or the courts of justice."[91]

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[88] *Id*. at 693.

[89] *Solid Homes, Inc. v. Payawal,* G.R. No. 84811, August 29, 1989, 257 Phil. 914, 921 (1989) [Per *J.* Cruz, First Division].

[90] *Id*.

[91] *Id*.

Administrative agencies are part of the executive branch of the government.[92] However, due to their highly specialized nature, they are not only vested executive powers but also with quasi-legislative and quasi-judicial powers.[93]

Quasi-judicial power is "the power to hear and determine *questions of fact* to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."[94] It is limited to the adjudication of the rights of the parties that are *incidental* to the agency's functions under the law. Its exercise does not amount to the executive's overreach into or appropriation of actual judicial competence:

> Quasi-judicial or administrative adjudicatory power is the power of the administrative agency to adjudicate the rights of persons before it. *The administrative body exercises its quasi-judicial power when it performs* ***in a judicial manner*** *an act which is essentially executive or administrative in nature,* where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.[95] (Emphasis supplied)

Quasi-judicial power is vested in administrative agencies because complex issues call for "technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts."[96] Congress may, by law, grant administrative

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[92] *Carpio v. Executive Secretary,* 283 Phil. 197, 204 (1992) [Per *J.* Paras, *En Banc*].

[93] *Narra Nickel Mining and Development Corp. v. Redmont Consolidated Mines Corp.,* G.R. No. 202877, December 9, 2015, 777 SCRA 258, 268 [Per *J.* Perlas-Bernabe, First Division].

[94] *Smart Communications, Inc. v. National Telecommunications Commission,* 456 Phil. 145, 155 (2003) [Per *J.* Ynares-Santiago, First Division].

[95] *Narra Nickel Mining and Development Corp. v. Redmont Consolidated Mines Corp.,* G.R. No. 202877, December 9, 2015, 777 SCRA 258, 268 [Per *J.* Perlas-Bernabe, First Division].

[96] *Antipolo Realty Corp. v. National Housing Authority,* 237 Phil. 389, 397 (1987) [Per *J.* Feliciano, *En Banc*].

agencies the exclusive original jurisdiction over cases within their competence.[97] Consistent with their specialized but narrowly limited competencies, the scope of the quasi-judicial power vested in administrative agencies is delineated in an agency's enabling statute:

> In general, the quantum of judicial or quasi-judicial powers which an administrative agency may exercise is defined in the enabling act of such agency. In other words, the extent to which an administrative entity may exercise such powers depends largely, if not wholly, on the provisions of the statute creating or empowering such agency.[98]

The basic nature of the *certiorari* power as an incident of judicial review—an exercise which must be limited to judicial questions that are beyond the competence of administrative agencies—necessarily means that administrative agencies have no *certiorari* powers.

The three (3) branches of our government—the Executive, Legislative, and Judicial branches—are superior in their respective spheres. Subject to our system of checks and balances, one (1) branch cannot encroach on the duties and prerogatives of another. The Legislative branch is tasked with enacting laws;[99] the Executive is responsible for the implementation of laws; and the Judiciary interprets the Constitution and laws.[100]

Determining whether an act of an officer or state organ exercising judicial or quasi-judicial powers was made without or in excess of jurisdiction demands an examination of the law delimiting that officer's or organ's jurisdiction. It is an exercise in legal interpretation. It is an exercise that only courts, and not administrative agencies, are competent to engage in.

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[97] *Id*.

[98] *Id*.

[99] *Araullo v. Aquino III,* 752 Phil. 716, 761 (2015) [Per. *J*. Bersamin, *En Banc*].

[100] *Id*.

IV

Presidential Proclamation No. 131 instituted then President Corazon C. Aquino's Comprehensive Agrarian Reform Program. Executive Order Nos. 229 and 129-A[101] put in place mechanisms for implementing this Program.

Executive Order No. 229 vested the Department of Agrarian Reform with quasi-judicial powers to resolve agrarian reform cases and incidental powers to punish for contempt and to issue subpoenas and enforcement writs. It also specified an appeal mechanism for decisions rendered by this Department:

> Section 17. Quasi-Judicial Powers of the DAR.— The DAR is hereby vested with quasi-judicial powers to determine and adjudicate agrarian reform matters, and shall have exclusive original jurisdiction over all matters involving implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture (DA).
>
> The DAR shall have powers to punish for contempt arid to issue *subpoena, subpoena duces tecum* and writs to enforce its orders or decisions.
>
> The decisions of the DAR may, in proper cases, be appealed to the Regional Trial Courts but shall be immediately executory notwithstanding such appeal.

Executive Order No. 129-A created DARAB, which was tasked to "assume the powers and functions with respect to the adjudication of agrarian reform cases."[102] Section 13 specifies that the Board's powers may be delegated to the regional offices of the Department, subject to its rules and regulations:

> Section 13. Agrarian Reform Adjudication Board. — There is hereby created an Agrarian Reform Adjudication Board under the Office of the Secretary. The Board shall be composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the

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[101] Statutes effected by President Corazon C. Aquino in the interregnum when she was exercising legislative powers.

[102] Exec. Order No. 129-A (1987), Sec. 13.

Secretary, the Assistant Secretary for Legal Affairs, and three (3) others to be appointed by the President upon the recommendation of the Secretary as members. A Secretariat shall be constituted to support the Board. The Board shall assume the powers and functions with respect to the adjudication of agrarian reform cases under Executive Order No. 229 and this Executive Order. These powers and functions may be delegated to the regional offices of the Department in accordance with rules and regulations to be promulgated by the Board.

Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988 maintained the quasi-judicial jurisdiction of the Department of Agrarian Reform:

Section 50. Quasi-Judicial Powers of the DAR. — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before it.

It shall have the power to summon witnesses, administer oaths, take testimony, require submission of reports, compel the production of books and documents and answers to interrogatories and issue subpoena, and subpoena duces tecum, and enforce its writs through sheriffs or other duly deputized officers. It shall likewise have the power to punish direct and indirect contempts [sic] in the same manner and subject to the same penalties as provided in the Rules of Court.

Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers, or their organizations in any proceedings before the DAR: Provided, however, That when there are two or more representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any DAR proceedings.

Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory.

Pursuant to its power to "adopt a uniform, rule of procedure" under Republic Act No. 6657, the Department of Agrarian Reform, through DARAB, adopted the Revised Rules of Procedure in 1989 (the 1989 Rules). The 1989 Rules were in lieu of "the previous Rules of Procedure adopted on January 29, 1988, pursuant to Executive Order No. 129-A."[103]

The 1989 Rules delegated DARAB's adjudicatory powers to RARADs and PARADs[104] subject to its "functional supervision."[105]

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[103] 1989 DARAB RULES OF PROCEDURE, Foreword.

[104] 1989 DARAB RULES OF PROCEDURE, Rule II, Sec. 2:

Section 2. *Delegated Jurisdiction.* — The Regional Agrarian Reform Adjudicators (RARAD) and the Provincial Agrarian Reform Adjudicators (PARAD) are empowered and authorized to receive, hear, determine and adjudicate all agrarian cases and disputes, and incidents in connection therewith, arising within their respective territorial jurisdiction.

[105] 1989 DARAB RULES OF PROCEDURE, Rule II, Sec. 3:

Section 3. *Functional Relationships.* — The Board shall exercise functional supervision over the RARADs; and the PARADs. For administrative purposes, however, the RARADs and the PARADs are deemed to form part of the DAR Regional Office where they are stationed, and as such, shall be given administrative support by their respective Regional and Provincial offices, in terms of office space, personnel services, equipment and supply, and other facilities.

Section 2. Appellate Jurisdiction of the Board. — The Board shall have exclusive appellate jurisdiction to review, reverse, modify, alter, or affirm resolutions, orders, and decisions of its Adjudicators.

No order of the Adjudicators on any issue, question, matter, or incident raised before them shall be elevated to the Board until the hearing shall have been terminated and the case decided on the merits. 2009 DARAB NEW RULES OF PROCEDURE, Rule II, Sec. 2:

Section 2. Appellate Jurisdiction of the Board. — The Board shall have exclusive appellate jurisdiction to review, reverse, modify, alter, or affirm resolutions, orders and decisions of the Adjudicators.

No order of the Adjudicators on any issue, question, matter, or incident raised before them shall be elevated to the Board until the hearing shall have been terminated and the case decided on the merits.

The 1989 Rules further provided that the decisions of PARADs and RARADs may be reviewed by the Board upon a verified petition for review on *certiorari.* Rule VIII, Section 3 of these Rules stated:

Section 3. Totality of Case Assigned. — When a case is assigned to a RARAD or PARAD, any or all incidents thereto shall be considered assigned to him, and the same shall be disposed of in the same proceedings to avoid multiplicity of suits or proceedings.

The order or resolution of the Adjudicators on any issue, question, matter or incident raised before them shall be valid and effective until the hearing shall have been terminated and the case is decided on the merits, unless modified and reversed by the Board upon a verified petition for review on certiorari. Such interlocutory orders shall not be the subject of an appeal.

In 1994, the Department of Agrarian reform adopted new rules of procedure. As with the 1989 Rules, the 1994 Rules maintained that decisions of RARADs and PARADs were reviewable by the Board upon a verified petition for *certiorari,* which must have been preceded by the filing of a motion for reconsideration. Rule VIII, Section 3 of these Rules stated:

SECTION 3. Totality of Case Assigned. — When a case is assigned to an Adjudicator, any or all incidents thereto shall be considered assigned to him, and the same shall be disposed of in the same proceedings to avoid multiplicity of suits or proceedings.

The order or resolution of the Adjudicator on any issue, question, matter or incident raised before them shall be valid and effective until the hearing shall have been terminated and the case is decided on the merits, unless modified and reversed by the Board upon a verified petition for certiorari which cannot be entertained without filing a motion for reconsideration with the Adjudicator a quo within five (5) days from receipt of the order, subject of the petition. Such interlocutory order shall not be the subject of an appeal.

In 2003 the Department of Agrarian Reform adopted new rules of procedure (the 2003 Rules) and again in 2009 (the 2009 Rules). Unlike the 1989 and 1994 Rules, the 2003 and 2009 Rules no longer made reference to *certiorari* as the Board's vehicle for reviewing decisions of RARADs and PARADs. Instead, they merely stated that, in pursuit of its appellate jurisdiction, the

Board has the power to "review, reverse, modify, alter, or affirm resolutions, orders and decisions of the Adjudicators."[106]

V

The DARAB May 12, 2006 Resolution subject of the present appeal, which gave rise to the assailed Court of Appeals July 23, 2012 Decision, was issued in response to a pleading specifically denominated as a "petition for certiorari" by respondent Landbank:

> This is a petition for certiorari pursuant to paragraph 2, Section 3, Rule VIII of the DARAB New Rules of Procedure seeking to annul and set aside the Order dated January 16, 2001 (sic) as well as the Alias Writ of Execution dated February 15, 2000 issued by respondent RARAD Miñas.[107]

In conformity with the relief sought by Landbank's petition for *certiorari,* the DARAB May 12, 2006 Resolution "annulled" the January 16, 2001 Order and the February 15, 2001 Alias Writ of Execution issued by Regional Adjudicator Miñas:

> WHEREFORE, in view of the foregoing, the petition is hereby GRANTED. The Order dated 16 January 2001 and an Alias Writ of Execution dated 15 February 2001 pursuant to the Decision in DARAB Case No. V-0412-0339-98 dated 03 October 2000 is hereby ANNULLED and herein public respondent is hereby ordered to withdraw the same.
>
> SO ORDERED.[108]

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[106] 2003 DARAB NEW RULES OF PROCEDURE, Rule II, Sec. 2:
Section 2. Appelate Jurisdiction of the Board.— The Board shall have exclusive appellate jurisdiction to review, reverse, modify, alter, or affirm resolutions, orders, and decisions of its Adjudicators.
No order of the Adjudicators on any issue, question, matter, or incident raised before them shall be elevated to the Board until the hearing shall have been terminated and the case decided on the merits.
2009 DARAB NEW RULES OF PROCEDURE, Rule II, Sec. 2:
Section 2. Appellate Jurisdiction of the Board. — The Board shall have exclusive appellate jurisdiction to review, reverse, modify, alter, or affirm resolutions, orders and decisions of the Adjudicators.

[107] *Rollo,* p. 135.

[108] *Id*. at 53.

In its assailed July 23, 2012 Decision, the Court of Appeals justified DARAB's favorable action on Landbank's petition for *certiorari* by referencing DARAB's appellate jurisdiction over and supervision of RARADs:

> In *Department of Agrarian Reform Adjudication Board vs. Court of Appeals,* the Supreme Court observed, based on the provisions aforecited, that:
>
> > . . . the DAR's exclusive original jurisdiction (as set forth in Section 50 of the CARL) is exercised through hierarchically arranged agencies, namely, the DARAB, RARAD and PARAD. The latter two exercise "delegated authority," while the first exercises appellate jurisdiction over resolutions, orders, decisions and other dispositions of the RARAD and the PARAD.
>
> In other words, respondent DARAB which has appellate jurisdiction over the resolutions and orders of RARAD and PARAD acted within the ambit of law when it annulled the highly irregular orders of the regional adjudicator allowing the issuance of a writ of execution for the purpose of enforcing the latter's October 3, 2000 Decision notwithstanding the glaring fact that the same has not yet become final and executory in view of [Landbank]'s appeal to the Special Agrarian Court in Lucena concerning the issue on the determination of the correct value of the just compensation of the subject property. The Supreme Court recognizes the supervisory authority of the DARAB over its delegates, namely, the RARADs and PARADs.[109]

The Court of Appeals may have been correct in noting that DARAB has supervisory authority over RARADs, but it was mistaken in using it as basis for sanctioning DARAB's exercise of *certiorari* powers.

In *Department of Agrarian Reform Adjudication Board v. Lubrica,*[110] DARAB similarly pleaded its authority over and supervision of RARADs as crafting an exception to the need for an express constitutional or statutory grant of jurisdiction. This Court rebuffed DARAB's reasoning:

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[109] *Id*. at 144-145, citing *Department of Agrarian Reform Adjudication Board vs. Court of Appeals,* 334 Phil. 369 (1997) [Per *J*. Davide, Third Division].

[110] 497 Phil. 313 (2005). [Per *J*. Tinga, Second Division].

DARAB takes exception to the general rule that jurisdiction over special civil actions must be expressly conferred by law before a court or tribunal can take cognizance thereof. It believes that this principle is applicable only in cases where the officials/entities contemplated to be subject thereof are not within the administrative power/competence, or in any manner under the control or supervision, of the issuing authority.

This Court is not persuaded. The function of a writ of certiorari is to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction. In the instant case, the RARAD issued the order of finality and the writ of execution upon the belief that its decision had become final and executory, as authorized under Section 1, Rule XII of the DARAB Rules of Procedure. It is worth noting that in its petition, DARAB maintains that in preventing the RARAD from implementing its decision, it merely "exercised its residual power of supervision, to insure that the RARAD acted within the bounds of delegated authority and/or prevent/avoid her from committing grave and serious disservice to the Program." DARAB's action, therefore, is a rectification of what it perceived as an abuse of the RARAD's jurisdiction. By its own admission, DARAB took upon itself the power to correct errors of jurisdiction which is ordinarily lodged with the regular courts by virtue of express constitutional grant or legislative enactments.

This Court recognizes the supervisory authority of the DARAB over its delegates, namely, the RARADs and PARADs, but the same should be exercised within the context of administrative supervision and/or control. In the event that the RARADs or PARADs act beyond its adjudicatory functions, nothing prevents the aggrieved party from availing of the extraordinary remedy of certiorari, which is ordinarily within the jurisdiction of the regular courts.

That the statutes allowed the DARAB to adopt its own rules of procedure does not permit it with unbridled discretion to grant itself jurisdiction ordinarily conferred only by the Constitution or by law. Procedure, as distinguished from jurisdiction, is the means by which the power or authority of a court to hear and decide a class of cases is put into action. Rules of procedure are remedial in nature and not substantive. They cover only rules on pleadings and practice.[111] (Citations omitted)

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[111] *Id*. at 325-326.

DARAB's reasoning failed to impress then; the same reasoning fails to impress now.

Not only are mere procedural rules incapable of supplanting a constitutional or statutory grant of jurisdiction, no amount of textual wrangling negates the basic truth that DARAB is an administrative agency belonging to the Executive, and not to the Judicial branch, of our government.

Determining whether an action was made without or in excess of jurisdiction or with grave abuse of discretion is a judicial question. In a petition for certiorari where these issues are raised, the public officers or state organs exercising judicial or quasi-judicial powers are impleaded as respondents. They themselves become party-litigants and it is their own legal rights that are the subject of adjudication. A consideration of law is impelled to delineate their proper rights and prerogatives. The controversy that ensues is inexorably beyond the competence of administrative agencies. When presented with such a controversy, an administrative agency must recuse and yield to courts of law.

Well-meaning intentions at rectifying a perceived breach of authority cannot be cured by an actual breach of authority. As It was in *DARAB v. Lubrica,* so it is true here that DARAB's avowed good intentions cannot justify its exercise of powers that were never meant for it to exercise.

DARAB's exercise of the innately judicial *certiorari* power is an executive encroachment into the judiciary. It violates the separation of powers; it is unconstitutional.

With or without a law enabling it, DARAB has no power to rule on jurisdictional controversies via petitions for *certiorari.* DARAB's self-serving grant to itself of the power to issue writs of certiorari in the 1994 DARAB New Rules of Procedure is itself a grave abuse of discretion amounting to lack or excess of jurisdiction. It must be annulled for running afoul of the Constitution.

VI

It should suffice, to settle the present controversy, for us to state, as this Court did, that under no circumstance may an administrative agency arrogate unto itself the power of judicial

review and to take cognizance of petitions for *certiorari*. However, it does not also escape our attention that the predicament that respondent Landbank finds itself in is no less the result of its own unrefined legal maneuver.

Landbank rendered ineffectual its own immediate recourse to the Special Agrarian Court. Before the Special Agrarian Court, it sought to restrain the looming actions of DARAB, acting through its RARAD, to enforce a judgment. Despite this, it still failed to implead DARAB as a respondent. Landbank's own oversight left the Special Agrarian Court with no reasonable recourse but the denial of Landbank's plea.

Failing at obtaining relief from the Special Agrarian Court, Landbank sought relief from an entirely different forum. Strikingly, this new forum is the same entity that it should have first impleaded as an adverse party before the Special Agrarian Court. Before this forum, it would then seek the issuance of what this Court long ago declared in *Lubrica* to be an unfounded—and what this Court is affirming now to be an unconstitutional—relief.

In keeping with our most basic constitutional principles and as a consequence of Landbank's own failings, this Court must sustain the petitioners' position.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED.** The assailed July 23, 2012 Decision and January 9, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 113235 are **REVERSED** and **SET ASIDE.** Respondent Department of Agrarian Reform Adjudication Board is ordered to dismiss the Petition for *Certiorari,* docketed as DSCA 0219, filed before it by respondent Land Bank of the Philippines.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206150. August 9, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **FASTECH SYNERGY PHILIPPINES, INC. (FORMERLY FIRST ASIA SYSTEM TECHNOLOGY, INC.), FASTECH MICROASSEMBLY & TEST, INC., FASTECH ELECTRONIQUE, INC., and FASTECH PROPERTIES, INC.,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; THE FINANCIAL REHABILITATION AND INSOLVENCY ACT (FRIA) OF 2010; A DISTRESSED CORPORATION SHOULD NOT BE REHABILITATED WHEN THE RESULTS OF THE FINANCIAL EXAMINATION AND ANALYSIS CLEARLY INDICATE THAT THERE LIES NO REASONABLE PROBABILITY THAT IT MAY BE REVIVED.—** A distressed corporation should not be rehabilitated when the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that it may be revived, to the detriment of its numerous stakeholders which include not only the corporation's creditors but also the public at large. x x x Thus, the higher interest of substantial justice will be better subserved by the reversal of the CA Decision. Since the rehabilitation petition should not have been granted in the first place, it is of no moment that the Rehabilitation Plan is currently under implementation. While payments in accordance with the Rehabilitation Plan were already made, the same were only possible because of the financial reprieves and protracted payment schedule accorded to respondents, which, as above-intimated, only works at the expense of the creditors and ultimately, do not meet the true purpose of rehabilitation.

2. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOOT AND ACADEMIC CASE; THE COURT GENERALLY DECLINES JURISDICTION WHEN A CASE IS MOOT AND ACADEMIC; EXCEPTIONS.—** In *Timbol v. Commission on Elections:* A case is moot and academic if it "ceases to present a justiciable controversy because of

supervening events so that a declaration thereon would be of no practical use or value." When a case is moot and academic, this court generally declines jurisdiction over it. There are recognized exceptions to this rule. This court has taken cognizance of moot and academic cases when: (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review. In *Republic v. Moldex Realty, Inc.:* A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist. There is no longer any justiciable controversy that may be resolved by the court. This court refuses to render advisory opinions and resolve issues that would provide no practical use or value. Thus, courts generally "decline jurisdiction over such case or dismiss it on ground of mootness." This Court is generally constrained to rule upon moot and academic cases since "[our] power of judicial review is limited to actual cases and controversies" under Article VIII, Section 1 of the Constitution; x x x An actual case or controversy exists "when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding." Courts will not decide a case unless there is "a real and substantial controversy admitting of specific relief."

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner Land Bank of the Philippines.

Quicho & Angeles for respondents Fastech Synergy Phils., Inc. *et al.*

Divina Law for Planters Development Bank and Philippine Asset Growth Two, Inc.

D E C I S I O N

LEONEN, *J.*:

Courts will not render judgment on a moot and academic case unless any of the following circumstances exists: "(1) [g]rave constitutional violations; (2) [e]xceptional character of the case; (3) [p]aramount public interest; (4) [t]he case presents an opportunity to guide the bench, the bar, and the public; or (5) [t]he case is capable of repetition yet evading review."[1]

This is a Petition for Review on Certiorari[2] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the Court of Appeals September 28, 2012 Decision[3] and March 5, 2013 Resolution[4] be modified to consider the concerns raised by Land Bank of the Philippines (petitioner).[5] These concerns pertain to the rehabilitation of respondents Fastech Synergy Philippines, Inc. (Fastech Synergy),[6] Fastech Microassembly & Test, Inc. (Fastech Microassembly), Fastech Electronique, Inc. (Fastech Electronique), and Fastech Properties, Inc. (Fastech Properties) (collectively, Fastech Corporations). In its September 28, 2012 Decision, the Court of Appeals set aside the December 9, 2011 Resolution[7]

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[1] *Republic v. Moldex Realty, Inc.*, G.R. No. 171041, February 10, 2016, 783 SCRA 414, 423 [Per *J.* Leonen, Second Division].

[2] *Rollo*, pp. 11-29.

[3] *Id*. at 30-53. The Decision, docketed as CA-G.R. SP No. 122836, was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Hakim S. Abdulwahid and Rodil V. Zalameda of the Special Former Fourth Division, Court of Appeals, Manila.

[4] *Id*. at 61-63. The Resolution was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Hakim S. Abdulwahid and Rodil V. Zalameda of the Former Special Former Fourth Division, Court of Appeals, Manila.

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

[6] *Id*. at 30. Fastech Synergy Philippines, Inc. was formerly known as First Asia System Technology, Inc.

[7] *Id*. at 54-60. The Resolution was penned by Presiding Judge Cesar O. Untalan of Branch 149, Regional Trial Court, Makati City.

of Branch 149, Regional Trial Court, Makati City (Rehabilitation Court), which dismissed respondents' Joint Petition for corporate rehabilitation (Rehabilitation Petition).[8] In this Decision, the Court of Appeals approved respondents' Rehabilitation Plan, which was attached to their Rehabilitation Petition filed under Republic Act No. 10142,[9] on April 8, 2011,[10] and remanded the case back to the Rehabilitation Court.[11]

The Fastech Corporations claimed that they filed a joint petition since they have common managers, assets, and creditors.[12] Due to financial losses, their assets would not be enough to pay their peso and dollar debts from the following creditors:

Creditors	**Peso debts**	**Dollar debts**
1. Planters Development Bank (Planters Bank)	₱55,175.00	N/A
2. Penta Capital Investment Corporation (Penta Capital)	₱10,260,000.00	US$1,638,669.00
3. Union Bank of the Philippines (UnionBank)	₱9,000,000.00	US$370,000.00
4. Bank of the Philippine Islands (BPI)	₱54,653,431.00	N/A
5. Land Bank of the Philippines (Landbank)	N/A	US$340,000.00
TOTAL:	₱73,968,606.00	US$2,348,669.00[13]

They prayed for the approval of their Rehabilitation Plan, which they submitted together with their Rehabilitation Petition. The terms and conditions of the Rehabilitation Plan provided

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[8] *Id*. at 60.

[9] The Financial Rehabilitation and Insolvency Act (FRIA) of 2010.

[10] *Rollo*, p. 31.

[11] *Id*. at 52-53.

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

[13] *Id*. at 32.

for a two (2)-year grace period for the payment of the Fastech Corporations' outstanding loans and a waiver of accumulated interests and penalties. Likewise, they indicated a 12-year period from the end of the grace period for the payment of interests accrued during the grace period. Finally, they stipulated an interest of four percent (4%) per annum for real estate-secured creditors and two percent (2%) per annum for chattel mortgage-secured creditors.[14]

On April 19, 2011, the Rehabilitation Court acted on the Rehabilitation Petition by issuing a Commencement Order with Stay Order. It appointed Atty. Rosario Bernaldo (Atty. Bernaldo) as Rehabilitation Receiver.[15]

On May 18, 2011, the Rehabilitation Petition was heard and the Rehabilitation Court eventually gave it due course to it. The creditors— Planters Bank, UnionBank, BPI, and Landbank— later filed their respective Notices of Claims and Comments.[16]

After the Fastech Corporations' presentation of their Rehabilitation Plan to Atty. Bernaldo and their creditors, the Rehabilitation Court issued its June 22, 2011 Order requiring them to submit a revised rehabilitation plan. The Fastech Corporations submitted their Revised Rehabilitation Plan and their creditors filed their respective comments and oppositions to it.[17]

In the meantime, Atty. Bernaldo submitted her Preliminary Report and opined that the Fastech Corporations' original

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[14] *Philippine Asset Growth Two, Inc., et al. v. Fastech Synergy Philippines, Inc., et al.*, G.R. No. 206528, June 28, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/206528.pdf>2–3 [Per *J.* Perlas-Bernabe, First Division].

[15] *Rollo*, p. 33. *Philippine Asset Growth Two, Inc., et al. v. Fastech Synergy Philippines, Inc., et al.*, G.R. No. 206528, June 28, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/206528.pdf>3 [Per *J.* Perlas-Bernabe, First Division].

[16] *Rollo*, p. 33.

[17] *Id*. at 34.

Rehabilitation Plan was viable.[18] She stated that the Fastech Corporations "may be successfully rehabilitated, considering the sufficiency of their assets to cover their liabilities and the underlying assumptions, financial projections and procedures to accomplish said goals in their Rehabilitation Plan."[19]

External auditors of the Fastech Corporations gave comments on the financial statements.[20] They issued qualified audit opinions on the 2008 financial statements of Fastech Microassembly and Fastech Electronique but noted that these companies were unable to prove financial support from their respective major stockholders.[21] However, the auditors were unable to provide opinions on Fastech Synergy's and Fastech Properties' 2008 financial statements due to insufficient audit evidence.[22] Finally, they were also unable to give audit opinions on the 2009 financial statements of the Fastech Corporations for lack of appropriate audit evidence.[23]

The Rehabilitation Court directed the Fastech Corporations to submit their Reply on the comments and oppositions presented by their creditors, to which they complied with on September 30, 2011.[24]

On December 9, 2011, the Rehabilitation Court issued a Resolution[25] dismissing the Rehabilitation Petition based on the following:

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[18] *Id*.

[19] *Philippine Asset Growth Two, Inc., et al. v. Fastech Synergy Philippines, Inc., et al.*, G.R. No. 206528, June 28, 2016,<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/206528.pdf> 3[Per *J.* Perlas-Bernabe, First Division].

[20] *Rollo*, pp. 56-59. The external auditors were from Manabat Sanagustin & Co., CPAs.

[21] *Id*. at 57.

[22] *Id*. at 56-58.

[23] *Id*.

[24] *Id*. at 34.

[25] *Id*. at 54-60.

1. The Singapore Stock Exchange has already deleted one of the petitioners. Yet, petitioners did not even bother to explain and/or inform this court the status of such deletion; or the steps being taken by the petitioners to resolve the incident.

   It must be noted here, then and now, that listed corporations in the stock exchange has an easy access to the public for their contributions to the capital built up to finance corporate business transactions including CAPEX and working capital. Thus, the public is always a very good source of money for business ventures of corporations. Petitioners had lost such good source of cheap money.

2. Petitioners miserably failed to overcome the unqualified adverse opinions of their external auditors. Petitioners did not explain what had happened to those adverse observations of the auditors. Thus, petitioners submitted before this court unreliable financial statements amounting to non-compliance of the basic requirements of the Law and the Rules for rehabilitation purposes.

3. Petitioners denied this court of its fair determination of the feasibility of the submitted rehabilitation plan by withholding from this court its basic assumptions of its rehabilitation plan.

4. Petitioners miserably failed to demonstrate before this court that they will have a better future business financial results [sic] of operation after their failures to meet the various restructuring plans they have secured from these creditors' banks.

5. The new way of doing business, i.e. niche manner of manufacturing its products or customers built design and needs, will be experimental, hence it will be completely and entirely dependent upon the number of customers petitioners may have. There is a great deal of competition in the petitioners' field of business, hence such new business venture becomes unreliable and uncertain. Thus, the possibility of success is quite uncertain, hence it is not feasible. There is [sic] no historical reliable facts and figures for this court to begin with for evaluation and study![26]

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

The Rehabilitation Court noted that there were no credible bases to determine if the Fastech Corporations could be rehabilitated since they failed to submit the bases for their positive financial projections due to confidentiality.[27] The dispositive portion of its December 9, 2011 Resolution read:

> WHEREFORE, premises considered, the petition is hereby DISMISSED for unreliable facts and figures submitted for evaluation and study by this court, hence this court could not arrive at the feasibility that petitioners could be rehabilitated. Thus, the petition is being DISMISSED for reason that its attachments, i.e. the financial statements and balance sheets of the petitioners contained materially false and misleading facts and figures. (Section 25, (b), (3) of R.A. No. 10142).
>
> Moreover, considering that the facts and figures submitted by petitioners are unreliable and not credible, this court could not also declare that petitioners be placed under liquidation.
>
> SO ORDERED.[28]

The Fastech Corporations elevated the case before the Court of Appeals by filing a Petition for Review[29] under Rule 43 of the 1997 Rules of Civil Procedure. The case was docketed as CA-G.R. SP No. 122836. The Fastech Corporations prayed that a Writ of Preliminary Injunction and/or a Temporary Restraining Order be issued.[30] They argued that their rehabilitation was feasible and that the Rehabilitation Court erred in ruling that they "[would] not have a better future due to their failures to meet various restructuring plans."[31]

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[27] *Id*. at 59. *Philippine Asset Growth Two, Inc., et al. v. Fastech Synergy Philippines, Inc., et al.*, G.R. No. 206528, June 28, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/206528.pdf> 4 [Per *J.* Perlas-Bernabe, First Division].

[28] *Id*. at 60.

[29] *Id*. at 213-296.

[30] *Id*. at 35. *Philippine Asset Growth Two, Inc., et al. v. Fastech Synergy Philippines, Inc., et al.*, G.R. No. 206528, June 28, 2016,<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/206528.pdf> 4 [Per *J.* Perlas-Bernabe, First Division].

[31] *Rollo*, pp. 37-38.

On January 24, 2012, the Court of Appeals issued a Temporary Restraining Order to prevent the case from being moot and academic considering the Ex Parte Petition for Issuance of a Writ of Possession filed by Planters Bank over the properties of the Fastech Corporations.[32] A Writ of Preliminary Injunction was issued by the Court of Appeals on March 22, 2012.[33]

On April 30, 2012, Atty. Bernaldo filed her Manifestation before the Court of Appeals.[34] She maintained that the Fastech Corporations' rehabilitation was viable as "the financial projections and procedures set forth to accomplish the goals in their Rehabilitation Plan [were] attainable."[35]

On September 28, 2012, the Court of Appeals issued a Decision,[36] granting the Fastech Corporations' Petition for Review, which it found to have "serve[d] the purpose of corporate rehabilitation."[37] The rehabilitation would allow the continued employment of its more than 100 employees and would assure payment to creditors, which would all equally participate in the Fastech Corporations' rehabilitation. Further, stockholders would benefit in the long run if the Rehabilitation Plan was successful. Finally, the general public would likewise gain

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[32] *Id*. at 35.

[33] *Id*. at 35-36. *Philippine Asset Growth Two, Inc., et al. v. Fastech Synergy Philippines, Inc., et al.*, G.R. No. 206528, June 28, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/206528.pdf> 4 [Per *J.* Perlas-Bernabe, First Division].

[34] *Id*. at 36. *Philippine Asset Growth Two, Inc., et al. v. Fastech Synergy Philippines, Inc., et al.*, G.R. No. 206528, June 28, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/206528.pdf> 4 [Per *J.* Perlas-Bernabe, First Division].

[35] *Philippine Asset Growth Two, Inc., et al. v. Fastech Synergy Philippines, Inc., et al.*, G.R. No. 206528, June 28, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/206528.pdf> 4 [Per *J.* Perlas-Bernabe, First Division].

[36] *Rollo*, pp. 30-53.

[37] *Id*. at 42.

considering that the Fastech Corporations would open the Philippine market to new opportunities.[38]

The Court of Appeals ruled that the Rehabilitation Court erred in disregarding the opinion of Atty. Bernaldo that the Fastech Corporations "may be successfully rehabilitated."[39] The Rehabilitation Court "failed to distinguish the difference between an adverse or negative opinion and a disclaimer or when an auditor [could not] formulate an opinion with exactitude for lack of sufficient data."[40]

The dispositive portion of the Court of Appeals September 28, 2012 Decision read:

> **WHEREFORE**, the instant petition is **GRANTED**. The assailed issuance is **REVERSED** and **SET ASIDE**. The Joint Petition in SP Case No. M-7130 is **REINSTATED** and the Rehabilitation Plan attached thereto is **APPROVED**. Respondent Planters Development Bank is permanently **ENJOINED** from effecting the foreclosure of [the Fastech Corporations'] property during the pendency of the implementation of the Rehabilitation Plan.
>
> The petition is **REMANDED** to the Regional Trial Court, National Capital Judicial Region, Br. 149, Makati City, for its supervision in the implementation of the Rehabilitation Plan.
>
> **SO ORDERED**.[41] (Emphasis in the original)

Landbank and Planters Bank separately moved for reconsideration. Landbank argued that the Rehabilitation Plan should not have been approved since it would not benefit the Fastech Corporations' creditors, while Planters Bank averred that the rehabilitation of the Fastech Corporations could no longer be obtained.[42]

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

[39] *Philippine Asset Growth Two, Inc., et al. v. Fastech Synergy Philippines, Inc., et al.*, G.R. No. 206528, June 28, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/206528.pdf> 4-5 [Per *J.* Perlas-Bernabe, First Division].

[40] *Id*. at 5.

[41] *Rollo*, pp. 52-53.

[42] *Id*. at 62.

On March 5, 2013, the Court of Appeals issued a Resolution[43] denying both motions. It added that Atty. Bernaldo's Manifestation bolstered its finding that the rehabilitation was possible if "implemented in accordance with the Rehabilitation Plan."[44]

On April 18, 2013, Planters Bank and its successor-in-interest, Philippine Asset Growth Two, Inc. (PAGTI), filed a Petition for Review before this Court. This Petition assailed the September 28, 2012 Decision and March 5, 2013 Resolution of the Court of Appeals. The case, docketed as G.R. No. 206528, was entitled *Philippine Asset Growth Two, Inc. (Successor-In-Interest of Planters Development Bank) and Planters Development Bank v. Fastech Synergy Philippines, Inc. (Formerly First Asia System Technology, Inc.), Fastech Microassembly & Test, Inc., Fastech Electronique, Inc., and Fastech Properties, Inc.*[45]

On April 25, 2013, Landbank also filed a Petition for Review before this Court against the Fastech Corporations. Petitioner likewise assails the September 28, 2012 Decision and March 5, 2013 Resolution of the Court of Appeals.[46] It questions the correctness of the Court of Appeals' application of Republic Act No. 10142 without considering the issues put forward by the creditors, petitioner included.[47]

Petitioner argues that respondents' creditors raised valid issues that should be addressed before declaring that rehabilitation was viable.[48] It maintains that it does not agree with the period of the repayment plan, which could take almost 20 years, or

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[43] *Id*. at 61-63.

[44] *Id*. at 62.

[45] G.R. No. 206528, June 28, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/206528.pdf> 1[Per *J*. Perlas-Bernabe, First Division].

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

[47] *Id*. at 17.

[48] *Id*. at 21.

with the waiver of interest and penalties incurred prior to the filing of rehabilitation.[49]

Petitioner points out that the Rehabilitation Receiver's opinion is subjective and possibly partial in favor of rehabilitation.[50] There are also some concerns which are beyond the Rehabilitation Receiver's competence and must be directly addressed by respondents to show petitioner that they are sincere in gaining the benefits of rehabilitation and are "not simply hiding behind its protective mantle to evade [their] obligations."[51]

Petitioner prays that the assailed Decision and Resolution of the Court of Appeals be modified to take its concerns into account.[52]

On October 7, 2013, respondents filed their Comment.[53] They counter that petitioner raised questions of fact, which could not be entertained by this Court. The resolution of petitioner's concerns would involve an examination of the records and evidence of the case.[54] Further, petitioner did not object to respondents' rehabilitation. Its opposition is merely on the stipulations in the Rehabilitation Plan.[55]

On February 3, 2014, petitioner filed its Reply.[56] It reiterates that the approval of the Rehabilitation Plan, without resolving the issues it has raised, "violates the very essence and policy behind the enactment of the [Financial Rehabilitation Plan and Insolvency Act]." Thus, the question on the correctness of the rehabilitation's approval is not a question of fact but of law.

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

[50] *Id*. at 21.

[51] *Id*. at 23.

[52] *Id*. at 24.

[53] *Id*. at 131-141.

[54] *Id*. at 132-134.

[55] *Id*. at 134.

[56] *Id*. at 149-153.

On March 12, 2014, this Court issued a Resolution,[57] giving due course to the petition and requiring the parties to file their respective memoranda.

Petitioner submitted its Memorandum[58] on May 19, 2014, while respondents submitted their Memorandum[59] on May 29, 2014. Both Memoranda contained a rehash of their arguments in their previous pleadings.

On January 4, 2016, respondents filed their Manifestation and Update[60] regarding their compliance with the September 28, 2012 Decision of the Court of Appeals. They report that "[i]n accordance with the Rehabilitation Plan, [respondents] had made four (4) quarterly payments with a total amount of Thirty Five Million Four Hundred Eighty Four Thousand Three Hundred Eighteen and Thirty Two Centavos (Php 35,484,318.32)."[61] The payment consisted of both principal and interest payments. They also paid their non-bank creditors. These show that the approved Rehabilitation Plan is viable.[62]

On April 1, 2016, respondents filed another Manifestation and Update,[63] attaching in it the Compliance[64] submitted by Atty. Bernaldo. Respondents emphasize the conclusion of Atty. Bernaldo that respondents "generally performed better than the projections in the approved rehabilitation plan."[65]

On November 25, 2016, PAGTI and Planters Bank filed their Manifestation,[66] stating that this Court already issued a Decision

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[57] *Id*. at 155-156.

[58] *Id*. at 159-173.

[59] *Id*. at 177-207.

[60] *Id*. at 327-330.

[61] *Id*. at 328.

[62] *Id*.

[63] *Id*. at 392-395.

[64] *Id*. at 396-403.

[65] *Id*. at 398.

[66] *Id*. at 409-415.

on June 28, 2016 in G.R. No. 206528. This Court granted PAGTI and Planters Bank's petition and reversed the September 28, 2012 Decision and March 5, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 122836.[67]

On June 16, 2017, PAGTI and Planters Bank filed another Manifestation,[68] stating that this Court's June 28, 2016 Decision in G.R. No. 206528 became final and executory on March 17, 2017.[69]

Thus, this Court resolves the issue of whether the Court of Appeals erred in approving the Rehabilitation Plan of respondents.

The sole issue raised by petitioner has already been ruled upon by this Court. One (1) of the issues resolved in G.R. No. 206528 was whether the rehabilitation of respondents was feasible. This Court found that rehabilitation was not possible and thoroughly explained:

. . . . . .

II.

Rehabilitation is statutorily defined under Republic Act No. 10142, otherwise known as the "Financial Rehabilitation and Insolvency Act of 2010" (FRIA), as follows:

> Section 4. *Definition of Terms.* — As used in this Act, the term:
>
> . . . . . .
>
> (gg) *Rehabilitation* shall refer to the **restoration of the debtor to a condition of successful operation and solvency**, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments

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[67] *Id*. at 411.

[68] *Id*. at 441-446.

[69] *Id*. at 443, PAGTI and Planters Bank's Manifestation dated May 31, 2017, and 451-452, Entry of Judgment.

> projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated. (Emphasis supplied)

Case law explains that corporate rehabilitation contemplates a continuance of corporate life and activities in an effort **to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.** Thus, the basic issues in rehabilitation proceedings concern the viability and desirability of continuing the business operations of the distressed corporation, all with a view of effectively restoring it to a state of solvency or to its former healthy financial condition through the adoption of a rehabilitation plan.

III.

In the present case, however, the Rehabilitation Plan failed to comply with the minimum requirements, *i.e.*: (*a*) material financial commitments to support the rehabilitation plan; and (*b*) a proper liquidation analysis, under Section 18, Rule 3 of the 2008 Rules of Procedure on Corporate Rehabilitation 80 (Rules), which Rules were in force at the time respondents' rehabilitation petition was filed on April 8, 2011:

> Section 18. *Rehabilitation Plan*. — The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors such as, but not limited, to the non- impairment of their security liens or interests; (c) **the material financial commitments to support the rehabilitation plan**; (d) the means for the execution of the rehabilitation plan, which may include debt to equity conversion, restructuring of the debts, *dacion en pago* or sale or exchange or any disposition of assets or of the interest of shareholders, partners or members; (e) **a liquidation analysis setting out for each creditor that the present value of payments it would receive under the plan is more than that which it would receive if the assets of the debtor were sold by a liquidator within a six-month period from the estimated date of filing of the petition**; and (f) such other relevant information to enable a reasonable investor to

make an informed decision on the feasibility of the rehabilitation plan. (Emphases supplied)

The Court expounds.

A. Lack of Material Financial Commitment to Support the Rehabilitation Plan.

A material financial commitment becomes significant in gauging the resolve, determination, earnestness, and good faith of the distressed corporation in financing the proposed rehabilitation plan. This commitment may include the **voluntary undertakings** of the stockholders or the would-be investors of the debtor-corporation indicating their readiness, willingness, and ability to contribute funds or property **to guarantee the continued successful operation of the debtor-corporation during the period of rehabilitation.**

In this case, respondents' Chief Operating Officer, Primo D. Mateo, Jr., in his executed Affidavit of General Financial Condition dated April 8, 2011, averred that respondents will not require the infusion of additional capital as he, instead, proposed to have all accrued penalties, charges, and interests waived, and a reduced interest rate prospectively applied to all respondents' obligations, in addition to the implementation of a two (2)- year grace period. Thus, there appears to be no concrete plan to build on respondents' beleaguered financial position through substantial investments as the plan for rehabilitation appears to be pegged merely on financial reprieves. Anathema to the true purpose of rehabilitation, a distressed corporation cannot be restored to its former position of successful operation and regain solvency by the sole strategy of delaying payments/waiving accrued interests and penalties at the expense of the creditors.

The Court also notes that while respondents have substantial total assets, a large portion of the assets of Fastech Synergy and Fastech Properties is comprised of noncurrent assets, such as advances to affiliates which include Fastech Microassembly, and investment properties which form part of the common assets of Fastech Properties, Fastech Electronique, and Fastech Microassembly. Moreover, while there is a claim that *unnamed* customers have made investments by way of consigning production equipment, and advancing money to fund procurement of various equipment intended to increase production capacity, this can hardly be construed as a material financial commitment which would inspire confidence that the rehabilitation would turn out to be successful. Case law holds that nothing short of legally binding investment commitment/s from third parties is

required to qualify as a material financial commitment. Here, no such binding investment was presented.

B. Lack of Liquidation Analysis.

Respondents likewise failed to include any liquidation analysis in their Rehabilitation Plan. The total liquidation assets and the estimated liquidation return to the creditors, as well as the fair market value vis-à-vis the forced liquidation value of the fixed assets were not shown. As such, the Court could not ascertain if the petitioning debtor's creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated. This is a crucial factor in a corporate rehabilitation case, which the CA, unfortunately, failed to address.

C. Effect of Non-Compliance.

The failure of the Rehabilitation Plan to state any material financial commitment to support rehabilitation, as well as to include a liquidation analysis, renders the CA's considerations for approving the same, *i.e.*, that: (a) respondents would be able to meet their obligations to their creditors within their operating cash profits and other assets without disrupting their business operations; (*b*) the Rehabilitation Receiver's opinion carries great weight; and (*c*) rehabilitation will be beneficial for respondents' creditors, employees, stockholders, and the economy, as actually **unsubstantiated**, and hence, insufficient to decree the feasibility of respondents' rehabilitation. It is well to emphasize that the remedy of rehabilitation should be denied to corporations that do not qualify under the Rules. Neither should it be allowed to corporations whose sole purpose is to delay the enforcement of any of the rights of the creditors.

Even if the Court were to set aside the failure of the Rehabilitation Plan to comply with the fundamental requisites of material financial commitment to support the rehabilitation and an accompanying liquidation analysis, a review of the financial documents presented by respondents fails to convince the Court of the feasibility of the proposed plan.

IV.

The test in evaluating the economic feasibility of the plan was laid down in *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation (Bank of the Philippine Islands)*, to wit:

> In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that a thorough examination and analysis of the distressed corporation's financial data must be conducted. If the results of such examination and analysis show that there is a real opportunity to rehabilitate the corporation in view of the assumptions made and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible. In such case, the rehabilitation court may convert the proceedings into one for liquidation.

In the recent case of *Viva Shipping Lines, Inc. v. Keppel Philippines Mining, Inc.*, the Court took note of the characteristics of an economically feasible rehabilitation plan as opposed to an infeasible rehabilitation plan:

> Professor Stephanie V. Gomez of the University of the Philippines College of Law suggests specific characteristics of an economically feasible rehabilitation plan:
>
> a. The debtor has assets that can generate more cash if used in its daily operations than if sold.
>
> b. Liquidity issues can be addressed by *a practicable business plan* that will generate enough cash to sustain daily operations.
>
> c. The debtor has a definite source of financing for the proper and full implementation of a Rehabilitation Plan that is anchored on realistic assumptions and goals.
>
> These requirements put emphasis on liquidity: the cash flow that the distressed corporation will obtain from rehabilitating its assets and operations. A corporation's assets may be more than its current liabilities, but some assets may be in the form of land or capital equipment, such as machinery or vessels. Rehabilitation sees to it that these assets generate more value if used efficiently rather than if liquidated.

On the other hand, this court enumerated the characteristics of a rehabilitation plan that is infeasible:

(a) the absence of a sound and workable business plan;

(b) baseless and unexplained assumptions, targets and goals;

(c) speculative capital infusion or complete lack thereof for the execution of the business plan;

(d) cash flow cannot sustain daily operations; and

(e) negative net worth and the assets are near full depreciation or fully depreciated.

In addition to the tests of *economic feasibility*, Professor Stephanie V. Gomez also suggests that the Financial and Rehabilitation and Insolvency Act of 2010 emphasizes on rehabilitation that provides for better *present value recovery* for its creditors.

Present value recovery acknowledges that, in order to pave way for rehabilitation, the creditor will not be paid by the debtor when the credit falls due. The court may order a suspension of payments to set a rehabilitation plan in motion; in the meantime, the creditor remains unpaid. By the time the creditor is paid, the financial and economic conditions will have been changed. Money paid in the past has a different value in the future. It is unfair if the creditor merely receives the face value of the debt. Present value of the credit takes into account the interest that the amount of money would have earned if the creditor were paid on time.

Trial courts must ensure that the projected cash flow from a business' rehabilitation plan allows for the closest present value recovery for its creditors. If the projected cash flow is realistic and allows the corporation to meet all its obligations, then courts should favor rehabilitation over liquidation. However, if the projected cash flow is unrealistic, then courts should consider converting the proceedings into that for liquidation to protect the creditors.

A perusal of the 2009 audited financial statements shows that respondents' cash operating position was not even enough to meet their maturing obligations. Notably, their current assets were materially lower than their current liabilities, and consisted mostly of advances

to related parties in the case of Fastech Microassembly, Fastech Electronique, and Fastech Properties. Moreover, the independent auditors recognized the absence of available historical or reliable market information to support the assumptions made by the management to determine the recoverable amount (value in use) of respondents' properties and equipment.

On the other hand, respondents' unaudited financial statements for the year 2010, and the months of February and March 2011 were unaccompanied by any notes or explanation on how the figures were arrived at. Besides, respondents' cash operating position remained insufficient to meet their maturing obligations as their current assets are still substantially lower than their current liabilities. The Court also notes the RTC-Makati's observation that respondents added new accounts and/or deleted/omitted certain accounts, but failed to explain or justify the same.

Verily, respondents' Rehabilitation Plan should have shown that they have enough serviceable assets to be able to continue its business operation. In fact, as opposed to this objective, the revised Rehabilitation Plan still requires "front load Capex spending" to replace common equipment and facility equipment to ensure sustainability of capacity and capacity robustness, thus, further sacrificing respondents' cash flow. In addition, the Court is hard-pressed to see the effects of the outcome of the streamlining of respondents' manufacturing operations on the carrying value of their existing properties and equipment.

In fine, the Rehabilitation Plan and the financial documents submitted in support thereof fail to show the feasibility of rehabilitating respondents' business.

V.

The CA's reliance on the expertise of the court-appointed Rehabilitation Receiver, who opined that respondents' rehabilitation is viable, in order to justify its finding that the financial statements submitted were reliable, overlooks the fact that the determination of the validity and the approval of the rehabilitation plan is not the responsibility of the rehabilitation receiver, but remains the function of the court. The rehabilitation receiver's duty *prior* to the court's approval of the plan is to study the best way to rehabilitate the debtor, and to ensure that the value of the debtor's properties is reasonably maintained; and *after* approval, to implement the rehabilitation plan.

Notwithstanding the credentials of the court-appointed rehabilitation receiver, the duty to determine the feasibility of the rehabilitation of the debtor rests with the court. While the court may consider the receiver's report favorably recommending the debtor's rehabilitation, it is not bound thereby if, in its judgment, the debtor's rehabilitation is not feasible.

The purpose of rehabilitation proceedings is not only to enable the company to gain a new lease on life, but also to allow creditors to be paid their claims from its earnings when so rehabilitated. Hence, the remedy must be accorded only after a judicious regard of all stakeholders' interests; it is not a one-sided tool that may be graciously invoked to escape every position of distress. Thus, the remedy of rehabilitation should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by: *(a)* the absence of a sound and workable business plan; *(b)* baseless and unexplained assumptions, targets, and goals; and *(c)* speculative capital infusion or complete lack thereof for the execution of the business plan, as in this case.

VI.

In view of all the foregoing, the Court is therefore constrained to grant the instant petition, notwithstanding the preliminary technical error as above-discussed. A distressed corporation should not be rehabilitated when the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that it may be revived, to the detriment of its numerous stakeholders which include not only the corporation's creditors but also the public at large. In *Bank of the Philippine Islands*:

> Recognizing the volatile nature of every business, the rules on corporate rehabilitation have been crafted in order to give companies sufficient leeway to deal with debilitating financial predicaments in the hope of restoring or reaching a sustainable operating form if only to best accommodate the various interests of all its stakeholders, may it be the corporation's stockholders, its creditors, and even the general public.

Thus, the higher interest of substantial justice will be better subserved by the reversal of the CA Decision. Since the rehabilitation petition should not have been granted in the first place, it is of no moment that the Rehabilitation Plan is currently under implementation. While payments in accordance with the Rehabilitation Plan were

already made, the same were only possible because of the financial reprieves and protracted payment schedule accorded to respondents, which, as above- intimated, only works at the expense of the creditors and ultimately, do not meet the true purpose of rehabilitation.[70] (Emphasis in the original, citations omitted)

The dispositive portion of the June 28, 2016 Decision in G.R. No. 206528 read:

WHEREFORE, the petition is **GRANTED**. The Decision dated September 28, 2012 and the Resolution dated March 5, 2013 of the Court of Appeals in CA-G.R. SP No. 122836 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Joint Petition for corporate rehabilitation filed by respondents Fastech Synergy Philippines, Inc. (formerly First Asia System Technology, Inc.), Fastech Microassembly & Test, Inc., Fastech Electronique, Inc., and Fastech Properties, Inc., before the Regional Trial Court of Makati City, Branch 149 in SP Case No. M-7130 is **DISMISSED**.

SO ORDERED.[71]

This Court arrived at the above conclusion after a careful scrutiny of the case records. The decision is comprehensive enough that to rule on the issue raised by petitioner will be futile and is a waste of this Court's time and resources. Moreover, petitioner did not advance any other issue that could have been resolved by this Court. Therefore, with the promulgation of the June 28, 2016 Decision in G.R. No. 206528, the present case has been rendered moot and academic.

In *Timbol v. Commission on Elections*:[72]

A case is moot and academic if it "ceases to present a justiciable controversy because of supervening events so that a declaration thereon

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[70] *Philippine Asset Growth Two, Inc., et al. v. Fastech Synergy Philippines, Inc., et al.*, G.R. No. 206528, June 28, 2016,<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/206528.pdf> 8–16 [Per *J.* Perlas-Bernabe, First Division].

[71] *Id*. at 17.

[72] 754 Phil. 578 (2015) [Per *J.* Leonen, *En Banc*].

would be of no practical use or value." When a case is moot and academic, this court generally declines jurisdiction over it.

There are recognized exceptions to this rule. This court has taken cognizance of moot and academic cases when:

> (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review.[73] (Citations omitted)

In *Republic v. Moldex Realty, Inc.*:[74]

A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist. There is no longer any justiciable controversy that may be resolved by the court. This court refuses to render advisory opinions and resolve issues that would provide no practical use or value. Thus, courts generally "decline jurisdiction over such case or dismiss it on ground of mootness."[75]

This Court is generally constrained to rule upon moot and academic cases since "[our] power of judicial review is limited to actual cases and controversies"[76] under Article VIII, Section 1 of the Constitution; thus:

ARTICLE VIII
Judicial Department

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable

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[73] *Id*. at 584-585.

[74] G.R. No. 171041, February 10, 2016, 783 SCRA 414 [Per *J.* Leonen, Second Division].

[75] *Id*. at 442.

[76] *Id*. at 421.

and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

An actual case or controversy exists "when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding."[77] Courts will not decide a case unless there is "a real and substantial controversy admitting of specific relief."[78]

WHEREFORE, the Petition for Review is **DENIED** for being moot and academic.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206178. August 9, 2017]

PEDRO C. PEREA, *petitioner, vs.* **ELBURG SHIPMANAGEMENT PHILIPPINES, INC., AUGUSTEA ATLANTICA SRL/ITALY, and CAPTAIN ANTONIO S. NOMBRADO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION

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[77] *Id*.

[78] *David v. Macapagal-Arroyo,* 522 Phil. 705, 753 (2006) [Per *J*. Sandoval-Gutierrez, *En Banc*].

(NLRC); IN DECIDING AN APPEAL, THE NLRC SHALL LIMIT ITSELF TO THE SPECIFIC ISSUES ELEVATED ON APPEAL; VIOLATION IN CASE AT BAR.— Rule VI, Section 4(d) of the 2005 Revised Rules of Procedure of the National Labor Relations Commission, categorically states that in deciding an appeal, the National Labor Relations Commission shall limit itself to the specific issues elevated on appeal: x x x Petitioner was correct to assail the National Labor Relations Commission's ruling on the concealment of a pre-existing fracture or dislocated elbow because it appears that it was never raised by the parties before the Labor Arbiter or even the National Labor Relations Commission. In fact, aside from petitioner questioning this ruling, the alleged concealment of a pre-existing injury was also not raised as an issue before this Court. The National Labor Relations Commission clearly erred in considering a matter that was never raised for resolution on appeal. x x x *Madridejos v. NYK-Fil Ship Management, Inc.* discussed that generally, this Court limits itself to questions of law in a Rule 45 petition.

2. ID.; POEA STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON BOARD OCEAN GOING VESSELS (2000); FOR ILLNESS OR INJURY TO BE COMPENSABLE UNDER THE POEA CONTRACT, IT MUST BE WORK-RELATED AND ACQUIRED DURING THE TERM OF THE SEAFARER'S CONTRACT; NOT PRESENT IN CASE AT BAR.— For an illness or injury to be compensable under the POEA Contract, it must have been work-related and acquired during the term of the seafarer's contract. Work-related illness is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." x x x It is not disputed that petitioner was treated for injuries and hypertension during the term of his contract. Soon after his repatriation, petitioner was seen by the company-designated physicians, who gave the initial impression, "To Consider Cubital Tunnel Syndrome, Right; Hypertension; Rule Out Ischemic Heart Disease." Dr. Hao-Quan and Dr. Lim monitored petitioner and subjected him to laboratory exams, chest CT scan, MRI, Dipyridamole Thallium Scan, and a coronary angiography. x x x after extensively monitoring Perea and correlating the results of the medical tests, Dr. Hao-Quan and Dr. Lim declared

that he was cleared of the cause of his repatriation: x x x This Court sees no reason to distrust Dr. Hao-Quan and Dr. Lim's assessment of Perea's condition considering that they were able to monitor Perea's condition over a prolonged period. x x x This finds support in *Philman Marine v. Cabanban,* which also gave more credence to the findings of the company-designated physician over those of the private physician.

3. **ID.; ID.; THE AWARD OF DAMAGES AND ATTORNEY'S FEES IS DEEMED NOT PROPER BY THE COURT CONSIDERING THE EMPLOYER'S COMPLIANCE WITH THE POEA CONTRACT INCLUDING PAYMENT OF WAGES AND SICKNESS ALLOWANCE.—** In his petition, Perea exhaustively enumerated the progress and medical reports issued by the company-designated physicians, belying his own allegations of respondents' negligence or delay in providing him with the necessary medical care both onboard the vessel and upon his repatriation. Considering respondents' compliance with the POEA Contract, including the payment of his wages and sickness allowance, this Court sees no reason to grant petitioner's prayer for damages and attorney's fees.

APPEARANCES OF COUNSEL

Rowena A. Martin for petitioner.
Del Rosario and Del Rosario Law Offices for respondents.

D E C I S I O N

LEONEN, *J.*:

The physician who has personal knowledge of a seafarer's actual medical condition after closely monitoring and regularly treating that seafarer is more credible than another physician who only saw such seafarer once.

This resolves the Petition for Review[1] filed by petitioner Pedro C. Perea (Perea), assailing the Resolutions dated October

[1] *Rollo,* pp. 3-51.

16, 2012[2] and March 5, 2013[3] of the Court of Appeals in CA-G.R. SP No. 123515. The Court of Appeals affirmed the Decision of the National Labor Relations Commission, which in turn affirmed the Decision of the Labor Arbiter.

This Court restates the facts as found by the lower courts.

On October 28, 2009, Perea entered into a Contract of Employment[4] with Elburg Shipmanagement Philippines, Inc. (Elburg) under its principal Augustea Atlantica SRL/Italy. Perea was hired as a fitter for a period of nine (9) months with a basic monthly salary of US$698.00. On October 31, 2009, Perea was deployed to work aboard MV Lemno.[5]

On May 15, 2010, Perea had difficulty breathing while repairing a pipe. The following day, he had chest pains with palpitations. He was seen by a doctor that same afternoon and was advised to take medication and to rest for three (3) consecutive days. However, he did not feel any better even after resting and taking medications; thus, he asked to be repatriated.[6]

A few days later, Perea was welding when the oxygen and acetylene torch he was holding exploded. He hit his left shoulder and twisted his fingers in trying to avoid the explosion. He took a pain reliever to ease the pain but three (3) days later, he found that two (2) of his fingers had grown numb.[7]

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[2] *Id*. at 525-539. The Resolution was penned by Associate Justice Rodil V. Zalameda and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ramon M. Bato, Jr. of the First Division, Court of Appeals Manila.

[3] *Id*. at 570-571. The Resolution was penned by Associate Justice Rodil V. Zalameda and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ramon M. Bato, Jr. of the First Division, Court of Appeals Manila.

[4] *Id*. at 103.

[5] *Id*. at 526.

[6] *Id*. at 527.

[7] *Id*.

On May 27, 2010, Perea was sent to a medical facility in Tuzla, Turkey because of continued chest pains. He was pronounced to have soft tissue trauma and was told to rest, avoid exertion, and avoid using his right arm. The following day, he was transferred to SEMA Hospital where he was declared to be suffering from "[C]ubital [T]unnel Syndrome (mainly due to swelling and bleeding), soft tissue injury of the right elbow."[8] The treatment proposed was to put his right arm in a sling and to rest for recovery for 10 days.[9] He was soon repatriated to the Philippines.[10]

On June 3, 2010, after conducting laboratory examinations and other medical procedures on Perea, company-designated physicians Dr. Karen Hao-Quan (Dr. Hao-Quan) and Dr. Robert D. Lim (Dr. Lim) gave an initial impression, "To Consider Cubital Tunnel Syndrome, Right; Hypertension; Rule Out Ischemic Heart Disease"[11] and recommended that a Dipyridamole Thallium Scan be conducted.[12]

On July 31, 2010, in a letter[13] to Elburg, Dr. Hao-Quan stated that the cause of hypertension was not work-related and opined that Perea's estimated length of treatment would be approximately three (3) to four (4) months.

On September 28, 2010, Perea filed a complaint[14] for underpayment of his sick leave pay, permanent disability benefits, compensatory, moral and exemplary damages, and attorney's fees.

On October 21, 2010, Perea consulted Dr. Antonio C. Pascual (Dr. Pascual), an internist, cardiologist, and echocardiographer,[15]

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[8] *Id*. at 185, SEMA Hospital Epicrisis Report.

[9] *Id*.

[10] *Id*. at 527.

[11] *Id*. at 379.

[12] *Id*. at 377-379.

[13] *Id*. at 585.

[14] *Id*. at 99-101.

[15] *Id*. at 199.

who diagnosed him with "Uncontrolled Hypertension [and] Coronary Artery Disease."[16] Dr. Pascual found Perea to be medically unfit to work as a seafarer. Portions of Dr. Pascual's medical certificate read:

> Remarks:
>
> . . . .
>
> - Patient consulted at the clinic with complain[t]s of anterior, lateral and back pains associated with left arm pain.
> - On examination, BP was 162/90 mm Hg and HR was 65 bpm. ECG tracing showed sinus rhythm and intraventricular conduction delay with right bundle branch block pattern. Coronary angiogram done on 29-Jul-10 showed a good sized, dominant right coronary artery with a 40-50% discrete stenosis at its mid vertical limb.
> - Based on these findings, patient is MEDICALLY UNFIT TO WORK as a seaman.
> - Patient was advised to continuously take his medications and have a regular medical check-up.[17]

On November 5, 2010, after a series of examinations, Dr. Hao-Quan and Dr. Lim certified that Perea was cleared of the injuries that caused his repatriation.[18]

The parties met for mediation proceedings and a possible compromise agreement but were unsuccessful. They were then directed to submit their respective position papers, together with their supporting evidence.[19]

On February 28, 2011, the Labor Arbiter dismissed Perea's complaint for lack of merit.[20]

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[16] *Id*. at 198.

[17] *Id*.

[18] *Id*. at 223.

[19] *Id*. at 252-253.

[20] *Id*. at 252-265. The Decision, docketed as NLRC NCR Case No. 09-13856-10, was penned by Labor Arbiter Fedriel S. Panganiban.

The Labor Arbiter ruled that the Collective Bargaining Agreement could not apply to Perea's claim for disability benefits because its effectivity period was only from March 28, 2008 to December 31, 2009. The Collective Bargaining Agreement had already lapsed by the time Perea was repatriated to the Philippines by late May 2010.[21]

The Labor Arbiter held that the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels of the Philippine Overseas Employment Agency (POEA Contract) and the Department of Labor and Employment Order No. 4, Series of 2000 were the governing provisions.[22]

The Labor Arbiter emphasized that Elburg followed the POEA Contract when it paid Perea's wages during the time he was indisposed while on board the vessel. He was also given medical treatment at a foreign port at Elburg's expense. The Labor Arbiter also underscored that after Perea's repatriation, he was subjected to a series of medical tests and procedures, including a computed tomography (CT) scan and a coronary angiogram, all at Elburg's expense.[23]

The Labor Arbiter ruled that while Section 32-A of the POEA Contract provided that hypertension may be compensable, this was applicable only if it caused "impairment of function[s] of body organs like kidneys, heart and brain, resulting in permanent disability."[24] The Labor Arbiter held that Perea's hypertension did not impair the functions of his organs, as evidenced by Dr. Hao-Quan and Dr. Lim's medical reports.[25]

Between the findings of Dr. Hao-Quan and Dr. Lim and those of Dr. Pascual, the Labor Arbiter gave more weight to the findings

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[21] *Id*. at 260.

[22] *Id*. at 261.

[23] *Id*. at 261-263.

[24] *Id*. at 263.

[25] *Id*.

of the company-designated physicians who concluded that Perea was not suffering from coronary disease based on the results of a coronary angiogram.[26]

Perea appealed[27] the Labor Arbiter Decision.

On October 14, 2011, the National Labor Relations Commission[28] dismissed Perea's appeal and affirmed the Labor Arbiter's Decision *in toto*.[29]

The National Labor Relations Commission ruled that Perea's failure to disclose his pre-existing condition of a "fractured/dislocated right elbow" on his pre-employment medical examination "would bar him from claiming compensation/disability benefits," even if the cause of his repatriation had no connection with his pre-existing condition.[30]

The National Labor Relations Commission likewise upheld Dr. Hao-Quan and Dr. Lim's assessment on Perea's physical fitness, finding it to be more credible than Dr. Pascual's:

> As to the two assessments, We find the company[-]designated physician[s'] assessment clearing complainant from the cause of his medical repatriation more credible. Said clearance was based on medical/laboratory examinations made on complainant like dipyridamole thallium scan done on July 1, 2010, coronary showed angiogram done on July 29, 2010 which showed normal vessels. On the other hand, the findings of complainant's physician declaring complainant medically "unfit to work as seaman" due to

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[26] *Id*. at 264.

[27] *Id*. at 266-297.

[28] *Id*. at 471-481. The Decision, docketed as NLRC Case No. NCR (M) 09-13856-10 [NLRC LAC No. (OFW-M) 06-000508-11], was penned by Commissioner Dolores M. Peralta-Beley and concurred in by Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap of the Fifth Division, National Labor Relations Commission, Quezon City.

[29] *Id*. at 480.

[30] *Id*. at 478-479.

"uncontrollable hypertension" and "coronary artery disease" was not supported by any medical/laboratory examination.[31]

On December 19, 2011, the National Labor Relations Commission[32] denied Perea's Motion for Reconsideration of its October 14, 2011 Decision.[33]

Perea filed a Petition for Review with the Court of Appeals but it was dismissed in the Court of Appeals Resolution[34] dated October 16, 2012.

The Court of Appeals stated that hypertension may be compensable under Section 32-A of the POEA Contract only if it caused the dysfunction of body organs, which must be substantiated with the following documents: "(a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy report, and (e) [CT] scan."[35]

The Court of Appeals declared that while Dr. Pascual certified that Perea was suffering from uncontrolled hypertension, his certification was not supported by the required procedures and laboratory exams. Thus, his medical opinion, which was rendered after a single consultation, could not be considered over that of the company-designated physicians, who monitored Perea's progress and subjected him to extensive examination.[36]

The Court of Appeals agreed with Perea that the National Labor Relations Commission erred when it went beyond the issues elevated on appeal, specifically Perea's concealment of a pre-existing illness, an issue that was never raised by

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[31] *Id*. at 479-480.

[32] *Id*. at 522-523.

[33] *Id*. at 482-497.

[34] *Id*. at 525-539. The Decision, docketed as CA-G.R. SP No. 123515, was penned by Associate Justice Rodil V. Zalameda and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ramon M. Bato, Jr. of the First Division, Court of Appeals, Manila.

[35] *Id*. at 531.

[36] *Id*. at 531-532 and 537.

the parties. Nonetheless, the Court of Appeals ruled that such was merely an error in judgment and not grave abuse of discretion.[37]

The Court of Appeals further held that the finding on concealment was merely in addition to the National Labor Relations Commission's main ground for the dismissal of the appeal—the lack of substantial evidence to support Dr. Pascual's declaration of Perea's unfitness to work as a seaman.[38]

The Court of Appeals found that Elburg strictly and faithfully observed the terms and conditions of the POEA Contract by paying his wages and sickness allowance and providing medical treatment in a foreign port and upon disembarking.[39] Finally, the Court of Appeals denied the prayer for moral damages and attorney's fees.[40]

On March 5, 2013, the Court of Appeals denied[41] Perea's Motion for Reconsideration of its October 16, 2012 Resolution.[42]

On March 27, 2013, Perea filed this Petition for Review[43] where he continues to assert his lack of fitness to work as a seafarer due to uncontrolled hypertension and coronary artery disease.[44] Petitioner claims that the Court of Appeals erred in according weight to the self-serving findings of the company-designated physicians and in disregarding the findings of the independent cardiologist.[45]

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[37] *Id*. at 532-533.

[38] *Id*. at 533.

[39] *Id*. at 534-537.

[40] *Id*. at 538.

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

[42] *Id*. at 540-559.

[43] *Id*. at 3-51.

[44] *Id*. at 26-32.

[45] *Id*. at 26.

Petitioner likewise claims that the Court of Appeals erred when it affirmed the National Labor Relations Commission's dismissal of his complaint due to concealment of pre-existing injury, since it was never put into issue, not having been raised by any of the parties.[46] Finally, petitioner avers that he was only given US$1,396.20 or two (2) months equivalent of his 130-day sickness allowance, leaving a balance of US$1,628.90.[47]

On June 10, 2013, Capt. Antonio S. Nombrado (Capt. Nombrado), Elburg, and its principal Augustea Atlantica SRL/ Italy (collectively, respondents) were directed to comment on the petition,[48] which they complied with on July 30, 2013.

In their Comment,[49] respondents, citing *Vergara v. Hammonia Maritime Services, Inc.,* contend that entitlement to disability benefits is governed by law, contract, and medical findings.[50] Respondents maintain that petitioner was monitored by their company-designated physicians and was subjected to laboratory examinations and procedures such as coronary angiography, CT scan, magnetic resonance imaging (MRI), and Dipyridamole Thallium Scan. Dr. Hao-Quan and Dr. Lim's resulting diagnosis of Perea's fitness to work was supported by a barrage of tests; thus, Perea's claim that he was suffering from coronary artery disease was sufficiently debunked.[51]

On November 22, 2013, petitioner filed his Reply[52] to respondents' comment, in compliance with this Court's Resolution[53] dated September 11, 2013.

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

[47] *Id*. at 19.

[48] *Id*. at 572.

[49] *Id*. at 573-582.

[50] *Id*. at 574.

[51] *Id*. at 575-577.

[52] *Id*. at 588-604.

[53] *Id*. at 587.

In his Reply, petitioner proclaims that the Labor Code provisions regarding the entitlement of a seafarer to disability benefits should be read hand-in-hand with the POEA Contract.[54]

Petitioner also contests the "fit to work" assessment of the company-designated physicians since it goes against the recommendation of "Optimal Medical Management" and "Aggressive Risk Factor Modification" issued in his coronary angiography result.[55]

Petitioner claims that he has been unable to earn wages as a seafarer for a period of more than 240 days, making him permanently unfit to work as a seafarer in whatever capacity.[56]

On March 5, 2014, this Court gave due course to the petition and directed[57] the parties to submit their respective memoranda.

On April 28, 2014, respondents filed their memorandum.[58] Petitioner did not file his memorandum.

In their Memorandum, respondents continue to argue that upon his repatriation, petitioner was diagnosed with simple high blood pressure, which did not impair the functions of his internal organs. Respondents emphasize that petitioner did not suffer a heart attack or stroke and that all of the tests and procedures performed showed that aside from his high blood pressure, which was timely addressed with medication, petitioner was not suffering from any disability or illness.[59] Respondents also point out that Dr. Pascual's finding that petitioner was medically unfit to work as a seafarer was arrived at after a single consultation and without conducting any tests on petitioner to ascertain his condition and support the conclusion of medical unfitness.[60]

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[54] *Id*. at 589-591.

[55] *Id*. at 593-594.

[56] *Id*. at 594.

[57] *Id*. at 607-608.

[58] *Id*. at 609-622.

[59] *Id*. at 614-616.

[60] *Id*. at 616-619.

This Court resolves the following issues:

First, whether the issue of the concealed pre-existing condition was rightly ruled upon by the National Labor Relations Commission when it was not raised by any of the parties;

Second, whether petitioner is entitled to disability benefits;

Third, whether petitioner is entitled to the balance of his disability allowance; and

Finally, whether petitioner is entitled to his claims of damages and attorney's fees.

I

Rule VI, Section 4(d) of the 2005 Revised Rules of Procedure of the National Labor Relations Commission, categorically states that in deciding an appeal, the National Labor Relations Commission shall limit itself to the specific issues elevated on appeal:

> Section 4. Requisites for Perfection of Appeal. –
>
> . . . . . .
>
> d) Subject to the provisions of Article 218 of the Labor Code, once the appeal is perfected in accordance with these Rules*, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.* (Emphasis supplied)

Petitioner was correct to assail the National Labor Relations Commission's ruling on the concealment of a pre-existing fracture or dislocated elbow because it appears that it was never raised by the parties before the Labor Arbiter or even the National Labor Relations Commission. In fact, aside from petitioner questioning this ruling, the alleged concealment of a pre-existing injury was also not raised as an issue before this Court. The National Labor Relations Commission clearly erred in considering a matter that was never raised for resolution on appeal.

However, contrary to petitioner's assertions, the dismissal of his claim was not brought about by his concealment of a pre-existing condition. Rather, his complaint was rightly

dismissed by the Court of Appeals because of his failure to substantially corroborate his claim that he was unfit to work as a seafarer, thus:

> We deem the [National Labor Relations Commission]'s finding of concealment to be merely an adjunct, if not a superfluity, to its main ground for the dismissal of the appeal, *i.e.,* the lack of any medical/laboratory examination to support Dr. Pascual's declaration that petitioner is "unfit to work as a seaman" due to "uncontrollable hypertension" and "coronary artery disease." Thus, even if the [National Labor Relations Commission] had not made any reference to the pre-existing fracture[,] the outcome of its decision would have remained the same: petitioner's appeal would still have been dismissed.[61]

II

Madridejos v. NYK-Fil Ship Management, Inc.[62] discussed that generally, this Court limits itself to questions of law in a Rule 45 petition:

> As a rule, we only examine questions of law in a Rule 45 petition. Thus, "we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the [National Labor Relations Commission], an administrative body that has expertise in its specialized field." Similarly, we do not replace our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the National Labor Relations Commission, when confirmed by the Court of Appeals, are usually "conclusive on this Court."[63]

This Court sees no reason to depart from this rule.

For an illness or injury to be compensable under the POEA Contract, it must have been work-related and acquired during

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[61] *Id*. at 533.

[62] G.R. No. 204262, June 7, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/204262.pdf> [Per *J*. Leonen,

[63] *Id*. at 13-14 citing *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9-10 (2012) [Per *J.* Brion, Second Division].

the term of the seafarer's contract.[64] Work-related illness is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[65] The relevant portions of Section 32-A are as follows:

> Section 32-A. Occupational Diseases. —
>
> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> (1) The seafarer's work must involve the risks described herein;
>
> (2) The disease was contracted as a result of the seafarer's exposure to the described risks;
>
> (3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;
>
> (4) There was no notorious negligence on the part of the seafarer.
>
> The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:
>
> . . . . . .
>
> 11. Cardio-Vascular Diseases. Any of the following conditions must be met:
>
> a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.
>
> b. The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship.

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[64] POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (2000), Sec. 20(B).

[65] POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (2000), Definition of Terms, par (12). This definition was amended by POEA Memorandum Circular No. 10 (2010).

c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

. . . . . .

20. Essential Hypertension

Hypertension classified as primary or essential is considered compensable if it causes impairment of function[s] of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; Provided, that, the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy report, and (f) C-T scan.[66]

It is not disputed that petitioner was treated for injuries and hypertension during the term of his contract. Soon after his repatriation, petitioner was seen by the company-designated physicians, who gave the initial impression, "To Consider Cubital Tunnel Syndrome, Right; Hypertension; Rule Out Ischemic Heart Disease."[67]

Dr. Hao-Quan and Dr. Lim monitored petitioner and subjected him to laboratory exams, chest CT scan, MRI, Dipyridamole Thallium Scan, and a coronary angiography. The results of the coronary angiography conducted on July 29, 2010 were as follows:

Coronary Arteriography:

LCA:

LM appears normal and it bifurcates into the LAD and LCx arteries.

LAD is a good-sized, Type III vessel which appears normal throughout its course. The diagonal branches are free of disease.

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[66] POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (2000), Sec. 32-A (11) and (20).

[67] *Rollo,* pp. 527-528.

> **LCx** is a good-sized, non-dominant vessel which appears normal. The OM branches are likewise free of disease.
>
> **RCA** is a good-sized dominant vessel with a 40-50% discrete stenosis at its mid vertical limb. The rest of the vessel appears normal.
>
> **CONCLUSION:**
>
> Insignificant Coronary Artery Disease
>
> **RECOMMENDATION:**
>
> Optimal Medical Management
>
> Aggressive Risk Factor Modification[68]

On November 5, 2010, after extensively monitoring Perea and correlating the results of the medical tests, Dr. Hao-Quan and Dr. Lim declared that he was cleared of the cause of his repatriation:

> This is a follow-up report on Fitter Pedro C. Perea who was initially seen here at Metropolitan Medical Center on June 3, 2010 and was diagnosed to have Hypertension.
>
> He is under the care of a Cardiologist.
>
> Patient still claims to have palpitation and pain on the left side of the chest and right forearm.
>
> His blood pressure is fairly controlled at 130/70 mmHg.
>
> Coronary Angiogram done on July 29, 2010 showed normal vessels.
>
> The specialist opines that patient is now cleared with regards to the cause of his repatriation.
>
> He was advised to continue his maintenance medications (Aprovel, Norvasc, Neurobion, Xanor).
>
> For your perusal.[69]

This Court sees no reason to distrust Dr. Hao-Quan and Dr. Lim's assessment of Perea's condition considering that they

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[68] *Id*. at 196.

[69] *Id*. at 223.

were able to monitor Perea's condition over a prolonged period. As the Court of Appeals discussed:

> As between the findings made by the company-designated physicians who conducted an extensive examination on the petitioner and Dr. Pascual who saw petitioner on only one (1) occasion and did not even order that medical tests be done to support his declaration that petitioner is unfit to work as [a] seaman, the company-designated physicians' findings that petitioner has been cleared for work should prevail.[70]

This finds support in *Philman Marine v. Cabanban,*[71] which also gave more credence to the findings of the company-designated physician over those of the private physician:

> In several cases, we held that **the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability**. In *Coastal Safeway Marine Services, Inc. v. Esguerra*, the Court significantly brushed aside the probative weight of the medical certifications of the private physicians, which were based merely on vague diagnosis and general impressions. Similarly in *Ruben D. Andrada v. Agemar Manning Agency, Inc.,* et al., the Court accorded greater weight to the assessments of the company-designated physician and the consulting medical specialist which resulted from an extensive examination, monitoring and treatment of the seafarer's condition, in contrast with the recommendation of the private physician which was "based only on a single medical report . . . [outlining] the alleged findings and medical history . . . obtained after . . . [one examination]."[72] (Citations omitted)

III

Petitioner's claim for sickness allowance[73] under the Collective Bargaining Agreement is likewise denied.

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[70] *Id*. at 537.

[71] 715 Phil. 454 (2013) [Per *J.* Brion, Second Division].

[72] *Id*. at 476-477.

[73] *Rollo,* p. 601.

The Collective Bargaining Agreement[74] between Associated Marine Officers' and Seamen's Union of the Philippines and Augustea Shipmanagement SRL[75] was only from March 28, 2008 to December 31, 2008 but was extended to December 31, 2009.[76] Thus, when petitioner first experienced chest pains on May 16, 2010,[77] the Collective Bargaining Agreement was no longer in effect.

IV

Petitioner prays for the award of moral, exemplary, and compensatory damages, allegedly due to respondents' gross negligence with respect to the proper medical attention he needed while on board the vessel.[78]

Petitioner fails to persuade.

The POEA Contract, which is deemed read and incorporated into petitioner's employment contract,[79] governs his claims for disability benefits. These guidelines were amended in recent years,[80] but the 2000 version of the POEA Contract applies since petitioner was hired in 2009.[81]

Section 20(B) of the 2000 POEA Contract provides the obligations of a seafarer's employer if he suffers any work-related injury during the term of his contract:

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[74] *Id*. at 144-177.

[75] Pertaining to Augustea Atlantica SRL/Italy.

[76] *Rollo*, p. 534.

[77] *Id*. at 182.

[78] *Id*. at 601.

[79] See *Vergara v. Hammonia Maritime*, 588 Phil. 895, 908-909 (2008) [Per *J.* Brion, Second Division].

[80] 2016 REVISED POEA RULES AND REGULATIONS GOVERNING THE RECRUITMENT AND EMPLOYMENT OF SEAFARERS AND 2010 STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS.

[81] *Rollo,* p. 103.

SECTION 20. COMPENSATION AND BENEFITS. —

. . . . . .

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

   However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work[-]related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness[,] the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

The facts show that respondents were not remiss in their obligation to provide Perea with adequate medical attention on board the vessel or in a foreign port.

Petitioner even admits, in his narration of facts, that on May 16, 2010, when he experienced chest pains, he was taken by a ship agent to see a doctor, who then prescribed three (3) types of medicine and advised that he take a three (3)-day rest.[82]

When the pain still persisted, petitioner wrote a Request for Medical Attention, which was granted by Capt. Nombrado. Upon reaching a port in Tuzla, Turkey, he was sent to a medical facility and later on transferred to SEMA Hospital.[83]

He was repatriated to the Philippines on June 1, 2010, reported to Elburg the following day, and was referred to the company-designated physicians. On June 3, 2010, he went to the company-designated physicians for his first check-up.[84]

Petitioner likewise underwent physical therapy at Calamba Doctors' Hospital, as suggested by the company-designated physicians.[85]

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[82] *Rollo,* p. 10.

[83] *Id*. at 10-11.

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

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

In his petition, Perea exhaustively enumerated the progress and medical reports issued by the company-designated physicians, belying his own allegations of respondents' negligence or delay in providing him with the necessary medical care both onboard the vessel and upon his repatriation.

Considering respondents' compliance with the POEA Contract, including the payment of his wages and sickness allowance, this Court sees no reason to grant petitioner's prayer for damages and attorney's fees.

WHEREFORE, this Court resolves to **DENY** the Petition. The assailed Court of Appeals Resolutions dated October 16, 2012 and March 5, 2013 in CA-G.R. SP No. 123515 are hereby **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206647. August 9, 2017]

RICHELLE P. ABELLA, for and in behalf of her minor daughter, MARL JHORYLLE ABELLA, *petitioner, vs.* **POLICARPIO CABAÑERO,** *respondent*.

SYLLABUS

1. CIVIL LAW; FAMILY CODE; SUPPORT; AN ILLEGITIMATE CHILD IS ENTITLED TO SUPPORT PROVIDED THE CHILD SHOULD HAVE FIRST BEEN ACKNOWLEDGED BY THE PUTATIVE PARENT OR MUST HAVE OTHERWISE PREVIOUSLY ESTABLISHED HIS OR HER

FILIATION WITH THE PUTATIVE PARENT.— The obligation to give support shall only be demandable from the time the person entitled to it needs it for maintenance, but it shall not be paid except from the date of judicial or extrajudicial demand. Support *pendente lite* may also be claimed, in conformity with the manner stipulated by the Rules of Court. An illegitimate child, "conceived and born outside a valid marriage," as is the admitted case with petitioner's daughter, is entitled to support. To claim it, however, a child should have first been acknowledged by the putative parent or must have otherwise previously established his or her filiation with the putative parent." When "filiation is beyond question, support [shall then follow] as [a] matter of obligation."

2. ID.; ID.; PATERNITY AND FILIATION; FILIATION PROCEEDINGS DO NOT MERELY RESOLVE THE MATTER OF RELATIONSHIP BUT ALSO THE LEGAL RIGHTS ASSOCIATED WITH THAT RELATIONSHIP; BURDEN OF PROOF IS UPON THE PERSON WHO ALLEGES THAT THE PUTATIVE PARENT IS THE BIOLOGICAL PARENT OF THE CHILD.— The judicial remedy to enable this is an action for compulsory recognition. Filiation proceedings do not merely resolve the matter of relationship with a parent but also secure the legal rights associated with that relationship: citizenship, support, and inheritance, among others. The paramount consideration in the resolution of questions affecting a child is the child's welfare, and it is "[t]he policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children." Nevertheless, in keeping with basic judicial principles, the burden of proof in proceedings seeking to establish paternity is upon the "person who alleges that the putative father is the biological father of the child." Likewise, a liberal application of rules should not be "without prejudice to the right of the putative parent to claim his or her own defenses."

3. ID.; ID.; ID.; THE MATTER OF FILIATION MAY BE INTEGRATED AND DETERMINED IN AN ACTION FOR SUPPORT IF IT INVOLVES THE SAME PARTIES, IS BROUGHT BEFORE A COURT WITH THE PROPER JURISDICTION, PRAYS TO IMPEL RECOGNITION OF PATERNAL RELATIONS, AND INVOKES JUDICIAL

INTERVENTION TO DO SO.— Having thus far only presented her child's birth certificate, which made no reference to respondent as the child's father, the Court of Appeals correctly noted that the necessary condition of filiation had yet to be established. The Court of Appeals later affirmed the dismissal of petitioner's Complaint, insisting that separate filiation proceedings and their termination in petitioner's daughter's favor were imperative. While ably noting that filiation had yet to be established, the Court of Appeals' discussion and final disposition are not in keeping with jurisprudence. *Dolina v. Vallecera* clarified that since an action for compulsory recognition may be filed ahead of an action for support, the direct filing of an action for support, "where the issue of compulsory recognition may be integrated and resolved," is an equally valid alternative: x x x In sustaining the lower courts' decisions, this Court noted that enabling the mother and her child to establish paternity and filiation in the course of an action for support was merely a permission "to prove their cause of action against [Agustin,] who had been denying the authenticity of the documentary evidence of acknowledgement." This Court added that an action to compel recognition could very well be integrated with an action for support. This Court drew analogies with extant jurisprudence that sustained the integration of an action to compel recognition with an action to claim inheritance and emphasized that "the basis or rationale for integrating them remains the same," x x x Indeed, an integrated determination of filiation is "entirely appropriate" to the action for support filed by petitioner Richelle for her child. An action for support may very well resolve that ineluctable issue of paternity if it involves the same parties, is brought before a court with the proper jurisdiction, prays to impel recognition of paternal relations, and invokes judicial intervention to do so. This does not run afoul of any rule. To the contrary, and consistent with *Briz v. Briz*, this is in keeping with the rules on proper joinder of causes of action. This also serves the interest of judicial economy—avoiding multiplicity of suits and cushioning litigants from the vexation and costs of a protracted pleading of their cause.

APPEARANCES OF COUNSEL

Mariano R. Pefianco for petitioner.

D E C I S I O N

LEONEN, *J.*:

Filiation must be established for a child to claim support from a putative father. When "filiation is beyond question, support follows as [a] matter of obligation."[1] To establish filiation, an action for compulsory recognition may be filed against the putative father ahead of an action for support. In the alternative, an action for support may be directly filed, where the matter of filiation shall be integrated and resolved.[2]

This resolves a Petition for Review on *Certiorari*[3] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed August 25, 2011 Decision[4] and January 15, 2013 Resolution[5] of the Court of Appeals in CA-G.R. SP No. 02687 be reversed and set aside.

The assailed Court of Appeals August 25, 2011 Decision sustained the March 19, 2007 Decision[6] of Branch 12, Regional Trial Court, San Jose, Antique in Civil Case No. 2005-4-3496. The Regional Trial Court Decision dismissed petitioner Richelle

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[1] *Dolina v. Vallecera*, 653 Phil. 391, 394 (2010) [Per *J.* Abad, Second Division] citing *Tayag v. Tayag-Gallor*, 572 Phil. 545, 551-552 (2008) [Per *J.* Tinga, Second Division] and *Montefalcon v. Vasquez*, 577 Phil. 383, 398 (2008) [Per *J.* Quisumbing, Second Division].

[2] *Id*. citing *Agustin v. Court of Appeals*, 499 Phil. 307, 317 (2005) [Per *J.* Corona, Third Division].

[3] *Rollo*, pp. 10-19.

[4] *Id*. at 49-59. The Decision was penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Nina G. Antonio-Valenzuela of the Special Nineteenth Division, Court of Appeals, Cebu City.

[5] *Id*. at 66-67. The Resolution was penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Pamela Ann Abella Maxino of the Special Former Special Nineteenth Division, Court of Appeals, Cebu City.

[6] *Id*. at 37-40. The Decision was penned by Judge Rudy P. Castrojas.

P. Abella's (Richelle) action for support of her minor daughter, Marl Jhorylle Abella (Jhorylle) against respondent Policarpio Cabañero (Cabañero). The assailed Court of Appeals January 15, 2013 Resolution denied petitioner's Motion for Reconsideration.[7]

In a Complaint[8] for Support (Complaint) filed on April 22, 2005, petitioner Richelle alleged that while she was still a minor in the years 2000 to 2002, she was repeatedly sexually abused by respondent Cabañero inside his rest house at Barangay Masayo, Tobias Fornier, Antique.[9] As a result, she allegedly gave birth to a child on August 21, 2002.[10]

Richelle added that on February 27, 2002, she initiated a criminal case for rape against Cabañero. This, however, was dismissed. Later, she initiated another criminal case, this time for child abuse under Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act. This, too, was dismissed.[11]

Richelle prayed for the child's monthly allowance in the amount of ₱3,000.00.[12]

In his Answer, Cabañero denied sexually abusing Richelle, or otherwise having any sexual relations with her. Thus, he asserted that he could not have been the father of Richelle's child.[13]

After two (2) re-settings, pre-trial was held on February 21, 2007. Only Richelle's counsel appeared. Richelle's motion to present her evidence *ex parte* was granted.[14]

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[7] *Id*. at 41-43.

[8] *Id*. at 20-23.

[9] *Id*. at 20.

[10] *Id*. at 20-21.

[11] *Id*. at 21.

[12] *Id*.

[13] *Id*. at 50.

[14] *Id*.

In her testimony, Richelle noted that Cabañero was related to her mother and that she treated him as her uncle. She narrated how she was sexually abused by Cabañero on July 25, 2000, September 10, 2000, and February 8, 2002 and how Cabañero threatened her to keep her silent. She added that during this period, Cabañero sent her three (3) letters. She testified that she bore her and Cabañero's child, whom she named Marl Jhorylle Abella, on August 21, 2002. She insisted on her certainty that Cabañero was the father of the child as she supposedly had no sexual relations with any other man.[15]

In its March 19, 2007 Decision,[16] the Regional Trial Court dismissed Richelle's Complaint without prejudice, on account of her failure to implead her minor child, Jhorylle, as plaintiff.

Richelle filed a petition for *certiorari* and mandamus before the Court of Appeals.[17]

In its assailed August 25, 2011 Decision,[18] the Court of Appeals sustained the dismissal of the Complaint.

However, the Court of Appeals disagreed with the Regional Trial Court's basis for dismissing the Complaint. It emphasized that non-joinder of indispensable parties is not a ground for the dismissal of an action and added that it would have sufficed for the Regional Trial Court to have "ordered the amendment of the caption of the [C]omplaint to implead the minor child."[19] The Court of Appeals still ruled that the dismissal of the Complaint was proper as the filiation and paternity of the child had not been previously established. As the child's birth certificate did not indicate that Cabañero was the father and as Cabañero had not done anything to voluntarily recognize the child as his own, the Court of Appeals asserted that Richelle

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

[16] *Id*. at 37-40.

[17] *Id*. at 49.

[18] *Id*. at 49-59.

[19] *Id*. at 57.

"should have first instituted filiation proceedings to adjudicate the minor child's paternity."[20]

Following the denial of her Motion for Reconsideration, Richelle filed this Petition.

For resolution is the sole issue of whether the Court of Appeals erred in ruling that filiation proceedings should have first been *separately* instituted to ascertain the minor child's paternity and that without these proceedings having first been resolved in favor of the child's paternity claim, petitioner Richelle P. Abella's action for support could not prosper.

This Court reverses the Court of Appeals Decision.

While it is true that the grant of support was contingent on ascertaining paternal relations between respondent and petitioner's daughter, Jhorylle, it was unnecessary for petitioner's action for support to have been dismissed and terminated by the Court of Appeals in the manner that it did. Instead of dismissing the case, the Court of Appeals should have remanded the case to the Regional Trial Court. There, petitioner and her daughter should have been enabled to present evidence to establish their cause of action—inclusive of their underlying claim of paternal relations—against respondent.

I

Article 194 of the Family Code delineates the extent of support among family members, while Article 195 identifies family members who "are obliged to support each other":

> Article 194. Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.
>
> The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work.

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[20] *Id*. at 58.

Article 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

(1) The spouses;

(2) Legitimate ascendants and descendants;

(3) Parents and their legitimate children and the legitimate and illegitimate children of the hitter;

(4) *Parents and their illegitimate children and the legitimate and illegitimate children of the latter*; and

(5) Legitimate brothers and sisters, whether of the full or half-blood. (Emphasis supplied)

Lim-Lua v. Lua[21] echoed Article 201 of the Family Code[22] and stated that the "amount of support which those related by marriage and family relationship is generally obliged to give each other shall be in proportion to the resources or means of the giver and to the needs of the recipient."[23] Article 202 of the Family Code adds, however, that support may be adjusted and that it "shall be reduced or increased proportionately, according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to furnish the same."[24]

II

The obligation to give support shall only be demandable from the time the person entitled to it needs it for maintenance, but it shall not be paid except from the date of judicial or

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[21] 710 Phil. 211 (2013) [Per *J.* Villarama, Jr., First Division].

[22] FAMILY CODE, Art. 201 provides:

Article 201. The amount of support, in the cases referred to in Articles 195 and 196, shall be in proportion to the resources or means of the giver and to the necessities of the recipient.

[23] *Lim-Lua v. Lua*, 710 Phil. 211, 221 (2013) [Per *J.* Villarama, Jr., First Division] citing FAMILY CODE, Art. 201, *Lacson v. Lacson*, 531 Phil. 277, 287 (2006) [Per *J.* Garcia, Second Division].

[24] FAMILY CODE, Art. 202.

extrajudicial demand.[25] Support *pendente lite* may also be claimed, in conformity with the manner stipulated by the Rules of Court.[26]

An illegitimate child, "conceived and born outside a valid marriage," as is the admitted case with petitioner's daughter, is entitled to support.[27] To claim it, however, a child should have first been acknowledged by the putative parent or must have otherwise previously established his or her filiation with the putative parent."[28] When "filiation is beyond question, support [shall then follow] as [a] matter of obligation."[29]

The judicial remedy to enable this is an action for compulsory recognition.[30] Filiation proceedings do not merely resolve the

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[25] FAMILY CODE, Art. 203 provides:

Article 203. The obligation to give support shall be demandable from the time the person who has a right to receive the same needs it for maintenance, but it shall not be paid except from the date of judicial or extrajudicial demand.

Support *pendente lite* may be claimed in accordance with the Rules of Court.

Payment shall be made within the first five days of each corresponding month. When the recipient dies, his heirs shall not be obliged to return what he has received in advance.

[26] FAMILY CODE, Art. 203.

[27] FAMILY CODE, Art. 176, as amended by Rep. Act No. 9255 provides:

Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. Provided, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child.

[28] *Dolina v. Vallecera,* 653 Phil. 391, 394 (2010) [Per *J.* Abad, Second Division] citing FAMILY CODE, Art. 195.

[29] *Id*.

[30] *Id*.

matter of relationship with a parent but also secure the legal rights associated with that relationship: citizenship, support, and inheritance, among others.[31]

The paramount consideration in the resolution of questions affecting a child is the child's welfare,[32] and it is "[t]he policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children."[33] Nevertheless, in keeping with basic judicial principles, the burden of proof in proceedings seeking to establish paternity is upon the "person who alleges that the putative father is the biological father of the child."[34] Likewise, a liberal application of rules should not be "without prejudice to the right of the putative parent to claim his or her own defenses."[35]

III

Illegitimate children establish their filiation "in the same way and on the same evidence as legitimate children,"[36] that is, by:

(1) The record of birth appearing in the civil register or a final judgment; or

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[31] *Estate of Rogelio Ong v. Diaz*, 565 Phil. 215, 224 (2007) [Per *J.* Chico-Nazario, Third Division].

[32] *Dela Cruz v. Gracia*, 612 Phil. 167, 180 (2009) [Per *J.* Carpio-Morales, Second Division] citing *Concepcion v. Court of Appeals*, 505 Phil. 529 (2005) [Per *J.* Corona, Third Division].

[33] *Herrera v. Alba*, 499 Phil. 185, 205 (2005). [Per *J.* Carpio, First Division].

[34] *Estate of Rogelio Ong v. Diaz*, 565 Phil. 215, 224 (2007) [Per *J.* Chico-Nazario, Third Division].

[35] *Herrera v. Alba*, 499 Phil. 185, 205-206 (2005) [Per *J.* Carpio, First Division].

[36] FAMILY CODE, Art. 175:

Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.[37]

In the absence of these, illegitimate filiation, as with legitimate filiation, may be established by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws.[38]

In keeping with these, the recognition of an illegitimate child through a birth certificate, a will, a statement before a court of record, or in any authentic writing, has been held to be "in itself, a consummated act of acknowledgment of the child, and no further court action is required."[39]

IV

Having thus far only presented her child's birth certificate, which made no reference to respondent as the child's father, the Court of Appeals correctly noted that the necessary condition of filiation had yet to be established. The Court of Appeals later affirmed the dismissal of petitioner's Complaint, insisting that separate filiation proceedings and their termination in petitioner's daughter's favor were imperative.

While ably noting that filiation had yet to be established, the Court of Appeals' discussion and final disposition are not in keeping with jurisprudence.

Dolina v. Vallecera[40] clarified that since an action for compulsory recognition may be filed ahead of an action for

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[37] FAMILY CODE, Art. 172.

[38] FAMILY CODE, Art. 172.

[39] *De Jesus v. Estate of Dizon*, 418 Phil. 768, 773 (2001) [Per *J.* Vitug, Third Division] citing *Gono-Javier v. Court of Appeals*, 309 Phil. 544 (1994) [Per *J.* Vitug, Third Division].

[40] 653 Phil. 391 (2010) [Per *J.* Abad, Second Division].

support, the direct filing of an action for support, "where the issue of compulsory recognition may be integrated and resolved,"[41] is an equally valid alternative:

> To be entitled to legal support, petitioner must, in proper action, first establish the filiation of the child, if the same is not admitted or acknowledged. Since Dolina's demand for support for her son is based on her claim that he is Vallecera's illegitimate child, the latter is not entitled to such support if he had not acknowledged him, until Dolina shall have proved his relation to him. The child's remedy is to file through her mother a judicial action against Vallecera for compulsory recognition. If filiation is beyond question, support follows as matter of obligation. In short, illegitimate children are entitled to support and successional rights but their filiation must be duly proved.
>
> Dolina's remedy is to file for the benefit of her child an action against Vallecera for compulsory recognition in order to establish filiation and then demand support. *Alternatively, she may directly file an action for support, where the issue of compulsory recognition may be integrated and resolved*.[42] (Emphasis supplied, citations omitted)

Agustin v. Court of Appeals[43] extensively discussed the deep jurisprudential roots that buttress the validity of this alternative.

Agustin concerned an action for support and support *pendente lite* filed by a child, represented by his mother. The putative father, Arnel Agustin, vehemently denied paternal relations with the child. He disavowed his apparent signature on the child's birth certificate, which indicated him as the father. Agustin "moved to dismiss the complaint for lack of cause of action, considering that his signature on the birth certificate was a forgery and that, under the law, an illegitimate child is not entitled to

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[41] *Id*. at 394 citing *Agustin v. Court of Appeals*, 499 Phil. 307, 317 (2005) [Per *J.* Corona, Third Division].

[42] *Dolina v. Vallecera*, 653 Phil. 391, 394-395 (2010) [Per *J.* Abad, Second Division].

[43] 499 Phil. 307 (2005) [Per *J.* Corona, Third Division]

support if not recognized by the putative father."[44] The Regional Trial Court denied Agustin's motion to dismiss; it was subsequently affirmed by the Court of Appeals.

In sustaining the lower courts' decisions, this Court noted that enabling the mother and her child to establish paternity and filiation in the course of an action for support was merely a permission "to prove their cause of action against [Agustin,] who had been denying the authenticity of the documentary evidence of acknowledgement."[45]

This Court added that an action to compel recognition could very well be integrated with an action for support. This Court drew analogies with extant jurisprudence that sustained the integration of an action to compel recognition with an action to claim inheritance and emphasized that "the basis or rationale for integrating them remains the same."[46] This Court explained:

> [Petitioner] claims that the order and resolution . . . effectively converted the complaint for support to a petition for recognition, which is supposedly proscribed by law. According to petitioner, Martin, as an unrecognized child, has no right to ask for support and must first establish his filiation in a separate suit. . .
>
> The petitioner's contentions are without merit.
>
> The assailed resolution and order did not convert the action for support into one for recognition but merely allowed the respondents to prove their cause of action against petitioner who had been denying the authenticity of the documentary evidence of acknowledgement. But even if the assailed resolution and order effectively integrated an action to compel recognition with an action for support, such was valid and in accordance with jurisprudence. In *Tayag v. Court of Appeals*, we allowed the integration of an action to compel recognition with an action to claim one's inheritance:
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> > . . . In *Paulino*, we held that an illegitimate child, to be entitled to support and successional rights from the putative or presumed

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[44] *Id*. at 314.

[45] *Id*. at 316-317.

[46] *Id*. at 318.

parent, must prove his filiation to the latter. We also said that it is necessary to allege in the complaint that the putative father had acknowledged and recognized the illegitimate child because such acknowledgment is essential to and is the basis of the right to inherit. There being no allegation of such acknowledgment, the action becomes one to compel recognition which cannot be brought after the death of the putative father. The *ratio decidendi* in *Paulino*, therefore, is not the absence of a cause of action for failure of the petitioner to allege the fact of acknowledgment in the complaint, but the prescription of the action.

Applying the foregoing principles to the case at bar, although petitioner contends that the complaint filed by herein private respondent merely alleges that the minor Chad Cuyugan is an illegitimate child of the deceased and is actually a claim for inheritance, from the allegations therein the same may be considered as one to compel recognition. Further, that, the two causes of action, one to compel recognition and the other to claim inheritance, may be joined in one complaint is not new in our jurisprudence.

As early as [1922] we had occasion to rule thereon in *Briz vs. Briz*, et al. . . . wherein we said:

> The question whether a person in the position of the present plaintiff can in any event maintain a complex action to compel recognition as a natural child and at the same time to obtain ulterior relief in the character of heir, is one which in the opinion of this court must be answered in the affirmative, provided always that the conditions justifying the joinder of the two distinct causes of action are present in the particular case. In other words, there is no absolute necessity requiring that the action to compel acknowledgment should have been instituted and prosecuted to a successful conclusion prior to the action in which that same plaintiff seeks additional relief in the character of heir. Certainly, there is nothing so peculiar to the action to compel acknowledgment as to require that a rule should be here applied different from that generally applicable in other cases . . .
>
> The conclusion above stated, though not heretofore explicitly formulated by this court, is undoubtedly to some extent supported by our prior decisions. Thus, we have

> held in numerous cases, and the doctrine must be considered well settled, that a natural child having a right to compel acknowledgment, but who has not been in fact legally acknowledged, may maintain partition proceedings for the division of the inheritance against his coheirs . . .; and the same person may intervene in proceedings for the distribution of the estate of his deceased natural father, or mother . . . In neither of these situations has it been thought necessary for the plaintiff to show a prior decree compelling acknowledgment. The obvious reason is that in partition suits and distribution proceedings the other persons who might take by inheritance are before the court; and the declaration of heirship is appropriate to such proceedings.

Although the instant case deals with support rather than inheritance, as in *Tayag*, the basis or rationale for integrating them remains the same. Whether or not respondent Martin is entitled to support depends completely on the determination of filiation. A separate action will only result in a multiplicity of suits, given how intimately related the main issues in both cases are. To paraphrase *Tayag*, the declaration of filiation is entirely appropriate to these proceedings.[47] (Citations omitted)

Indeed, an integrated determination of filiation is "entirely appropriate"[48] to the action for support filed by petitioner Richelle for her child. An action for support may very well resolve that ineluctable issue of paternity if it involves the same parties, is brought before a court with the proper jurisdiction, prays to impel recognition of paternal relations, and invokes judicial intervention to do so. This does not run afoul of any rule. To the contrary, and consistent with *Briz v. Briz*,[49] this is in keeping with the rules on proper joinder of causes of action.[50] This also

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[47] *Id.* at 316-318.

[48] *Id*. at 318.

[49] 43 Phil. 763 (1922). [Per *J.* Street, *En Banc*], as quoted in *Agustin v. Court of Appeals*, 499 Phil. 307, 317-318 (2005) [Per *J.* Corona, Third Division].

[50] On joinder of causes of action, RULES OF COURT, Rule 2, Sec. 5 provides:

serves the interest of judicial economy—avoiding multiplicity of suits and cushioning litigants from the vexation and costs of a protracted pleading of their cause.

Thus, it was improper to rule here, as the Court of Appeals did, that it was impossible to entertain petitioner's child's plea for support without her and petitioner first surmounting the encumbrance of an entirely different judicial proceeding. Without meaning to lend credence to the minutiae of petitioner's claims, it is quite apparent that the rigors of judicial proceedings have been taxing enough for a mother and her daughter whose claim for support amounts to a modest ₱3,000.00 every month. When petitioner initiated her action, her daughter was a toddler; she is, by now, well into her adolescence. The primordial interest of justice and the basic dictum that procedural rules are to be "liberally construed in order to promote their objective of securing

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Section 5. Joinder of causes of action. — A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:

(a) The party joining the causes of action shall comply with the rules on joinder of parties;

(b) The joinder shall not include special civil actions or actions governed by special rules;

(c) Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and

(d) Where the claims in all the causes of action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction.

As to joinder of parties, RULES OF COURT, Rule 3, Sec. 6 provides:

Section 6. Permissive joinder of parties. — All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest.

a just, speedy and inexpensive disposition of every action and proceeding"[51] impel us to grant the present Petition.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The assailed August 25, 2011 Decision and January 15, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 02687 are **REVERSED** and **SET ASIDE**. The case is**REMANDED** to Branch 12, Regional Trial Court, San Jose, Antique for it to settle in Civil Case No. 2005-4-3496 the matter of Marl Jhorylle Abella's purported paternal relation with respondent Policarpio Cabañero and, in the event of a favorable determination on this, to later rule on the matter of support.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 207396. August 9, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DELIA SAUNAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SALE OF ILLEGAL DRUGS; ELEMENTS; THE *CORPUS DELICTI*, IS THE DANGEROUS DRUG ITSELF, WHICH MUST BE PRESENTED AS EVIDENCE IN COURT.— The crime of sale of illegal drugs is consummated "the moment the

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[51] RULES OF COURT, Rule 1, Sec. 6.

buyer receives the drug from the seller." The prosecution must prove beyond reasonable doubt that the transaction actually took place by establishing the following elements: "(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." Aside from this, the *corpus delicti* must be presented as evidence in court. In cases involving dangerous drugs, "the *corpus delicti* is the dangerous drug itself." Hence, its identity and integrity must likewise be established beyond reasonable doubt. The obligation of the prosecution is to ensure that the illegal drugs offered in court are the very same items seized from the accused. This would entail the presentation of evidence on how the seized drugs were handled and preserved from the moment they were confiscated from the accused until their presentation in court. Non-compliance with this requirement creates doubt regarding the origin of the dangerous drugs.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE CHAIN OF CUSTODY RULE PROVIDES THE MANNER BY WHICH LAW ENFORCERS SHOULD HANDLE SEIZED DANGEROUS DRUGS.— The chain of custody rule provides the manner by which law enforcers should handle seized dangerous drugs. x x x Although "chain of custody" is not specifically defined under the law, the term essentially refers to: "[T]he duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. The "duly recorded authorized movements" of the seized dangerous drugs may be ascertained through the testimonies of every person who handled them. x x x Although strict compliance with the chain of custody rule may be excused provided that the integrity and evidentiary value of the seized items are preserved, a more exacting standard is required of law enforcers when only a miniscule amount of dangerous drugs are alleged to have been seized from the accused.

3. ID.; ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO STRICTLY COMPLY WITH THE EXACTING STANDARDS IN REPUBLIC ACT NO. 9165, AS AMENDED, CASTS DOUBT ON THE ORIGIN, IDENTITY, AND INTEGRITY OF THE SEIZED DANGEROUS DRUGS ALLEGEDLY TAKEN FROM THE ACCUSED-APPELLANT. — The prosecution failed to establish who held the seized items from the moment they were taken from accused-appellant until they were brought to the police station. The designated poseur-buyer, PO2 Montales, did not mention who took custody of the seized items for safekeeping. x x x Based on the testimony of PO2 Montales, the two (2) plastic sachets were only marked at Camp Simeon Ola. Any of the apprehending officers could have taken custody of the seized items during transit. It is highly probable, therefore, that the two (2) sachets had been tampered with, altered, or contaminated. The belated marking of the seized items creates doubt on the identity and origin of the dangerous drugs allegedly taken from accused-appellant. Although the requirement of "marking" is not found in Republic Act No. 9165, its significance lies in ensuring the authenticity of the *corpus delicti*. x x x While it may be true that the seized items were marked and inventoried in the presence of a media representative, an elected barangay official, and a representative from the Department of Justice, there is no evidence showing that these procedures were done in the presence of accused-appellant or her authorized representative or counsel. Moreover, none of the witnesses to the marking and inventory of the seized items was presented in court to testify. Further, it appears that the authorities failed to take photographs of the seized items. No photograph of the seized dangerous drugs was presented and offered as evidence before the trial court. More telling is the finding of the Court of Appeals that although there were photographs taken at Camp Simeon Ola, "these were not photographs of the seized items." In addition, it was highly irregular for the police officers to use accused-appellant's cellphone while they were in the process of filing the criminal case against her. This conduct is violative of accused-appellant's right to privacy. The failure of the prosecution to strictly comply with the exacting standards in Republic Act No. 9165, as amended, casts serious doubt on the origin, identity, and integrity of the seized dangerous drugs allegedly taken from accused-appellant.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

A miniscule amount of dangerous drugs alleged to have been taken from the accused is highly susceptible to planting, tampering, or alteration. In these cases, "law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia."[1]

This resolves an appeal from the September 26, 2012 Decision[2] of the Court of Appeals, which affirmed the conviction of Delia Saunar (Saunar) for illegal sale of dangerous drugs.

In the Information dated April 24, 2006,[3] Saunar was charged with violation of Article II, Section 5 of Republic Act No. 9165. The accusatory portion of the Information read:

That on or about the 27th day of February 2006 at around 6:20 p.m. at Brgy. Kinali, [M]unicipality of Polangui, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously deliver, dispense and sell two heat[-]sealed plastic sachets [of] methamphetamine hydrochloride (shabu) weighing 0.0526 gram and 0.0509 gram to a poseur buyer, without authority of law, to the detriment of the public welfare.

ACTS CONTRARY TO LAW.[4]

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[1] *People v. Holgado*, 741 Phil. 78, 81 (2014) [Per *J.* Leonen, Second Division].

[2] *Rollo*, pp. 2-33. The Decision, docketed as CA-G.R. CR-H.C. No. 05003, was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Normandie B. Pizarro and Manuel M. Barrios of the Second Division, Court of Appeals, Manila.

[3] CA *rollo*, p. 32.

[4] *Id*.

On June 8, 2006, Saunar was arraigned.[5] She pleaded not guilty to the charge. Afterwards, pre-trial and trial ensued.[6]

Based on the collective testimonies of its witnesses, the prosecution alleged that on January 5, 2006, the Special Operation Team of the 5th Regional Criminal Investigation and Detection Group learned about the illegal drug activities of a certain "Lolita" Saunar[7] in Polangui, Albay.[8] The authorities acted on this tip and conducted surveillance operations on Saunar.[9]

Before noon on February 27, 2006, the authorities received a report regarding Saunar's whereabouts.[10] Captain Cesar Dalonos (Capt. Dalonos) formed a team composed of PO2 Ami Montales (PO2 Montales), SPO4 Rolando Barroga, SPO4 Fernando Cardona, and SPO2 Roger Seladis to conduct a buy-bust operation. PO2 Montales was designated as the poseur-buyer.[11]

At around 6:00 p.m., the buy-bust team proceeded to Saunar's residence.[12] PO2 Montales and the informant met Saunar by the gate while the rest of the police operatives positioned themselves a few meters from Saunar's house.[13] PO2 Montales introduced herself as a buyer of *shabu* and handed Saunar the marked money.[14] After a brief conversation, Saunar went inside the house. She returned moments later "with two (2) transparent plastic sachets containing white crystalline substance."[15] PO2

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[5] *Id*.

[6] *Id*. at 33.

[7] *Rollo*, pp. 4-9.

[8] CA *rollo*, p. 34.

[9] *Rollo*, pp. 4-9.

[10] *Id*. at 4.

[11] CA *rollo*, pp. 33-34.

[12] *Rollo*, p. 4.

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

[14] *Id*. at 5.

[15] *Id*.

Montales examined the plastic sachets and gave the pre-arranged signal by removing her sunglasses.[16] This indicated the consummation of the transaction to the other members of the buy-bust team.[17]

The buy-bust team closed in and arrested Saunar.[18] PO2 Montales then frisked Saunar to recover the marked money but only found a Nokia 5210, which she confiscated.[19] No photograph of the seized items was taken at the crime scene.[20] Saunar was then brought to Camp Simeon Ola for investigation.[21] It was only after the arrest that the authorities discovered that Saunar's real name was Delia.[22]

Upon reaching Camp Simeon Ola, PO2 Montales prepared a seizure receipt, which Saunar refused to sign.[23] Meanwhile, Capt. Dalanos invited representatives from the media and the Department of Justice and a barangay official to witness the marking and inventory.[24]

PO2 Montales marked the two (2) plastic sachets with her initials "AOM1" and "AOM2."[25] Afterwards, the seized items were inventoried and then placed in a larger transparent plastic bag.[26] The marking and inventory were both done in the presence of the three (3) witnesses from the media, the barangay, and the Department of Justice.[27] PO2 Montales brought the seized items

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[16] *Id*. at 8.

[17] *Id*.

[18] *Id*. at 5.

[19] *Id*.

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

[21] *Id*. at 5.

[22] *Id*. at 6.

[23] *Id*. at 5.

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

[25] *Id*. at 5.

[26] *Id*.

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

to the crime laboratory for scientific examination.[28] The contents of the two (2) plastic sachets weighed 0.0496 grams and 0.0487 grams.[29] They tested positive for *shabu*.[30]

While the police officers were preparing the necessary documents for Saunar's prosecution, the seized cellular phone received several calls and text messages from different people who were looking for Saunar to place ₱1,000.00 and ₱2,000.00 worth of orders on something called "LADA." PO2 Montales introduced herself as Saunar's sister and tried to set up a meeting with them. However, the callers refused to talk to anyone but Saunar.[31]

For her defense, Saunar asserted that she was merely framed-up.[32] She testified that on the day of the alleged incident, the authorities raided her house looking for *shabu*. However, they only found her cellphone.[33] Although the police officers found nothing, Saunar was brought to Camp Simeon Ola and was forced to sign a seizure receipt, which indicated that two (2) sachets of *shabu* were taken from her. Saunar did not sign this seizure receipt.[34]

In the Judgment[35] dated March 21, 2011, the Regional Trial Court found Saunar guilty beyond reasonable doubt of illegal sale of dangerous drugs.[36] Accordingly, she was sentenced to suffer the penalty of life imprisonment and required to pay a fine of ₱500,000.00:[37]

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[28] *Id*. at 6.

[29] CA *rollo*, p. 38.

[30] *Rollo*, p. 6.

[31] *Id*.

[32] *Id*. at 9-12.

[33] *Id*.

[34] *Id*. at 11-12.

[35] CA *rollo*, pp. 32-42. The Judgment, docketed as Crim. Case No. 5229, was penned by Acting Presiding Judge Alben C. Rabe of Branch 12, Regional Trial Court, Ligao City, Albay.

[36] *Id*. at 42.

[37] *Id*.

WHEREFORE, judgment is hereby rendered:

1. FINDING the accused, DELIA SAUNAR y DOLOM, GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II, Republic Act No. 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002" for selling and/or delivering two (2) small transparent plastic sachets containing 0.0496 gram and 0.0487 gram respectively of methamphetamine hydrochloride or "shabu," a dangerous drug, without authority of law; thereby, sentencing her to suffer the penalty of life imprisonment and to pay a fine of Five [H]undred Thousand Pesos (₱500,000.00);

2. The two (2) small transparent plastic sachets containing 0.0496 gram and 0.0487 gram respectively of methamphetamine hydrochloride or *"shabu"* . . . involved in this case, are DIRECTED to be disposed/ destroyed in accordance with Sec. 21, R.A. No. 9165 and in the presence of a representative from this court. Within twenty-four (24) hours from such destruction, the pertinent certification shall be submitted to this court.

Furnish a copy of this judgment to the Philippine Drug Enforcement [Agency] (PDEA), Central Office, Manila.

SO ORDERED.[38]

In its September 26, 2012 Decision,[39] the Court of Appeals affirmed Saunar's conviction.

On October 9, 2012, Saunar filed a Notice of Appeal,[40] which was given due course by the Court of Appeals.[41]

In the Resolution[42] dated August 5, 2013, this Court noted the records forwarded by the Court of Appeals and required the parties to file their respective supplemental briefs if they so desired.

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[38] *Id*.

[39] *Rollo*, pp. 2-33.

[40] *Id*. at 34-36.

[41] *Id*. at 37.

[42] *Id*. at 39.

On September 25, 2013, the Office of the Solicitor General, on behalf of the People of the Philippines, manifested that it would no longer file a supplemental brief.[43] A similar motion was made by Saunar on October 1, 2013.[44]

In her Appellant's Brief,[45] accused-appellant argues that the trial court glossed over the procedural errors committed by the apprehending officers. In particular, she argues that the authorities failed to comply with the chain of custody rule. Accused-appellant claims that there were gaps in the handling of the items allegedly seized from her.[46]

On the other hand, the Office of the Solicitor General argues in its Appellee's Brief[47] that although the requirements in Republic Act No. 9165 were not strictly complied with, the prosecution sufficiently established the identity, integrity, and evidentiary value of the seized drugs.[48]

The sole issue for this Court's resolution is whether the guilt of accused-appellant Delia Saunar for violation of Section 5 of Republic Act No. 9165 was proven beyond reasonable doubt.

The crime of sale of illegal drugs is consummated "the moment the buyer receives the drug from the seller."[49] The prosecution must prove beyond reasonable doubt that the transaction actually took place by establishing the following elements: "(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."[50]

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[43] *Id*. at 41-43.

[44] *Id*. at 44-46.

[45] CA *rollo*, pp. 69-86.

[46] *Id*. at 79-84.

[47] *Id*. at 105-119.

[48] *Id*. at 111-116.

[49] *People v. Tumulak*, G.R. No. 206054, July 25, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/206054.pdf> 4 [Per *J*. Brion, Second Division].

[50] *Id*.

Aside from this, the *corpus delicti* must be presented as evidence in court.[51] In cases involving dangerous drugs, "the *corpus delicti* is the dangerous drug itself."[52] Hence, its identity and integrity must likewise be established beyond reasonable doubt.[53] The obligation of the prosecution is to ensure that the illegal drugs offered in court are the very same items seized from the accused.[54] This would entail the presentation of evidence on how the seized drugs were handled and preserved from the moment they were confiscated from the accused until their presentation in court.[55] Non-compliance with this requirement creates doubt regarding the origin of the dangerous drugs.[56]

The chain of custody rule provides the manner by which law enforcers should handle seized dangerous drugs. Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, provides:

> Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The [Philippine Drug Enforcement Agency] shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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[51] *Id*.

[52] *People v. Casacop*, 755 Phil. 265, 276 (2015) [Per *J*. Leonen, Second Division].

[53] *Id*.

[54] *People v. Holgado*, 741 Phil. 78, 93 (2014) [Per *J*. Leonen, Second Division] citing *People v. Lorenzo*, 633 Phil. 393 (2010) [Per *J*. Perez, Second Division].

[55] *Mallillin v. People*, 576 Phil. 576, 587 (2008) [Per *J*. Tinga, Second Division].

[56] *People v. Holgado*, 741 Phil. 78, 91 (2014) [Per *J*. Leonen, Second Division].

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of 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 and custody over said items.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of 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 immediately upon completion of the said examination and certification[.]

Although "chain of custody" is not specifically defined under the law, the term essentially refers to:

"[T]he duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/

confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[57] (Citation omitted)

The "duly recorded authorized movements" of the seized dangerous drugs may be ascertained through the testimonies of every person who handled them. *Mallillin v. People*[58] is instructive:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. *It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same*.[59] (Emphasis supplied, citations omitted)

Although strict compliance with the chain of custody rule may be excused provided that the integrity and evidentiary value of the seized items are preserved,[60] a more exacting standard is required of law enforcers when only a miniscule amount of

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[57] *People v. Ameril*, G.R. 203293, November 14, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/203293.pdf> 4 [Per *J.* Brion, Second Division].

[58] 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

[59] *Id*. at 587.

[60] *People v. Casacop*, 755 Phil. 265, 277–278 (2015) [Per *J.* Leonen, Second Division].

dangerous drugs are alleged to have been seized from the accused. The reason for this rule was clarified in *People v. Holgado*:[61]

> In *Mal[l]il[l]in v. People,* this court explained that the exactitude required by Section 21 goes into the very nature of narcotics as the subject of prosecutions under Republic Act No. 9165:
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> > Indeed, *the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives*. *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.
>
> > *A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature*. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied*, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

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[61] 741 Phil. 78 (2014) [Per *J.* Leonen, Second Division].

> Compliance with the chain of custody requirement provided by Section 21, therefore, ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.
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> . . . . . .
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> The prosecution's sweeping guarantees as to the identity and integrity of seized drugs and drug paraphernalia will not secure a conviction. Not even the presumption of regularity in the performance of official duties will suffice. In fact, whatever presumption there is as to the regularity of the manner by which officers took and maintained custody of the seized items is "negated." Republic Act No. 9165 requires compliance with Section 21.[62] (Citations omitted)

In this case, only 0.0496 grams and 0.0487 grams[63] or a total of 0.0983 grams of shabu were allegedly taken from accused-appellant. Such a miniscule amount of drugs is highly susceptible to tampering and contamination.

A careful review of the factual findings of the lower courts shows that the prosecution failed to discharge its burden of preserving the identity and integrity of the dangerous drugs allegedly seized from accused-appellant.

The prosecution failed to establish who held the seized items from the moment they were taken from accused-appellant until they were brought to the police station. The designated poseur-buyer, PO2 Montales, did not mention who took custody of the seized items for safekeeping:

> Q: Now what happened when you meet face to face with Lolita Saunar who is now identified as Delia Saunar?

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[62] *Id*. at 92-94.

[63] CA *rollo*, p. 39.

A: I was introduced as the buyer of shabu wo[r]th One Thousand Pesos (₱1,000.00), then Lolita demanded the money and she went inside her house and several minutes later, she went out and handed to me the two (2) plastic transparent sachet containing white crystalline substance suspected as shabu.

Q: Upon or after it was handed to you, what happened next?

A: After examining and determining the contents of the plastic sachets, I gave the pre-arranged signal to the other members of the team.

. . . . . .

Q: After you have apprehended the accused, were you able to take possession of this recovered cellphone from Delia Saunar, what did you do next if any?

A: I showed it to our Team Leader including the two (2) sachets of suspected shabu.

Q: After that, where did you proceed?

A: And after that, we proceeded to our office at Camp Simeon Ola.[64]

Based on the testimony of PO2 Montales, the two (2) plastic sachets were only marked at Camp Simeon Ola.[65] Any of the apprehending officers could have taken custody of the seized items during transit. It is highly probable, therefore, that the two (2) sachets had been tampered with, altered, or contaminated. The belated marking of the seized items creates doubt on the identity and origin of the dangerous drugs allegedly taken from accused-appellant.

Although the requirement of "marking" is not found in Republic Act No. 9165, its significance lies in ensuring the authenticity of the *corpus delicti.* In *People v. Dahil*:[66]

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[64] *Id*. at 25.

[65] *Id*. at 5.

[66] 750 Phil. 212 (2015) [Per *J.* Mendoza, Second Division].

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. *"Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because 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.

It must be noted that marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165, however, this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the corpus delicti.[67] (Emphasis supplied, citations omitted)

While it may be true that the seized items were marked and inventoried in the presence of a media representative, an elected barangay official, and a representative from the Department of Justice,[68] there is no evidence showing that these procedures were done in the presence of accused-appellant or her authorized representative or counsel. Moreover, none of the witnesses to the marking and inventory of the seized items was presented in court to testify.[69]

Further, it appears that the authorities failed to take photographs of the seized items. No photograph of the seized dangerous drugs was presented and offered as evidence before the trial court.[70] More telling is the finding of the Court of

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[67] *Id*. at 232.

[68] *Rollo*, pp. 5-6.

[69] *Id*. at 4.

[70] CA *rollo*, p. 39.

Appeals that although there were photographs taken at Camp Simeon Ola, "these were not photographs of the seized items."[71]

In addition, it was highly irregular for the police officers to use accused-appellant's cellphone while they were in the process of filing the criminal case against her. This conduct is violative of accused-appellant's right to privacy.

The failure of the prosecution to strictly comply with the exacting standards in Republic Act No. 9165, as amended, casts serious doubt on the origin, identity, and integrity of the seized dangerous drugs allegedly taken from accused-appellant.

WHEREFORE, the Decision dated September 26, 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 05003 is **REVERSED** and **SET ASIDE**. Accused-appellant Delia Saunar is **ACQUITTED** for the failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention unless she is confined for any other lawful cause. Let entry of final judgement be issued immediately.

Let a copy of this decision be furnished to the Bureau of Corrections, Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

SO ORDERED.

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

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[71] *Rollo,* p. 23.

FIRST DIVISION

[G.R. No. 210209. August 9, 2017]

CATHAY LAND, INC. and CATHAY METAL CORPORATION, *petitioners, vs.* **AYALA LAND, INC., AVIDA LAND CORPORATION[*] and LAGUNA TECHNOPARK, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; A JUDGMENT BASED ON A COMPROMISE AGREEMENT SHALL BE EXECUTED OR IMPLEMENTED STRICTLY PURSUANT TO THE TERMS AGREED UPON BY THE PARTIES; COURTS CANNOT MODIFY OR VARY THE TERMS OF SUCH AGREEMENT.—** It is settled that once a compromise agreement is approved by a final order of the court, it transcends its identity as a mere contract binding only upon the parties thereto, as it becomes a judgment that is subject to execution in accordance with the Rules of Court. Judges, therefore, have the *ministerial and mandatory duty* to implement and enforce it. Since the issuance of a writ of execution implementing a judicial compromise is ministerial in nature, it cannot be viewed as a judgment on the merits as contemplated by Section 14, Article VIII of the Constitution. To be clear, it is the decision based on a compromise agreement that is considered as a judgment on the merits, not the order pertaining to its execution. Nevertheless, in implementing a compromise agreement, **the "courts cannot modify, impose terms different from the terms of [the] agreement, or set aside the compromises and reciprocal concessions made in good faith by the parties without gravely abusing their discretion**."

2. **ID.; ID.; ID.; ID.; THE TRIAL COURT GRAVELY ABUSED ITS DISCRETION WHEN IT GRANTED A REMEDY NOT AVAILABLE TO THE PARTY, THEREBY IMPOSING TERMS DIFFERENT FROM WHAT WAS AGREED UPON BY THE PARTIES.—** It will be recalled that under the Compromise Agreement, the remedies available to the Ayala

[*] Formerly known as Laguna Properties Holdings, Inc.

Group should the Cathay Group fail to abide by the terms of the agreement are, first: to notify the Cathay Group of such breach; and second, either *to withdraw or suspend the grant of easement of right-of-way* to the Cathay Group, if the latter does not undertake to rectify the said breach within 30 days from notice. It is this specific right that is enforceable through a writ of execution, as expressly provided in Sections 4 and 6 of the Compromise Agreement. In short, the Ayala Group has no right, under the Compromise Agreement, to seek injunctive relief from the courts in case the Cathay Group commits an act contrary to its undertakings in the agreement. To emphasize, under the Compromise Agreement, the Ayala Group has no right to seek to enjoin the Cathay Group from proceeding with the development of its South Forbes Golf City project or from constructing high-rise buildings as it did in its Motion for Execution. To be sure, the Ayala Group's right under the Compromise Agreement that is enforceable through a writ of execution is only **the suspension or withdrawal of the grant of easement of right of way**. Thus, the RTC, through Judge Young, seriously erred when it issued a Writ of Execution and Writ of Injunction prohibiting the Cathay Group from constructing buildings with a height of 15 meters or higher and other developments not in accord with the residential character of the properties of the Ayala Group in the area. The **RTC gravely abused its discretion when it granted a remedy that is not available to the Ayala Group, thereby imposing terms different from what was agreed upon by the parties in their Compromise Agreement**. Given these circumstances, the CA seriously erred in dismissing the Petition for *Certiorari* filed by the Cathay Group.

3. ID.; ID.; ID.; A PARTY CANNOT PREMATURELY MOVE FOR EXECUTION OF THE COMPROMISE AGREEMENT IN ORDER TO PREVENT THE OTHER PARTY FROM ACTUALLY COMMITTING A BREACH OF THE TERMS OF THE AGREEMENT.— The records show that the Ayala Group based its Motion for Execution on *mere development and structural plans, and marketing materials* for the Cathay Group's South Forbes Golf City project which allegedly involved "the construction of ninety-seven (97) high-rise residential and commercial buildings having as much as twelve (12) floors." It had simply *anticipated* that the Cathay Group would violate its undertaking not to construct high-rise buildings in the area.

In other words, the Ayala Group **prematurely** moved for execution of the Compromise Agreement in order to prevent the Cathay Group from actually committing a breach of the terms of the agreement. It must be pointed out that under the Compromise Agreement, the Ayala Group must notify first the Cathay Group of any perceived breach in its undertakings; thereafter, the Cathay Group has 30 days within which to rectify such breach. It is only when the Cathay Group fails to correct the breach within 30 days from notice that the Ayala Group may move for the execution of the Compromise Agreement. Clearly, therefore, the Ayala Group violated the terms of the agreement which afforded the Cathay Group a period of 30 days from notice to rectify a breach, should it indeed occur.

4. **ID.; ID.; ID.; WHERE THE TERMS OF THE AGREEMENT DID NOT PROVIDE FOR THE DEFINITION OF THE TERM "HIGH-RISE BUILDING," IT MUST BE INTERPRETED ACCORDING TO THE PREVAILING INDUSTRY STANDARDS AND PRACTICES ADOPTED BY THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS IN THE REVISED IMPLEMENTING RULES AND REGULATIONS (IRR) OF THE NATIONAL BUILDING CODE (NBC) AT THE TIME THE COMPROMISE AGREEMENT WAS EXECUTED.—** [T]he records are bereft of proof to show that the parties had agreed to adopt the definition of the term "high-rise building" found in the IRR of the Fire Code. The Compromise Agreement, too, does not contain any provision that points to a reference to the Fire Code as to the usage of the term. Besides, the IRR of the Fire Code itself *limits its scope* to matters dealing with "life safety from fires and similar emergencies in high-rise buildings," covering "*fire safety features* in construction and protection of exits and passageways and provisions for fire protection." Consequently, the definition of the term "high-rise building" found therein is inapplicable to this case, precisely because **it is not in keeping with the nature and object of the Compromise Agreement**. We simply cannot reasonably conclude, in the absence of clear language to this effect, that the parties intended to use as reference a law that pertains to fire protection in order to define a term in a contract relating to the construction of buildings. Rather, the term "high-rise buildings" should be interpreted to follow its general and primary acceptation, or in other words, the prevailing industry standards

and practices as adopted by the Department of Public Works and Highways in the IRR of the NBC, at the time the Compromise Agreement was executed.

CAGUIOA, *J.*, *concurring and dissenting opinion*:

1. REMEDIAL LAW; JUDGMENTS; JUDGMENT BASED ON COMPROMISE AGREEMENT; THE PARTIES COULD NOT HAVE CONTEMPLATED A MEANING OF "HIGH-RISE BUILDING" CONTRARY TO THE ORDINANCE AT THE TIME THE COMPROMISE AGREEMENT WAS EXECUTED WHICH "LIMITED THE PERMISSIBLE BUILDING HEIGHT TO ONLY THREE STOREYS."— It now behooves the Court to rule on the correctness of their interpretation of the term "high-rise buildings." What did the parties intend by that term? Surely, the parties could not have intended a meaning that would be contrary to or violate the laws and ordinances that were in effect when they executed the Compromise Agreement. Both parties are into property development and are expected to know the laws and ordinances applicable to their business. The ordinance of Silang, Cavite at the time the Compromise Agreement was executed "limited the permissible building height to only three storeys." I believe that the parties could not have contemplated a meaning of "high-rise building" contrary to the said ordinance.

2. ID.; ID.; ID.; THAT RESPONDENTS PREMATURELY MOVED FOR THE EXECUTION OF THE COMPROMISE AGREEMENT SINCE THERE IS NO PROOF THAT PETITIONERS ALREADY COMMITTED A BREACH OF THE COMPROMISE AGREEMENT IS INCONSISTENT WITH THE RECORDS OF THE CASE; IF THE ACTS COMMITTED BY PETITIONERS DO NOT AMOUNT TO ACTUAL BREACH, THEN THEY SHOULD AT LEAST CONSTITUTE ANTICIPATORY BREACH.— I believe that a pronouncement of breach on the part of the Cathay Group is justified. There is breach of the obligation when a party in any manner contravenes its tenor; and this kind of non-performance refers to any illicit act which impairs the strict and faithful fulfillment of the obligation, or every kind of defective performance. A strict and faithful fulfillment of the Compromise Agreement by the Cathay Group could no longer be expected

because of its aforesaid acts showing a clear intention to build "high-rise buildings" beyond the contemplation of the Compromise Agreement. If the said acts do not amount to actual breach, then they should at the very least constitute anticipatory breach. An anticipatory breach may occur, for example, when there is a definite or unconditional repudiation of the contract by a party thereto communicated to the other even though it takes place before the time prescribed for the promised performance and before conditions specified in the promise have even occurred. For the Ayala Group to wait until the Cathay Group had built beyond the height of "high-rise buildings" contemplated in the Compromise Agreement before it filed suit would be ludicrous. Given the Cathay Group's anticipatory breach — x x x the Ayala Group was well within its rights to already act thereon based on the Compromise Agreement, that is, either to withdraw or suspend the grant of the easement of right of way. In fact, the Civil Code obligates every party to a contract with the duty to minimize its damages. Hence, when it became clear that Cathay was intent on building edifices beyond what the Ayala Group believed the Compromise Agreement prohibited, then it was the Ayala Group's duty to file suit.

3. ID.; ID.; ID.; THE COMPROMISE AGREEMENT DOES NOT SANCTION THE ISSUANCE OF A RESTRAINING ORDER OR A WRIT OF INJUNCTION AGAINST PETITIONERS; RESPONDENTS' RECOURSE IS ONLY TO WITHDRAW OR SUSPEND THE GRANT OF EASEMENT OF RIGHT OF WAY.— [T]he Compromise Agreement does not sanction the issuance of a restraining order or a writ of injunction against the Cathay Group's plan to construct high-rise buildings not contemplated in the Compromise Agreement. What the Compromise Agreement sanctions is that in case of breach by the Cathay Group and its failure to rectify the same within 30 days from receipt of notice, the Ayala Group's recourse is only to withdraw or suspend the grant of the easement of right of way.

APPEARANCES OF COUNSEL

Rivera Santos & Maranan for petitioners.
Cayetano Sebastian Ata Dado & Cruz for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

We resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the June 28, 2013 Decision[1] and the November 26, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 108480.

The Antecedent Facts

Petitioners Cathay Land, Inc. and Cathay Metal Corporation (Cathay Group) own and develop a mixed-use and multi-phase subdivision development project known as the South Forbes Golf City which covers an area of around 213 hectares of contiguous land in Silang, Cavite.[3]

On February 5, 2003, the Cathay Group filed a Complaint[4] for easement of right of way with prayer for the issuance of a preliminary injunction/temporary restraining order against respondents Ayala Land, Inc., Avida Land Corporation, and Laguna Technopark, Inc., (Ayala Group) before the Regional Trial Court (RTC), Branch 18, Tagaytay City. The Complaint alleged that the Ayala Group unjustifiably denied passage to Cathay Group's personnel, vehicles and heavy equipment through its properties by putting up checkpoints and constructing gates which caused the development of the latter's South Forbes Golf City project to be interrupted and delayed.[5]

However, before trial could ensue, the parties executed a Compromise Agreement[6] dated July 4, 2003 where they "mutually

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[1] *Rollo*, pp. 40-49; penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta.

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

[3] Records, Vol. 1, p. 2.

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

[5] *Id*. at 11-12.

[6] *Rollo*, pp. 53-67.

agreed to amicably settle all their claims as well as other claims and causes of action that they may have against each other in relation to the [Complaint]."[7] Specifically, the Ayala Group granted a pedestrian, vehicular and utility easement of right of way in favor of the Cathay Group in consideration of and subject to the latter's faithful compliance of its undertakings in the Compromise Agreement.[8] This includes undertakings relating to the development of the Cathay Group's properties in the area:

> 2.3 **Undertakings of the Cathay Group Relating to the Development of the Cathay Properties.** The Cathay Group will develop the Cathay properties into such developments which are consistent with the residential character of the adjacent developments of Ayala Land and Laguna Properties in the Sta. Rosa, Laguna and Silang, Cavite areas. More particularly, but without limiting the generality of the foregoing, **the Cathay Group undertakes that it will not develop and will not allow the development of** one or more of the following types of projects: (i) cemetery, memorial park, mortuary or similar development or related structures; (ii) industrial park or estate, whether for heavy, medium or light industries; (iii) **high-rise buildings**; (iv) low-cost or socialized housing subdivisions within the purview of Batas Pambansa Blg. 220; and (v) warehouse or warehouse facilities.[9]

It was also expressly stated in the Compromise Agreement that in the event of breach on the part of the Cathay Group of any of its undertakings, the Ayala Group has the right to withdraw or suspend the grant of easement of right of way from the Cathay Group, to wit:

> 4. **Undertakings Essential.** x x x Accordingly and subject to Section 6 hereof, the Ayala Group has the right to withdraw or suspend the grant of easement of right-of-way subject of this Agreement if the Cathay Group or any of the Grantees

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[7] *Id*. at 55.

[8] *Id*.

[9] *Id*. at 64. Emphasis supplied.

> shall breach any of the provisions of this Agreement and the Cathay Group or the Grantees shall have failed to rectify such breach within a period of thirty (30) days from receipt of a notice from the Ayala Group (or any of its assigns).[10]

In fine, in case of breach on the part of Cathay Group, the remedies available to the Ayala Group are as follows: first, the Ayala Group shall notify the Cathay Group of such breach; and second, the Ayala Group can either suspend or withdraw the grant of easement of right of way in case the Cathay Group fails to rectify such breach within 30 days from receipt of notice. Such right may then be enforced through a writ of execution pursuant to Section 6 of the Compromise Agreement which states:

> 6. **Writ of Execution.** Non-compliance by any party with the terms of this Compromise Agreement shall entitle the aggrieved party to a writ of execution from the [court] to enforce the terms of this Agreement.[11]

The RTC approved the Compromise Agreement in its Judgment[12] dated July 30, 2003, and ordered the parties to strictly comply with the terms and conditions provided therein.[13]

In 2005, the Cathay Group commenced the development of its South Forbes Golf City project. Subsequently, however, the Ayala Group noted that Cathay Group's marketing materials for the project showed plans to develop a thirty-hectare cyber park which will house, among others, call center offices, and to construct high-rise buildings.[14] The Ayala Group thus made verbal and written demands to Cathay Group to abide by the terms and conditions of the Compromise Agreement particularly on its undertaking not to construct high-rise buildings, but to

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[10] *Id*. Emphasis supplied.

[11] *Id*. at 65.

[12] *Id*. at 81-95; penned by Presiding Judge Alfonso S. Garcia.

[13] *Id*. at 95.

[14] *Id*. at 298.

no avail. It also later found out that the Cathay Group had applied for a variance[15] from a local zoning ordinance[16] of Silang, Cavite which then imposed a three-storey height limit on buildings to be constructed in the area.[17]

Thus, on July 29, 2008, the Ayala Group filed a Motion for Execution[18] with Application for Issuance of a Temporary Restraining Order (TRO) and Writ of Injunction before the RTC.

Attaching copies of Cathay Group's development plan, building plan, brochures and newspaper advertisements to its motion for execution, the Ayala Group alleged that the Cathay Group disregarded its undertaking not to construct high-rise buildings, or structures which are at least 15 meters high or beyond the building height limit of three storeys, as provided under the Compromise Agreement.[19] It further claimed that the Cathay Group's development plan of its South Forbes Golf City project involved the construction of 97 high-rise residential and commercial buildings having as many as 12 floors.[20] Consequently, the Ayala Group argued that it had a clear legal right to enforce the terms of the Compromise Agreement and compel the Cathay Group to abide by them.[21] The Ayala Group thus prayed for the issuance of a TRO to enjoin the Cathay Group "from proceeding with the development of their South Forbes Golf City project;" and a writ of execution to permanently enjoin Cathay Group "from constructing buildings fifteen (15) meters and higher, and other developments deviating from the residential character"[22] of the Ayala Group's projects.

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[15] CA *rollo*, pp. 132-181.

[16] *Id*. at 135.

[17] *Rollo,* p. 299.

[18] *Id*. at 96-107.

[19] *Id*. at 98-99.

[20] *Id*. at 99.

[21] *Id*. at 101.

[22] *Id*. at 106-107.

The Cathay Group opposed the motion and insisted that it had not violated the terms of the July 30, 2003 Judgment and there is simply no justification for the Ayala Group's motion seeking the execution of any part thereof.[23] It contended that the Compromise Agreement does not contain a provision limiting building height at three storeys and the proscription therein only pertains to the construction of high-rise buildings without any specific qualifications.[24]

The Regional Trial Court Ruling

In its Order[25] dated September 15, 2008, the RTC denied the Motion for Execution filed by the Ayala Group for lack of merit.

The trial court rejected the Ayala Group's contention that the term "high-rise building" as stated in the Compromise Agreement should follow the definition in the Fire Code of the Philippines (Fire Code), which defines the same as "at least 15 meters high." It explained that "the Fire Code x x x is intended not to define the structural configurations of a building but to advance its clear mandate of preventing fires and avoiding its damaging effects."[26] It also pointed out that the Compromise Agreement itself never mentioned the Fire Code as its governing law.[27]

In addition, the trial court ruled that the basic definition of the term "high-rise building" in the Revised Implementing Rules and Regulations (IRR) of the National Building Code (NBC), *i.e.,* buildings with 16 storeys or taller in height, or 48 meters above established grade, should be given weight, especially since the NBC is the governing law on the construction of buildings.[28]

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[23] CA *rollo*, p. 399.

[24] *Id*. at 402.

[25] *Rollo*, pp. 108-114; penned by Presiding Judge Edwin G. Larida, Jr.

[26] *Id*. at 111.

[27] *Id*.

[28] *Id*. at 112.

Following the denial, the Ayala Group filed a Motion for Reconsideration[29] before the RTC.

In its April 1, 2009 Order,[30] the RTC, through Acting Presiding Judge Emma S. Young (Judge Young), granted the motion and set aside the September 15, 2008 Order on the ground that the Compromise Agreement is immediately final and executory.

The RTC thus ordered that a writ of execution be issued to enforce the terms and conditions of the Compromise Agreement. It likewise directed the issuance of a writ of injunction against the Cathay Group enjoining the construction of high-rise structures on the land for being contrary to laws and ordinances of Silang, Cavite then applicable at the time of the execution of the Compromise Agreement.[31]

On April 27, 2009, the Cathay Group filed a Petition for *Certiorari*[32] under Rule 65 of the Rules of Court before the CA, challenging the April 1, 2009 Order.

While the case was pending before the CA, the RTC issued a Writ of Execution[33] and a Writ of Injunction,[34] both dated December 2, 2009, **prohibiting the Cathay Group from constructing buildings with a height of 15 meters or higher, and other developments which would deviate from the residential character of the adjacent properties** of the Ayala Group in the area.[35]

The Court of Appeals Ruling

The CA dismissed the Petition for *Certiorari* in its Decision dated June 28, 2013, as it found no grave abuse of discretion

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[29] CA *rollo*, pp. 468-481.

[30] *Rollo*, p. 115.

[31] *Id*.

[32] *Id*. at 116-139.

[33] Records, Vol. 3, pp. 866-867.

[34] *Id*. at 865.

[35] *Id*. at 867.

on the part of the RTC in ordering the execution of the Compromise Agreement.[36]

The CA found no merit in the Cathay Group's claim that Judge Young failed to provide any factual or legal basis in reversing the September 15, 2008 Order which denied the Ayala Group's Motion for Execution. It held that although Judge Young's questioned one-page Order is extremely concise, the basis for the ruling, *i.e.,* that the act of the Cathay Group in constructing high-rise buildings on the property was contrary to the laws and ordinance of Silang, Cavite, was clearly indicated therein.[37]

Moreover, the CA noted that the definition of a "high-rise building" in the IRR of the NBC could not be applied in this case, since the IRR was promulgated only in 2005, or after the parties had already entered into the Compromise Agreement. Hence, the CA ruled that the parties could not have contemplated and considered the definition as part of their agreement.[38]

The CA likewise pointed out that the limitation on the height of the building or structures to be erected by the Cathay Group is clearly defined in its undertaking to ensure that its development plan is "consistent with the residential character of the adjacent developments of [the Ayala Group] in the Sta. Rosa, Laguna and Silang, Cavite area[s]."[39]

Consequently, the CA ruled that the proper interpretation of the term "high-rise building" should be in accordance with the laws and ordinance enforced when the parties executed the Compromise Agreement, which, at the time, limited the permissible building height to only three storeys.[40]

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[36] *Rollo*, p. 44.

[37] *Id*. at 45.

[38] *Id*. at 47.

[39] *Id*.

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

The Cathay Group moved for reconsideration but the CA denied the motion in its Resolution dated November 26, 2013. As a consequence, the Cathay Group filed the present Petition for Review on *Certiorari* assailing the CA's June 28, 2013 Decision and the November 26, 2013 Resolution.

Issues

In the present Petition, the Cathay Group raises the following arguments for the Court's resolution: ***first***, the one-page April 1, 2009 Order should be nullified as it does not state the facts and the law on which it is based, in violation of the requirements under Section 14, Article VIII of the Constitution;[41] ***second,*** the CA seriously erred when it affirmed the questioned RTC Order, since it was never shown that the Cathay Group had violated any of the laws and ordinances of Silang, Cavite;[42] ***third,*** the term "high-rise building" as used in the Compromise Agreement should not be interpreted to imply a "height limit of three storeys," as such definition in the Fire Code was not contemplated by the parties when they entered into the Compromise Agreement;[43] and ***fourth,*** the Writ of Execution dated December 2, 2009 is void because it gives the Sheriff unbridled authority to halt any of the Cathay Group's construction projects which, in his personal view, constitutes a "high-rise" structure.[44]

The Court's Ruling

The Petition is impressed with merit.

A judgment based on compromise agreement shall be executed/ implemented based strictly on the terms agreed upon by the parties.

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[41] *Id*. at 20-21.

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

[43] *Id.* at 33-34.

[44] *Id*. at 32.

The Civil Code provides that "[a] compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."[45] It has the effect and authority of *res judicata* upon the parties, **but there shall be no execution except in compliance with a judicial compromise**.[46]

It is settled that once a compromise agreement is approved by a final order of the court, it transcends its identity as a mere contract binding only upon the parties thereto, as it becomes a judgment that is subject to execution in accordance with the Rules of Court. Judges, therefore, have the *ministerial and mandatory duty* to implement and enforce it.[47]

Since the issuance of a writ of execution implementing a judicial compromise is ministerial in nature, it cannot be viewed as a judgment on the merits as contemplated by Section 14, Article VIII of the Constitution.[48] To be clear, it is the decision based on a compromise agreement that is considered as a judgment on the merits, not the order pertaining to its execution.

Nevertheless, in implementing a compromise agreement, **the "courts cannot modify, impose terms different from the terms of [the] agreement, or set aside the compromises and reciprocal concessions made in good faith by the parties without gravely abusing their discretion**."[49]

In this case, the RTC, through Judge Young, granted the Ayala Group's Motion for Execution of the Compromise Agreement on account of the Cathay Group's construction of

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[45] CIVIL CODE, Article 2028.

[46] CIVIL CODE, Article 2037.

[47] See *Spouses Cachopero v. Celestial*, 685 Phil. 5, 17-18 (2012), citing *Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) v. Abella*, 489 Phil. 515, 535 (2005).

[48] See *GC Dalton Industries, Inc. v. Equitable PCI Bank*, 613 Phil. 329, 335 (2009).

[49] See *Gabrinab v. Salamanca*, 736 Phil. 279, 295 (2014).

"high-rise structures" on its properties. In its assailed Order dated April 1, 2009, the RTC ruled as follows:

> x x x Let the corresponding writ of execution be issued to enforce the [Judgment] of this court dated July 30, 2003 by then Judge Alfonso S. Garcia enforcing the terms and conditions of the Compromise Agreement dated [July 4, 2003]. And let [the] corresponding writ of injunction issue against the plaintiff in this case **for construction of high-rise structures** on [the] land subject matter of the said agreement **[for] being contrary to [the] laws and ordinance of Silang, [Cavite] then applicable at the time of the execution of said compromise agreement**.[50]

It will be recalled that under the Compromise Agreement, the remedies available to the Ayala Group should the Cathay Group fail to abide by the terms of the agreement are, first: to notify the Cathay Group of such breach; and second, either *to withdraw or suspend the grant of easement of right-of-way* to the Cathay Group,[51] if the latter does not undertake to rectify the said breach within 30 days from notice. It is this specific right that is enforceable through a writ of execution, as expressly provided in Sections 4 and 6 of the Compromise Agreement. In short, the Ayala Group has no right, under the Compromise Agreement, to seek injunctive relief from the courts in case the Cathay Group commits an act contrary to its undertakings in the agreement. To emphasize, under the Compromise Agreement, the Ayala Group has no right to seek to enjoin the Cathay Group from proceeding with the development of its South Forbes Golf City project or from constructing high-rise buildings as it did in its Motion for Execution. To be sure, the Ayala Group's right under the Compromise Agreement that is enforceable through a writ of execution is only **the suspension or withdrawal of the grant of easement of right of way**.

Thus, the RTC, through Judge Young, seriously erred when it issued a Writ of Execution and Writ of Injunction prohibiting

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[50] *Rollo*, p. 115. Emphasis supplied.

[51] *Id*. at 64.

the Cathay Group from constructing buildings with a height of 15 meters or higher and other developments not in accord with the residential character of the properties of the Ayala Group in the area. The **RTC gravely abused its discretion when it granted a remedy that is not available to the Ayala Group, thereby imposing terms different from what was agreed upon by the parties in their Compromise Agreement**. Given these circumstances, the CA seriously erred in dismissing the Petition for *Certiorari* filed by the Cathay Group.

The Ayala Group prematurely moved for the execution of the compromise agreement.

In addition, **there is likewise no sufficient proof that the Cathay Group had violated the terms of the Compromise Agreement**, so as to warrant the RTC's issuance of a writ of execution and a writ of injunction in favor of the Ayala Group.

The records show that the Ayala Group based its Motion for Execution on *mere development and structural plans, and marketing materials*[52] for the Cathay Group's South Forbes Golf City project which allegedly involved "the construction of ninety-seven (97) high-rise residential and commercial buildings having as much as twelve (12) floors."[53] It had simply *anticipated* that the Cathay Group would violate its undertaking not to construct high-rise buildings in the area.

In other words, the Ayala Group **prematurely** moved for execution of the Compromise Agreement in order to prevent the Cathay Group from actually committing a breach of the terms of the agreement. It must be pointed out that under the Compromise Agreement, the Ayala Group must notify first the Cathay Group of any perceived breach in its undertakings; thereafter, the Cathay Group has 30 days within which to rectify such breach. It is only when the Cathay Group fails to correct

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[52] *Id*. at 100.

[53] *Id*. at 99.

the breach within 30 days from notice that the Ayala Group may move for the execution of the Compromise Agreement. Clearly, therefore, the Ayala Group violated the terms of the agreement which afforded the Cathay Group a period of 30 days from notice to rectify a breach, should it indeed occur.[54]

The parties did not agree on what constitutes a "high-rise building".

Moreover, we note that there is no clear definition in the Compromise Agreement as to what constitutes a "high-rise building." A review of the records shows that the parties never agreed on the definition of the term "high-rise buildings" when they entered into the Compromise Agreement on July 4, 2003. In fact, they continued to discuss the matter through an exchange of letters[55] from August 2005 up until April 2008, right before the Ayala Group filed its Motion for Execution of the Compromise Agreement before the RTC on July 29, 2008.

In their correspondence, the Ayala Group insisted on the definition of a "high-rise building," *i.e.,* one which is at least 15 meters high, in the IRR of the Fire Code,[56] while the Cathay Group sought the adoption of prevailing industry standards and practices in determining what a "high-rise building" is.[57] The Cathay Group later on cited the definition of the term as found in the IRR of the NBC and insisted that "as long as [it] does not construct any building beyond the twelve (12) storey building height limit, or thirty-six (36) meters above the highest grade level, there would be no violation of the Compromise Agreement x x x."[58] The matter, however, was *never* resolved.

Note that in the interpretation of documents, the Rules of Court provides for a presumption that the terms of a contract were used in their primary and general acceptation:

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[54] *Id*. at 64.

[55] Records, Vol. 3, pp. 765-775.

[56] *Id*. at 765.

[57] *Id.* at 772.

[58] *Id*. at 774.

Sec. 14. Peculiar signification of terms. — The terms of a writing are presumed to have been used in their primary and general acceptation, but **evidence is admissible to show that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance**, in which case the agreement must be construed accordingly.[59]

Thus, when the terms of the agreement are so clear and explicit that they do not justify an attempt to read into it any alleged intention of the parties, the terms are to be understood literally just as they appear on the face of the contract.[60]

In this case, the records are bereft of proof to show that the parties had agreed to adopt the definition of the term "high-rise building" found in the IRR of the Fire Code. The Compromise Agreement, too, does not contain any provision that points to a reference to the Fire Code as to the usage of the term.

Besides, the IRR of the Fire Code itself *limits its scope* to matters dealing with "life safety from fires and similar emergencies in high-rise buildings," covering "*fire safety features* in construction and protection of exits and passageways and provisions for fire protection."[61] Consequently, the definition of the term "high-rise building" found therein is inapplicable to this case, precisely because **it is not in keeping with the nature and object of the Compromise Agreement**.[62]

We simply cannot reasonably conclude, in the absence of clear language to this effect, that the parties intended to use as reference a law that pertains to fire protection in order to define a term in a contract relating to the construction of buildings. Rather, the term "high-rise buildings" should be interpreted to follow its general and primary acceptation, or in other words,

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[59] RULES OF COURT, Rule 130, Section 14. Emphasis supplied.

[60] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume IV, 1991, p. 559.

[61] Rules and Regulations Implementing the Fire Code of the Philippines (P.D. No. 1185), Section 40.101.

[62] See CIVIL CODE, Article 1375.

the prevailing industry standards and practices as adopted by the Department of Public Works and Highways in the IRR of the NBC, at the time the Compromise Agreement was executed.

We also cannot agree with the CA's ruling which equated the three-storey building height limit in Silang, Cavite with the definition of the term "high-rise buildings" in the Compromise Agreement. For one thing, the Municipal Zoning Ordinance imposing such building height limit does not provide that buildings over three-storeys high are to be considered as "high-rise buildings." Specifically, Section 12-B-1 of the Ordinance states:

> B. General Zoning Regulations:
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> For areas that are not classified as Residential Subdivisions, the FAR shall be two (2); the PLO shall be 50% and **the [Building Height Limit] shall be not more than three (3) storeys.**
>
> x x x [F]urther, residential structures within subdivisions shall be required to have a PLO of 50% and **a [Building Height Limit] of not more than three (3) storeys.**[63]

While it is true that the Ordinance imposed a building height limit of three-storeys, it is a grave error to read such regulation as a definition of what constitutes as a "high-rise building" for construction purposes in the area. Consequently, the CA erred when it declared that said building height limitation "is consistent with the laws and ordinance enforced at that time and, thus, should be the one deemed contemplated upon by the parties in their agreement."[64]

For another, the Compromise Agreement itself contains no express prohibition pertaining to the Cathay Group's construction of buildings which are over three storeys high in the area. It is also important to point out that the Cathay Group had already applied for and was granted a variance[65] which exempted it

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[63] CA *Rollo*, p. 135. Emphasis supplied.

[64] *Rollo*, p. 47.

[65] CA *rollo*, pp. 132-181.

from the coverage of the subject Municipal Zoning Ordinance. It was then issued all the necessary development permits for its South Forbes Golf City project, including a Building Permit[66] from the Office of the Municipal Engineer of Silang, Cavite.

In these lights, it is clear that the CA committed an error when it found that the Cathay Group had violated the terms of the Compromise Agreement.

WHEREFORE, we **GRANT** the Petition for Review on *Certiorari.* The Decision dated June 28, 2013 and the Resolution dated November 26, 2013 of the Court of Appeals in CA-G.R. SP No. 108480, as well as the Order dated April 1, 2009 of the Regional Trial Court, Branch 18, Tagaytay City in Civil Case No. TG-2335, are hereby **SET ASIDE** and **REVERSED**.

SO ORDERED.

Leonardo-de Castro, Bersamin,[*] and *Perlas-Bernabe, JJ.,* concur.

Caguioa, J., see separate opinion.

CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* grants the petition and reverses the Decision of the Regional Trial Court, Branch 18, Tagaytay City (RTC) which had ordered the issuance of a writ of execution to enforce the terms and conditions of the Compromise Agreement between petitioners (Cathay Group) and respondents (Ayala Group) and a writ of injunction prohibiting the Cathay Group from constructing buildings with a height of 15 meters or more, and the Court of Appeals (CA) Decision which found no grave abuse of discretion on the part of the RTC.

The *ponencia* posits that the Ayala Group prematurely moved for execution of the Compromise Agreement based on "*mere*

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[66] Records, Vol. 2, p. 604.

[*] Per Raffle dated August 9, 2017.

development and structural plans, and marketing materials x x x for 'the construction of x x x 97 x x x high-rise residential and commercial buildings having as much as x x x 12 x x x floors.'"[1] Under the Compromise Agreement, the Ayala Group must first notify the Cathay Group of the breach and the latter has 30 days to rectify the breach. It is only after the failure of the Cathay Group to rectify the breach within 30 days from notice that execution can be availed of.

The *ponencia* also concludes that a "review of the records shows that the parties never agreed on the definition of the term 'high-rise buildings' when they entered into the Compromise Agreement on July 4, 2003."[2] The parties continued to discuss the matter through exchange of letters from August 2005 up until April 2008, right before the filing of the motion for execution. The matter was not resolved.

To my mind, the granting of the petition and the finding that the parties have not agreed on the definition of "high-rise buildings" have the effect, firstly, of overturning the ruling of the RTC, and upheld by the CA, that the said term is to be construed in accordance with the laws and ordinances then applicable at the time of the execution of the Compromise Agreement. Per the narration of proceedings in the *ponencia*, "the CA ruled that the proper interpretation of the term 'high-rise building' should be in accordance with the laws and ordinance enforced when the parties executed the Compromise Agreement, which, at the time, limited the permissible building height to only three storeys."[3] Secondly, such finding — *"[t]he parties did not agree on what constitutes a 'high-rise building'*"[4] — means that since there was no meeting of the parties' minds on the definition of the said term or "that it cannot be known what may have been the intention or will of the parties [upon

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[1] Decision, p. 9.

[2] *Id*.

[3] *Id*. at 6.

[4] *Id*. at 9.

a principal object of]"[5] the Compromise Agreement, then the contract should be deemed as null and void. However, the *ponencia* does not rule that the Compromise Agreement is void, but holds only that "[t]he matter x x x was *never* resolved."[6]

I believe otherwise. The matter was, in fact, resolved — by the RTC and the CA. It now behooves the Court to rule on the correctness of their interpretation of the term "high-rise buildings." What did the parties intend by that term? Surely, the parties could not have intended a meaning that would be contrary to or violate the laws and ordinances that were in effect when they executed the Compromise Agreement. Both parties are into property development and are expected to know the laws and ordinances applicable to their business. The ordinance of Silang, Cavite at the time the Compromise Agreement was executed "limited the permissible building height to only three storeys."[7] I believe that the parties could not have contemplated a meaning of "high-rise building" contrary to the said ordinance.

With the meaning of the term in dispute resolved, the Court can then proceed to determine whether the Cathay Group committed a breach of the Compromise Agreement.

The *ponencia* finds that "**there is likewise no sufficient proof that the Cathay Group had violated the terms of the Compromise Agreement**"[8] because the Ayala Group based the purported breach of the Cathay Group "on *mere development and structural plans, and marketing materials* for the Cathay Group's South Forbes Golf City project."[9] Thus, the Ayala Group "**prematurely** moved for execution of the Compromise Agreement."[10] This finding is inconsistent with the pronouncements that "the Cathay Group had already applied

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[5] CIVIL CODE, Art. 1378.

[6] Decision, p. 10.

[7] *Id*. at 6.

[8] *Id*. at 9.

[9] *Id*.

[10] *Id*.

for and was granted a variance which exempted it from the coverage of the subject Municipal Zoning Ordinance"[11] and "[i]t was then issued all the necessary development permits for its South Forbes Golf City project, including a Building Permit from the Office of the Municipal Engineer of Silang, Cavite."[12] The Ayala Group had even called the attention of the Cathay Group on the latter's plan to construct high-rise buildings, but to no avail.

Given the foregoing, I believe that a pronouncement of breach on the part of the Cathay Group is justified. There is breach of the obligation when a party in any manner contravenes its tenor;[13] and this kind of non-performance refers to any illicit act which impairs the strict and faithful fulfillment of the obligation, or every kind of defective performance.[14] A strict and faithful fulfillment of the Compromise Agreement by the Cathay Group could no longer be expected because of its aforesaid acts showing a clear intention to build "high-rise buildings" beyond the contemplation of the Compromise Agreement.

If the said acts do not amount to actual breach, then they should at the very least constitute anticipatory breach. An anticipatory breach may occur, for example, when there is a definite or unconditional repudiation of the contract by a party thereto communicated to the other even though it takes place before the time prescribed for the promised performance and before conditions specified in the promise have even occurred.[15] For the Ayala Group to wait until the Cathay Group had built beyond the height of "high-rise buildings" contemplated in the Compromise Agreement before it filed suit would be ludicrous. Given the Cathay Group's anticipatory breach — *evident from*

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[11] *Id*. at 11-12.

[12] *Id*. at 12.

[13] CIVIL CODE, Art. 1170.

[14] Eduardo P. Caguioa, *Comments and Cases on Civil Law Civil Code of the Philippines*, Vol. IV (1968 First Ed.), p. 67.

[15] Eduardo P. Caguioa, *id*. at 66.

the development and structural plans, and marketing materials for the Cathay Group's South Forbes Golf Project; the issuance of all the necessary development permits for the Project, including a Building Permit from the Office of the Municipal Engineer of Silang, Cavite; the granting of a variance for the Project which exempted it from the coverage of the subject Municipal Zoning Ordinance; the Cathay Group's insistence of its definition of "high-rise buildings" when the Ayala Group called its attention on the alleged breach of the Compromise Agreement[16] — the Ayala Group was well within its rights to already act thereon based on the Compromise Agreement, that is, either to withdraw or suspend the grant of the easement of right of way. In fact, the Civil Code obligates every party to a contract with the duty to minimize its damages.[17] Hence, when it became clear that Cathay was intent on building edifices beyond what the Ayala Group believed the Compromise Agreement prohibited, then it was the Ayala Group's duty to file suit.

I agree that the Compromise Agreement does not sanction the issuance of a restraining order or a writ of injunction against the Cathay Group's plan to construct high-rise buildings not contemplated in the Compromise Agreement. What the Compromise Agreement sanctions is that in case of breach by the Cathay Group and its failure to rectify the same within 30 days from receipt of notice, the Ayala Group's recourse is only to withdraw or suspend the grant of the easement of right of way.

Accordingly, I concur that the petition should be granted and the assailed CA Decision and Resolution as well as the assailed Order of the RTC should be set aside and reversed. However, there should be, at the same time, a declaration that the Cathay Group had violated the Compromise Agreement and that the Ayala Group could act conformably therewith.

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[16] See *Jison and Javellana v. Hernaez*, No. 47632, December 31, 1942, O.G., Vol. 2, No. 5, p. 492.

[17] CIVIL CODE, Art. 2203. 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.

SECOND DIVISION

[G.R. No. 210802. August 9, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENE BOY DIMAPILIT *y* ABELLADO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF CREDIBILITY BY THE TRIAL COURT WILL NOT GENERALLY BE DISTURBED ON APPEAL.—** It is already established that "assignment of values to the testimony of a witness is virtually left, almost entirely, to the trial court which has the opportunity to observe the demeanor of the witness on the stand." Except for significant matters "that might have been overlooked or discarded, the findings of credibility by the trial court will not generally be disturbed on appeal." The trial court explicitly stated that Magdalena's testimony was categorical and consistent. Based on the evidence presented before it, the trial court sustained the prosecution's stand. Given that the trial court ruling on the credibility of Magdalena's testimony was also affirmed by the Court of Appeals, this Court does not see any reason to deviate from the general rule. Hence, this Court is persuaded that Rene Boy participated in the killing since Magdalena has given a detailed account of the incident and has positively identified him as one (1) of the assailants.

2. **ID.; ID.; ID.; INCONSISTENCIES IN THE TESTIMONY OF A WITNESS THAT PERTAIN TO MINOR DETAILS DO NOT AFFECT HIS OR HER CREDIBILITY; EXPLAINED.** — The alleged inconsistencies in Magdalena's testimony only pertain to minor details. Hence, they do not affect her credibility. What is essential is that there are no material contradictions in her "complete and vivid narration [on] the principal occurrence and the positive identification" of the accused as one (1) of the main offenders. Admittedly, there were discrepancies between Magdalena's testimony before the court and her sworn statement. While she mentioned in court that she went with Simeon to follow Diego at Pastor's house, she failed to disclose this

information in her sworn statement. This failure, however, does not automatically cast doubt on her credibility as a witness. As explained in *People v. Nelmida*: Inconsistencies between the sworn statement and direct testimony given in open court do not necessarily discredit the witness. ***An affidavit, being taken ex-parte, is oftentimes incomplete and is generally regarded as inferior to the testimony of the witness in open court.*** Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those stated in sworn statements, which are usually incomplete and inaccurate for a variety of reasons. More so, because of the partial and innocent suggestions, or for want of specific inquiries. In addition, an extrajudicial statement or affidavit is generally not prepared by the affiant himself [or herself] but by another who uses his [or her] own language in writing the affiant's statement, hence, omissions and misunderstandings by the writer are not infrequent. Indeed, the prosecution witnesses' direct and categorical declarations on the witness stand are superior to their extrajudicial statements. Whether Magdalena was alone or with Simeon in following Diego to Pastor's house does not really matter. "An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction."

3. ID.; ID.; ID.; DENIAL; CONSTITUTES SELF-SERVING NEGATIVE EVIDENCE WHICH CANNOT BE ACCORDED GREATER EVIDENTIARY WEIGHT THAN THE DECLARATION OF CREDIBLE WITNESSES WHO TESTIFY ON AFFIRMATIVE MATTERS; CASE AT BAR.— The Court of Appeals correctly pointed out that Magdalena's statements were corroborated by the testimony of PO3 Bulaclac regarding the following: 1) the receipt of a report of a killing incident; 2) finding victim sprawled on the road with wounds on his face from a bladed weapon; 3) the victim sustained injury in his jaw and hematoma in the left side of his body and left arm; 4) victim's tricycle of more or less twenty (20) meters away from the cadaver; and 5) they found Magdalena together with Simeon, her brother, in the crime scene. Magdalena's testimony was irrefutably supported by evidence. Hence, this cannot be outweighed by Rene Boy's baseless denial. This Court held: Denial, like alibi, as an exonerating justification, is inherently weak and if uncorroborated, regresses to blatant impotence. Like alibi, it also constitutes self-serving negative evidence which cannot

be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.

4. CRIMINAL LAW; CRIMES AGAINST PERSONS; MURDER; TREACHERY; ELEMENTS; PRESENT IN CASE AT BAR.— Treachery exists "when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make." For treachery to be appreciated, two (2) elements should be proven: (1) [T]he employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted. Diego went to Pastor's house, believing in good faith that Pastor would just borrow his tricycle. Diego was never forewarned that danger awaits his destination. He even assured Magdalena that he would immediately return since he would be sending off his brother to Mindoro. Not expecting any peril for his life, he proceeded to Pastor's house "***unarmed and alone***." The four (4) accused took turns in beating and hitting him. Trapped and obviously outnumbered, Diego was undoubtedly put in a position where he was helpless and unable to protect himself. When Junnel beat Diego, he tried to escape but Joel grabbed him. Joel then punched him on the face. Consequently, Pastor hit him with a piece of wood rendering him ***unconscious***. Despite this, however, Rene Boy still proceeded to hit him with a crowbar. Rene Boy seemingly assured himself that Diego would not be able to endure the attack. With these, the four (4) accused succeeded in killing him "without risk to themselves." Collectively, these are indicative of treachery. Hence, the means employed by the assailants were knowingly sought to ensure Diego's death.

5. ID.; ID.; ID.; EVIDENT PREMEDITATION; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— As to evident premeditation, the following must concur to ascertain its presence: (1) [T]he time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act. "The essence of evident premeditation is that the execution of the criminal act must be

preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment." In this case, the prosecution failed to present any evidence showing that the acts of the assailants "were preceded by a reflection that led to a determined plan to kill [Diego] after sufficient time had passed from the [inception] of the plan." "In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient."

6. **ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH; PRESENT IN CASE AT BAR; PENALTY.—** Abuse of superior strength, however, attended Diego's killing. There is abuse of superior strength "whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely selected or taken advantage of to facilitate the commission of the crime." Abuse of superior strength means "to purposely ***use force excessively out of proportion*** to the means of defense available to the person attacked." Thus, in considering this aggravating circumstance, this Court looks into "the age, size and strength of the parties." Diego was 72 years old when he was killed. His assailants, namely, Pastor, Rene Boy, and Junnel were respectively 50, 27, and 18 years old. Given the disparity in their ages, the assailants were physically stronger than the victim. Additionally, the manner by which the assailants killed Diego reflects how they "took advantage of their superior strength to weaken the defense and guarantee execution of the offense." It is, therefore, apparent that the victim "was besieged by [their] concerted acts." When treachery and abuse of superior strength coincides, abuse of superior strength is absorbed in treachery. Given that there was neither any aggravating nor any mitigating circumstances that attended Diego's killing, the proper penalty to be imposed is ***reclusion perpetua*** pursuant to Article 63, paragraph 2 of the Revised Penal Code.

7. **CIVIL LAW; DAMAGES; WHEN THE CIRCUMSTANCES OF THE CRIME CALL FOR THE IMPOSITION OF *RECLUSION PERPETUA* ONLY, THE CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES SHOULD BE ₱75,000.00 EACH.—** [I]n accordance with *People v. Jugueta*, where this Court clarified

that "when the circumstances of the crime call for the imposition of *reclusion perpetua* only, the civil indemnity and moral damages should be ₱75,000.00 each, as well as exemplary damages in the amount of ₱75,000.00." This Court retains the award of civil indemnity at ₱75,000.00 but modifies the award of moral damages and exemplary damages to ₱75,000.00 each.

8. **ID.; ID.; ACTUAL DAMAGES; WARRANTED IN CASE AT BAR.—** The trial court found that the actual damages were sufficiently substantiated by receipts and proofs of the same nature, indicating that they were incurred for Diego's funeral expenses. The award of ₱148,000.00 as actual damages, therefore, was established with reasonable assurance. Hence, it is warranted in this case.

9. **ID.; ID.; ATTORNEY'S FEES; ABSENT ANY EVIDENCE SUPPORTING ITS GRANT, THE SAME MUST BE DELETED FOR LACK OF FACTUAL BASIS.—** This Court deletes the attorney's fees for the failure of Diego's heirs to substantiate it with actual proof. "Attorney's fees are in the concept of actual or compensatory damages allowed under the circumstances provided for in Article 2208 of the Civil Code, and absent any evidence supporting its grant, the same must be deleted for lack of factual basis."

10. **ID.; ID.; LITIGATION EXPENSES; NOT WARRANTED IN CASE AT BAR.—** [T]his Court also deletes the award for litigation expenses since nothing in the records shows that there was evidence presented to support the claim.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

A witness' inconsistency on minor details does not affect his or her credibility as long as there are no material contradictions in his or her absolute and clear narration on the central incident

and positive identification of the accused as one (1) of the main assailants.[1] Any inconsistency, which is not relevant to the elements of the crime, "is not a ground to reverse a conviction."[2]

This Court resolves this appeal[3] filed by Rene Boy Dimapilit y Abellado (Rene Boy) from the August 30, 2013 Decision[4] of the Court of Appeals in CA-GR. C.R.-H.C. No. 05091, which affirmed the Regional Trial Court ruling[5] that he was guilty beyond reasonable doubt of murder.

On February 11, 2007, victim Diego Garcia (Diego) informed his live-in partner Magdalena Apasan (Magdalena) that he would go to Pastor Dimapilit's (Pastor) house as Pastor wanted to rent his tricycle.[6] Diego informed Magdalena that he would be back immediately because he would be sending off his brother, Simeon Garcia (Simeon),[7] who was visiting from Mindoro at that time.[8]

When twenty minutes passed and Diego was still not home, Magdalena worried, since Pastor and his sons were reputed troublemakers in their place.[9] Thus, Magdalena and Simeon decided to go to Pastor's house.[10]

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[1] *People v. Mamaruncas*, 680 Phil. 192, 206 (2012) [Per *J.* Del Castillo, First Division].

[2] *People v. Nelmida*, September 11, 2012, 694 Phil. 529, 559 (2012) [Per *J.* Perez, *En Banc*].

[3] CA *rollo*, pp. 145-147.

[4] *Id*. at 135-144. The Decision was penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr. of the Third Division, Court of Appeals, Manila.

[5] *Id*. at 15-34. The Decision, docketed as Crim. Case No. 5970, was penned by Presiding Judge Carolina F. De Jesus-Suarez of Branch 9, Regional Trial Court, Balayan, Batangas.

[6] *Id*. at 26.

[7] *Id*. at 19.

[8] *Id*. at 26.

[9] *Id*.

[10] *Id*.

As they approached Pastor's house, Magdalena saw one (1) of Pastor's sons, Junnel Dimapilit (Junnel), box Diego's face. Diego tried to escape but Junnel caught him. Pastor hit Diego's head with a piece of wood, rendering Diego unconscious. Accused Rene Boy, another son of Pastor, hit Diego's face with a crowbar (bareta).[11]

Pastor and his sons Junnel and Joel Dimapilit (Joel) kept on boxing Diego, prompting Simeon to shout, "*Tigilan na po ninyo ang pagbugbog at pagbareta sa mukha ng aking kapatid*."[12]

Rene Boy then responded, "*Putang-ina mo, ikaw na ang susunod na mapapatay*."[13]

For fear that the assailants might pursue her, Magdalena hid behind a mango tree. Simeon ran for help. When Pastor and his sons left, Magdalena went to Diego's aid, whose face was unrecognizable.[14]

Barangay officials came and volunteered to report the incident to the police. By the time Simeon, and his two (2) sons, arrived, the assailants had already left.[15]

Meanwhile, a report on the killing incident reached Tuy Municipal Police Station. PO3 Ruelito Fronda, PO3 Pedro Oronico, SPO1 Augusto Sanchez, PO2 Joy Jimenez, and PO2 Michael Canlubo responded pursuant to the orders of their Chief of Police, PO3 Gary Bulaclac (PO3 Bulaclac).[16]

They arrived at the crime scene at around 2:10 p.m., where they saw Diego lying on the ground, drenched in blood, with his tricycle 20 meters away and his sandals scattered about.[17]

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[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

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

Magdalena told the police that Pastor, Junnel, Rene Boy, and Joel killed Diego.[18] With the information gathered, the police made a follow up operation.[19]

At around 3:00 p.m. and 4:30 p.m., they arrested Pastor in Barangay Lumbangan, Tuy, Batangas and Junnel in Lian, Batangas, both of whom they delivered to the police station.[20]

Dr. Jaime Valientes (Dr. Valientes), a Municipal Health Officer in Tuy, Batangas, noted the following findings in Diego's medico-legal report:

1) hacking wound sub mandibular area extending to the left mandible from temporo mandibular joint 17.3 x 7 x 2 cm;
2) Periorbital hematoma right;
3) Lacerated wound right post auricular area 1 x .5 x .5 cm;
4) Lacerated wound mid upper lip 1 x .5 x 1 cm;
5) Complete fracture mandibular area extending to the left mandible from temporo mandibular joint 17.3 x 7 x 2 cm;
6) Superficial laceration 7.5 x .2 x .1 cm at the abdomen;
7) Positive evisceration right eye ball; and
8) Depressed fracture mid nasal bridge 1x4 cm.[21]

He concluded that the first, third, fourth, fifth, and sixth wounds "were caused by a bladed weapon considering that the edges of these wounds were smooth." The second, seventh, and eighth injuries were due to "any blunt or hard object like a piece of wood or an iron bar."[22]

According to Dr. Valientes, the first wound primarily caused Diego's immediate demise.[23] He noted in the Death Certificate that Diego's traumatic head injury caused his death.[24]

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[18] *Id*. at 26.

[19] *Id*. at 27.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*. at 28.

Rene Boy, Pastor, Junnel, and Joel were charged with Murder, docketed as Crim. Case No. 5970, before Branch 9, Regional Trial Court, Balayan, Batangas.[25]

The Information read:

> That on or about the 11th day of February, 2007, at 12:20 o'clock [sic] in the afternoon, at Barangay Talon, Municipality of Tuy, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, accused Pastor Dimapilit y Cornejo alias "Astor", armed with a big "sianse" and a piece of wood, Rene Boy Dimapilit y Abellado armed with a crowbar (taktak/bareta), conspiring and confederating together with accused Junnel Dimapilit y Abellado alias "Nonoy" and Joel Dimapilit y Abellado, acting in common accord and mutually helping one another, with intent to kill, with the qualifying circumstances of treachery, evident premeditation, and with abuse of superior strength and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and hit with the said weapons one Diego Garcia y Mauro, suddenly and without warning, thereby inflicting upon the latter multiple wounds and other injuries on the different parts of his body which directly caused his death.
>
> Contrary to law.[26]

Only Rene Boy was arraigned on February 12, 2008 as Pastor and Junnel escaped from detention on May 12, 2007.[27] Rene Boy pleaded not guilty to the charge.[28]

The prosecution presented the following witnesses: Magdalena; Diego's son, Rommy Garcia (Rommy); PO3 Bulaclac; and Dr. Valientes.[29]

Magdalena testified about Diego's death on February 11, 2007.[30] On cross-examination, she asserted that she did not know "any personal grudge between [Rene Boy] and Diego."[31]

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[25] *Id*. at 15.

[26] *Id*.

[27] *Id*. Pursuant to the return of subpoena dated August 21, 2007.

[28] *Id*.

[29] *Id*. at 136.

[30] *Id*.

[31] *Id*. at 19.

She did not mention anything about Simeon in her sworn statement although he was with her in following Diego at Pastor's house. She just stated that she hid behind a mango tree out of fear. She admitted failing to ask for help in spite of the people in the vicinity in broad daylight.[32]

On direct-examination, she narrated that Simeon asked Rene Boy to stop beating Diego. Rene Boy was only two (2) arms' length from Simeon when the former threatened the latter. From their position, Magdalena and Simeon saw Rene Boy beat Diego as there was no obstruction to their view. However, she did not bring this up in her sworn statement because she was allegedly afraid and confused.[33]

She admitted saying in her sworn statement that she saw Junnel box Diego's jaw. Diego tried to escape but Joel caught him and boxed him. In her direct examination, she said that it was Junnel and not Joel who ran after Diego. However, it was really Joel who pursued Diego. Diego's unexpected demise and the similarity in the names allegedly confused her.[34]

Rommy confirmed the damages they suffered and the actual funeral expenses spent on Diego's interment.[35]

PO3 Bulaclac testified that he and five (5) other police officers responded when they learned about the incident.[36]

Dr. Valientes attested that he conducted the cadaver's post-mortem examination and accordingly prepared the needed report.[37]

On the other hand, the defense presented as its sole witness, Rene Boy, who denied all the accusations against him.[38]

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[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] *Id*. at 136.

[36] *Id*. at 21.

[37] *Id*. at 136.

[38] *Id*. at 23.

Rene Boy testified that on February 10, 2007, he and his wife slept at his parents' house in Barangay Talon, Tuy, Batangas to attend his cousin's birthday the next day. He said that they hurriedly left around 9:00 a.m. the next day as they were invited by his brother Junnel to have lunch at the house of Junnel's parents-in-law in Bungahan, Lian, Batangas. Together with Junnel and his wife, they rode a tricycle and reached their destination at around 10:00 a.m. After lunch, Rene Boy claimed that he and his wife immediately went home to check on the charcoal he was making.[39]

It was only when he was arrested on October 6, 2007 that he discovered that he was one (1) of the suspects for Diego's death. He averred not to know anything about the incident, his father being a suspect, or his father's and brother Junnel's arrest just a few days after the incident. However, he later admitted that he learned about Junnel's apprehension but not his father's.[40]

During trial, Rene Boy alleged that Junnel suggested leaving the party as only pancit and juice were served.[41]

He gave inconsistent answers on the actual time of Junnel's invitation to leave. He clarified that he was already in Lian when Junnel invited him. They were constrained to leave the celebration as he needed to watch over the charcoal he was making and he wanted to cook delicious food.[42]

He claimed that his house was in Baldeo, Lian, Batangas and Junnel's house was only 10 kilometers away or about a six (6)-minute walk away.[43]

The Regional Trial Court found that Diego was killed by the four (4) accused.[44]

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

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

[41] *Id*. at 25.

[42] *Id*.

[43] *Id*.

[44] *Id*. at 28.

It gave more credence to Magdalena's positive identification of Rene Boy as the offender.[45] Similarly, Magdalena's statements were substantiated by the testimony of Dr. Valientes.[46] It ruled that Magdalena was a credible witness who had no ill motive to fabricate false charges against the accused.[47]

Furthermore, the trial court found that there was treachery, qualifying the killing to murder.[48] Despite Diego's helpless condition, the accused repeatedly hacked him to ensure his death.[49] However, evident premeditation could not be appreciated as there was no showing that the collective acts of the accused "were preceded by a reflection that led to a determined plan to kill [Diego] after sufficient time had passed from the hatching of the plan."[50] The dispositive portion of the Decision read:

WHEREFORE, the foregoing considered, this Court hereby finds accused **Rene Boy Dimapilit y Abellado GUILTY** beyond reasonable doubt of the crime of **Murder** defined and penalized under Article 248 of the Revised Penal Code, as amended, and sentences him to suffer the penalty of **Reclusion Perpetua** and to pay the heirs of victim Diego Garcia represented by private complainant Rommy Garcia the following amounts: **Seventy Five Thousand Pesos (₱75,000.00)** as civil indemnity for the victim's death, **One Hundred Forty-eight Pesos (₱148,000.00)** as actual damages, **Fifty Thousand Pesos (₱50,000.00)** as moral damages,**Fifty Thousand Pesos (₱50,000.00)** for attorney's fees and **Thirty Thousand Pesos (₱30,000.00)** for litigation expenses. With Costs.

Let the necessary mittimus for the transfer and detention of accused Rene Boy Dimapilit for the service of his sentence in the National Bilibid Prisons, Muntinlupa City, be issued.

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[45] *Id*. at 33.

[46] *Id*. at 29.

[47] *Id*.

[48] *Id*. at 31.

[49] *Id*. at 30.

[50] *Id*.

As regards accused Pastor Dimapilit y Cornejo, Junnel Dimapilit y Abellado and Joel Dimapilit y Abellado, let the instant case against them be ARCHIVED.

SO ORDERED.[51] (Emphasis in the original)

In his appeal, Rene Boy insisted that his guilt was not proven beyond reasonable doubt as Magdalena's testimony was allegedly "tainted with material and substantial inconsistencies."[52]

In its August 30, 2013 Decision, the Court of Appeals affirmed the trial court ruling.[53] In issues involving the credibility of witnesses, the findings of the trial court are given great respect since it has the opportunity to "observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth."[54] In the absence of any showing that it has overlooked or misapplied some facts, its findings of facts will not be disturbed on appeal.[55]

It ruled that the minor inconsistencies in Magdalena's testimony did not affect her credibility as a witness.[56] One cannot suppose that witnesses could give errorless testimonies especially when they are relating the "details of a harrowing experience."[57]

Moreover, it also ruled that Rene Boy failed to substantiate his defense of denial.[58] His self-serving assertions were inadmissible as proof of the alleged facts he was asserting.[59] The dispositive portion of its Decision provided:

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[51] *Id*. at 34.

[52] *Id*. at 139.

[53] *Id*. at 143.

[54] *Id*. at 140.

[55] *Id*.

[56] *Id*. at 141.

[57] *Id*.

[58] *Id*. at 142.

[59] *Id*.

WHEREFORE, the Decision appealed from, being in accordance with law and the evidence, is hereby **AFFIRMED**.

SO ORDERED.[60]

An appeal before this Court was filed.

On February 3, 2014,[61] the Court of Appeals elevated to this Court the records of this case pursuant to its Resolution[62] dated September 26, 2013, which gave due course to the Notice of Appeal[63] filed by Rene Boy.

In its Resolution[64] dated March 12, 2014, this Court noted the records of the case forwarded by the Court of Appeals. The parties were then ordered to file their supplemental briefs, should they so desired, within 30 days from notice.

On May 6, 2014, the Office of the Solicitor General filed a Manifestation[65] on behalf of the People of the Philippines stating that it would no longer file a supplemental brief. A similar Manifestation[66] was filed on May 9, 2014 by the Public Attorney's Office on behalf of Rene Boy.

The sole issue for resolution is whether or not Rene Boy Dimapilit's guilt was proven beyond reasonable doubt.

Rene Boy underscores the material inconsistencies in Magdalena's testimony and insists that they cannot serve as a basis for finding him guilty.[67]

1) Magda[lena] stated that she saw accused Junnel as the one who boxed Diego which statement she negated during the next hearing

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[60] *Id*. at 143.

[61] *Rollo*, p. 1.

[62] *Id*. at 15.

[63] *Id*. at 12-14.

[64] *Id*. at 18.

[65] *Id*. at 21-25.

[66] *Id*. at 26-30.

[67] CA *rollo*, pp. 61-62.

when she claimed that it was Joel; 2) Magda[lena] was insistent that she was with Simeon, the victim's brother, when she went to the place of the incident, which is in contradiction to her initial report wherein she never mentioned of Simeon; 3) Magda[lena] hid herself behind a mango tree because she feared for her life and still managed to witness what really transpired on that fateful afternoon which according to the defense is inconsistent to human experience because if it were true, she should have been too afraid to peek and see for herself what was happening; and 4) She never asked anyone for help which is contrary to human experience that a person whose loved one is being assaulted will just stand, wait and do nothing.[68]

Furthermore, Rene boy argues that the trial court erred in equating the idea that Magdalena could have no other motive than to ensure justice to "the conclusion that a witness is credible because the defense has not shown any ill motive that would motivate him or her to falsely testify."[69] Citing *People v. Rodrigo*, the conclusion only pertains to "third parties who are detached from and who have no personal interest in the incident that gave rise to the trial."[70]

In this case, he claimed that a common-law wife is not a detached witness.[71] Her testimony "should be handled with the realistic thought that they have . . . material and emotional ties to the subject of litigation."[72] Her testimony cannot be readily accepted as credible merely because the defense failed to prove any ill motive on her part.[73]

Accordingly, he argues, the trial court could not automatically disregard his defense of denial since "not all denials should be regarded as fabricated, emphasizing that if the accused is truly innocent, he [or she] can have no other defense but denial and alibi."[74]

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[68] *Id*. at 139-140.

[69] *Id*. at 64.

[70] *Id*.

[71] *Id*.

[72] *Id*. at 65.

[73] *Id*.

[74] *Id*. at 66.

He then concludes that "not all the elements of [murder] were proven with moral certainty."[75]

On the other hand, the Office of the Solicitor General maintains that the minor inconsistencies in Magdalena's testimony do not affect her credibility.[76]

Magdalena herself was shocked when she narrated that it was Junnel, not Joel, who boxed Diego. At that time, Magdalena was emotional when she recounted the traumatic incident that happened. Hence, Magdalena did not deliberately intend to commit the alleged contradictions.[77] Provided that the witness' testimonies conform to material points, "the slight clashing statements dilute neither the witness' credibility nor the veracity of [his or her] testimonies."[78]

Furthermore, Magdalena's testimony on how Diego was hit with a crow bar and a piece of wood was substantiated by the medico-legal report. Similarly, PO3 Bulaclac's testimony corroborated Magdalena's narration of events regarding the injuries sustained by Diego and regarding Simeon's presence in the crime scene.[79]

Nevertheless, regardless of who really overtook Diego, Magdalena's testimony "as a whole is sufficient to support [Rene Boy's] conviction. There could be no mistake as to the identity of all the assailants, since the killing happened at daytime and Magdalena was just two arms[']length or more away from the crime scene."[80]

Moreover, the relationship itself of a witness to an accused or complainant does not automatically discredit him or her.[81]

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[75] *Id*.

[76] *Id*. at 108.

[77] *Id*.

[78] *Id*. at 109.

[79] *Id*. at 109-110.

[80] *Id*. at 110.

[81] *Id*. at 115.

On the contrary, "kinship by blood or marriage to the victim would deter one from implicating innocent persons, as one's natural interest would be to secure conviction of the real culprit."[82]

The Office of the Solicitor General asserts that denial cannot overcome a credible witness' positive identification of the accused.[83] Given that all the elements of murder were present and proven in this case, Rene Boy's conviction is warranted.[84]

The appeal lacks merit.

I

Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659,[85] prescribes murder. It provides:

> Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *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.

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[82] *Id*.

[83] *Id*. at 118.

[84] *Id*. at 119-120.

[85] Death Penalty Law (1993).

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

To warrant a conviction of murder, the following elements should be proven:

(1) that a person was killed;
(2) that the accused killed him or her;
(3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and
(4) that the killing is not parricide or infanticide.[86]

Diego's death on February 11, 2007 due to a "traumatic head injury," as evinced by his death certificate, is already settled.[87] Disputed, however, is whether accused Rene Boy participated in killing him.

There were contradicting testimonies from the prosecution witnesses and the defense. Magdalena directed to the accused as one (1) of the (4) offenders. She testified that on February 11, 2007, Pastor, Junnel, Rene Boy, and Joel "mutually helped each other in beating and stabbing" Diego. On the other hand, Rene Boy denies participation asserting that he knew nothing about Diego's death.[88]

In resolving Rene Boy's appeal, this Court necessarily ascertains the credibility of Magdalena's testimony as a witness for the prosecution.[89]

It is already established that "assignment of values to the testimony of a witness is virtually left, almost entirely, to the trial court which has the opportunity to observe the demeanor of

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[86] *People v. Las Piñas*, 739 Phil. 502, 524 (2014) [Per *J.* Leonardo-de Castro, First Division].

[87] CA *rollo*, p. 28.

[88] *Id*.

[89] *Id*. at 140, CA Decision.

the witness on the stand."[90] Except for significant matters "that might have been overlooked or discarded, the findings of credibility by the trial court will not generally be disturbed on appeal."[91]

The trial court explicitly stated that Magdalena's testimony was categorical and consistent.[92] Based on the evidence presented before it, the trial court sustained the prosecution's stand.[93] Given that the trial court ruling on the credibility of Magdalena's testimony was also affirmed by the Court of Appeals,[94] this Court does not see any reason to deviate from the general rule. Hence, this Court is persuaded that Rene Boy participated in the killing since Magdalena has given a detailed account of the incident and has positively identified him as one (1) of the assailants.

However, Rene Boy hinges on the purported inconsistencies in Magdalena's testimony to assail her credibility.

The alleged inconsistencies in Magdalena's testimony only pertain to minor details. Hence, they do not affect her credibility. What is essential is that there are no material contradictions in her "complete and vivid narration [on] the principal occurrence and the positive identification" of the accused as one (1) of the main offenders.[95]

Admittedly, there were discrepancies between Magdalena's testimony before the court and her sworn statement. While she mentioned in court that she went with Simeon to follow Diego at Pastor's house, she failed to disclose this information in her sworn statement.[96] This failure, however, does not automatically

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[90] *People v. Harovilla*, 436 Phil. 287, 293 (2002) [Per *J*. Ynares-Santiago, First Division].

[91] *Id*.

[92] CA *Rollo*, p. 28.

[93] *Id*.

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

[95] *People v. Mamaruncas*, 680 Phil. 192, 206 (2012) [Per *J*. Del Castillo, First Division].

[96] CA *rollo*, p. 19.

cast doubt on her credibility as a witness. As explained in *People v. Nelmida*:[97]

> Inconsistencies between the sworn statement and direct testimony given in open court do not necessarily discredit the witness. ***An affidavit, being taken ex-parte, is oftentimes incomplete and is generally regarded as inferior to the testimony of the witness in open court.*** Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those stated in sworn statements, which are usually incomplete and inaccurate for a variety of reasons. More so, because of the partial and innocent suggestions, or for want of specific inquiries. In addition, an extrajudicial statement or affidavit is generally not prepared by the affiant himself [or herself] but by another who uses his [or her] own language in writing the affiant's statement, hence, omissions and misunderstandings by the writer are not infrequent. Indeed, the prosecution witnesses' direct and categorical declarations on the witness stand are superior to their extrajudicial statements.[98] (Emphasis supplied)

Whether Magdalena was alone or with Simeon in following Diego to Pastor's house does not really matter. "An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction."[99]

Magdalena's confusion with the names of the accused also does not affect her credibility as a witness. It is possible that she might have interchanged the name of "Junnel" to "Joel" due to their vivid similarity. This Court cannot assume that Magdalena would deliver errorless narrations while recalling the details of the harrowing killing incident. Instead of weakening her credibility, the trivial lapses strengthen her statements as they indicate that she was not "coached or [her] answers contrived."[100]

Moreover, the fact that Magdalena did not ask for help is not contrary to human experience. She clearly saw how the

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[97] 694 Phil. 529 (2012) [Per *J.* Perez, *En Banc*].

[98] *Id*. at 559.

[99] *Id*.

[100] *People v. Garcia*, 447 Phil. 244, 256 (2003) [Per *J.* Callejo, Sr., *En Banc*].

four (4) assailants took turns in beating Diego to death as the incident happened in broad daylight. Similarly, she heard how Rene Boy threatened Simeon.[101] Probably, out of fear for her life, Magdalena was constrained to be mum and helpless. "Witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience."[102] Hence, the trivial inconsistencies in Magdalena's testimony do not affect the fact that she witnessed how Rene Boy participated in killing Diego.

Furthermore, Magdalena's testimony on how the assailants took turns in beating and injuring Diego with their weapons was substantiated by the testimony and medico-legal report of Dr. Valientes.[103]

Magdalena recounted that Diego became unconscious when Pastor hit his head with a piece of wood.[104] Concomitantly, Dr. Valientes concluded that some of Diego's wounds were "caused by a bladed weapon considering that the edges of these wounds were smooth."[105]

Similarly, Magdalena also narrated how Rene Boy hit Diego's face with a crowbar.[106] Accordingly, Dr. Valientes also found that the other wounds sustained by Diego were due to a "hard object like a piece of wood or an iron bar."[107]

The Court of Appeals correctly pointed out that Magdalena's statements were corroborated by the testimony of PO3 Bulaclac regarding the following:

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[101] CA *rollo*, p. 26.

[102] *People v. Bañez y Baylon*, 770 Phil. 40, 46 (2015) [Per *J.* Peralta Third Division].

[103] CA *rollo*, pp. 141-142.

[104] *Id*. at 28.

[105] *Id*. at 27.

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

[107] *Id*. at 27.

1) the receipt of a report of a killing incident; 2) finding victim sprawled on the road with wounds on his face from a bladed weapon; 3) the victim sustained injury in his jaw and hematoma in the left side of his body and left arm; 4) victim's tricycle of more or less twenty (20) meters away from the cadaver; and 5) they found Magdalena together with Simeon, her brother, in the crime scene.[108]

Magdalena's testimony was irrefutably supported by evidence. Hence, this cannot be outweighed by Rene Boy's baseless denial. This Court held:

> Denial, like alibi, as an exonerating justification, is inherently weak and if uncorroborated, regresses to blatant impotence. Like alibi, it also constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[109]

II

In a further attempt to evade liability, Rene Boy asserts that the trial court erred in automatically accepting Magdalena's testimony as credible merely because the defense allegedly failed to prove that she had basis to falsely charge him.[110] Citing *People v. Rodrigo*,[111] he concludes that this assumption cannot apply to Magdalena as it only applies to detached third parties.[112]

The factual milieu of *Rodrigo* is different from the case at bar.

In *Rodrigo*, a restaurant owned by spouses Paquito (Paquito) and Rosita (Rosita) Buna was robbed by three (3) armed men. One (1) of the assailants fired at Paquito three (3) times, causing his death. Based on the sworn statement of Rosita, Lee Rodrigo

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[108] *Id*. at 142.

[109] *People v. Villacorta*, 672 Phil. 712, 721 (2011) [Per *J*. Leonardo-de Castro, First Division].

[110] CA *rollo*, p. 64.

[111] 586 Phil. 515 (2008) [Per *J*. Brion, Second Division].

[112] CA *rollo*, p. 64.

(Rodrigo) was one (1) of the assailants. The two (2) others, however, remained at large.[113]

An Information for special complex crime of robbery with homicide was filed against Rodrigo. Rosita, as prosecution witness, identified Rodrigo in court as one (1) of the robbers.[114] On re-cross examination, however, she conceded "that she ***initially*** identified Rodrigo by means of a photograph shown to her at the police station."[115] Thus, the photo "was the only one shown to her at that time."[116]

On the other hand, the defense presented Rodrigo as its witness who interposed the defense of denial, contending that he was at home at the time of the incident.[117]

The trial court convicted Rodrigo of the crime charged. It ruled that Rosita's testimonies were "candid, straightforward, firm, and ***without any trace of any improper motive***."[118]

On appeal, Rodrigo's conviction was upheld. The Court of Appeals, however, modified the award of civil indemnity. It underscored that Rosita had positively identified him from the photo given to her at the police station. Then months later, she saw him at San Jose del Monte Police Station.[119] Also, Rosita pointed to Rodrigo in court as one (1) of the assailants.[120]

Rodrigo appealed before this Court, pointing out the inconsistencies in Rosita's testimony. Allegedly, Rosita's inconsistencies coupled by Rodrigo's defense of denial corroborated

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[113] *People v. Rodrigo*, 586 Phil. 515, 522 (2008) [Per *J*. Brion, Second Division].

[114] *Id*.

[115] *Id*. at 524.

[116] *Id*.

[117] *Id.*

[118] *Id*.

[119] *Id*.

[120] *Id*.

that he was not at the crime scene.[121] He also asserted that the recognition made through photograph was not enough to prove that he was one (1) of the assailants because this kind of identification impaired the witness' credibility.[122]

Purportedly, Rosita's action was only "expected from someone who had just lost a loved one unexpectedly."[123] He insisted that before claiming that "positive identification prevails over denial or alibi," the identification must be "positive and beyond question."[124]

This Court ***acquitted*** Rodrigo of the charge since his guilt was not proven beyond reasonable doubt.[125] This Court ruled that since Rosita's identification would be the ***sole*** basis for Rodrigo's conviction, it should be handled with great caution.[126] Thus, the flawed procedure in the photographic identification made the witness' recognition undependable.[127] This Court concluded that:

> In the context of this case, the investigators might not have been fair to Rodrigo if they themselves, purposely or unwittingly, fixed in the mind of Rosita, or at least actively prepared her mind to, the thought that Rodrigo was one of the robbers.[128]

Among others, this Court also considered the fact that "Rosita did not know the robbers" and "she [only] saw them for the first time during the robbery."[129] Hence,

> This fact can make a lot of difference as human experience tells us: in the recognition of faces, the mind is more certain when the faces relate to those already in the mind's memory bank; conversely, it is

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[121] *Id*.

[122] *Id*. at 525.

[123] *Id*. at 526.

[124] *Id*.

[125] *Id*. at 527.

[126] *Id*. at 528.

[127] *Id*. at 529-531.

[128] *Id*. at 529.

[129] *Id*. at 534.

not easy to recall or identify someone we have met only once or whose appearance we have not fixed in our mind.[130]

Nothing in the records revealed that the witnesses' statements were instantly gathered after the incident.[131] Thus, there was no point of comparison between Rosita's immediate memory of the assailants' description and her subsequent identification.[132] Further, this Court also discussed that:

> ***Separately from these considerations***, we entertain serious doubts about the validity of the reasoning, made by both the trial and the appellate courts, that a ***widow's testimony — particularly, her identification of the accused — should be accepted and held as credible simply because the defense failed to show by evidence that she had reasons to falsify.***
>
> Arguably, a widow who testifies about the killing of her husband has no motive other than to see that justice is done so that her testimony should be considered totally credible. This assumption, however, is not the same as the conclusion that a witness is credible because the defense has not shown any ill motive that would motivate him or her to falsely testify. Strictly speaking, this conclusion should apply only to third parties who are detached from and who have no personal interest in the incident that gave rise to the trial. Because of their presumed detachment, the testimonies of these detached parties can be presumed credible unless impugned by the adverse party through a showing of an ill or ulterior motive on the part of the witnesses.
>
> The presumed detachment that applies to third parties obviously cannot apply to a widow whose husband has been killed, or for that matter, to a relative whose kin is the victim, when the testimony of the widow or the relative is offered in the trial of the killer. The widow or the relatives are not detached or disinterested witnesses; they are parties who suffered and experienced pain as a result of the killing. In fact, they are better characterized as *aggrieved parties* as even the law recognizes them as such through the grant of indemnities and damages . . .

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[130] *Id*.

[131] *Id*. at 536.

[132] *Id*. at 536.

Thus, the testimonies from aggrieved parties should not simplistically be equated to or treated as testimonies from detached parties. Their testimonies should be handled with the realistic thought that they come from parties with material and emotional ties to the subject of the litigation so that they cannot be accepted and held as credible simply because the defense has not adduced evidence of ill-motivation. ***It is in this light that we have examined Rosita's identification of Rodrigo, and we hold as unpersuasive the lower courts' conclusion that Rosita deserved belief because the defense had not adduced any evidence that she had motives to falsely testify. The better rule, to our mind, is that the testimony of Rosita, as an aggrieved party, must stand, on its independent merits, not on any failure of the defense to adduce evidence of ill-motivation.***[133] (Emphasis supplied)

In *Rodrigo*, the procedure in the photographic identification was already flawed from the beginning. Accordingly, in that case, this Court was constrained to doubt the lower court ruling that the witness' testimony, *especially her identification of the accused*, "should be accepted and held as credible" for the failure of the defense to adduce evidence that Rosita had reasons to fabricate such allegations.[134]

Unlike the witness in *Rodrigo*, Magdalena's testimony can stand on its own.[135] Her identification of Rene Boy was ***unquestionable*** since she knew the accused even before the incident happened. She even referred to them as known troublemakers in their place.[136]

Contrary to Rene Boy's imputation, the trial court in this case did not automatically accept Magdalena's testimony as credible on the ground that the defense failed to show any proof that Magdalena had reasons to falsely testify against him. A perusal of its decision showed that after considering the pertinent elements of the charge, the trial court merely added that conclusion:

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[133] *Id*. at 538-539.

[134] *Id*. at 538.

[135] *Id*.

[136] CA *rollo*, p. 26.

Untarnished with ill motive to falsely testify against the accused, witness Magdalena Apasan is certainly a credible witness whose testimony should be, as it has been, accorded due weight and credence.[137] (Emphasis supplied)

Hence, the fact that Magdalena had no apparent motives against Rene Boy ***only corroborated*** the totality of evidence which favored the prosecution's case. After considering Magdalena's well-substantiated testimony and reliable identification of the accused, the trial court accordingly gave more credence to her as a witness rather than Rene Boy's baseless denial.

III

Diego's killing was qualified by treachery.

Treachery exists "when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make."[138] For treachery to be appreciated, two (2) elements should be proven:

(1) [T]he employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.[139]

Diego went to Pastor's house, believing in good faith that Pastor would just borrow his tricycle. Diego was never forewarned that danger awaits his destination, He even assured Magdalena that he would immediately return since he would be sending off his brother to Mindoro.[140] Not expecting any peril for his life, he proceeded to Pastor's house "***unarmed and alone***."[141]

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[137] *Id*. at 29.

[138] *People v. Dela Cruz y Balobal,* 626 Phil. 631, 639-640 (2010) [Per *J.* Velasco Jr., Third Division].

[139] *Id*. at 640.

[140] *Id*. at 26.

[141] CA *rollo*, p. 29.

The four (4) accused took turns in beating and hitting him. Trapped and obviously outnumbered, Diego was undoubtedly put in a position where he was helpless and unable to protect himself.[142]

When Junnel beat Diego, he tried to escape but Joel grabbed him. Joel then punched him on the face.[143] Consequently, Pastor hit him with a piece of wood rendering him ***unconscious***. Despite this, however, Rene Boy still proceeded to hit him with a crowbar. Rene Boy seemingly assured himself that Diego would not be able to endure the attack. With these, the four (4) accused succeeded in killing him "without risk to themselves."[144] Collectively, these are indicative of treachery. Hence, the means employed by the assailants were knowingly sought to ensure Diego's death.

As to evident premeditation, the following must concur to ascertain its presence:

> (1) [T]he time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.[145]

"The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment."[146]

In this case, the prosecution failed to present any evidence showing that the acts of the assailants "were preceded by a reflection that led to a determined plan to kill [Diego] after

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[142] *Id*.

[143] *Id*.

[144] *Id*.

[145] *People v. Duavis*, 678 Phil. 166, 177 (2011) [Per *J*. Peralta, Third Division].

[146] *Id*. at 176-177.

sufficient time had passed from the [inception] of the plan."[147] "In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient."[148]

Abuse of superior strength, however, attended Diego's killing.

There is abuse of superior strength "whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely selected or taken advantage of to facilitate the commission of the crime."[149]

Abuse of superior strength means "to purposely ***use force excessively out of proportion*** to the means of defense available to the person attacked."[150] Thus, in considering this aggravating circumstance, this Court looks into "the age, size and strength of the parties."[151]

Diego was 72 years old when he was killed. His assailants, namely, Pastor, Rene Boy, and Junnel were respectively 50, 27, and 18 years old. Given the disparity in their ages, the assailants were physically stronger than the victim. Additionally, the manner by which the assailants killed Diego reflects how they "took advantage of their superior strength to weaken the defense and guarantee execution of the offense."[152] It is, therefore, apparent that the victim "was besieged by [their] concerted acts."[153]

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[147] CA *rollo*, p. 30.

[148] *People v. Dadivo y Mendoza*, 434 Phil. 684, 689 (2002) [Per *J.* Ynares-Santiago, First Division].

[149] *Valenzuela v. People,* 612 Phil. 907, 917 (2009) [Per *J.* Brion, Second Division].

[150] *Id*.

[151] *Id*.

[152] CA *rollo*, p. 31.

[153] *Id*.

When treachery and abuse of superior strength coincides, abuse of superior strength is absorbed in treachery.[154] Given that there was neither any aggravating nor any mitigating circumstances that attended Diego's killing, the proper penalty to be imposed is ***reclusion perpetua*** pursuant to Article 63, paragraph 2 of the Revised Penal Code.[155]

After evaluating the records of this case, this Court resolves to affirm the conviction of the accused and dismiss the appeal, there being no reversible error in the assailed decision that would warrant the exercise of this Court's appellate jurisdiction. However, in accordance with *People v. Jugueta*,[156] where this Court clarified that "when the circumstances of the crime call for the imposition of *reclusion perpetua* only, the civil indemnity and moral damages should be ₱75,000.00 each, as well as exemplary damages in the amount of ₱75,000.00."[157] This Court retains the award of civil indemnity at ₱75,000.00 but modifies the award of moral damages and exemplary damages to ₱75,000.00 each.

The trial court found that the actual damages were sufficiently substantiated by receipts and proofs of the same nature, indicating that they were incurred for Diego's funeral expenses.[158] The award of ₱148,000.00 as actual damages, therefore, was

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[154] *People v. Aquino y Cendana*, 724 Phil. 739, 757 (2014) [Per *J.* Leonardo-De Castro, First Division].

[155] *Id*. See REV. PEN. CODE, Art. 63 stating:
Article 63. *Rules for the Application of Indivisible Penalties*. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.
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:
. . . . . .
(2) When there are ***neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied***.

[156] G.R. No. 202124, April 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> [Per *J.* Peralta, *En Banc*].

[157] *Id*. at 27.

[158] CA *rollo*, p. 34.

established with reasonable assurance.[159] Hence, it is warranted in this case.

This Court deletes the attorney's fees for the failure of Diego's heirs to substantiate it with actual proof.[160] "Attorney's fees are in the concept of actual or compensatory damages allowed under the circumstances provided for in Article 2208 of the Civil Code, and absent any evidence supporting its grant, the same must be deleted for lack of factual basis."[161] Similarly, this Court also deletes the award for litigation expenses since nothing in the records shows that there was evidence presented to support the claim.[162]

WHEREFORE, the assailed August 30, 2013 Decision of the Court of Appeals is **AFFIRMED with MODIFICATION**. Accused-appellant Rene Boy Dimapilit y Abellado is found **GUILTY** beyond reasonable doubt of the crime of Murder. He is sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of Diego Garcia, represented by private complainant Rommy Garcia, the following amounts: ₱148,000.00 as actual damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and the costs of the suit. The award for attorney's fees and litigation expenses are **DELETED**.

In line with current jurisprudence, interest at the legal rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[163]

SO ORDERED.

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

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[159] *People v. Ducabo*, 560 Phil. 709, 727 (2007) [Per *J.* Chico-Nazario, Third Division].

[160] *People v. Likiran*, 735 Phil. 397, 408 (2014) [Per *J.* Reyes, First Division].

[161] *Id.*

[162] *Almojuela y Villanueva v. People*, 734 Phil. 636, 651 (2014) [Per *J.* Brion, Second Division].

[163] See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per *J.* Peralta, *En Banc*].

FIRST DIVISION

[G.R. No. 211845. August 9, 2017]

PEN DEVELOPMENT CORPORATION and LAS BRISAS RESORT CORPORATION, *petitioners, vs.* **MARTINEZ LEYBA, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; QUIETING OF TITLE; VERIFICATION SURVEY APPROVED BY THE REGIONAL TECHNICAL DIRECTOR OF LANDS CONSIDERED AS PROOF OF ENCROACHMENT OF LAND.— Respondent's main evidence is the said Verification Survey Plan Vs-04-000394, which is a public document. As a public document, it is admissible in evidence even without further proof of its due execution and genuineness, and had in its favor the presumption of regularity. To contradict the same, there must be evidence that is clear, convincing and more than merely preponderant, otherwise the document should be upheld. The certification and approval by the Regional Technical Director of Lands signifies the "technical correctness of the survey plotted in the said plan." x x x [R]espondent's Verification Survey Plan Vs-04-000394 remains unrefuted. Petitioners' sole objection to this piece of evidence that it was not authenticated during trial is of no significance considering that the said documentary evidence is a public document. x x x For the RTC and CA, respondent's undisputed evidence proved its claim of overlapping. This Court agrees. As a public document containing the certification and approval by the Regional Technical Director of Lands, Verification Survey Plan Vs-04-000394 can be relied upon as proof of the encroachment over respondent's lands. More so when petitioners could not present contradictory proof.

2. ID.; OWNERSHIP; BUILDER IN BAD FAITH; PETITIONERS, BEING BUILDERS IN BAD FAITH, ARE NOT ENTITLED TO REIMBURSEMENT FOR NECESSARY EXPENSES.— On the issue of being a builder in bad faith, there is no question that petitioners should be held liable to respondent for their obstinate refusal to abide by the latter's repeated demands to cease and desist from continuing their construction upon the

encroached area. Petitioners' sole defense is that they purchased their property in good faith and for value; but this does not squarely address the issue of encroachment or overlapping. To repeat, while petitioners may have been innocent purchasers for value with respect to their land, this does not prove that they are equally innocent of the claim of encroachment upon respondent's lands. The evidence suggests otherwise: despite being apprised of the encroachment, petitioners turned a blind eye and deaf ear and continued to construct on the disputed area. They did not bother to conduct their own survey to put the issue to rest, and to avoid the possibility of being adjudged as builders in bad faith upon land that did not belong to them. x x x For their part, petitioners are not entitled to reimbursement for necessary expenses. Indeed, under Article 452 of the Civil Code, the builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land. However, in this case, respondent's lands were not preserved: petitioners' construction and use thereof in fact caused damage, which must be undone or simply endured by respondent by force of law and circumstance. Respondent did not in any way benefit from petitioners' occupation of its lands.

3. ID.; ID.; LACHES DOES NOT APPLY TO REGISTERED LAND UNDER THE TORRENS SYSTEM; THE REGISTERED OWNER HAS THE RIGHT TO RECOVER POSSESSION OF THE LAND AT ANY TIME.— [O]n the question of laches, the CA correctly held that as owners of the subject property, respondent has the imprescriptible right to recover possession thereof from any person illegally occupying its lands. Even if petitioners have been occupying these lands for a significant period of time, respondent as the registered and lawful owner has the right to demand the return thereof at any time. Jurisprudence consistently holds that 'prescription and laches cannot apply to registered land covered by the Torrens system' because 'under the Property Registration Decree, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession.'

CAGUIOA, *J.*, *concurring and dissenting opinion*:

1. CIVIL LAW; LAND REGISTRATION; QUIETING OF TITLE; IN CASE OF OVERLAPPING OF CERTIFICATES OF TITLES BELONGING TO DIFFERENT PERSONS,

PRIORITY OF REGISTRATION IS THE SETTLED RULE. — This case is NOT a simple boundary dispute where a neighbor builds a structure on an adjacent registered land belonging to another. Here, the area where the former had built happens to be within the land registered in his name which overlaps with the titles of the latter. Thus, this is a proper case of overlapping of certificates of title belonging to different persons. Given the fact that this case involves overlapping of titles, I fully concur with the Decision that as between Martinez Leyba, Inc. (MLI) and Las Brisas Resorts Corp. (Las Brisas), MLI has a superior right to the overlapped or encroached portions in issue being the holder of a transfer certificate of title that can be traced to the earlier original certificate of title. In case of double registration where land has been registered in the name of two persons, priority of registration is the settled rule.

2. ID.; ID; THE FACTUAL APPROACH IS PREFERABLE OVER THE INDISCRIMINATE APPLICATION OF THE CONSTRUCTIVE NOTICE DOCTRINE TO DETERMINE THE GOOD FAITH OR BAD FAITH OF THE POSSESSOR OR BUILDER WHO DERIVES HIS RIGHT FROM THE "SECOND ORIGINAL CERTIFICATE OF TITLE."— If the constructive notice doctrine embodied in Section 52 of PD 1529 and espoused in *Legarda* has been strictly applied in this case and the *ponente* has not taken a "more factual approach," then it would be erroneous to hold that "they [referring to petitioners, Las Brisas and Pen Development Corporation, which are one and the same entity] acquired TCT 153101 in good faith and for value" or "petitioners may have been innocent purchasers for value with respect to their land," and that Las Brisas' good faith turned into bad faith upon "being apprised of the encroachment" by MLI —because Las Brisas should automatically be deemed to have had constructive notice of MLI's certificates of title that overlapped the certificate of title of Republic Bank which Las Brisas acquired as a foreclosed property. By the same token, a finding that Las Brisas is an "innocent purchaser for value with respect to its land" is precisely what *Legarda* wanted to avoid because that would result in a transferee of the "second or later original certificate of title" having a right of ownership superior to that of a transferee of the "first or earliest original certificate of title." Clearly, the Decision here betrays a fundamental confusion on the import of these earlier rulings. I agree that the factual approach is

preferable over the indiscriminate application of the constructive notice doctrine in cases of double registration with respect to the determination of the good faith or bad faith **of the possessor or builder who derives his right from** the "second original certificate of title."

3. **ID.; ID.; ID.; PETITIONER COULD NOT BE FAULTED FOR RELYING ON ITS OWN CERTIFICATE OF TITLE AND IT WOULD BE UNJUST TO EXPECT IT TO MAKE A LEGAL DETERMINATION OF THE VALIDITY OF ITS TITLE; WHERE IT WAS IMPOSSIBLE FOR PETITIONER TO DISCOVER THE OVERLAPPING OF TITLES FROM THE RECORDS OF THE REGISTER OF DEEDS WHEN IT BOUGHT THE LAND FROM THE BANK AND WHILE IT WAS BUILDING THE IMPROVEMENTS, THE APPLICATION OF CONSTRUCTIVE NOTICE RULE WOULD BE BOTH OPPRESSIVE AND UNJUST.—** In the instant case, the accurate question to ask is this: were the letters of MLI sufficient to put Las Brisas on notice that it was **possessing** the disputed areas or portions improperly or wrongfully? To my mind, those letters were insufficient even if the transfer certificates of title of MLI were specified therein. **Following the en banc cases of *Dizon, De Villa and Gatioan,* I believe that Las Brisas could *not* be faulted for relying on its own certificate of title which, until nullified or voided by a court of competent jurisdiction, is incontrovertible or indefeasible — and it would be unjust to expect Las Brisas to make a legal determination of the validity of its certificate of title**. It should be mentioned that Las Brisas bought the land in a foreclosure sale. Furthermore, Las Brisas should not be blamed for the failure of the government agency concerned to ascertain the overlapping when it approved the survey plan that became the basis for the application and approval of the confirmation of the original title of Las Brisas' predecessor-in-interest, which overlapping also escaped the attention of the court that granted the application and confirmed the title. Even the Assessor's Office of Antipolo City never noticed the overlapping since there is no indication thereof in the parties' respective declarations of real property value for real property tax purposes. As formulated in *Dizon,* the matter indeed involves a doubtful or difficult question of law which, under Article 526, may be the basis of good faith. More importantly, it was impossible for Las Brisas to have

unearthed or discovered the overlapping of titles from the records of the Antipolo City Registry of Deeds at the time it bought its land from Republic Bank and while it was building the improvements. The records of the said Registry of Deeds could not be relied upon to disclose such overlapping. Evidently, there are at least two registrations that must be scrutinized and the traceback or scrutiny of one registration will not readily reveal the existence of the others and *vice versa.* To my mind, a full proof application of the constructive notice doctrine requires that the defect or flaw in the title could be ascertained from a competent and exhaustive due diligence on the subject titled property. To require beyond that would be asking the impossible. That would be both oppressive and unjust.

4. ID.; ID.; BUILDER IN GOOD FAITH OR BAD FAITH; CIRCUMSTANCES IN CASE AT BAR WOULD SHOW THAT PETITIONER ACTED IN GOOD FAITH, OR AT THE VERY LEAST, IT SHOULD BE DEEMED IN GOOD FAITH SINCE BOTH PARTIES ACTED IN BAD FAITH FOLLOWING ARTICLE 453 OF THE CIVIL CODE; RESPONDENT IS NOW BARRED BY LACHES TO CLAIM GOOD FAITH IN SO FAR AS PETITIONER'S CONSTRUCTION OF IMPROVEMENT IS CONCERNED; ARTICLE 448 OF THE CIVIL CODE IS CONTROLLING IN DETERMINING THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREIN.— [E]ven assuming that, as intimated by the *ponencia,* Las Brisas' initial good faith when it bought the property ceased when it received the seven letters from MLI, it is significant to note that the latter filed the complaint for quieting of title/cancellation of title and recovery of ownership only on March 24, 1997 — **almost 30 years from 1968 when MLI sent its first letter after it noticed the construction of Las Brisas' fence within the contested area, and allowing Las Brisas to develop the property and conducting its business therein, to put up a two-story building initially, and in 1988, to expand and put up a multi-story conference center building that finished construction sometime in 1995 sourced from bank loans and costing Las Brisas ₱55,000,000.00.** By no means can this be considered as MLI seasonably availing of "the means established by the laws and the Rules of Court," such as a petition for injunction with a prayer for a temporary restraining order, to protect MLI in its possession thereof or restore to MLI its possession over the same. **These**

circumstances indubitably taint MLI's good faith. x x x While MLI "opposed" the introduction of improvements by Las Brisas through the letters the former sent to the latter, this "opposition" can only be considered as token. MLI should have seasonably resorted to court action when Las Brisas kept ignoring its claim of ownership over the disputed areas. MLI is now barred by estoppel by laches to claim good faith insofar as the construction by Las Brisas is concerned of the improvements, consisting mainly of a ₱55,000,000.00-worth multi-story building that it introduced in the disputed areas. Laches is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. It is a type of equitable estoppel which arises when a party, knowing his rights as against another, takes no steps or delays in enforcing them until the condition of the latter, who has no knowledge or notice that the former would assert such rights, has become so changed that he cannot without injury or prejudice, be restored to his former state. In this case, the doctrines of laches and estoppel are being invoked **in relation to the issue of possession and not with respect to ownership.** Section 47 of PD 1529 finds no application as it is confined to "title to registered land." Given the foregoing, I take the position that Las Brisas acted in good faith, or, at the very least, be deemed to be in good faith since both Las Brisas and MLI were in bad faith following Article 453 of the Civil Code. Thus, Article 448 is controlling in determining the rights and obligations of MLI and Las Brisas with respect to the old building, the new multi-story edifice and the riprapping.

APPEARANCES OF COUNSEL

Tec Rodriguez Law Office for petitioners.
Cruz Marcelo & Tenefrancia for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the July 17, 2013 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 97478 which affirmed with modification the January 20, 2009 Decision[3] of the Regional Trial Court of Antipolo City, Branch 71 (RTC) in Civil Case No. 97-4386, and the CA's March 28, 2014 Resolution[4] denying herein petitioners' Motion for Reconsideration.[5]

Factual Antecedents

As found by the CA, the facts are as follows:

Plaintiff-Appellee Martinez Leyba, Inc. (hereafter Martinez) is a corporation organized and existing under Philippine laws and the registered owner of three (3) contiguous parcels of land situated in Antipolo, Rizal, surveyed and identified as Lot Nos. 29, 30 and 31, Block 3, (LRC) Pcs-7305 and registered under Transfer Certificate of Title Nos. 250242, 250244 and 250243, respectively, with the Register of Deeds of Rizal.

Defendants-Appellants Pen Development Corporation and Las Brisas Resorts Corporation are also domestic corporations duly organized and existing under Philippine laws. Appellants, thereafter, merged into one corporate entity under the name Las Brisas Resorts Corporation (hereafter Las Brisas). Las Brisas is the registered owner of a parcel of land under TCT No. 153101 which is situated adjacent to the lands owned by Martinez. Las Brisas occupied the said land in 1967 and fenced the same.

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[1] *Rollo*, pp. 11-40.

[2] *Id*. at 42-52; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr.

[3] *Id*. at 198-207; penned by Assisting Judge Armando A. Yanga.

[4] *Id*. at 81-82.

[5] *Id*. at 53-62.

In 1968, Martinez noticed that the construction of Las Brisas' fence seemed to encroach on its land. Upon verification by surveyors, Martinez was informed that the fence of Las Brisas overlaps its property. On 11 March 1968, Martinez sent a Letter informing Las Brisas that the fence it constructed encroaches [sic] on Martinez's land and requested Las Brisas to refrain from further intruding on the same. Las Brisas did not respond to Martinez's letter and continued developing its land.

Martinez sent two (2) more Letters dated 31 March 1970 and 3 November 1970 to Las Brisas informing the latter of the encroachment of its structures and improvements over Martinez's titled land.

On 31 July 1971, Las Brisas, through a certain Paul Naidas, sent a letter to Martinez, claiming that it 'can not [sic] trace the origin of these titles' (pertaining to Martinez's land).

Martinez sent two (2) Letters to Las Brisas reiterating its ownership over the land that Las Brisas' improvements have encroached upon. Despite the notices, Las Brisas continued developing its property.

Martinez sought the services of a licensed geodetic engineer to survey the boundaries of its land. The verification survey plan Vs-04-00034, which was approved by the Regional Technical Director for Lands of the Department of Environment and Natural Resources (DENR), revealed that the building and improvements constructed by Las Brisas occupied portions of Martinez's lands: 567 square meters of Lot No. 29, Block 3, (LRC) Pcs. 7305; a portion of 1,389 square meters of Lot No. 30, Block 3, (LRC) Pcs. 7305 covered under TCT Nos. 250242, 250244 and 250243, respectively.

On 24 November 1994, Martinez sent a letter to Las Brisas demanding the latter to cease and desist from unlawfully holding portions of Martinez's land occupied by Las Brisas structures and improvements. Despite the said demand, no action was taken by Las Brisas.

On 24 March 1997, Martinez filed a *Complaint for Quieting of Title, Cancellation of Title and Recovery of Ownership with Damages* against Las Brisas before the Regional Trial Court of Antipolo City, docketed as Civil Case No. 97-4386. The case was raffled to, and heard by, Branch 71 thereof x x x.

In its *Answer*, Las Brisas denied that it encroached on Martinez's land and that it constructed the Las Brisas Resort Complex within the land covered by TCT No. 153101.[6]

In its Complaint,[7] Martinez added that Transfer Certificate of Title (TCT) Nos. 250242, 250244 and 250243 (or the Martinez titles — totaling 9,796 square meters)[8] emanated from Decree No. 1921 issued by the General Land Registration Office pursuant to Land Registration Case No. 3296, which was transcribed as Original Certificate of Title (OCT) No. 756 by the Register of Deeds of Rizal on August 14, 1915; that Las Brisas "constructed a riprapping on the northern portion of Lot No. 29, a building straddling Lots 30 and 31, and are now constructing a new building on Lot No. 31,"[9] which acts constitute an encroachment on lands covered by the Martinez titles; that Las Brisas's title, TCT 153101[10] (TCT 153101), was originally registered on September 14, 1973, under OCT 9311 pursuant to Decree No. N-147380, LRC Case No. N-7993, Rec. No. N-43097; that the encroachment is confirmed per verification survey conducted by a geodetic engineer and approved by the Regional Technical Director for Lands of the Department of Environment and Natural Resources (DENR); and that TCT 153101 thus casts a cloud on the Martinez titles, which must be removed in order to quiet title to the latter.

Las Brisas countered in its Answer[11] that it bought the land covered by TCT 153101 (consisting of 3,606 square meters) on May 18, 1967 from Republic Bank; that it took possession thereof in good faith that very same year; and that it is actually Martinez that was encroaching upon its land.

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[6] *Id*. at 43-45.

[7] *Id*. at 91-99.

[8] *Id*. at 113-115.

[9] *Id*. at 92.

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

[11] *Id*. at 100-104.

Ruling of the Regional Trial Court

After trial, the RTC issued its Decision dated January 20, 2009, containing the following pronouncement:

To clarify matters, the plaintiff[12] engaged the services of Ricardo S. Cruz, a licensed Geodetic Engineer, to plot and verify the plans and technical descriptions to determine the relative geographic positions of the land covered by the titles of plaintiff and defendant.[13] This verification survey was approved by the Regional Technical Director of Lands on May 23, 1996, under plan VS-04-000394. (Exh. T-1, T-2, T-3, T-4, T-5). This plan revealed that Psu-234002, in relation to T.C.T. No. 153101 of the defendant overlapped thus:

a. A portion of 567 square meters of Lot No. 29, Block 3, (LRC) Pcs-7305, covered by plaintiff's T.C.T. No. 250242. This is the portion where the defendant built a riprapping.

b. A portion of 1,389 square meters of Lot No. 30, Block 3, (LRC) Pcs-7305, covered by plaintiff's T.C.T. No. 250243. This is the portion where the defendant had constructed an old building.

c. A portion of 1,498 square meters of Lot No. 31, Block 3, (LRC) Pcs-7305, covered by plaintiff's T.C.T. No. 250244. This is the portion where the defendant constructed a new multi-story edifice.

x x x x x x x x x

The issues sought to be resolved x x x can be read in the respective memorandum [sic] submitted by the parties.

For the plaintiff, the statement of issues are as follows:

1. Whether x x x the Certificate of Title of the defendant overlapped and thus created a cloud on plaintiff T.C.T. Nos. 250242, 250243, 250244, covering lots nos. 29, 30, and 31, block 3 (LRC) PCS-7305, which should be removed under Article 476 of the Civil Code of the Philippines;

2. Whether x x x defendant's T.C.T. No. 153101 should be cancelled insofar as it overlapped Lots 29, 30 and 31, Block 3, (LRC) PCS-7305;

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[12] Martinez.

[13] Las Brisas.

3. Whether x x x the defendant is a builder in bad faith and is liable for the consequence of his acts;

4. Whether x x x the plaintiff is entitled to collect actual or compensatory and moral damages in the amount of ₱5,000,000.00, exemplary damage in the amount of ₱1,000,000.00, nominal damage in the amount of ₱1,000,000.00, and attorney's fees in the amount of ₱300,000.00, exclusive of appearance fee of ₱3,000.00 per hearing or unferome [sic] attended.

For defendants, the issues presented are:

1. Whether x x x defendant's title over the property is valid and effective;

2. Whether x x x defendant is an innocent purchaser for value;

3. Whether x x x defendant is entitled to reimbursement for expenses in developing the property.

For its evidence in chief, plaintiff presented Nestor Quesada (direct, June 7, 2001; cross July 26, 2001) rested its case on October 4, 2001. Its Formal Offer of Evidence as filed with the Court on November 15, 2001 wherein Court Order dated January 15, 2002, Exhibits A to U, inclusive of their submarkings were admitted over the objections of defendant.

The defendant presented Eufracia Naidas (direct/cross on July 11, 2004), then rested its case on May 11, 2005, the Formal Offer of Evidence was filed in Court on June 10, 2005 wherein the Court Order dated June 27, 2005, Exhibits 1 to 7 inclusive of submarkings were all admitted over plaintiff's objections.

x x x x x x x x x

Considering that the defendant has raised the defense of the validity of T.C.T. No. N-21871 of the Registry of Deeds, Marikina (Exhibit 1), and subsequently cancelled by T.C.T. No. 153101 as transferred to the Pen Development Corp. (Exh. 2) and introduced substantial improvements thereon which from the facts established and evidence presented during the hearings of the case it cannot be denied that said title over the property in question is genuine and valid. Moreover, the defendant obtained the property as innocent purchasers for value, having no knowledge of any irregularity, defect, or duplication in the title.

Defendant further argued that there is no proof to plaintiff's claim that it had sent notices and claims to defendant. Assuming that notices were sent to defendant as early as 1968, it took plaintiff almost thirty (30) years to file the action to quiet its title. Therefore, by the principle of laches it should suffer the consequence of its failure to do so within a reasonable period of time. x x x

Defendant, having introduced substantial improvements on the property, if on the ground or assumption that the case will be decided in favor of the plaintiff, that defendant should be, by law, entitled to be reimbursed for the expenses incurred in purchasing and developing the property, the construction cost of the building alone estimated to be Fifty-Five Million Pesos (₱55,000,000.00) x x x.

Defendant also cited Articles 544, 546, 548 of the New Civil Code of the Philippines in further support of its defense.

It is incumbent upon the plaintiff to adduce evidence in support of his complaint x x x. Likewise, the trial shall be limited to the issues stated in the pre-trial order.

As earlier stated, the Court shall rule on whether x x x plaintiff has discharged its obligation to do so in compliance with the Rules of Court. Having closely examined, evaluated and passed upon the evidence presented by both the plaintiff and defendant the Court is convinced that the plaintiff has successfully discharged said obligation and is inclined to grant the reliefs prayed for.

Clearly this is a valid complaint for quieting of title specifically defined under Article 476 of the Civil Code and as cited in the cases of *Vda. De Angeles v. CA, G.R. No. 95748, November 21, 1996; Tan vs. Valdehuesa, 66 SCRA 61 (1975)*.

As claimed by the plaintiff, defendant's T.C.T. No. 153101 is an instrument, record or claim which constitutes or casts a cloud upon its T.C.T. Nos. 250242, 250243, and 250244. Sufficient and competent evidence has been introduced by the plaintiff that upon plotting verification of the technical description of both parcels of land conducted by Geodetic Engineer Ricardo Cruz, duly approved by the Regional Technical Director of Lands of the DENR that Psu-234002, covered by defendant's T.C.T. No. 153101 overlapped a portion of 567 square meters of Lot No. 29 x x x, a portion of 1,389 square meters of Lot No. 30 x x x covered by plaintiff's T.C.T. Nos. 250242, 250243 and 250244, respectively. Surprisingly, defendant has not disputed nor has it adduced evidence to disprove these findings.

It was likewise established that plaintiff's T.C.T. No[s]. 250242, 250243 and 250244 emanated from O.C.T. No. 756, which was originally registered on August 14, 1915, whereas, from defendant's own evidence, its T.C.T. No. 153101 was derived from O.C.T. No. 9311, which was originally registered on September 14, 1973, pursuant to Decree No. D-147380, in LRC Case No. N-7993, Rec. No. 43097.

Plaintiff's mother title was registered 58 years ahead of defendant's mother title. Thus, while defendant's T.C.T. No. 153101 and its mother title are apparently valid and effective in the sense that they were issued in consequence of a land registration proceeding, they are in truth and in fact invalid, ineffective, voidable, and unforceable [sic] insofar as it overlaps plaintiff's prior and subsisting titles.

x x x x x x x x x

In the cases of Chan vs. CA, 298 SCRA 713, de Villa vs. Trinidad, 20 SCRA 1167, Gotian vs. Gaffud, 27 SCRA 706, again the Supreme Court held:

> *'When two certificates of title are issued to different persons covering the same land, in whole or in part, the earlier in date must prevail and in cases of successive registrations where more than one certificate of title is issued over the same land, the person holding a prior certificate is entitled to the land as against a person who relies on a subsequent certificate.'*

x x x x x x x x x

Article 526 of the Civil Code defines a possession in good faith as 'one who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it, and a possession in bad faith as one who possesses in any case contrary to the foregoing.'

x x x x x x x x x

In the case of Ortiz vs. Fuentebella, 27 Phil. 537, the Supreme Court held:

> '*Thus, where defendant received a letter from the daughter of the plaintiff, advising defendant to desist from planting coconut on a land in possession of defendant, and which letter the defendant answered by saying she did not intend to plant coconuts on the land belonging to plaintiff, it was held that the possession [in] bad faith began from the receipt of such letter.'*

A close similarity exists in Fuentebella above cited with the facts obtaining in this case. The pieces evidence [sic] show that while defendant was in good faith when it bought the land from the Republic Bank as a foreclosed property, the plaintiff in a letter dated as early as March 11, 1968 x x x had advised the defendant that the land it was trying to fence is within plaintiff's property and that the defendant should refrain from occupying and building improvements thereon and from doing any act in derogation of plaintiff's property rights. Six other letters followed suit x x x. The records show that defendant received these letters but chose to ignore them and the only communication in writing from the defendant thru Paul Naidas was a letter dated July 31, 1971, stating that he (Naidas) was all the more confused about plaintiff's claim to the land. The defendant cannot dispute the letters sent because it sent a response dated July 31, 1970. It is very clear that while defendant may have been [in] good faith when it purchased the land from Republic Bank on December 6, 1977, such good faith ceased upon being informed in writing about plaintiff's title or claim over the same land, and, worse, it acted with evident bad faith when it proceed [sic] to build the structures on the land despite such notice.

Consequently, the rule on the matter can be found in Articles 449, 450 of the Civil Code of the Philippines which provide:

> *'Article 449. – He who builds, plants, or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity."*
>
> *Article 450. – The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed, or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.'*

In the case of Tan Queto vs. CA, 122 SCRA 206, the Supreme Court held:

'A builder in bad faith loses the building he builds on another's property without right of refund,' x x x

x x x x x x x x x

As to defendant's claim that they had obtained title to the property as innocent purchasers for value, lack of knowledge of any irregularity,

effect or duplication of title, they could have discovered the overlapping had they only bothered to engage a licensed geodetic engineer to check the accuracy of their plan Psu-234002. To that extent, defendant has failed to exercise the diligence to be entitled to the status as an innocent purchaser for value. It was clearly established that defendant's certificate of title emanated from a mother title that partially overlapped the plaintiff's prior and subsisting title. Hence, defendant's certificate of title is void abinittio [sic] insofar as the overlapped areas are concerned.

Defendant's claim of lack of notice on the claim of the plaintiff on the overlapped properties is belied by the evidence presented by plaintiff which consisted by [sic] a letter dated as early as March 11, 1968 (Exh. N, N-1, N-2) advising defendant that the land it was trying to fence of [sic] is within plaintiff's property, and at the same time asking the defendant to refrain from occupying and building improvements thereon and from doing any act in derogation of plaintiff's property rights. Five (5) succeeding letters addressed to defendant followed suit and the evidence clearly show that the same were received by defendant and no less than Paul Naidas wrote a reply letter to plaintiff's counsel, Alfonso Roldan on July 31, 1971 which conclusively affirm the fact that defendant is well aware of plaintiff's claim to the portion of the land encroached. Thus, the defendant's claim that it is a builder in good faith finds no factual nor legal basis. On the contrary, the defendant's continued construction and introduction of improvements on the questioned portion of plaintiff's property clearly negates good faith.

The claim for damages prayed for by plaintiff as a result of defendant's obstinate refusal to recognize [the] plaintiff's title to the land insofar as the encroachments were made and to turn over the possession thereof entitles the plaintiff to the award of moral, exemplary damages and attorney's fees. However, since no sufficient evidence was presented that the plaintiff suffered actual damages, the Court cannot award any pursuant to [Article] 2199 of the New Civil Code of the Philippines.

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant as follows:

1. Quieting its T.C.T. Nos. 250242, 240243 and 250[2]44, and removing the clouds thereon created by the issuance of T.C.T. No. 153101 insofar as the said titles are overlapped by the T.C.T. No. 153101;

2. Ordering the cancellation or annulment of portions of T.C.T. No. 153101 insofar as it overlaps plaintiff's T.C.T. No. 250242, to Lot 29, Block 3, (LRC) Pcs-7305; plaintiff's T.C.T. No. 250243 to Lot 30, Block 3 (LRC) Pcs-7305; and plaintiff's [TCT] No. 250244 to Lot 31, Block 3, (LRC) Pcs-7305;

3. Ordering the defendant to vacate and turn over the possession of said portions in favor of the plaintiff, and to remove the building or structures it has constructed thereon at its own expense without right to indemnity [therefor]; to allow the plaintiff to appropriate what the defendant has built or to compel the defendant to pay for the value of the land encroached upon;

4. Ordering the defendant to pay moral damages to the plaintiff in the amount of ₱1,000,000.00; exemplary damages in the amount of ₱1,000,000.00 and attorney's fees in the amount of ₱100,000.00.

5. Ordering the defendant to pay for the cost of suit.

SO ORDERED.[14]

Petitioners filed a joint Motion for Reconsideration.[15] However, in an August 7, 2009 Order,[16] the RTC held its ground.

Ruling of the Court of Appeals

Petitioners interposed an appeal before the CA, docketed as CA-G.R. CV No. 97478. They argued that the trial court erred in giving probative value to respondent's documentary evidence despite its hearsay character; that the trial court erred in declaring them builders in bad faith; that the respondent is guilty of laches; and that the lower court erred in awarding damages to respondent.

On July 17, 2013, the CA rendered the assailed Decision declaring as follows:

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[14] *Rollo*, pp. 200-207.

[15] *Id*. at 208-222.

[16] *Id*. at 245-251.

The appeal fails.

Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another.

Article 528 of the New Civil Code provides that possession acquired in good faith does not lose this character, except in a case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully. Possession in good faith ceases from the moment defects in the title are made known to the possessors, by extraneous evidence or by suit for recovery of the property by the true owner. Whatever may be the cause or the fact from which it can be deduced that the possessor has knowledge of the defects of his title or mode of acquisition, it must be considered sufficient to show bad faith.

In the instant case, as early as 1968, Martinez sent several letters to Las Brisas informing the latter of Martinez's ownership over the land covered by TCT Nos. 250242, 250243 and 250244 and that the buildings and improvements Las Brisas made have encroached on the said property. In the *Letter* dated 11 March 1968, Martinez informed Las Brisas that the latter's fence had overlapped into the former's land and requested that Las Brisas refrain from entering Martinez's property. However, Las Brisas did not heed Martinez's demand and continued developing its property. Martinez sent six (6) more letters to Las Brisas reiterating that the latter's structures and improvements encroached on Martinez's land. Records show that Las Brisas received these notices and in fact, made a reply to one of Martinez's letters. Clearly, Las Brisas was informed on several occasions about Martinez's titles x x x over its land and, despite such notices, Las Brisas chose to ignore Martinez's demand and continued constructing other buildings and improvements that intruded into Martinez's property. Hence, Las Brisas cannot claim that it had no knowledge of the defects of its title and, consequently, cannot be considered in good faith.

Neither did Las Brisas bother to have its property surveyed in order to discover, for its own benefit, the actual boundaries of its land (TCT No. 153101). It is doctrinal in land registration law that possession of titled property adverse to the registered owner is necessarily tainted with bad faith. Thus, proceeding with the construction works on the overlapped portions of TCT Nos. 250242, 250243 and 250244 despite knowledge of Martinez's ownership thereof puts Las Brisas in bad faith.

Las Brisas further argues that Martinez is guilty of laches as it failed to assert its right over the encroached portions of TCT Nos. 250242, 250243 and 250244 within reasonable time.

We disagree.

x x x x x x x x x

Furthermore, Martinez is the registered owner of TCT Nos. 250242, 250243 and 250244 and, as such, its right to demand to recover the portions thereof encroached by Las Brisas is never barred by laches. In the case of *Arroyo vs. Bocago Inland Dev't Corp.*, the Supreme Court held:

> 'As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.'

Las Brisas argues that the court *a quo* erred in admitting Martinez's Relocation Survey of Lot Nos. 28, 29 and 30 and the Verification Plan Vs-04-00394 as they constitute hearsay evidence and as such are inadmissible.

We are not persuaded.

It bears noting that this issue of hearsay evidence was raised for the first time on appeal. It is a fundamental rule that no question will be entertained on appeal unless it has been raised below. Stated differently, issues of fact and arguments not adequately brought to the attention of the lower courts will not be considered by the reviewing courts as they cannot be raised for the first time on appeal. An issue,

which was neither averred in the complaint nor raised during the trial in the lower courts, cannot be raised for the first time on appeal because it would be offensive to the basic rule of fair play and justice, and would be violative of the constitutional right to due process of the other party. In fact, the determination of issues at the pre-trial bars consideration of other issues or questions on appeal.

In this case, Las Brisas failed to raise this argument during pre-trial and in the trial proper. Las Brisas even failed to [raise] its objection during Martinez's formal offer of evidence. Clearly, Las Brisas waived its right to object on [sic] the admissibility of Martinez's evidence. Thus, We cannot bend backwards to examine this issue raised by Las Brisas at this late stage of the proceedings as it would violate Martinez's right to due process and should thus be disregarded.

Anent the award of moral damages of Php1,000,000.00 and exemplary damages of Php1,000,000.00, We find the same without factual or legal basis.

A juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering, or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock. While the courts may allow the grant of moral damages to corporations in exceptional situations, it is not automatically granted because there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendant's acts. Moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. In this case, We find no evidence that Martinez suffered besmirched reputation on account of the Las Brisas encroachment on Martinez's land. Hence, the award of moral damages should be deleted.

Neither is Martinez entitled to exemplary damages. Exemplary damages may only be awarded if it has been shown that the wrongful act was accompanied by bad faith or done in a wanton, fraudulent and reckless or malevolent manner. Exemplary damages are allowed only in addition to moral damages such that no exemplary damage can be awarded unless the claimant first establishes his clear right to moral damages. As the moral damages are improper in the instant case, so is the award of exemplary damages.

Nevertheless, an award of nominal damages of Php100,000.00 is warranted since Las Brisas violated the property rights of Martinez. The New Civil Code provides:

> Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.
>
> Art. 2222. The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, or in every case where any property right has been invaded.

The award of damages is also in accordance with Article 451 of the New Civil Code which states that the landowner is entitled to damages from the builder in bad faith.

WHEREFORE, the *Decision* dated 20 January 2009 of the Regional Trial Court of Antipolo City, Branch 71, in Civil Case No. 97-4386 is AFFIRMED with MODIFICATION, as follows:

1.) deleting the award of moral damages and exemplary damages to Martinez Leyba, Inc.; and

2.) ordering Las Brisas Resort Corporation to pay Martinez Leyba, Inc., Php100,000.00, as nominal damages.

SO ORDERED.[17] (Citations omitted)

Petitioners sought to reconsider, but were rebuffed. Hence, the present Petition.

Issues

In a June 15, 2015 Resolution,[18] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

A. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT PETITIONER IS A POSSESSOR/BUILDER IN BAD FAITH.

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[17] *Id*. at 46-52.

[18] *Id*. at 425-426.

B. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO RULE THAT THE RESPONDENT INCURRED LACHES IN ENFORCING ITS PUTATIVE RIGHTS.

C. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT THE ISSUE ON HEARSAY CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.[19]

Petitioners' Arguments

In praying that the assailed CA and trial court dispositions be set aside and that Civil Case No. 97-4386 be dismissed instead, petitioners argue in their Petition and Reply[20] that they are not builders in bad faith; that in constructing the improvements subject of the instant case, they merely relied on the validity and indefeasibility of their title, TCT 153101; that until their title is nullified and invalidated, the same subsists; that as builders in good faith, they are entitled either to a) a refund and reimbursement of the necessary expenses, and full retention of the land until they are paid by respondent, or b) removal of the improvements without damage to respondent's property; that contrary to the CA's pronouncement, respondent may be held accountable for laches in filing a case only after the lapse of thirty years; and that the Survey Plan of Lots 29, 30 and 31 and the Verification Survey Plan Vs-04-000394 are inadmissible in evidence for being hearsay, as they were not authenticated in court.

Respondent's Arguments

Respondent, on the other hand, counters in its Comment[21] that the CA is correct in declaring that petitioners are possessors and builders in bad faith; that while petitioners may have been innocent purchasers for value, they were not possessors and

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[19] *Id*. at 17-18.

[20] *Id*. at 405-411.

[21] *Id*. at 369-387.

builders in good faith because despite having been regularly informed in writing that they encroached on respondent's land and are building illegal structures thereon, they continued with their illegal occupation and construction; that under the Civil Code, petitioners are not entitled to retention or reimbursement for being builders in bad faith; that the principle of laches does not apply against owners of land registered under the Torrens system of land registration; and that petitioners cannot be allowed to argue for the first time on appeal that the pieces of documentary evidence it presented before the trial court are hearsay.

Our Ruling

The Court denies the Petition.

Under the Manual on Land Survey Procedures of the Philippines, on Verification Surveys, particularly, it is provided, thus:

> Section 146. The Regional Technical Director for Lands may issue order to conduct a verification survey whenever any approved survey is reported to be erroneous, or when titled lands are reported to overlap or where occupancy is reported to encroach another property. x x x
>
> x x x x x x x x x
>
> Section 149. All survey work undertaken for verification purposes shall be subject of verification and approval in the DENR-LMS Regional Office concerned and shall be designated as Verification Surveys (Vs). x x x

Pursuant to these provisions, respondent caused its property to be surveyed, and on May 23, 1996, the Regional Technical Director of Lands approved the verification survey under Verification Survey Plan Vs-04-000394.[22] This Verification Survey Plan revealed that petitioners encroached on respondent's land to the following extent:

a. A portion of 567 square meters of Lot No. 29, Block 3, (LRC) Pcs-7305, covered by respondent's TCT 250242. This is the portion where the petitioners built a riprapping.

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[22] Annex "E", records, p. 13.

b. A portion of 1,389 square meters of Lot No. 30, Block 3, (LRC) Pcs-7305, covered by respondent's TCT 250243. This is the portion where the petitioners had constructed an old building.

c. A portion of 1,498 square meters of Lot No. 31, Block 3, (LRC) Pcs-7305, covered by respondent's TCT 250244. This is the portion where the petitioners constructed a new multi-story edifice.

On this basis, respondent filed Civil Case No. 97-4386. Respondent's main evidence is the said Verification Survey Plan Vs-04-000394, which is a public document. As a public document, it is admissible in evidence even without further proof of its due execution and genuineness,[23] and had in its favor the presumption of regularity. To contradict the same, there must be evidence that is clear, convincing and more than merely preponderant, otherwise the document should be upheld.[24] The certification and approval by the Regional Technical Director of Lands signifies the "technical correctness of the survey plotted in the said plan."[25]

On the other hand, petitioners' evidence consists mainly of the claim that their TCT 153101 is a valid title and that they purchased the land covered by it in good faith and for value. They did not present evidence to contradict respondent's Verification Survey Plan VS-04-000394; in other words, no evidence was presented to disprove respondent's claim of overlapping. Their evidence only goes so far as proving that they acquired the land covered by TCT 153101 in good faith. However, while it may be true that they acquired TCT 153101 in good faith and for value, this does not prove that they did not encroach upon respondent's lands.

In effect, respondent's Verification Survey Plan Vs-04-000394 remains unrefuted. Petitioners' sole objection to this piece of

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[23] *Iwasawa v. Gangan*, 717 Phil. 825, 830 (2013).

[24] *Ladignon v. Court of Appeals*, 390 Phil. 1161, 1172 (2000).

[25] *Republic v. Dayaoen*, G.R. No. 200773, July 8, 2015, 762 SCRA 310, 337.

evidence that it was not authenticated during trial is of no significance considering that the said documentary evidence is a public document.

Although "[i]n overlapping of titles disputes, it has always been the practice for the [trial] court to appoint a surveyor from the government land agencies [such as] the Land Registration Authority or the DENR to act as commissioner,"[26] this is not mandatory procedure; the trial court may rely on the parties' respective evidence to resolve the case.[27] In this case, respondent presented the results of a verification survey conducted on its lands. On the other hand, petitioners did not present proof like the results of a survey conducted upon their initiative to contradict respondent's evidence; nor did they move for the appointment by the trial court of government or private surveyors to act as commissioners. Their sole defense is that they acquired their land in good faith and for value; but this does not squarely address respondent's claim of overlapping.

For the RTC and CA, respondent's undisputed evidence proved its claim of overlapping. This Court agrees. As a public document containing the certification and approval by the Regional Technical Director of Lands, Verification Survey Plan Vs-04-000394 can be relied upon as proof of the encroachment over respondent's lands. More so when petitioners could not present contradictory proof.

On the issue of being a builder in bad faith, there is no question that petitioners should be held liable to respondent for their obstinate refusal to abide by the latter's repeated demands to cease and desist from continuing their construction upon the encroached area. Petitioners' sole defense is that they purchased their property in good faith and for value; but this does not squarely address the issue of encroachment or overlapping. To repeat, while petitioners may have been innocent purchasers

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[26] *Cambridge Realty and Resources Corporation v. Eridanus Development, Inc.*, 579 Phil. 375, 395-396 (2008).

[27] *Id*.

for value with respect to their land, this does not prove that they are equally innocent of the claim of encroachment upon respondent's lands. The evidence suggests otherwise: despite being apprised of the encroachment, petitioners turned a blind eye and deaf ear and continued to construct on the disputed area. They did not bother to conduct their own survey to put the issue to rest, and to avoid the possibility of being adjudged as builders in bad faith upon land that did not belong to them.

Under the Civil Code,

> Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.
>
> Art. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.
>
> Art. 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.

Moreover, it has been declared that

> The right of the owner of the land to recover damages from a builder in bad faith is clearly provided for in Article 451 of the Civil Code. Although said Article 451 does not elaborate on the basis for damages, the Court perceives that it should reasonably correspond with the value of the properties lost or destroyed as a result of the occupation in bad faith, as well as the fruits (natural, industrial or civil) from those properties that the owner of the land reasonably expected to obtain. x x x[28]

For their part, petitioners are not entitled to reimbursement for necessary expenses. Indeed, under Article 452 of the Civil Code,[29]

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[28] *Heirs of Durano, Sr. v. Spouses Uy*, 398 Phil. 125, 155 (2000).

[29] Art. 452. The builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land.

the builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land. However, in this case, respondent's lands were not preserved: petitioners' construction and use thereof in fact caused damage, which must be undone or simply endured by respondent by force of law and circumstance. Respondent did not in any way benefit from petitioners' occupation of its lands.

Finally, on the question of laches, the CA correctly held that as owners of the subject property, respondent has the imprescriptible right to recover possession thereof from any person illegally occupying its lands. Even if petitioners have been occupying these lands for a significant period of time, respondent as the registered and lawful owner has the right to demand the return thereof at any time.

> Jurisprudence consistently holds that 'prescription and laches cannot apply to registered land covered by the Torrens system' because 'under the Property Registration Decree, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession.'[30]

Under Section 47 of the Property Registration Decree, or Presidential Decree No. 1529, "(n)o title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession."

WHEREFORE, the Petition is **DENIED**. The July 17, 2013 Decision and March 28, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 97478 are **AFFIRMED *in toto***.

SO ORDERED.

Sereno, C.J. (Chairperson) and *Perlas-Bernabe, J.,* concur.

Caguioa, J., see concurring and dissenting opinion.

Leonardo-de Castro, J., joins the concurring and dissenting opinion of *J.* Caguioa.

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[30] *Spouses Ocampo v. Heirs of Bernardino U. Dionisio*, 744 Phil. 716, 730 (2014), citing *Jakosalem v. Barangan*, 682 Phil. 130, 142 (2012).

CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

This case is NOT a simple boundary dispute where a neighbor builds a structure on an adjacent registered land belonging to another. Here, the area where the former had built happens to be within the land registered in his name which overlaps with the titles of the latter. Thus, this is a proper case of overlapping of certificates of title belonging to different persons.

Given the fact that this case involves overlapping of titles, I fully concur with the Decision that as between Martinez Leyba, Inc. (MLI) and Las Brisas Resorts Corp.[1] (Las Brisas), MLI has a superior right to the overlapped or encroached portions in issue being the holder of a transfer certificate of title that can be traced to the earlier original certificate of title.

In case of double registration where land has been registered in the name of two persons, priority of registration is the settled rule. In the 1915 *en banc* case of *Legarda v. Saleeby*,[2] the Court stated:

> **We have decided, in case of double registration under the Land Registration Act, that the owner of the earliest certificate is the owner of the land**. That is the rule between original parties. May this rule be applied to successive vendees of the owners of such certificates? Suppose that one or the other of the parties, before the error is discovered, transfers his original certificate to an "innocent purchaser." The general rule is that the vendee of land has no greater right, title, or interest than his vendor, that he acquires the right which his vendor had, only. Under that rule the **vendee of the earlier certificate would be the owner as against the vendee of the owner of the later certificate**.[3] (Emphasis and underscoring supplied)

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[1] Pen Development Corp. merged with Las Brisas Resorts Corp and the latter is the surviving entity; see *rollo*, p. 43.

[2] 31 Phil. 590 (1915).

[3] *Id*. at 598-599.

TCT Nos. 250242, 250243 and 250244 registered in the name of MLI conflict with TCT No. 153101 registered in the name of Las Brisas. There is encroachment or overlapping of: (1) a portion of 567 square meters in TCT No. 250242 where Las Brisas built a riprapping; (2) a portion of 1,389 square meters in TCT No. 250243 where Las Brisas constructed an old building; and (3) a portion of 1,498 square meters in TCT No. 250244 where Las Brisas constructed a new multi-story edifice. The overlapped portions add up to 3,454 square meters. Given that the total area of TCT No. 153101 is 3,606 square meters and 3,454 square meters will be deducted therefrom because that portion rightfully pertains to MLI pursuant to prevailing and settled rule on double registration, only 152 square meters will remain under TCT No. 153101 in the name of Las Brisas.

However, I cannot agree with the finding that Las Brisas is a builder in bad faith. Thus, my dissent tackles directly and mainly the issue of good faith on the part of a registered owner (Las Brisas) who built within a portion of the parcel of land delimited by the boundaries or technical descriptions of its own certificate of title that turns out to be within the boundaries or technical descriptions of the adjoining titled parcels of land despite prior written notices by the registered owner (MLI) of the adjoining parcels of land that the former owner was building within the latter owner's registered property.

The Decision rules in favor of MLI and affirms the finding of the Court of Appeals (CA) that Las Brisas is a builder in bad faith. The CA Decision states:

> [W]hile [Las Brisas] may have been [an] innocent [purchaser] for value with respect to [its] land, this does not prove that they are equally innocent of the claim of encroachment upon [MLI]'s lands. The evidence suggest otherwise; despite being apprised of the encroachment, [Las Brisas] turned a blind eye and deaf ear and continued to construct on the disputed area. They did not bother to conduct their own survey to put the issue to rest, and to avoid the possibility of being adjudged as builders in bad faith upon land that did not belong to them.[4]

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[4] Decision, p. 15.

With due respect, the determination of the good faith of Las Brisas should not be made to depend solely on the written notices sent by MLI to Las Brisas warning the latter that it was building and making improvements on MLI's parcels of land. I firmly subscribe to the view that the fact that Las Brisas built within its titled property and the doctrine of indefeasibility or incontrovertibility of its certificate of title should also be factored in.

The provision of the Civil Code on the definition of a possessor in good faith, Article 526, provides:

> ART. 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.
>
> He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.
>
> Mistake upon a doubtful or difficult question of law may be the basis of good faith.

In turn, Article 528 of the Civil Code provides: "Possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully."

When did Las Brisas became aware of facts which show that it was possessing the disputed areas or portions improperly or wrongfully? There are several ***en banc*** Decisions of the Court which may find application in this case. These are *Legarda v. Saleeby*[5] (1915), *Dizon v. Rodriguez*[6] (1965), *De Villa v. Trinidad*[7] (1968) and *Gatioan v. Gaffud*[8] (1969).

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[5] *Supra* note 2.

[6] 121 Phil. 681 (1965).

[7] 131 Phil. 269 (1968).

[8] 137 Phil. 125 (1969).

In *Legarda*, the Court had to grapple with Sections 38,[9] 55[10] and 112[11] of Act No. 496 which indicate that the vendee may acquire rights and be protected against the defenses which the vendor would not and speak of available rights in favor of third parties which are cut off by virtue of the sale of the land to an "innocent purchaser."[12] Thus, the Court said:

> May the purchaser of land which has been included in a "second original certificate" ever be regarded as an "innocent purchaser," as against the rights or interest of the owner of the first original certificate, his heirs, assigns, or vendee? The first original certificate is recorded in the public registry. It is never issued until it is recorded. The record is notice to all the world. All persons are charged with the knowledge of what it contains. All persons dealing with the land so recorded, or any portion of it, must be charged with notice of whatever it contains. The purchaser is charged with notice of every fact shown by the record and is presumed to know every fact which the record discloses. x x x
>
> When a conveyance has been properly recorded such record is constructive notice of its contents and all interests, legal and equitable, included therein. x x x
>
> Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrebutable. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith. Otherwise the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the

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[9] Now Sec. 32, Presidential Decree No. (PD) 1529 or the Property Registration Decree. It is in this section that the phrase "innocent purchaser for value" is mentioned and it is deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

[10] Now Sec. 53, PD 1529.

[11] Now Sec. 108, PD 1529.

[12] *Legarda v. Saleeby*, *supra* note 2, at 599.

public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.

x x x x x x x x x

In view, therefore, of the foregoing rules of law, may the purchaser of land from the owner of the second original certificate be an "innocent purchaser," when a part or all of such land had theretofore been registered in the name of another, not the vendor? We are of the opinion that said sections 38, 55, and 112 should not be applied to such purchasers. We do not believe that the phrase "innocent purchaser" should be applied to such a purchaser. He cannot be regarded as an "innocent purchaser" because of the facts contained in the record of the first original certificate. x x x He, in no sense, can be an "innocent purchaser" of the portion of the land included in another earlier original certificate. The rule of notice of what the record contains precludes the idea of innocence. By reason of the prior registry there cannot be an innocent purchaser of land included in a prior original certificate and in a name other than that of the vendor, or his successor. In order to minimize the difficulties we think this is the safer rule to establish. We believe the phrase "innocent purchaser," used in said sections, should be limited only to cases where unregistered land has been wrongfully included in a certificate under the torrens system. When land is once brought under the torrens system, the record of the original certificate and all subsequent transfers thereof is notice to all the world. x x x[13] (citations omitted)

***Legarda* was concerned more with the issue of ownership than with the issue of possession:** To bar transferees of the "second or later original certificate of title" from ever having a right of ownership superior to those who derive their title from the "earlier or first original certificate of title," *Legarda* ruled that the "innocent purchaser [for value]" doctrine should not apply because "[w]hen land is once brought under the torrens system, the record of the original certificate and all subsequent transfers thereof is notice to all the world."[14] However, that notice is constructive and not actual.

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[13] *Id*. at 600-602.

[14] *Id*. at 602.

If *Legarda* is strictly and uniformly applied, then holders of transfer certificates of title emanating from the "second or later original certificate of title" or any person deriving any interest from them can never be buyers in good faith.

I am not advocating in this dissent that the *Legarda* doctrine on double registration or titling be abandoned or overturned. I submit that it is and remains controlling in that respect. Rather, I take the position that a wholesale, indiscriminate, blind application of the constructive notice doctrine espoused in *Legarda* without regard to the peculiar factual circumstances of each case may not be the best approach to dispense justice.

Dizon v. Rodriguez[15] did not involve double registration. It involved titled lots which are "actually part of the territorial waters and belong to the State."[16] While the Court ruled that "the incontestable and indefeasible character of a Torrens certificate of title does not operate when the land thus covered is not capable of registration,"[17] the Court nonetheless upheld the CA's finding of possession in good faith in favor of the registered owners ***until the latter's titles were declared null and void***, *viz*.:

> On the matter of possession of plaintiffs-appellants, the ruling of the Court of Appeals must be upheld. There is no showing that plaintiffs are not purchasers in good faith and for value. ***As such title-holders, they have reason to rely on the indefeasible character of their certificates***.
>
> On the issue of good faith of the plaintiffs, the Court of Appeals reasoned out:
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> > "The concept of possessor in good faith given in Art. 526 of the Civil Code and when said possession loses this character under Art. 528, needs to be reconciled with the doctrine of indefeasibility of a Torrens title. Such reconciliation can only be achieved by holding that the possessor with a Torrens title

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[15] *Supra* note 6.

[16] *Id*. at 686.

[17] *Id*.

is not aware of any flaw in his title which invalidates it until his Torrens Title is declared null and void by final judgment of the Courts.

"Even if the doctrine of indefeasibility of a Torrens Title were not thus reconciled, the result would be the same, considering the third paragraph of Art. 526 which provides that:

Art. 526. x x x

'Mistake upon a doubtful or difficult question of law may be the basis of good faith.'

"The legal question whether plaintiffs-appellants' possession in good faith, under their Torrens Titles acquired in good faith, does not lose this character except in the case and from the moment their Titles are declared null and void by the Courts, is a difficult one. Even the members of this Court were for a long time divided, two to one, on the answer. It was only after several sessions, where the results of exhaustive researches on both sides were thoroughly discussed, that an undivided Court finally found the answer given in the next preceding paragraph. Hence, even if it be assumed for the sake of argument that the Supreme Court would find that the law is not as we have stated it in the next preceding paragraph and that the plaintiffs-appellants made a mistake in relying thereon, such mistake on a difficult question of law may be the basis of good faith. Hence, their possession in good faith does not lose this character except in the case and from the moment their Torrens Titles are declared null and void by the Courts."

Under the circumstances of the case, especially where the subdivision plan was originally approved by the Director of Lands, we are not ready to conclude that the above reasoning of the Court of Appeals on this point is reversible error. Needless to state, as such occupants in good faith, plaintiffs have the right to the retention of the property until they are reimbursed of the necessary expenses made on the lands.[18] (Emphasis and italics supplied)

The Court, in *De Villa v. Trinidad*,[19] while it cited *Legarda*, did not apply the constructive notice doctrine in determining

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[18] *Id*. at 686-687.

[19] *Supra* note 7.

whether necessary and useful expenses may be recovered by a transferee of the "second original certificate" and reckoned the said transferee's bad faith from the filing of the complaint, *viz*.:

> We have laid the rule that where two certificates of title are issued to different persons covering the same land in whole or in part, the earlier in date must prevail as between original parties and in case of successive registrations where more than one certificate is issued over the land, the person holding under the prior certificate is entitled to the land as against the person who rely on the second certificate. The purchaser from the owner of the later certificate and his successors, should resort to his vendor for redress, rather than molest the holder of the first certificate and his successors, who should be permitted to rest secure in their title. Consequently, since Original Certificate of Title No. 183 was registered on January 30, 1920, De Villa's claim which is based on said title should prevail, as against Trinidad's whose original title was registered on November 25, 1920. And from the point of equity, this is the proper solution, considering that unlike the titles of Palma and the DBP, De Villa's title was never tainted with fraud.
>
> x x x x x x x x x
>
> The facts and circumstances, however, do not call for assessment of damages against appellants until after the filing of the present suit on January 26, 1962 for only then could they be positively adjudged in bad faith in view of their knowledge that there was an adverse claimant to the land.
>
> Trinidad's repossession of the land on March 2, 1961 cannot be deemed in bad faith as it was pursuant to a court order legally obtained, and as his possession before that time was in good faith.
>
> Appellant does not question the specific *amounts* of the damages[20] awarded in De Villa's favor and the same, at any rate, is borne out by the records. Said damages, however should be offset against the value of whatever necessary and useful expenses and improvements were made or incurred by Trinidad with respect to the land, provided

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[20] "₱48,000.00 per annum representing the value of the abaca fibers derived from the land plus the further sum of ₱360.00 every two months representing the value of the harvests from coconuts, starting from the period beginning March 2, 1961 until possession of the property is restored to the plaintiff." *Id.* at 275-276.

that in the case of useful expenses or improvements these were made or incurred prior to the filing of the present action. Such reimbursable amount due to Trinidad must, therefore, first be determined before the aforesaid award of damages in De Villa's favor can be executed. And its determination shall be by way of supplementary proceedings in aid of execution in the lower court.[21]

In *Gatioan v. Gaffud*,[22] the Court did not only cite *Legarda* but held it controlling. In that case, while the appellant therein (Philippine National Bank) did not impugn the lower court's ruling in declaring null and void and cancelling OCT No. P-6038 in favor of defendant spouses Gaffud and Logan, it insisted that the lower court should have declared it an innocent mortgagee in good faith and for value as regards the mortgages executed in its favor by said defendant spouses and duly annotated on their OCT and that consequently, the said mortgage annotations should be carried over to and considered encumbrances on the land covered by TCT No. T-1212 of appellee which is the identical land covered by the OCT of the Gaffuds. The Court found the contention of the appellant therein without merit and quoted extensively *Legarda* wherein the Court held that the purchaser of the land or a part thereof which has been included in a "second original certificate" cannot be regarded as an "innocent purchaser" under Sections 38, 55, and 112 of Act No. 496 because of the facts contained in the record of the first original certificate.

However, in the same breath, the Court also took judicial notice that before a bank grants a loan on the security of a land, it first undertakes a careful examination of title of the applicant as well as a physical and on-the-spot investigation of the land itself offered as security. In that case, had the appellant bank taken such a step which was demanded by the most ordinary prudence, it would have easily discovered the flaw in the title of the defendant spouses. As such, it was held guilty of gross negligence in granting the loans in question. The Court further said:

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[21] *De Villa v. Trinidad*, *supra* note 7, at 277-278.

[22] *Supra* note 8.

A more factual approach would lead to the same result. From the stipulated facts, it can be seen that prior to the execution of the mortgage between appellant and the defendant spouses, the appellee had been mortgaging the land described in TCT No. T-1212 to it. She did this first in the year 1950 for a loan of ₱900.00 and again in 1954 for a loan of ₱1,100.00. In both instances, the appellant Bank had possession of, or at least, must have examined appellee's title, TCT No. T-1212, wherein appear clearly the technical description, exact area, lot number and cadastral number of the land covered by said title. In other words, by the time the defendant spouses offered OCT P-6038, in their names, for scrutiny in connection with their own application for loan with appellant, the latter was charged with the notice of the identity of the technical descriptions, areas, lot numbers and cadastral numbers of the lands purportedly covered by the two titles and was in a position to know, if it did not have such knowledge actually, that they referred to one and the same lot. Under the circumstances, appellant had absolutely no excuse for approving the application of the defendant spouses and giving the loans in question. x x x[23]

Thus, the Court in *Gatioan* took "a more factual approach" in determining the good faith of the mortgagee who derived its right from the owner of the "second original certificate" and it did not simply apply the constructive notice doctrine espoused in *Legarda*.

In the Decision, the factual approach is being adopted. This is evident when it reproduced the Regional Trial Court of Antipolo City, Branch 71 (RTC) Decision's citation and discussion of *Ortiz v. Fuentebella*,[24] wherein it was held that the defendant's possession in bad faith began from the receipt by the defendant of a letter from the daughter of the plaintiff therein, advising the defendant to desist from planting on a land in possession of the defendant. The RTC noted that:

A close similarity exists in [*Ortiz*] with the facts obtaining in this case. The pieces evidence [sic] show that while defendant was in good faith when it bought the land from the Republic Bank as a foreclosed property, the plaintiff in a letter dated as early as March 11, 1968 x x x had advised the defendant that the land it was trying

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[23] *Gatioan v. Gaffud*, *supra* note 8, at 132-133.

[24] 27 Phil. 537 (1914).

to fence is within plaintiff's property and that the defendant should refrain from occupying and building improvements thereon and from doing any act in derogation of plaintiff's property rights. Six other letters followed suit x x x.[25] The records show that defendant received these letters but chose to ignore them and the only communication in writing from the defendant thru Paul Naidas was a letter dated July 31, 1971, stating that he (Naidas) was all the more confused about plaintiff's claim to the land. x x x[26]

Unfortunately, *Ortiz* — decided "103 years ago" according to the *ponente* — is not squarely in point. There, the subject land is not registered land. It was merely covered by a possessory information title, which was allowed under the Spanish Mortgage Law.[27] The *informacion posesoria* was a method of acquiring title to public lands, subject to two conditions, to wit: (1) the inscription or registration thereof in the Registry of Property, and (2) actual, public, adverse and uninterrupted possession of the land for 20 years.[28]

If the constructive notice doctrine embodied in Section 52[29] of PD 1529 and espoused in *Legarda* has been strictly applied in this case and the *ponente* has not taken a "more factual approach," then it would be erroneous to hold that "they [referring to petitioners, Las Brisas and Pen Development Corporation, which are one and the same entity] acquired TCT 153101 in good faith and for value" or "petitioners may have been innocent

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[25] In the letters (Exhs. "M", "N", "O", "P", "R", and "S") it will be noted that MLI indicated the TCT Nos. of the land being claimed by MLI where Las Brisas was introducing improvements and their predecessor certificates of title.

[26] Decision, pp. 6-7.

[27] See *Republic v. Court of Appeals*, 230 Phil. 118, 120 (1986).

[28] *Republic v. Court of Appeals*, 244 Phil. 387, 389-390 (1988).

[29] Sec. 52. *Constructive notice upon registration*. — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument, or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

purchasers for value with respect to their land," and that Las Brisas' good faith turned into bad faith upon "being apprised of the encroachment" by MLI — because Las Brisas should automatically be deemed to have had constructive notice of MLI's certificates of title that overlapped the certificate of title of Republic Bank which Las Brisas acquired as a foreclosed property. By the same token, a finding that Las Brisas is an "innocent purchaser for value with respect to its land" is precisely what *Legarda* wanted to avoid because that would result in a transferee of the "second or later original certificate of title" having a right of ownership superior to that of a transferee of the "first or earliest original certificate of title." Clearly, the Decision here betrays a fundamental confusion on the import of these earlier rulings.

I agree that the factual approach is preferable over the indiscriminate application of the constructive notice doctrine in cases of double registration with respect to the determination of the good faith or bad faith **of the possessor or builder who derives his right from** the "second original certificate of title."

I must emphasize that, in this case, the issue of good faith or bad faith is being decided in relation to possession, independently of ownership. *Legarda* already grants the ownership of the overlapped portions in favor of MLI, being a vendee who derives its title from the "earlier original certificate of title" based on the rule that "the vendee of land has no greater right, title, or interest than his vendor, that he acquires the right which his vendor had, only."

In the instant case, the accurate question to ask is this: were the letters of MLI sufficient to put Las Brisas on notice that it was **possessing** the disputed areas or portions improperly or wrongfully?

To my mind, those letters were insufficient even if the transfer certificates of title of MLI were specified therein. **Following the en banc cases of *Dizon, De Villa and Gatioan*, I believe that Las Brisas could *not* be faulted for relying on its own certificate of title which, until nullified or voided by a court of competent jurisdiction, is incontrovertible or indefeasible — and it would be unjust to expect Las Brisas to make a legal determination of the validity of its certificate of title.**

It should be mentioned that Las Brisas bought the land in a foreclosure sale. Furthermore, Las Brisas should not be blamed for the failure of the government agency concerned to ascertain the overlapping when it approved the survey plan that became the basis for the application and approval of the confirmation of the original title of Las Brisas' predecessor-in-interest, which overlapping also escaped the attention of the court that granted the application and confirmed the title. Even the Assessor's Office of Antipolo City never noticed the overlapping since there is no indication thereof in the parties' respective declarations of real property value for real property tax purposes. As formulated in *Dizon*, the matter indeed involves a doubtful or difficult question of law which, under Article 526, may be the basis of good faith.

More importantly, it was impossible for Las Brisas to have unearthed or discovered the overlapping of titles from the records of the Antipolo City Registry of Deeds at the time it bought its land from Republic Bank and while it was building the improvements. The records of the said Registry of Deeds could not be relied upon to disclose such overlapping. Evidently, there are at least two registrations that must be scrutinized and the traceback or scrutiny of one registration will not readily reveal the existence of the others and *vice versa*. To my mind, a full proof application of the constructive notice doctrine requires that the defect or flaw in the title could be ascertained from a competent and exhaustive due diligence on the subject titled property. To require beyond that would be asking the impossible. That would be both oppressive and unjust.

The fact that Las Brisas did not present its own survey, unlike MLI, is of no moment. **What is crucial is that the improvements that Las Brisas made were within the boundaries described in its title**. This is clear from the CA Decision dated July 17, 2013 when it affirmed the Decision dated January 20, 2009 of the RTC in Civil Case No. 97-4386, "[o]rdering the cancellation or annulment of portions of T.C.T. No. 153101 [,Las Brisas' title,] insofar as it overlaps [MLI's] T.C.T. No. 250242, x x x T.C.T. No. 250243 x x x; and T.C.T. No. 250244 x x x"[30] and

[30] CA Decision, p. 2; *rollo*, p. 43.

noted that the construction works of Las Brisas were on the overlapped portions of TCT Nos. 250242, 250243 and 250244.[31]

Indeed, the real purpose of the Torrens system is to quiet title to land and to forever stop any question as to its legality, so that once a title is registered, the owner — in this case, Las Brisas — may rest secure, without the necessity of waiting in the portals of the court, or sitting on the "*mirador su casa*," to avoid the possibility of losing his land.[32] Because of this principle, MLI needed to file a complaint to directly question the validity of Las Brisas' title which resulted to its partial nullity because a collateral attack on Las Brisas' Torrens title is not allowed.[33]

Finally, even assuming that, as intimated by the *ponencia*, Las Brisas' initial good faith when it bought the property ceased when it received the seven letters from MLI, it is significant to note that the latter filed the complaint for quieting of title/cancellation of title and recovery of ownership only on March 24, 1997[34] — **almost 30 years from 1968 when MLI sent its first letter after it noticed the construction of Las Brisas' fence within the contested area, and allowing Las Brisas to develop the property and conducting its business therein, to put up a two-story building initially, and in 1988, to expand and put up a multi-story conference center**[35] **building that finished construction sometime in 1995 sourced from bank loans and costing Las Brisas ₱55,000,000.00**.[36] By no means can this be considered as MLI seasonably availing of "the means established by the laws and the Rules of Court," such as a petition for injunction with a prayer for a temporary restraining order, to protect MLI in its possession thereof or restore to MLI its

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[31] *Id*. at 7; *id*. at 48.

[32] Judge Oswaldo D. Agcaoili, *PROPERTY REGISTRATION DECREE AND RELATED LAWS* (Land Titles and Deeds) (2015), p. 295.

[33] *Id*.

[34] Complaint, *rollo*, pp. 91-99.

[35] Petition for Review, par. 13, p. 3; *id*. at 13.

[36] *Id.*, pars. 15, 16 and 17, p. 4, citing TSN, July 14, 2004, pp. 8-9; *id*. at 14.

possession over the same.[37] **These circumstances indubitably taint MLI's good faith**.[38]

Under Article 453 of the Civil Code:

> If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.
>
> It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

While MLI "opposed" the introduction of improvements by Las Brisas through the letters the former sent to the latter, this "opposition" can only be considered as token. MLI should have seasonably resorted to court action when Las Brisas kept ignoring its claim of ownership over the disputed areas.

MLI is now barred by estoppel by laches to claim good faith insofar as the construction by Las Brisas is concerned of the improvements, consisting mainly of a ₱55,000,000.00-worth multi-story building that it introduced in the disputed areas. Laches is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[39] It is a type of equitable estoppel which arises when a party, knowing his rights as against another, takes no steps or delays in enforcing them until the condition of the latter, who has no knowledge or notice that the former would assert such rights, has become so changed that he cannot without injury or prejudice, be restored to his former state.[40]

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[37] CIVIL CODE, Art. 539.

[38] It must be noted that the owners of Las Brisas acquired the titled property from Republic Bank in 1967; *rollo*, p. 13.

[39] Desiderio P. Jurado, *Comments and Jurisprudence on Obligations and Contracts* (1987 Ninth Rev. Ed.), pp. 622-623, citing *Tijam v. Sibonghanoy*, 131 Phil. 556 (1968).

[40] *Id*. at 623.

In this case, the doctrines of laches and estoppel are being invoked **in relation to the issue of possession and not with respect to ownership**. Section 47 of PD 1529 finds no application as it is confined to "title to registered land."

Given the foregoing, I take the position that Las Brisas acted in good faith, or, at the very least, be deemed to be in good faith since both Las Brisas and MLI were in bad faith following Article 453 of the Civil Code. Thus, Article 448 is controlling in determining the rights and obligations of MLI and Las Brisas with respect to the old building, the new multi-story edifice and the riprapping.

Article 448 of the Civil Code provides:

> The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

As to the riprapping, I believe that it is a necessary improvement that it is to be refunded to every possessor, whether in good faith or in bad faith, pursuant to Article 546.

Thus, I vote to **GRANT** the petition. The Decision dated July 17, 2013 and the Resolution dated March 23, 2014 of the Court of Appeals in CA-G.R. CV No. 97478 should be **REVERSED** and **SET ASIDE**.

Finding the parties to have acted in good faith insofar as the improvements introduced by petitioner Las Brisas Resort Corporation are concerned, the Regional Trial Court of Antipolo City, Branch 71 should be directed to issue an Order in Civil Case No. 97-4386, directing the parties to observe and comply with their respective rights and obligations under Article 448 of the Civil Code.

FIRST DIVISION

[G.R. No. 214771. August 9, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUBEN "ROBIN" BONGBONGA *y* NALOS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURT CARRY GREAT WEIGHT AND RESPECT ESPECIALLY WHEN SUSTAINED BY THE COURT OF APPEALS.— It is settled that in assessing the credibility of a witness, the findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the deportment of the witness while undergoing the rigors of examination. 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. Such rule finds an even more stringent application where the findings of the RTC are sustained by the CA, as in the case at bench. In this case, Ruben failed to show any misappreciation by the CA of the facts or circumstances so as to warrant a reversal of the questioned Decision. In the same vein, Ruben's arguments were already considered and thoroughly addressed by the courts below.

2. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; "SWEETHEART THEORY" DEFENSE; CONSISTENTLY DISFAVORED BY THE SUPREME COURT FOR BEING SELF-SERVING IN NATURE.— [I]t should be emphasized that the Court has consistently disfavored the "sweetheart theory" defense for being self-serving in nature. Being an affirmative defense, the allegation of a love affair must be substantiated by the accused with convincing proof. It bears noting that Ruben's defense was corroborated only by his daughter, Ruby Ann, which effectively weakened the defense, being supported by a mere relative of the accused. In *People v. Nogpo, Jr.*, the Court held that where nothing supports the sweetheart theory except the testimony of a relative, such defense deserves scant consideration.

3. ID.; ID.; ID.; THE GRAVAMEN OF THE OFFENSE IS SEXUAL INTERCOURSE WITHOUT CONSENT; ACCUSED'S GUILT BEYOND REASONABLE DOUBT AFFIRMED IN CASE AT BAR.— The gravamen of the crime of Rape is sexual intercourse without consent. In the instant case, that Ruben obtained carnal knowledge of AAA by employing force, threat, and intimidation is fully supported by the testimony of AAA and the medical findings of Dr. Jeanna Ramilo. In both instances, Ruben threatened AAA with a *balisong* in fulfilling his bestial desires. As previously ruled by the Court: Suffice it to say that in rape cases, the law does not impose a burden on the private complainant to prove resistance. The degree of force and resistance is relative, depending on the circumstances of each case and on the physical capabilities of each party. It is well settled that the force or violence required in rape cases is relative; when applied, it need not be overpowering or irresistible. When force is an element of the crime of rape, it need not be irresistible; it need but be present, and so long as it brings about the desired result, all consideration of whether it was more or less irresistible is beside the point. Hence, finding no reason to vacate the findings of the RTC and CA, the Court affirms Ruben's guilt beyond reasonable doubt for the two (2) counts of rape in Criminal Case Nos. U-11324 and U-11325.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; NATURE AND CAUSE OF THE ACCUSATION MUST BE STATED THEREIN; RATIONALE.— Anent the charge for Acts of Lasciviousness, the Court affirms the CA's conclusion that subsequent proof of suggested rape is immaterial where the allegations of the Information only describe lascivious conduct. To convict an accused of a higher or more serious offense than that specifically charged in the information on which he is tried (*e.g.*, Rape versus Acts of Lasciviousness) would be an outright violation of his basic rights. It is well-settled that a conviction for a crime not sufficiently alleged in the Information is proscribed by the fundamental requirement of due process and other rights granted to an accused by the Constitution, particularly the right to be informed of the nature and cause of the accusation against him. In implementing such right, our Rules specifically require that the acts or omissions complained of as constituting the offense, including the qualifying and aggravating circumstances, must be stated in

ordinary and concise language and in terms sufficient to enable a person of common understanding to know what offense is being charged and the attendant qualifying and aggravating circumstances present, so that the accused can properly defend himself and the court can pronounce judgment.

5. CRIMINAL LAW; CRIMES AGAINST CHASTITY; ACTS OF LASCIVIOUSNESS; MODIFICATION OF THE PENALTY IS WARRANTED TO CORRESPOND TO THE PENALTY IMPOSED BY LAW FOR VIOLATION OF SECTION 5 (B), OF REPUBLIC ACT 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT); EXPLAINED.— [T]he Court finds that the RTC imposed the incorrect penalty corresponding to the Information in Criminal Case No. U-11326. To recall, the RTC sentenced Ruben to suffer the indeterminate penalty of imprisonment of four (4) months and one (1) day of *arresto mayor* as minimum up to four (4) years and two (2) months of *prision correccional* as maximum. Based on the foregoing, it appears that the RTC imposed the penalty merely for Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC), as amended, as opposed to the same crime when committed in relation to Section 5, paragraph b, Article III of Republic Act No. 7610 (R.A. 7610), otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act." x x x As it stands, the facts of this case support a conviction for a violation of Article 336 of the RPC, in relation to Section 5(b) of R.A. 7610, as originally described in the Information. x x x However, following the position articulated above, absent a specific allegation of the unique circumstances of the child in the Information, Ruben can only be convicted for violation of Article 336 of the RPC and not under Section 5(b) of R.A. 7610. It is with this same *animus* of due process that Ruben was only held liable for acts of lasciviousness instead of rape despite evidence to the contrary. Be that as it may, the majority's ruling in *Quimvel* remains binding and requires application in this case. Accordingly, the penalty uniformly imposed by the RTC and the CA is modified to correspond to the penalty imposed by law for violation of Section 5(b), which is *reclusion temporal* in its medium period to *reclusion perpetua*. Further, the Court is guided by the following ruling in *Roallos v. People* in applying the Indeterminate Sentence Law: For acts of lasciviousness

performed on a child under Section 5(b), Article III of R.A. No. 7610, the penalty prescribed is *reclusion temporal* in its medium period to *reclusion perpetua*. Notwithstanding that R.A. No. 7610 is a special law, Roallos may enjoy the benefits of the Indeterminate Sentence Law. Applying the Indeterminate Sentence Law, Roallos shall be entitled to a minimum term to be taken within the range of the penalty next lower to that prescribed by R.A. No. 7610. The penalty next lower in degree is *prision mayor* medium to *reclusion temporal* minimum, the range of which is from eight (8) years and one (1) day to fourteen (14) years and eight (8) months. On the other hand, the maximum term of the penalty should be taken from the penalty prescribed under Section 5(b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period to *reclusion perpetua*, the range of which is from fourteen (14) years, eight (8) months and one (1) day to *reclusion perpetua*. The minimum, medium and maximum term of the same is as follows: minimum — fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months; medium— seventeen (17) years, four (4) months and one (1) day to twenty (20) years; and maximum — *reclusion perpetua*. Considering that there are neither aggravating nor mitigating circumstances extant in this case, both the RTC and the CA correctly imposed on Roallos the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium as the minimum term to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as the maximum term.

6. CIVIL LAW; DAMAGES; MODIFICATION OF THE DAMAGES AWARDED IS PROPER TO CONFORM TO RECENT JURISPRUDENCE.— The amount of damages awarded is likewise increased, ordering accused-appellant to pay the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages for each count of Rape. In addition to the Thirty Thousand Pesos (₱30,000.00) moral damages awarded by the Court of Appeals for the crime of Acts of Lasciviousness, civil indemnity in the amount of Twenty Thousand Pesos (₱20,000.00) and Ten Thousand Pesos (₱10,000.00) exemplary damages are likewise awarded. 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.

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 February 26, 2013 (questioned Decision) of the Court of Appeals, Twelfth Division (CA), in CA-G.R. CR HC No. 04851, which affirmed the Judgment[3] dated July 12, 2010 of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 49 (RTC), in Criminal Case Nos. U-11324, U-11325, and U-11326, convicting accused-appellant Ruben N. Bongbonga (Ruben) for the crimes charged therein.

The Facts

Three (3) separate Informations were filed in the RTC, charging Ruben with two (2) counts of Rape and one (1) count of Acts of Lasciviousness, as follows:

CRIMINAL CASE NO. U-11324

That on or about April 26, 2000 at Brgy. [XXX], Binalonan, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA],[4] a minor, 11 years and 11 months

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[1] *Rollo*, pp. 12-13.

[2] *Id*. at 2-11. Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Vicente S. E. Veloso and Jane Aurora C. Lantion concurring.

[3] CA *rollo*, pp. 40-48. Penned by Presiding Judge Efren B. Tienzo.

[4] The victim's name and personal circumstances or any other information tending to establish or compromise her identity as well as those of her immediate family are withheld per *People v. Cabalquinto*, 533 Phil. 703 (2006).

of age[5] against her will and without her consent to her damage and prejudice.

CONTRARY to Art. 335, Revised Penal Code, as amended by R.A. 8353 and R.A. 7659.[6]

CRIMINAL CASE NO. U-11325

That on or about May 29, 2000 at Brgy. [XXX], Binalonan, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], a minor, 12 years of age against her will and without her consent to her damage and prejudice.

CONTRARY to Art. 335, Revised Penal Code, as amended by R.A. 8353 and R.A. 7659.[7]

CRIMINAL CASE NO. U-11326

That on or about October 16, 2000 at Brgy. [XXX], Binalonan, Pangasinan and within the jurisdiction of this Honorable Court, the above- named accused, by means of force and intimidation with lewd design, did then and there willfully, unlawfully and feloniously perform lascivious conduct upon [AAA], minor, 12 years of age, by kissing her lips, mashing her private parts against her will and without her consent, to the damage and prejudice of [AAA].

CONTRARY to Article 336, Revised Penal Code, in relation to Sec. 5, par. b, R.A. 7610.[8]

As summarized by the CA in the questioned Decision, the facts are as follows:

AAA, a minor of about 16 years of age at the time she testified on February 4, 2003, declared that on April 26, 2000, while she was seated in a chair reading a pocketbook in the yard of their house, appellant came. Since no one was at home except for the two of

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[5] The records show that at the time of her testimony, AAA was sixteen (16) years of age, having been born on May 26, 1986. CA *rollo*, p. 42.

[6] *Id*. at 40.

[7] *Id*. at 40-41.

[8] *Id*. at 41.

them, he carried her inside the house up to the second floor where he laid her down the bamboo floor. After removing his clothes, appellant then removed the shirt, pajamas, panty and bra of the victim. She wanted to shout, but the accused wielded a "balisong". The appellant then went on top of AAA and forcibly had carnal knowledge with her and mashed her breast. AAA tried to kick appellant but he was too strong for her. After the ordeal, appellant warned AAA not to tell anyone. AAA did not tell anyone out of fear of appellant.

The second incident took place on May 29, 2000. While AAA was playing with her siblings, BBB, CCC, and appellant's daughter Ruby Ann and niece Julie Ann Bongbonga, in the yard of their house, appellant arrived thereat. While playing, appellant called AAA and told her they were going to his mother Crising Bongbonga's house some 200 meters away. Appellant allowed AAA to watch "Eat Bulaga" in their living room for about an hour. Thereafter, appellant brought AAA inside one of the bedrooms and locked the door. Armed with a "*balisong*", appellant again had carnal knowledge of AAA. When appellant was finished, he stood and dressed up. AAA put her clothes on and was told by appellant not to tell her parents about what happened between them. Thereafter, they left the premises. AAA did not tell her parents what happened because she was afraid that Ruben might kill her.

The third incident was on October 16, 2000, when AAA, BBB, CCC and their other playmates, went to the river to go swimming. While the group was playing in the water, appellant arrived. Thereafter, AAA's group went home. After doing some household chores, AAA and her siblings went to the sugar cane field to gather sugar cane for eating. Appellant followed the group to the sugar cane field. The group went home while AAA stayed behind because she was told by the appellant "May gagawin tayo." Appellant carried AAA to the middle of the field, undressed her and laid her down. Appellant undressed himself, went on top of AAA, kissed her lips and for the third time, had carnal knowledge with the victim. After such incident, AAA was again warned by the appellant not to tell her parents. However, this time AAA told her parents about the incident and her parents got mad and whipped her.[9]

Thereafter, a medical examination conducted on AAA revealed deep healed lacerations in AAA's genitalia, which allegedly

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

could have been caused by strenuous activities, the insertion of a foreign body (*e.g.*, a hardened penis), or a viral disease.[10]

Pleading his innocence, Ruben denied the accusations against him on the claim that he and AAA were live-in partners and that their sexual encounters were consensual.[11] Ruben further claimed that the charges against him were filed at the instance of AAA's Aunt, possibly due to feelings of disapproval as Ruben was still married to another woman.[12] Ruben's defense was corroborated by his daughter, Ruby Ann, during her testimony before the RTC.[13]

Upon arraignment, Ruben entered separate pleas of "not guilty" to the separate Informations.[14] Trial on the merits thereafter ensued.[15]

Ruling of the RTC

On July 12, 2010, the RTC rendered a Judgment of even date, finding Ruben guilty beyond reasonable doubt of the crimes charged. The *fallo* of the said Judgment reads:

> WHEREFORE, this Court finds the accused RUBEN "ROBIN" BONGBONGA *Y* NALOS **GUILTY** beyond reasonable doubt of Rape (2 counts) and Acts of Lasciviousness.
>
> **IN CRIMINAL CASE NO. U-11324**
>
> (1) Accused is sentenced to suffer the penalty of reclusion perpetua;
>
> (2) He is ordered to pay the offended party civil indemnity of Fifty Thousand Pesos (₱50,000.00) and moral damages of Fifty Thousand Pesos (₱50,000.00);
>
> **IN CRIMINAL CASE NO. U-11325**
>
> (1) Accused is sentenced to suffer the penalty of *reclusion perpetua*;

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[10] *Id*. at 5.

[11] *Id*.

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

[13] *Id*. at 6.

[14] CA *rollo*, p. 41.

[15] *Id*.

(2) He is ordered to pay the offended party civil indemnity of Fifty Thousand Pesos (₱50,000.00) and moral damages of Fifty Thousand Pesos (₱50,000.00);

IN CRIMINAL CASE NO. U-11326

(1) Accused is sentenced to suffer the indeterminate penalty of imprisonment of four (4) months and one (1) day of arresto mayor as minimum up to four (4) years and two (2) months of prision correccional as maximum;

(2) He is ordered to pay the offended party moral damages of Twenty Thousand Pesos (₱20,000.00).

Accused is ordered committed to the New Bilibid Prison, Muntinlupa City without unnecessary delay.

NO COSTS.

SO ORDERED.[16]

Ruben then appealed to the CA via Notice of Appeal dated August 26, 2010.[17] Both parties accordingly filed their respective Briefs dated October 5, 2011[18] and February 8, 2012.[19]

Ruling of the CA

On February 26, 2013, the CA issued the questioned Decision of even date, giving credence to the positive and specific testimony of AAA as against Ruben's claims.

In this regard, it was observed by the CA that although the evidence on record indicates that Ruben had carnal knowledge of AAA on the third occasion in October 2000, contrary to AAA's *Sinumpaang Salaysay* dated January 16, 2001 which only described lascivious conduct by Ruben,[20] the fact of the matter is that the Information for Criminal Case No. U-11326

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[16] *Id*. at 47-48.

[17] *Id*. at 49.

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

[19] *Id*. at 92-110.

[20] *Rollo*, p. 9.

only charged Ruben with Acts of Lasciviousness.[21] Accordingly, the CA could only convict Ruben for the crime of Acts of Lasciviousness:

> However, We cannot impose the penalty of rape upon appellant on the third incident that transpired on October 16, 2000 because the Information only spoke of the crime of acts of lasciviousness. It is a basic constitutional right of the accused to be informed of the nature and cause of accusation against him. It would be a denial of appellant's constitutional right to due process if he was charged with acts of lasciviousness but subsequent proof suggested rape. Nevertheless, the prosecution established that appellant was motivated by lewd design on October 16, 2000 when after AAA's companions left, he brought AAA in the middle of the sugarcane field and thereafter kissed AAA and touched her private parts.[22]

In affirming the findings of the RTC, the CA modified the award of damages, to wit:

> **WHEREFORE**, premises considered, accused-appellant Ruben Bongbonga's **APPEAL** is hereby **DENIED**. Hence, the Decision dated July 12, 2010 for two counts of **RAPE** and **ACTS OF LASCIVIOUSNESS** is hereby **AFFIRMED with modification** insofar as the amount of civil indemnity which is hereby increased to Php75,000.00 and moral damages to Php75,000.00 for each count of rape, plus Php30,000.00 as exemplary damages. Concerning the award of moral damages for acts of lasciviousness, it is hereby increased to Php30,000.00.
>
> **SO ORDERED.**[23]

Thereafter, Ruben lodged the instant Appeal before the Court via Notice of Appeal dated March 6, 2013.[24] In a Resolution dated January 26, 2015, the Court notified the parties of their option to file supplemental briefs.[25] The parties subsequently

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[21] *Id*.

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

[23] *Id*. at 11.

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

[25] *Id*. at 17.

filed Manifestations in lieu of supplemental briefs respectively dated April6, 2015[26] and September 8, 2015.[27]

Issue

For our resolution is the issue of whether the CA erred in affirming the conviction of Ruben for two (2) counts of Rape and one (1) count of Acts of Lasciviousness.

The Court's Ruling

Ruben assigns the following errors on the part of the RTC, as upheld by the CA: (i) the RTC gravely erred in giving weight and credence to the private complainant's testimony, and (ii) the RTC gravely erred in finding him guilty beyond reasonable doubt of the crimes charged.[28] In particular, Ruben claimed that the alleged incidents of rape were consensual as they were "live- in partners."[29] Ruben further discredits AAA's testimony by pointing out her "unnatural behavior" during trial,*i.e*., that she was hesitant in giving her answers and seemed indecisive in her narration of details relating to the incidents.[30]

The Court is not convinced.

It is settled that in assessing the credibility of a witness, the findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the deportment of the witness while undergoing the rigors of examination.[31] Hence, it is a settled rule that appellate courts will not overturn the factual findings of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance that would affect the result of the case.[32] Such rule

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

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

[28] CA *rollo*, p. 70.

[29] *Id*. at 71-72.

[30] *Id*. at 73.

[31] See *Corpuz v. People*, 734 Phil. 353, 396 (2014).

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

finds an even more stringent application where the findings of the RTC are sustained by the CA, as in the case at bench.[33]

In this case, Ruben failed to show any misappreciation by the CA of the facts or circumstances so as to warrant a reversal of the questioned Decision. In the same vein, Ruben's arguments were already considered and thoroughly addressed by the courts below.

As correctly observed by the CA, Ruben's flimsy defense of consensual sexual congress pales in comparison to the testimony of AAA, which was delivered in a clear and straightforward manner:

> On the basis of the record of this case, We can hardly agree with appellant's belief that there was cogent reason to deviate from the findings of the lower court that appellant had carnal knowledge with AAA. **The testimony of AAA was clear, straightforward and consistent in her recollection of the details of the defloration. She positively identified the appellant and she vividly recounted the three incidents of sexual assault she suffered in April, May and October of 2000 and these declarations were corroborated by the findings of Dr. Ramilo.** The doctor examined the victim and found deep healed lacerations in AAA's hymen which was caused by forcibly inserting a foreign body. When the consistent and forthright testimony of a rape victim blended (*sic*) with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.
>
> x x x x x x x x x
>
> **AAA categorically declared that she and appellant were not lovers prior to the three incidents that happened on April 26, May 29, and October 16, 2000, and based on the testimony of both the prosecution and defense, they cohabited *after* the third incident of alleged rape in October 2000.** Moreover, out of fear and intimidation employed upon AAA by her father, she was forced to live with appellant against her will. Evidently, the cohabitation was dictated upon the victim out of fear and not free consent and even if they cohabited after the incidents, it will not negate the fact that AAA was raped by appellant. **"Definitely, a man cannot demand**

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[33] *Id*.

sexual gratification from a fiancee and worse, employ violence upon her on the pretext of love. Love is not a license for lust."[34] (Emphasis supplied)

At the outset, it should be emphasized that the Court has consistently disfavored the "sweetheart theory" defense for being self-serving in nature.[35] Being an affirmative defense, the allegation of a love affair must be substantiated by the accused with convincing proof.[36] It bears noting that Ruben's defense was corroborated only by his daughter, Ruby Ann,[37] which effectively weakened the defense, being supported by a mere relative of the accused.[38] In *People v. Nogpo, Jr.*,[39] the Court held that where nothing supports the sweetheart theory except the testimony of a relative, such defense deserves scant consideration.

On this note, Ruben anchors his claim of consensual sexual congress on the fact of his cohabitation with AAA.[40] However, such claim was already addressed by the CA in the questioned Decision, which affirmed the findings of the RTC, that such cohabitation occurred only **after** the respective dates of the incidents.[41] Here, such fact of cohabitation, by itself, had no bearing on the prior forcible advances committed by Ruben upon AAA. In fact, contrary to Ruben's assertions, any consent implied from the fact of cohabitation is dispelled by AAA's express declarations that she was forced against her will to live with Ruben out of fear of her father.[42]

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[34] *Rollo*, pp. 7-8.

[35] See *People v. Taperla,* 443 Phil. 400, 407 (2003).

[36] *People v. Monfero*, 367 Phil. 675, 693 (1999).

[37] *Rollo*, p. 6.

[38] See *People v. Nogpo, Jr.*, 603 Phil. 722, 742 (2009).

[39] *Id*.

[40] CA *rollo*, p. 72.

[41] *Id*. at 47.

[42] *Rollo*, p. 8.

To be sure, that a man and a woman are living in the same house is not enough to rule out the bestial act of forced sexual intercourse. Here, the fact of cohabitation is immaterial to the charge of rape as it only took place after the alleged incidents. In *People v. Bautista*,[43] the Court aptly held:

> Besides, even if he and the victim were really sweethearts, such a fact would not necessarily establish consent. It has been consistently ruled that "a love affair does not justify rape, for the beloved cannot be sexually violated against her will." The fact that a woman voluntarily goes out on a date with her lover does not give him unbridled license to have sex with her against her will. x x x[44]

Moreover, in the landmark case of *People v. Jumawan*,[45] the Court declared that even a husband has no ownership over his wife's body by reason of marriage, for in assenting to marital union, the wife does not divest herself of her right to exclusive autonomy over her own body. Hence, a married woman can give or withhold her consent to sexual intercourse with her husband and he cannot unlawfully wrestle such consent from her in case of her refusal.[46]

In the same manner, Ruben's defense of consensual intercourse evidenced by cohabitation does not hold water in the absence of compelling evidence *contra* AAA's unwavering testimony of her defilement. In this respect, we defer to the factual conclusions of the RTC regarding the credibility of the witnesses and their respective testimonies, which were affirmed *in toto* by the CA.

Proceeding therefrom, the Court finds that the prosecution was able to positively establish the guilt of Ruben for the crimes as charged beyond reasonable doubt.

Criminal Case Nos. U-11324 and U-11325 for Rape

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[43] 474 Phil. 531 (2004).

[44] *Id*. at 556.

[45] 733 Phil. 102, 159-160 (2014).

[46] *Id*. at 143.

The gravamen of the crime of Rape is sexual intercourse without consent.[47] In the instant case, that Ruben obtained carnal knowledge of AAA by employing force, threat, and intimidation is fully supported by the testimony of AAA and the medical findings of Dr. Jeanna Ramilo. In both instances, Ruben threatened AAA with a *balisong* in fulfilling his bestial desires. As previously ruled by the Court:

> Suffice it to say that in rape cases, the law does not impose a burden on the private complainant to prove resistance. The degree of force and resistance is relative, depending on the circumstances of each case and on the physical capabilities of each party. It is well settled that the force or violence required in rape cases is relative; when applied, it need not be overpowering or irresistible. When force is an element of the crime of rape, it need not be irresistible; it need but be present, and so long as it brings about the desired result, all consideration of whether it was more or less irresistible is beside the point.[48]

Hence, finding no reason to vacate the findings of the RTC and CA, the Court affirms Ruben's guilt beyond reasonable doubt for the two (2) counts of rape in Criminal Case Nos. U-11324 and U-11325.

Criminal Case No. U-11326 for Acts of Lasciviousness

Anent the charge for Acts of Lasciviousness, the Court affirms the CA's conclusion that subsequent proof of suggested rape is immaterial where the allegations of the Information only describe lascivious conduct.[49] To convict an accused of a higher or more serious offense than that specifically charged in the information on which he is tried (*e.g.*, Rape versus Acts of Lasciviousness) would be an outright violation of his basic rights.[50]

It is well-settled that a conviction for a crime not sufficiently alleged in the Information is proscribed by the fundamental

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[47] *People v. Nogpo, Jr.*, *supra* note 38, at 743.

[48] *Id*. at 744.

[49] *Rollo*, p. 9.

[50] *People v. Tampos*, 455 Phil. 844, 861 (2003).

requirement of due process and other rights granted to an accused by the Constitution, particularly the right to be informed of the nature and cause of the accusation against him.[51] In implementing such right, our Rules specifically require that the acts or omissions complained of as constituting the offense, including the qualifying and aggravating circumstances, must be stated in ordinary and concise language and in terms sufficient to enable a person of common understanding to know what offense is being charged and the attendant qualifying and aggravating circumstances present, so that the accused can properly defend himself and the court can pronounce judgment.[52]

In this regard, the Rules authorize the quashal, upon motion of the accused, of an Information that fails to allege the acts constituting the offense.[53] Likewise, the Rules impose restrictions in the amendment of an information to safeguard the rights of the accused. Thus, an information may be amended, in form or in substance, without leave of court, at any time *before* the accused enters his plea. However, *after* the plea and during the trial, only a formal amendment may be made with leave of court and only if it can be done without causing prejudice to the rights of the accused.[54] In the same vein, if it appears at any time *before judgment* that a mistake has been made in charging the proper offense, the court shall dismiss the original information upon the filing of a new one, provided the accused would not be placed in double jeopardy.[55]

Here, there is no indication in the records that the Prosecution attempted to have the Information in Criminal Case No. U-11326 amended at any stage of the proceedings before the RTC. Upon rendition of the Judgment dated July 12, 2010 of the RTC, amendments to the Information could no longer be made.

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[51] See *People v. Flores, Jr.*, 442 Phil. 561 (2002).

[52] *Go v. Bangko Sentral ng Pilipinas*, 619 Phil. 306, 316 (2009).

[53] *Id*.

[54] RULES OF COURT, Rule 110, Section 14.

[55] *Id*.

Accordingly, Ruben can only be convicted for Acts of Lasciviousness as described in the Information, notwithstanding evidence of carnal knowledge during the trial proper.

However, the Court finds that the RTC imposed the incorrect penalty corresponding to the Information in Criminal Case No. U-11326.

To recall, the RTC sentenced Ruben to suffer the indeterminate penalty of imprisonment of four (4) months and one (1) day of *arresto mayor* as minimum up to four (4) years and two (2) months of *prision correccional* as maximum.[56] Based on the foregoing, it appears that the RTC imposed the penalty merely for Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC), as amended, as opposed to the same crime when committed in relation to Section 5, paragraph b, Article III of Republic Act No. 7610 (R.A. 7610), otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act." The Information reads:

> That on or about October 16, 2000 at Brgy. [XXX], Binalonan, Pangasinan and within the jurisdiction of this Honorable Court, the above- named accused, by means of force and intimidation with lewd design, did then and there willfully, unlawfully and feloniously perform lascivious conduct upon [AAA], minor, 12 years of age, by kissing her lips, mashing her private parts against her will and without her consent, to the damage and prejudice of [AAA].
>
> **CONTRARY to Article 336, Revised Penal Code, in relation to Sec.5, par. b, R.A. 7610.**[57] (Emphasis supplied)

As it stands, the facts of this case support a conviction for a violation of Article 336 of the RPC, in relation to Section 5(b)[58]

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[56] CA *rollo*, p. 48.

[57] *Id*. at 41.

[58] 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**.

of R.A. 7610, as originally described in the Information. The essential elements of Section 5(b) are:

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. The child, whether male or female, is below 18 years of age.[59]

Undoubtedly, the first and third element are amply supported by the evidence on record — the testimonial evidence sufficiently established that Ruben committed lascivious acts against AAA, who, at the time of the incident, was only 12 years of age.

Meanwhile, anent the second element, the Court's recent ruling in *Quimvel v. People*[60] finds particular relevance in this case. In *Quimvel*, the petitioner challenged the sufficiency of the Information as it did not allege all the elements necessary in committing Acts of Lasciviousness under R.A. 7610. In addition, the petitioner argued that the second element, *i.e.*, that the victim is a child "exploited in prostitution or subject to other sexual abuse" was absent. In denying the petition, the majority of the Court sitting *en banc* held that the allegations of the Information were sufficient to allow a conviction for violation of Section

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The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

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(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 victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x. (Emphasis supplied)

[59] *People v. Abello*, 601 Phil. 373, 392 (2009), citing *People v. Larin*, 357 Phil. 987, 997 (1998).

[60] G.R. No. 214497, Apri1 18, 2017.

5(b). It was ruled that for Acts of Lasciviousness committed under R.A. 7610, the victim need not suffer abuse *aside from* the act complained of based on the majority's reading of Section 5(b), which defines "children exploited in prostitution and other sexual abuse" as those who "indulge in sexual intercourse or lascivious conduct x x x due to coercion or influence of any adult."

Dissenting from the majority, the *ponente* herein offered a different interpretation. In a Dissenting Opinion, it was opined that a person can only be convicted of violating Article 336 in relation to Section 5(b) upon allegation and proof of the unique circumstances of the child — that he or she was exploited in prostitution or subjected to other sexual abuse. Stated differently, it is necessary to show that the child is already a child exploited in prostitution or subjected to other sexual abuse at the time the sexual intercourse or lascivious conduct complained of was committed. Hence, the phrase "other sexual abuse" can only mean that the child was previously subjected to sexual abuse *other* than the crime for which the accused is being charged under Section 5(b). To be sure, such reading is not novel as it was adopted by Justice Carpio in his Dissenting Opinion in *Olivarez v. Court of Appeals*.[61]

Admittedly, the second element of Section 5(b) — that the act complained of is performed with a child exploited in prostitution or subjected to other sexual abuse — is present herein. As discussed above, the facts unmistakably establish two prior instances of forced intercourse committed against AAA, which should count for "other sexual abuse" *aside* from the Acts of Lasciviousness charged in Criminal Case No. U-11326. However, following the position articulated above, absent a specific allegation of the unique circumstances of the child in the Information, Ruben can only be convicted for violation of Article 336 of the RPC and not under Section 5(b) of R.A. 7610. It is with this same *animus* of due process that Ruben

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[61] See *J.* Carpio, Dissenting Opinion, *Olivarez v. Court of Appeals*, 503 Phil. 421, 442-450 (2005).

was only held liable for acts of lasciviousness instead of rape despite evidence to the contrary.

Be that as it may, the majority's ruling in *Quimvel* remains binding and requires application in this case. Accordingly, the penalty uniformly imposed by the RTC and the CA is modified to correspond to the penalty imposed by law for violation of Section 5(b), which is *reclusion temporal* in its medium period to *reclusion perpetua*. Further, the Court is guided by the following ruling in *Roallos v. People*[62] in applying the Indeterminate Sentence Law:

> For acts of lasciviousness performed on a child under Section 5(b), Article III of R.A. No. 7610, the penalty prescribed is *reclusion temporal* in its medium period to *reclusion perpetua*. Notwithstanding that R.A. No. 7610 is a special law, Roallos may enjoy the benefits of the Indeterminate Sentence Law. Applying the Indeterminate Sentence Law, Roallos shall be entitled to a minimum term to be taken within the range of the penalty next lower to that prescribed by R.A. No. 7610. The penalty next lower in degree is *prision mayor* medium to *reclusion temporal* minimum, the range of which is from eight (8) years and one (1) day to fourteen (14) years and eight (8) months. On the other hand, the maximum term of the penalty should be taken from the penalty prescribed under Section 5(b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period to*reclusion perpetua*, the range of which is from fourteen (14) years, eight (8) months and one (1) day to *reclusion perpetua*. The minimum, medium and maximum term of the same is as follows: minimum — fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months; medium— seventeen (17) years, four (4) months and one (1) day to twenty (20) years; and maximum — *reclusion perpetua*.
>
> Considering that there are neither aggravating nor mitigating circumstances extant in this case, both the RTC and the CA correctly imposed on Roallos the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium as the minimum term to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as the maximum term. x x x[63]

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[62] 723 Phil. 655 (2013).

[63] *Id*. at 672.

Finally, to conform with recent jurisprudence,[64] the damages awarded by the CA are hereby modified.

WHEREFORE, in view of the foregoing, the Appeal is **DISMISSED** for lack of merit and the Decision dated February 26, 2013 of the Court of Appeals in CA-G.R. CR HC No. 04851 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Ruben "Robin" Bongbonga y Nalos is hereby found **GUILTY** beyond reasonable doubt of the crimes of Rape under Article 335 of the Revised Penal Code, as amended, and Acts of Lasciviousness under Article 336 of the same law, in relation to Section 5, paragraph b, Article III of Republic Act No. 7610. For the crime of Acts of Lasciviousness in Criminal Case No. U-11326 the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium as the minimum term to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as the maximum term is hereby imposed.

The amount of damages awarded is likewise increased, ordering accused-appellant to pay the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages for each count of Rape. In addition to the Thirty Thousand Pesos (₱30,000.00) moral damages awarded by the Court of Appeals for the crime of Acts of Lasciviousness, civil indemnity in the amount of Twenty Thousand Pesos (₱20,000.00) and Ten Thousand Pesos (₱10,000.00) exemplary damages are likewise awarded. 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.

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[64] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331; *People v. Pareja*, 724 Phil. 759 (2014).

SECOND DIVISION

[G.R. No. 215454. August 9, 2017]

HEIRS OF SPOUSES CORAZON P. DE GUZMAN and FORTUNATO DE GUZMAN, represented by JENIE JANE DE GUZMAN-CARPIO, *petitioners, vs.* **HEIRS OF MARCELIANO BANDONG, represented by REGINA Z. BANDONG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION RESOLVES ONLY QUESTIONS OF LAW; BY WAY OF EXCEPTION, THE COURT RESOLVES FACTUAL ISSUES IN VIEW OF THE DIFFERING FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS.— [T]his Court notes that resolving the contentions raised would necessarily require the re-evaluation of the parties' submissions and the CA's factual findings. This course of action is ordinarily proscribed in a petition for review on *certiorari*, *i.e.*, a Rule 45 petition resolves only questions of law. By way of exception, however, the Court resolves factual issues when the findings of the RTC differ from those of the CA, as in the case at bar.

2. CIVIL LAW; LAND REGISTRATION; THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) HAS NO AUTHORITY TO GRANT FREE PATENT FOR LAND THAT HAS CEASED TO BE PUBLIC LAND AND HAS PASSED TO PRIVATE OWNERSHIP.— Suffice it to state that the Spouses De Guzman have sufficiently established their title over the disputed portion of the *Real* property before the issuance of free patent and title in favor of the Spouses Bandong. The 1984 Deed in their favor, the 1960 Deed disputing the Spouses Bandong's claim of the entire subject property, and their actual possession demonstrate that the Spouses De Guzman held the disputed portion as their private property. As such, the DENR had no authority to grant to the Spouses Bandong the free patent for the whole *Real* property since a portion of which has ceased to be a public land and has passed to the private ownership of the Spouses De Guzman.

APPEARANCES OF COUNSEL

S. P. Madrid & Associates for petitioners.
The Law Firm of AC Estrada & Associates for respondents.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is the petition for review on *certiorari* filed by the Heirs of Spouses Corazon P. De Guzman and Fortunato De Guzman (*petitioners*), represented by their duly-authorized representative, Jenie Jane De Guzman-Carpio, assailing the Decision[1] and Resolution,[2] dated August 20, 2014 and November 20, 2014, respectively, of the Court of Appeals (*CA*), which reversed the Decision[3] of the Regional Trial Court (*RTC*) of San Carlos City, Pangasinan, Branch 57.

The instant case stemmed from a Complaint[4] filed by the Spouses Corazon De Guzman (*Corazon*) and Fortunato De Guzman (*Spouses De Guzman*) against the Spouses Marceliano Bandong (*Marceliano*) and Regina Zamora (*Spouses Bandong*), seeking nullity of title and free patent with damages.

Domingo Calzada (*Domingo*) was the owner of a parcel of unregistered land located in Barrio Angatel (now Barangay Real), Urbiztondo, Pangasinan, with an area of 3,018 square meters (*sq. m.*) (*Real property*). Through a Deed of Absolute Sale of Unregistered Land dated March 17, 1960 (*1960 Deed*),[5] Domingo sold a 660 sq. m. portion of the property in favor of Emilio Bandong (*Emilio*) who then allegedly donated the same to his son Pedro Bandong (*Pedro*). Subsequently, by way of a Deed

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[1] Penned by Associate Justice Pedro B. Corales, with Associate Justices Sesinando E. Villon and Victoria Isabel A. Paredes, concurring; *rollo*, pp. 267-279.

[2] *Id.* at 307-310.

[3] Penned by Presiding Judge Renato D. Pinlac; *id.* at 167-175.

[4] Records pp. 1-12.

[5] *Id.* at 17.

about Marceliano's intention to sell the *Real* property, which included the 2,358 sq. m. portion of their property.

On January 2, 2002, the Spouses De Guzman filed a protest before the DENR-CENRO alleging that they own a portion of the land that was registered under the Spouses Bandong's name, and prayed for the issuance of a recommendation to the Office of the Solicitor General for the cancellation of the title. However, the DENR denied the protest on the ground of lack of jurisdiction. The *fallo* of the DENR's decision reads:

> WHEREFORE premises considered, it is hereby ordered that the case be dismissed for lack of jurisdiction. The PROTESTANT is advised to seek relief from the regular courts for the cancellation of the title, recovery of possession and partition of the subject area.
>
> SO ORDERED.[11]

The Spouses De Guzman sought the services of Geodetic Engineer Leonardo V. De Vera (*De Vera*) to determine the extent of the alleged encroachment. De Vera evaluated the V-37 of Cad. Lot No. 3011, Cad. 31-A, Module 11, Urbiztondo, sketch of survey notification card prior to the cadastral survey and other pertinent documents, made ocular inspection and relocation survey of the premises, and made the conclusion in his letter, *viz.*:

> x x x I also located the corresponding public land monument and the following are the findings I found, to wit:
>
> Mon. No. 1 located at the Northern side of the property which is within the [alleged] [o]riginal property of [Marceliano] Bandong on the Northeastern side;
>
> Mon. No. 2 located at Northeastern corner of the property and within the [a]lleged original property and bounded on the Provincial Road;
>
> Mon. No. 3 located at Southeastern corner of the property and within your [a]lleged original property and bounded on the Provincial Road;

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[11] Records, p. 33.

by law for the issuance of free patent and certificate of title. They invoked the doctrine of prescription because four (4) years had already lapsed from the time of the issuance of the OCT.

After weighing the evidence of both sides, the RTC ruled in favor of petitioners in its April 17, 2012 Decision. A pertinent portion of the decision reads:

> x x x [T]he [petitioners'] lot lies between the Road and the lot of the [respondents]. This is depicted in the Survey Notification Card marked as Exhibit "G-2," dorsal portion (p. 19). This explains why Lot No. 3011 was subdivided into two portions delineating them with natural boundaries like trees and also barbwire and stone monuments. It was, therefore, an error for the Cadastral Survey contractor to have merged both properties into one lot. Furthermore, there being no satisfactory explanation as to why the area of the [respondents'] lot grew bigger, the Court cannot but deduce that it encroached upon the [petitioners'] lot. x x x The error in the Cadastral Survey which increased the area belonging to the [respondents] was taken advantage of by the latter, in that they caused the revision of their tax declaration to include therein the mistakenly added portion belonging to the [petitioners]. On the basis of the revised tax declaration, [respondents] applied for free patent covering Lot No. 3011 which the DENR eventually approved and on the basis of which OCT No. P-41536 was issued in their favor. x x x.[13]
>
> x x x x x x x x x
>
> WHEREFORE, in light of the above disquisitions, the Court hereby directs the [Register] of Deeds of Pangasinan to cancel the Katibayan ng Orihinal na Titulo Blg. P-41536 and to issue two (2) separate titles covering Lot No. 3011 Cad. 31-A, Urbiztondo, Pangasinan in accordance with the tenor of this decision, to wit:
>
> a.) To the plaintiffs Spouses Corazon de Guzman and Fortunato de Guzman, the eastern portion covering the 2,102 square meters; and
>
> b.) To the defendants Spouses Marceliano Bandong and Regina Zamora, the western portion covering the 1,119 square meters.
>
> upon payment of lawful fees therefor (*sic*).

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[13] *Id.* at 172-173.

b. It is our humble submission that the Honorable Court of Appeals committed irreversible error when it declared, "Contrary to the findings of the RTC, this Court did not find any clear and convincing evidence for the cancellation of Spouses Bandong's free patent. Spouses De Guzman claimed that Spouses Bandong committed fraud in their application for free patent because their land area increased from 1,320 sq. m., as stated in the 1979 Deed of [S]ale, to 3,221 sq. m. after the 1992 cadastral survey. However, Spouses De Guzman failed to prove that such increase was brought by the wrongful inclusion of a portion of their land in Spouses Bandong's application for free patent."

c. It is our humble submission that the Honorable Court of Appeals committed irreversible error when it declared, ". . . Spouses De Guzman claimed that the 1992 cadastral survey was erroneous as to Spouses Bandong's lot but they still used the same as basis of their application for free patent. This Court cannot permit Spouses De Guzman to get the best of both worlds at the expense of Spouses Bandong. 'They cannot have their cake and eat it too,' so to speak."

d. We respectfully submit herein that this Honorable Court of Appeals committed irreversible error when it declared, "The RTC conveniently ignored the existence of Spouses De Guzman's OCT No. P-46416 and relied heavily on the 1984 Deed of Sale in ruling that plaintiffs-appellees' land was erroneously included in Spouses Bandong's Lot No. 3011. However, we take note of the fact that the 2,330-sq.m. lot designated as Lot No. 3015 and now covered by OCT No. P-46416 has almost the same area, 2,358 sq. m., as described in the 1984 Deed of Sale. There is no substantial decrease in Spouses De Guzman's land area to warrant a conclusion that they had been prejudiced by the increase in size of Spouses Bandong's lot."

e. We respectfully submit herein that this Honorable Court of Appeals committed irreversible error when it declared, "Thus, the boundaries explicitly mentioned in the 1979 Deed of Sale would be controlling rather than the 1,320 sq. m. area stated therein. Clearly, the increase in the area of Spouses Bandong's Lot No. 3011 was brought by the accurate plotting of the boundaries of their land and not due to the alleged encroachment.

f. We respectfully submit that this Honorable Court of Appeals committed a reversible error when it declared, "Besides,

of such free patent and certificate of title as well as the defendant's fraud or mistake, as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff. In such a case, the nullity arises strictly not from the fraud or deceit but from the fact that the land is beyond the jurisdiction of the Bureau of Lands to bestow and whatever patent or certificate of title obtained therefor is consequently void *ab initio*.[18] By asking for the nullification of the free patent granted to the Spouses Bandong, the Spouses De Guzman are claiming the portion of the subject property which, they allege, rightfully belongs to them.

It was held that a free patent that purports to convey land to which the Government did not have any title at the time of its issuance does not vest any title in the patentee as against the true owner.[19] We ruled in *De la Concha, et al. v. Magtira*:[20]

> Private ownership of land (as when there is a *prima facie* proof of ownership like a duly registered possessory information) is not affected by the issuance of a free patent over the same land, because the Public Land Law applies only to lands of the public domain. The Director of Lands has no authority to grant to another a free patent for land that has ceased to be a public land and has passed to private ownership. Consequently, a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding only if the land covered by it is really a part of the disposable land of the public domain.[21]

In his free patent application, Marceliano declared under oath, among others, that the *Real* property with a 3,221 sq. m. area was a public land not claimed or occupied by any other person; that it was entered upon, cultivated and occupied sometime in 1940 by Pedro and his wife Lourdes Viray; and that he entered upon and continuously cultivated and introduced improvements

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[18] *Heirs of Kionisala v. Heirs of Dacut,* 428 Phil. 249, 260 (2002).

[19] *Agne v. Director of Lands*, 261 Phil. 13, 30 (1990).

[20] 124 Phil. 961 (1966).

[21] *De la Concha, et al. v. Magtira, supra,* at 964-965.

x x x x x x x x x[24]

ATTY. MADRID:

Q Good morning, Mr. Bandong you have presented the Deed of Absolute Sale dated May 17, 1979 and as shown from that document, your area was only 1,320 square meters and your title that you applied for has now carries the area of =P=3,221 (*sic*) square meters. My question to you is; have you evaluated from the adjoining lot as to where these extra/ excess 1,901 square meters come from?

A The 1,320 square meters is [incorrect] because that is only an estimate just for taxation purposes, sir.

Q Why did you say that just for taxation purposes, how is the taxation purposes related with the area declared which is only 1,320 square meters?

A Sir, it is commonly practice by our ancestors that will be declared . . . (unfinished).

x x x x x x x x x[25]

Undisputed is the fact that Domingo originally owned the 3,018 sq. m. *Real* property. Both parties are claiming to have derived their supposed rights and interests over the property by purchase. As the property was unregistered when it was sold, it is necessary for this Court to examine the contracts of sale which purportedly transferred the ownership to the parties to resolve their respective claims.

Based on the records, the 1960 Deed executed by Domingo in favor of Emilio described the purchased property as follows:

x x x that portion of land (Residential), with an area of **SIX HUNDRED and SIXTY (660) square meters, more or less, of the whole parcel of land** situated in the barrio Angatel, Urbiztondo, Pangasinan, and which in **whole portion is more particularly bounded** and described as follows:

A parcel of residential land situated in the barrio Angatel, Urbiz., Pangasinan, under Tax Declaration No. 1517; assessed

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[24] *Id.* at 6.

[25] *Id*. at 12. (Emphasis ours)

land and instead mentioned the boundaries of the whole property, it is apparent from the language of the contract that Domingo, who is the original owner, intended to transmit only 660 sq. m. of his 3,018-sq.m. land to Emilio. A public document, like the 1960 Deed, is regarded as evidence of the facts therein expressed in a clear, unequivocal manner, and enjoys a presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity.[29]

The 1979 Deed, also a public document, indicated boundaries of the 1,320 sq. m. property coinciding with the 3,221 sq. m. area of the property in the cadastral survey plan. It is noted that Marceliano admitted that his parents previously owned the property and transferred the same to Pedro as a dowry. As Pedro's title emanated from his father's, evidence of subsequent conveyance would have justified the allegation of ownership of the entire subject property, considering that the property was still unregistered at that time. However, records are bereft of evidence of subsequent sale of the remaining portion of the *Real* property in favor of Emilio or Pedro between 1960 and 1979, either by Domingo or his heirs when Domingo died in 1961. In light of the Spouses Bandong's failure to rebut the fact presented by the 1960 Deed that a mere 660 sq. m. portion was transferred to Marceliano's father, the 1979 Deed alone cannot support the claim of ownership of the entire *Real* property.

Aside from the deed of sale in their favor, the Spouses De Guzman ascertained their ownership through their possession of the disputed portion since 1984. Corazon testified:

ATTY. MAGDAMIT:

x x x x x x x x x

Q Will you kindly tell us how did you acquire this property?
A We bought this property from the heirs of Domingo Calzada, sir.

Q Do you have proof of that?
A Yes, sir.

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[29] *Dela Peña v. Avila,* 681 Phil. 553, 567 (2012).

A As per requested by Mrs. De Guzman to survey and to know the extent of her property, sir.

Q Were you able to go there?
A Yes, sir.

Q What happened after you conducted your survey?
A I found out that there is a barb wire separating of the two (2) lots, sir.

x x x x x x x x x[31]

Q How were you able to verify Mr. Witness the property occupied by De Guzman?
A At first sir, I refer to the Technical Description on the V-37 from the DENR and then on the relocation I found out that De Guzman and Bandong have only one lot number and that is lot #3011 then I measured the boundary and I found out that from the ground there is the distance, sir.

Q And you indicated in the plan what is the area occupied by De Guzman which is identified as Exhibit "F-1"?
A 2,102.57 square meters, sir.

Q What about the area occupied by Bandong?
A 1,119 square meters, sir.

Q **How did you know the boundary or fence, kindly describe it to us?**
A **There is a barb wire in between separating the two (2) lots and the trees planted along the boundary line, sir.**

x x x x x x x x x[32]

Q And because of what you saw the V-37 Technical Description and the Technical Description on the title and base on the ocular inspection you saw the two (2) occupants on the same area that is why you platted the demarcation line or the division line between them?
A Yes, sir.

Q **Now, when you said "encroaching" can you just explain to us how did the encroachment happen committed by defendant Bandong?**

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[31] TSN, August 10, 2006, p. 9.

[32] *Id.* at 11-12.

to those mentioned in their deeds and tax declarations, the RTC did not disturb each party's landholding, thus:

> x x x As established during the ocular inspection made, the [petitioners] possess the eastern portion measuring 2,102 square meters and the [respondents], the western part which is of 1,119 square meters. While the Court notes that the area actually possessed by each party is not exactly equal to those stated in their deeds of acquisition and tax declarations, it, however, finds no basis to disturb or alter each party's landholding cognizant of the principle that their respective period of possession tucked with those of their predecessors-in-interest, has ripened into title or ownership of the area they so possess.[37]

Article 1106, in relation to Article 712,[38] of the New Civil Code provides that:

> Article 1106. By prescription, one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law.
>
> In the same way, rights and actions are lost by prescription.

Other names for acquisitive prescription are adverse possession and *usucapcion*. Ordinary acquisitive prescription requires possession of things in good faith and with just title for a period of ten years, while extraordinary acquisitive prescription requires uninterrupted adverse possession of thirty years, without need of title or of good faith.[39] Possession is in good faith when there is a reasonable belief that the person from whom the thing is received has been the owner thereof and could thereby transmit his ownership.[40] There is just title when the adverse claimant comes into possession of the property through any of the modes

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[37] *Rollo* p. 174.

[38] Article 712. Ownership is acquired by occupation and by intellectual creation.

Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.

They may also be acquired by means of prescription. (Emphasis ours)

[39] *Virtucio v. Alegarbes,* 693 Phil. 567, 575 (2012).

[40] Article 1127, New Civil Code.

constitute at least proof that the holder has a claim of title over the property.[45]

The RTC ascertained that the Spouses Bandong are in actual possession of at least 1,119 sq. m. of the property since 1979. Aside from the 1960 Deed, the Spouses De Guzman did not present any evidence of the Spouses Bandong's bad faith or knowledge of the discrepancy in the area of the property originally conveyed to their father and of the property eventually sold to them. Since they occupied the portion since 1979, the Spouses Bandong have acquired by ordinary acquisitive prescription the area in excess of the 660 sq. m. purchased by Emilio, or more or less the area transferred by Pedro. It is also noted that it was the Spouses De Guzman who constructed the fence made of barb wire to delineate their boundaries in 1984.

It is emphasized that the registration of a patent under the Torrens System merely confirms the registrant's title. It does not vest title where there is none because registration under this system is not a mode of acquiring ownership.[46] The registration of the Spouses Bandong's free patent over the *Real* property did not vest them the ownership thereof. The Spouses De Guzman successfully ascertained their prior title, as well as the Spouses Bandong's title based on their predecessors' interest, which both corresponded with the area they actually occupied.

WHEREFORE, the petition for review on *certiorari* is **GRANTED.** The Decision and Resolution, dated August 20, 2014 and November 20, 2014, respectively, of the Court of Appeals in CA-G.R. CV No. 99522 are **REVERSED** and **SET ASIDE**, and the Decision of the Regional Trial Court of San Carlos City, Pangasinan, Branch 57 in Civil Case No. SCC-2767 is hereby **REINSTATED**.

SO ORDERED.

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

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[45] *Heirs of Santiago v. Heirs of Santiago,* 452 Phil. 238, 248 (2003).

[46] *Baguio v. Republic,* 361 Phil. 374 (1999).

SECOND DIVISION

[G.R. No. 216161. August 9, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE ALUMINUM WHEELS, INC.,** *respondent.*

SYLLABUS

1. TAXATION; TAX AMNESTY; CONCEPT; IT PARTAKES OF A FORGIVENESS OR WAIVER BY THE GOVERNMENT OF ITS RIGHT TO COLLECT WHAT IS DUE IT.— A tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It partakes of an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.

2. ID.; ID.; TAX AMNESTY PROGRAM UNDER REPUBLIC ACT NO. (RA) 9480; COMPLETION OF THE REQUIREMENTS FOR TAX AMNESTY PROGRAM UNDER RA 9480 IS SUFFICIENT TO EXTINGUISH RESPONDENT'S TAX LIABILITY.— On 19 September 2007, respondent availed of the Tax Amnesty Program under RA 9480, as implemented by DO 29-07. Respondent submitted its Notice of Availment, Tax Amnesty Return, Statement of Assets, Liabilities and Net Worth, and comparative financial statements for 2005 and 2006. Respondent paid the amnesty tax to the Development Bank of the Philippines, evidenced by its Tax Payment Deposit Slip dated 21 September 2007. Respondent's completion of the requirements of the Tax Amnesty Program under RA 9480 is sufficient to extinguish its tax liability under the FDDA of the BIR.

3. ID.; ID.; ID.; ONLY PERSONS WITH "TAX CASES SUBJECT OF FINAL AND EXECUTORY JUDGMENT BY

THE COURTS" ARE DISQUALIFIED TO AVAIL OF THE AMNESTY PROGRAM; FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) ISSUED BY THE BUREAU OF INTERNAL REVENUE (BIR) IS NOT THE TAX CASE CONTEMPLATED BY LAW.— Section 8(f) is clear: only persons with "tax cases subject of final and executory judgment by the courts" are disqualified to avail of the Tax Amnesty Program under RA 9480. There must be a judgment promulgated by a court and the judgment must have become final and executory. Obviously, there is none in this case. ***The FDDA issued by the BIR is not a tax case "subject to a final and executory judgment by the courts" as contemplated by Section 8(f) of RA 9480.*** The determination of the tax liability of respondent has not reached finality and is still not subject to an executory judgment by the courts as it is the issue pending before this Court. In fact, in *Metrobank*, this Court held that the FDDA issued by the BIR was not a final and executory judgment and did not prevent *Metrobank* from availing of the immunities and privileges granted under RA 9480[.]

4. **ID.; ID.; ID.; A REVENUE MEMORANDUM CIRCULAR CANNOT AMEND RA 9480 BY INCLUDING DELINQUENT ACCOUNTS OR ACCOUNTS RECEIVABLE CONSIDERED AS ASSETS BY THE BIR AS DISQUALIFICATIONS TO AVAIL THE AMNESTY.—** The CIR alleges that respondent is disqualified to avail of the Tax Amnesty Program under Revenue Memorandum Circular No. 19-2008 (RMC No. 19-2008) dated 22 February 2008 issued by the BIR which includes "delinquent accounts or accounts receivable considered as assets by the BIR or the Government, including self-assessed tax" as disqualifications to avail of the Tax Amnesty Program under RA 9480. The exception of delinquent accounts or accounts receivable by the BIR under RMC No. 19-2008 cannot amend RA 9480. As a rule, executive issuances including implementing rules and regulations cannot amend a statute passed by Congress.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Buñag And Associates Law Office for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on certiorari[1] assailing the 19 May 2014 Decision[2] and the 5 January 2015 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 994.

The CTA *En Banc* affirmed the Decision of the CTA First Division ordering the cancellation and withdrawal of the deficiency tax assessments issued by the Commissioner of Internal Revenue (CIR) against Philippine Aluminum Wheels, Inc. (respondent).

The Facts

Respondent is a corporation organized and existing under Philippine laws which engages in the manufacture, production, sale, and distribution of automotive parts and accessories. On 16 December 2003, the Bureau of Internal Revenue (BIR) issued a Preliminary Assessment Notice (PAN) against respondent covering deficiency taxes for the taxable year 2001.[4] On 28 March 2004, the BIR issued a Final Assessment Notice (FAN) against respondent in the amount of ₱32,100,613.42.[5] On 23 June 2004, respondent requested for reconsideration of the FAN issued by the BIR. On 8 November 2006, the BIR issued a Final Decision on Disputed Assessment (FDDA) and demanded

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[1] *Rollo,* pp. 10-24. Under Rule 45 of the Rules of Court.

[2] *Id*. at 29-40. Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas concurring. Associate Justices Erlinda P. Uy and Caesar A. Casanova were on leave.

[3] *Id*. at 41-43.

[4] *Id*. at 44-52.

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

full payment of the deficiency tax assessment from respondent.[6] On 12 April 2007, the FDDA was served through registered mail.

On 19 July 2007, respondent filed with the BIR an application for the abatement of its tax liabilities under Revenue Regulations No. 13-2001 for the taxable year 2001.[7] In a letter dated 12 September 2007,[8] the BIR denied respondent's application for tax abatement on the ground that the FDDA was already issued by the BIR and that the FDDA had become final and executory due to the failure of the respondent to appeal the FDDA with the CTA. The BIR contended that the FDDA had been sent through registered mail on 12 April 2007 and that the FDDA had become final, executory, and demandable because of the failure of the respondent to appeal the FDDA with the CTA within thirty (30) days from receipt of the FDDA.

In a letter dated 19 September 2007,[9] respondent informed the BIR that it already paid its tax deficiency on withholding tax amounting to ₱736,726.89 through the Electronic Filing and Payment System of the BIR and that it was also in the process of availing of the Tax Amnesty Program under Republic Act No. 9480 (RA 9480) as implemented by Revenue Memorandum Circular No. 55-2007 to settle its deficiency tax assessment for the taxable year 2001. On 21 September 2007, respondent complied with the requirements of RA 9480 which include: the filing of a Notice of Availment, Tax Amnesty Return and Payment Form, and remitting the tax payment. In a letter dated 29 January 2008, the BIR denied respondent's request and ordered respondent to pay the deficiency tax assessment amounting to ₱29,108,767.63.[10]

In a second letter dated 16 July 2008, the BIR reiterated that the FDDA had become final and executory for the failure

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[6] *Id*. at 61-65.

[7] *Id*. at 66.

[8] *Id*. at 67.

[9] *Id*. at 68.

[10] *Id*. at 69.

of the respondent to appeal the FDDA with the CTA within the prescribed period of thirty (30) days. The BIR demanded the full payment of the tax assessment and contended that the respondent's availment of the tax amnesty under RA 9480 had no effect on the assessment due to the finality of the FDDA prior to respondent's tax amnesty availment. On 1 August 2008, respondent filed a Petition for Review with the CTA assailing the letter of the BIR dated 16 July 2008.

The Decision of the CTA First Division

On 12 November 2012, the CTA granted respondent's Petition for Review and set aside the assessment in view of respondent's availment of a tax amnesty under RA 9480. The CTA First Division held that RA 9480 covers all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued, that have remained unpaid as of 31 December 2005.[11] The CTA First Division ruled that respondent complied with all the requirements of RA 9480 including the payment of the amnesty tax and submission of all relevant documents. Having complied with all the requirements of RA 9480, respondent is fully entitled to the immunities and privileges granted under RA 9480.[12]

The dispositive portion of the Decision states:

> WHEREFORE, premises considered, the instant Petition for Review is GRANTED. The subject assessment in the present case against petitioner is hereby SET ASIDE solely in view of petitioner's availment of the Tax Amnesty Program under R.A. No. 9480; and accordingly, petitioner is hereby DECLARED ENTITLED to the immunities and privileges provided by the Tax Amnesty Law being a qualified tax amnesty applicant and for having complied with all the documentary requirements set by law.
>
> SO ORDERED.[13]

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[11] *Id*. at 137.

[12] *Id*. at 146.

[13] *Id*. at 146-147.

The CIR filed a Motion for Reconsideration[14] on 3 December 2012 which the CTA First Division denied on 1 March 2013.[15]

The Decision of the CTA *En Banc*

On 19 May 2014, the CTA *En Banc* held that a qualified tax amnesty applicant who has completed the requirements of RA 9480 shall be deemed to have fully complied with the Tax Amnesty Program. Upon compliance with the requirements of the law, the taxpayer shall, as mandated by law, be immune from the payment of taxes as well as appurtenant civil, criminal, or administrative penalties under the National Internal Revenue Code. The CTA *En Banc* ruled that the finality of a tax assessment did not disqualify respondent from availing of a tax amnesty under RA 9480.

The dispositive portion of the Decision states:

> WHEREFORE, premises considered, the Petition for Review filed by the Commissioner of Internal Revenue is DENIED, for lack of merit. The Decision of the First Division of this Court promulgated on November 12, 2012 in CTA Case No. 781[7], captioned *Philippine Aluminum Wheels, Inc. v. Commissioner of Internal Revenue*, and the Resolution of the said Division dated March 1, 2013, are AFFIRMED *in toto*.
>
> SO ORDERED.[16]

The CIR filed a Motion for Reconsideration on 11 June 2014 which was denied on 5 January 2015.[17]

The Issue

Whether respondent is entitled to the benefits of the Tax Amnesty Program under RA 9480.

The Decision of this Court

This Court denies the petition in view of the respondent's availment of the Tax Amnesty Program under RA 9480.

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[14] *Id*. at 148-202.

[15] *Id*. at 203-206.

[16] *Id*. at 39.

[17] *Id*. at 43.

A tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It partakes of an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[18]

On 24 May 2007, RA 9480, or "An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years," became law.

The pertinent provisions of RA 9480 are:

Section 1. *Coverage*. There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, **with or without assessments duly issued therefor**, that have remained unpaid as of December 31, 2005: Provided, however, that the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.

x x x x x x x x x

Section 6. *Immunities and Privileges*. Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:

(a) The taxpayer shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

x x x x x x x x x

(Emphasis supplied)

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[18] *Commissioner of Internal Revenue v. Marubeni Corporation*, 423 Phil. 862, 874 (2001).

The Department of Finance issued DOF Department Order No. 29-07 (DO 29-07).[19] Section 6 of DO 29-07 provides for the method for availing a tax amnesty under RA 9480, to wit:

> Section 6. *Method of Availment of Tax Amnesty*.
>
> 1. Forms/Documents to be filed. To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:
>
> a. Notice of Availment in such forms as may be prescribed by the BIR;
> b. Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such forms, as may be prescribed by the BIR;
> c. Tax Amnesty Return in such forms as may be prescribed by the BIR.
>
> 2. x x x.
>
> 3. x x x.
>
> The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. **The completion of these requirements shall be deemed full compliance with the provisions of RA 9480.**
>
> x x x x x x x x x
> (Emphasis supplied)

In *Philippine Banking Corporation v. Commissioner of Internal Revenue*,[20] this Court held that the taxpayer's completion of the requirements under RA 9480, as implemented by DO 29-07, will extinguish the taxpayer's tax liability, additions and all appurtenant civil, criminal, or administrative penalties under the National Internal Revenue Code, to wit:

> Considering that the completion of these requirements shall be deemed full compliance with the tax amnesty program, the law mandates that the taxpayer shall thereafter be immune from the payment of

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[19] Rules and Regulations to Implement Republic Act No. 9480. Issued on 15 August 2007.

[20] 597 Phil. 363 (2009).

taxes, and additions thereto, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.[21]

Similarly, in *Metropolitan Bank and Trust Company* (*Metrobank*) *v. Commissioner of Internal Revenue*,[22] this Court sustained the validity of Metrobank's tax amnesty upon full compliance with the requirements of RA 9480. This Court ruled: "Therefore, by virtue of the availment by Metrobank of the Tax Amnesty Program under Republic Act No. 9480, it is already immune from the payment of taxes, including DST on the UNISA for 1999, as well as the addition thereto."[23]

On 19 September 2007, respondent availed of the Tax Amnesty Program under RA 9480, as implemented by DO 29-07. Respondent submitted its Notice of Availment, Tax Amnesty Return, Statement of Assets, Liabilities and Net Worth, and comparative financial statements for 2005 and 2006. Respondent paid the amnesty tax to the Development Bank of the Philippines, evidenced by its Tax Payment Deposit Slip dated 21 September 2007. Respondent's completion of the requirements of the Tax Amnesty Program under RA 9480 is sufficient to extinguish its tax liability under the FDDA of the BIR.

In *Asia International Auctioneers, Inc. v. Commissioner of Internal Revenue*,[24] this Court ruled that the tax liability of Asia International Auctioneers, Inc. was fully settled when it was able to avail of the Tax Amnesty Program under RA 9480 in February 2008 while its Petition for Review was pending before this Court. This Court declared the pending case involving the tax liability of Asia International Auctioneers, Inc. moot since the company's compliance with the Tax Amnesty Program under RA 9480 extinguished the company's outstanding deficiency taxes.

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[21] *Id*. at 388.

[22] 612 Phil. 544 (2009).

[23] *Id*. at 573.

[24] 695 Phil. 852 (2012).

The CIR contends that respondent is disqualified to avail of the tax amnesty under RA 9480. The CIR asserts that the finality of its assessment, particularly its FDDA is equivalent to a final and executory judgment by the courts, falling within the exceptions to the Tax Amnesty Program under Section 8 of RA 9480, which states:

> Section 8. *Exceptions*. The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:
>
> (a) Withholding agents with respect to their withholding tax liabilities;
>
> (b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
>
> (c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
>
> (d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
>
> (e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and
>
> **(f) Tax cases subject of final and executory judgment by the courts.** (Emphasis supplied)

The CIR is wrong. Section 8(f) is clear: only persons with "tax cases subject of final and executory judgment by the courts" are disqualified to avail of the Tax Amnesty Program under RA 9480. There must be a judgment promulgated by a court and the judgment must have become final and executory. Obviously, there is none in this case. ***The FDDA issued by the BIR is not a tax case "subject to a final and executory judgment by the courts" as contemplated by Section 8(f) of RA 9480***. The determination of the tax liability of respondent has not reached finality and is still not subject to an executory judgment by the courts as it is the issue pending before this Court. In fact,

in *Metrobank*, this Court held that the FDDA issued by the BIR was not a final and executory judgment and did not prevent *Metrobank* from availing of the immunities and privileges granted under RA 9480, to wit:

> x x x. As argued by Metrobank, the very fact that the instant case is still subject of the present proceedings is proof enough that it has not reached a final and executory stage as to be barred from the tax amnesty under Republic Act No. 9480.
>
> The assertion of the CIR that deficiency DST is not covered by the Tax Amnesty Program under Republic Act No. 9480 is downright specious.[25]

The CIR alleges that respondent is disqualified to avail of the Tax Amnesty Program under Revenue Memorandum Circular No. 19-2008 (RMC No. 19-2008) dated 22 February 2008 issued by the BIR which includes "delinquent accounts or accounts receivable considered as assets by the BIR or the Government, including self-assessed tax" as disqualifications to avail of the Tax Amnesty Program under RA 9480. The exception of delinquent accounts or accounts receivable by the BIR under RMC No. 19-2008 cannot amend RA 9480. As a rule, executive issuances including implementing rules and regulations cannot amend a statute passed by Congress.

In *National Tobacco Administration v. Commission on Audit,*[26] this Court held that in case there is a discrepancy between the law and a regulation issued to implement the law, the law prevails because the rule or regulation cannot go beyond the terms and provisions of the law, to wit: "[t]he Circular cannot extend the law or expand its coverage as the power to amend or repeal a statute is vested with the legislature." To give effect to the exception under RMC No. 19-2008 of delinquent accounts or accounts receivable by the BIR, as interpreted by the BIR, would unlawfully create a new exception for availing of the Tax Amnesty Program under RA 9480.

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[25] *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue, supra* note 22, at 569.

[26] 370 Phil. 793 (1999).

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 19 May 2014 Decision and the 5 January 2015 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 994.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 217993. August 9, 2017]

MANUEL R. BAKUNAWA III, *petitioner, vs.* **NORA REYES BAKUNAWA**, *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE; THE EVIDENCE PRESENTED BY PETITIONER IS INSUFFICIENT TO PROVE THAT HE AND RESPONDENT ARE PSYCHOLOGICALLY INCAPACITATED TO PERFORM THE ESSENTIAL OBLIGATIONS OF MARRIAGE.— [T]he totality of evidence presented by Manuel comprising of his testimony and that of Dr. Villegas, as well as the latter's psychological evaluation report, is insufficient to prove that he and Nora are psychologically incapacitated to perform the essential obligations of marriage. Dr. Villegas' conclusion that Manuel is afflicted with Intermittent Explosive Disorder and that Nora has Passive Aggressive Personality Disorder which render them psychologically incapacitated under Article 36 of the Family Code, is solely based on her interviews with Manuel and the parties' eldest child, Moncho. Consequently, the CA did not err in not according probative value to her psychological evaluation report and testimony. x x x [T]he only person interviewed by Dr. Villegas aside from Manuel for the spouses'

psychological evaluation was Moncho, who could not be considered as a reliable witness to establish the psychological incapacity of his parents in relation to Article 36 of the Family Code, since he could not have been there at the time his parents were married.

2. ID.; ID.; ID.; ID.; ID.; THE ADMINISTRATION OF PSYCHOLOGICAL TESTS OR PERSONAL EXAMINATION BY A PHYSICIAN IS NOT REQUIRED ONLY IF THE TOTALITY OF EVIDENCE IS SUFFICIENT TO SUSTAIN A FINDING OF PSYCHOLOGICAL INCAPACITY.— The Court also notes that Dr. Villegas did not administer any psychological tests on Manuel despite having had the opportunity to do so. While the Court has declared that there is no requirement that the person to be declared psychologically incapacitated should be personally examined by a physician, much less be subjected to psychological tests, this rule finds application only if the totality of evidence presented is enough to sustain a finding of psychological incapacity. In this case, the supposed personality disorder of Manuel could have been established by means of psychometric and neurological tests which are objective means designed to measure specific aspects of people's intelligence, thinking, or personality.

3. ID.; ID.; ID.; THE CONFIRMATORY DECREE OF THE NATIONAL TRIBUNAL OF APPEALS ISSUED IN FAVOR OF THE NULLITY OF THE CATHOLIC MARRIAGE OF HEREIN PARTIES IS NOT CONTROLLING AND DECISIVE.— With regard to the Confirmatory Decree of the National Tribunal of Appeals, which affirmed the decision of the Metropolitan Tribunal of First Instance for the Archdiocese of Manila in favor of nullity of the Catholic marriage of Manuel and Nora, the Court accords the same with great respect but does not consider the same as controlling and decisive, in line with prevailing jurisprudence.

APPEARANCES OF COUNSEL

Santiago Cruz & Sarte Law Offices for petitioner.
Alafriz Domingo Bartolome Lachica Agpaoa Calvan Cantil & Custodio Law Office for respondent.

R E S O L U T I O N

REYES, JR., *J.*:

For resolution of the Court is a petition for review on *certiorari*[1] filed by Manuel R. Bakunawa III (Manuel) challenging the Decision[2] dated March 27, 2014 and Resolution[3] dated April 22, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 98579, which upheld the validity of his marriage to Nora Reyes Bakunawa (Nora).

The Facts

Manuel and Nora met in 1974 at the University of the Philippines where they were students and became sweethearts. When Nora became pregnant, she and Manuel got married on July 26, 1975 at St. Ignatius Church, Camp Aguinaldo, Quezon City.[4]

Because Manuel and Nora were both college undergraduates at that time, they lived with Manuel's parents. While Nora was able to graduate, Manuel had to stop his studies to help his father in the family's construction business. Manuel was assigned to provincial projects and came home only during weekends. This setup continued even as Nora gave birth to their eldest child, Moncho Manuel (Moncho). However, whenever Manuel came back from his provincial assignments, he chose to spend his limited time with friends and girlfriends instead of his family. Nora resented this and they started quarreling about Manuel's behavior. Worse, Manuel depended on his father and on Nora for their family's needs.[5]

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[1] *Rollo,* pp. 3-31.

[2] Penned by Associate Justice Marlene B. Gonzales-Sison, with Associate Justices Michael P. Elbinias and Edwin D. Sorongon concurring; *id.* at 33-51.

[3] *Id*. at 71-72.

[4] *Id*. at 6.

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

In 1976, Manuel and Nora lived separately from Manuel's parents. It was during this period that Manuel first observed Nora's passiveness and laziness; she was moody and mercurial. Their house was often dirty and disorderly. Thus, Manuel became more irritated with Nora and their verbal quarrels escalated to physical violence.[6]

On May 9, 1977, Nora gave birth to their second child. However, nothing changed in their relationship. Manuel spent most of his time with friends and engaged in drinking sprees. In 1979, he had an extramarital affair and seldom came home. He eventually left Nora and their children in 1980 to cohabit with his girlfriend. They considered themselves separated.[7]

In 1985, Manuel, upon Nora's request, bought a house for her and their children. After Manuel spent a few nights with them in the new house, Nora became pregnant again and thereafter gave birth to their third child.[8]

On June 19, 2008, Manuel filed a petition for declaration of nullity of marriage with the Regional Trial Court (RTC) of Quezon City,[9] on the ground that he and Nora are psychologically incapacitated to comply with the essential obligations of marriage.

Manuel presented a psychiatrist, Dr. Cecilia Villegas (Dr. Villegas), who testified that Manuel has Intermittent Explosive Disorder, characterized by irritability and aggressive behavior that is not proportionate to the cause. Dr. Villegas diagnosed Nora with Passive Aggressive Personality Disorder, marked by a display of negative attitude and passive resistance in her relationship with Manuel. Her findings were based on her interview with Manuel and the parties' eldest son, Moncho, because Nora did not participate in the psychological assessment.[10]

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[6] *Id*. at 7.

[7] *Id*.

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

[9] *Id*. at 73.

[10] *Id*. at 76.

Manuel alleges in his petition that he continues to live with his common-law wife and has a son with her, whereas, Nora lives alone in her unit in Cubao, Quezon City. Their house and lot was already foreclosed following Nora's failure to pay a loan secured by a mortgage on the said property.[11]

Ruling of the RTC

The RTC granted the petition in its Decision[12] dated March 28, 2011. The dispositive portion thereof reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered declaring the marriage between **MANUEL R. BAKUNAWA III** and **NORA REYES BAKUNAWA** null and void *ab initio* under Article 36 of the Family Code.
>
> The Office of the City Civil Registrar of Quezon City is hereby ordered to make entries into the records of the respective parties pursuant to the judgment of the Court.
>
> Let a copy of this Decision be furnished upon the Office of Solicitor General, the Office of the City Prosecutor of Quezon City, the Office of the Civil Registrars of Quezon City, and the National Statistics Office, as well as the parties and counsel.
>
> SO ORDERED.[13]

Nora appealed the RTC decision to the CA, arguing *inter alia* that the RTC erred in finding that the testimony of the psychiatrist is sufficient to prove the parties' psychological incapacity.

Ruling of the CA

The CA, in its Decision[14] dated March 27, 2014, granted Nora's appeal and reversed the RTC decision. The decretal portion of the decision states:

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[11] *Id*. at 8.

[12] Rendered by Presiding Judge Maria Elisa Sempio Diy; *id*. at 73-81.

[13] *Id*. at 80.

[14] *Id*. at 33-51.

WHEREFORE, premises considered, the instant appeal filed by [Nora] is **GRANTED**. The Decision dated March 28, 2011 of the RTC, National Capital Judicial Region in Civil Case No. Q-08-62822 is **REVERSED and SET ASIDE.**

SO ORDERED. [15]

The CA denied Manuel's motion for reconsideration[16] through a Resolution[17] dated April 22, 2015.

Manuel filed the present petition raising the following grounds:

I. THE HONORABLE CA ERRED WHEN IT UPHELD THE VALIDITY OF THE MARRIAGE OF THE PARTIES DESPITE MORE THAN CLEAR AND CONVINCING EVIDENCE TO DECLARE ITS NULLITY DUE TO THE PSYCHOLOGICAL INCAPACITY OF EITHER OR BOTH PARTIES TO PERFORM THEIR MARITAL OBLIGATIONS; and

II. THE HONORABLE CA ERRED WHEN IT FAILED TO RECONSIDER ITS DECISION DATED MARCH 27, 2014 DESPITE MORE THAN COMPELLING REASONS FOR THE REVERSAL THEREOF.[18]

Ruling of the Court

As the CA correctly ruled, the totality of evidence presented by Manuel comprising of his testimony and that of Dr. Villegas, as well as the latter's psychological evaluation report, is insufficient to prove that he and Nora are psychologically incapacitated to perform the essential obligations of marriage.

Dr. Villegas' conclusion that Manuel is afflicted with Intermittent Explosive Disorder and that Nora has Passive Aggressive Personality Disorder which render them psychologically

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[15] *Id*. at 50.

[16] *Id*. at 52-69.

[17] *Id*. at 71-72.

[18] *Id*. at 10-11.

incapacitated under Article 36 of the Family Code,[19] is solely based on her interviews with Manuel and the parties' eldest child, Moncho. Consequently, the CA did not err in not according probative value to her psychological evaluation report and testimony.

In *Republic of the Philippines v. Galang*,[20] the Court held that "[i]f the incapacity can be proven by independent means, no reason exists why such independent proof cannot be admitted to support a conclusion of psychological incapacity, independently of a psychologist's examination and report."[21] In *Toring v. Toring, et al*.,[22] the Court stated that:

> Other than from the spouses, such evidence can come from persons intimately related to them, such as relatives, close friends or even family doctors or lawyers who could testify on the allegedly incapacitated spouses' condition at or about the time of marriage, or to subsequent occurring events that trace their roots to the incapacity already present at the time of marriage.[23]

In this case, the only person interviewed by Dr. Villegas aside from Manuel for the spouses' psychological evaluation was Moncho, who could not be considered as a reliable witness to establish the psychological incapacity of his parents in relation to Article 36 of the Family Code, since he could not have been there at the time his parents were married.

The Court also notes that Dr. Villegas did not administer any psychological tests on Manuel despite having had the opportunity to do so. While the Court has declared that there

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[19] Article 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void, even if such incapacity becomes manifest only after its solemnization.

[20] 665 Phil. 658 (2011).

[21] *Id*. at 675.

[22] 640 Phil. 434 (2010).

[23] *Id*. at 451.

is no requirement that the person to be declared psychologically incapacitated should be personally examined by a physician,[24] much less be subjected to psychological tests, this rule finds application only if the totality of evidence presented is enough to sustain a finding of psychological incapacity. In this case, the supposed personality disorder of Manuel could have been established by means of psychometric and neurological tests which are objective means designed to measure specific aspects of people's intelligence, thinking, or personality.[25]

With regard to the Confirmatory Decree[26] of the National Tribunal of Appeals, which affirmed the decision of the Metropolitan Tribunal of First Instance for the Archdiocese of Manila in favor of nullity of the Catholic marriage of Manuel and Nora, the Court accords the same with great respect but does not consider the same as controlling and decisive, in line with prevailing jurisprudence.[27]

WHEREFORE, the petition for review is hereby **DENIED**. The Decision dated March 27, 2014 and Resolution dated April 22, 2015 of the Court of Appeals in CA-G.R. CV No. 98579 are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, del Castillo,[*] and *Tijam, JJ.,* concur.

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[24] *Marcos v. Marcos*, 397 Phil. 840, 847 (2000).

[25] *Lim v. Sta. Cruz-Lim*, 625 Phil. 407, 422 (2010).

[26] *Rollo*, pp. 132-134.

[27] *Mallilin v. Jamesolamin, et al.*, 754 Phil. 158, 184 (2015); *Republic of the Philippines v. CA*, 335 Phil. 664, 678 (1997).

[*] Designated additional Member per Raffle dated August 9, 2017 *vice* Associate Justice Francis H. Jardeleza.

SECOND DIVISION

[G.R. No. 219500. August 9, 2017]

MAMERTO DY, *petitioner, vs.* **MARIA LOURDES ROSELL ALDEA,** *respondent.*

SYLLABUS

1. **CIVIL LAW; REPUBLIC ACT (RA) NO. 26; REQUISITES THAT MUST BE COMPLIED FOR AN ORDER OF RECONSTITUTION OF TITLE TO ISSUE; CONCEPT AND PURPOSE OF RECONSTITUTION OF TITLE.—** From the foregoing, it appears that the following requisites must be complied with for an order for reconstitution to be issued: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) that the certificate of title was in force at the time it was lost and destroyed; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title. Verily, the reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.

2. **ID.; ID.; ID.; WHERE THE OWNER'S DUPLICATE COPY OF TITLE WAS NEVER LOST, THE TRIAL COURT NEVER ACQUIRED JURISDICTION OVER THE RECONSTITUTION PROCEEDINGS AND THE JUDGMENT RENDERED THEREIN IS VOID.—** Mamerto asserted that he never lost his owner's duplicate copy of TCT No. T-24829 and that he had always been in possession thereof. Moreover, it is beyond doubt that another person impersonated Mamerto and represented before the court that the owner's duplicate copy of TCT No. T-24829 was lost in order to secure a new copy which was consequently used to deceive Lourdes

into purchasing the subject land. Hence, the fact of loss or destruction of the owner's duplicate certificate of title, which is the primordial element in the validity of reconstitution proceedings, is clearly missing. Accordingly, the RTC never acquired jurisdiction over the reconstitution proceedings initiated by the impostor, and its judgment rendered thereafter is null and void. This alone is sufficient to declare the reconstituted title null and void.

3. ID.; LAND REGISTRATION; BUYER IN GOOD FAITH; ONLY INNOCENT PURCHASER FOR VALUE MAY INVOKE THE MIRROR DOCTRINE.— The real purpose of the Torrens system of registration is to quiet title to land and to put a stop to any question of legality of the title except claims which have been recorded in the certificate of title at the time of registration or which may arise subsequent thereto. As a consequence, the mirror doctrine provides that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and is in no way obliged to go beyond the certificate to determine the condition of the property. Every registered owner and every subsequent purchaser for value in good faith holds the title to the property free from all encumbrances except those noted in the certificate. As such, a defective title, or one the procurement of which is tainted with fraud and misrepresentation — may be the source of a completely legal and valid title, provided that the buyer is an innocent third person who, in good faith, relied on the correctness of the certificate of title, or an innocent purchaser for value.

4. ID.; ID.; BUYER IN GOOD FAITH, NOT A CASE OF; FAILURE TO CONDUCT THOROUGH INVESTIGATION BEFORE BUYING THE LAND AND THAT THERE WAS GROSS UNDERVALUATION OF THE PROPERTY ARE CIRCUMSTANCES INDICATING THAT RESPONDENT WAS NOT AN INNOCENT PURCHASER FOR VALUE.— Lourdes was deficient in her vigilance as buyer of the subject land. During cross-examination, Lourdes admitted that she did not conduct a thorough investigation and that she merely instructed her uncle to check with the Register of Deeds whether the subject land is free from any encumbrance. Further, it must be noted that Lourdes met the seller only during the signing of the two deeds of sale. Yet, she did not call into question why

the seller refused to see her during the negotiation. x x x Lourdes conducted an ocular inspection of the subject land. When she asked Engracia Mondrel, the overseer, if she knows the owner, Engracia affirmed that the property is owned by a person named "Mamerto Dy." Noteworthy, however, is Lourdes' admission that the seller was not present when she talked to Engracia such that there was no way for the latter to ascertain whether she and Lourdes were talking about the same Mamerto Dy. Another circumstance indicating that Lourdes was not an innocent purchaser for value was the gross undervaluation of the property in the deeds of sale at the measly price of ₱1,684,500.00 when the true market value was at least ₱5,390,400.00 for the entire property. Moreover, Lourdes initially decided to buy only half of the subject land or 3,369 square meters. When the impostor, however, insisted that she should buy the remaining half just because it would be difficult to divide the subject land, Lourdes readily acceded without questioning why the seller was willing to sell at ₱200.00 per square meter.

5. **ID.; ID.; ID.; WHERE THE TRANSFER CERTIFICATE OF TITLE (TCT) WAS DERIVED FROM A DUPLICATE OWNER'S COPY REISSUED BY VIRTUE OF THE ALLEGED LOSS OF THE ORIGINAL DUPLICATE OWNER'S COPY, RESPONDENT SHOULD HAVE INQUIRED BEYOND THE FACE OF THE IMPOSTOR'S TCT.—** [I]t was not enough for Lourdes to show that the property was unfenced and vacant; otherwise, it would be too easy for any registered owner to lose his property, including its possession, through illegal occupation. It was also imprudent for her to simply rely on the face of the impostor's TCT considering that she was aware that the said TCT was derived from a duplicate owner's copy reissued by virtue of the alleged loss of the original duplicate owner's copy. That circumstance should have already alerted her to the need to inquire beyond the face of the impostor's TCT.

6. **ID.; ID.; PETITIONER MAY RECOVER THE SUBJECT LAND NOTWITHSTANDING ITS REGISTRATION IN RESPONDENT'S NAME; REASON.—** While it is true that under Section 32 of Presidential Decree No. 1529 the decree of registration becomes incontrovertible after a year, it does not altogether deprive an aggrieved party of a remedy in law.

> The acceptability of the Torrens System would be impaired, if it is utilized to perpetuate fraud against the real owners. Furthermore, ownership is not the same as a certificate of title. Registering a piece of land under the Torrens System does not create or vest title, because registration is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. The indefeasibility of the Torrens title should not be used as a means to perpetrate fraud against the rightful owner of real property. Good faith must concur with registration, otherwise, registration would be an exercise in futility. A Torrens title does not furnish a shield for fraud, notwithstanding the long-standing rule that registration is a constructive notice of title binding upon the whole world. The legal principle is that if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee.

APPEARANCES OF COUNSEL

Jannette Chua Hu-Lamban for petitioner.
Zosimo Bedrijo Argawanon 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 January 30, 2015 Decision[1] and July 1, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 03974, which nullified the November 18, 2009 Decision[3] of the Regional Trial Court, Branch 23, Cebu City *(RTC)* in Civil Case No. CEB-31689.

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[1] Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justice Gabriel T. Ingles and Associate Justice Renato C. Francisco, concurring; *rollo*, pp. 45-57.

[2] *Id*. at 59-64.

[3] Penned by Presiding Judge Generosa G. Labra; *id*. at 227-230.

The Antecedents

Petitioner Mamerto Dy *(Mamerto)* is the owner of Lot 5158 located in Vito, Minglanilla, Cebu, with an area of 6,738 square meters, and covered by Transfer Certificate of Title *(TCT)* No. T-24849.

In June 2005, Mamerto agreed to sell the subject land to his brothers Nelson Dy *(Nelson)* and Sancho Dy, Jr. *(Sancho)*. He asked them to secure copies of the tax declarations covering the subject land from the Municipal Assessor's Office. Nelson found out that the subject land had gone through a series of anomalous transactions. The owner's duplicate copy of TCT No.T-24849 was declared lost. As a result, a new owner's duplicate copy of the same TCT was issued and the subject land was subsequently mortgaged.

On August 17, 2005, Mamerto, through his lawyer, sent a letter to the Register of Deeds of Cebu informing the said office that his owner's duplicate copy of TCT No. T-24849 was never lost and that he never mortgaged his property to anyone.[4]

When Mamerto discovered that the subject land was being fenced upon the instruction of respondent Maria Lourdes Rosell Aldea *(Lourdes)*, he immediately filed a complaint against the latter before the *barangay* office of Minglanilla. Lourdes, however, failed to attend the hearing. A certificate to file action was subsequently issued.

On September 16, 2005, Atty. Manolo D. Rubi, Deputy Register of Deeds, informed Nelson that TCT No. T-134753 covering the subject land was issued in Lourdes' name.[5] Mamerto insisted that he never executed any deed of sale in favor of Lourdes and that the signature appearing on the purported deed of sale was not his authentic signature.[6]

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[4] *Id*. at 66-67.

[5] *Id*. at 117.

[6] *Id*. at 66-67.

For her part, Lourdes countered that in 2004, a certain Mila Labang *(Mila)* was introduced to her by her aunt Luz Aldea *(Luz)*. Mila told her that several parcels of land in Minglanilla, including the subject land, were purportedly for sale.[7]

After she visited the lots in Minglanilla, Lourdes signified her intention to buy the subject land. Mila informed Lourdes that the subject land was mortgaged to a certain Atty. Lim and further told her that she should pay the loan secured by the mortgage. Thereafter, Mila introduced her to Fatima Nadela *(Fatima)*, who allegedly knew the owner of the subject land and promised Lourdes that she would prepare the deed of sale.[8]

On June 20, 2004, Lourdes met with the person impersonating Mamerto *(the impostor)* at a hotel in Cebu City. She gave the impostor ₱1,010,700.00 as payment for the 3,369 square meter-portion of the subject land. Thereafter, they signed the Deed of Sale[9] in the presence of Mila, Fatima and Zenon Aldea *(Zenon)*, Lourdes' uncle. Afterwards, Lourdes, Fatima and the impostor went to the office of Atty. Lim to pay the mortgage loan.[10]

A few weeks thereafter, the impostor called Lourdes and insisted that she should buy the entire land for it would be difficult and expensive to subdivide the same. Lourdes agreed and paid an additional ₱673,800.00. Lourdes and the impostor signed a second deed of sale. For the 6,738 square meter-property, Lourdes paid an aggregate sum of ₱1,684,500.00.[11]

After weeks of waiting, Lourdes was informed by Fatima that the impostor was dead and he had not given any money to process the transfer of the subject land. Lourdes went to the Office of the Provincial Assessor to process the payment of capital gains tax and the transfer of title in her name. Eventually,

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[7] *Id*. at 80.

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

[9] *Id*. at 124.

[10] *Id*. at 81.

[11] *Id*. at 81-82.

the Register of Deeds issued TCT No. T-134753 under her name.[12] Consequently, Mamerto filed a complaint for declaration of nullity of deed of sale and TCT No. T-134753, and recovery of real property with injunction and damages.

The RTC Ruling

In its November 18, 2009 Decision, the RTC ruled that Mamerto had a better right over the subject land and was the rightful and lawful owner thereof. It found that Mamerto's owner's duplicate copy was never lost, and so ruled that the reconstituted title issued in favor of the impostor was null and void. Hence, the RTC nullified Lourdes' title as it was based on a void reconstituted title. It further opined that the contract of sale between Lourdes and the impostor was null and void because the latter did not have the right to transfer ownership of the subject land at the time it was delivered to Lourdes.

The trial court held that Lourdes could not be considered a buyer in good faith because she should have been suspicious of the transaction which occurred at a hotel room and without any lawyer present. It noted that Lourdes gave her money to the seller even if the owner's copy of the certificate of title was not handed to her; and that she decided to buy the remaining portion of the subject land when the price was reduced to ₱200.00 per square meter for the flimsy reason that it would be hard for the seller to subdivide the subject land.

Unconvinced, Lourdes elevated an appeal to the CA.

The CA Ruling

In its assailed January 30, 2015 Decision, the CA *reversed and set aside* the RTC ruling. It declared that Lourdes was an innocent purchaser for value. The appellate court ruled that a person dealing with registered land is only charged with notice of the burdens on the property which are noted on the face of the register or the certificate of title. It observed that the only annotation at the back of the title was that it was mortgaged to Audie C. Uy *(Uy)*.

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[12] *Id*. at 82.

The CA added that Lourdes exercised ordinary prudence because during the signing of the deed of sale, she asked for an identification card and she was given a senior citizen's I.D., showing that the person she was dealing with was "Mamerto Dy." It stated that while it turned out that the I.D. exhibited by the seller was fake and that the person claiming to be the owner of the land was a fraud, Lourdes could not be blamed for believing that she was dealing with the real owner of the land. The appellate court held that the confirmation of Fatima; Engracia Mondrel and Rena Canio, the overseers of the subject land; and Uy, the named mortgagee lead Lourdes to believe that she was dealing with the rightful owner.

Aggrieved, Mamerto moved for reconsideration, but his motion was denied by the CA in its July 1, 2015 Resolution.

Hence, this petition.

ISSUES

(1) WHETHER THE RECONSTITUTED TITLE, FROM WHICH TCT NO. T-134753 IN THE NAME OF LOURDES WAS DERIVED, IS VALID.

(2) WHETHER LOURDES IS AN INNOCENT PURCHASER FOR VALUE WHO IS ENTITLED TO THE APPLICATION OF THE MIRROR DOCTRINE.

(3) WHETHER MAMERTO HAS BETTER RIGHT OVER THE SUBJECT LAND.

Mamerto argues that the fact that the title was reconstituted should have urged Lourdes to conduct further investigation on the identity of the vendor; that even though Fatima, Uy and the purported overseers assured Lourdes that the person she was dealing with was the real owner of the subject land, she should have taken into consideration that these persons might have been lying and that a possible syndicated sale might have been planned; that the impostor did not accompany her when she visited the subject land; that she should have asked for other documents to establish the identity of the seller; and that the market value of the subject land ranges from ₱800.00 to

₱1,000.00, thus, Lourdes should have wondered why the purchase price was inexpensive.

In her Comment,[13] dated December 18, 2015, Lourdes contends that she is an innocent purchaser for value; that while it may be true that an impostor had fraudulently acquired a void reconstituted title over the subject land, such circumstance did not necessarily invalidate her own title; that a valid transfer could issue from a void reconstituted title if an innocent purchaser for value intervenes; and that where innocent third persons rely on the correctness of the certificate of title issued and acquire rights over the property, courts cannot disregard such right and order the total cancellation of the certificate of title for that would impair public confidence in the certificate of title.

In his Reply,[14] dated April 8, 2016, Mamerto insists that Lourdes' argument that a spurious deed can become the root of a valid title when an innocent purchaser for value comes into the picture is not applicable where the real owner still holds a valid and existing certificate of title; and that Lourdes has met the impostor, thus, she should have inquired further into the details of why the title was reconstituted.

The Court's Ruling

The petition is meritorious.

When the Owner's Duplicate Certificate of Title has not been lost, the reconstituted certificate is void

The governing law for judicial reconstitution of title is Republic Act *(R.A.)* No. 26, Section 15 of which provides when reconstitution of a title should be allowed:

> Section 15. If the court, after hearing, finds that the documents presented, as supported by parole evidence or otherwise, are sufficient and proper to warrant the reconstitution of the **lost or destroyed certificate of title,** and that petitioner is the **registered owner of**

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[13] *Id*. at 246-268.

[14] *Id*. at 271-291.

the property or has an interest therein, that the **said certificate of title was in force at the time it was lost or destroyed,** and that the **description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title,** an order of reconstitution shall be issued. The clerk of court shall forward to the register of deeds a certified copy of said order and all the documents which, pursuant to said order, are to be used as the basis of the reconstitution. If the court finds that there is no sufficient evidence or basis to justify the reconstitution, the petition shall be dismissed, but such dismissal shall not preclude the right of the party or parties entitled thereto to file an application for confirmation of his or their title under the provisions of the Land Registration Act. [Emphases supplied]

From the foregoing, it appears that the following requisites must be complied with for an order for reconstitution to be issued: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) that the certificate of title was in force at the time it was lost and destroyed; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title. Verily, the reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.[15]

Indubitably, the fact of loss or destruction of the owner's duplicate certificate of title is crucial in clothing the RTC with jurisdiction over the judicial reconstitution proceedings. In *Spouses Paulino v. CA*,[16] the Court reiterated the rule that when the owner's duplicate certificate of title was not actually lost

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[15] *Sebastian v. Spouses Cruz*, G.R. No. 220940, March 20, 2017.

[16] 725 Phil. 273 (2014).

or destroyed, but is in fact in the possession of another person, the reconstituted title is void because the court that rendered the order of reconstitution had no jurisdiction over the subject matter of the case, *viz.*:

> As early as the case of *Strait Times, Inc. v. CA*, the Court has held that **when the owner's duplicate certificate of title has not been lost, but is, in fact, in the possession of another person, then the reconstituted certificate is void, because the court that rendered the decision had no jurisdiction.** Reconstitution can be validly made only in case of loss of the original certificate. This rule was reiterated in the cases of *Villamayor v. Arante, Rexlon Realty Group, Inc. v. [CA], Eastworld Motor Industries Corporation v. Skunac Corporation, Rodriguez v. Lim, Villanueva v. Viloria,* and *Camitan v. Fidelity Investment Corporation*. Thus, with evidence that the original copy of the TCT was not lost during the conflagration that hit the Quezon City Hall and that the owner's duplicate copy of the title was actually in the possession of another, the RTC decision was null and void for lack of jurisdiction.
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> **In reconstitution proceedings, the Court has repeatedly ruled that before jurisdiction over the case can be validly acquired, it is a condition *sine qua non* that the certificate of title has not been issued to another person. If a certificate of title has not been lost but is in fact in the possession of another person, the reconstituted title is void and the court rendering the decision has not acquired jurisdiction over the petition for issuance of new title.** The courts simply have no jurisdiction over petitions by (such) third parties for reconstitution of allegedly lost or destroyed titles over lands that are already covered by duly issued subsisting titles in the names of their duly registered owners. **The existence of a prior title *ipso facto* nullifies the reconstitution proceedings.** The proper recourse is to assail directly in a proceeding before the regional trial court the validity of the Torrens title already issued to the other person.[17] [Emphases supplied and citations omitted]

In this case, Mamerto asserted that he never lost his owner's duplicate copy of TCT No. T-24829 and that he had always been in possession thereof. Moreover, it is beyond doubt that

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[17] *Id*. at 285-288.

another person impersonated Mamerto and represented before the court that the owner's duplicate copy of TCT No. T-24829 was lost in order to secure a new copy which was consequently used to deceive Lourdes into purchasing the subject land. Hence, the fact of loss or destruction of the owner's duplicate certificate of title, which is the primordial element in the validity of reconstitution proceedings, is clearly missing. Accordingly, the RTC never acquired jurisdiction over the reconstitution proceedings initiated by the impostor, and its judgment rendered thereafter is null and void. This alone is sufficient to declare the reconstituted title null and void.

Only an innocent purchaser for value may invoke the mirror doctrine

The real purpose of the Torrens system of registration is to quiet title to land and to put a stop to any question of legality of the title except claims which have been recorded in the certificate of title at the time of registration or which may arise subsequent thereto.[18] As a consequence, the mirror doctrine provides that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and is in no way obliged to go beyond the certificate to determine the condition of the property.[19]

Every registered owner and every subsequent purchaser for value in good faith holds the title to the property free from all encumbrances except those noted in the certificate.[20] As such, a defective title, or one the procurement of which is tainted with fraud and misrepresentation — may be the source of a completely legal and valid title, provided that the buyer is an innocent third person who, in good faith, relied on the correctness of the certificate of title, or an innocent purchaser for value.[21]

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[18] *Republic v. Umali*, 253 Phil. 732, 738 (1989).

[19] *Locsin v. Hizon,* G.R. No. 204369, September 17, 2014, 735 SCRA 547, 557.

[20] *Cruz v. Court of Appeals,* 346 Phil. 506, 511 (1997).

[21] *Locsin v. Hizon, supra* note 19, at 556.

Thus, in order to resolve whether Lourdes holds an indefeasible title to the subject land, it becomes necessary to determine whether she is an innocent purchaser for value.

Lourdes cannot be considered a purchaser in good faith

In *Nobleza v. Nuega*,[22] the Court defined an innocent purchaser for value, to wit:

> An innocent purchaser for value is one who buys the property of another, without notice that some other person has a right or interest in the property, for which a full and fair price is paid by the buyer at the time of the purchase or before receipt of any notice of claims or interest of some other person in the property. It is the party who claims to be an innocent purchaser for value who has the burden of proving such assertion, and **it is not enough to invoke the ordinary presumption of good faith**. To successfully invoke and be considered as a buyer in good faith, the presumption is that first and foremost, **the "buyer in good faith" must have shown prudence and due diligence in the exercise of his/her rights**. It presupposes that the buyer did everything that an ordinary person would do for the protection and defense of his/her rights and interests against prejudicial or injurious concerns when placed in such a situation. **The prudence required of a buyer in good faith is not that of a person with training in law, but rather that of an average man who 'weighs facts and circumstances without resorting to the calibration of our technical rules of evidence of which his knowledge is nil.'** A buyer in good faith does his homework and verifies that the particulars are in order — such as the title, the parties, the mode of transfer and the provisions in the deed/contract of sale, to name a few. To be more specific, such prudence can be shown by making an ocular inspection of the property, checking the title/ownership with the proper Register of Deeds alongside the payment of taxes therefor, or inquiring into the minutiae such as the parameters or lot area, the type of ownership, and the capacity of the seller to dispose of the property, which capacity necessarily includes an inquiry into the civil status of the seller to ensure that if married, marital consent is secured when necessary. In fine, for a purchaser of a property in the possession of another to be in good faith, he must exercise due diligence, conduct

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[22] *Nobleza v. Nuega,* G.R. No. 193038, March 11, 2015, 752 SCRA 602.

an investigation, and weigh the surrounding facts and circumstances like what any prudent man in a similar situation would do.[23] [Emphases supplied and citations omitted]

In the case at bench, Lourdes was deficient in her vigilance as buyer of the subject land.

During cross-examination, Lourdes admitted that she did not conduct a thorough investigation and that she merely instructed her uncle to check with the Register of Deeds whether the subject land is free from any encumbrance.[24] Further, it must be noted that Lourdes met the seller only during the signing of the two deeds of sale.[25] Yet, she did not call into question why the seller refused to see her during the negotiation. For sure, an ordinary prudent buyer of real property who would be relinquishing a significant amount of money would want to meet the seller of the property and would exhaust all means to ensure that the seller is the real owner thereof.

Indeed, Lourdes conducted an ocular inspection of the subject land. When she asked Engracia Mondrel, the overseer, if she knows the owner, Engracia affirmed that the property is owned by a person named "Mamerto Dy." Noteworthy, however, is Lourdes' admission that the seller was not present when she talked to Engracia such that there was no way for the latter to ascertain whether she and Lourdes were talking about the same Mamerto Dy.[26]

Another circumstance indicating that Lourdes was not an innocent purchaser for value was the gross undervaluation of the property in the deeds of sale at the measly price of ₱1,684,500.00 when the true market value was at least ₱5,390,400.00 for the entire property. Moreover, Lourdes initially decided to buy only half of the subject land or 3,369 square

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[23] *Id*. at 610-611.

[24] TSN, dated January 11, 2007; *rollo,* p. 194.

[25] *Id*. at 197.

[26] *Id*. at 196.

meters. When the impostor, however, insisted that she should buy the remaining half just because it would be difficult to divide the subject land, Lourdes readily acceded without questioning why the seller was willing to sell at ₱200.00 per square meter.[27]

Certainly, it was not enough for Lourdes to show that the property was unfenced and vacant; otherwise, it would be too easy for any registered owner to lose his property, including its possession, through illegal occupation.[28] It was also imprudent for her to simply rely on the face of the impostor's TCT considering that she was aware that the said TCT was derived from a duplicate owner's copy reissued by virtue of the alleged loss of the original duplicate owner's copy.[29] That circumstance should have already alerted her to the need to inquire beyond the face of the impostor's TCT.[30]

In sum, the Court rules that Lourdes is not an innocent purchaser for value. In sum

Mamerto may recover the subject land notwithstanding its registration in Lourdes' name

While it is true that under Section 32 of Presidential Decree No. 1529 the decree of registration becomes incontrovertible after a year, it does not altogether deprive an aggrieved party of a remedy in law. The acceptability of the Torrens System would be impaired, if it is utilized to perpetuate fraud against the real owners.[31]

Furthermore, ownership is not the same as a certificate of title. Registering a piece of land under the Torrens System does

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[27] *Id*. at 202.

[28] *Spouses Cusi v. Domingo,* 705 Phil. 255, 268 (2013).

[29] TSN, dated January 11, 1997; *rollo*, p. 205.

[30] *Spouses Cusi v. Domingo, supra* note 28, at 271.

[31] *Bayoca v. Nogales*, 394 Phil. 465, 481 (2000).

not create or vest title, because registration is not a mode of acquiring ownership.[32] A certificate of title is merely an evidence of ownership or title over the particular property described therein.[33] The indefeasibility of the Torrens title should not be used as a means to perpetrate fraud against the rightful owner of real property. Good faith must concur with registration, otherwise, registration would be an exercise in futility. A Torrens title does not furnish a shield for fraud, notwithstanding the long-standing rule that registration is a constructive notice of title binding upon the whole world. The legal principle is that if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee.[34]

Hence, the fact that Lourdes was able to secure a title in her name neither operates to vest ownership upon her of the subject land nor cures the void sale. Accordingly, the Court deems it proper to restore Mamerto's rights of dominion over Lot 5158.

WHEREFORE, the January 30, 2015 Decision and July 1, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 03974 are **REVERSED and SET ASIDE**. The November 18, 2009 Decision of the Regional Trial Court, Branch 23, Cebu City in Civil Case No. CEB-31689 is hereby **REINSTATED**.

SO ORDERED.

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

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[32] *Heirs of Teodoro de la Cruz v. Court of Appeals*, 358 Phil. 652, 660 (1998).

[33] *Development Bank of the Philippines v. Court of Appeals*, 387 Phil. 283, 296 (2000).

[34] *Spouses Reyes v. Montemayor*, 614 Phil. 256, 275 (2009).

SECOND DIVISION

[G.R. No. 222821. August 9, 2017]

NORTH GREENHILLS ASSOCIATION, INC., *petitioner, vs.* **ATTY. NARCISO MORALES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER OF THE CASE AS WELL AS WHICH COURT OR BODY HAS JURISDICTION OVER IT IS CONFERRED BY LAW AND DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT; LACK OF JURISDICTION MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS.—** Basic is the rule that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined from the allegations contained in the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. Once vested by the allegations in the complaint, jurisdiction remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. Relative thereto is the rule that lack of jurisdiction over the subject matter may be raised at any stage of the proceedings. Jurisdiction over the subject matter is conferred only by the Constitution or the law. It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court. Consequently, questions of jurisdiction may be cognizable even if raised for the first time on appeal.

2. **ID.; ID.; ID.; WHERE THE REQUIREMENT OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION IS PRESENT, JURISDICTION OVER THE SUBJECT MATTER OF THE CASE WAS PROPERLY VESTED IN THE HOUSING AND LAND USE REGULATORY BOARD (HLURB).—** [I]t appears that Atty. Morales, by filing his complaint as a member whose rights have been allegedly violated,

has satisfied such requirement. His status as a member has not been questioned. It is worthy to note that NGA, in its counterclaim, demanded the payment of association dues from Atty. Morales as he has been refusing to pay his dues for more than three decades. In sum, there is no dispute that Atty. Morales is a member of NGA, albeit a delinquent member. x x x Considering that the requirement of membership is present, jurisdiction over the subject matter of the case was properly vested in the HLURB.

3. ID.; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS IS GENERALLY CONCLUSIVE UPON THE SUPREME COURT; EXCEPTIONS, ENUMERATED.— The CA in disposing the case, ruled that the restroom posed sanitary issues to Atty. Morales and is, therefore, a nuisance *per accidens*. Such is a finding of fact, which is generally conclusive upon the Court, because it is not its function to analyze and weigh the evidence all over again. There are, however, well-recognized exceptions. These are (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

4. ID.; ID.; ID.; ID.; THIS COURT MAY REVIEW THE FACTUAL FINDING OF THE COURT OF APPEALS (CA) WHERE SUCH FINDING WAS ONLY SPECULATIVE RESULTING IN A GRAVE MISAPPREHENSION OF FACTS; IT WAS IMPROPER FOR THE CA TO ASSUME THE NEGATIVE EFFECTS OF MODERN DAY

RESTROOMS AND CONSIDER IT AS *NUISANCE PER ACCIDENS* WITHOUT SUPPORTING EVIDENCE.— NGA avers that the case falls under the said exceptions considering that no proof was ever presented to prove that the restroom was a *nuisance per accidens*. Absent such evidence, the CA's finding was only speculative, resulting in a grave misapprehension of facts. The Court agrees. A nuisance *per accidens* is one which depends upon certain conditions and circumstances, and its existence being a question of fact, *it cannot be abated without due hearing* thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance. Obviously, it requires a determination of such circumstances as to warrant the abatement of the nuisance. That can only be done with reasonable notice to the person alleged to be maintaining or doing the same of the time and place of hearing before a tribunal authorized to decide whether such a thing or act does in law constitute a nuisance *per accidens*. In other words, it requires a proper appreciation of evidence before a court or tribunal rules that the property being maintained is a nuisance *per accidens*. x x x By the use of the words "would, should, could," it can be discerned that the CA was not even sure that the restroom has caused such annoyance to Atty. Morales or his family. Its declaration that the restroom is a nuisance *per accidens* had no basis in evidence. There is nothing in the records which discloses that Atty. Morales had introduced any evidence, testimonial or documentary, to prove that the restroom annoyed his senses, that foul odor emanated from it, or that it posed sanitary issues detrimental to his family's health. No certification by the City Health Officer was even submitted to the HLURB to attest on such matters. It was improper on the part of the CA to assume those negative effects because modern day restrooms, even those for the use of the public, are clean, safe and emitting no odor as these are regularly maintained. For said reason, it was an error on the part of the CA to rule that the restroom was a nuisance *per accidens* and to sustain the order that it should be relocated. Clearly, its finding was based on speculations, and not evidence.

5. ID.; CIVIL PROCEDURE; KINDS OF PLEADINGS; COUNTERCLAIM; COMPULSORY COUNTERCLAIM, EXPLAINED; THE COMPELLING TEST OF COMPULSORINESS CHARACTERIZES A COUNTERCLAIM AS COMPULSORY IF THERE SHOULD EXIST A

LOGICAL RELATIONSHIP BETWEEN THE MAIN CLAIM AND THE COUNTERCLAIM; CRITERIA TO DETERMINE WHETHER THE COUNTERCLAIM IS COMPULSORY OR PERMISSIVE.— A compulsory counterclaim is any claim for money or any relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of the plaintiff's complaint. It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and will be barred in the future if not set up in the answer to the complaint in the same case. Any other counterclaim is permissive. The Court has held that the compelling test of compulsoriness characterizes a counterclaim as compulsory if there should exist a logical relationship between the main claim and the counterclaim. The Court further ruled that there exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties. The criteria to determine whether the counterclaim is compulsory or permissive are as follows: (a) Are issues of fact and law raised by the claim and by the counterclaim largely the same? (b) Would *res judicata* bar a subsequent suit on defendant's claim absent the compulsory rule? (c) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim? (d) Is there any logical relations between the claim and the counterclaim? A positive answer to all four questions would indicate that the counterclaim is compulsory. Otherwise, the same is permissive.

6. **ID.; ID.; ID.; SINCE THE PAYMENT OR NON-PAYMENT OF ASSOCIATION DUES ARE DISTINCT MATTERS THAT DO NOT RELATE TO THE MAIN CAUSE OF RESPONDENT AGAINST PETITIONER, THE COUNTERCLAIM IN THE INSTANT CASE WAS A PERMISSIVE ONE.—** [T]he main issues in the complaint are limited only to the propriety of barring Atty. Morales from accessing the park through the side door and whether the restroom constructed by NGA is a nuisance *per se*. On the other hand,

the counterclaim is simply concerned with collecting from Atty. Morales his unpaid association dues for the past thirty (30) years. Suffice it to state that payment or non-payment of association dues are distinct matters that do not relate to whether the main cause of Atty. Morales against NGA was proper. Whether there was payment or otherwise is irrelevant to the main issues considering that the pleadings filed by the parties essentially reflected an admission of membership of Atty. Morales in the association. The failure to raise the issue of unpaid association dues in this case or its dismissal if properly raised will not be a bar to the filing of the appropriate separate action to collect it.

APPEARANCES OF COUNSEL

Abejo Tayag & Juarez Law Offices for petitioner.
Luisito B. Demaisip for respondent.

D E C I S I O N

MENDOZA, *J.*:

In this petition for review on *certiorari* with application for temporary restraining order and writ of preliminary injunction[1] filed under Rule 45 of the Rules of Court, petitioner North Greenhills Association, Inc. *(NGA)* seeks the review of the March 13, 2015 Decision[2] and February 3, 2016 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 131707, which affirmed the February 17, 2010 Decision[4] and August 8, 2013 Resolution[5] of the Office of the President *(OP)* in O.P. Case

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[1] *Rollo,* pp. 17-61.

[2] Penned by Associate Justice Jane Aurora C. Lantion, with Magdangal M. De Leon and Nina G. Antonio-Valenzuela, concurring, *id*. at 66-76.

[3] *Id*. at 78-79.

[4] Penned by Deputy Executive Secretary for Legal Affairs, Natividad G. Dizon, *id*. at 185-191.

[5] Penned by Deputy Executive Secretary for Legal Affairs, Michael G. Aguinaldo, *id*. at 232-233.

No. 08-I-004. The CA ruled in favor of respondent Atty. Narciso Morales *(Atty. Morales)*, a resident of North Greenhills Subdivision, who filed a Complaint before the Housing and Land Use Regulatory Board *(HLURB),* docketed as HLURB Case No. HOA-A-050425-0014, against the NGA for allegedly blocking his side access to the community park.

Factual Antecedents

Atty. Morales is a resident of North Greenhills Subdivision in San Juan City. His house is located alongside Club Filipino Avenue and adjacent to McKinley Park, an open space/ playground area owned and operated by NGA. He also has a personal access door, which he built through a wall separating his house from the park. This access door, when unlocked, opens directly into the park.

On the other hand, NGA, an association composed of members of the subdivision, organized to promote and advance the best interests, general welfare, prosperity, and safeguard the well-being of the owners, lessees and occupants of North Greenhills, is the undisputed owner of the park. It has acquired ownership thereof through a donation made by the original owner, Ortigas &. Co. Ltd.

In June 2003, NGA started constructing a pavilion or kiosk occupying the side of the park adjacent to the residence of Atty. Morales. Part of the design was a public restroom intended to serve the needs of park guests and members of NGA. Said restroom was constructed alongside the concrete wall separating the house of Atty. Morales from the park.

Objecting to the construction of the restroom, Atty. Morales filed on July 23, 2003 a complaint before the HLURB, docketed as HLURB Case No. NCRHOA-072303-309. On August 13, 2013, he amended his complaint and additionally sought the demolition of the pavilion which was then being built.

In his Amended Complaint, Atty. Morales alleged that for a period spanning 33 years, he had an open, continuous, immediate, and unhampered access to the subdivision park through his side door, which also served as an exit door in case

of any eventuality; that having such access to the park was one of the considerations why he purchased the lot; that the construction of the pavilion was illegal because it violated his right to immediate access to the park, Presidential Decree No. 957 and the Deed of Donation of Ortigas & Co. Ltd., which required the park to be maintained as an open area; and that the restroom constructed by NGA was a nuisance *per se.*

NGA, in its Answer with Compulsory Counterclaim, rejected the assertions of Atty. Morales. It contended that as the absolute owner of the park, it had the absolute right to fence the property and impose reasonable conditions for the use thereof by both its members and third parties; that the construction of the restroom was for the use and benefit of all NGA members, including Atty. Morales; and that Atty. Morales' use of a side entrance to the park for 33 years could not have ripened into any right because easement of right of way could not be acquired by prescription. NGA likewise sought the payment of ₱878,778.40 corresponding to the annual membership dues which Atty. Morales had not been paying since 1980.

On April 13, 2003, the HLURB Arbiter conducted an ocular inspection of the park and noted that the construction started by NGA blocked Atty. Morales' side access to the park.

On February 16, 2005, the HLURB Arbiter rendered a Decision,[6] the decretal portion of which reads:

> **WHEREFORE**, **PREMISES CONSIDERED**, judgment is hereby rendered ordering respondents of the removal of the pavilion and the relocation of the common toilet in a place where it will not be a nuisance to any resident. Respondents are further directed to remove the obstruction to the side door of the complainant.
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> All other claims and counterclaims are hereby dismissed for lack of merit.
>
> **IT IS SO ORDERED**.[7]

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[6] *Id*. at 139-142.

[7] *Id*. at 141.

NGA appealed to the HLURB Board of Commissioners *(HLURB Board)*. In its November 22, 2007 Decision,[8] the HLURB Board *modified* the ruling of the HLURB Arbiter, thus:

> Further, the complaint against respondent Alviar should be dropped as no acts have been particularly attributed to him in his personal capacity.
>
> **WHEREFORE**, premises considered, the decision of the Regional Office is hereby **MODIFIED**. Accordingly, respondent NGA is ordered to relocate the restroom constructed or being constructed in the McKinley Park away from the walls of any resident and where it will not block complainant's side door access to the park.
>
> **SO ORDERED**.[9]

NGA appealed to the Office of the President *(OP)*.

On February 17, 2010, the OP rendered its decision, *affirming in toto* the ruling of the HLURB Board.

NGA moved for reconsideration, but its motion was denied by the OP in its August 8, 2013 Resolution.

Aggrieved, NGA filed a petition for review under Rule 43 of the Rules of Court before the CA, arguing that the OP erred in its findings.

Ruling of the CA

In its March 13, 2015 Decision,[10] the CA affirmed the ruling of the OP. It found no error on the part of the OP in affirming the characterization of the restrooms built as nuisance *per accidens* considering that the structure posed sanitary issues which could adversely affect not only Atty. Morales, but also his entire household; that even if there existed a perimeter wall

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[8] *Id*. at 161-167.

[9] *Id*. at 167.

[10] *Id*. at 66-76. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Magdangal M. De Leon and Nina G. Antonio-Valenzuela, concurring.

between the park and Atty. Morales' home, the odor emanating from the restroom could easily find its way to the dining area, and the foul and noxious smell would make it very difficult and annoying for the residents of the house to eat; and that the proximity of the restroom to Atty. Morales' house placed the people residing therein at a greater risk of contracting diseases both from improperly disposed waste and human excrements, as well as from flies, mosquitoes and other insects, should NGA fail to maintain the cleanliness of the structures.

The CA stated that NGA's fear of being exposed to outsiders and criminals because Atty. Morales' access was unfounded. It pointed out that the door had been in existence for more than three decades and that if dangers truly existed, NGA should have taken immediate action and blocked the side access years earlier. It then pointed out other ways to remedy the security concerns of NGA, such as placing a wall strategically placed at the border of the park or additional guards to patrol the vicinity.

As to the counterclaim of NGA for association dues, the CA held that the claim was in the nature of a permissive counterclaim, which was correctly dismissed by the OP.

NGA moved for reconsideration, but its motion was denied by the CA in its February 3, 2016 Resolution.

Hence, this petition.

GROUNDS:

I.

THE COURT OF APPEALS SERIOUSLY ERRED IN COMPLETELY DISREGARDING THE HLURB'S LACK OF JURISDICTION OVER THE INSTANT CASE.

(1)

RESPONDENT MORALES FAILED TO ALLEGE IN HIS COMPLAINT (OR AMENDED COMPLAINT) THAT HE IS A MEMBER OF NGA — A FATAL JURISDICTIONAL DEFECT FOR FAILURE TO PROPERLY LAY THE PREDICATE THAT WOULD HAVE ENABLED THE

HLURB TO ACQUIRE JURISDICTION OVER THE INSTANT ACTION.

(2)

IN THE CASE OF *STA. CLARA HOMEOWNERS' ASSOCIATION V. GASTON* (G.R. NO. 141961, JANUARY 23, 2002), THE HONORABLE COURT RULED THAT WHERE THE BODY OF THE COMPLAINT FILED IN THE NOW HLURB FAILS TO MENTION THAT THE COMPLAINANT IS A MEMBER OF THE ASSOCIATION HE IS SUING, SUCH COMPLAINT MUST BE DISMISSED FOR LACK OF JURISDICTION.

(3)

PETITIONER NGA'S CLAIM FOR UNPAID ASSOCIATION DUES DOES NOT PRECLUDE IT FROM ASSAILING RESPONDENT'S MEMBERSHIP IN THE NGA.

(4)

IN THE CASE OF *GREGORIO C. JAVELOSA V. COURT OF APPEALS* (G.R. NO. 124292, DECEMBER 10, 1996), THE HONORABLE COURT RULED THAT "IT IS SETTLED THAT THE JURISDICTION OF COURTS OVER THE SUBJECT MATTER OF LITIGATION IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT. IT IS EQUALLY SETTLED THAT AN ERROR OF JURISDICTION CAN BE RAISED AT ANY TIME AND EVEN FOR THE FIRST TIME ON APPEAL."

II.

THE COURT OF APPEALS SERIOUSLY ERRED AND IS MANIFESTLY MISTAKEN IN RULING THAT THE TOILET BUILT BY NGA AT THE MCKINLEY PARK IS A NUISANCE *PER ACCIDENS*, ON THE BASIS OF MERE SPECULATION, SUPPOSITION AND PURE CONJECTURE, CONSIDERING THE TOTAL LACK OF EVIDENCE ON RECORD TO PROVE SO.

(1)

RESPONDENT ATTY. MORALES DID NOT SET OUT TO PROVE THAT THE TOILET ADJACENT HIS HOUSE INJURED HIM OR THAT FOUL ODOR EMANATED

FROM IT BECAUSE HE MISTAKENLY ALLEGED THAT THE TOIILET WAS A NUISANCE *PER SE*.

(2)

BY FAILING TO ADDUCE EVIDENCE THAT THE TOILET, IN ANY WAY, ANNOYED RESPONDENT'S SENSES, OR THAT FOUL ODOR EMANATED FROM IT, OR THAT IT POSED SANITARY ISSUES DETRIMENTAL TO HIS FAMILY'S HEALTH — THE SUBJECT TOILET CANNOT BE LEGALLY CONSIDERED NUISANCE *PER ACCIDENS*.

(3)

INDEED, A CURSORY VIEW OF THE PERTINENT DISCUSSION IN THE ASSAILED DECISION REVEALS THAT THE COURT OF APPEALS SADLY TOOK THE PATH OF SPECULATION, SUPPOSITION AND PURE CONJECTURE IN JUSTIFYING ITS DECISION.

III.

THE ASSAILED 13 MARCH 2015 DECISION IS PATENTLY ERRONEOUS AS IT IS BASED ON GRAVE MISAPPREHENSION OF FACTS AND OF THE EVIDENCE — OR THE TOTAL LACK OF IT — ON RECORD.

(1)

INDEED, A PERUSAL OF THE RECORDS WOULD REVEAL THAT THERE WAS NO EVIDENCE WHATSOEVER ADDUCED BY THE RESPONDENT DEMONSTRATING THAT THE SUBJECT TOILET HAS CAUSED PHYSICAL ANNOYANCE OR DISCOMFORT TO HIM. NO TESTIMONY HAS EVER BEEN BROUGHT TO THE HLURB OR THE OFFICE OF THE PRESIDENT SHOWING THAT THE TOILET EMITTED ANY FOUL SMELL, OR ODOR, OR AT THE VERY LEAST, ANNOYED RESPONDENT MORALES EVERY TIME HE WOULD EAT IN HIS DINING AREA.

(2)

AS A MATTER OF FACT, IT IS WORTH TO NOTE THAT THE RESPONDENT DID NOT EVEN SUBMIT A POSITION PAPER BEFORE THE HLURB TO ATTEST TO AND PROVE SUCH FACTUAL MATTERS.

(3)

IN THE VERY CASE CITED BY THE COURT OF APPEALS, *SMART COMMUNICATIONS V. ALDECOA* (G.R. NO. 166330, SEPTEMBER 11, 2013), THE HONORABLE COURT STRUCK DOWN THE RULING OF THE LOWER COURT AND PRONOUNCED THAT A DECISION THAT DECLARES A THING TO BE A NUISANCE *PER ACCIDENS* MUST BE SUPPORTED BY FACTUAL EVIDENCE AND NOT BY MERE CONJECTURES OR SUPPOSITIONS.

IV.

THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING RESPONDENT ATTY. MORALES' UNBRIDLED ACCESS TO MCKINLEY PARK, EFFECTIVELY CONSTITUTING AN EASEMENT OF RIGHT OF WAY WITHOUT ANY BASIS — AS AGAINST THE CLEAR STATUTORY RIGHT OF PETITIONER NGA, AS THE OWNER OF MCKINLEY PARK TO FENCE AND PROTECT ITS PROPERTY, GRANTED UNDER ARTICLES 429 AND 430 OF THE CIVIL CODE.

(1)

CONTRARY TO THE ASSAILED DECISION, IT IS NOT INCUMBENT UPON PETITIONER NGA TO PROVE THE LEGALITY OF ITS ACT OF CONSTRUCTING THE SUBJECT TOILET ON ITS OWN PROPERTY. INDEED, THIS IS A BASIS STATUTORY RIGHT OF NGA AS AN "OWNER".

(2)

RESPONDENT, ON THE OTHER HAND, BEING THE PROPONENT OF THE ACTION TO DECLARE THE TOILET A NUISANCE, IS THE ONE SADDLED BY LAW WITH THE RESPONSIBILITY OF PROVING THAT THE STRUCTURE BUILT BY NGA IS A NUISANCE. AS DISCUSSED, HOWEVER, RESPONDENT UTTERLY FAILED TO DISCHARGE SUCH BURDEN.

(3)

ARTICLE 430 OF THE CIVIL CODE GRANTS PETITIONER NGA OF ITS STATUTORY RIGHT TO

FENCE OFF HIS PROPERTY. ART. 430 STATES THAT "EVERY OWNER MAY ENCLOSE OR FENCE HIS LAND OR TENEMENTS BY MEANS OF WALLS, DITCHES, LIVE OR DEAD HEDGES, OR BY ANY OTHER MEANS WITHOUT DETRIMENT TO SERVITUDES CONSTITUTED THEREON."

(4)

MOREOVER, ARTICLE 429 OF THE CIVIL CODE LIKEWISE GRANTS PETITIONER NGA THE RIGHT TO EXCLUDE OTHERS FROM ACCESS TO AND ENJOYMENT OF ITS PROPERTY.

V.

THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT PETITIONER NGA'S COUNTERCLAIM TO COLLECT ON RESPONDENT'S UNPAID ASSOCIATION DUES FOR THE PAST THIRTY-THREE (33) YEARS, IS NOT COMPULSORY BUT MERELY PERMISSIVE.

(1)

AS A PERSON SUING NGA FOR THE EXERCISE OF HIS RIGHTS AS AN ALLEGED MEMBER THEREOF, NGA'S DEFENSE WILL, AS A MATTER OF COURSE, INVOLVE THE CONTEST OF SUCH RIGHT. IN ORDER FOR NGA TO CONTEST RESPONDENT'S RIGHT TO USE THE PARK AS A MEMBER OF NGA, THE LATTER HAS NO OTHER ALTERNATIVE BUT TO RAISE HIS NON-PAYMENT OF MEMBERSHIP DUES IN ORDER TO ATTACK HIS RIGHT TO USE THE PARK, WHICH RIGHT INEXTRICABLY ARISES OUT OF HIS STANDING AS AN ALLEGED MEMBER OF NGA.

(2)

AS A MATTER OF FACT, REPUBLIC ACT NO. 9904, OTHERWISE KNOWN AS THE "MAGNA CARTA FOR HOMEOWNERS AND HOMEOWNERS' ASSOCIATIONS" MAKES IT A CONDITION *SINE QUA NON* THAT THE HOMEOWNER MUST PAY THE ASSOCIATION FEES AND CHARGES BEFORE HE CAN ENJOY ITS FACILITIES.[11]

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[11] *Id*. at 18-22.

In its Resolution,[12] dated May 30, 2016, the Court required respondent to file his Comment on the petition. To date, no Comment has been filed. For said reason, the Court deemed, as it hereby deems, that respondent had waived his right to file one.

ISSUES

1. **WHETHER THE CA CORRECTLY RULED THAT THE HLURB HAD JURISDICTION OVER THE COMPLAINT FILED BY ATTY. MORALES;**
2. **WHETHER THE CA CORRECTLY RULED THAT THE RESTROOM BUILT BY NGA INSIDE THE MCKINLEY PARK IS A NUISANCE *PER ACCIDENS;***
3. **WHETHER NGA HAS THE RIGHT TO BLOCK ATTY. MORALES' ACCESS TO THE PARK; AND**
4. **WHETHER THE CA CORRECTLY RULED THAT THE COUNTERCLAIM OF NGA AGAINST ATTY. MORALES FOR UNPAID ASSOCIATION DUES WAS A PERMISSIVE COUNTERCLAIM.**

The Ruling of the Court

The Court partly grants the petition.

On Jurisdiction

Basic is the rule that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined from the allegations contained in the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. Once vested by the allegations in the complaint, jurisdiction remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[13]

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[12] *Id*. at 672-673.

[13] *City of Dumaguete v. Philippine Ports Authority,* 671 Phil. 610, 629 (2011).

Relative thereto is the rule that lack of jurisdiction over the subject matter may be raised at any stage of the proceedings.[14] Jurisdiction over the subject matter is conferred only by the Constitution or the law.[15] It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court. Consequently, questions of jurisdiction may be cognizable even if raised for the first time on appeal.[16]

NGA claims that the HLURB never had jurisdiction over the complaint filed by Atty. Morales considering that there was no allegation that he was member of the association, entitling him to claim the use of the latter's facilities including the right of access to McKinley Park. Citing *Sta. Clara Homeowner's Association v. Gaston*,[17] NGA asserts that for HLURB to acquire jurisdiction over disputes among members of an association, it is a requirement that the allegation of membership must be clear in the complaint, otherwise, no authority to hear and decide the case is vested in the concerned agency. Membership in a homeowners' association is voluntary and cannot be unilaterally forced by a provision in the association's articles of incorporation or by-laws, which the alleged member did not agree to be bound to.[18]

In this case, it appears that Atty. Morales, by filing his complaint as a member whose rights have been allegedly violated, has satisfied such requirement. His status as a member has not been questioned. It is worthy to note that NGA, in its counterclaim, demanded the payment of association dues from Atty. Morales as he has been refusing to pay his dues for more than three decades. In sum, there is no dispute that Atty. Morales is a member of NGA, albeit a delinquent member. In *Tumpag v. Tumpag,*[19] the Court said:

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[14] *Sps. Pasco v. Pison-Arceo Agricultural and Development Corp.*, 520 Phil. 387 (2006).

[15] *Sps. Genato v. Viola*, 625 Phil. 514 (2010).

[16] *La Naval Drug Corporation v. Court of Appeals*, 306 Phil. 84, 96 (1994).

[17] 425 Phil. 221 (2002).

[18] *Id*.

[19] 744 Phil. 423 (2014).

Generally, the court should only look into the facts alleged in the complaint to determine whether a suit is within its jurisdiction. There may be instances, however, when a rigid application of this rule may result in defeating substantial justice or in prejudice to a party's substantial right. In *Marcopper Mining Corp. v. Garcia,* we allowed the RTC to consider, in addition to the complaint, other pleadings submitted by the parties in deciding whether or not the complaint should be dismissed for lack of cause of action. In *Guaranteed Homes, Inc. v. Heirs of Valdez, et al.*, we held that the factual allegations in a complaint should be considered in tandem with the statements and inscriptions on the documents attached to it as annexes or integral parts.[20] [Citations omitted]

Considering that the requirement of membership is present, jurisdiction over the subject matter of the case was properly vested in the HLURB.

On the finding that the restroom was a nuisance per accidens

The CA in disposing the case, ruled that the restroom posed sanitary issues to Atty. Morales and is, therefore, a nuisance *per accidens*. Such is a finding of fact, which is generally conclusive upon the Court, because it is not its function to analyze and weigh the evidence all over again.

There are, however, well-recognized exceptions. These are (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are

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[20] *Id*. at 430-431.

not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[21]

NGA avers that the case falls under the said exceptions considering that no proof was ever presented to prove that the restroom was a *nuisance per accidens*. Absent such evidence, the CA's finding was only speculative, resulting in a grave misapprehension of facts.

The Court agrees.

A nuisance *per accidens* is one which depends upon certain conditions and circumstances, and its existence being a question of fact, *it cannot be abated without due hearin*g thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance.[22] Obviously, it requires a determination of such circumstances as to warrant the abatement of the nuisance. That can only be done with reasonable notice to the person alleged to be maintaining or doing the same of the time and place of hearing before a tribunal authorized to decide whether such a thing or act does in law constitute a nuisance *per accidens*.[23]

In other words, it requires a proper appreciation of evidence before a court or tribunal rules that the property being maintained is a nuisance *per accidens*.

A reading of the CA's decision would easily reveal that its conclusions were merely speculative. It wrote:

> The said toilet, to Our mind, poses sanitary issues which could adversely affect not only the Respondent but his entire household as

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[21] *Medina v. Mayor Asistio, Jr.,* 269 Phil. 225, 232 (1990).

[22] *Rana v. Wong*, 737 Phil. 364, 376-377 (2014), citing *Salao v. Santos*, 67 Phil. 547, 550-551 (1939).

[23] *Monteverde v. Generoso*, 52 Phil. 123 (1928).

well. Even if there exists a perimeter wall between Respondent's house and the toilet, the odor emanating from the latter could easily find its way to the dining area, and the foul and noxious smell would make it very difficult and annoying for the residents of the house to eat. Moreover, the proximity of the toilet to Respondent's house places the people residing therein at greater risk of contracting diseases both from improperly disposed waste and human excrements, as well as from flies, mosquitoes, and other insects, should petitioner NGA fail to maintain the cleanliness in the said structure. Verily, the determining factor when the toilet is the cause of the complaint is not how much it smells or stinks but where it is located as to produce actual physical discomfort and annoyance to a person of ordinary sensibilities.[24]

By the use of the words "would, should, could," it can be discerned that the CA was not even sure that the restroom has caused such annoyance to Atty. Morales or his family. Its declaration that the restroom is a nuisance *per accidens* had no basis in evidence. There is nothing in the records which discloses that Atty. Morales had introduced any evidence, testimonial or documentary, to prove that the restroom annoyed his senses, that foul odor emanated from it, or that it posed sanitary issues detrimental to his family's health. No certification by the City Health Officer was even submitted to the HLURB to attest on such matters.

It was improper on the part of the CA to assume those negative effects because modern day restrooms, even those for the use of the public, are clean, safe and emitting no odor as these are regularly maintained. For said reason, it was an error on the part of the CA to rule that the restroom was a nuisance *per accidens* and to sustain the order that it should be relocated.

Clearly, its finding was based on speculations, and not evidence.

On the finding that Atty. Morales had no access to McKinley Park

[24] *Rollo,* p. 73.

NGA claims that the CA erred in upholding Atty. Morales' unbridled access to the park, which effectively constituted an easement of right of way without any basis as against the clear statutory right of NGA, as the owner of the park, to fence and protect its property on the basis of Articles 429 and 430 of the Civil Code.

The Court agrees with NGA.

Under the Civil Code, NGA, as owner of the park, has the right to enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon. It also has a right to exclude others from access to, and enjoyment of its property.

NGA's legal right to block the access door is beyond doubt. Courts have no business in securing the access of a person to another property absent any clear right on the part of the latter.

The CA essentially violated the right of NGA. Atty. Morales never introduced any evidence that he had acquired any right by prescription or by agreement or legal easement to access the park through his side door. Moreover, he never claimed that his side door was his only access to the park. He has other means and, being adjacent to the park, going through other means is not cumbersome.

The conditions[25] set forth under the Deed of Donation by Ortigas & Co. Ltd. to NGA could not be used by Atty. Morales in his favor. Assuming that he has a right as a member to use the park, it does not mean that he can assert that his access to the park could only be done through his side door. Atty. Morales knows very well that he can access the park through some other parts of the park.

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[25] WHEREAS, the DONOR has agreed to donate to the DONEE, the parcels of land hereinabove described in view of the fact that the members of the DONEE, their families, domestic help, and related persons are the principal users of the streets, park, and other properties within the Greenhills IV Subdivision, being directly affected by any improper use or deterioration. DONOR therefore finds it proper that DONEE should own the properties subject of this Deed in order to control and regulate their use under their own conditions and restrictions.

Counterclaim for unpaid dues was a permissive one and, therefore, the affirmation of its dismissal was proper

A compulsory counterclaim is any claim for money or any relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of the plaintiff's complaint. It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and will be barred in the future if not set up in the answer to the complaint in the same case. Any other counterclaim is permissive. [26]

The Court has held that the compelling test of compulsoriness characterizes a counterclaim as compulsory if there should exist a logical relationship between the main claim and the counterclaim. The Court further ruled that there exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties.[27]

The criteria to determine whether the counterclaim is compulsory or permissive are as follows:

(a) Are issues of fact and law raised by the claim and by the counterclaim largely the same?

(b) Would *res judicata* bar a subsequent suit on defendants claim absent the compulsory rule?

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[26] *Bungcayao, Sr. v. Fort Ilocandia Property Holdings and Development Corporation,* 632 Phil. 391 (2010), citing *Cruz-Agana v. Hon. Santiago-Lagman*, 495 Phil. 188 (2005).

[27] *Id*., citing *Lafarge Cement Phil., Inc. v. Continental Cement Corp.*, 486 Phil. 123 (2004), further citing *Quintanilla v. CA,* 344 Phil. 811 (1997) and *Alday v. FGU Insurance Corporation*, 402 Phil. 962 (2001).

(c) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?

(d) Is there any logical relations between the claim and the counterclaim?

A positive answer to all four questions would indicate that the counterclaim is compulsory.[28] Otherwise, the same is permissive.

Here, the main issues in the complaint are limited only to the propriety of barring Atty. Morales from accessing the park through the side door and whether the restroom constructed by NGA is a nuisance *per se*. On the other hand, the counterclaim is simply concerned with collecting from Atty. Morales his unpaid association dues for the past thirty (30) years. Suffice it to state that payment or non-payment of association dues are distinct matters that do not relate to whether the main cause of Atty. Morales against NGA was proper. Whether there was payment or otherwise is irrelevant to the main issues considering that the pleadings filed by the parties essentially reflected an admission of membership of Atty. Morales in the association. The failure to raise the issue of unpaid association dues in this case or its dismissal if properly raised will not be a bar to the filing of the appropriate separate action to collect it.

WHEREFORE, the petition is **PARTLY GRANTED**. The March 13, 2015 Decision and the February 3, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 131707, are **REVERSED** insofar as it affirmed (1) Atty. Morales' entitlement to an unbridled access to the park through his side door; and (2) the order to relocate the restroom to another area.

SO ORDERED.

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

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[28] *Id*., citing *Lafarge Cement Phil., Inc. v. Continental Cement Corp.*, 486 Phil. 123 (2004) further citing *Quintanilla v. CA,* 344 Phil. 811 (1997) and *Alday v. FGU Insurance Corporation*, 402 Phil. 962 (2001), citing *NAMARCO v. Federation of United Mamarco Distributors*, 151 Phil. 338 (1973).

THIRD DIVISION

[G.R. No. 227734. August 9, 2017]

ROMEO ALBA, *petitioner, vs.* **CONRADO G. ESPINOSA, *et al.***, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYER-EMPLOYEE RELATIONSHIP, SUFFICIENTLY ESTABLISHED; PETITIONER'S RELATIONSHIP WITH THE RESPONDENTS SATISFIES THE FOUR-FOLD TEST.— Contrary to Alba's contention, the existence of an employer-employee relationship between him and the respondents was sufficiently established. The Court reiterates its ruling in *South East International Rattan, Inc., et al. v. Coming* on the established measure for such determination, particularly: To ascertain the existence of an employer-employee relationship[,] jurisprudence has invariably adhered to the four-fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test." x x x Alba's relationship with the respondents satisfies the four-fold test. The presence of the first element is beyond dispute. Alba himself admitted that he was the one who selected and engaged the workers that comprised his pool of semi-skilled and skilled workers, for placement in his several construction projects obtained from various clients. x x x [T]he circumstance likewise rendered concomitant the power of Alba to dismiss any of the respondents. x x x Alba's payment of the respondents' wages was likewise established by his plain admission. x x x Taken in light of Alba's declaration, it could be reasonably deduced that the arrangement on his clients' direct payment of the workers' wages was by a mere concession between Alba and the clients in order to facilitate payment, yet it was still Alba who ultimately bore liability for the payment of the wages. x x x From the records, it is clear that Alba possessed this power to control, and had in fact freely exercised it over the respondents. x x x He even controlled the time when they had to stay at work. The respondents relied upon instructions coming from Alba, as their work was for

projects obtained by the latter. He controlled the results of the work that the respondents had to perform, along with the means and methods by which to accomplish them.

2. **ID.; ID.; ID.; ID.; RESPONDENTS WERE REGULAR EMPLOYEES OF PETITIONER SINCE THEY PERFORMED TASKS THAT WERE CRUCIAL AND NECESSARY TO PETITIONER'S BUSINESS AND THEY HAD BEEN ENGAGED TO WORK FOR LONG PERIODS OF TIME.—** As the Court affirms the finding of illegal dismissal, it underscores the fact that the respondents were regular employees, and not project employees as Alba asserts. The mere fact that the respondents worked on projects that were time-bound did not automatically characterize them as project employees. x x x As construction workers, the respondents performed tasks that were crucial and necessary in Alba's business. Their work was the core of his trade. His enterprise could not have thrived through the years without their service. The fact that the respondents had been engaged to work for long periods of time, and across several construction projects, further substantiate the finding that their work was vital in the business.

3. **ID.; ID.; ID.; ID.; ID.; WHERE NO ADEQUATE EXPLANATIONS FROM EMPLOYER AS TO WHY THE EMPLOYEES HAD CEASED OBTAINING ASSIGNMENTS IN THE CONSTRUCTION PROJECT, THEY ARE DEEMED ILLEGALLY DISMISSED AND RIGHTFULLY ENTITLED TO REINSTATEMENT AND BACKWAGES OR SEPARATION PAY IN CASE OF STRAINED RELATIONS. —** Given the respondents' regular employment, their employment could not have been validly terminated by Alba without just or valid cause, and without affording them their right to due process. In cases affecting an employee's dismissal, the burden is on the employer to prove that the dismissal was legal, a matter that in this case, Alba miserably failed to establish. There were no adequate explanations from Alba as to why the respondents had ceased obtaining assignments in his construction projects. In view of the illegal dismissal, the respondents were rightfully entitled to the ordered reinstatement and award of backwages, or separation pay in case of strained relations.

4. **ID.; ID.; ID.; ID.; HAVING BEEN ILLEGALLY DISMISSED, RESPONDENTS ARE ALSO ENTITLED TO 13TH MONTH**

PAY, SERVICE INCENTIVE LEAVE (SIL) PAY, MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEYS' FEES.— Article 95 of the Labor Code provides that "[e]very employee who has rendered at least one year of service shall be entitled to a yearly [SIL] of five days with pay." On the other hand, the respondents derive their right to the 13th month pay from Presidential Decree No. 851, otherwise known as the 13th Month Pay Law, as amended. After the respondents alleged non-payment of the 13th month and SIL pays, it became incumbent upon Alba to prove payment of the statutory monetary benefits when he opted to deny further liability therefor. Instead of doing so, however, Alba could only harp on his argument that the respondents, in the first place, could not be considered as his employees. The award of ₱200,000.00 as total moral and exemplary damages for the respondents is reasonable under the circumstances. When it declared such award, the NLRC aptly referred to the dismissal as a retaliatory action by Alba after his employees had asked for their benefits as employees. x x x Finally, attorney's fees in labor cases are sanctioned "when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer."

APPEARANCES OF COUNSEL

Ferdinand Mark C. Ronquillo for petitioner.
Cabrera & Associates Law Offices for respondents.

D E C I S I O N

REYES, JR., *J.*:

This resolves the Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court by petitioner Romeo Alba (Alba) to assail the Decision[2] dated July 14, 2016 and Resolution[3]

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[1] *Rollo*, pp. 11-30.

[2] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez, concurring; *id*. at 33-46.

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

dated October 17, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 144043, wherein the CA affirmed the Decision[4] dated November 27, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 09-002460-15 that declared Alba guilty of illegal dismissal and liable for monetary claims.

The Antecedents

The case stems from two complaints for illegal dismissal and monetary claims filed against Alba Construction and its owner, Alba, by herein respondents with the Arbitration Branch of the NLRC. The first labor complaint, docketed as NLRC NCR Case No. 06-07959-14,[5] was filed by Conrado Gabe Espinosa (Conrado), Eusebio Mojica, Jaime Ocfemia, Jr. (Jaime, Jr.), Remy Diama, Ross Florencio, Jr., Gerry U. Milo, Rodolfo Benoza, Rolando Benoza, Marcelino Macindo, Nikko Benosa, Felix Taperla, Landirico Taperla, Arturo Nebrida, Jr. and Bongbong Delumpines.[6] The second complaint, docketed as NLRC NCR Case No. 06-07960-14,[7] was filed by Nilo Abrencillo (Nilo), Freddie Abrencillo, Robert Manimtim, Ronaldo Hernandez, Jr., William Janer, Ronie Tuparan, Samuel Nabas (Samuel), Eufrecino B. Jemina, Ruben Caleza, Hermel Caringal, Phamer Mandeoya, Alexander Barbacena, Rolly Abrencillo, Rene Barbacena, Jr., Jolito Cabillo and Roger Nebrida.[8]

It was alleged by the respondents that on various dates, Alba hired them as construction workers for his projects in several residential villages within Metro Manila and nearby provinces. The respondents were Alba's regular employees who were paid different wage rates that ranged from ₱350.00 to ₱500.00 a

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[4] Penned by Commissioner Cecilio Alejandro C. Villanueva, with Presiding Commissioner Alex A. Lopez and Pablo C. Espiritu, Jr., concurring; *id.* at 60-86.

[5] *Id*. at 169-170.

[6] *Id*. at 173.

[7] *Id*. at 177-178.

[8] *Id*. at 181.

day, but were deprived of some statutorily-mandated benefits such as their overtime pay, 13th month pay, holiday pay, and service incentive leave (SIL) pay.[9] On different dates in 2013, some of the respondents[10] confronted Alba regarding their benefits, but such action eventually resulted in their dismissal.[11]

In 2014, the other respondents again questioned Alba for his non-payment of their benefits. Alba still took it against them and began treating them harshly, as he would shout at them while at the job site, and would find scheming ways to extend their working hours. The foregoing prompted these respondents to seek the assistance of media personality Raffy Tulfo (Tulfo) in his *Radyo Singko* Program. As he addressed the respondents' dilemma, Tulfo personally called Alba, who was reminded to pay the respondents their full benefits. The action, however, proved to create more harm than good for the respondents because when they reported back for work the following day, they were informed of their dismissal.[12] Feeling aggrieved, all the respondents filed their complaints for illegal dismissal and monetary claims with the NLRC. The two complaints were later consolidated before the Labor Arbiter (LA).

For his defense, Alba argued that the respondents could not be deemed his regular employees. He claimed to be a mere taker of small-scale construction projects for house repairs and renovations. In the construction industry, he was deemed a mere *mamamakyaw*, who would pool a team of skilled and semi-skilled carpenters and masons for specific projects that usually lasted from one to two weeks. The respondents were paid daily wages ranging from ₱600.00 to ₱1,000.00, depending on their skill, and could take on projects with their own clients after Alba's projects had terminated.[13] For succeeding projects, Alba

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

[10] Marcelino Macindo, Landrito Taperia, Ross Florencio, Nestor Abrencillo, Rolly Abrencillo, Freddie Abrencillo, Ronie Tuparan and Eufrecino Jemina.

[11] *Rollo*, p. 221.

[12] *Id*. at 35.

[13] *Id*. at 35-36.

would only take in construction workers who were still available for the duration of the new work.[14]

As he denied any liability for the respondents' claims, Alba likewise presented certifications from clients indicating that the latter directly paid the salaries of the workers provided by Alba for the projects. He also argued that the respondents used their own tools at work, and received instructions from either the architect or foreman engaged by the project owner.[15]

The respondents were displeased by Alba's explanations. To disprove Alba's claim that he was a mere *mamamakyaw*, they presented gate passes, issued by the villages where Alba had construction projects, which indicated that Alba was a "contractor."[16]

Ruling of the LA

The LA dismissed the complaints *via* a Decision[17] dated July 31, 2015.

For the LA, no employer-employee relationship existed between Alba and the respondents. The LA referred to the following circumstances affecting the parties' payment of wages and the element of control, and which negated the claim that the respondents should be deemed employees of Alba: *first,* the wages of the respondents were paid directly by the project owners; *second*, the respondents applied their own methodology and used their own tools and equipment as they discharged their work; and *third*, the respondents obtained their work instructions from architects or the foreman directly hired by the owners or clients.[18] The supposed gate passes issued by village representatives did not qualify as substantial evidence to show that Alba was indeed a contractor.[19]

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[14] *Id*. at 53.

[15] *Id*. at 54.

[16] *Id*.

[17] Rendered by LA Irene Castro De Quiroz; *id*. at 50-58.

[18] *Id*. at 56.

[19] *Id*. at 57.

The LA's decision ended with the following dispositive portion:

WHEREFORE, this Labor Arbitration Branch resolves to **DISMISS** the complaint for lack of merit.

SO ORDERED.[20]

Dissatisfied, the respondents appealed to the NLRC.

Ruling of the NLRC

The respondents' appeal was partly granted by the NLRC. On November 27, 2015, the NLRC rendered its Decision[21] that ended with the following decretal portion:

WHEREFORE, premises considered, this instant Appeal is **PARTLY GRANTED**. The assailed Decision dated 31 July 2015 is AFFIRMED with respect to [respondents] **CONRADO GABE ESPINOSA**, and **JAIME OCFEMIA, JR**. The same assailed Decision is **REVERSED AND SET ASIDE** with respect to the remaining [respondents]. [Alba and Alba Construction] are hereby ordered to:

1. Reinstate the remaining [respondents] and pay full backwages computed from the time of their dismissal up to the time of actual reinstatement. In case reinstatement is no longer possible due to strained relations between the parties, [Alba and Alba Construction] shall be liable for separation pay in lieu of reinstatement equivalent to one month salary for every year of service reckoned from the [respondents'] respective time of employment to the finality of this decision;
2. Pay the remaining [respondents] moral and exemplary damages in the total amount of ₱200,000.00;
3. Pay the remaining [respondents] their 13th month pay computed from the last three years;
4. Pay the remaining [respondents], excluding Nilo Abrencillo, [SIL] benefits computed from their respective date[s] of employment; and
5. Pay attorney's fees equivalent to 10 percent of the final judgment award.

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

[21] *Id*. at 60-86.

The monetary awards are as follows:

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	₱ 14,459,613.28
ADD: Moral and Exemplary Damages	200,000.00
TOTAL	1[4],659,613.28
PLUS: 10% ATTORNEY'S FEES	1,465,961.33
TOTAL AWARD	**₱16,125,574.61**

SO ORDERED.[22]

The NLRC justified the dismissal of Jaime, Jr.'s complaint by citing sufficient evidence that Alba engaged him as an independent contractor, specifically as excavation contractor.[23] Conrado's complaint, on the other hand, was dismissed given his admission that he was employed as a *tanod* in Barangay Almanza Dos, Las Piñas City.[24]

As to the remaining respondents, the NLRC rejected the LA's finding on the lack of employer-employee relationship. The association between Alba and the respondents was established after Alba readily proclaimed that the respondents were part of his pool of workers. Alba had the power to determine who would remain in or be terminated from his projects. He also admitted that he paid the respondents their wages on a daily basis.

The claim that the respondents used their own methods and tools for the construction remained unsubstantiated by convincing evidence. On the contrary, it was established that Alba exercised his authority at the respondents' job sites. The four-fold test in determining the existence of an employer-employee relationship was duly satisfied, particularly: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished.[25]

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[22] *Id*. at 74-86.

[23] *Id*. at 67.

[24] *Id*. at 69.

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

Their employment was deemed regular given that they had been continuously rehired for Alba's projects for several years. More importantly, they performed tasks which were necessary and indispensable to the usual business or trade of Alba.[26]

The NLRC also addressed the evidentiary weight of the documents that were considered by the LA. By the gate passes that formed part of the respondents' evidence, it was shown that even the management of the villages that issued them recognized Alba to be the employer of the respondents. On the other hand, the certifications presented by Alba were either unsigned, defective or proven to contain false statements.[27]

In the end, Alba was declared liable for illegal dismissal given his failure to allocate further work assignments to the respondents. It did not appear that the termination was founded on any just or valid cause, and neither was it established that Alba duly satisfied the demands of due process for an employee's termination.[28] The illegally dismissed employees were declared entitled to reinstatement and backwages, plus moral damages, exemplary damages and attorney's fees.[29]

As regards the other monetary claims, the NLRC ordered the payment of 13th month pay and SIL pay, in view of Alba's failure to prove that the said benefits had been paid to his employees. Nilo, however, was declared not entitled to SIL pay because he worked as a personal driver who, pursuant to Article 82 of the Labor Code, was not entitled to the benefit.[30]

Undaunted, Alba sought relief with the CA through a Petition for *Certiorari*,[31] as he imputed grave abuse of discretion upon

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[26] *Id*. at 69-70.

[27] *Id*. at 66-67.

[28] *Id*. at 71-72.

[29] *Id*. at 72-74.

[30] *Id*. at 73-74.

[31] *Id*. at 108-126.

the NLRC and reiterated the arguments that he presented during the proceedings with the LA.

Ruling of the CA

On July 14, 2016, the CA rendered its Decision[32] dismissing Alba's petition. The CA reiterated the satisfaction of the four-fold test that is considered in finding employer-employee relationship. The appellate court likewise assessed the nature of work that the respondents were required to accomplish, *vis-à-vis* the type of Alba's business, which prompted the CA to also affirm the finding that the illegally dismissed respondents were regular employees.

The dispositive portion of the CA decision provides:

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby **DISMISSED**.

SO ORDERED.[33]

Alba moved to reconsider, but his motion was denied by the CA in its Resolution[34] dated October 17, 2016. Hence, this petition.

The Present Petition

Alba restates the same grounds cited in his petition for *certiorari* with the CA. Specifically assailed are the finding of employer-employee relationship, and the ruling that the respondents were regular employees illegally dismissed by Alba from employment. Alba likewise disputes the order upon him to pay the monetary claims totalling ₱16,125,574.61.

Ruling of the Court

At the outset, the Court explains that it shall no longer delve on the correctness of the NLRC's and CA's ruling to, *first,*

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[32] *Id*. at 33-46.

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

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

dismiss the complaints of Conrado and Jaime, Jr. for illegal dismissal and monetary claims, and, *second*, deny Nilo of his claim for SIL pay. The NLRC's pronouncements thereon did not appear to have been assailed by said parties, making the pronouncements on the matter already final. Moreover, the Court's disposition in this case needs to be confined to the issues that are assailed in the petition. Hence, the Court's further reference to, or use of, the term "respondents" shall be limited by these qualifications.

Upon review, the Court finds no cogent reason to disturb the ruling of the CA that affirmed the decision of the NLRC.

The respondents were regular employees of Alba

Contrary to Alba's contention, the existence of an employer-employee relationship between him and the respondents was sufficiently established. The Court reiterates its ruling in *South East International Rattan, Inc., et al. v. Coming*[35] on the established measure for such determination, particularly:

> To ascertain the existence of an employer-employee relationship[,] jurisprudence has invariably adhered to the four-fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test." In resolving the issue of whether such relationship exists in a given case, substantial evidence — that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion — is sufficient. Although no particular form of evidence is required to prove the existence of the relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence.[36] (Citations omitted)

Alba's relationship with the respondents satisfies the four-fold test.

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[35] 729 Phil. 298 (2014).

[36] *Id*. at 306.

The presence of the first element is beyond dispute. Alba himself admitted that he was the one who selected and engaged the workers that comprised his pool of semi-skilled and skilled workers, for placement in his several construction projects obtained from various clients. It was equally significant that Alba determined to which projects the respondents were to be assigned, or whether they would be assigned at all. As it established Alba's power to select and engage, the circumstance likewise rendered concomitant the power of Alba to dismiss any of the respondents. Notwithstanding the length of time that his workers had been working for his projects, he could opt to simply drop them off any assignment, effectively dismissing them from employment, albeit with necessary consequences if the dismissal was proved to be illegal.

Alba's payment of the respondents' wages was likewise established by his plain admission. As the LA cited in its decision, "[Alba] would pay the [respondents] a daily fee ranging from [₱]600.00 to [₱]1,000.00. They were also given bonuses from savings that [Alba and Alba Construction] made."[37] As against this statement from Alba and the certifications that he later presented to dispute his direct payment of the wages, the latter deserves nil consideration. The evidentiary weight of the supposed certifications on this issue even remained questionable. While the documents appeared to have been subscribed before a Notary Public, the requirements for a valid notarization were not satisfied because proof of each affiant's identity was not indicated in the jurat. Taken in light of Alba's declaration, it could be reasonably deduced that the arrangement on his clients' direct payment of the workers' wages was by a mere concession between Alba and the clients in order to facilitate payment, yet it was still Alba who ultimately bore liability for the payment of the wages.

Specifically on the "control test," this power to control is oft-repeated in jurisprudence as the most important and crucial

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[37] *Rollo*, p. 53.

among the four tests.[38] The Court explained in *Gapayao v. Fulo, et al.*:[39]

> In *Legend Hotel Manila v. Realuyo*, the Court held that "the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This is the so-called control test and is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end." It should be remembered that the control test merely calls for the existence of the right to control, and not necessarily the exercise thereof. It is not essential that the employer actually supervises the performance of duties by the employee. It is enough that the former has a right to wield the power.[40] (Citations omitted)

From the records, it is clear that Alba possessed this power to control, and had in fact freely exercised it over the respondents. Alba failed to satisfactorily rebut the respondents' direct assertions that Alba frequented the work sites, and would reprimand his workers whom he believed were idle or sluggish. He even controlled the time when they had to stay at work.[41] The respondents relied upon instructions coming from Alba, as their work was for projects obtained by the latter. He controlled the results of the work that the respondents had to perform, along with the means and methods by which to accomplish them. His control was not negated by any instructions that came from a foreman or an architect, as directives that came from them, if there were at all, were understandably limited. The respondents worked for Alba who held the project, and the latter was the one who exercised authority over them.

Even Alba's allegation that the respondents were independent contractors was not amply substantiated. Time and again, the

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[38] *Atok Big Wedge Company, Inc. v. Gison,* 670 Phil. 615, 627 (2011).

[39] 711 Phil. 179 (2013).

[40] *Id*. at 195-196.

[41] *Rollo*, pp. 68-69.

Court has emphasized that "the test of independent contractorship is 'whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer, except only as to the results of the work.'"[42] The Court has explained Alba's exercise of control over the respondents. For a worker to be deemed an independent contractor, it is further necessary to establish several indicators. In *Television and Production Exponents, Inc. and/or Tuviera v. Servaña,*[43] the Court explained:

> Aside from possessing substantial capital or investment, a legitimate job contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof. x x x.[44] (Citation omitted)

"It is the burden of the employer to prove that a person whose services it pays for is an independent contractor rather than a regular employee with or without a fixed term."[45] Undeniably, Alba failed to discharge this burden.

As the Court affirms the finding of illegal dismissal, it underscores the fact that the respondents were regular employees, and not project employees as Alba asserts. The mere fact that the respondents worked on projects that were time-bound did not automatically characterize them as project employees. The nature of their work was determinative, as the Court considers its ruling in *D.M. Consunji, Inc., et al. v. Jamin*[46] that "[o]nce a project or work pool employee has been: (1) continuously, as opposed to intermittently, rehired by the same employer for

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[42] *Polyfoam-RGC International Corporation, et al. v. Concepcion*, 687 Phil. 137, 148 (2012).

[43] 566 Phil. 564 (2008).

[44] *Id*. at 574.

[45] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 394 (2014).

[46] 686 Phil. 220 (2012).

the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee."[47]

As construction workers, the respondents performed tasks that were crucial and necessary in Alba's business. Their work was the core of his trade. His enterprise could not have thrived through the years without their service. The fact that the respondents had been engaged to work for long periods of time, and across several construction projects, further substantiate the finding that their work was vital in the business. Most respondents were separately employed beginning way back to the 1990s to 2006.[48] One employee, Samuel, even began working for Alba in 1982.[49] "[A]n employment ceases to be co-terminus with specific projects when the employee is continuously rehired due to the demands of the employer's business and re-engaged for many more projects without interruption."[50]

Given the respondents' regular employment, their employment could not have been validly terminated by Alba without just or valid cause, and without affording them their right to due process. In cases affecting an employee's dismissal, the burden is on the employer to prove that the dismissal was legal, a matter that in this case, Alba miserably failed to establish. There were no adequate explanations from Alba as to why the respondents had ceased obtaining assignments in his construction projects. In view of the illegal dismissal, the respondents were rightfully entitled to the ordered reinstatement and award of backwages, or separation pay in case of strained relations.[51]

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[47] *Id*. at 233. (Emphasis deleted)

[48] *Rollo*, pp. 75-86.

[49] *Id*. at 85.

[50] *Chua v. CA*, 483 Phil. 126, 139 (2004).

[51] See *Aliling v. Feliciano, et al.*, 686 Phil. 889, 915-918 (2012).

Alba is liable for the payment of the other monetary claims

The awards of 13th month pay, SIL pay, moral and exemplary damages, and attorney's fees are sustained.

Article 95 of the Labor Code provides that "[e]very employee who has rendered at least one year of service shall be entitled to a yearly [SIL] of five days with pay." On the other hand, the respondents derive their right to the 13th month pay from Presidential Decree No. 851, otherwise known as the 13th Month Pay Law, as amended.

After the respondents alleged non-payment of the 13th month and SIL pays, it became incumbent upon Alba to prove payment of the statutory monetary benefits when he opted to deny further liability therefor. Instead of doing so, however, Alba could only harp on his argument that the respondents, in the first place, could not be considered as his employees.

The award of ₱200,000.00 as total moral and exemplary damages for the respondents is reasonable under the circumstances. When it declared such award, the NLRC aptly referred to the dismissal as a retaliatory action by Alba after his employees had asked for their benefits as employees. The NLRC sufficiently explained:

> A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud; or constitutes an act oppressive to labor; or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner. Dismissing the [respondents] as an act of retaliation and after they requested to be given their rightful benefits as employees constitute an act oppressive to labor and displays x x x wanton exercise of authority.[52]

Finally, attorney's fees in labor cases are sanctioned "when the employee is illegally dismissed in bad faith and is compelled

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[52] *Rollo*, p. 73.

to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer."[53]

WHEREFORE, the petition is **DENIED**. The Decision dated July 14, 2016 and Resolution dated October 17, 2016 of the Court of Appeals in CA-G.R. SP No. 144043 are **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 227878. August 9, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERALDO SANTILLAN *y* VILLANUEVA and EUGENE BORROMEO *y* NATIVIDAD,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; DYING DECLARATION; REQUISITES TO BE ADMISSIBLE IN EVIDENCE, CONCUR IN CASE AT BAR.— A dying declaration, although generally inadmissible as evidence due to its hearsay character, may nonetheless be admitted when the following requisites concur, namely: (a) the declaration must concern the cause and surrounding circumstances of the declarant's death; (b) at the time the declaration is made, the declarant is under a consciousness of an impending death; (c) the declarant is competent as a witness; and (d) the declaration

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[53] *Pepsi Cola Products Philippines, Inc., et al. v. Santos,* 574 Phil. 400, 408 (2008).

is offered in a criminal case for homicide, murder, or parricide, in which the declarant is a victim. All of the above requisites are present in this case.

2. ID.; ID.; ID.; PART OF THE *RES GESTAE*; REQUISITES; VICTIM'S STATEMENT MAY ALSO BE CONSIDERED PART OF THE *RES GESTAE*.— Ernesto's statement may also be considered part of the *res gestae*. A declaration or an utterance is deemed as part of the *res gestae* and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur, to wit: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statements are made before the declarant had time to contrive or devise; and (c) the statements must concern the occurrence in question and its immediately attending circumstances. Ernesto's statement referred to a startling occurrence, that is, him being stabbed by Dodong, Eugene, Ramil, and a certain "Palaka." At the time he relayed his statement to Julie Ann, he was wounded and blood oozed from his chest. Given his condition, it is clear that he had no time to contrive the identification of his assailants. Hence, his utterance was made in spontaneity and only in reaction to the startling occurrence. Definitely, such statement is relevant because it identified the authors of the crime.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH, NOT A CASE OF; THE SOLE FACT THAT THERE WERE TWO PERSONS WHO ATTACKED THE VICTIM DOES NOT *PER SE* ESTABLISH THAT THE CRIME WAS COMMITTED WITH ABUSE OF SUPERIOR STRENGTH.— Although the Court entertains no doubt that Geraldo and Eugene are responsible for Ernesto's death, the lower tribunals erred when it appreciated abuse of superior strength to qualify the killing to murder. The courts *a quo* commonly concluded that the assailants' number and weapons gave them significant advantage in ensuring the death of Ernesto. Such reasoning, however, is incorrect and fails to muster the standards set by jurisprudence on the proper appreciation of the qualifying circumstance of abuse of superior strength. x x x In line with *Beduya*, the sole fact that there were two (2) persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength. Moreover, as can be gleaned from Michael's testimony, the respective attacks thrown by Ramil

and Geraldo occurred alternately, one after the other. It is settled that when the attack was made on the victim alternately, there is no abuse of superior strength.

4. ID.; ID.; ID.; VICTIM'S DYING DECLARATION WAS NOT SUFFICIENT TO ESTABLISH ABUSE OF SUPERIOR STRENGTH; HIS *ANTE MORTEM* STATEMENT IS BEREFT OF ANY INDICIA THAT WILL CONVINCE THIS COURT THAT THE PERPETRATORS ESPOUSED A DELIBERATE DESIGN TO UTILIZE THE ADVANTAGE OF NUMBER AND WEAPONS.— Neither will Ernesto's dying declaration suffice to establish abuse of superior strength. The *ante mortem* statement, as relayed to Julie Ann, revolved solely on the identification of the assailants Dodong, Eugene, Ramil, and a certain "Palaka." There was no account on how the assault transpired or a narration to the effect that the aggressors cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity. Aside from naming his assailants, Ernesto's *ante mortem* statement is bereft of any indicia that will convince the Court that the perpetrators espoused a deliberate design to utilize the advantage of number and weapons. Thus, the dearth in the prosecution's evidence impels a downgrading of the nature of the offense committed from murder to homicide.

5. ID.; HOMICIDE; PROPER PENALTY AND CIVIL LIABILITY.— Having established Geraldo and Eugene's guilt beyond reasonable doubt for the crime of homicide, they must suffer the appropriate penalty imposed by law. The crime of homicide is punishable by *reclusion temporal*. Considering that there are no mitigating or aggravating circumstances, the penalty should be fixed in its medium period. Applying the Indeterminate Sentence Law, they should be sentenced to an indeterminate term, the minimum of which is within the range of the penalty next lower in degree, *i.e., prision mayor*, and the maximum of which is that properly imposable under the RPC, *i.e., reclusion temporal* in its medium period. In line with prevailing jurisprudence, the Court reduces the awards of civil indemnity to ₱50,000.00. Likewise, the award of moral damages is reduced to ₱50,000.00.

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

MENDOZA, *J.*:

This is an appeal from the May 8, 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-H.C. No. 05026, which affirmed the April 6, 2011 Decision[2] of the Regional Trial Court, Branch 128, Caloocan City *(RTC)* in Criminal Case No. C-70393, finding accused-appellants Geraldo Santillan *y* Villanueva (*Geraldo*) and Eugene Borromeo (*Eugene*) guilty beyond reasonable doubt of the crime of murder.

The Antecedents

In an Information, dated March 30, 2004, Geraldo and four (4) John Does were charged with the crime of murder. The Information reads:

> That on or about the 28th day of March 2004 in Caloocan City, Metro-Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually aiding with one another, without any justifiable cause, with deliberate intent to kill, treachery, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack and stab with a bladed weapon one ERNESTO GARCIA Y MARIANG, hitting the latter on the different parts of the body, thereby inflicting upon him serious physical injuries, which caused his instantaneous death.
>
> Contrary to Law.[3]

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[1] Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justice Noel G. Tijam (now member of the Court) and Associate Justice Victoria Isabel A. Paredes, concurring; *rollo*, pp. 2-20.

[2] Penned by Presiding Judge Eleanor R. Kwong; CA *rollo,* pp. 82-92.

[3] *Id*. at 82.

On April 28, 2004, Geraldo was arraigned where he pleaded "not guilty." Upon motion by the Public Prosecutor, an Amended Information was admitted by the RTC on June 24, 2004. The Amended Information named the four (4) John Does as Eugene, Ramil Santillan *y* Villanueva (*Ramil*), Julious Esmeña (*Julious*), and Andres Cartnueva (*Andres*).

On January 24, 2007, Eugene was arraigned and he pleaded "not guilty" to the crime charged. Ramil, Julious and Andres, however, remained at large.

The prosecution presented Julie Ann Garcia (*Julie Ann*), Michael Garcia (*Michael*), Police Chief Inspector Felimon Porciuncula, Jr. (*Dr. Porciuncula, Jr.*), PO1 Joselito Bagting, and Mary Ann Pariñas as its witnesses. On the other hand, the defense consisted of the testimonies of Clarita Amen (*Clarita*), Teresita Arias (*Teresita*), Geraldo and Eugene.

Version of the Prosecution

On March 23, 2004, at about 7:30 o'clock in the evening, Andres invited the victim Ernesto Garcia (*Ernesto*), who was then watching television in his living room, to go out. Ernesto agreed and they went to the end portion of an alley.

Minutes later, Michael, Ernesto's son, was tending their store when he saw his father running towards their gate while being chased by Ramil and Geraldo, also known in their place as Dodong Santillan.[4] Thereupon, Ramil stabbed Ernesto at the back. Geraldo, who was also armed, tried to stab Ernesto but missed.

Ernesto ran towards their gate and embraced Michael. Michael then called out his sister, Julie Ann, who came to help her father while Michael sought assistance from their uncle, Domingo Trinidad. Julie Ann asked Ernesto who his assailants were. Ernesto answered Dodong, Eugene, Ramil, and a certain "Palaka." Ernesto vomited blood and fell to the ground. Michael returned on board a tricycle and they tried to bring Ernesto to the hospital, but their father was already dead.

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[4] *Id*. at 84.

Version of the Defense

Geraldo testified that on March 28, 2004, at about 7:45 o'clock in the evening, he was already asleep in their house but was awakened when he felt something cold was pointed at his side. He was surprised to see that it was a gun and policemen were inside his house. The policemen immediately handcuffed him and informed him that he was responsible for Ernesto's death.

Geraldo further attested that Ernesto filed a complaint against him for allegedly throwing stones at his (Ernesto's) house. The *barangay* investigation, however, showed that he was not responsible for the complained act. He and Ernesto shook hands and the latter's children even asked for an apology. On March 14, 2004, Ernesto hacked him on the head. He filed a case for frustrated murder before the police precinct, but the case did not reach the prosecutor's office because Ernesto died.[5] Also, sometime in November 2003, he and his wife Lorna Santillan filed a complaint against Ernesto before the *barangay*.[6] He never thought of retaliating as they were advised to file a case against Ernesto.

Teresita, sister of Julious, corroborated the testimony of Geraldo. She testified that on March 28, 2004, between 6:00 to 6:30 o'clock in the evening, she was at Geraldo's house and she saw him sleeping because the house had no door and there was illumination from a candle; that while on her way home from the market, she noticed a commotion; that she heard that Ernesto was stabbed; that she hurriedly went to Geraldo's house to fetch her son and saw that Geraldo was still sleeping; that she was cooking at about 8:00 to 8:30 o'clock in the evening when policemen suddenly arrived; and that she saw from their window that Geraldo, who had just awakened, was being arrested.

For his part, Eugene deposed that on March 28, 2004 at about 7:45 o'clock in the evening, he was in Camarin, Zapote, Caloocan City. He arrived in the said place at about 4:30 o'clock in the

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[5] *Id*. at 89.

[6] *Id*.

afternoon because his mother instructed him to collect payment from her *kumadre*. He ate there and was able to collect the payment. He left Zapote at about 7:00 o'clock in the evening but did not go home and instead played *video carrera* for more than thirty 30 minutes. Afterwards, he went home and was surprised to see a lot of people in their place. He then learned of Ernesto's death. He alleged that he never had a misunderstanding with Ernesto; and that he was present during the time that Ernesto attacked Geraldo with a bolo. On November 23, 2005, he discovered that a case for murder was filed against him when he secured a clearance from the OCC-MeTC.[7] He stated that he never left their house in Bagong Silang; and that he did not go into hiding.

The RTC Ruling

In its April 6, 2011 decision, the RTC found Geraldo and Eugene guilty beyond reasonable of the crime of murder and sentenced them to suffer the penalty of *reclusion perpetua* and all the accessory penalties attached thereto.

The RTC treated the *ante mortem* statement of Ernesto as a dying declaration. It found that Ernesto's declaration, which was relayed to Julie Ann, concerned the circumstances surrounding his death; that it was offered in a criminal case in which he was the victim; and that it was made under the consciousness of impending death, taking into consideration the gravity of his wounds and the immediacy by which death took place. It also admitted Ernesto's declaration as part of the *res gestae*.

The trial court was convinced that the dying declaration, coupled with the testimony of Michael, had established beyond reasonable doubt the guilt of both Geraldo and Eugene. It opined that the defenses proffered centered on alibi, an inherently weak defense that is reduced to self-serving evidence when unsubstantiated and is undeserving of weight in law.

Moreover, the RTC ruled that the testimonies of defense witnesses Clarita and Teresita did not provide corroboration

[7] *Id*. at 90.

because both witnesses were not present during the stabbing incident. It observed that Teresita was at the market and saw Geraldo before and after the stabbing incident but not during its occurrence. In the same manner, the RTC noted that while Clarita saw Geraldo asleep before and after the stabbing incident, she nevertheless did not see him at the time of its commission for she was inside the house of Geraldo's mother having a massage session.

Finally, the RTC appreciated the qualifying circumstance of abuse of superior strength. In so ruling, it stressed that Ernesto was unarmed and was trying to flee from his attackers. The RTC took into account the fact that there were four assailants, two of whom were seen chasing Ernesto with a bolo on hand. Hence, it concluded that the crime committed was murder, qualified by abuse of superior strength. The *fallo* reads:

> **WHEREFORE**, finding the accused Geraldo Santillan and Eugene Borromeo Guilty beyond reasonable doubt for Murder, the court hereby sentences them to suffer the penalty of *reclusion perpetua* and all the accessory penalties attached thereto. Accused Geraldo Santillan and Eugene Borromeo are likewise directed to pay jointly and severally the heirs of Ernesto Garcia as follows:
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> 1) Seventy Five Thousand (₱75,000.00) Pesos, as civil indemnity;
> 2) Seventy Five Thousand (₱75,000.00) Pesos, as moral damages;
> 3) Seventy Five Thousand (₱75,000.00) Pesos as, exemplary damages; and
> 4) Twenty Seven Thousand Eight Hundred Forty Five (₱27, 845.00) Pesos, as actual damages.
>
> **SO ORDERED**.[8]

Aggrieved, the accused-appellants elevated an appeal before the CA.

The CA Ruling

In its May 8, 2015 decision, the CA affirmed with modification the conviction of Geraldo and Eugene. It held that all the

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[8] *Id*. at 92.

requisites for the admissibility of a dying declaration were present in this case. In the same manner, the CA ruled that Ernesto's declaration could also be admitted as part of the *res gestae* because when Ernesto gave the identities of those who stabbed him to Julie Ann, he was referring to a startling occurrence. It added that Ernesto was wounded and blood was oozing from his chest, thus, he had no time to contrive the identification of his assailants. The CA opined that Ernesto's utterance that Dodong, Eugene, Ramil, and a certain "Palaka" stabbed him was spontaneously made and only in reaction to the startling occurrence.

The appellate court explained that the qualifying circumstance of abuse of superior strength must be appreciated because the assailants enjoyed superiority in number and were armed with weapons, while Ernesto had no means with which to defend himself. It declared that the medico-legal report supported the inequality of forces between the victim and the assailants in terms of number and weapons. The CA noted Dr. Porciuncula, Jr.'s testimony that Ernesto sustained multiple incise wounds on different parts of his body; that the weapon used was a single bladed sharp instrument and it was possible that more than one was used; and that it was likely that there could have been more than one assailant that inflicted the stab wounds.[9] The CA disposed of the appeal in this wise:

WHEREFORE, the appeal is **DENIED**. The decision of the Regional Trial Court of Caloocan City, Branch 128 in Criminal Case No. C-70393, finding accused-appellants Geraldo Santillan *y* Villanueva and Eugene Borromeo *y* Natividad guilty beyond reasonable doubt of the crime of murder and sentencing each of them to suffer the penalty of *reclusion perpetua*, is **AFFIRMED** with **MODIFICATION**. Accused-appellants are ordered to pay jointly and severally the heirs of Ernesto Garcia the amounts of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, Thirty Thousand Pesos (₱30,000.00) as exemplary damages and Twenty-Seven Thousand Eight Hundred Forty-Five Pesos (₱27,845.00) as actual

[9] *Rollo*, p. 11.

damages. Accused-appellants shall also pay interest on all these damages assessed at the legal rate of six percent (6%) per annum from date of finality of this decision until fully paid.

SO ORDERED.[10]

Hence, this appeal.

ISSUES

I.

Whether IT WAS PROVEN BEYOND REASONABLE DOUBT THAT GERALDO AND EUGENE WERE RESPONSIBLE FOR THE DEATH OF ERNESTO

II.

WHETHER ABUSE OF SUPERIOR STRENGTH ATTENDED THE COMMISSION OF THE CRIME

In a Resolution,[11] dated January 16, 2017, the Court required the parties to submit their respective supplemental briefs simultaneously, if they so desired. In their Manifestation (in lieu of Supplemental Brief),[12] dated March 3, 2017, accused-appellants manifested that they were adopting the Appellant's Brief filed before the CA as their supplemental brief, for the same had adequately discussed all the matters pertinent to their defense. In its Manifestation (Re: Supplemental Brief),[13] dated March 15, 2017, the Office of the Solicitor General *(OSG)* stated that all matters and issues raised by the accused-appellants had already been adequately discussed in its Brief before the CA and manifested that it would no longer file a supplemental brief.

In their appellant's brief, accused-appellants sought a reversal of their conviction contending that Ernesto's statement, as relayed to Julie Ann, was inadmissible as a dying declaration or part

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[10] *Id*. at 18-19.

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

[12] *Id*. at 28-30.

[13] *Id*. at 33-35.

of *res gestae*. They posited that Ernesto was incompetent to testify had he survived. Accused-appellants advanced the proposition that because the stabbing incident happened at night, darkness made it improbable for Ernesto to identify his assailants. Considering that no moral certainty could be had as to their participation, their accountability for Ernesto's death was reduced to a mere possibility which was insufficient to establish guilt beyond reasonable doubt.

Further, accused-appellants argued that the prosecution failed to prove that they took advantage of their physical strength to ensure commission of the crime for even if it was true that Michael saw Ramil and Geraldo chasing Ernesto, such circumstance did not prove that they took advantage of their physical strength by simultaneously attacking the victim.

The Court's Ruling

The appeal is partly meritorious.

Ernesto's dying declaration stands; likewise, his statement is admissible as part of the res gestae

A dying declaration, although generally inadmissible as evidence due to its hearsay character, may nonetheless be admitted when the following requisites concur, namely: (a) the declaration must concern the cause and surrounding circumstances of the declarant's death; (b) at the time the declaration is made, the declarant is under a consciousness of an impending death; (c) the declarant is competent as a witness; and (d) the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is a victim.[14]

All of the above requisites are present in this case. The Court quotes with approval the CA's disquisition on the matter:

Ernesto communicated his ante-mortem statement to Julie Ann, identifying accused-appellants and the other two accused as the persons

[14] *People v. Salafranca*, 682 Phil. 470, 481-482 (2012).

who stabbed him. At the time of his statement, Ernesto was conscious of his impending death, having sustained multiple incise and stab wounds, one of which being fatal, piercing deeply into the middle lobe of his right lung, trachea and esophagus. Ernesto even vomited blood, collapsed, and eventually died.

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Ernesto would have been competent to testify on the subject of the declaration had he survived. Lastly, the dying declaration was offered in this criminal prosecution for murder in which Ernesto was the victim.[15]

The postulate that darkness of the night prevented Ernesto from identifying his assailants must be rejected for being entirely conjectural. Basic is the rule that mere allegation and speculation is not evidence, and is not equivalent to proof.[16]

To be sure, Geraldo and Eugene's proposition crumbles in light of the testimony of Dr. Porciuncula, Jr., whose competence as an expert witness was admitted by the defense. Dr. Porciuncula, Jr. testified that with respect to the injuries in front, the assailant could have been in the front right side of the victim if the assailant was right-handed; whereas, if the assailant was left-handed, then he was facing the victim in front.[17] He likewise stated that the incise wounds on the hands could be considered as defense wounds and it was possible that the victim was able to fight back his assailant.[18]

The presence of defense wounds is a positive indication of resistance on the part Ernesto. Gauging from the *situs* of the defense wounds, it is discernible that the victim utilized his hands to ward off the slew of attacks from his assailants. Logically, the defense wounds resulted from attacks that were hurled within Ernesto's line of sight, for the simple reason that

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[15] *Rollo*, pp. 13-14.

[16] *Office of the Ombudsman v. De Villa*, G.R. No. 208341, June 17, 2015, 759 SCRA 288, 304.

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

[18] *Id*.

his hands could only parry those attacks coming from the direction he was facing. This leads to the unmistakable conclusion that at one point in time, Ernesto came face to face with his assailants. Contrary to Geraldo and Eugene's assertion, the evidence on record reveals that Ernesto was in a position to glance upon and recognize the face of his aggressors. Moreover, such conclusion is buttressed by the uncontroverted findings that Ernesto sustained frontal injuries; and that the attacker could have been in front or facing the victim.

Ernesto's statement may also be considered part of the *res gestae*. A declaration or an utterance is deemed as part of the *res gestae* and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur, to wit: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statements are made before the declarant had time to contrive or devise; and (c) the statements must concern the occurrence in question and its immediately attending circumstances.[19]

Ernesto's statement referred to a startling occurrence, that is, him being stabbed by Dodong, Eugene, Ramil, and a certain "Palaka." At the time he relayed his statement to Julie Ann, he was wounded and blood oozed from his chest. Given his condition, it is clear that he had no time to contrive the identification of his assailants. Hence, his utterance was made in spontaneity and only in reaction to the startling occurrence. Definitely, such statement is relevant because it identified the authors of the crime.[20]

The Qualifying Circumstance of Abuse of Superior Strength was improperly appreciated; Geraldo and Eugene could only be convicted of the crime of homicide

Although the Court entertains no doubt that Geraldo and Eugene are responsible for Ernesto's death, the lower tribunals

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[19] *People v. Salafranca*, *supra* note 14, at 482-483.

[20] *People v. Palanas*, G.R. No. 214453, June 17, 2015, 759 SCRA 318, 329.

erred when it appreciated abuse of superior strength to qualify the killing to murder. The courts *a quo* commonly concluded that the assailants' number and weapons gave them significant advantage in ensuring the death of Ernesto. Such reasoning, however, is incorrect and fails to muster the standards set by jurisprudence on the proper appreciation of the qualifying circumstance of abuse of superior strength.

In *People v. Beduya* (*Beduya*),[21] the Court explained the qualifying circumstance of abuse of superior strength as follows:

> Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked.[22]

As pointed out in the appellant's brief, only the fact that there were two (2) persons chasing Ernesto, Ramil and Geraldo, can be ascertained from Michael's testimony. In line with *Beduya*, the sole fact that there were two (2) persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength. Moreover, as can be gleaned from Michael's testimony, the respective attacks thrown by Ramil and Geraldo occurred alternately, one after the other. It is settled that when the attack was made on the victim alternately, there is no abuse of superior strength.[23] Besides, the Court notes that Eugene was not even a participant in the chase Michael witnessed.

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[21] 641 Phil. 399 (2010).

[22] *Id*.

[23] *People v. Baltar, Jr.,* 401 Phil. 1, 16 (2000).

Neither will Ernesto's dying declaration suffice to establish abuse of superior strength. The *ante mortem* statement, as relayed to Julie Ann, revolved solely on the identification of the assailants Dodong, Eugene, Ramil, and a certain "Palaka." There was no account on how the assault transpired or a narration to the effect that the aggressors cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity.[24] Aside from naming his assailants, Ernesto's *ante mortem* statement is bereft of any indicia that will convince the Court that the perpetrators espoused a deliberate design to utilize the advantage of number and weapons. Thus, the dearth in the prosecution's evidence impels a downgrading of the nature of the offense committed from murder to homicide.

Proper penalty and award of damages

Having established Geraldo and Eugene's guilt beyond reasonable doubt for the crime of homicide, they must suffer the appropriate penalty imposed by law. The crime of homicide is punishable by *reclusion temporal.* Considering that there are no mitigating or aggravating circumstances, the penalty should be fixed in its medium period. Applying the Indeterminate Sentence Law, they should be sentenced to an indeterminate term, the minimum of which is within the range of the penalty next lower in degree, *i.e.*, *prision mayor*, and the maximum of which is that properly imposable under the RPC, *i.e.*, *reclusion temporal* in its medium period.[25]

In line with prevailing jurisprudence,[26] the Court reduces the awards of civil indemnity to ₱50,000.00. Likewise, the award of moral damages is reduced to ₱50,000.00.

WHEREFORE, the April 6, 2011 Decision of the Regional Trial Court, Branch 128, Caloocan City, in Criminal Case No. C-70393, is **AFFIRMED with MODIFICATION.** The Court

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[24] *People v. Mariano Baluyot*, 252 Phil. 591, 598 (1989).

[25] *People v. Beduya*, *supra* note 21, at 413-414.

[26] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

finds accused-appellants Geraldo Santillan *y* Villanueva and Eugene Borromeo *y* Natividad guilty beyond reasonable doubt of the crime of Homicide and hereby sentences them to an indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum; to pay the heirs of Ernesto Garcia the amounts of ₱27,845.00 as actual damages; ₱50,000.00 as civil indemnity; and ₱50,000.00 as moral damages.

The damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 228248. August 9, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO DE GUZMAN *y* DE CASTRO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE COURT AGREES WITH THE FACTUAL FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS. — [T]he Court agrees with the findings of the lower court and the CA. The Court finds AAA to be a credible witness when she recounted in open court the circumstances of her ill-fated ordeal — from the first instance when De Guzman, being her

stepfather, had carnal knowledge of her since she was merely 8 years of age up to the following years of repeated sexual abuses through the use of force, threat and intimidation. The first commission of rape in 2003 does not require any other circumstance to support conviction. As provided by the above-mentioned law, rape is committed by a man who shall have carnal knowledge of a woman under 12 years of age such as AAA. Same finding is arrived at to the subsequent acts of carnal knowledge of AAA between the years of 2006 and 2010.

2. **CRIMINAL LAW; REVISED PENAL CODE (RPC); QUALIFIED RAPE; MORAL ASCENDANCY WIELDED BY THE ACCUSED AS A STEPFATHER SUBSTITUTED ACTUAL FORCE, THREAT AND INTIMIDATION.—** The Court likewise cannot subscribe to the assertion of De Guzman that his moral ascendancy as a stepparent is insufficient to replace force, violence or intimidation in the crime of rape. Jurisprudence dictates that the moral ascendancy wielded by De Guzman as a stepfather substituted actual force, threat and intimidation.

3. **ID.; ID.; ID.; SPECIFIC REFERENCE OF THE EXACT DATE OR TIME OF THE COMMISSION OF RAPE IS NOT AN ELEMENT OF THE SAID CRIME.—** In the same note, the argument of mandatory reference in the two sets of information of the specific time and date of the commission of rape must fail. Specific reference of the exact date or time of the commission of rape is not an element of the said crime. What is essential to sustain conviction is proof of carnal knowledge of a woman under any of the circumstances provided by law. *"Precision as to the time when the rape is committed has no bearing on its commission. Consequently, the date or the time of the commission of the rape need not be stated in the complaint or information with absolute accuracy, for it is sufficient that the complaint or information states that the crime was committed at any time as near as possible to the date of its actual commission."*

4. **ID.; ID.; ID.; PROPER PENALTY FOR QUALIFIED RAPE IS *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE.—** Under Article 266-B of the RPC, the penalty of death shall be imposed when the victim of rape is under 18 years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the

victim. However, upon the effectivity of Republic Act No. 9346 prohibiting the imposition of death penalty in the Philippines, the penalty of *reclusion perpetua* without eligibility for parole, in lieu of death penalty, shall be imposed on De Guzman.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

REYES, JR., *J.*:

This is an appeal from the Decision[1] of the Court of Appeals (CA) dated September 24, 2015 in CA-G.R. CR-HC No. 06284, which affirmed with modifications the Decision[2] dated June 17, 2013 of the Regional Trial Court (RTC) of Las Piñas City, Branch 199, in Criminal Case Nos. 11-0539 and 11-0541 finding accused-appellant Romeo De Guzman *y* De Castro (De Guzman) guilty of two counts of Qualified Rape under Article 266-A, in relation to Article 266-B, of the Revised Penal Code (RPC).[3]

Two sets of Information were filed against De Guzman in which he pleaded not guilty to both charges.

Criminal Case No. 11-0539

"That sometime in year 2003, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously had carnal knowledge with AAA, an eight (8) year old minor, without her consent, by means of force,

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[1] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Normandie B. Pizarro and Agnes Reyes-Carpio, concurring; CA *rollo*, pp. 114-128.

[2] Penned by Presiding Judge Joselito DJ. Vibandor; *id*. at 50-68.

[3] *Republic Act No. 8353*, otherwise known as "*The Anti-Rape Law of 1997,*" approved on September 30, 1997.

threat and intimidation, and by taking advantage of his moral ascendancy over her, he being her step-parent, thereby subjecting her to sexual abuse; the act complained of is prejudicial to the physical, psychological and moral development of the said minor, and which degrades or demeans her intrinsic worth and dignity as human being.

CONTRARY TO LAW."[4]

Criminal Case No. 11-0541

"That sometime between years 2006 to 2010, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously had carnal knowledge with AAA, a minor child between eleven (11) to fifteen (15) years old, without her consent, by means of force, threat and intimidation, and by taking advantage of his moral ascendancy over her, he being her step-parent, thereby subjecting her to sexual abuse; the act complained of is prejudicial to the physical, psychological and moral development of the said minor, and which degrades or demeans her intrinsic worth and dignity as human being.

CONTRARY TO LAW."[5]

The victim, AAA,[6] in her testimony, narrated that she was first sexually assaulted by her stepfather, De Guzman, when she was only 8 years old. It happened sometime in 2003 when De Guzman led AAA to the extension part of their house in Las Piñas City, then laid her on the floor and removed her clothes. Thereafter, he inserted his penis inside her vagina and successfully had carnal knowledge of her. After raping AAA, De Guzman warned her to keep her silence and not to tell anyone. Fearful of the safety of her mother BBB and her younger siblings,

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[4] CA *rollo*, pp. 50-51.

[5] *Id*. at 51.

[6] 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 initial 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.

AAA maintained her silence until she confided her sexual abuse to her aunt CCC. The sexual abuses of AAA from the hands of De Guzman continued between the years of 2006 and 2010.[7]

AAA's narration was corroborated in open court by her aunt, CCC, who affirmed the confession of AAA to her about the sexual abuses of De Guzman.[8] Furthermore, Dr. Editha Martinez of Philippine National Police Crime Laboratory in Camp Crame, Quezon City, confirmed in her Medico-Legal Report that, upon physical and genital examination of AAA, there were indeed lacerations on the hymen of AAA, which could have been caused by any blunt, hard object like a finger or erect penis.[9]

On his part, De Guzman denied raping AAA and interposed the defenses of denial and alibi. He alleged that he was in Pangasinan when the purported rape in 2003 happened, thus, it would be impossible for him to commit the said crime. He likewise denied the alleged instances of rape from 2006 to 2010 as he was never left alone with AAA in their house. At the end of his testimony, he imputed bad behavior and ill motive on the part of AAA.[10]

The defense of De Guzman was supported by BBB in her testimony. She testified that she is the mother of AAA but believed that the accusation of rape against her husband was false. She also affirmed the imputation of bad behavior against AAA by De Guzman.[11]

After trial, the RTC of Las Piñas City found that the prosecution was able to prove the guilt of De Guzman beyond reasonable doubt. It found credibility on AAA's clear and categorical declaration that she was raped by De Guzman sometime in the year 2003 and between 2006 and 2010 worthy

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[7] CA *rollo,* pp. 53-54.

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

[9] *Id*. at 52-53

[10] *Id*. at 55-57.

[11] *Id*. at 57.

of belief. The vivid recollection of AAA, in the absence of strong motive on her part, found merit to prove culpability. Thus, on June 17, 2013, the trial court rendered a guilty verdict on the two counts of Qualified Rape as charged. The dispositive portion of the decision reads:

> WHEREFORE**,** this court finds the accused **ROMEO DE CASTRO DE GUZMAN, GUILTY** beyond reasonable doubt of two (2) counts of Qualified Rape defined and penalized under Article 266-A par. 1 in relation to Article 266-B, par. 1 RPC as amended in relation to RA 7610 and hereby imposes the penalty of RECLUSION PERPETUA to EACH of the criminal information (Criminal Case No. 11-0539 and 11-0541) with the accessory penalty provided for by law.
>
> While the offender is the stepfather of [AAA], the statutory penalty of Death is reduced to Reclusion Perpetua because the supreme penalty of death can no longer be imposed as the imposition of the same is now prohibited by law.
>
> In line with the recent jurisprudence, [De Guzman] is directed to indemnify the victim AAA the amount of FIFTY THOUSAND PESOS (Php 50,000.00) as exemplary damages to EACH of the aforesaid cases. It is assumed that the victim of rape has suffered moral injuries entitling her to an award therefore.
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> With cost *de oficio*.
>
> Let a copy of this Decision be furnished the parties.
>
> SO ORDERED.[12]

Upon appeal, the CA, in its Decision[13] dated September 24, 2015, affirmed with modifications the ruling of the trial court, the dispositive portion of which reads:

> **WHEREFORE,** the appeal is DENIED. The Decision dated 17 June 2013 of the [RTC] of Las Piñas City in Criminal Cases Nos. 11-0539 and 11-0541 finding the accused-appellant **ROMEO DE GUZMAN *y* De Castro GUILTY** beyond reasonable doubt of two (2) counts of Qualified Rape as defined and penalized under Article

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

[13] *Id*. at 114-128.

266-A, in relation to Article 266-B, of the [RPC] is hereby **AFFIRMED** sentencing accused-appellant to suffer the penalty of *reclusion perpetua*, without eligibility of parole, with **MODIFICATION** ordering him to pay AAA the amounts of (a) Php100,000.000 as civil indemnity; (b) Php100,000.00 as moral damages; and (c) Php100,000.00 as exemplary damages, all with interest at the legal rate of six percent (6%) per annum on all monetary awards from the date of the finality of this Decision until fully paid.

SO ORDERED.[14]

Ruling of the Court

After a thorough review of the records of the case, the Court dismisses the appeal for lack of merit.

Under Article 266-A(1) of the RPC, rape is committed through the following acts:

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.

The rape is qualified under paragraph 1, Article 266-B[15] of the same code if it was committed by the step-parent of the victim.

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[14] *Id.* at 127.

[15] Art. 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

In this case, the Court agrees with the findings of the lower court and the CA.

The Court finds AAA to be a credible witness when she recounted in open court the circumstances of her ill-fated ordeal — had carnal knowledge of her since she was merely 8 years of age up to the following years of repeated sexual abuses through the use of force, threat and intimidation. The first commission of rape in 2003 does not require any other circumstance to support conviction. As provided by the above-mentioned law, rape is committed by a man who shall have carnal knowledge of a woman under 12 years of age such as AAA. Same finding is arrived at to the subsequent acts of carnal knowledge of AAA between the years of 2006 and 2010.

The Court likewise cannot subscribe to the assertion of De Guzman that his moral ascendancy as a stepparent is insufficient to replace force, violence or intimidation in the crime of rape. Jurisprudence dictates that the moral ascendancy wielded by De Guzman as a stepfather substituted actual force, threat and intimidation. As held in *People v. Barcela*:[16]

> Being regarded as the "*tatay*," Barcela had gained such moral ascendancy over AAA and BBB that any resistance normally expected from girls their age could not have been put up by them. **His moral ascendancy and influence over them substituted for actual physical violence and intimidation as an element of rape.** This made them easy prey for his sexual advances. Barcela's moral and physical dominion of AAA and BBB are sufficient to cow them into submission to his beastly desires. No further proof is needed to show lack of consent of the victims to their own defilement. x x x.[17] (Emphasis Ours)

In the same note, the argument of mandatory reference in the two sets of information of the specific time and date of the commission of rape must fail. Specific reference of the exact date or time of the commission of rape is not an element of the

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[16] 734 Phil. 332 (2014).

[17] *Id*. at 348.

said crime. What is essential to sustain conviction is proof of carnal knowledge of a woman under any of the circumstances provided by law. *"Precision as to the time when the rape is committed has no bearing on its commission. Consequently, the date or the time of the commission of the rape need not be stated in the complaint or information with absolute accuracy, for it is sufficient that the complaint or information states that the crime was committed at any time as near as possible to the date of its actual commission."*[18]

As to the last issue, De Guzman is trying to convince this Court that AAA was motivated by ill will when she filed a case against him. As oft-repeated ruling, no young girl such as AAA would subject herself to humiliation and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice.[19]

With respect to the penalty, the Court affirms the penalties imposed upon by the CA.

Under Article 266-B of the RPC, the penalty of death shall be imposed when the victim of rape is under 18 years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. However, upon the effectivity of Republic Act No. 9346[20] prohibiting the imposition of death penalty in the Philippines, the penalty of *reclusion perpetua* without eligibility for parole, in lieu of death penalty, shall be imposed on De Guzman.[21] As to the award of damages imposed, the Court likewise affirms the same pursuant to recent ruling in *People v. Jugueta*.[22]

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[18] *People v. Nuyok,* 759 Phil. 437, 448-449 (2015). (Italics Ours)

[19] *People v. Cuaycong*, 718 Phil. 633, 645-646 (2013); *People v. Padigos,* 700 Phil. 368, 376 (2012).

[20] Approved on June 24, 2006.

[21] *People v. Colentava,* 753 Phil. 361, 380 (2015); *People v. Prodenciado,* 749 Phil. 746, 768-770 (2014).

[22] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

WHEREFORE, the Court **ADOPTS** and **AFFIRMS** the findings of fact and conclusions of law of the Court of Appeals, in its Decision dated September 24, 2015 in CA-G.R. CR-HC No. 06284, finding accused-appellant Romeo De Guzman *y* De Castro guilty beyond reasonable doubt of two counts of Qualified Rape.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen,[*] and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 201806. August 14, 2017]

NORTH SEA MARINE SERVICES CORPORATION, Ms. ROSALINDA CERDINA and/or CARNIVAL CRUISE LINES, *petitioners, vs.* **SANTIAGO S. ENRIQUEZ,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; PERMANENT DISABILITY BENEFITS; WHERE THERE WAS NO EVIDENCE THAT SEAFARER WAS ENTITLED TO THE BENEFITS UNDER THE COLLECTIVE BARGAINING AGREEMENT (CBA), HE IS ENTITLED TO THE BENEFITS UNDER THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC). — We find that respondent failed to adequately prove that he was entitled to the benefits of an alleged CBA he had presented.

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[*] Designated additional Member per Raffle dated December 7, 2016 *vice* Associate Justice Francis H. Jardeleza.

The *ITF Cruise Ship Model Agreement For Catering Personnel April 2003* presented by respondent bore no specific details as regards the parties covered thereby, the effectivity or duration thereof, or even the signatures of contracting parties. Records are bereft of evidence showing that respondent's employment was covered by the supposed CBA or that petitioners had entered into any collective bargaining agreement with any union in which respondent was a member. There was likewise no evidence that an accident happened that caused respondent's injury. There was no report in the crew illness log dated September 2, 2008 that an accident happened on board the vessel which resulted in respondent's back pain. It is basic that respondent has the duty to prove his own assertions. And his failure to discharge the burden of proving that he was covered by the CBA militates against his entitlement to any of its benefits. As such, the NLRC and the CA had no basis in awarding respondent disability benefits under the supposed CBA. Respondent's entitlement to disability benefits is therefore governed by the POEA-SEC and relevant labor laws which are deemed written in the contract of employment with petitioners.

2. ID.; ID.; ID.; ID.; FAILURE TO OBSERVE THE PROCEDURE IN CASE OF CONFLICTING FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN AND THE DOCTOR APPOINTED BY THE SEAFARER WILL MAKE THE FORMER'S ASSESSMENT FINAL AND BINDING; RULE APPLIED IN CASE AT BAR.— It is clearly provided in the POEA-SEC that in order to claim disability benefits, it is the company-designated physician who must proclaim that the seafarer suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of his employment. If the doctor appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, a third doctor may be agreed jointly between the employer and seafarer whose decision shall be binding on both of them. In *Vergara v. Hammonia Maritime Services, Inc.,* the Court pronounced that while a seafarer has the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with this agreed procedure. The Court went on to emphasize that failure to observe this will make the company-designated physician's assessment final and binding. x x x

[R]espondent did not refer these conflicting assessments to a third doctor in accordance with the mandated procedure. In fine, the company-designated physician's assessment was not effectively disputed; hence, the Court has no option but to declare Dr. Rabago's fit to work declaration as final and binding.

3. ID.; ID.; ID.; WHILE THE COURT DISMISSED RESPONDENT'S CLAIM FOR DISABILITY BENEFITS, IT HOWEVER REINSTATED THE AWARD OF FINANCIAL ASSISTANCE. — The CA erred in awarding respondent his claim for permanent disability benefits. While the provisions of the POEA-SEC are liberally construed in favor of the well-being of Filipino seafarers, the law nonetheless authorizes neither oppression nor self-destruction of the employer. In any event, we sustain the Labor Arbiter's award of US$3,000.00 as financial assistance in the interest of equity and compassionate justice. Besides, the same was not properly assailed by the petitioners via an appeal to the NLRC. As such, the same had attained finality and could no longer be questioned by petitioners.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for petitioners.
Dante Acorda for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the January 20, 2012 Decision[2] and May 8, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 117050, which dismissed the Petition for *Certiorari* filed therewith and thus affirmed the June 25, 2010 Decision[4] and September 20, 2010

[1] *Rollo,* pp. 35-89.

[2] CA *rollo,* pp. 358-377; penned by Associate Justice Vicente S. E. Veloso and concurred in by Associate Justices Stephen C. Cruz and Manuel M. Barrios.

[3] *Id*. at 460.

[4] *Id.* at 51-66; penned by Presiding Commissioner Herminio V. Suelo and concurred in by Commissioners Angelo Ang Palana and Numeriano D. Villena.

Resolution[5] of the National Labor Relations Commission (NLRC) ordering petitioners North Sea Marine Services Corporation, Ms. Rosalinda Cerdina, and Carnival Cruise Lines (collectively petitioners) to pay respondent Santiago S. Enriquez (respondent) US$80,000.00 as permanent disability benefits, US$576.00 as balance for sickness wages, and 10% thereof as attorney's fees.

Antecedent Facts

On February 27, 2008, petitioner North Sea Marine Services Corporation, for and on behalf of its foreign principal, petitioner Carnival Cruise Lines, entered into a Contract of Employment[6] with respondent for a period of six months which commenced on April 27, 2008, as Assistant Plumber for the vessel *MS Carnival Triumph*.

On September 2, 2008, while in the performance of his duties, respondent experienced nape pains that radiated to his upper back. The ship doctor diagnosed him to be suffering from mechanical back pains and prescribed him with medicines.[7] However, due to the worsening of his back pains, he was medically repatriated on October 5, 2008.

Upon arrival in Manila on October 7, 2008, respondent was immediately referred to the company-designated physician, Dr. John Rabago (Dr. Rabago), at the Cardinal Santos Medical Center. An orthopedic specialist recommended Magnetic Resonance Imaging (MRI) of respondent's cervical spine, which test revealed that he was suffering from *Cervical Spondylosis with Thickening of the Posterior Longitudinal Ligament from C2-3 to C5-6; Mild Disc Bulging from C3-4 to T2-E; and Superimposed Left Paracentral Disc Protrusion at C5-6.*[8] During his confinement at the Cardinal Santos Medical Center from October 28, 2008 to October 30, 2008, respondent underwent

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

[6] *Id*. at 202 and 269.

[7] *Id*. at 270.

[8] Certification dated December 22, 2008 by Dr. Rabago, *id*. at 203.

Anterior Disectomy, Spinal fusion C5-C6 Ciliac Bone Graft, and Anterior Plating.[9] After his discharge from the hospital, respondent continuously reported to the orthopedic surgeon for medical treatment and evaluation. On November 28, 2008, he was referred to a physiatrist to undergo physical therapy.[10]

In a Medical Report[11] dated December 17, 2008, Dr. Rabago declared respondent fit to resume sea duties, with the conformity of both the orthopedic surgeon and the physiatrist. Respondent thereafter signed a Certificate of Fitness to Work,[12] releasing petitioners from all liabilities.

On February 25, 2009, respondent consulted an independent orthopedic surgeon, Dr. Venancio P. Garduce, Jr. (Dr. Garduce), of the UP-PGH Medical Center, who certified his unfitness to work as a seaman with the following findings:

Feb. 25, 2009

To whom it may concern

This is to certify that SANTIAGO S. ENRIQUEZ, 45 years old, male, has been seen & examined by the undersigned as outpatient. History reviewed and patient's physical examination reveal limitation of neck motion associated with tenderness on posterior aspect of the neck. He also has numbness of the (R) shoulder with muscle spasm. The (L) pelvic/iliac bone graft down is tender associated with numbness.

Considering all these findings, it would be impossible for him to work as seaman-plumber. Disability grade of three (3) is recommended.[13]

Proceedings before the Labor Arbiter (LA)

On March 4, 2009, respondent filed a Complaint[14] with the NLRC seeking to recover permanent disability compensation

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[9] Cardinal Santos Medical Center Discharge Summary, *id*. at 209-210.

[10] 9th Medical Report dated November 28, 2008, *id*. at 277.

[11] *Id*. at 281-282.

[12] *Id*. at 283.

[13] *Id*. at 211.

[14] *Id*. at 284-285.

in the amount of US$80,000.00 under the International Transport Workers' Federation Cruise Ship Collective Bargaining Agreement (ITF Cruise Ship CBA),[15] balance of sick wages for two months, moral and exemplary damages, and attorney's fees. Respondent claimed that despite the lapse of 120 days and medical attention given to him by the company-designated physician, his condition did not improve, as attested by the medical findings of his own physician Dr. Garduce.

Petitioners, on the other hand, disclaimed respondent's entitlement to any disability benefit since he was declared fit to work by Dr. Rabago, as attested by both the orthopedic surgeon and physiatrist. Petitioners asserted that the fit-to-work assessment of the company-designated physician deserved utmost credibility because it was rendered after extensive monitoring and treatment of respondent's condition by a team of specialists, and it contained a detailed explanation of the progress in respondent's condition. Petitioners also asserted that there was no proof that respondent's employment was covered by a CBA or that his injury was caused by an accident as to fall under the CBA provisions. Moreover, petitioners insisted that respondent had executed a Certificate of Fitness to Work, releasing petitioners from any obligation in relation to his employment.

In a Decision[16] dated September 29, 2009, the Labor Arbiter denied respondent's claim for disability benefits. The Labor Arbiter found credence in Dr. Rabago's fit to work assessment, which was buttressed by the findings of the specialists, was arrived at after careful and accurate evaluation of respondent's condition, and well-substantiated by the medical records.

The Labor Arbiter disregarded the ITF Cruise Ship Model CBA presented by respondent for lack of proof that petitioners were parties to such agreement. Further, there was no evidence that respondent's illness resulted from an accident. The dispositive portion of the Decision read:

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[15] *Id*. at 212-230.

[16] *Id*. at 107-119; penned by Labor Arbiter Aliman D. Mangandog.

WHEREFORE, premises considered, judgment is hereby rendered dismissing the Complaint for lack of merit.

However, in the interest of justice, this Arbitration Branch awards complainant US$3,000.00 as financial assistance.

All other claims are likewise denied for want of any basis.

SO ORDERED.[17]

Records show that only respondent appealed from the Decision of the Labor Arbiter. Petitioners did not appeal but instead filed an Opposition to Complainant's Request for Payment of Financial Assistance.[18]

Proceedings before the National Labor Relations Commission

In a Decision[19] dated June 25, 2010, the NLRC found respondent's appeal meritorious. The NLRC gave more weight to the medical certificate of Dr. Garduce which declared respondent unfit to resume sea duties since petitioners never redeployed him for work despite the company-designated physician's assessment of fitness to resume sea duties. The NLRC ruled that permanent and total disability did not mean a state of absolute helplessness but mere inability to perform usual tasks. The NLRC also held that the Certificate of Fitness is akin to a release or quitclaim, which did not constitute a bar for respondent to demand what was legally due him.

The NLRC found that respondent's injury was caused by an accident when his spinal column cracked while lifting some heavy pipes; it thus awarded him total and permanent disability benefits under the ITF Cruise Ship CBA. The dispositive portion of the Decision read:

WHEREFORE, premises considered, the assailed Decision rendered by Labor Arbiter Aliman D. Mangandog dated September 29, 2009 is hereby REVERSED and SET ASIDE and a NEW ONE ENTERED

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[17] *Id*. at 119.

[18] See NLRC Decision, *id*. at 51-66 at 55.

[19] *Id*. at 51-66.

holding respondents liable to pay jointly and severally, complainant's claim for permanent disability benefits in the sum of US$80,000.00 and US$576.00 as balance for sickness wages, plus attorney's fees in the sum equivalent to 10% of the total judgment award.

SO ORDERED.[20]

Petitioners filed a motion for reconsideration on the grounds that the NLRC erred in granting disability benefits under the alleged CBA and in awarding attorney's fees in the absence of a finding of bad faith. This motion was, however, denied by the NLRC in a Resolution[21] dated September 20, 2010.

Proceedings before the Court of Appeals

Petitioners filed a Petition for *Certiorari* with Application for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction to enjoin the enforcement and execution of the NLRC judgment. In a Resolution[22] dated March 2, 2011, the CA denied petitioners' prayer for a TRO.

The CA, in a Decision[23] dated January 20, 2012, dismissed petitioners' Petition for *Certiorari* for lack of merit. The CA held that while it is the company-designated physician who is tasked under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) to assess the condition of the seafarer, his medical report is not binding and may be disputed by a contrary opinion of another physician. The CA went on to affirm the NLRC's reliance on the medical assessment of Dr. Garduce as it was based not merely on respondent's physical examination but also after considering the medical findings of Dr. Rabago.

Petitioners sought reconsideration of this Decision but was denied by the CA in its Resolution[24] dated May 8, 2012.

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[20] *Id*. at 65.

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

[22] *Id*. at 325.

[23] *Id*. at 358-377.

[24] *Id*. at 460.

Issues

Hence, petitioners filed the instant Petition, arguing that:

A. The Court of Appeals committed a serious error in law in affirming the award of US$80,000.00 under the CBA. Respondent's employment has no overriding CBA.

B. The Court of Appeals committed serious error in holding that Respondent is entitled to disability benefits. Respondent was declared FIT TO WORK by the company-designated physician. The findings of the company-designated physician should be given weight in accordance with the rulings of this Honorable Court in the cases of *Coastal Safeway Marine Services, Inc. v. Esguerra, G.R. No. 185352, 10 August 2011* and *Allen Santiago vs. Pacbasin Shipmanagement, Inc. and/or Majestic Carriers, Inc., G.R. No. 194677, 18 April 2012.*

C. The Court of Appeals committed a serious error in law in ruling that respondent is entitled to attorney's fees. The denial of private respondent's claims were based on legal grounds and made in good faith.[25]

Petitioners maintain that the CA committed serious error in awarding respondent full disability benefits despite the timely fit to work assessment of Dr. Rabago, which was rendered after extensive treatment of respondent's condition, vis-à-vis the baseless opinion and medical findings of Dr. Garduce that was rendered only after a single consultation. Besides, probative weight should be given to the company-designated physician's assessment as there was no third doctor appointed to properly dispute the same. Moreover, the Certificate of Fitness to Work signed by respondent corroborated the fit to work assessment of Dr. Rabago; therefore, respondent lacked any basis in claiming disability benefits.

Petitioners also argue that there was no sufficient evidence to entitle respondent to disability benefits in the amount of US$80,000.00 under an alleged CBA. The CBA presented was merely a model CBA which was unsigned and unauthenticated.

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[25] *Rollo,* p. 316.

There was likewise no concrete proof to support respondent's claim that his condition resulted from an accident as to entitle him to claim benefits under the CBA's provisions.

Our Ruling

We find merit in the Petition.

No proof was presented to show that respondent's employment was covered by the CBA.

We find that respondent failed to adequately prove that he was entitled to the benefits of an alleged CBA he had presented. The *ITF Cruise Ship Model Agreement For Catering Personnel April 2003*[26] presented by respondent bore no specific details as regards the parties covered thereby, the effectivity or duration thereof, or even the signatures of contracting parties. Records are bereft of evidence showing that respondent's employment was covered by the supposed CBA or that petitioners had entered into any collective bargaining agreement with any union in which respondent was a member.

There was likewise no evidence that an accident happened that caused respondent's injury. There was no report in the crew illness log[27] dated September 2, 2008 that an accident happened on board the vessel which resulted in respondent's back pain. It is basic that respondent has the duty to prove his own assertions. And his failure to discharge the burden of proving that he was covered by the CBA militates against his entitlement to any of its benefits. As such, the NLRC and the CA had no basis in awarding respondent disability benefits under the supposed CBA.

Respondent's entitlement to disability benefits is therefore governed by the POEA-SEC and relevant labor laws which are deemed written in the contract of employment with petitioners.

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[26] CA *rollo,* pp. 212-230.

[27] *Id*. at 270-271.

Dr. Rabago's fit to work assessment prevails. Respondent is not entitled to total and permanent disability benefits.

Section 20 B (3) of the POEA-SEC provides:

> 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.

It is clearly provided in the POEA-SEC that in order to claim disability benefits, it is the company-designated physician who must proclaim that the seafarer suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of his employment. If the doctor appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, a third doctor may be agreed jointly between the employer and seafarer whose decision shall be binding on both of them. In *Vergara v. Hammonia Maritime Services, Inc.,*[28] the Court pronounced that while a seafarer has the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with this agreed procedure. The Court went on to

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[28] 588 Phil. 895, 914 (2008).

emphasize that failure to observe this will make the company-designated physician's assessment final and binding.

Upon repatriation on October 5, 2008, respondent's condition was medically evaluated and treated by the company-designated physicians. Respondent was subjected to continuous medical examination by Dr. Rabago, underwent surgery under the care of an orthopedic specialist, and received physical therapy from a physiatrist. On December 17, 2008, Dr. Rabago, the orthopedic surgeon, and the physiatrist assessed respondent fit to resume sea duties. On February 25, 2009, respondent sought an independent opinion from Dr. Garduce who assessed him to be unfit for sea duties. However, respondent did not refer these conflicting assessments to a third doctor in accordance with the mandated procedure. In fine, the company-designated physician's assessment was not effectively disputed; hence, the Court has no option but to declare Dr. Rabago's fit to work declaration as final and binding.

In any event, the Court finds Dr. Rabago's assessment to be credible considering his close monitoring and extensive treatment of respondent's condition. His fit to work assessment was supported by the findings of the orthopedic surgeon and physiatrist who both opined, after making a thorough evaluation of respondent's condition, that respondent was already physically fit to resume work without any restrictions. The extensive medical attention and treatment given to respondent starting from his repatriation on October 5, 2008 until December 17, 2008 were clearly supported by medical reports. In Dr. Rabago's initial medical report[29] dated October 10, 2008, respondent was referred to an orthopedic specialist for proper treatment and procedure. In a subsequent medical report[30] dated November 7, 2008, respondent was evaluated after surgery and found to be recovering well although complaining of some discomfort and pain which are common during post surgery. Respondent was then referred to a physiatrist for rehabilitation. In a medical

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[29] CA *rollo,* pp. 272-273.

[30] *Id*. at 274.

report[31] dated December 12, 2008, significant improvement in respondent's condition was noted after a series of physical therapy and rehabilitation. These medical reports confirmed that respondent had already recovered from his injury after treatment by the specialists. On the other hand, Dr. Garduce rendered a medical opinion after a singular examination of respondent. His pronouncement of respondent's unfitness to resume sea duties and partial disability impediment of Grade 3 was unsupported by adequate explanation as to how his recommendations were arrived at.

Besides, Dr. Rabago's fit to work assessment was supported by the Certificate of Fitness to Work signed by respondent. It bears to emphasize that respondent immediately caused the execution of this waiver or release in favor of petitioners instead of disputing the fit to work declaration of Dr. Rabago. We have held that not all waivers and quitclaims are invalid as against public policy.[32] Absent any evidence that any of the vices of consent is present, this document executed by respondent constitutes a binding agreement and a valid waiver in favor of petitioners.[33]

In fine, we find Dr. Rabago's fit to work assessment a reliable diagnosis of respondent's condition and should prevail over Dr. Garduce's appraisal of respondent's disability. Dr. Rabago's timely assessment, rendered within 120 days from respondent's repatriation, which was not properly disputed in accordance with an agreed procedure, is considered final and binding. The CA erred in awarding respondent his claim for permanent disability benefits.

While the provisions of the POEA-SEC are liberally construed in favor of the well-being of Filipino seafarers, the law nonetheless

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[31] *Id.* at 278-279.

[32] *Intel Technology Philippines, Inc. v. National Labor Relations Commission,* 726 Phil. 298, 312-313 (2014).

[33] *Aujero v. Phil. Communications Satellite Corporation,* 679 Phil. 463, 478-479 (2012).

authorizes neither oppression nor self-destruction of the employer. In any event, we sustain the Labor Arbiter's award of US$3,000.00 as financial assistance in the interest of equity and compassionate justice. Besides, the same was not properly assailed by the petitioners via an appeal to the NLRC. As such, the same had attained finality and could no longer be questioned by petitioners.

WHEREFORE, the Petition is **GRANTED**. The January 20, 2012 Decision and May 8, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 117050 are **REVERSED and SET ASIDE**. The September 29, 2009 Decision of Labor Arbiter Aliman D. Mangandog in NLRC-NCR Case No. (M) NCR-03-03817-09 dismissing respondent's claim for disability benefits and awarding US$3,000.00 as financial assistance is **REINSTATED and AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.,* concur.

THIRD DIVISION

[G.R. No. 211519. August 14, 2017]

BANK OF COMMERCE, *petitioner, vs.* **HEIRS OF RODOLFO DELA CRUZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY PETITION FOR REVIEW ON *CERTIORARI*; LIMITED ONLY TO QUESTIONS OF LAW; QUESTIONS OF LAW AND QUESTIONS OF FACT, DISTINGUISHED. —An appeal by petition for review on *certiorari* is limited to

questions of law because the Court is not a trier of facts. In this regard, the dichotomy between questions of law and questions of fact is jurisprudentially settled. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of the facts being admitted. In contrast, a question of fact exists when a doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.

2. **ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.—**Generally, the Court shuns away from delving into questions of fact, the same being outside the ambit of an appeal under Rule 45 of the *Rules of Court*. However, there are recognized instances wherein the Court may settle factual disputes that a party raises, and such instances include the following, namely: (a) when the inference made is manifestly mistaken, absurd or impossible; (b) when there is grave abuse of discretion; (c) when the finding is grounded entirely on speculations, surmises or conjectures; (d) when the judgment of the CA is based on misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the CA, in making its findings, went beyond the issues of the case, and the same is contrary to the admissions of both the appellant and the appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (j) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.

3. **ID.; EVIDENCE; OFFER OF EVIDENCE; THE JUDGE IS MANDATED TO REST THE FINDINGS OF FACTS AND THE JUDGMENT ONLY AND STRICTLY UPON THE EVIDENCE OFFERED BY THE PARTIES AT THE TRIAL.—** The CA and the RTC are upheld in this regard.

Section 34, Rule 132 of the *Rules of Court* commands that "the court shall consider no evidence which has not been formally offered," and that "the purpose for which the evidence is offered must be specified." The formal offer of evidence was necessary because the judge was mandated to rest the findings of facts and the judgment only and strictly upon the evidence offered by the parties at the trial. The function of the formal offer was to enable the trial judge to know the purpose or purposes for which the proponent was presenting the evidence. Such formal offer would also enable the opposing parties to examine the evidence and to reasonably object to their admissibility. The formal offer would further facilitate the review by the appellate court by limiting the review to the documents previously scrutinized by the trial court. Accordingly, any document is merely a scrap of paper barren of probative weight unless and until admitted by the trial court as evidence for the purpose or purposes for which it is offered.

4. ID.; ID.; ID.; ID.; WHEN EVIDENCE NOT FORMALLY OFFERED MAY BE CONSIDERED BY THE TRIAL COURT; CONDITIONS; NOT ESTABLISHED IN CASE AT BAR.— [T]he trial court may consider evidence even if it was not formally offered provided that: (a) the same was duly identified by testimony duly recorded; and (b) the same was incorporated in the records of the case. Considering that, as observed by the CA, the Purchase and Sale Agreement and Deed of Assignment were not marked as exhibits, and their contents were not revealed in the records, and in the case of the Purchase and Sale Agreement, the petitioner did not competently identify it during the trial, the general rule should apply in this case.

5. ID.; ID.; JUDICIAL NOTICE; THREE MATERIAL REQUISITES; ELEMENT OF NOTORIETY AS BASIS FOR TAKING JUDICIAL NOTICE, LACKING IN CASE AT BAR.— [The Court] reiterated the requisite of notoriety for the taking of judicial notice in the recent case of *Expertravel & Tours, Inc. v. Court of Appeals*, which cited *State Prosecutors*:Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The

principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable. x x x Contrary to the findings and conclusions of the RTC, the merger of the petitioner and Panasia was not of common knowledge. It was overly presumptuous for the RTC to thereby assume the merger because the element of notoriety as basis for taking judicial notice of the merger was loudly lacking. x x x [T]here were several specific facts whose existence must be shown (not assumed) before the merger of two or more corporations can be declared as established. Among such facts are the plan of merger that includes the terms and mode of carrying out the merger and the statement of the changes, if any, of the present articles of the surviving corporation; the approval of the plan of merger by majority vote of each of the boards of directors of the concerned corporations at separate meetings; the submission of the plan of merger for the approval of the stockholders or members of each of the corporations at separate corporate meetings duly called for the purpose; the affirmative vote of 2/3 of the outstanding capital in case of stock corporations, or 2/3 of the members in case of non-stock corporations; the submission of the approved articles of merger executed by each of the constituent corporations to the SEC; and the issuance of the certificate by the SEC on the approval of the merger. In this case, because dela Cruz's allegation of the merger was specifically denied by the petitioner, the RTC had absolutely no factual and legal bases to take constructive notice of any of the foregoing circumstances. It should have required proof of the acquisition of the liability of Panasia on the part of the petitioner.

6. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; MERGER; DOES NOT BECOME EFFECTIVE UPON THE MERE AGREEMENT OF THE CONSTITUENT CORPORATIONS, BUT UPON THE APPROVAL OF THE ARTICLES OF MERGER.—A merger is the union of two or more existing corporations in which the surviving corporation

absorbs the others and continues the combined business. The merger dissolves the non-surviving corporations, and the surviving corporation acquires all the rights, properties and liabilities of the dissolved corporations. Considering that the merger involves fundamental changes in the corporation, as well as in the rights of the stockholders and the creditors, there must be an express provision of law authorizing the merger. The merger does not become effective upon the mere agreement of the constituent corporations, but upon the approval of the articles of merger by the Securities and Exchange Commission issuing the certificate of merger as required by Section 79 of the *Corporation Code*. Should any party in the merger be a special corporation governed by its own charter, the *Corporation Code* particularly mandates that a favorable recommendation of the appropriate government agency should first be obtained.

APPEARANCES OF COUNSEL

Rodrigo Berenguer and Guno for petitioner.
Arnel P. Kho for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The terms of merger between two corporations, when determinative of their joint or respective liabilities towards third parties, cannot be assumed. The party alleging the corporations' joint liabilities should establish the allegation. Otherwise, the liabilities of each of them shall be separate.

The Case

We review the decision promulgated on August 29, 2013,[1] whereby the Court of Appeals (CA) dismissed the appeal of the petitioner and affirmed the judgment rendered on April 28,

[1] *Rollo*, pp. 43-51; penned by Associate Justice Amelita G. Tolentino (retired), and concurred by Associate Justice Ramon R. Garcia and Associate Justice Danton Q. Bueser.

2010 in Civil Case No. C-19332 by the Regional Trial Court (RTC), Branch 13, in Caloocan City adjudging the petitioner and Panasia Banking, Inc. (Panasia) jointly and severally liable to pay to the respondents the amount of ₱56,223,066.00, less ₱27,150,000.00 by way of a legal set-off, and attorney's fees.[2]

Antecedents

The CA summarized the factual and procedural antecedents, to wit:

> This case has its roots from a *Complaint* for collection of sum of money and damages with prayer for a writ of preliminary injunction and/or temporary restraining order filed by the late plaintiff Rodolfo Dela Cruz (Dela Cruz) against defendant Panasia Banking, Inc. (Panasia). The complaint was lodged with the Regional Trial Court of Caloocan City, docketed as RTC Case No. C-19332, and raffled off to Branch 131.
>
> However, this complaint was amended to include defendant-appellant Bank of Commerce (Bank of Commerce) as additional defendant. Thereafter, Dela Cruz filed an Urgent Motion to Re-Amend Complaint and for Issuance of a Temporary Restraining Order to amend anew the complaint so as to include the Clerk of Court and Ex-officio Sheriff of the Regional Trial Court of Manila, Jesusa P. Maningas and her Deputy, Eufracio B. Pilipina as additional defendants, which was granted by the court *a quo* in its order dated March 28, 2001. The re-amended complaint was admitted and as prayed for, the court *a quo* ordered the issuance of a temporary restraining order against the defendants Panasia, Bank of Commerce, the Clerk of Court and Ex-Officio Sheriff of Manila, Jesusa P. Maningas and her deputy, Eufracio B. Pilipina, and all persons claiming rights under them, to refrain from committing or pursuing any and all acts which will bring about the auction sale scheduled on March 29, 2001 of the mortgaged parcels of land covered by TCT No. 194509 mentioned in the Notice of Extra-Judicial Sale bearing the date March 1, 2001 and also of TCT Nos. 291630 and 262200 of the Registry of Deeds of Caloocan City, until the issue of the issuance of preliminary injunction shall have been duly heard and determined by the court *a quo*. In its order dated April 23, 2001, the court *a quo* ordered the

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[2] *Id*. at 130-134.

issuance of a writ of preliminary injunction upon posting by Dela Cruz of an injunctive bond in the amount of ₱1.5 million executed in favor of defendant-appellant Bank of Commerce.

Defendant Panasia has been declared in default in the order of December 15, 2000 and again, it has been declared in default for failure to file the pre-trial brief in the order dated April 5, 2002.

On July 21, 2003, plaintiff Dela Cruz died and he was substituted by his surviving spouse Perla Pulgar Dela Cruz, his children namely: Leewardo P. Dela Cruz, Allan P. Dela Cruz and Joan P. Dela Cruz. His heirs are represented by Leewardo P. Dela Cruz.

As gleaned from the records, the antecedents are as follows:

Plaintiff Dela Cruz is the sole owner and proprietor of the Mamertha General Merchandising (Mamertha), an entity engaged in sugar trading since 1970. He maintained a bank account with defendant Panasia, in its branch in Grace Park, Caloocan City, in the name of Mamertha General Merchandising under Savings Account No. 002-004-00008-1.

Sometime in October 1998, Dela Cruz discovered that Panasia allowed his son, Allan Dela Cruz to withdraw money from the said bank account/deposit without his consent and/or authority. Upon discovery, he immediately instructed Panasia not to allow his son to make any withdrawals from his bank account and even sent a letter dated October 5, 1998 to Panasia, stating therein that his son, Allan Dela Cruz is neither authorized to make any withdrawal from his bank account nor sign any check drawn against the bank account unless with his written/expressed consent or authority. The said letter was personally received by Panasia's Grace Park Branch Manager and Operation Officer, Vicky Nubla and Lorraine de Leon, respectively, on October 16, 1998.

Despite said instruction and receipt of the letter dated October 5, 1998 Panasia still allowed and continued to allow Dela Cruz's son, Allan Dela Cruz to withdraw from the said bank account/deposit without his knowledge and consent. The unauthorized withdrawals amounted to Fifty Six Million Two Hundred Twenty Three Thousand Sixty Six Pesos and 7/100 (₱56,223,066.07) as evidenced by Panasia's banking counter checks.

Dela Cruz demanded from Panasia the restoration of the said amount to his bank account/deposit. However, despite said demand, Panasia failed to do so. Hence, through a letter sent to Panasia, Dela Cruz

made a formal demand from Panasia to pay and/or re-deposit the amount of Fifty Six Million Two Hundred Twenty Three Thousand Sixty Six Pesos and 7/100 (₱56,223,066.07) to his bank account/ deposit within five (5) days from receipt hereof. Still, Panasia failed to heed the said demand of Dela Cruz, claiming that all transactions were pursuant to the existing banking policies and procedures.

On August 7, 2000, Dela Cruz instituted a suit for collection of sum of money against Panasia to collect the amount of the unauthorized withdrawals on his bank account/deposit. In the meantime, sometime in September, 2000, the Bank of Commerce demanded payment from Dela Cruz the amount of Twenty Seven Million One Hundred Fifty Thousand Pesos (₱27,150,000.00). Not having any knowledge of obtaining or having obtained a loan from the Bank of Commerce, Dela Cruz upon verification from the said bank discovered that the loan payment demanded by the bank refers to the loan he obtained from Panasia and that pursuant to a Purchase and Sale Agreement entered into between Panasia and Bank of Commerce on July 27, 2000, Panasia has been acquired by Bank of Commerce transferring to the latter the former's assets and liabilities on bank deposits.

As a consequence thereof, Dela Cruz demanded from the Bank of Commerce to pay the liability of Panasia to him and offered to compensate/set off his secured loan obligation with Panasia in the amount of ₱27,150,000.00 by deducting the same from his outstanding claim of ₱56,223,066.07. Dela Cruz claimed that he is entitled to legal compensation or set-off and therefore, the Bank of Commerce had no right to foreclose the mortgaged properties since the principal obligation has already been extinguished.

The Bank of Commerce claimed that it purchased from Panasia only selected accounts and liabilities. Dela Cruz's loan account who does business under the name and style of Mamertha General Merchandising was among those acquired by it from Panasia by virtue of the Purchase and Sale Agreement dated July 27, 2000 and Deed of Assignment dated September 18, 2000, both entered into by and between Panasia and Bank of Commerce. Dela Cruz obtained loans in the principal amount of ₱16,650,000.00 and ₱2,850,000.00 from Panasia secured by Real Estate Mortgage dated September 2, 1998 and April 17, 2000 using Transfer Certificate of Title (TCT) Nos. 262200 and 291630. Likewise, Dela Cruz executed six (6) promissory notes which became past due and demandable and the former refused to settle his outstanding obligations. Hence, it filed a petition for

extra-judicial foreclosure of real estate mortgage under Act. 3135, as amended. It had to foreclose on the mortgage when Dela Cruz refused to pay his obligation and maintained that Dela Cruz cannot ask for set-off or legal compensation.[3]

Judgment of the RTC

After trial, the RTC declared the petitioner and Panasia jointly and severally liable to the late Rodolfo dela Cruz. It concluded that dela Cruz had successfully established the negligence of Panasia in its fudiciary relationship with him by allowing his son to withdraw from his account despite the lack of authority to withdraw, and, worse, despite the express instructions of dela Cruz himself; and that the petitioner's defense that it had not assumed the liability of Panasia was unworthy of consideration because common sense dictated that the petitioner, by taking over Panasia, had absorbed all the assets and liabilities of Panasia.

The RTC disposed:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants Panasia Banking, Inc., and Bank of Commerce to:

1. Jointly and severally pay plaintiff the amount of FIFTY SIX MILLION TWO HUNDRED TWENTY THREE THOUSAND SIXTY SIX and 7/100 (₱56,223,066.00) PESOS and therefrom the amount of ₱27,150,000.00 loan obligation of the herein plaintiffs from defendant PANASIA Banking Inc., the payment of which has been demanded by the defendant Bank of Commerce;
2. Jointly and severally to pay plaintiff the amount of ₱50,000.00 as and for attorney's fees;
3. The cost of suit.

SO ORDERED.[4]

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[3] *Id*. at 44-46.

[4] *Id*. at 134.

Decision of the CA

On appeal, the CA concurred with the RTC's conclusion, and affirmed the judgment of the RTC,[5] pointing out that the failure of the petitioner to formally offer the documents denominated as Purchase and Sale Agreement and the Deed of Assignment was fatal to the petitioner's defense of not having assumed Panasia's liabilities; and that the factual findings by the RTC on the negligence on the part of Panasia were correct. The *fallo* of the CA's decision reads:

> **WHEREFORE**, for all the foregoing considerations, the appeal is **DISMISSED**. Accordingly, the decision dated April 28, 2010 of the Regional Trial Court of Caloocan, Branch 131 in Civil Case No. C-19332 is **AFFIRMED**.
>
> **SO ORDERED.**[6]

The CA denied the petitioner's motion for reconsideration on February 25, 2014.[7]

Issue

Hence, this appeal, whereby the petitioner seeks the reversal of the decision of the CA. It argues that its failure to formally offer the documents that would prove that it had acquired from Panasia only selected assets and liabilities was not fatal to its defense because the genuineness and due execution of the documents had been alleged to have been admitted by dela Cruz in his amended complaint and pre-trial brief; that there was no evidence on which to base its solidary liability for the negligence of Panasia; and that Panasia had not been negligent in allowing dela Cruz's son to withdraw from his account because such withdrawals had been authorized.[8]

In response, respondent dela Cruz, now represented by his heirs, submits that the fact that he had mentioned the documents

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[5] *Supra* note 1.

[6] *Id*. at 50.

[7] *Rollo*, pp. 64-65.

[8] *Id*. at 17-18.

in his pleadings did not dispense with the requirement for the petitioner to still make a formal offer of the documents.

Did the CA and the RTC err in pronouncing the petitioner solidarily liable with Panasia for the latter's negligence?

Ruling of the Court

The appeal has merit.

An appeal by petition for review on *certiorari* is limited to questions of law because the Court is not a trier of facts. In this regard, the dichotomy between questions of law and questions of fact is jurisprudentially settled. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of the facts being admitted. In contrast, a question of fact exists when a doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.[9]

Generally, the Court shuns away from delving into questions of fact, the same being outside the ambit of an appeal under Rule 45 of the *Rules of Court*. However, there are recognized instances wherein the Court may settle factual disputes that a party raises, and such instances include the following, namely: (a) when the inference made is manifestly mistaken, absurd or impossible; (b) when there is grave abuse of discretion; (c) when the finding is grounded entirely on speculations, surmises or conjectures; (d) when the judgment of the CA is based on misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the CA, in making its findings, went beyond

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[9] *Republic v. Vega*, G.R. No. 177790, January 17, 2011, 639 SCRA 541, citing *New Rural Bank of Guimba, (N.E.) Inc. v. Abad*, G.R. No. 161818, 20 August 2008, 562 SCRA 503, 509-510.

the issues of the case, and the same is contrary to the admissions of both the appellant and the appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and j) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[10]

The petitioner raises the following errors herein, to wit:

I.

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT RULED THAT THE FAILURE OF PETITIONER TO OFFER THE PURCHASE AND SALE AGREEMENT WITH PANASIA AS EVIDENCE WAS FATAL TO ITS DEFENSE.

II.

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT HELD PETITIONER LIABLE FOR THE ACTS COMMITTED BY PANASIA

III.

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF FACT IN DISREGARDING THE ADMISSION OF RODOLFO THAT HE AUTHORIZED HIS SON TO WITHDRAW FROM THE SUBJECT SAVINGS ACCOUNT.[11]

Of the foregoing errors, the third poses a question of fact. In this regard, the petitioner has not shown that its case comes under any of the earlier mentioned recognized exceptions. Moreover, the findings about Panasia's negligence and the declaration of Panasia's liability based on such negligence already

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[10] *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 585.

[11] *Rollo*, pp. 17-18.

attained finality in light of its non-appeal of the adverse judgment rendered herein.

The remaining substantive issue is whether or not the petitioner was properly held to be solidarily liable with Panasia for the latter's negligence.

The CA and the RTC were in unison in declaring that the petitioner's failure to formally offer the Purchase and Sale Agreement and Deed of Assignment was fatal to its defense. They rejected the petitioner's assertion that Panasia's liability adjudged herein was not one of the liabilities it had assumed. Hence, the petitioner now urges a review and reversal considering that the omission to formally offer was not fatal in view of dela Cruz's admission of the existence and due execution of the Purchase and Sale Agreement and Deed of Assignment.

The CA and the RTC are upheld in this regard. Section 34, Rule 132 of the *Rules of Court* commands that "the court shall consider no evidence which has not been formally offered," and that "the purpose for which the evidence is offered must be specified." The formal offer of evidence was necessary because the judge was mandated to rest the findings of facts and the judgment only and strictly upon the evidence offered by the parties at the trial. The function of the formal offer was to enable the trial judge to know the purpose or purposes for which the proponent was presenting the evidence. Such formal offer would also enable the opposing parties to examine the evidence and to reasonably object to their admissibility. The formal offer would further facilitate the review by the appellate court by limiting the review to the documents previously scrutinized by the trial court.[12] Accordingly, any document is merely a scrap of paper barren of probative weight unless and until admitted by the trial court as evidence for the purpose or purposes for which it is offered.[13]

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[12] *Heirs of Pedro Pasag v. Parocha*, G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416.

[13] *Westmont Investment Corporation v. Francia, Jr.*, G.R. No. 194128, December 7, 2011, 661 SCRA 787, 794.

On the other hand, the trial court may consider evidence even if it was not formally offered provided that: (a) the same was duly identified by testimony duly recorded; and (b) the same was incorporated in the records of the case.[14] Considering that, as observed by the CA, the Purchase and Sale Agreement and Deed of Assignment were not marked as exhibits, and their contents were not revealed in the records, and in the case of the Purchase and Sale Agreement, the petitioner did not competently identify it during the trial, the general rule should apply in this case.

Nonetheless, the exclusion of the Sale and Purchase Agreement from the body of evidence for consideration in the resolution of the case caused a void in the link between the petitioner and Panasia necessary to support the pronouncement of the personal liability of the petitioner for the negligence on the part of Panasia. Verily, without the Sale and Purchase Agreement being admitted in evidence, implicating the petitioner in the negligence of Panasia had no factual basis for the simple reason that there was no showing at all of the petitioner having specifically merged with Panasia and thereby assumed the latter's liabilities.

Yet, dela Cruz precisely did not establish that the petitioner had assumed Panasia's liabilities. The allegations of his amended complaint, being averments of ultimate facts,[15] did not constitute

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[14] *People v. Villanueva*, G.R. No. 181829, September 1, 2010, 629 SCRA 720, 736.

[15] Section 1, Rule 8 of the *Rules of Court*, which states:

> Section 1. *In general*. — Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts. (1)
>
> If a defense relied on is based on law, the pertinent provisions thereof and their applicability to him shall be clearly and concisely stated. (n)

According to *Nacua-Jao v. China Banking Corporation*, G.R. No. 149468, October 23, 2006, 505 SCRA 56, 64, citing *Barcelona v. Court of Appeals*, G.R. No. 130087, September 24, 2003, 412 SCRA 41, 48, ultimate facts refer to the principal, determinative, constitutive facts upon the existence of which the cause of action rests; **the term does not refer to details of probative matter or particulars of evidence which establish the material elements.**

proof of his cause of action against the petitioner. With the petitioner having specifically denied having merged with Panasia, averring instead that its purchase had concerned only selected assets and liabilities of Panasia, it became the burden of dela Cruz to prove the merger with Panasia, and the petitioner's becoming the surviving corporation. His failure in this respect left his cause of action against the petitioner unproved.

In pronouncing the solidary liability of the petitioner with Panasia despite the gap in the evidence, the RTC observed that:

> Common sense dictates that when Bank of Commerce took over Panasia, it likewise took over its assets but also its liabilities. It cannot say that only selected assets and liabilities were the subject matter of the purchase agreement. It cannot just pick its choice and forget the other obligations which are not favorable to its business. The act of Bank of Commerce is one way of evading an obligation. It is using the purchase and sale agreement as a shield to get away from it.[16]

Therein lay the error of the CA. It should have undone the RTC's unfounded assumption that the petitioner had merged with Panasia and had thereby taken over all of the assets and liabilities of the latter, including that for the negligent handling of dela Cruz's account. Such assumption had neither factual nor legal support in the records. Instead, the RTC should have required dela Cruz to present evidence of the merger, including its terms, in view of the petitioner's specific denial of the same. Merger was an act that could not be assumed; its details must be shown, and its effects must be based on the terms adopted by the parties concerned (through their respective boards of directors) and approved by the proper government office or agency regulating the merging parties.

Simply stated, judicial notice of the terms of merger and the consequences of merger, which the trial and the appellate courts took in adjudging the petitioner jointly and severally liable with Panasia, could not be justified. Thereby, the lower courts grossly erred. In *Latip v. Chua*,[17] the Court laid down the instances

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[16] *Rollo*, p. 134.

[17] G.R. No. 177809, October 16, 2009, 604 SCRA 163, 174-176.

when judicial notice could be properly taken of facts that would normally take the place of evidence, to wit:

Sections 1 and 2 of Rule 129 of the Rules of Court declare when the taking of judicial notice is mandatory or discretionary on the courts, thus:

> **SECTION 1.** *Judicial notice, when mandatory*. A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.
>
> **SEC. 2.** *Judicial notice, when discretionary*. A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration or ought to be known to judges because of their judicial functions.

On this point, *State Prosecutors v. Muro* is instructive:

> I. The doctrine of judicial notice rests on the wisdom and discretion of the courts. **The power to take judicial notice is to be exercised by courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt on the subject should be promptly resolved in the negative.**
>
> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. **The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.**
>
> To say that a court will take judicial notice of a fact is merely another way of saying that the usual form of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. This is because the court assumes that the matter is so notorious that it will not be disputed. **But judicial notice is**

> **not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action.** Judicial cognizance is taken only of those matters which are commonly known.
>
> Things of common knowledge, of which courts take judicial notice, may be matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person.

We reiterated the requisite of notoriety for the taking of judicial notice in the recent case of *Expertravel & Tours, Inc. v. Court of Appeals*, which cited *State Prosecutors*:

> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.
>
> Things of common knowledge, of which courts take judicial notice, may be matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially

> noticed, provided, they are such of universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. *But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge.* [citations omitted; bold underscoring supplied for emphasis]

Contrary to the findings and conclusions of the RTC, the merger of the petitioner and Panasia was not of common knowledge. It was overly presumptuous for the RTC to thereby assume the merger because the element of notoriety as basis for taking judicial notice of the merger was loudly lacking. A merger is the union of two or more existing corporations in which the surviving corporation absorbs the others and continues the combined business. The merger dissolves the non-surviving corporations, and the surviving corporation acquires all the rights, properties and liabilities of the dissolved corporations. Considering that the merger involves fundamental changes in the corporation, as well as in the rights of the stockholders and the creditors, there must be an express provision of law authorizing the merger. The merger does not become effective upon the mere agreement of the constituent corporations, but upon the approval of the articles of merger by the Securities and Exchange Commission issuing the certificate of merger as required by Section 79 of the *Corporation Code*.[18] Should any party in the merger be a special corporation governed by its own charter, the *Corporation Code* particularly mandates that a favorable recommendation of the appropriate government agency should first be obtained.[19]

It is plain enough, therefore, that there were several specific facts whose existence must be shown (not assumed) before the

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[18] *Poliand Industrial Limited v. National Development Company*, G.R. No. 143866, August 22, 2005 and G.R. No. 143877, August 22, 2005; 467 SCRA 500, 528-529.

[19] *Id*. at 529.

merger of two or more corporations can be declared as established. Among such facts are the plan of merger that includes the terms and mode of carrying out the merger and the statement of the changes, if any, of the present articles of the surviving corporation; the approval of the plan of merger by majority vote of each of the boards of directors of the concerned corporations at separate meetings; the submission of the plan of merger for the approval of the stockholders or members of each of the corporations at separate corporate meetings duly called for the purpose; the affirmative vote of 2/3 of the outstanding capital in case of stock corporations, or 2/3 of the members in case of non-stock corporations; the submission of the approved articles of merger executed by each of the constituent corporations to the SEC; and the issuance of the certificate by the SEC on the approval of the merger.[20]

In this case, because dela Cruz's allegation of the merger was specifically denied by the petitioner, the RTC had absolutely no factual and legal bases to take constructive notice of any of the foregoing circumstances. It should have required proof of the acquisition of the liability of Panasia on the part of the petitioner. Accordingly, if the RTC and the CA could not reasonably declare the petitioner solidarily liable with Panasia for the latter's negligence, the dismissal of the amended complaint of dela Cruz against the petitioner was in order.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on August 29, 2013 by the Court of Appeals subject to the **MODIFICATION** that Civil Case No. C-19332 is **DISMISSED** insofar as petitioner Bank of Commerce is concerned for lack of cause of action; and **ORDERS** the respondents to pay the costs of suit.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonen, Martires, and *Gesmundo, JJ.*, concur.

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[20] *Id*. at 529-530.

SECOND DIVISION

[G.R. No. 224225. August 14, 2017]

NORMA I. BARING, *petitioner, vs.* **ELENA LOAN and CREDIT COMPANY, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; ACT NO. 3135 AS AMENDED BY ACT NO. 4118; EXTRAJUDICIAL FORECLOSURE SALE OF REAL ESTATE MORTGAGE; INSTANCES WHERE A WRIT OF POSSESSION MAY BE ISSUED IN FAVOR OF A PURCHASER IN A FORECLOSURE SALE, EXPLAINED. — [A] writ of possession may be issued in favor of a purchaser in a foreclosure sale of a real estate mortgage either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond. Within the one-year redemption period, a purchaser in a foreclosure sale may apply for a writ of possession by filing a petition in the form of an *ex-parte* motion under oath for that purpose. Upon the filing of such motion with the RTC having jurisdiction over the subject property and the approval of the corresponding bond, the law, also in express terms, directs the court to issue the order for a writ of possession.

2. ID.; ID.; ID.; EFFECTS WHEN THE MORTGAGOR FAILED TO REDEEM THE PROPERTY WITHIN THE PRESCRIBED PERIOD.— [A]fter the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale as the mortgagor is now considered to have lost interest over the foreclosed property. Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and

proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function.

3. **ID.; ID.; ID.; ID.; WHEN PETITIONER FAILED TO EXERCISE HER RIGHT OF REDEMPTION AND TITLE TO THE PROPERTY WAS CONSOLIDATED IN RESPONDENT'S NAME, IT BECOMES A MINISTERIAL FUNCTION FOR THE COURT TO ISSUE THE WRIT OF POSSESSION PRAYED FOR BY RESPONDENT.—** In this case, respondent foreclosed the subject property after petitioner and her co-debtors failed to pay their obligation under the promissory notes despite repeated demands. Upon compliance with the legal requirements, a public auction was held where respondent emerged as the highest bidder. A certificate of sale was issued in respondent's favor and was registered with the Office of the Register of Deeds of Las Piñas City on November 27, 2007. As petitioner did not exercise her right of redemption over the foreclosed property, the title to the property was consolidated in the name of respondent as evidenced by TCT No. 117238. Consequently, as the new registered owner of the subject property, respondent is entitled to exercise all the attributes of ownership as provided in Article 428. x x x Since respondent is the absolute and registered owner of the subject property, and entitled to the possession thereof, the CA correctly ruled that it was the RTC's ministerial duty to issue the writ of possession prayed for by the respondent. The issuance of the writ of possession becomes a ministerial function upon the proper application and proof of title.

4. **ID.; ID.; ID.; ID.; ID.; ALLEGATIONS THAT RESPONDENT HAS NO AUTHORITY TO OPERATE AS A LENDING COMPANY AND THAT EXORBITANT INTEREST WAS IMPOSED ON THE LOANS CANNOT JUSTIFY TO PREVENT THE ISSUANCE OF THE WRIT OF POSSESSION.—** Petitioner's assertion that respondent has not been granted any authority to operate as a lending company, as well as the allegations of unconscionable and exorbitant interest rates imposed on her loans, cannot be raised as a legal basis to prevent the issuance of the writ of possession. We have held that given the ministerial nature of the RTC's duty to issue the writ of possession after the purchaser has consolidated its ownership, any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as justification for opposing the issuance of the writ. A pending action for

annulment of mortgage or foreclosure does not stay the issuance of a writ of possession.

APPEARANCES OF COUNSEL

Luvimindo R. Balinang, Jr. for petitioner.
Capco Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated September 18, 2015 and the Resolution[2] dated March 22, 2016 of the Court of Appeals (*CA*) in CA-G.R. CV No. 95956.

The antecedent facts, as found by the Court of Appeals, are as follows:

Herein defendants-appellants Norma Baring (now petitioner Baring), Esmeraldo Hernaez (*Hernaez*) and the Spouses Virgilio and Rosario Bernardino (*Spouses Bernardino*) obtained a series of loans and other credit accommodations in the initial amount of three hundred thousand pesos (₱300,000.00) from herein petitioner-appellee Elena Loan and Credit Company, Inc. (herein respondent Elena Loan), a duly organized lending investor. As a security for the said loan, Baring executed a Deed of Real Estate Mortgage over a parcel of land, with improvements, located at Blk 4, Lot 20, Adelfa Street, San Antonio Valley 17, Talon, Las Piñas City (*subject property*). The subject property was covered by Transfer Certificate of Title No. T-95109 (TCT No. T-95109) of the Register of Deeds of Las Piñas City and was registered in the name of Baring. In the Real Estate Mortgage, the parties agreed that Elena Loan, as the mortgagee, may foreclose the mortgage extrajudicially in accordance with Act No. 3135 should Baring, the mortgagor, default in the payment of her obligation. The Real Estate Mortgage was duly registered with the Register of Deeds on March 4, 2005.

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[1] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Stephen C. Cruz and Rodil V. Zalameda, concurring; *rollo*, pp. 20-30.

[2] *Id*. at 31-33.

Subsequently, the debtors failed to pay their obligations under the promissory notes despite repeated demands. As of August 6, 2007, their outstanding obligation had ballooned to six hundred ninety-eight thousand forty pesos and seventy-one centavos (₱698,040.71), inclusive of interest, penalties and charges.

Consequently, on August 28, 2007, Elena Loan filed a Petition for Foreclosure under Act No. 3135, as amended, before the Office of the Clerk of Court and *Ex-Officio* Sheriff of Las Piñas City. Acting on the application, the *Ex-Officio* Sheriff issued a Notice of Extrajudicial Sale on September 5, 2007, scheduling the public auction on October 9, 2007 at 10:00 o'clock in the morning. Thereafter, Elena Loan complied with all the formalities prescribed by law, such as the posting of the required Notice of Extrajudicial Sale and the publication thereof in a newspaper of general circulation. Later on, Elena Loan participated in the public auction and emerged as the highest bidder. Shortly thereafter, a Certificate of Sale was issued in favor of Elena Loan on November 14, 2007. The Certificate of Sale was registered in the Office of the Register of Deeds of Las Piñas City and was inscribed on TCT No. T-95109 on November 27, 2007 as Entry No. 8204-29.

Eventually, the period of redemption expired without Baring exercising her right of redemption. Thus, on November 28, 2008, Elena Loan filed an Affidavit of Consolidation of Ownership. Thereafter, TCT No. T-95109 was canceled and in lieu thereof, Transfer Certificate of Title No. T-117238 (TCT No. 117238) was issued in the name of Elena Loan on April 24, 2009 by the Register of Deeds of Las Piñas City. Accordingly, as the new owner of the subject property, Elena Loan sent a demand letter to Baring and Hernaez on September 16, 2009 requesting them to vacate the subject property. However, the demand remained unheeded.

Meanwhile on December 4, 2009, Elena Loan filed an *Ex-Parte* Petition for the Issuance of a Writ of Possession. In its Petition, Elena Loan prayed for the issuance of a writ of possession directing the sheriff to eject the mortgagor Baring and place it in complete possession of the subject property, free from any adverse occupants. The Petition was docketed as LRC Case No. L.P. 09-0116 and raffled to Branch 201 presided over by Judge Navarro-Domingo.[3]

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

On April 20, 2010, the Regional Trial Court (*RTC*) rendered a Decision,[4] the dispositve portion of which reads:

> WHEREFORE, premises considered, the petition is hereby GRANTED. As prayed for, let a writ of possession be issued addressed to the Clerk of Court of the Regional Trial Court of Las Piñas City as Ex-Officio Sheriff or her duly authorized representative for her to place petitioner Elena Loan and Credit Company, Inc. in possession of the parcel of land covered by Transfer Certificate of Title No. T-117238 of the Register of Deeds of Las Piñas City formerly Transfer Certificate of Title No. T-95109 of the Register of Deeds of Las Piñas City.
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> SO ORDERED.[5]

Petitioner filed an appeal with the CA which in a Decision dated September 18, 2015 denied petitioner's appeal for lack of merit and affirmed the RTC decision *in toto*.

Petitioner filed a Manifestation with motion for reconsideration where she claimed that respondent is not authorized by the Securities and Exchange Commission (*SEC*) to act as a lending company and, accordingly, it is devoid of any authority and personality to file the petition for foreclosure of the real estate mortgage and to request for the issuance of an *ex-parte* writ of possession in its favor.

On March 22, 2016, the CA issued a Resolution denying the motion for reconsideration saying that the question laid by petitioner regarding the legal personality and authority of respondent to file the petition for issuance of a writ of possession is clearly misplaced and cannot work to defeat the latter's right to the issuance of the writ of possession as the absolute owner of the subject property.

Hence, this petition for review filed by petitioner raising the following issues:

> THE COURT OF APPEALS ERRED IN DENYING THE MOTION FOR RECONSIDERATION OF THEIR DECISION UPHOLDING THE DECISION OF THE LOWER COURT.

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[4] Penned by Judge Lorna Navarro Domingo.

[5] *Id*. at 22-23.

I.

AUTHORITY AND CAPACITY;

ELENA LOAN IS NOT AUTHORIZED TO CONDUCT ITS BUSINESS AS A LENDING COMPANY UNDER REPUBLIC ACT NO. 9474;

THEY CANNOT PURSUE THEIR OBJECTIVE AS A LENDING COMPANY IF THERE IS NO AUTHORIZATION FROM THE SECURITIES AND EXCHANGE COMMISISION.[6]

II

EXORBITANT AND USURIOUS INTEREST RATES;

3.75% MONTHLY INTEREST RATE IS *CONTRA BONUS MORES*, IT IS UNCONSCIONABLE, INIQUITOUS AND EXORBITANT.[7]

Petitioner reiterates her contention that per the Certification issued by the SEC, respondent has not been issued a secondary franchise to operate as a lending company pursuant to Republic Act (*RA*) No. 9474, otherwise known as the *Lending Company Regulation Act of 2007*; that at the time the petition for foreclosure was filed on August 28, 2007, as well as the extrajudicial foreclosure of property, the public auction and the *ex-parte* petition for the issuance of a writ of possession on December 4, 2009, respondent had not been granted any authorization by the SEC to operate and conduct business as a lending company; and, that it cannot be a party to a civil action, therefore, it is not entitled to the issuance of a writ of possession. Petitioner also assails the interest rates charged on her loans for being unconscionable, exorbitant, excessive and contrary to morals which made it impossible for her to extinguish and pay those loans.

We find no merit in the petition.

The CA correctly affirmed the RTC's issuance of the writ of possession over the subject property.

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[6] *Id.* at 6.

[7] *Id.* at 12.

Section 7 of Act No. 3135, as amended by Act 4118,[8] governs the issuance of a writ of possession in cases of extrajudicial foreclosure sales of real estate mortgage, to wit:

> Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion x x x and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Hence, a writ of possession may be issued in favor of a purchaser in a foreclosure sale of a real estate mortgage either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond.[9] Within the one-year redemption period, a purchaser in a foreclosure sale may apply for a writ of possession by filing a petition in the form of an *ex-parte* motion under oath for that purpose. Upon the filing of such motion with the RTC having jurisdiction over the subject property and the approval of the corresponding bond, the law, also in express terms, directs the court to issue the order for a writ of possession.[10] On the other hand, after the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in

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[8] Entitled *An Act to Amend Act Numbered Thirty-One Hundred and Thirty-Five, Entitled "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages."* (Approved December 7, 1933).

[9] *LZK Holdings and Development Corporation v. Planters Development Bank*, 550 Phil. 825, 832 (2007).

[10] *Sagarbarria v. Philippine Business Bank*, 611 Phil. 269, 276-277 (2009), citing *Spouses Saguan v. Philippine Bank of Communications*, 563 Phil. 696, 706 (2007).

a foreclosure sale as the mortgagor is now considered to have lost interest over the foreclosed property.[11] Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function.[12]

In this case, respondent foreclosed the subject property after petitioner and her co-debtors failed to pay their obligation under the promissory notes despite repeated demands. Upon compliance with the legal requirements, a public auction was held where respondent emerged as the highest bidder. A certificate of sale was issued in respondent's favor and was registered with the Office of the Register of Deeds of Las Piñas City on November 27, 2007. As petitioner did not exercise her right of redemption over the foreclosed property, the title to the property was consolidated in the name of respondent as evidenced by TCT No. 117238. Consequently, as the new registered owner of the subject property, respondent is entitled to exercise all the attributes of ownership as provided in Article 428.[13] Thus, in *Gallent, Sr. v. Velasquez*,[14] we said:

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[11] *Id.*

[12] *Id.* at 707.

[13] Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

[14] G.R. No. 203949 and G.R. No. 205071, April 6, 2016, 788 SCRA 518, 529-530, citing *Laureano v. Bormaheco, Inc.,* 404 Phil. 80, 86 (2001). (Citations omitted)

It is well-settled that the purchaser in an extrajudicial foreclosure of real property becomes the *absolute* owner of the property if no redemption is made within one year from the registration of the certificate of sale by those entitled to redeem. As absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, not least of which is possession, or *jus possidendi.*

> A torrens title recognizes the owner whose name appears in the certificate as entitled to all the rights of ownership under the *civil law*. The Civil Code of the Philippines defines ownership in Articles 427, 428 and 429. This concept is based on Roman Law which the Spaniards introduced to the Philippines through the Civil Code of 1889. Ownership, under Roman Law, may be exercised over things or rights. It primarily includes the right of the owner to enjoy and dispose of the thing owned. And the right to enjoy and dispose of the thing includes the right to receive from the thing what it produces, [*jus utendi; jus fruendi*] the right to consume the thing by its use, [*jus abutendi*] the right to alienate, encumber, transform or even destroy the thing owned, [*jus disponendi*] and the right to exclude from the possession of the thing owned by any other person to whom the owner has not transmitted such thing [*jus vindicandi*].

Since respondent is the absolute and registered owner of the subject property, and entitled to the possession thereof, the CA correctly ruled that it was the RTC's ministerial duty to issue the writ of possession prayed for by the respondent. The issuance of the writ of possession becomes a ministerial function upon the proper application and proof of title.

In *Spouses Espiridion v. Court of Appeals*,[15] We held:

> x x x The issuance of a writ of possession to a purchaser in a public auction is a ministerial act. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function. The trial court has no discretion on this matter. Hence, any talk of discretion in connection with such issuance is misplaced.

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[15] 523 Phil. 664 (2006).

A clear line demarcates a discretionary act from a ministerial one. Thus:

> The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[16]

Petitioner's assertion that respondent has not been granted any authority to operate as a lending company, as well as the allegations of unconscionable and exorbitant interest rates imposed on her loans, cannot be raised as a legal basis to prevent the issuance of the writ of possession. We have held that given the ministerial nature of the RTC's duty to issue the writ of possession after the purchaser has consolidated its ownership, any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as justification for opposing the issuance of the writ.[17] A pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession.[18]

In *Bank of the Philippine Islands v. Spouses Tarampi*,[19] we ruled:

> [The court] need not look into the validity of the mortgages or the manner of their foreclosure. The writ issues as a matter of course, and the court neither exercises its official discretion nor judgment.

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[16] *Spouses Espiridion v. Court of Appeals, supra*, at 667-668. (Citations omitted)

[17] *Spouses Tolosa v. UCPB*, 708 Phil. 134, 144 (2013), citing *Spouses Fortaleza v. Spouses Lapitan*, 692 Phil. 596, 613 (2012).

[18] *Id*., citing *Spouses Samson v. Judge Rivera*, 472 Phil. 836, 849 (2004).

[19] 594 Phil. 198 (2008).

x x x x x x x x x

To stress the ministerial character of the writ of possession, the Court has disallowed injunction to prohibit its issuance, just as it has held that its issuance may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.

Clearly then, until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court. The same is true with its implementation; otherwise, the writ will be a useless paper judgment — a result inimical to the mandate of Act No. 3135 to vest possession in the purchaser immediately.[20]

WHEREFORE, the petition is **DENIED**. The Decision dated September 18, 2015 and the Resolution dated March 22, 2016 of the Court of Appeals in CA-G.R. CV No. 95956 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

EN BANC

[A.C. No. 11149. August 15, 2017]
(Formerly CBD Case No. 13-3709)

LAURENCE D. PUNLA and MARILYN SANTOS, *complainants, vs.* **ATTY. ELEONOR MARAVILLA-ONA,** *respondent*.

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[20] *Bank of the Philippine Islands v. Spouses Tarampi, supra,* at 205-206. (Citations omitted)

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; WITHHOLDING CLIENT'S MONEY DESPITE DEMAND TO RETURN IT DUE TO LAWYER'S FAILURE TO RENDER LEGAL SERVICES CONSTITUTES VIOLATION OF THE LAWYER'S OATH AND THE CODE OF PROFESSIONAL RESPONSIBILITY.** — [T]here is no question as to respondent's guilt. It is clear from the records that respondent violated her lawyer's oath and code of conduct when she withheld from complainants the amount of ₱350,000.00 given to her, despite her failure to render the necessary legal services, and after complainants demanded its return. It cannot be stressed enough that once a lawyer takes up the cause of a client, that lawyer is duty-bound to serve the latter with competence and zeal, especially when he/she accepts it for a fee. The lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him/her. Moreover, a lawyer's failure to return upon demand the monies he/she holds for his/her client gives rise to the presumption that he/she has appropriated the said monies for his/her own use, to the prejudice and in violation of the trust reposed in him/her by his/her client.

2. **ID.; ID.; ID.; THE COURT TOOK NOTE OF THE SEVERAL CASES AND PAST DISBARMENT COMPLAINTS FILED AGAINST RESPONDENT; WHILE RESPONDENT'S CONDEMNABLE ACTS OUGHT TO MERIT THE PENALTY OF DISBARMENT, THE COURT CANNOT DISBAR HER ANEW SINCE DOUBLE DISBARMENT CANNOT BE IMPOSED IN THIS JURISDICTION.—** [T]his Court cannot overlook the reality that several cases had been filed against respondent, as pointed out by the IBP. In fact, one such case eventually led to the disbarment of respondent. In *Suarez v. Maravilla-Ona*, the Court meted out the ultimate penalty of disbarment and held that the misconduct of respondent was aggravated by her unjustified refusal to obey the orders of the IBP directing her to file an answer and to appear at the scheduled mandatory conference. This constitutes blatant disrespect towards the IBP and amounts to conduct unbecoming a lawyer. In the same case, the Court took note of the past disbarment complaints that had been filed against Atty. Maravilla-Ona[.] x x x While indeed respondent's condemnable acts ought

to merit the penalty of disbarment, we cannot disbar her anew, for in this jurisdiction we do not impose double disbarment.

LEONEN, *J., separate opinion*:

LEGAL ETHICS; ATTORNEYS; DISBARMENT; WHILE DISBARRED LAWYERS CANNOT BE DISBARRED AGAIN, THEY MAY SIMULTANEOUSLY SERVE MULTIPLE PENALTIES OF DISBARMENT ALREADY IMPOSED; MULTIPLE PENALTIES RECORDED IN THE OFFICE OF THE BAR CONFIDANT WILL SIGNAL TO THE COURT AND TO THE PUBLIC THAT CLEMENCY MAY NOT BE GRANTED SHOULD RESPONDENT REQUEST FOR IT IN THE FUTURE.— In criminal law, this Court has adopted the legal fiction that courts may sentence a person convicted of multiple offenses with the penalties corresponding to each offense, even if the law enforces a maximum duration on the convict's service of the sentences imposed. Thus, in *People v. Peralta*, it was emphasized that courts shall impose as many penalties as there are separate and distinct offenses committed, charged, and proved. Each offense carries its own individual penalty. That the service of penalties may be impossible or impractical should not deter courts from imposing those prescribed by law or jurisprudence. Far from being a useless formality, the imposition of multiple penalties emphasizes the reprehensible character of the convict's acts. It serves as a warning against an improvident grant of clemency to the offender in the future. In the same way, the imposition of the penalty of disbarment on a previously disbarred lawyer has meaningful consequences. While disbarred lawyers cannot be disbarred again, they may simultaneously serve multiple penalties of disbarment already imposed, akin to the service of multiple penalties of disqualification from public office, profession, calling, or exercise of the right to suffrage. As stated in *Sanchez* and *Paras*, the penalty imposed shall be recorded in the respondent's file in the Office of the Bar Confidant. It is a warning to the bench and bar that the acts committed by the lawyer are anathema to the legal profession, meriting the most severe sanctions. The imposition of the proper penalty also does justice to those the lawyer has wronged. It communicates to them that her transgressions of her oath as a lawyer and against the canons of the legal profession are not

tolerated by this Court. Past serious offenses by the same lawyer should not amount to a mitigation of the penalty to be imposed. If they amount to anything, past transgressions should be aggravating. Furthermore, multiple penalties will signal to this Court and to the public that clemency may not be granted should the respondent request for it in the future.

D E C I S I O N

***PER CURIAM*:**

The present administrative case stemmed from a Complaint-Affidavit[1] filed with the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD) by complainants Laurence D. Punla and Marilyn Santos against respondent Atty. Eleonor Maravilla-Ona, charging the latter with violation of the lawyer's oath, for neglecting her clients' interests.

Factual Background

The facts, as culled from the disbarment complaint, are summarized in the Report and Recommendation[2] of Investigating Commissioner Ricardo M. Espina *viz*.:

In a complaint-affidavit filed on 15 January 2013, complainants alleged that they got to know respondent lawyer sometime in January 2012 when they requested her to notarize a Deed of Sale; that subsequently, they broached the idea to respondent that they intend (sic) to file two (2) annulment cases and they wanted respondent to represent them; that respondent committed to finish the two (2) annulment cases within six (6) months from full payment; that the agreed lawyer's fee for the two annulment cases is ₱350,000.00; that the ₱350,000.00 was paid in full by complainants, as follows: ₱100,000.00 on 27 January 2012 as evidenced by respondent's Official Receipt (O.R.) No. 55749 of even date (Annex "A"); ₱150,000.00 on 28 January 2012 as evidenced by respondent's Official Receipt (O.R.) No. 56509 of even date (Annex "B"); ₱50,000.00 on 14 March 2012 personally handed to respondent lawyer and evidenced by

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[1] *Rollo*, pp. 2-4.

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

respondent's handwritten acknowledgement receipt of same date (Annex "C"); and, ₱50,000.00 on 15 March 2012 deposited to respondent's Metrobank account no. 495-3-49509141-5 (Annex "D").

On the commitment of respondent that she will (sic) finish the cases in six (6) months, complainants followed up their cases in September 2012 or about 6 months from their last payment in March 2012. They were ignored by respondent. On 25 September 2012, complainants sent a letter (Annex "E") to respondent demanding that the ₱350,000.00 they paid her be refunded in full within five (5) days from receipt of the letter. In a Certification dated 07 November 2012 (Annex "F"), the Philpost of Dasmariñas, Cavite, attested that complainants' letter was received by respondent on 01 October 2012. No refund was made by respondent.[3]

In an Order[4] dated January 25, 2013, the IBP directed respondent to file her Answer within 15 days. **No answer was filed.** A Mandatory Conference/Hearing was set on December 4, 2013[5] but respondent did not appear, so it was reset to January 22, 2014.[6] However, **respondent again failed to attend the mandatory conference/hearing as scheduled**. Hence, in an Order[7] dated January 22, 2014, the mandatory conference was terminated and both parties were directed to submit their verified position papers.

Report and Recommendation of the Investigating Commissioner

The Investigating Commissioner was of the opinion that respondent is guilty of violating Canons 17 and 18 of the Code of Professional Responsibility, to wit:[8]

There is clear violation of Canons 17 and 18, Canons of Professional Responsibility. These canons, quoted hereunder, [state]:

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[3] *Id*. at 21.

[4] *Id*. at 10.

[5] *Id*. at 11.

[6] *Id*. at 13.

[7] *Id*. at 15.

[8] *Id*. at 23.

> 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.
>
> CANON 18 — A lawyer shall serve his client with competence and diligence.

Of particular concern is Rule 18.04, Canon 18 of the Code of Professional Responsibility, which requires a lawyer to always keep the client informed of the developments in his case and to respond whenever the client requests for information. Respondent has miserably failed to comply with this Canon.[9]

In addition, the IBP Investigating Commissioner found that respondent has been charged with several infractions. Thus:

Moreover, verification conducted by this Office shows that this is not the first time that respondent lawyer has been administratively charged before this Office. As shown in the table below, respondent is involved in the following active cases:

COMPLAINANTS	CASE NO.	STATUS	PENALTY	WHEN FILED
Ten (10) consolidated cases:				
1. Felisa Amistoso, et al.	A.C. No. 6369	Pending with Supreme Court	Suspension	
2. Anita Lagman	A.C. No. 6371			
3. Isidro H. Montoya	A.C. No. 6458			
4. Noel Angcao	A.C. No. 6459			
5. Mercedes Bayan	A.C. No. 6460			
6. Rustica Canuel	A.C. No. 6462			
7. Anita Canuel	A.C. No. 6457			
8. Elmer Canuel	A.C. No. 6463			
9. Evangeline Sangalang	A.C. No. 6464			
10. Felisa Amistoso	A.C. No. 6469			
11. Beatrice Yatco, *et al.*	CBD Case No. 10-2733	Pending with Supreme Court	Suspension	July 26, 2010
12. Norma Guiterrez	CBD Case No. 12-3444	For report and recommendation		May 23, 2012
13. Bienvenida Flor Suarez	CBD Case No. 12-3534	For report and recommendation		August 01, 2012

Clearly, respondent lawyer has been a serial violator of the Canons of Professional Responsibility as shown in the thirteen (13) pending

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

cases filed against her. Add to that the present case and that places the total pending administrative cases against respondent at fourteen (14). That these 14 cases were filed on different dates and by various individuals is substantial proof that respondent has the propensity to violate her lawyer's oath — and has not changed in her professional dealing with the public.[10]

Consequently, the Investigating Commissioner recommended that respondent be disbarred and ordered to pay complainants the amount of ₱350,000.00 with legal interest until fully paid.[11]

Recommendation of the IBP Board of Governors

The IBP Board of Governors, in Resolution No. XXI-2015-156[12] dated February 20, 2015, resolved to adopt the findings of the Investigating Commissioner as well as the recommended penalty of disbarment.

The issue in this case is whether respondent should be disbarred.

Our Ruling

The Court resolves to adopt the findings of fact of the IBP but must, however, modify the penalty imposed in view of respondent's previous disbarment.

Rule 138, Sec. 27 of the Rules of Court provides the penalties of disbarment and suspension as follows:

Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully

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[10] *Id*. at 22-23.

[11] *Id*. at 24.

[12] *Id*. at 18.

appearing as an attorney for a party to a case without authority so to do x x x.

Here, there is no question as to respondent's guilt. It is clear from the records that respondent violated her lawyer's oath and code of conduct when she withheld from complainants the amount of ₱350,000.00 given to her, despite her failure to render the necessary legal services, and after complainants demanded its return.

It cannot be stressed enough that once a lawyer takes up the cause of a client, that lawyer is duty-bound to serve the latter with competence and zeal, especially when he/she accepts it for a fee. The lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him/her.[13] Moreover, a lawyer's failure to return upon demand the monies he/she holds for his/her client gives rise to the presumption that he/she has appropriated the said monies for his/her own use, to the prejudice and in violation of the trust reposed in him/her by his/her client.[14]

What is more, this Court cannot overlook the reality that several cases had been filed against respondent, as pointed out by the IBP. In fact, one such case eventually led to the disbarment of respondent. In *Suarez v. Maravilla-Ona*,[15] the Court meted out the ultimate penalty of disbarment and held that the misconduct of respondent was aggravated by her unjustified refusal to obey the orders of the IBP directing her to file an answer and to appear at the scheduled mandatory conference. This constitutes blatant disrespect towards the IBP and amounts to conduct unbecoming a lawyer.

In the same case, the Court took note of the past disbarment complaints that had been filed against Atty. Maravilla-Ona *viz*.:

x x x In A.C. No. 10107 entitled *Beatrice C. Yatco, represented by her Attorney-In-Fact, Marivic Yatco v. Atty. Eleanor Maravilla-Ona*,

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[13] *Olayta-Camba v. Atty. Bongon*, 757 Phil. 1, 5-6 (2015).

[14] *Llunar v. Ricafort*, A.C. No. 6484, June 16, 2015, 757 SCRA 614, 620.

[15] A.C. No. 11064, September 27, 2016.

the complainant filed a disbarment case against Atty. Maravilla-Ona for issuing several worthless checks as rental payments for the complainant's property and for refusing to vacate the said property, thus forcing the latter to file an ejectment case against Atty. Maravilla-Ona. The IBP required Atty. Maravilla-Ona to file her Answer, but she failed to do so. Neither did she make an appearance during the scheduled mandatory conference. In its Resolution dated February 13, 2013, the IBP found Atty. Maravilla-Ona guilty of serious misconduct[,] and for violating Canon 1, Rule 1.01 of the Code. The Court later adopted and approved the IBP's findings in its Resolution of September 15, 2014, and suspended Atty. Maravilla-Ona from the practice of law for a period of one year.

In yet another disbarment case against Atty. Maravilla-Ona, docketed as A.C. No. 10944[,] and entitled *Norma M. Gutierrez v. Atty. Eleonor Maravilla-Ona*, the complainant therein alleged that she engaged the services of Atty. Maravilla-Ona and gave her the amount of ₱80,000.00 for the filing of a case in court. However, Atty. Maravilla-Ona failed to file the case, prompting the complainant to withdraw from the engagement and to demand the return of the amount she paid. Atty. Maravilla-Ona returned ₱15,000.00[,] and executed a promissory note to pay the remaining ₱65,000.00. However, despite several demands, Atty. Maravilla-Ona failed to refund completely the complainant's money. Thus, a complaint for disbarment was filed against Atty. Maravilla-Ona for grave misconduct, gross negligence and incompetence. But again, Atty. Maravilla-Ona failed to file her Answer and [to] appear in the mandatory conference before the IBP. The IBP found that Atty. Maravilla-Ona violated Canon 16, Rule 16.03 of the Code [of Professional Responsibility] and recommended her suspension for a period of five (5) years, considering her previous infractions. The Court, however, reduced Atty. Maravilla-Ona's penalty to suspension from the practice of law for a period of three (3) years, with a warning that a repetition of the same or similar offense will be dealt with more severely. She was also ordered to return the complainant's money.

Clearly, Atty. Maravilla-Ona exhibits the habit of violating her oath as a lawyer and the Code [of Professional Responsibility], as well as defying the processes of the IBP. The Court cannot allow her blatant disregard of the Code [of Professional Responsibility] and her sworn duty as a member of the Bar to continue. She had been warned that a similar violation [would] merit a more severe

penalty, and yet, her reprehensible conduct has, again, brought embarrassment and dishonor to the legal profession.[16]

Back to the case at bar: While indeed respondent's condemnable acts ought to merit the penalty of disbarment, we cannot disbar her anew, for in this jurisdiction we do not impose double disbarment.

WHEREFORE, the Court hereby **ADOPTS** the findings of the Integrated Bar of the Philippines and **FINDS** respondent ATTY. ELEONOR MARAVILLA-ONA **GUILTY** of gross and continuing violation of the Code of Professional Responsibility and accordingly **FINED** ₱40,000.00. Respondent is also **ORDERED to PAY** complainants the amount of ₱350,000.00, with 12% interest from the date of demand until June 30, 2013 and 6% *per annum* from July 1, 2013 until full payment.[17] This is without prejudice to the complainants' filing of the appropriate criminal case, if they so desire.

Furnish a copy of this Decision to the Office of the Bar Confidant, which shall append the same to the personal record of respondent; to the Integrated Bar of the Philippines; and the Office of the Court Administrator, which shall circulate the same to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

SO ORDERED.

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

Leonen, J., see separate opinion.

Caguioa, J., on official leave.

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

[17] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

SEPARATE OPINION

LEONEN, *J.*:

I concur with the ponencia's findings but vote to still impose the penalty of disbarment on respondent. I am aware that she has already been disbarred.

The majority found that respondent's acts merited the penalty of disbarment but that this Court cannot disbar her again as she was already disbarred by virtue of *Suarez v. Maravilla-Ona*.[1]

In the past, this Court has imposed the penalty of suspension on lawyers who have already been disbarred. In *Sanchez v. Torres*,[2] for the purpose of recording the case in the respondent's personal file in the Office of the Bar Confidant, this Court suspended him for two (2) years even though he had been disbarred in an earlier case.[3] Likewise, in *Paras v. Paras*,[4] the respondent was penalized with suspension for six (6) months, although the Court acknowledged that the suspension could no longer be effectuated due to his previous disbarment.[5]

Paras adopted the reasoning in *Sanchez* that the penalty should still be meted out for recording with the Office of the Bar Confidant. If a disbarred lawyer may later be penalized with suspension for another complaint, then it stands to reason that disbarment may also still be imposed.

The imposition of a penalty is distinct from its service, although these concepts are related.[6]

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[1] A.C. No. 11064, September 27, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/11064.pdf> [*Per Curiam, En Banc*].

[2] 748 Phil. 18 (2014) [*Per Curiam, En Banc*].

[3] *Id*. at 24.

[4] A.C. No. 5333, March 13, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/5333.pdf> [Per *J*. Perlas-Bernabe, First Division].

[5] *Id*. at 7.

[6] *People v. Peralta*, 134 Phil. 703, 731 (1968) [*Per Curiam, En Banc*].

In criminal law, this Court has adopted the legal fiction that courts may sentence a person convicted of multiple offenses with the penalties corresponding to each offense, even if the law enforces a maximum duration on the convict's service of the sentences imposed.[7] Thus, in *People v. Peralta*,[8] it was emphasized that courts shall impose as many penalties as there are separate and distinct offenses committed, charged, and proved. Each offense carries its own individual penalty. That the service of penalties may be impossible or impractical should not deter courts from imposing those prescribed by law or jurisprudence.[9] Far from being a useless formality, the imposition of multiple penalties emphasizes the reprehensible character of the convict's acts. It serves as a warning against an improvident grant of clemency to the offender in the future.[10]

In the same way, the imposition of the penalty of disbarment on a previously disbarred lawyer has meaningful consequences. While disbarred lawyers cannot be disbarred again, they may simultaneously serve multiple penalties of disbarment already imposed, akin to the service of multiple penalties of disqualification

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[7] See REV. PEN. CODE, Art. 70, which states:

Art. 70. *Successive service of sentences.* — When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit; otherwise, the following rules shall be observed:

In the imposition of the penalties, the order of their respective severity shall be followed so that they may be executed successively or as nearly as may be possible, should a pardon have been granted as to the penalty or penalties first imposed, or should they have been served out.

. . . . . .

Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period.

Such maximum period shall in no case exceed forty years.

[8] 134 Phil. 703, 731 (1968) [*Per Curiam, En Banc*].

[9] *Id*. at 731.

[10] *Id*.

from public office, profession, calling, or exercise of the right to suffrage.[11] As stated in *Sanchez* and *Paras*, the penalty imposed shall be recorded in the respondent's file in the Office of the Bar Confidant. It is a warning to the bench and bar that the acts committed by the lawyer are anathema to the legal profession, meriting the most severe sanctions.

The imposition of the proper penalty also does justice to those the lawyer has wronged. It communicates to them that her transgressions of her oath as a lawyer and against the canons of the legal profession are not tolerated by this Court. Past serious offenses by the same lawyer should not amount to a mitigation of the penalty to be imposed. If they amount to anything, past transgressions should be aggravating.

Furthermore, multiple penalties will signal to this Court and to the public that clemency may not be granted should the respondent request for it in the future.

Respondent's blatant disregard of her oath as a lawyer and the Code of Professional Responsibility in this case demands her disbarment. The penalty for her acts should not be mitigated in any form whatsoever.

ACCORDINGLY, I vote to hold Atty. Eleonor Maravilla-Ona **GUILTY** of gross and continuing violation of the Code of Professional Responsibility. I vote that she be **DISBARRED** from the practice of law and that she be **ORDERED TO PAY** complainants the amount of ₱350,000.00 with twelve percent (12%) interest from the date of demand until June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until full payment.

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[11] *In The Matter of the Petition for Habeas Corpus of Pete C. Lagran*, 415 Phil. 506, 510 (2001) [Per *J.* Puno, First Division].

EN BANC

[G.R. No. 226679. August 15, 2017]

SALVADOR ESTIPONA, JR. *y* ASUELA, *petitioner, vs.* **HON. FRANK E. LOBRIGO, Presiding Judge of the Regional Trial Court, Branch 3, Legazpi City, Albay, and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF SECTION 23 OF THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); THE COURT PERMITS THE FULL AND EXHAUSTIVE VENTILATION OF THE PARTIES' ARGUMENTS DESPITE TECHNICAL INFIRMITIES OF THE PETITION; REASONS.— [I]t must be underscored that it is within this Court's power to make exceptions to the rules of court. Under proper conditions, We may permit the full and exhaustive ventilation of the parties' arguments and positions despite the supposed technical infirmities of a petition or its alleged procedural flaws. In discharging its solemn duty as the final arbiter of constitutional issues, the Court shall not shirk from its obligation to determine novel issues, or issues of first impression, with far-reaching implications. Likewise, matters of procedure and technicalities normally take a backseat when issues of substantial and transcendental importance are present. We have acknowledged that the Philippines' problem on illegal drugs has reached "epidemic," "monstrous," and "harrowing" proportions, and that its disastrously harmful social, economic, and spiritual effects have broken the lives, shattered the hopes, and destroyed the future of thousands especially our young citizens. At the same time, We have equally noted that "as urgent as the campaign against the drug problem must be, so must we as urgently, if not more so, be vigilant in the protection of the rights of the accused as mandated by the Constitution x x x who, because of excessive zeal on the part of the law enforcers, may be unjustly accused and convicted." Fully aware of the gravity of the drug menace that has beset our country and its direct link to certain crimes, the Court, within its sphere,

must do its part to assist in the all-out effort to lessen, if not totally eradicate, the continued presence of drug lords, pushers and users. Bearing in mind the very important and pivotal issues raised in this petition, technical matters should not deter Us from having to make the final and definitive pronouncement that everyone else depends for enlightenment and guidance. When public interest requires, the Court may brush aside procedural rules in order to resolve a constitutional issue.

2. ID.; ID.; ID.; SECTION 23 OF RA 9165 IS DECLARED UNCONSTITUTIONAL FOR BEING CONTRARY TO THE RULE-MAKING AUTHORITY OF THE SUPREME COURT.— Section 23 of Republic Act No. 9165 is declared unconstitutional for being contrary to the rule-making authority of the Supreme Court under Section 5(5), Article VIII of the 1987 Constitution.

3. ID.; ID.; JUDICIAL DEPARTMENT; RULE-MAKING POWER OF THE SUPREME COURT; THE SUPREME COURT HAS THE SOLE DOMAIN TO PROMULGATE RULES OF PLEADING, PRACTICE AND PROCEDURE AND NO LONGER SHARED WITH THE EXECUTIVE AND LEGISLATIVE DEPARTMENTS.— Section 5(5), Article VIII of the 1987 Constitution explicitly provides: Sec. 5. The Supreme Court shall have the following powers: x x x (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. x x x The power to promulgate rules of pleading, practice and procedure is now Our exclusive domain and no longer shared with the Executive and Legislative departments. x x x The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by the Court. Viewed from this perspective, We have rejected previous attempts on the part of the Congress, in the exercise of its legislative power, to amend the Rules of Court[.]

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA BARGAINING, DEFINED AND EXPLAINED; RULES ON PLEA BARGAINING NEITHER CREATE A RIGHT NOR TAKE AWAY A VESTED RIGHT.— In this jurisdiction, plea bargaining has been defined as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval." There is give-and-take negotiation common in plea bargaining. The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses. Properly administered, plea bargaining is to be encouraged because the chief virtues of the system — speed, economy, and finality — can benefit the accused, the offended party, the prosecution, and the court. Considering the presence of mutuality of advantage, the rules on plea bargaining neither create a right nor take away a vested right. Instead, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.

5. ID.; ID.; ID.; PLEA BARGAINING IS NOT A DEMANDABLE RIGHT BUT DEPENDS ON THE CONSENT OF THE OFFENDED PARTY AND THE PROSECUTOR AND ADDRESSED TO THE SOUND DISCRETION OF THE COURT.— Under the present *Rules*, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain. x x x The plea is further addressed to the sound discretion of the trial court, which *may* allow the accused to plead guilty to a lesser offense which is necessarily included in the offense charged. The word *may* denotes an exercise of discretion upon the trial court on whether to allow the accused to make such plea. Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.

6. ID.; ID.; ID.; STAGES IN THE PROCEEDINGS WHEN PLEA BARGAINING IS ALLOWED, DISCUSSED.— Plea bargaining is allowed during the arraignment, the pre-trial, or even up to the point when the prosecution already rested its case. As regards plea bargaining during the pre-trial stage, the trial court's exercise of discretion should not amount to a grave abuse thereof. "Grave abuse of discretion" is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility; it arises when a court or tribunal violates the Constitution, the law or existing jurisprudence. If the accused moved to plead guilty to a lesser offense subsequent to a bail hearing or after the prosecution rested its case, the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged. The only basis on which the prosecutor and the court could rightfully act in allowing change in the former plea of not guilty could be nothing more and nothing less than the evidence on record. As soon as the prosecutor has submitted a comment whether for or against said motion, it behooves the trial court to assiduously study the prosecution's evidence as well as all the circumstances upon which the accused made his change of plea to the end that the interests of justice and of the public will be served. The ruling on the motion must disclose the strength or weakness of the prosecution's evidence. Absent any finding on the weight of the evidence on hand, the judge's acceptance of the defendant's change of plea is improper and irregular.

LEONEN, *J.*, *separate concurring opinion*:

POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF SECTION 23 OF THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); THE ASSAILED PROVISION PROHIBITING PLEA BARGAINING OF ANY PERSON CHARGED UNDER THE SAID ACT IS UNCONSTITUTIONAL NOT ONLY BECAUSE IT CONTRAVENES THE RULE-MAKING POWER OF THE SUPREME COURT BUT IT ALSO CONSTITUTES "CRUEL, DEGRADING AND INHUMAN PUNISHMENT" FOR THE ACCUSED.— [T]he prohibition found in Section 23 of Republic Act No. 9165, [which

disallows plea bargaining of any person charged under any provision of said Act,] is unconstitutional not only because it contravenes the rule-making power of this Court, it also constitutes "cruel, degrading, [and] inhuman" punishment for the accused. It is the declared policy of the law "to provide effective mechanisms or measures to re-integrate into society individuals who have fallen victims to drug abuse or dangerous drug dependence through sustainable programs of treatment and rehabilitation." The aim is to rehabilitate, not punish, those drug offenders. When an accused pleads to a lesser offense, he or she waives all the fundamental rights guaranteed to an accused. It is essentially a choice that only the accused can make, as a way to acknowledge his or her guilt and as atonement for that guilt. The reality is that most "drug-pushers" that come before the courts are found with less that 0.1 gram of illegal drugs. While some of these accused will be charged with both selling and possession, most of them will have to suffer the penalty of selling, that is, life imprisonment. They will be sentenced to life imprisonment for evidence amounting to "only about 2.5% of the weight of a five-centavo coin (1.9 grams) or a one-centavo coin (2.0 grams)." x x x The application of the mandatory penalty of life imprisonment, as practiced, appear to have a disproportionate impact on those who are poor and those caught with very miniscule quantities of drugs. A disproportionate impact in practice of a seemingly neutral penal law, in my view, will amount to an unusual punishment considering that drugs affect all economic classes. Plea-bargaining does not necessarily mean that the accused will automatically be sentenced to the lesser offense. The plea is subject to the acceptance of the prosecution and is only allowed by discretion of the court. What is essential is that the choice exists. Preventing the accused from pleading to the lesser offense of possession is a cruel, degrading, and unusual punishment for those who genuinely accept the consequences of their actions and seek to be rehabilitated. It will not advance the policy of the law to punish offenders with penalties not commensurate with the offense and to hinder their reintegration into society.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PERALTA, ***J.*:**

Challenged in this petition for *certiorari* and prohibition[1] is the constitutionality of Section 23 of Republic Act *(R.A.)* No. 9165, or the *"Comprehensive Dangerous Drugs Act of 2002*,*"*[2] which provides:

SEC 23. *Plea-Bargaining Provision*. — Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.[3]

The facts are not in dispute.

Petitioner Salvador A. Estipona, Jr. *(Estipona)* is the accused in Criminal Case No. 13586 for violation of Section 11, Article II of R.A. No. 9165 (*Possession of Dangerous Drugs*). The Information alleged:

That on or about the 21st day of March, 2016, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any regulated drug and without the corresponding license or prescription, did then and there, willfully, unlawfully and feloniously have, in his possession and under his control and custody, one (1) piece heat-sealed transparent plastic sachet marked as VOP 03/21/16-1G containing 0.084 [gram] of white crystalline substance, which when examined were found to be positive for Methamphetamine Hydrocloride *(Shabu)*, a dangerous drug.

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[1] With Urgent Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

[2] Approved on June 7, 2002.

[3] This repealed Section 20-A of R.A. No. 6425 *("Dangerous Drugs Act of 1972"),* as amended by R.A. No. 7659 *("Death Penalty Law"),* which was approved on December 13, 1993. It provided:

> SEC. 20-A. *Plea-bargaining Provisions.* — Any person charged under any provision of this Act where the imposable penalty is *reclusion perpetua* to death shall not be allowed to avail of the provision on plea-bargaining.

CONTRARY TO LAW.[4]

On June 15, 2016, Estipona filed a *Motion to Allow the Accused to Enter into a Plea Bargaining Agreement*,[5] praying to withdraw his not guilty plea and, instead, to enter a plea of guilty for violation of Section 12, Article II of R.A. No. 9165 (*Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*) with a penalty of rehabilitation in view of his being a first-time offender and the minimal quantity of the dangerous drug seized in his possession. He argued that Section 23 of R.A. No. 9165 violates: (1) the intent of the law expressed in paragraph 3, Section 2 thereof; (2) the rule-making authority of the Supreme Court under Section 5(5), Article VIII of the 1987 Constitution; and (3) the principle of separation of powers among the three equal branches of the government.

In its Comment or Opposition[6] dated June 27, 2016, the prosecution moved for the denial of the motion for being contrary to Section 23 of R.A. No. 9165, which is said to be justified by the Congress' prerogative to choose which offense it would allow plea bargaining. Later, in a Comment or Opposition[7] dated June 29, 2016, it manifested that it "is open to the Motion of the accused to enter into plea bargaining to give life to the intent of the law as provided in paragraph 3, Section 2 of [R.A. No.] 9165, however, with the express mandate of Section 23 of [R.A. No.] 9165 prohibiting plea bargaining, [it] is left without any choice but to reject the proposal of the accused."

On July 12, 2016, respondent Judge Frank E. Lobrigo of the Regional Trial Court *(RTC)*, Branch 3, Legazpi City, Albay, issued an Order denying Estipona's motion. It was opined:

The accused posited in his motion that Sec. 23 of RA No. 9165, which prohibits plea bargaining, encroaches on the exclusive

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[4] *Rollo*, p. 47.

[5] *Id*. at 49-51.

[6] *Id*. at 52.

[7] *Id*. at 53.

constitutional power of the Supreme Court to promulgate rules of procedure because plea bargaining is a "rule of procedure." Indeed, plea bargaining forms part of the Rules on Criminal Procedure, particularly under Rule 118, the rule on pre-trial conference. It is only the Rules of Court promulgated by the Supreme Court pursuant to its constitutional rule-making power that breathes life to plea bargaining. It cannot be found in any statute.

Without saying so, the accused implies that Sec. 23 of Republic Act No. 9165 is unconstitutional because it, in effect, suspends the operation of Rule 118 of the Rules of Court insofar as it allows plea bargaining as part of the mandatory pre-trial conference in criminal cases.

The Court sees merit in the argument of the accused that it is also the intendment of the law, R.A. No. 9165, to rehabilitate an accused of a drug offense. Rehabilitation is thus only possible in cases of use of illegal drugs because plea bargaining is disallowed. However, by case law, the Supreme Court allowed rehabilitation for accused charged with possession of paraphernalia with traces of dangerous drugs, as held in People v. Martinez, G.R. No. 191366, 13 December 2010. The ruling of the Supreme Court in this case manifested the relaxation of an otherwise stringent application of Republic Act No. 9165 in order to serve an intent for the enactment of the law, that is, to rehabilitate the offender.

Within the spirit of the disquisition in People v. Martinez, there might be plausible basis for the declaration of Sec. 23 of R.A. No. 9165, which bars plea bargaining as unconstitutional because indeed the inclusion of the provision in the law encroaches on the exclusive constitutional power of the Supreme Court.

While basic is the precept that lower courts are not precluded from resolving, whenever warranted, constitutional questions, the Court is not unaware of the admonition of the Supreme Court that lower courts must observe a becoming modesty in examining constitutional questions. Upon which admonition, it is thus not for this lower court to declare Sec. 23 of R.A. No. 9165 unconstitutional given the potential ramifications that such declaration might have on the prosecution of illegal drug cases pending before this judicial station.[8]

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

Estipona filed a motion for reconsideration, but it was denied in an Order[9] dated July 26, 2016; hence, this petition raising the issues as follows:

I.

WHETHER SECTION 23 OF REPUBLIC ACT NO. 9165, WHICH PROHIBITS PLEA BARGAINING IN ALL VIOLATIONS OF THE SAID LAW, IS UNCONSTITUTIONAL FOR BEING VIOLATIVE OF THE CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAW.

II.

WHETHER SECTION 23 OF REPUBLIC ACT NO. 9165 IS UNCONSTITUTIONAL AS IT ENCROACHED UPON THE POWER OF THE SUPREME COURT TO PROMULGATE RULES OF PROCEDURE.

III.

WHETHER THE REGIONAL TRIAL COURT, AS PRESIDED BY HON. FRANK E. LOBRIGO, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO DECLARE SECTION 23 OF REPUBLIC ACT NO. 9165 AS UNCONSTITUTIONAL.[10]

We grant the petition.

PROCEDURAL MATTERS

The People of the Philippines, through the Office of the Solicitor General *(OSG)*, contends that the petition should be dismissed outright for being procedurally defective on the grounds that: (1) the Congress should have been impleaded as an indispensable party; (2) the constitutionality of Section 23 of R.A. No. 9165 cannot be attacked collaterally; and (3) the proper recourse should have been a petition for declaratory relief before this Court or a petition for *certiorari* before the RTC. Moreover, the OSG argues that the petition fails to satisfy

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[9] *Id*. at 46, 54-55.

[10] *Id*. at 3, 15-16.

the requisites of judicial review because: (1) Estipona lacks legal standing to sue for failure to show direct injury; (2) there is no actual case or controversy; and (3) the constitutionality of Section 23 of R.A. No. 9165 is not the *lis mota* of the case.

On matters of technicality, some points raised by the OSG maybe correct. Nonetheless, without much further ado, it must be underscored that it is within this Court's power to make exceptions to the rules of court. Under proper conditions, We may permit the full and exhaustive ventilation of the parties' arguments and positions despite the supposed technical infirmities of a petition or its alleged procedural flaws. In discharging its solemn duty as the final arbiter of constitutional issues, the Court shall not shirk from its obligation to determine novel issues, or issues of first impression, with far-reaching implications.[11]

Likewise, matters of procedure and technicalities normally take a backseat when issues of substantial and transcendental importance are present.[12] We have acknowledged that the Philippines' problem on illegal drugs has reached "epidemic," "monstrous," and "harrowing" proportions,[13] and that its disastrously harmful social, economic, and spiritual effects have broken the lives, shattered the hopes, and destroyed the future of thousands especially our young citizens.[14] At the same time, We have equally noted that "as urgent as the campaign against the drug problem must be, so must we as urgently, if not more so, be vigilant in the protection of the rights of the accused as mandated by the Constitution x x x who, because of excessive zeal on the part of the law enforcers, may be unjustly accused and convicted."[15]

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[11] See *Garcia v. Judge Drilon, et al.,* 712 Phil. 44, 84 (2013).

[12] *GMA Network, Inc. v. COMELEC,* 742 Phil. 174, 209-210 (2014).

[13] See *People v. Castro,* 340 Phil. 245, 246 (1997); *People v. Camba,* 302 Phil. 311, 323 (1994); *People v. Tantiado,* 288 Phil. 241, 258 (1992); *People v. Zapanta,* 272-A Phil. 161, 166 (1991); *People v. Taruc,* 241 Phil. 177, 186 (1988); and *People v. Ale,* 229 Phil. 81, 87 (1986).

[14] *People v. Tantiado, supra,* as cited in *People v. Camba, supra,* and *People v. Caco,* 294 Phil. 54, 65 (1993).

[15] *People v. Quintana,* 256 Phil. 430, 436 (1989).

Fully aware of the gravity of the drug menace that has beset our country and its direct link to certain crimes, the Court, within its sphere, must do its part to assist in the all-out effort to lessen, if not totally eradicate, the continued presence of drug lords, pushers and users.[16]

Bearing in mind the very important and pivotal issues raised in this petition, technical matters should not deter Us from having to make the final and definitive pronouncement that everyone else depends for enlightenment and guidance.[17] When public interest requires, the Court may brush aside procedural rules in order to resolve a constitutional issue.[18]

> x x x [T]he Court is invested with the power to suspend the application of the rules of procedure as a necessary complement of its power to promulgate the same. *Barnes v. Hon. Quijano Padilla* discussed the rationale for this tenet, *viz.*:
>
> > Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, x x x.
> >
> > *The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.*[19]

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[16] See *People v. Gatlabayan,* 669 Phil. 240, 261 (2011); *People v. Lagmay,* 365 Phil. 606, 632 (1999); and *People v. Arcega,* G.R. No. 96319, March 31, 1992, 207 SCRA 681, 688.

[17] See *GMA Network, Inc. v. COMELEC, supra* note 12, at 210.

[18] *Matibag v. Benipayo,* 429 Phil. 554, 579 (2002).

[19] *Philippine Woman's Christian Temperance Union, Inc. v. Teodoro R. Yangco 2nd And 3rd Generation Heirs Foundation, Inc.*, 731 Phil. 269, 292 (2014). (Citation omitted and italics supplied)

SUBSTANTIVE ISSUES

Rule-making power of the Supreme Court under the 1987 Constitution

Section 5(5), Article VIII of the 1987 Constitution explicitly provides:

> Sec. 5. The Supreme Court shall have the following powers:
>
> x x x x x x x x x
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

The power to promulgate rules of pleading, practice and procedure is now Our exclusive domain and no longer shared with the Executive and Legislative departments.[20] In *Echegaray v. Secretary of Justice,*[21] then Associate Justice (later Chief Justice) Reynato S. Puno traced the history of the Court's rule-making power and highlighted its evolution and development.

> x x x *It should be stressed that the power to promulgate rules of pleading, practice and procedure was granted by our Constitutions to this Court to enhance its independence*, for in the words of Justice Isagani Cruz "without independence and integrity, courts will lose that popular trust so essential to the maintenance of their vigor as champions of justice." Hence, our Constitutions continuously vested this power to this Court for it enhances its independence. Under the

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[20] *Echegaray v. Secretary of Justice,* 361 Phil. 73, 88 (1999), as cited in *RE: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fee, 626 Phil. 93, 106 (2010)* and *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Hon. Judge Cabato-Cortes,* 627 Phil. 543, 549 (2010).

[21] *Supra.*

1935 Constitution, the power of this Court to promulgate rules concerning pleading, practice and procedure was granted *but it appeared to be co-existent with legislative power for it was subject to the power of Congress to repeal, alter or supplement.* Thus, its Section 13, Article VIII provides:

> "Sec. 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice and procedure are hereby repealed as statutes, and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. *The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines.*"

The said power of Congress, however, is not as absolute as it may appear on its surface. In *In re: Cunanan* Congress in the exercise of its power to amend rules of the Supreme Court regarding admission to the practice of law, enacted the Bar Flunkers Act of 1953 which considered as a passing grade, the average of 70% in the bar examinations after July 4, 1946 up to August 1951 and 71% in the 1952 bar examinations. *This Court struck down the law as unconstitutional.* In his *ponencia*, Mr. Justice Diokno held that "x x x the disputed law is not a legislation; it is a judgment — a judgment promulgated by this Court during the aforecited years affecting the bar candidates concerned; and although this Court certainly can revoke these judgments even now, for justifiable reasons, it is no less certain that *only this Court*, and not the legislative nor executive department, that may do so. Any attempt on the part of these departments would be a clear usurpation of its function, as is the case with the law in question." The venerable jurist further ruled: "It is obvious, therefore, that the ultimate power to grant license for the practice of law belongs *exclusively* to this Court, and the law passed by Congress on the matter is of permissive character, or as other authorities say, merely to fix the minimum conditions for the license." *By its ruling, this Court qualified the absolutist tone of the power of Congress* to "repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines.

The ruling of this Court in *In re Cunanan* was not changed by the *1973 Constitution*. For the *1973 Constitution reiterated* the power

of this Court "to promulgate rules concerning pleading, practice and procedure in all courts, x x x which, however, may be repealed, altered or supplemented by the Batasang Pambansa x x x." More completely, Section 5(2)5 of its Article X provided:

x x x x x x x x x

"Sec. 5. The Supreme Court shall have the following powers.

x x x x x x x x x

(5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the Batasang Pambansa. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights."

Well worth noting is that the *1973 Constitution further strengthened* the independence of the judiciary by giving to it the additional power to promulgate rules governing the integration of the Bar.

The *1987 Constitution* molded an even *stronger and more independent judiciary*. Among others, *it enhanced the rule making power of this Court.* Its Section 5(5), Article VIII provides:

x x x x x x x x x

"Section 5. The Supreme Court shall have the following powers:

x x x x x x x x x

(5) *Promulgate rules concerning the protection and enforcement of constitutional rights*, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. *Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court."*

The rule making power of this Court was expanded. This Court for the *first time* was given the power to promulgate rules concerning

the protection and enforcement of constitutional rights. The Court was also granted for the *first time* the power to disapprove rules of procedure of special courts and quasi-judicial bodies. *But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure.* In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive. x x x.[22]

Just recently, *Carpio-Morales v. Court of Appeals (Sixth Division)*[23] further elucidated:

> While the power to define, prescribe, and apportion the jurisdiction of the various courts is, by constitutional design, vested unto Congress, **the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs exclusively to this Court**. Section 5 (5), Article VIII of the 1987 Constitution reads:
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> x x x x x x x x x
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> In *Echegaray v. Secretary of Justice (Echegaray)*, the Court traced the evolution of its rule-making authority, which, under the 1935 and 1973 Constitutions, had been priorly subjected to a power-sharing scheme with Congress. As it now stands, the 1987 Constitution **textually altered the old provisions by deleting the concurrent power of Congress to amend the rules, thus solidifying in one body the Court's rule-making powers,** in line with the Framers' vision of institutionalizing a "**[s]tronger and more independent judiciary."**
>
> The records of the deliberations of the Constitutional Commission would show that the Framers debated on whether or not the Court's rule-making powers should be shared with Congress. There was an initial suggestion to insert the sentence "The National Assembly may repeal, alter, or supplement the said rules with the advice and

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[22] *Echegaray v. Secretary of Justice, supra* note 20, at 85-88. (Citations omitted). See also *RE: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fee, supra* note 20, at 106-108 and *In Re: Exemption of the National Power Corporation from Payment of Filing/Docket Fees,* 629 Phil. 1, 4-5 (2010).

[23] G.R. Nos. 217126-27, November 10, 2015, 774 SCRA 431.

concurrence of the Supreme Court," right after the phrase "Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged[,]" in the enumeration of powers of the Supreme Court. Later, Commissioner Felicitas S. Aquino proposed to delete the former sentence and, instead, after the word "[under]privileged," place a comma (,) to be followed by "the phrase with the concurrence of the National Assembly." Eventually, a compromise formulation was reached wherein (**a**) the Committee members agreed to Commissioner Aquino's proposal **to delete** the phrase "the National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court" and (**b**) in turn, Commissioner Aquino agreed **to withdraw** his proposal to add "the phrase with the concurrence of the National Assembly." **The changes were approved, thereby leading to the present lack of textual reference to any form of Congressional participation in Section 5 (5), Article VIII,** *supra.* **The prevailing consideration was that "both bodies, the Supreme Court and the Legislature, have their inherent powers."**

Thus, as it now stands, Congress has no authority to repeal, alter, or supplement rules concerning pleading, practice, and procedure. x x x.[24]

The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court.[25] The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by the Court.[26] Viewed from this perspective, We have rejected previous attempts on the part of the Congress, in the exercise of its legislative power, to amend the Rules of Court *(Rules)*, to wit:

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[24] *Carpio-Morales v. Court of Appeals (Sixth Division), supra,* at 505-508. (Citations omitted).

[25] *RE: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fee, supra* note 20, at 108.

[26] *Id*.

1. Fabian v. Desierto[27] — Appeal from the decision of the Office of the Ombudsman in an administrative disciplinary case should be taken to the Court of Appeals under the provisions of Rule 43 of the *Rules* instead of appeal by *certiorari* under Rule 45 as provided in Section 27 of R.A. No. 6770.

2. Cathay Metal Corporation v. Laguna West Multi-Purpose Cooperative, Inc.[28] — The Cooperative Code provisions on notices cannot replace the rules on summons under Rule 14 of the *Rules.*

3. RE: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fees;[29] *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Hon. Judge Cabato-Cortes;*[30] *In Re: Exemption of the National Power Corporation from Payment of Filing/Docket Fees;*[31] and *Rep. of the Phils. v. Hon. Mangotara, et al.*[32] — Despite statutory provisions, the GSIS, BAMARVEMPCO, and NPC are not exempt from the payment of legal fees imposed by Rule 141 of the *Rules.*

4. *Carpio-Morales v. Court of Appeals (Sixth Division)*[33] — The first paragraph of Section 14 of R.A. No. 6770, which prohibits courts except the Supreme Court from issuing temporary restraining order and/or writ of preliminary injunction to enjoin an investigation conducted by the Ombudsman, is unconstitutional as it contravenes Rule 58 of the *Rules*.

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[27] 356 Phil. 787 (1998).

[28] 738 Phil. 37 (2014).

[29] *Supra note 20.*

[30] *Supra* note 20.

[31] *Supra* note 22.

[32] 638 Phil. 353 (2010).

[33] *Supra* note 23.

Considering that the aforesaid laws effectively modified the *Rules*, this Court asserted its discretion to amend, repeal or even establish new rules of procedure, to the exclusion of the legislative and executive branches of government. To reiterate, the Court's authority to promulgate rules on pleading, practice, and procedure is exclusive and one of the safeguards of Our institutional independence.[34]

Plea bargaining in criminal cases

Plea bargaining, as a rule and a practice, has been existing in our jurisdiction since July 1, 1940, when the 1940 *Rules* took effect. Section 4, Rule 114 (Pleas) of which stated:

SEC. 4. *Plea of guilty of lesser offense.* — The defendant, with the consent of the court and of the fiscal, may plead guilty of any lesser offense than that charged which is necessarily included in the offense charged in the complaint or information.

When the 1964 *Rules* became effective on January 1, 1964, the same provision was retained under Rule 118 (Pleas). Subsequently, with the effectivity of the 1985 *Rules* on January 1, 1985, the provision on plea of guilty to a lesser offense was amended. Section 2, Rule 116 provided:

SEC. 2. *Plea of guilty to a lesser offense.* — The accused with the consent of the offended party and the fiscal, may be allowed by the trial court to plead guilty to a lesser offense, regardless of whether or not it is necessarily included in the crime charged, or is cognizable by a court of lesser jurisdiction than the trial court. No amendment of the complaint or information is necessary. (4a, R-118)

As well, the term "plea bargaining" was first mentioned and expressly required during pre-trial. Section 2, Rule 118 mandated:

SEC. 2. *Pre-trial conference; subjects.* — The pre-trial conference shall consider the following:

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[34] See *Carpio-Morales v. Court of Appeals (Sixth Division), supra* note 23, at 517-518, citing *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Hon. Judge Cabato-Cortes, supra* note 20, at 550.

(a) Plea bargaining;
(b) Stipulation of facts;
(c) Marking for identification of evidence of the parties;
(d) Waiver of objections to admissibility of evidence; and
(e) Such other matters as will promote a fair and expeditious trial. (n)

The 1985 *Rules* was later amended. While the wordings of Section 2, Rule 118 was retained, Section 2, Rule 116 was modified in 1987. A second paragraph was added, stating that "[a] conviction under this plea shall be equivalent to a conviction of the offense charged for purposes of double jeopardy."

When R.A. No. 8493 *("Speedy Trial Act of 1998")* was enacted,[35] Section 2, Rule 118 of the *Rules* was substantially adopted. Section 2 of the law required that plea bargaining and other matters[36] that will promote a fair and expeditious trial are to be considered during pre-trial conference in all criminal cases cognizable by the Municipal Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court, Regional Trial Court, and the Sandiganbayan.

Currently, the pertinent rules on plea bargaining under the 2000 *Rules*[37] are quoted below:

RULE 116 (Arraignment and Plea):

SEC. 2. *Plea of guilty to a lesser offense.* — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (Sec. 4, Cir. 38-98)

RULE 118 (Pre-trial):

SEC. 1. *Pre-trial; mandatory in criminal cases*. — In all criminal cases cognizable by the *Sandiganbayan,* Regional Trial Court,

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[35] Approved on February 12, 1998.

[36] Such as stipulation of facts, marking for identification of evidence of parties, and waiver of objections to admissibility of evidence.

[37] Effective December 1, 2001 *(People v. Mamarion,* 459 Phil. 51, 74 [2003]).

Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

(a) plea bargaining;
(b) stipulation of facts;
(c) marking for identification of evidence of the parties;
(d) waiver of objections to admissibility of evidence;
(e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
(f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case. (Sec. 2 & 3, Cir. 38-98)

Plea bargaining is a rule of procedure

The Supreme Court's sole prerogative to issue, amend, or repeal procedural rules is limited to the preservation of substantive rights, *i.e.,* the former should not diminish, increase or modify the latter.[38] "Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions."[39] *Fabian v. Hon. Desierto*[40] laid down the test for determining whether a rule is substantive or procedural in nature.

It will be noted that no definitive line can be drawn between those rules or statutes which are procedural, hence within the scope of this Court's rule-making power, and those which are substantive. In fact, a particular rule may be procedural in one context and substantive

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[38] CONSTITUTION, Art. VIII, Sec. 5(5). See also *Ogayon v. People,* 768 Phil. 272, 288 (2015) and *San Ildefonso Lines, Inc. v. CA,* 352 Phil. 405, 415-416 (1998).

[39] See *Carpio-Morales v. Court of Appeals (Sixth Division), supra* note 23, at 516-517.

[40] *Supra* note 27.

in another. It is admitted that what is procedural and what is substantive is frequently a question of great difficulty. It is not, however, an insurmountable problem if a rational and pragmatic approach is taken within the context of our own procedural and jurisdictional system.

In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the *judicial process for enforcing rights and duties recognized by substantive law* and for justly administering remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but *if it operates as a means of implementing an existing right then the rule deals merely with procedure*.[41]

In several occasions, We dismissed the argument that a procedural rule violates substantive rights. For example, in *People v. Lacson,*[42] Section 8, Rule 117 of the *Rules* on provisional dismissal was held as a special procedural limitation qualifying the right of the State to prosecute, making the time-bar an essence of the given right or as an inherent part thereof, so that its expiration operates to extinguish the right of the State to prosecute the accused.[43] Speaking through then Associate Justice Romeo J. Callejo, Sr., the Court opined:

In the new rule in question, as now construed by the Court, it has fixed a time-bar of one year or two years for the revival of criminal cases provisionally dismissed with the express consent of the accused and with *a priori* notice to the offended party. The time-bar may appear, on first impression, unreasonable compared to the periods

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[41] *Fabian v. Desierto, supra* at 808-809. See also *Carpio-Morales v. Court of Appeals (Sixth Division), supra* note 23, at 517; *Securities and Exchange Commission v. Judge Laigo, et al.,* 768 Phil. 239, 269-270 (2015); *Jaylo, et al. v. Sandiganbayan, et al.,* 751 Phil. 123, 141-142 (2015); *Land Bank of the Phils. v. De Leon,* 447 Phil. 495, 503 (2003); and *Bernabe v. Alejo,* 424 Phil. 933, 941 (2002).

[42] 448 Phil. 317 (2003).

[43] See *Los Baños v. Pedro,* 604 Phil. 215, 229 (2009).

under Article 90 of the Revised Penal Code. However, in fixing the time-bar, the Court balanced the societal interests and those of the accused for the orderly and speedy disposition of criminal cases with minimum prejudice to the State and the accused. It took into account the substantial rights of both the State and of the accused to due process. The Court believed that the time limit is a reasonable period for the State to revive provisionally dismissed cases with the consent of the accused and notice to the offended parties. The time-bar fixed by the Court must be respected unless it is shown that the period is manifestly short or insufficient that the rule becomes a denial of justice. The petitioners failed to show a manifest shortness or insufficiency of the time-bar.

The new rule was conceptualized by the Committee on the Revision of the Rules and approved by the Court *en banc* primarily to enhance the administration of the criminal justice system and the rights to due process of the State and the accused by eliminating the deleterious practice of trial courts of provisionally dismissing criminal cases on motion of either the prosecution or the accused or jointly, either with no time-bar for the revival thereof or with a specific or definite period for such revival by the public prosecutor. There were times when such criminal cases were no longer revived or refiled due to causes beyond the control of the public prosecutor or because of the indolence, apathy or the lackadaisical attitude of public prosecutors to the prejudice of the State and the accused despite the mandate to public prosecutors and trial judges to expedite criminal proceedings.

It is almost a universal experience that the accused welcomes delay as it usually operates in his favor, especially if he greatly fears the consequences of his trial and conviction. He is hesitant to disturb the hushed inaction by which dominant cases have been known to expire.

The inordinate delay in the revival or refiling of criminal cases may impair or reduce the capacity of the State to prove its case with the disappearance or nonavailability of its witnesses. Physical evidence may have been lost. Memories of witnesses may have grown dim or have faded. Passage of time makes proof of any fact more difficult. The accused may become a fugitive from justice or commit another crime. The longer the lapse of time from the dismissal of the case to the revival thereof, the more difficult it is to prove the crime.

On the other side of the fulcrum, a mere provisional dismissal of a criminal case does not terminate a criminal case. The possibility that the case may be revived at any time may disrupt or reduce, if not derail, the chances of the accused for employment, curtail his association, subject him to public obloquy and create anxiety in him and his family. He is unable to lead a normal life because of community suspicion and his own anxiety. He continues to suffer those penalties and disabilities incompatible with the presumption of innocence. He may also lose his witnesses or their memories may fade with the passage of time. In the long run, it may diminish his capacity to defend himself and thus eschew the fairness of the entire criminal justice system.

The time-bar under the new rule was fixed by the Court to excise the malaise that plagued the administration of the criminal justice system for the *benefit of the State and the accused*; not for the accused only.[44]

Also, We said in *Jaylo, et al. v. Sandiganbayan, et al.*[45] that Section 6, Rule 120 of the *Rules*, which provides that an accused who failed to appear at the promulgation of the judgment of conviction shall lose the remedies available against the judgment, does not take away substantive rights but merely provides the manner through which an existing right may be implemented.

Section 6, Rule 120, of the Rules of Court, does not take away *per se* the right of the convicted accused to avail of the remedies under the Rules. It is the failure of the accused to appear without justifiable cause on the scheduled date of promulgation of the judgment of conviction that forfeits their right to avail themselves of the remedies against the judgment.

It is not correct to say that Section 6, Rule 120, of the Rules of Court diminishes or modifies the substantive rights of petitioners. It only works in pursuance of the power of the Supreme Court to "provide a simplified and inexpensive procedure for the speedy disposition of cases." This provision protects the courts from delay in the speedy disposition of criminal cases — delay arising from the simple

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[44] *People v. Lacson, supra* note 42, at 387-389. (Citations omitted).

[45] *Supra* note 41.

expediency of nonappearance of the accused on the scheduled promulgation of the judgment of conviction.[46]

By the same token, it is towards the provision of a simplified and inexpensive procedure for the speedy disposition of cases in all courts[47] that the rules on plea bargaining was introduced. As a way of disposing criminal charges by agreement of the parties, plea bargaining is considered to be an "important," "essential," "highly desirable," and "legitimate" component of the administration of justice.[48] Some of its salutary effects include:

> x x x For a defendant who sees slight possibility of acquittal, the advantages of pleading guilty and limiting the probable penalty are obvious – his exposure is reduced, the correctional processes can begin immediately, and the practical burdens of a trial are eliminated. For the State there are also advantages – the more promptly imposed punishment after an admission of guilt may more effectively attain the objectives of punishment; and with the avoidance of trial, scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant's guilt or in which there is substantial doubt that the State can sustain its burden of proof. (*Brady v. United States,* 397 U.S. 742, 752 [1970])
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> Disposition of charges after plea discussions x x x leads to prompt and largely final disposition of most criminal cases; it avoids much of the corrosive impact of enforced idleness during pretrial confinement for those who are denied release pending trial; it protects the public from those accused persons who are prone to continue criminal conduct even while on pretrial release; and, by shortening the time between charge and disposition, it enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned. (*Santobello v. New York,* 404 U.S. 257, 261 [1971])
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> The defendant avoids extended pretrial incarceration and the anxieties and uncertainties of a trial; he gains a speedy disposition of his case,

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[46] *Jaylo, et al. v. Sandiganbayan, et al., supra* at 142-143. (Citation omitted).

[47] CONSTITUTION, Art. VIII, Sec. 5(5). See also *Neypes v. Court of Appeals,* 506 Phil. 613, 626 (2005) and *San Ildefonso Lines, Inc. v. CA, supra* note 38, at 415-416.

[48] See *Corbitt v. New Jersey,* 439 U.S. 212 (1978); *Blackledge v. Allison,* 431 U.S. 63 (1977); and the Majority Opinion and Mr. Justice Douglas' Concurring Opinion in *Santobello v. New York,* 404 U.S. 257 (1971).

the chance to acknowledge his guilt, and a prompt start in realizing whatever potential there may be for rehabilitation. Judges and prosecutors conserve vital and scarce resources. The public is protected from the risks posed by those charged with criminal offenses who are at large on bail while awaiting completion of criminal proceedings. (*Blackledge v. Allison,* 431 U.S. 63, 71 [1977])

In this jurisdiction, plea bargaining has been defined as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval."[49] There is give-and-take negotiation common in plea bargaining.[50] The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses.[51] Properly administered, plea bargaining is to be encouraged because the chief virtues of the system — speed, economy, and finality — can benefit the accused, the offended party, the prosecution, and the court.[52]

Considering the presence of mutuality of advantage,[53] the rules on plea bargaining neither create a right nor take away a vested right. Instead, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.

The decision to plead guilty is often heavily influenced by the defendant's appraisal of the prosecution's case against him

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[49] *People v. Villarama, Jr.,* 285 Phil. 723, 730 (1992), citing *Black's Law Dictionary*, 5th Ed., 1979, p. 1037. See also *Gonzales III v. Office of the President of the Philippines, et al.,* 694 Phil. 52, 106 (2012); *Atty. Amante-Descallar v. Judge Ramas,* 601 Phil. 21, 40 (2009); *Daan v. Hon. Sandiganbayan,* 573 Phil. 368, 375 (2008); and *People v. Mamarion, supra* note 37, at 75.

[50] *Parker v. North Carolina,* 397 U.S. 790 (1970).

[51] *Hughey v. United States,* 495 U.S. 411 (1990).

[52] See *Santobello v. New York, supra* note 48 and *Blackledge v. Allison, supra* note 48.

[53] *Brady v. United States,* 397 U.S. 742 (1970).

and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted.[54] In any case, whether it be to the offense charged or to a lesser crime, a guilty plea is a "serious and sobering occasion" inasmuch as it constitutes a waiver of the fundamental rights to be presumed innocent until the contrary is proved, to be heard by himself and counsel, to meet the witnesses face to face, to bail (except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong), to be convicted by proof beyond reasonable doubt, and not to be compelled to be a witness against himself.[55]

Yet a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial.[56] Under the present *Rules*, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party[57] and the prosecutor, which is a

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[54] *Id.*

[55] See *Brady v. United States, supra*, and Mr. Justice Douglas' Concurring Opinion in *Santobello v. New York, supra* note 48, at 264.

[56] *Weatherford v. Bursey,* 429 U.S. 545 (1977). See also Mr. Justice Scalia's Dissenting Opinion in *Lafler v. Cooper,* 566 U.S. 156 (2011).

[57] The State is the offended party in crimes under R.A. No. 9165. In *People v. Villarama, Jr.*, *supra* note 49, at 732 the Court ruled:

> *"*x x x While the acts constituting the crimes are not wrong in themselves, they are made so by law because they infringe upon the rights of others. The threat posed by drugs against human dignity and the integrity of society is malevolent and incessant (*People v. Ale*, G.R. No. 70998, October 14, 1986, 145 SCRA 50, 58). Such pernicious effect is felt not only by the addicts themselves but also by their families. As a result, society's survival is endangered because its basic unit, the family, is the ultimate victim of the drug menace. The state is, therefore, the offended party in this case. As guardian of the rights of the people, the government files the criminal action in the name of the People of the Philippines. The Fiscal who represents the government is duty bound to defend the public interests, threatened by crime, to the point that it is as though he were the person directly injured by the offense (see *United States v. Samio*, 3 Phil. 691, 696). Viewed in this light, the consent of the offended party, *i.e*. the state, will have to be secured from the Fiscal who acts in behalf of the government."

condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged.[58] The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.[59]

> [Courts] normally must defer to prosecutorial decisions as to whom to prosecute. The reasons for judicial deference are well known. Prosecutorial charging decisions are rarely simple. In addition to assessing the strength and importance of a case, prosecutors also must consider other tangible and intangible factors, such as government enforcement priorities. Finally, they also must decide how best to allocate the scarce resources of a criminal justice system that simply cannot accommodate the litigation of every serious criminal charge. Because these decisions "are not readily susceptible to the kind of analysis the courts are competent to undertake," we have been "properly hesitant to examine the decision whether to prosecute."[60]

The plea is further addressed to the sound discretion of the trial court, which *may* allow the accused to plead guilty to a lesser offense which is necessarily included in the offense charged. The word *may* denotes an exercise of discretion upon the trial court on whether to allow the accused to make such plea.[61] Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not

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[58] *People v. Villarama, Jr., supra* note 49.

[59] *Id.*

[60] *Newton v. Rumery,* 480 U.S. 386, 396 (1987).

[61] *Daan v. Hon. Sandiganbayan, supra* note 49, at 732. In *Capati v. Dr. Ocampo* (199 Phil. 230, 234 [1982], *citing In Re: Hirsh's Estate* 5A. 2d 160, 163; 334 Pa. 172; Words & Phrases, permanent edition, 26a.), the Court also held:

> "It is well settled that the word 'may' is merely permissive and operates to confer discretion upon a party. Under ordinary circumstances, the term 'may be' connotes possibility; it does not connote certainty. 'May' is an auxillary verb indicating liberty, opportunity, permission or possibility."

supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.[62]

Plea bargaining is allowed during the arraignment, the pre-trial, or even up to the point when the prosecution already rested its case.[63] As regards plea bargaining during the pre-trial stage, the trial court's exercise of discretion should not amount to a grave abuse thereof.[64] "Grave abuse of discretion" is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility; it arises when a court or tribunal violates the Constitution, the law or existing jurisprudence.[65]

If the accused moved to plead guilty to a lesser offense subsequent to a bail hearing or after the prosecution rested its case, the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged.[66] The only basis on which the prosecutor and the court could rightfully act in allowing change in the former plea of not guilty could be nothing more and nothing less than the evidence on record. As soon as the prosecutor has submitted a comment whether for or against said motion, it behooves the trial court to assiduously study the prosecution's evidence as well as all the circumstances upon which the accused made his change of plea to the end that the interests of justice and of the

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[62] *Daan v. Hon. Sandiganbayan, supra* note 49, at 377 and *People v. Villarama, Jr., supra* note 49, at 730.

[63] See *Daan v. Hon. Sandiganbayan, id.* at 376; *People v. Mamarion, supra* note 37, at 75; *Ladino v. Hon. Garcia,* 333 Phil. 254, 258 (1996); and *People v. Villarama, Jr., supra* note 49, at 731.

[64] See *Daan v. Hon. Sandiganbayan, supra* note 49, at 378.

[65] *Sofronio Albania v. Commission on Elections, et al.,* G.R. No. 226792, June 6, 2017.

[66] *People v. Villarama, Jr., supra* note 49, at 252, as cited in *Gonzales III v. Office of the President of the Philippines, et al., supra* note 49, at 106 and *People v. Mamarion, supra* note 37, at 76.

public will be served.[67] The ruling on the motion must disclose the strength or weakness of the prosecution's evidence.[68] Absent any finding on the weight of the evidence on hand, the judge's acceptance of the defendant's change of plea is improper and irregular.[69]

On whether Section 23 of R.A. No. 9165 violates the equal protection clause

At this point, We shall not resolve the issue of whether Section 23 of R.A. No. 9165 is contrary to the constitutional right to equal protection of the law in order not to preempt any future discussion by the Court on the policy considerations behind Section 23 of R.A. No. 9165. Pending deliberation on whether or not to adopt the statutory provision *in toto* or a qualified version thereof, We deem it proper to declare as invalid the prohibition against plea bargaining on drug cases until and unless it is made part of the rules of procedure through an administrative circular duly issued for the purpose.

WHEREFORE, the petition for *certiorari* and prohibition is **GRANTED**. Section 23 of Republic Act No. 9165 is declared unconstitutional for being contrary to the rule-making authority of the Supreme Court under Section 5(5), Article VIII of the 1987 Constitution.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Perlas-Bernabe, Jardeleza, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Leonen, J., see separate concurring opinion.

Caguioa, J., on wellness leave.

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[67] *People v. Villarama, Jr., supra* note 49, at 731.

[68] See *People v. Villarama, supra.*

[69] *People v. Villarama, Jr., supra* note 49.

SEPARATE CONCURRING OPINION

LEONEN, *J.:*

I concur with the ponencia.

In my view, the prohibition found in Section 23 of Republic Act No. 9165[1] is unconstitutional not only because it contravenes the rule-making power of this Court, it also constitutes "cruel, degrading, [and] inhuman" punishment for the accused.[2]

It is the declared policy of the law "to provide effective mechanisms or measures to re-integrate into society individuals who have fallen victims to drug abuse or dangerous drug dependence through sustainable programs of treatment and rehabilitation."[3] The aim is to rehabilitate, not punish, those drug offenders.

When an accused pleads to a lesser offense, he or she waives all the fundamental rights guaranteed to an accused.[4] It is essentially a choice that only the accused can make, as a way to acknowledge his or her guilt and as atonement for that guilt.

The reality is that most "drug-pushers" that come before the courts are found with less that 0.1 gram of illegal drugs. While some of these accused will be charged with both selling and

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[1] Rep. Act No. 9165 (2001), Art. II, Sec. 23. Plea-Bargaining Provision. — Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.

[2] CONST., Art. III, Sec. 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua.*

[3] Rep. Act. No. 9165 (2001), Art. I, Sec. 2.

[4] The rights include the right to be presumed innocent, to right to be heard, the right to meet witnesses face to face, (CONST., Art. III, Sec. 14 (2), and the right against self-incrimination (CONST., Art III. Sec. 17).

possession, most of them will have to suffer the penalty of selling, that is, life imprisonment.[5] They will be sentenced to life imprisonment for evidence amounting to "only about 2.5% of the weight of a five-centavo coin (1.9 grams) or a one-centavo coin (2.0 grams)."[6]

As we have observed in *People v. Holgado*:[7]

> It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[8]

The application of the mandatory penalty of life imprisonment, as practiced, appear to have a disproportionate impact on those who are poor and those caught with very miniscule quantities of drugs. A disproportionate impact in practice of a seemingly neutral penal law, in my view, will amount to an unusual punishment considering that drugs affect all economic classes.

Plea-bargaining does not necessarily mean that the accused will automatically be sentenced to the lesser offense. The plea

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[5] See Rep. Act No. 9165 (2001), Art. II, Sec. 5.

[6] See *People v. Holgado*, 741 Phil. 78, 99 (2014) [Per *J.* Leonen, Third Division].

[7] 741 Phil. 78 (2014) [Per *J.* Leonen, Third Division].

[8] *Id*. at 100.

is subject to the acceptance of the prosecution and is only allowed by discretion of the court.[9] What is essential is that the choice exists. Preventing the accused from pleading to the lesser offense of possession is a cruel, degrading, and unusual punishment for those who genuinely accept the consequences of their actions and seek to be rehabilitated. It will not advance the policy of the law to punish offenders with penalties not commensurate with the offense and to hinder their reintegration into society.

Having said all these, I am reserving judgment for an appropriate case where the issue is whether life imprisonment is by itself cruel for those caught trading miniscule amounts of illegal drugs.

Accordingly, I vote to **GRANT** the Petition.

FIRST DIVISION

[A.C. No. 8574. August 16, 2017]

CARMELO IRINGAN, *complainant, vs.* **ATTY. CLAYTON B. GUMANGAN,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; NOTARIZING A CONTRACT WITHOUT COMPETENT EVIDENCE OF THE IDENTITY OF THE PARTIES AND FAILURE TO SUBMIT NOTARIAL REPORT CONSTITUTE VIOLATIONS OF THE NOTARIAL LAW, THE 2004 RULES ON NOTARIAL PRACTICE AND THE CODE OF PROFESSIONAL RESPONSIBILITY; PENALTY OF SUSPENSION OF NOTARIAL COMMISSION FOR TWO YEARS, IMPOSED.

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[9] See *ponencia*, pp. 17-18.

— Atty. Gumangan herein violated the 2004 Rules on Notarial Practice by notarizing the Contract of Lease on December 30, 2005 without competent evidence of identity of Renato and Carmelo and, thus, committing an expressly prohibited act under the Rules. x x x Per Atty. Andomang's Affidavit dated September 3, 2009, Atty. Gumangan did not submit to the RTC Clerk of Court his Notarial Report and a duplicate original of the Contract of Lease dated December 30, 2005 between Renato and Carmelo. Atty. Gumangan did not dispute Atty. Andomang's Affidavit nor provide any explanation for his failure to comply with such requirements. x x x A lawyer, who is also commissioned as a notary public, is mandated to discharge with fidelity the sacred duties appertaining to his office, such duties being dictated by public policy and impressed with public interest. Faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment are sacrosanct. A notary public cannot simply disregard the requirements and solemnities of the Notarial Law. Clearly, herein, Atty. Gumangan – in notarizing the Contract of Lease without competent evidence of the identity of Renato and Carmelo, and in failing to submit to the RTC Clerk of Court his Notarial Report and a duplicate original of the Contract of Lease – had been grossly remiss in his duties as a notary public and as a lawyer, consequently, undermining the faith and confidence of the public in the notarial act and/or notarized documents. Therefore, in light of the foregoing, the Court holds Atty. Gumangan administratively liable and imposes upon him the penalty of suspension of his notarial commission for two years.

APPEARANCES OF COUNSEL

Ma. Katrina A. Lasam for complainant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an administrative complaint for disbarment or suspension filed by complainant Carmelo Iringan (Carmelo) against respondent Atty. Clayton B. Gumangan (Atty. Gumangan) relative to Civil Case No. 518-09, entitled *Sps. Renato and*

Carmen A. Iringan v. Carmelo A. Iringan, for Illegal Detainer and Ejectment with Damages, before the Municipal Trial Court in Cities (MTCC) of the City of Tabuk, Kalinga.

Civil Case No. 518-09 was instituted before the MTCC by spouses Renato (Renato) and Carmen Iringan (spouses Iringan) against Carmelo, who is Renato's brother. The spouses Iringan alleged in their complaint that they are the owners of a piece of land, with an area of about 625 square meters, located in Tabuk, Kalinga, registered under Original Certificate of Title No. P-8864[1] in Renato's name. A two-storey structure stands on said piece of land, which was used as a restaurant with the name "Emilia's Kitchenette." Renato acquired the right to operate said restaurant from his mother, Lourdes Iringan, by virtue of a Deed of Assignment to Operate Establishments[2] dated January 19, 1982, for the consideration of ₱5,000.00. Pursuant to a Contract of Lease[3] dated December 30, 2005, Renato agreed to lease to Carmelo the land and the two-storey building thereon (collectively referred to herein as the premises) for a period of one year, for a monthly rental of ₱5,000.00. The Contract of Lease was notarized by Atty. Gumangan also on December 30, 2005. The lease expired but Carmelo continued to possess the premises upon spouses Iringan's tolerance. In September 2008, the spouses Iringan demanded that Carmelo vacate the premises but to no avail. A Final Demand dated April 1, 2009 was served upon Carmelo on April 2, 2009, signed by Atty. Gumangan, with Renato's approval and conformity. Carmelo, however, still refused to vacate the premises. The barangay heard the dispute between the spouses Iringan and Carmelo on April 29, 2009 but no settlement was reached. Thus, the spouses Iringan had no other recourse but to file Civil Case No. 518-09 for Illegal Detainer and Ejectment with Damages against Carmelo.

In his defense, Carmelo averred that he and Renato are brothers. The premises actually belonged to their late parents

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[1] *Rollo*, pp. 8-9.

[2] *Id*. at 11.

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

Sixto and Lourdes Iringan, and upon their parents' deaths, the premises descended to Carmelo, Renato, and their other siblings. Hence, Renato is not the sole owner of the premises even though the certificate of title to the land is registered in his name alone. Renato is a mere trustee of the premises for his siblings. The Deed of Assignment to Operate Establishments did not vest title to the premises upon the spouses Iringan as this was in derogation of the succession rights of Renato's siblings. Carmelo further claimed that the Contract of Lease for the premises was spurious as he had never entered into such a contract with Renato. Carmelo asserted that he did not sign the Contract of Lease nor did he appear before Atty. Gumangan who notarized the same.

In its Decision[4] dated September 24, 2009, the MTCC rendered a Decision in favor of the spouses Iringan. Particularly on the matter of the Contract of Lease, the MTCC found:

> THERE IS A VALID CONTRACT OF LEASE EXECUTED BY THE PARTIES
>
> Exhibit "D" of the [spouses Iringan] is the alleged "Spurious" Contract of Lease. It is a document duly notarized before a Notary public. It was executed with all the formalities required by law and duly acknowledged before Atty. Clayton Gumangan. This Contract of Lease is a public document, which needs no further proof of its content and is entitled to much faith and confidence, unless clear evidences show otherwise. This is where [Carmelo] failed. [Carmelo] offered no evidence tending to show that said document is indeed spurious. What we have, are the allegations of [Carmelo] and his witnesses, which allegations are, to say the least, self-serving and biased. Allegations are not proofs.
>
> On this point, the [spouses Iringan] submitted the Affidavit of the Notary Public before whom the document was executed and acknowledged. In said Affidavit, Atty. Gumangan affirmed that he prepared the document and that Carmelo and Renato Iringan signed the contract of lease in his presence. There is no showing that Atty. Gumangan was telling a lie, or that he was ill-motivated. His affidavit rings true and is credible.

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[4] *Id*. at 31-40; penned by Presiding Judge Victor A. Dalanao.

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Then too, we have the affidavit of the instrumental witnesses, in the person of Hilda Langgaman and Narcisa Padua (Exhibit "Q"). They were the witnesses to the execution of the contract at the office of Atty. Gumangan. They saw with their own eyes Carmelo and Renato signing the Contract of Lease. These are impartial witnesses. In order to discredit the allegations of the Affidavit of Atty. Gumangan, [Carmelo] submitted the Affidavit of Atty. Mary Jane Andomang to the effect that Atty. Clayton Gumangan has not submitted his notarial register containing the questioned document. But the non-submission of Atty. Gumangan of his notarial register does not preclude the fact that said document was executed and notarized as claimed by the affiants. If any, it should be Atty. Gumangan who is brought to task for his negligence, not the [spouses Iringan]. The failure of Gumangan to submit his register should not prejudice the cause of the [spouses Iringan]. This Affidavit of Atty. Andomang only proved that Atty. Gumangan failed to submit his register. It cannot disprove the due execution of the Contract of lease.

Much noise has been made on the fact that the document was allegedly executed in December 2005 but that the Community Tax Receipt of Renato was dated January 17, 2006. Also, that the CTR of [Carmelo] has not been indicated in the said document. Again, to [Carmelo], this smacks of fraud.

The court is not convinced. This may have been a typographical error attributable to human frailties. The intent to defraud or falsify was not shown by [Carmelo] through independent and credible evidences. Fraud is not assumed.[5]

The MTCC decreed:

WHEREFORE, judgment is hereby rendered in favor of the [spouses Iringan] and against Carmelo Iringan, ordering [Carmelo] to;

1. VACATE immediately the property in dispute and turnover peacefully its possession to the [spouses Iringan];
2. Pay FIVE THOUSAND (₱5,000.00) PESOS a month from April 2, 2009 up to the time the finality of Judgment with interest at 6% per annum;

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[5] *Id*. at 36-37.

3. The total amount awarded above shall earn legal interest at 12% per annum from the time judgment became final until the same shall have been fully paid;

4. PAY TWENTY THOUSAND (₱20,000.00) PESOS as attorney's fees and cost of litigation; and

5. [P]ay the cost of the suit.[6]

Carmelo filed an appeal with the Regional Trial Court (RTC) of Bulanao, Tabuk City, Kalinga, Branch 25, docketed as Civil Case No. 762. In a Decision[7] dated May 25, 2010, the RTC affirmed *in toto* the MTCC judgment. The RTC eventually issued a Writ of Execution and an Alias Writ of Execution dated November 2, 2010 and February 22, 2011, respectively, for the implementation of its judgment.

In the meantime, while Civil Case No. 762 was still pending before the RTC, Carmelo instituted on April 5, 2010, before the Court, through the Office of the Bar Confidant (OBC), the present administrative complaint[8] against Atty. Gumangan, alleging as follows:

3. That [Atty. Gumangan] is a practicing attorney and a notary public, principally based [in] Tabuk, Kalinga;

4. That sometime on December 30, 2005, a "Contract of Lease" was purportedly executed by and between [Carmelo] and Renato Iringan; This document was prepared and notarized by [Atty. Gumangan];

5. That the aforecited "Contract of Lease" became the principal subject of a Civil Case between [Carmelo] and Sps. Renato and Carmen Iringan docketed as Civil Case No. 518-09; The original copy of the pertinent Summons (with the Complaint and annexes thereto) is made Annex "A" and appended therewith is a certified machine copy of the said "Contract of Lease" (Annex "C" of the Complaint);

6. That the purported "Contract of Lease" is entirely spurious and fraudulent; [Carmelo] never executed such instrument and did

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[6] *Id*. at 40.

[7] *Id*. at 41-51; penned by Judge Marcelino K. Wacas.

[8] *Id*. at 1-2.

not appear before [Atty. Gumangan] for its due subscription under oath; [Carmelo] never ever entered into any lease contract with Renato A. Iringan whether verbal or in writing;

7. That it is too obvious that the alleged Lease Contract prepared and notarized by [Atty. Gumangan] is fraudulent since by simple examination, the same was **executed and subscribed before [Atty. Gumangan] on December 30, 2005, when in fact Renato Iringan's CTC (08768743) was issued on January 17, 2006;** [Carmelo's] own CTC **does not appear thereon, meaning that he never appeared to execute it;** That besides not appearing before [Atty. Gumangan], [Carmelo] has not been or seen the alleged witnesses to the contract;

8. That more importantly, [Carmelo] had **not known, met or had any transaction with [Atty. Gumangan]; He only saw him for the first time** in the Municipal Trial Court, Tabuk, Kalinga, during one of the proceedings in Civil Case No. 518-09 where [Atty. Gumangan] happened to be present in attendance;

9. Moreover, the said "Contract of Lease" was never filed with the notarial report of [Atty. Gumangan] with the Office of the Clerk of Court of Kalinga.; The Sworn Affidavit of Atty. Mary Jane A. Andomang (Regional Trial Court, Branch 25, Clerk of Court) made Annex "B" hereof attests to this fact;

10. That the very blatant act of [Atty. Gumangan] in preparing and notarizing said "Contract of Lease" bespeaks of wanton and willful violation of the Canons of Professional Responsibility for lawyers; As officers of the Court they are mandated not to involve themselves in fraudulent and deceitful acts, to the grave damage and prejudice of private individuals;

11. That [Atty. Gumangan] had not acted with honesty and faithfulness to the responsibilities and duties of his profession; He must then be sanctioned and subjected to disciplinary action by this Honorable Supreme Court.[9]

Carmelo prayed that Atty. Gumangan "be DISBARRED/ SUSPENDED from the practice of law, and with all the attendant accessory penalties and fines to be justly imposed."[10]

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[9] *Id*.

[10] *Id*. at 2.

In support of his allegations, Carmelo attached, among other documents, the purported Contract of Lease between him and Renato and the Affidavit[11] dated September 3, 2009 of Mary Jane A. Andomang (Andomang), RTC Clerk of Court VI, certifying that Atty. Gumangan "did not submit his Notarial Report and a copy of a 'Contract of Lease,' appearing as Doc. No. 191, Page No. 39, Book No. X, Series of 2005."

Atty. Gumangan, in his Comment/Answer,[12] asserted that Carmelo instituted the instant administrative complaint to harass and embarrass him, and to extricate himself, Carmelo, from the felonious acts of dispossessing his very own brother of the latter's property.

Atty. Gumangan admitted that he notarized the Contract of Lease, but maintained that Carmelo, together with Renato, personally executed said Contract before Atty. Gumangan and in the presence of two witnesses, namely, Hilda Langgaman (Langgaman) and Narcisa Padua (Padua). Atty. Gumangan attached to his Comment/Answer the Joint Affidavit[13] dated July 20, 2009 in which Langgaman and Padua affirmed that they were personally present at Atty. Gumangan's office when Carmelo and Renato signed the Contract of Lease, and that they saw with their own eyes Carmelo signing said Contract. Atty. Gumangan likewise attached to his Comment/Answer the Affidavit[14] dated July 9, 2009 executed by Carmelo's daughter-in-law, Cathelyn Bawat Iringan (Cathelyn), attesting to the existence and implementation of the Contract of Lease:

> That as trustee of the Emilia's Kitchenette, I was instrumental in the payment of rentals over said Kitchenette to plaintiffs [spouses Iringan] thus:
>
> a) In June, 2007, I withdrew the sum of Twenty-five Thousand (₱25,000.00) Pesos from the Rural Bank of Rizal, Kalinga and used

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[11] *Id*. at 18.

[12] *Id*. at 20-26.

[13] *Id*. at 27.

[14] *Id*. at 28.

it for the medical operation of Inez Gamad; the amount was treated as rentals of Emilia's Kitchenette covering the months of November & December, 2006, January, February and March of year 2007;

b) I paid Ten Thousand (₱10,000.00) Pesos on August 23, 2007 for our rental of April and May 2007;

c) I paid rental of Thirty Thousand (₱30,000.00) Pesos to Carmen Iringan, which was used for the eye treatment of Renato Iringan;

d) I issued a check in the sum of One Hundred Thousand (₱100,000.00) Pesos, given to Engr. Federico Iringan, son of [spouses Iringan]; Sixty Thousand (₱60,000.00) Pesos was used to cover rentals of the Kitchenette and Forty Thousand (₱40,000.00) Pesos was personal to Federico[.]

Atty. Gumangan proffered the following explanation for the irregularities as regards the community tax certificates (CTCs) of Carmelo and Renato, the parties to the Contract of Lease:

A. [Carmelo] and his brother Renato Iringan appeared before the herein [Atty. Gumangan] in the afternoon of December 30, 2005, and after they x x x, together with their witnesses, affixed their signature on the Contract of Lease, the herein [Atty. Gumangan], directed them to produce their community tax certificates, but they failed to do so, but they instead promised to secure their community tax certificates the earliest possible opportunity;

B. Considering that December 30, 2005 is a Friday, and the next working day January 01, 2006, is a holiday, Renato Iringan secured his community tax certificate on the 17th day of January 2006. x x x.[15]

Atty. Gumangan substantiated his foregoing averments by appending Renato's Affidavit[16] dated August 11, 2010 to his Comment/Answer, in which the latter deposed and stated:

1. That on the 30th day of December 2005, I together with my brother Carmelo Iringan, went to the office of Atty. Clayton B. Gumangan, for the purpose of executing a Contract of Lease, over my two storey building, located at Bulanao, Tabuk City, Kalinga;

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[15] *Id*. at 22.

[16] *Id*. at 29-30.

2. That after we came to the terms and conditions of the Contract of Lease, Atty. Gumangan, prepared the same, and explained the contents thereof to us in Ilokano dialect;

x x x x x x x x x

5. That after we had affixed our signatures, Atty. Gumangan required us to present our community tax certificates, but we have none that time;

6. That Atty. Gumangan, directed us to secure a cedula, but considering that it was then a Friday and the 30th of December 2005, we told him that we will just secure our community tax certificates, on the following working day which is [in] January of 2006;

7. That I then entered the number of my community tax certificate the date of its issuance and place of issuance on the 17th of January 2006;

8. That considering that Carmelo Iringan is my very own brother, I no longer [asked] him to secure his community tax certificate for the purpose of entering its number, date of issue and place of issue, in our Contract of Lease as directed by Atty. Gumangan[;]

9. That I hereby state that I and my very own brother CARMELO IRINGAN, together with our witnesses are personally present before Atty. Gumangan, when we [executed] our contract of lease[.]

In addition, Atty. Gumangan belied Carmelo's claim that they do not know each other prior to Civil Case No. 518-09. According to Atty. Gumangan, after Renato and Carmelo executed the Contract of Lease before him, he frequented Emilia's Kitchenette, which was only 500 meters away from the RTC, and Tabuk City, Kalinga is a small community where almost everyone know each other.

Atty. Gumangan also argued that the Contract of Lease was not the principal subject of Civil Case No. 518-09. Civil Case No. 518-09 was for Illegal Detainer and Ejectment with Damages filed by Renato against Carmelo because of the latter's failure to vacate the premises. It was Carmelo who alleged that the

Contract of Lease between him and Renato was spurious, but both the MTCC and the RTC found that the notarized Contract was a public document which needed no further proof of its content and was entitled to much faith and confidence, absent clear evidence to the contrary.

Lastly, Atty. Gumangan submitted the Affidavit[17] dated July 21, 2009 of one Margielyn Narag (Narag), Carmelo's employee at Emilia's Kitchenette from July 2008 to June 2009. Narag recalled in her Affidavit that in June 2009, she saw Carmelo practicing his signature on a blank yellow pad paper, while his niece, Ines Gammad (Gammad) watched. After sometime, Gammad went over Carmelo's signatures and said, "*kitaem sabalin ti pirmam,*" which meant, "look[,] your signatures are now different."

In a Resolution[18] dated October 11, 2010, the Court referred the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The IBP Commission on Bar Discipline set the case for mandatory conference on June 8, 2011. Only Carmelo and his counsel appeared for the scheduled mandatory conference. In his Order[19] dated June 8, 2011, Commissioner (Com.) Hector B. Almeyda (Almeyda) granted Carmelo's motion and instead of resetting the mandatory conference, directed the parties to submit their respective position papers within 40 days, without prejudice to the submission of a comment or reply to the other party's position paper within 10 days from receipt; and provided that, thereafter, the case would be deemed submitted for report and recommendation.

Com. Almeyda rendered his Report and Recommendation[20] on December 7, 2011 finding that:

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[17] *Id*. at 52.

[18] *Id*. at 54.

[19] *Id*. at 68.

[20] *Id*. at 126-130.

The existence and execution of the lease contract between [Carmelo] and his brother Renato appears to be an established fact. Not only was the agreement between the brothers given recognition by a couple of courts (MTC of Tabuk City and the Regional Trial Court of Tabuk City), [Carmelo], other than the self-serving claim that he did not appear at the signing, completely failed to deny that his signature on the contract of lease was not his or otherwise forged. The validity of the contract of lease, absent clear evidence of its non-execution in the face of document/affidavits that quite clearly showed the contrary, established the fact of execution.

There is one other matter [though] that needs some discussion. Sustaining the validity of the contract of lease notwithstanding, [Atty. Gumangan] must be held responsible for the execution of that document that is incomplete due to the absence and/or questionable CTC's of the parties. Add to that the admitted failure of [Atty. Gumangan] to make his notarial report, and even on the assumption that he filed his notarial report, he failed to include in his notarial report the contract of lease as among those he notarized. The violation of the notarial law and the liability of [Atty. Gumangan] in this regard is obvious.

In the end, Com. Almeyda recommended:

WHEREFORE, it is respectfully recommended that the complaint for disbarment on the grounds relied on be dismissed for insufficiency of merit to sustain the plea for disbarment and/or suspension. But [Atty. Gumangan] is advised to be a bit more circumspect in the performance of his duties as a lawyer so that he is warned that a repetition of a similar lapse will be dealt with more serious sanctions.

Due to the incompleteness in the preparation of the contract of lease, [Atty. Gumangan's] commission as notary public is recommended to be revoked upon notice and he is further recommended to be disqualified to act as notary public for the next two (2) years.[21]

In its Resolution No. XX-2013-415[22] dated April 15, 2013, the IBP Board of Governors unanimously adopted and approved Com. Almeyda's Report and Recommendation.

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[21] *Id*. at 130.

[22] *Id*. at 125.

The Court wholly agrees with the findings and recommendations of Com. Almeyda and the IBP Board of Governors.

The Contract of Lease was executed by Renato and Carmelo on December 30, 2005 and notarized by Atty. Gumangan on even date. During said time, the 2004 Rules on Notarial Practice[23] still applied.

The 2004 Rules on Notarial Practice required the notary public to maintain a notarial register with the following information:

RULE VI
Notarial Register

x x x x x x x x x

Sec. 2. *Entries in the Notarial Register.* — (a) For every notarial act, the notary shall record in the notarial register at the time of notarization the following:

(1) the entry number and page number;

(2) the date and time of day of the notarial act;

(3) the type of notarial act;

(4) the title or description of the instrument, document or proceeding;

(5) the name and address of each principal;

(6) the competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary;

(7) the name and address of each credible witness swearing to or affirming the person's identity;

(8) the fee charged for the notarial act;

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

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

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[23] A.M. No. 02-8-13-SC, which took effect on August 1, 2004.

Highlighting the importance of the requirement of competent evidence of identity of the parties, the 2004 Rules on Notarial Practice explicitly prohibited the notary public, who did not personally know the parties, from notarizing an instrument or document without the same, thus:

RULE IV
Powers and Limitations of Notaries Public

x x x x x x x x x

Sec. 2. *Prohibitions*. — x x x

x x x x x x x x x

(b) A person **shall not perform a notarial act** if the person involved as signatory to the instrument or document —

x x x x x x x x x

2. Is **not personally known to the notary public** or otherwise identified by the notary public through **competent evidence of identity** as defined by these Rules. (Emphases supplied.)

The 2004 Rules on Notarial Practice defined "competent evidence of identity" as follows:

RULE II
Definitions

x x x x x x x x x

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

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

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

Atty. Gumangan herein violated the 2004 Rules on Notarial Practice by notarizing the Contract of Lease on December 30,

2005 without competent evidence of identity of Renato and Carmelo and, thus, committing an expressly prohibited act under the Rules.

Atty. Gumangan did not allege that he personally knew Renato and Carmelo when they appeared before him on December 30, 2005 for the notarization of the Contract of Lease. There was no showing that Renato and Carmelo presented current identification documents issued by an official agency bearing their photographs and signatures before Atty. Gumangan notarized their Contract of Lease. Langgaman and Padua witnessed Renato and Carmelo signing the Contract of Lease in person at Atty. Gumangan's office, but they did not attest under oath or affirmation that they personally knew Renato and Carmelo, and neither did they present their own documentary identification.

According to Renato, Atty. Gumangan asked them to present their CTCs, but neither Renato nor Carmelo had CTCs at that moment. Renato only secured a CTC on January 17, 2006, which he belatedly presented to Atty. Gumangan for recording.

CTCs no longer qualifies as competent evidence of the parties' identity as defined under Rule II, Section 12 of the 2004 Rules on Notarial Practice. In *Baylon v. Almo*,[24] considering the ease with which a CTC could be obtained these days and recognizing the established unreliability of a CTC in proving the identity of a person who wishes to have his document notarized, the Court did not include the CTC in the list of competent evidence of identity that notaries public should use in ascertaining the identity of persons appearing before them to have their documents notarized.[25] Worse, neither Renato nor Carmelo had CTCs with

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[24] 578 Phil. 238, 242 (2008).

[25] Subsequently, in a Resolution dated February 19, 2008 in A.M. No. 02-8-13-SC, the Court amended Rule II, Section 12(a) of the 2004 Rules on Notarial Practice to read:

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

them on December 30, 2005, yet, Atty. Gumangan still proceeded with notarizing the Contract of Lease, allowing Renato to belatedly present his CTC weeks later, while Carmelo did not present any CTC at all.

Moreover, the 2004 Rules on Notarial Practice also prescribed:

RULE VI
Notarial Register

x x x x x x x x x

Sec. 2. *Entries in the Notarial Register.* – x x x

x x x x x x x x x

(d) **When the instrument or document is a contract**, the notary public shall keep an original copy thereof as part of his records and enter in said records a brief description of the substance thereof and shall give to each entry a consecutive number, beginning with number one in each calendar year. **He shall also retain a duplicate original copy for the Clerk of Court.**

x x x x x x x x x

(h) **A certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before the notary public shall, within the first ten (10) days of the month following, be forwarded to the Clerk of Court** and shall be under the responsibility of such officer. If there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of certified copies herein required. (Emphases supplied.)

(a) at least one current identification document issued by an official agency, bearing the photograph and signature of the individual, such as but not limited to, passport, driver's license, Professional Regulation Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification[.]

Per Atty. Andomang's Affidavit dated September 3, 2009, Atty. Gumangan did not submit to the RTC Clerk of Court his Notarial Report and a duplicate original of the Contract of Lease dated December 30, 2005 between Renato and Carmelo. Atty. Gumangan did not dispute Atty. Andomang's Affidavit nor provide any explanation for his failure to comply with such requirements.

In *Agagon v. Bustamante*,[26] which involved closely similar administrative infractions by therein respondent, Atty. Artemio F. Bustamante, the Court stressed the importance of the notary public's compliance with the formalities for notarization of documents:

> There is no doubt that respondent violated the Code of Professional Responsibility and the Notarial Law when he failed to include a copy of the Deed of Sale in his Notarial Report and for failing to require the parties to the deed to exhibit their respective community tax certificates. Doubts were cast as to the existence and due execution of the subject deed, thus undermining the integrity and sanctity of the notarization process and diminishing public confidence in notarial documents since the subject deed was introduced as an annex to the Affidavit of Title/Right of Possession of Third Party Claimant relative to NLRC Case No. RAB-CAR-12-0672-00.
>
> A notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgment and affirmation of a document or instrument. In the performance of such notarial acts, the notary public must be mindful of the significance of the notarial seal as affixed on a document. The notarial seal converts the document from private to public, after which it may be presented as evidence without need for proof of its genuineness and due execution. Thus, notarization should not be treated as an empty, meaningless, or routinary act. As early as *Panganiban v. Borromeo*, we held that notaries public must inform themselves of the facts which they intend to certify and to take no part in illegal transactions. They must guard against any illegal or immoral arrangements.

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[26] 565 Phil. 581, 586-587 (2007). Note that the subject Deed of Sale in the case was notarized in 2000, prior to the effectivity of the 2004 Rules on Notarial Practice, when parties were required to present only their CTCs before the notary public.

It cannot be overemphasized that notarization of documents is not an empty, meaningless or routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. It is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without need of preliminary proof of authenticity and due execution. Indeed, a notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe utmost care in complying with the elementary formalities in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

Canon 1 of the Code of Professional Responsibility requires every lawyer to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes. Moreover, the Notarial Law and the 2004 Rules on Notarial Practice require a duly commissioned notary public to make the proper entries in his Notarial Register and to refrain from committing any dereliction or act which constitutes good cause for the revocation of commission or imposition of administrative sanction. Unfortunately, respondent failed in both respects. (Citations omitted.)

A lawyer, who is also commissioned as a notary public, is mandated to discharge with fidelity the sacred duties appertaining to his office, such duties being dictated by public policy and impressed with public interest. Faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment are sacrosanct. A notary public cannot simply disregard the requirements and solemnities of the Notarial Law.[27]

Clearly, herein, Atty. Gumangan — in notarizing the Contract of Lease without competent evidence of the identity of Renato and Carmelo, and in failing to submit to the RTC Clerk of Court his Notarial Report and a duplicate original of the Contract of Lease — had been grossly remiss in his duties as a notary public and as a lawyer, consequently, undermining the faith and confidence of the public in the notarial act and/or notarized documents.

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

Therefore, in light of the foregoing, the Court holds Atty. Gumangan administratively liable and imposes upon him the penalty of suspension of his notarial commission for two years.

As a last note, the Court points out that its judgment in the present case does not touch upon the execution and existence of the Contract of Lease between Renato and Carmelo, facts which the MTCC found sufficiently established in its Decision dated September 24, 2009 in Civil Case No. 518-09, and affirmed on appeal by the RTC in its Decision dated May 25, 2010. Such factual findings of the MTCC and RTC were not based solely on the irregularly-notarized Contract of Lease between Renato and Carmelo, but also on the consistent declarations of Renato, Atty. Gumangan, and the two impartial witnesses, Langgaman and Padua, that Renato and Carmelo personally appeared and signed said Contract of Lease at the office and in the presence of Atty. Gumangan on December 30, 2005. Carmelo's self-serving denial, averments of irregularities in the notarization of the Contract of Lease, and presentation of Atty. Andomang's Affidavit dated September 3, 2009 were deemed insufficient by the MTCC and the RTC to refute such factual findings.

It is worthy to mention that any defect in the notarization of the Contract of Lease did not affect its validity and it continued to be binding between the parties to the same, namely, Renato and Carmelo. The irregularity in the notarization was not fatal to the validity of the Contract of Lease since the absence of such formality would not necessarily invalidate the lease, but would merely render the written contract a private instrument rather than a public one.[28] In addition, parties who appear before a notary public to have their documents notarized should not be expected to follow up on the submission of the notarial reports. They should not be made to suffer the consequences of the negligence of the notary public in following the procedures prescribed by the Notarial Law.[29]

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[28] See *Pontigon v. Heirs of Meliton Sanchez*, G.R. No. 221513, December 5, 2016.

[29] *Destreza v. Riñoza-Plazo*, 619 Phil. 775, 782-783 (2009).

Hence, the ruling of the Court in the present administrative case, essentially addressing the defects in the notarization of the Contract of Lease dated December 30, 2005 between Renato and Carmelo and Atty. Gumangan's failings as a notary public, should not affect the judgment rendered against Carmelo in Civil Case No. 518-09, the unlawful detainer case.

WHEREFORE, respondent Atty. Clayton B. Gumangan is found **GUILTY** of violating the Notarial Law, the 2004 Rules on Notarial Practice, and the Code of Professional Responsibility. His incumbent commission as notary public, if any, is **REVOKED**, and he is **PROHIBITED** from being commissioned as a notary public for two (2) years, effective immediately. He is **DIRECTED** to report the date of his receipt of this Decision to enable this Court to determine when his suspension shall take effect. He is finally **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to respondent Atty. Clayton B. Gumangan's personal record as member of the Bar. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, Jardeleza, and *Tijam, JJ.,* concur.

FIRST DIVISION

[A.C. No. 10245. August 16, 2017]

ELIBENA A. CABILES, *complainant, vs.* **ATTY. LEANDRO S. CEDO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; FAILURE TO COMPLY WITH THE MANDATORY CONTINUING LEGAL EDUCATION (MCLE) REQUIREMENT CONSTITUTES VIOLATION OF CANON 5 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** Bar Matter 850 mandates continuing legal education for IBP members as an additional requirement to enable them to practice law. This is "to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law." Non-compliance with the MCLE requirement subjects the lawyer to be listed as a delinquent IBP member. x x x In the present case, respondent lawyer failed to indicate in the pleadings filed in the said labor case the number and date of issue of his MCLE Certificate of Compliance for the Third Compliance Period, *i.e.*, from April 15, 2007 to April 14, 2010, considering that NLRC NCR Case No. 00-11-16153-08 had been pending in 2009. In fact, upon checking with the MCLE Office, Elibena discovered that respondent lawyer had failed to comply with the three MCLE compliance periods. For this reason, there is no doubt that respondent lawyer violated Canon 5 [of the Code of Professional Responsibility].

2. **ID.; ID.; GROSS NEGLIGENCE IN PROSECUTING AND DEFENDING THE INTEREST OF THE CLIENT AND FAILURE TO RENDER LEGAL SERVICES DESPITE RECEIPT OF ACCEPTANCE FEES AMOUNT TO VIOLATION OF CANONS 17 AND 18 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** The circumstances of this case indicated that respondent lawyer was guilty of gross negligence for failing to exert his utmost best in prosecuting and in defending the interest of his client. Hence, he is guilty of the following: 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. CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE. x x x Furthermore, respondent lawyer's act of receiving an acceptance fee for legal services, only to subsequently fail to render such service at the appropriate time, was a clear violation of Canons 17 and 18 of the Code of Professional Responsibility.

3. ID.; ID.; ID.; PENALTY OF ONE YEAR SUSPENSION FROM THE PRACTICE OF LAW, IMPOSED.— "[T]he appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts." Given herein respondent lawyer's failure to maintain a high standard of legal proficiency with his refusal to comply with the MCLE as well as his lack of showing of his fealty to Elibena's interest in view of his lackadaisical or indifferent approach in handling the cases entrusted to him, we find it apt and commensurate to the facts of the case to adopt the recommendation of the IBP to suspend him from the practice of law for one year.

D E C I S I O N

DEL CASTILLO, *J.*:

Complainant Elibena Cabiles (Elibena) filed this administrative complaint[1] before the Integrated Bar of the Philippines (IBP) seeking the disbarment of Atty. Leandro Cedo (respondent lawyer) for neglecting the two cases she referred to him to handle.

The Facts

According to Elibena, she engaged the services of respondent lawyer to handle an illegal dismissal case, *i.e.*, NLRC NCR Case No. 00-11-16153-08 entitled "Danilo Ligbos v. Platinum Autowork and/or Even Cabiles and Rico Guido," where therein respondents were Elibena's business partners. Respondent lawyer was paid Php5,500.00[2] for drafting therein respondents' position

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[1] *Rollo*, pp. 2-9.

[2] *Id*. at 10.

paper[3] and Php2,000.00[4] for his every appearance in the NLRC hearings.

During the hearing set on March 26, 2009, only Danilo Ligbos (Danilo), the complainant therein, showed up and submitted his Reply.[5] On the other hand, respondent lawyer did not file a Reply for his clients,[6] despite being paid his appearance fee earlier.[7]

In a Decision[8] dated March 31, 2009, the Labor Arbiter ruled for Danilo, and ordered the clients of respondent lawyer to pay Danilo backwages, separation pay, and 13th month pay.

Worse still, on October 27, 2009, the NLRC likewise dismissed the appeal of the clients of respondent lawyer for failure to post the required cash or surety bond, an essential requisite in perfecting an appeal.[9]

According to Elibena, respondent lawyer misled them by claiming that it was Danilo who was absent during the said hearing on March 26, 2009; and that moreover, because of the failure to submit a Reply, they were prevented from presenting the cash vouchers[10] that would refute Danilo's claim that he was a regular employee.

With regard to the non-perfection of the appeal before the NLRC, Elibena claimed that respondent lawyer instructed them (his clients) to pick up the said Memorandum only on the last

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[3] *Id*. at 11-15.

[4] *Id*. at 17. One instance in which Atty. Cedo was paid the amount was on March 6, 2009, when he received from Platinum Autowork Php2,000.00 labeled as "Attorney's Fees."

[5] *Id*. at 23.

[6] *Id*. at 28, as pointed out in the Labor Arbiter's Decision.

[7] *Id*. at 19.

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

[9] *Id*. at 37-41.

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

day to file the appeal, *i.e.*, on May 28, 2009; that the memorandum was ready for pick up only at around 2:30 p.m. that day; that left to themselves, with no help or assistance from respondent lawyer, they rushed to file their appeal with the NLRC in Quezon City an hour later; that the NLRC Receiving Section informed them that their appeal was incomplete, as it lacked the mandatory cash/surety bond, a matter that respondent lawyer himself did not care to attend to; and, consequently, their appeal was dismissed for non-perfection.

Elibena moreover claimed that respondent lawyer failed to indicate his Mandatory Continuing Legal Education (MCLE) compliance[11] in the position paper and in the memorandum of appeal that he prepared. Elibena pointed to a certification[12] issued on June 29, 2010 by the MCLE Office that respondent lawyer had not at all complied with the first, second, and third compliance periods[13] of the (MCLE) requirement.

Elibena also averred that in May 2009, she hired respondent lawyer to file a criminal case for unjust vexation against Emelita Claudit; that as evidenced by a May 5, 2009 handwritten receipt,[14] she paid respondent lawyer his acceptance fees, the expenses for the filing of the case, and the appearance fees totalling Php45,000.00; and that in order to come up with the necessary

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[11] In violation of Bar Matter No. 1922 dated June 3, 2008. The pertinent portion which states:

x x x x x x x x x

The Court further Resolved, upon the recommendation of the Committee on Legal Education and Bar Matters, to **REQUIRE** practicing members of the bar to **INDICATE** in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, as may be applicable, for the immediately preceding compliance period. x x x

[12] *Rollo*, p. 82.

[13] 1st Compliance Period was from April 15, 2001 to April 14, 2004; 2nd Compliance Period was from April 15, 2004 to April 14, 2007; and the Third Compliance Period was from April 15, 2007 to April 14, 2010.

[14] *Rollo*, p. 44.

amount, she sold to respondent lawyer her 1994 Model Mitsubishi Lancer worth Php85,000.00, this sale being covered by an unnotarized Deed of Sale[15] dated August 1, 2009.

Elibena claimed that, despite payment of his professional fees, respondent lawyer did not exert any effort to seasonably file her Complaint for unjust vexation before the City Prosecutor's Office; that the Office of the City Prosecutor of Muntinlupa City dismissed her Complaint for unjust vexation on September 10, 2009 on the ground of prescription; and that although she moved for reconsideration of the Order dismissing the case, her motion for reconsideration was denied by the City Prosecutor's Office in a resolution dated October 19, 2009.[16]

In his Answer,[17] respondent lawyer argued that the March 26, 2009 hearing was set to provide the parties the opportunity either to explore the possibility of an amicable settlement, or give time for him (respondent lawyer) to decide whether to file a responsive pleading, after which the case would be routinely submitted for resolution, with or without the parties' further appearances. As regards the cash vouchers, respondent lawyer opined that their submission would only contradict their defense of lack of employer-employee relationship. Respondent lawyer likewise claimed that Elibena was only feigning ignorance of the cost of the appeal bond, and that in any event, Elibena herself could have paid the appeal bond. With regard to Elibena's allegation that she was virtually forced to sell her car to respondent lawyer to complete payment of the latter's professional fee, respondent lawyer claimed that he had fully paid for the car.[18]

Respondent lawyer did not refute Ebilena's claim that he failed to indicate his MCLE compliance in the position paper and in the memorandum of appeal.

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[15] *Id*. at 54.

[16] *Id*. at 45.

[17] *Id*. at 56-59.

[18] *Id*. at 49-52.

The IBP's Report and Recommendation

In a May 18, 2011 Report and Recommendation,[19] the Investigating Commissioner found respondent lawyer guilty of having violated Canons 5, 17, and 18 of the Code of Professional Responsibility and recommended his suspension from the practice of law for two years. Aside from respondent lawyer's failure to comply with the MCLE requirements, the Investigating Commissioner also found him grossly negligent in representing his clients, particularly (1) in failing to appear on the March 26, 2009 hearing in the NLRC, and file the necessary responsive pleading; (2) in failing to advise and assist his clients who had no knowledge of, or were not familiar with, the NLRC rules of procedure, in filing their appeal and; 3) in failing to file seasonably the unjust vexation complaint before the city prosecutor's office, in consequence of which it was overtaken by prescription.

In its March 20, 2013 Resolution, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation, but modified the recommended administrative sanction by reducing the suspension to one year.

The Court's Ruling

We adopt the IBP's finding that respondent lawyer violated the Code of Professional Responsibility. We also agree with the recommended penalty.

Violation of Canon 5

Firstly, Bar Matter 850 mandates continuing legal education for IBP members as an additional requirement to enable them to practice law. This is "to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law."[20] Non-compliance with the MCLE requirement subjects

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[19] *Id*. at 89-98.

[20] *Arnado v. Adaza*, A.C. No. 9834, August 26, 2015, 768 SCRA 172, 179-180.

the lawyer to be listed as a delinquent IBP member.[21] In *Arnado v. Adaza,*[22] we administratively sanctioned therein respondent lawyer for his non-compliance with four MCLE Compliance Periods. We stressed therein that in accordance with Section 12(d) of the MCLE Implementing Regulations,[23] even if therein respondent attended an MCLE Program covered by the Fourth Compliance Period, his attendance therein would only cover his deficiency for the First Compliance Period, and he was still considered delinquent and had to make up for the other compliance periods. Consequently, we declared respondent lawyer therein a delinquent member of the IBP and suspended him from law practice for six months or until he had fully complied with all the MCLE requirements for all his non-compliant periods.

In the present case, respondent lawyer failed to indicate in the pleadings filed in the said labor case the number and date of issue of his MCLE Certificate of Compliance for the Third Compliance Period, *i.e.*, from April 15, 2007 to April 14, 2010, considering that NLRC NCR Case No. 00-11-16153-08 had

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[21] Bar Matter 850, Rule 13, Section 2. *Listing as delinquent member.* — A member who fails to comply with the requirements after the sixty (60) day period for compliance has expired, shall be listed as a delinquent member of the IBP upon the recommendation of the MCLE Committee. The investigation of a member for non-compliance shall be conducted by the IBP's Commission on Bar Discipline as a fact-finding arm of the MCLE Committee.

[22] *Supra* at 180.

[23] d. A member failing to comply with the continuing legal education requirement will receive a Non-Compliance Notice stating his specific deficiency and will be given sixty (60) days from the receipt of the notification to explain the deficiency or otherwise show compliance with the requirements. x x x

x x x x x x x x x

The Member may use the 60-day period to complete his compliance with the MCLE requirement. **Credit units earned during this period may only be counted toward compliance with the prior compliance period requirement unless units in excess of the requirement are earned, in which case the excess may be counted toward meeting the current compliance period requirement.** (Emphasis ours)

been pending in 2009. In fact, upon checking with the MCLE Office, Elibena discovered that respondent lawyer had failed to comply with the three MCLE compliance periods. For this reason, there is no doubt that respondent lawyer violated Canon 5, which reads:

CANON 5 — A LAWYER SHALL KEEP ABREAST OF LEGAL DEVELOPMENTS, PARTICIPATE IN CONTINUING LEGAL EDUCATION PROGRAMS, SUPPORT EFFORTS TO ACHIEVE HIGH STANDARDS IN LAW SCHOOLS AS WELL AS IN THE PRACTICAL TRAINING OF LAW STUDENTS AND ASSIST IN DISSEMINATING INFORMATION REGARDING THE LAW AND JURISPRUDENCE.

Violation of Canons 17 and 18 and Rule 18.03

The circumstances of this case indicated that respondent lawyer was guilty of gross negligence for failing to exert his utmost best in prosecuting and in defending the interest of his client. Hence, he is guilty of the following:

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.

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.

Furthermore, respondent lawyer's act of receiving an acceptance fee for legal services, only to subsequently fail to render such service at the appropriate time, was a clear violation of Canons 17 and 18 of the Code of Professional Responsibility.[24]

Respondent lawyer did not diligently and fully attend to the cases that he accepted, although he had been fully compensated

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[24] *Emiliano Court Townhouses Homeowners Association v. Atty. Dioneda*, 447 Phil. 408, 413 (2003).

for them. First off, respondent lawyer never successfully refuted Elibena's claim that he was paid in advance his Php2,000.00 appearance fee on March 21, 2009 for the scheduled hearing of the labor case on March 26, 2009, during which he was absent. Furthermore, although respondent lawyer had already received the sum of Php45,000.00 to file an unjust vexation case, he failed to promptly file the appropriate complaint therefor with the City Prosecutor's Office, in consequence of which the crime prescribed, resulting in the dismissal of the case.

We have held that:

> Case law further illumines that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to the counsel's care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so.
>
> Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation.[25]

"[A] lawyer 'is expected to exert his best efforts and [utmost] ability to [protect and defend] his client's cause, for the unwavering loyalty displayed to his client likewise serves the ends of justice.'"[26] However, in the two cases for which he was duly compensated, respondent lawyer was grossly remiss in his duties as counsel. He exhibited lack of professionalism, even indifference, in the defense and protection of Elibena's rights which resulted in her losing the two cases.

With regard to the labor case for which he opted not to file a Reply and refused to present the cash vouchers which, according

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[25] *Caranza Vda. de Saldivar v. Atty. Cabanes, Jr.*, 713 Phil. 530, 538 (2013).

[26] *Mattus v. Atty. Villaseca*, 718 Phil. 478, 483 (2013).

to Elibena, ought to have been submitted to the NLRC, we hold that even granting that he had the discretion being the handling lawyer to present what he believed were available legal defenses for his client, and conceding, too, that it was within his power to employ an allowable legal strategy, what was deplorable was his way of handling the appeal before the NLRC. Aside from handing over or delivering the requisite pleading to his clients almost at the end of the day, at the last day to file the appeal before the NLRC, he never even bothered to advise Elibena and the rest of his clients about the requirement of the appeal bond. He should not expect Elibena and her companions to be conversant with the indispensable procedural requirements to perfect the appeal before the NLRC. If the averments in his Answer are any indication, respondent lawyer seemed to have relied heavily on the NLRC's much vaunted 'leniency' in gaining the successful prosecution of the appeal of his clients in the labor case; no less censurable is his propensity for passing the blame onto his clients for not doing what he himself ought to have done. And, in the criminal case, he should have known the basic rules relative to the prescription of crimes that operate to extinguish criminal liability. All these contretemps could have been avoided had respondent lawyer displayed the requisite zeal and diligence.

As mentioned earlier, the failure to comply with the MCLE requirements warranted a six-month suspension in the *Adaza* case. Respondent lawyer must likewise be called to account for violating Canons 17, 18, and Rule 18.03. In one case involving violation of Canons 17 and 18 where a lawyer failed to file a petition for review with the Court of Appeals, the lawyer was penalized with a six-month suspension.[27] In another case,[28] involving transgression of the same Canons, the guilty lawyer was meted out the penalty of suspension from the practice of law for a period of six months and admonished and sternly warned that a commission of the same or similar acts would be dealt with more severely.

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[27] *Abiero v. Atty. Juanino*, 492 Phil. 149, 159 (2005).

[28] *Penilla v. Atty. Alcid, Jr.*, 717 Phil. 210, 223 (2013).

"[T]he appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts."[29] Given herein respondent lawyer's failure to maintain a high standard of legal proficiency with his refusal to comply with the MCLE as well as his lack of showing of his fealty to Elibena's interest in view of his lackadaisical or indifferent approach in handling the cases entrusted to him, we find it apt and commensurate to the facts of the case to adopt the recommendation of the IBP to suspend him from the practice of law for one year.

WHEREFORE, respondent Atty. Leandro S. Cedo is hereby found **GUILTY** of violating Canons 5, 17, 18, and Rule 18.03 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of one (1) year effective upon receipt of this Decision, and warned that a repetition of the same or a similar act will be dealt with more severely.

Let a copy of this Decision be attached to Atty. Cedo's personal record as attorney-at-law. Further, let copies of this Decision be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate said copies to all courts in the country for their information and guidance.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.,* concur.

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[29] *Fabie v. Real*, A.C. No. 10574, September 20, 2016.

FIRST DIVISION

[G.R. No. 195457. August 16, 2017]

READ-RITE PHILIPPINES, INC., *petitioner, vs.* **GINA G. FRANCISCO, MAXIMINO H. REYES, LUCIA E. MACHADO, IRENE G. ABANILLA, EDNA L. GUAVES, ARLENE FRANCISCO, JOSEPHINE V. TRINIDAD, MARILYN E. AMPARO, SOLITA F. SANTOS, ELLEN T. CASTILLO, ROSALIE VALDEABELLA, MARITA E. RIVERA, JULITA M. MAGNO, MARCIA P. DELA TORRE, ELENA ANGCAHAN, ESTER H. REYES, CORAZON ARMADILLA, IRMA A. PEREGRINO, DELFIN D. DUBAN, AMANCIA PRADO, CECILIA D. NABUA, DANNY A. CABUCOY, ELIZABETH R. REVELLAME, ELVIRA R. MAGNO, GIERLYN R. VILLANUEVA, JEANETTE GAA LEGASPI, GREGORIA I. MARASIGAN, JOHN JOSEPH R. MAGNO, LODELYN P. CASTILLO, JUSTINA TORTOSA, LENY M. ZARENO, LOIDA E. ESTOMATA, MA. BASILIA DE LA ROSA, MA. GRACIA DE GUZMAN, MA. NENITA G. CASTILLO, MERCEDARIO A. MARTINEZ, NORA M. PAVELON, PRECILLA D. MAGBITANG, RAQUEL CABUCOY, REGAL M. ALFARO, RIZA UMANDAP, ROSALITA R. MANLUNAS, ROSEMARIE C. LEYVA, ROSSANA M. YUMOL, SENETA SERENO, VILMA R. MANALO, YOLANDA Y. MANGAOANG, GLORIA BARSOLASCO and NENA M. REYES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; RETRENCHMENT; RESPONDENTS, BEING RETRENCHED EMPLOYEES, ARE ENTITLED ONLY TO INVOLUNTARY SEPARATION BENEFITS UNDER THE COMPANY'S COMPENSATION AND BENEFITS MANUAL AND THE RETIREMENT PLAN.— Respondents never disputed the fact that they were

retrenched employees of Read-Rite and they were accordingly paid **involuntary separation benefits** of one month pay per year of service. They, however, claim similar entitlement to **voluntary separation benefits** under Read-Rite's Compensation and Benefits Manual. To our mind, the Labor Arbiter and the NLRC were correct in ruling that voluntary and involuntary separation benefits are distinct from one another. The same are embodied in separate provisions of both the Compensation and Benefits Manual, upon which the respondents base their claim, and the Read-Rite Retirement Plan, which the Court of Appeals cited in its ruling. Respondents' right to voluntary and involuntary separation benefits are governed by the aforementioned instruments. x x x Given the diametrical nature of an involuntary and a voluntary separation from service, one necessarily excludes the other. For sure, an employee's termination from service cannot be voluntary and involuntary *at the same time.* As respondents' termination was involuntary in nature, *i.e.,* by virtue of a retrenchment program undertaken by Read-Rite, they are only entitled to receive **involuntary separation benefits** under the express provisions of the company's Compensation and Benefits Manual and the Retirement Plan.

2. ID.; ID.; ID.; ID.; ID.; PREVIOUS PAYMENT OF ADDITIONAL VOLUNTARY SEPARATION BENEFITS TO RETRENCHED EMPLOYEES ON TOP OF INVOLUNTARY SEPARATION BENEFITS WAS A MISTAKE; RESPONDENTS CANNOT USE SUCH PAYMENT TO BOLSTER THEIR CLAIM TO ADDITIONAL VOLUNTARY SEPARATION BENEFITS. — [T]he Court is more inclined to believe that the payment of additional voluntary separation benefits, on top of involuntary separation benefits, to eight retrenched employees of Read--Rite in April 1999 was indeed a mistake since the same was not in accordance with the company's Compensation and Benefits Manual and its Retirement Plan. In any event, whether said payment was a mistake or otherwise, respondents cannot use the same to bolster their own claim of entitlement to additional voluntary separation benefits.

3. ID.; ID.; ID.; ID.; RESPONDENTS' INDIVIDUAL QUITCLAIMS ARE VALID AND BINDING.— [W]e uphold the ruling of the Labor Arbiter and the NLRC that the respondents' individual quitclaims are valid and binding upon

> them. x x x [T]here is want of proof that respondents were coerced or deceived into signing their individual quitclaims. As consideration therefor, respondents each received involuntary separation benefits of one month pay per year of service. This consideration is reasonable and not unconscionable under the circumstances given that respondents are only entitled thereto[.]

APPEARANCES OF COUNSEL

Dela Rosa and Nograles for petitioner.
Tagle-Chua Cruz & Aquino for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this petition for review on *certiorari*,[1] petitioner Read-Rite Philippines, Inc. (Read-Rite) seeks to annul and set aside the Decision[2] dated June 17, 2010 and the Resolution[3] dated February 2, 2011 of the Court of Appeals in CA-G.R. SP No. 104622.

The Facts

During the time material to this case, Read-Rite was a duly registered domestic corporation engaged in the business of manufacturing magnetic heads for use in computer hard disks.[4]

In the Compensation and Benefits Manual[5] of Read-Rite's predecessor company, among the benefits that an employee is entitled to are the following:

Voluntary Separation Benefit. Upon separation from employment after rendering at least twenty (20) continuous years of service, an

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[1] *Rollo*, pp. 12-46.

[2] *Id*. at 48-58; penned by Associate Justice Rodil V. Zalameda with Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr. concurring.

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

[4] *Id*. at 71.

[5] *Id.* at 225-253.

employee shall be entitled to a lump sum benefit equal to his full retirement benefit with salary and service calculated as of the date of voluntary separation.

Year of Service	Percentage
Less than 10	0%
10	50%
11	55%
12	60%
13	65%
14	70%
15	75%
16	80%
17	85%
18	90%
19	95%
20	100%

Involuntary Separation Benefit. An employee terminated involuntarily for reasons beyond his control (except for just cause), including but not limited to retrenchment or redundancy, shall be entitled to receive the applicable minimum benefit prescribed by law.[6]

Similarly, in the Retirement Plan[7] subsequently adopted by Read-Rite, Sections 3 and 4 of Article VII (Retirement Benefits) thereof state:

Section 3 - Voluntary Separation Benefit

Upon separation from employment after having rendered ten (10) years of Continuous Service, a Member will receive a lump sum

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[6] *Id*. at 246.

[7] *Id*. at 307-321.

benefit equal his full accrued Normal Retirement Benefit multiplied by the appropriate factor as shown below:

Years of Service	**Factor**
Less than 10	0%
10	50%
11	55%
12	60%
13	65%
14	70%
15	75%
16	80%
17	85%
18	90%
19	95%
20 and up	100%

Section 4 - Involuntary Separation Benefit

A Member terminated involuntarily for reasons beyond his control (except for just cause), including but not limited to retrenchment or redundancy, shall be entitled to receive the applicable minimum benefit prescribed by law on involuntary separation or the benefit computed in accordance with Article VII Section 3 of this Plan, whichever is greater.

Such benefit will be in lieu of and is in full satisfaction of all termination and retirement benefits which the Employee may be entitled to under the labor laws of the Republic of the Philippines and benefits under this Plan.[8]

In April 1999, Read-Rite began implementing a retrenchment program due to serious business losses. About 200 employees were terminated and they were each given **involuntary separation**

[8] *Id*. at 314-315.

benefits equivalent to one month pay per year of service. From this first batch of retrenched employees, however, there were eight employees — who had rendered at least ten years of service — that apparently received additional **voluntary separation benefits**.[9]

Eventually, Read-Rite embarked on another round of retrenchment beginning the last quarter of 1999. Most of the 49 respondents in this case were part of this second batch of retrenched employees.

All of the respondents received involuntary separation benefits equivalent to one month pay per year of service. Accordingly, they each executed a Release, Waiver and Quitclaim[10] (quitclaim),

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[9] The eight employees were identified as Rosalinda Albao, Marie Faythe Floresca, Jenny Dalangin, Sergia Reyes, Manibeth Casanova, Janet Natad, Alfred Sagmaquen, and Rowena Reano (*Rollo*, p. 49).

[10] The basic text of the standard Release, Waiver and Quitclaim reads:

1. I freely, voluntarily and release, remise and forever discharge the Company, its stockholders, its officers, directors, agents or employees from any action, sum of money, damages, claims and demands whatsoever, which in law or in equity I ever had, now have, or which I, my heirs, successors and assigns hereafter may have upon or by reason of any matter, cause or thing whatsoever, up to the time of this separation, the intention hereof being to completely and absolutely release the Company, its stockholders, officers, directors, agents or employees from all liabilities arising wholly or partially from my employment therewith.

2. I further warrant and expressly undertake that I will institute no action and will not continue prosecuting pending actions (if one has already been commenced) against the Company. I likewise declare that the payment by said [company] of the foregoing sum of money shall not be taken by me, my heirs or assigns as a confession and/or admission of liability on its part, its stockholders, officers, directors, agents or employees for any matter, cause, demand or damages I may have against any or all of them.

3. I acknowledge that I received all amounts that are now or in the future may be due me. I further declare that during the entire period of my employment, I received and was duly paid all compensation, benefits and privileges to which I was entitled to under all laws and company policies; and if hereafter I may find in any manner to have been entitled to any amount, the above consideration nevertheless is a full and final satisfaction of any or all such undisclosed claims.

which stated, among others, that they had each received from Read-Rite the full payment of all compensation, benefits, and privileges due them and they will not undertake any action against the company to demand further compensation.

In July 2003, Read-Rite sent notices to various government agencies, such as the Securities and Exchange Commission (SEC), the Bureau of Internal Revenue (BIR), and the Department of Labor and Employment (DOLE) Region IV, that the company had ceased its manufacturing operations effective June 18, 2003.[11]

Meanwhile in February 2002 and February 2003, respondents filed complaints against Read-Rite docketed as NLRC Case No. RAB-IV-02-15180-02-L[12] and NLRC Case No. RAB-IV-02-17002-03-L,[13] which were consolidated. Respondents sought the payment of additional **voluntary separation benefits**, legal interest thereon, and attorney's fees. They argued that Read-Rite discriminated against them by not granting the aforesaid benefits, the award of which had since become a company policy.

The Labor Arbiter Ruling

In a **Decision**[14] **dated July 1, 2005**, the Labor Arbiter dismissed the respondents' complaints, ruling that voluntary separation benefits are separate and distinct from involuntary separation benefits. That additional voluntary separation benefits were given once to a few retrenched employees in April 1999 did not convert such grant into a company practice. The isolated payment was no longer given to involuntarily separated employees in

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4. I finally declare that I read this document which has been translated to me in a vernacular I fully understand and which I fluently speak, and I acknowledge that the foregoing release, waiver and quitclaim hereby given are made willingly and voluntarily with full knowledge of my rights under the law. *(Rollo*, pp. 104-149.)

[11] *Rollo*, pp. 323-325.

[12] *Id*. at 157-159.

[13] *Id*. at 181-186.

[14] *Id*. at 393-401; penned by Labor Arbiter Generoso V. Santos.

subsequent rounds of retrenchment as Read-Rite explained that the same was only paid by mistake.

The Labor Arbiter also declared that the respondents' quitclaims were valid and voluntarily executed. Respondents occupied positions that required a certain degree of intelligence and competence such that they must have fully understood the consequences of their signing of the quitclaims. Besides, respondents did not allege that their execution of the quitclaims was vitiated by duress, force, or intimidation. Thus, respondents may no longer pursue any claim of action against Read-Rite.

The NLRC Ruling

On appeal, the National Labor Relations Commission (NLRC) affirmed the above judgment in a **Resolution**[15] **dated December 21, 2007** in NLRC CA No. 046085. The NLRC ruled that respondents were not entitled to additional voluntary separation benefits as the same pertained to employees who have rendered at least ten years of service and who resigned voluntarily. Moreover, involuntarily separated employees cannot avail themselves of both involuntary separation benefits and voluntary separation benefits, unless the same was so expressly provided by Read-Rite's Compensation and Benefits Manual. The NLRC further upheld the Labor Arbiter's position that an isolated payment of additional separation benefits to eight retrenched employees in April 1999 did not ripen into a company policy. The NLRC also bound respondents to their quitclaims absent any proof that the same were executed with vitiated consent.

Respondents sought a reconsideration[16] of the NLRC Resolution, manifesting that in similar labor cases involving other employees of Read-Rite, the Court of Appeals and the Supreme Court allegedly upheld said employees' entitlement to additional voluntary separation benefits.

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[15] *Id*. at 431-437; penned by Commissioner Victoriano R. Calaycay with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan concurring.

[16] *Id*. at 438-447.

Respondents alleged that in a Decision[17] dated October 7, 2005 in CA-G.R. SP No. 73795, entitled *Read-Rite (Phils.), Inc. v. National Labor Relations Commission and Teresa Ayore*, the Court of Appeals affirmed the judgment of the NLRC that ruled in favor of another batch of Read-Rite employees in their pursuit of the same additional voluntary separation benefits sought by herein respondents. Read-Rite did not appeal the appellate court's decision, thus making the same final and executory.

In like manner, respondents argued that the Court of Appeals rendered a Decision dated January 26, 2006 in CA-G.R. SP No. 82463, entitled *Zamora v. Read-Rite Philippines, Inc. and National Labor Relations Commission*, which affirmed the NLRC ruling that awarded additional voluntary separation benefits to yet another set of retrenched Read-Rite employees. Read-Rite elevated the said decision to the Court, but the petition was denied outright in a minute Resolution[18] dated November 12, 2007 in G.R. No. 179022. The resolution became final and executory on March 28, 2008.[19]

Respondents also argued that they had been discriminated upon by Read-Rite in their enjoyment of the additional voluntary separation benefits. Their quitclaims should not be used against them as the same were standard requirements imposed on resigning or separated employees. That they filed their complaints is proof that they did not voluntarily execute their quitclaims.

The NLRC denied the motion in a Resolution[20] dated May 30, 2008.

The Court of Appeals Ruling

Respondents filed a petition for *certiorari*[21] before the Court of Appeals to impugn the judgment of the NLRC. In its assailed

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[17] *Id*. at 583-600.

[18] *Id*. at 653.

[19] *Id*. at 655.

[20] *Id*. at 448-453.

[21] *Id*. at 454-478.

Decision dated June 17, 2010, the Court of Appeals granted the petition.

The Court of Appeals noted that the case involved the same facts and the same employer, *i.e.*, Read-Rite, as that of the *Ayore* and *Zamora* cases. The complainant employees therein sought additional voluntary separation benefits previously granted by Read-Rite to the above-mentioned eight employees who were retrenched in April 1999, arguing that the denial of the benefits constituted undue discrimination. The arguments put forward by the parties in *Ayore* and *Zamora* were found to be the same as the contentions of the herein respondents. Given the said similarities, the Court of Appeals held that the rulings in *Ayore* and *Zamora* must be applied in a similar manner.

The Court of Appeals agreed with Read-Rite that the grant of voluntary separation benefits to eight employees in April 1999 did not turn it into a company practice as it was given only once. Still, the failure of Read-Rite to grant the same to respondents constituted discrimination. The appellate court further rejected Read-Rite's claim that the grant of voluntary separation benefits to the eight retrenched employees in April 1999 was merely made by mistake. As for the quitclaims, the same cannot bar respondents from demanding benefits to which they are legally entitled to.

The appellate court further added that "while the position of [Read-Rite] may be correct under the circumstances,"[22] it was not inclined to revisit its rulings in *Ayore* and *Zamora* especially when the ruling in *Zamora* was affirmed by this Court.

The Court of Appeals, thus, decreed:

> WHEREFORE, premises considered, the Petition is hereby GRANTED. The assailed Resolutions of the NLRC are NULLIFIED and SET ASIDE. [Read-Rite] is ordered to pay each [respondent] the following:
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> (1) Lump sum benefit equal to his/her full retirement benefit as of the date of retrenchment in accordance with Sec. III, Art. VII of the Retirement Plan; and

[22] *Id*. at 57.

(2) Legal interest of six percent (6%) per annum computed from the date of the employee's retrenchment.

Let this case be remanded to the Labor Arbiter for proper computation of the awards.[23]

Read-Rite moved for reconsideration[24] on the above decision, but the same was denied in the assailed **Resolution dated February 2, 2011**.

Hence, Read-Rite filed this petition.

The Arguments of Read-Rite

Read-Rite puts forth the following issue:

May an employer, forced to undergo retrenchment due to serious business losses, be required to still pay Voluntary Separation Benefit after it had already paid Involuntary Separation Benefit (retrenchment pay) to the retrenched employees, simply because it had earlier paid, albeit mistakenly, eight (8) retrenched employees additional Voluntary Separation Benefit?[25]

Read-Rite avers that respondents were separated from service on the ground of retrenchment, which separation was involuntary in nature. Accordingly, they received involuntary separation benefit equivalent to one month pay for every year of service. As such, nothing more is due them. Read-Rite faults the Court of Appeals for awarding to respondents additional voluntary separation benefits in accordance with the rulings in *Ayore* and *Zamora*. This was done despite the fact that the appellate court conceded that Read-Rite's position may be correct.

According to Read-Rite, it cannot be adjudged guilty of undue discrimination as the same must proceed from a deliberate and ill motivated act. There was no intent to favor the eight employees who were retrenched in April 1999, who were mistakenly paid additional voluntary separation benefits, over the other retrenched

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[23] *Id*.

[24] *Id*. at 531-543.

[25] *Id*. at 726.

employees. The company insists that the retrenched employees were only entitled to receive involuntary separation benefits under its Retirement Plan.

As to the individual quitclaims executed by the respondents, Read-Rite contends that they have categorically stated therein that they have discharged the company from any and all liabilities in connection with their former employment. The consideration therefore cannot be considered inadequate or unreasonable as the amount thereof was actually more than the amount required by law in cases of retrenchment.

The Arguments of the Respondents

Respondents pray for the outright dismissal of the petition, given that the same raises a factual issue and that Read-Rite is bound by the final rulings in *Ayore* and *Zamora* on the entitlement to additional voluntary separation pay of retrenched Read-Rite employees who have worked in the company for at least ten years. They argue that Read-Rite should no longer be allowed to re-litigate the same issue.

Respondents further maintain that they were arbitrarily discriminated upon when they were not awarded additional voluntary separation benefits despite being in Read-Rite's employ for at least ten years. They believe that the grant thereof is already an established company practice. They refuse to concede that the payment of additional voluntary separation benefits to the eight retrenched employees in April 1999 was made by mistake.

The Court's Ruling

The petition is meritorious.

At the outset, the Court finds that the instant petition does pose factual issues. In *Century Iron Works, Inc. v. Bañas*,[26] we explained that:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when

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[26] 711 Phil. 576, 585-586 (2013).

the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

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. (Citations omitted.)

In the case before us, there is a need to examine the evidence presented by the parties relative to the entitlement of respondents to the additional voluntary separation benefits they seek. Ordinarily, questions of fact cannot be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, by way of exception, the Court will scrutinize the facts if only to rectify the prejudice and injustice resulting from an incorrect assessment of the evidence presented.[27]

Respondents are only entitled to involuntary separation benefits

The Court rules that respondents are only entitled to involuntary separation pay given that they were retrenched employees.

Retrenchment to prevent losses is one of the authorized causes for an employee's separation from employment. As explained in *Waterfront Cebu City Hotel v. Jimenez*[28]:

Retrenchment is the termination of employment initiated by the employer through no fault of and without prejudice to the employees. It is resorted to during periods of business recession, industrial depression, or seasonal fluctuations or during lulls occasioned by

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[27] *Intel Technology Phils., Inc. v. National Labor Relations Commission*, 726 Phil. 298, 308 (2014).

[28] 687 Phil. 171, 181-182 (2012).

lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery or of automation. It is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business. (Citations omitted.)

Article 283 (now Article 298) of the Labor Code, as amended, recognizes retrenchment as a right of the management to meet clear and continuing economic threats or during periods of economic recession to prevent losses.[29] Said article reads:

ART. 283. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of **retrenchment to prevent losses** and in cases of closures or cessation of operations of establishment or 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.)

Respondents never disputed the fact that they were retrenched employees of Read-Rite and they were accordingly paid **involuntary separation benefits** of one month pay per year of service. They, however, claim similar entitlement to **voluntary separation benefits** under Read-Rite's Compensation and Benefits Manual.

To our mind, the Labor Arbiter and the NLRC were correct in ruling that voluntary and involuntary separation benefits are

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[29] *Plastimer Industrial Corporation v. Gopo*, 658 Phil. 627, 635 (2011).

distinct from one another. The same are embodied in separate provisions of both the Compensation and Benefits Manual, upon which the respondents base their claim, and the Read-Rite Retirement Plan, which the Court of Appeals cited in its ruling. Respondents' right to voluntary and involuntary separation benefits are governed by the aforementioned instruments.[30]

As to **involuntary separation benefits**, the Compensation and Benefits Manual explicitly and specifically states that "an employee terminated involuntarily for reasons beyond his control (except for just cause), including but not limited to retrenchment or redundancy, shall be entitled to receive the applicable minimum benefit prescribed by law."

On the other hand, Section 4, Article VII of the Retirement Plan more emphatically states that a member thereof who is "terminated involuntarily for reasons beyond his control (except for just cause), including but not limited to retrenchment or redundancy, shall be entitled to receive the applicable minimum benefit prescribed by law on involuntary separation or the benefit computed in accordance with Article VII, Section 3 of this Plan, whichever is greater." Section 3, Article VII of the Retirement Plan pertains to voluntary separation benefits.

As to **voluntary separation benefits**, the Compensation and Benefits Manual and Retirement Plan are ostensibly silent as to the conditions for an employee's entitlement thereto, save for the length of the required continuous service. However, by its nomenclature alone, one could easily discern that the award of voluntary separation benefits involves a situation that is opposite of that contemplated in involuntary separation benefits — that is, the employee's separation from employment is by his own choice and/or for reasons within his control. Indeed, the term voluntary is defined as "proceeding from the will or from one's own choice or consent"; "unconstrained by interference"; or "done by design or intention."[31]

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[30] See *Suarez, Jr. v. National Steel Corporation*, 590 Phil. 352 (2008).

[31] <https://www.merriam-webster.com/dictionary/voluntary> (visited June 16, 2017).

Given the diametrical nature of an involuntary and a voluntary separation from service, one necessarily excludes the other. For sure, an employee's termination from service cannot be voluntary and involuntary *at the same time*. As respondents' termination was involuntary in nature, *i.e.*, by virtue of a retrenchment program undertaken by Read-Rite, they are only entitled to receive **involuntary separation benefits** under the express provisions of the company's Compensation and Benefits Manual and the Retirement Plan.

In view of the foregoing discussion, the Court is more inclined to believe that the payment of additional voluntary separation benefits, on top of involuntary separation benefits, to eight retrenched employees of Read-Rite in April 1999 was indeed a mistake since the same was not in accordance with the company's Compensation and Benefits Manual and its Retirement Plan. In any event, whether said payment was a mistake or otherwise, respondents cannot use the same to bolster their own claim of entitlement to additional voluntary separation benefits.

First, the labor tribunals and the Court of Appeals were one in declaring that the single, isolated payment of additional voluntary separation benefits to the eight retrenched employees of Read-Rite in April 1999 did not convert the same into a voluntary company practice that cannot be unilaterally withdrawn by the company. The Court had since declared in *National Sugar Refineries Corporation v. National Labor Relations Commission*[32] that to be considered as a company practice, the grant of benefits should have been practiced over a long period of time, and must be shown to have been consistent and deliberate.

Second, respondents are wrong to insist that they had been discriminated upon by Read-Rite in view of the similarity of their case to that obtaining in *Businessday Information Systems and Services, Inc. v. National Labor Relations Commission*.[33]

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[32] 292-A Phil. 582, 594 (1993).

[33] 293 Phil. 9 (1993).

In said case, Businessday Information Systems and Services, Inc. (BSSI) terminated the services of some of its employees as a retrenchment measure brought about by financial reverses. The retrenched employees were given separation pay equivalent to one-half (½) month pay for every year of service. In an attempt to rehabilitate its business as a trading company, BSSI retained some of its employees. Nonetheless, after only two and a half months, BSSI also terminated their services as it decided to cease all of its business operations. The second and third batches of retrenched employees were then given separation pay equivalent to one full month pay for every year of service and a mid-year bonus.

In granting the claim of the first batch of retrenched BSSI employees, the Court found that "there was impermissible discrimination against [them] in the payment of their separation benefits. The law requires an employer to extend equal treatment to its employees. It may not, in the guise of exercising management prerogatives, grant greater benefits to some and less to others."[34] However, in so ruling, the Court took into account the following findings of the NLRC:

> **The respondent argued that the giving of more separation benefit to the second and third batches of employees separated was their expression of gratitude and benevolence to the remaining employees who have tried to save and make the company viable in the remaining days of operations**. This justification is not plausible. There are workers in the first batch who have rendered more years of service and could even be said to be more efficient than those separated subsequently, yet they did not receive the same recognition. Understandably, their being retained longer in their job and be not included in the batch that was first terminated, was a concession enough and may already be considered as favor granted by the respondents to the prejudice of the complainants. As it happened, there are workers in the first batch who have rendered more years in service but received lesser separation pay, because of that arrangement made by the respondents in paying their termination benefits[.] x x x.[35] (Emphasis supplied, citation omitted.)

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[34] *Id*. at 14.

[35] *Id*.

Clearly, BSSI admitted that it purposely favored the second and third batches of retrenched employees by giving them a higher separation pay and a mid-year bonus as a reward for their efforts during the last days of the company. In contrast to the instant case, however, Read-Rite made no such admission. Quite the opposite, Read-Rite has consistently claimed that the payment of additional voluntary separation benefits to the eight retrenched employees in April 1999 was made by mistake and was no longer repeated in the next batches of retrenchment.

Third, respondents cannot invoke the final rulings in *Ayore* and *Zamora* in order to fetter this Court into dismissing the instant petition.

The final ruling in *Ayore* is a Decision dated October 7, 2005 of the Court of Appeals in CA-G.R. SP No. 73795. As such, it does not establish a doctrine and can only have a persuasive juridical value.[36] Moreover, a close reading of the *Ayore* decision reveals that the same involved an issue that is not present in the instant case, *i.e.*, which appropriate severance package should be applied in computing the retrenched employees' separation benefits.[37] In this case, no such issue was invoked by the parties and none was resolved by the lower courts.

Respondents based their claim of additional voluntary separation benefits on the Compensation and Benefits Manual of Read-Rite's predecessor company, while Read-Rite disputed the claim not only on the basis of the said Manual but also on the company's Retirement Plan. The Court notes that in respondents' reply to Read-Rite's position paper before the Labor Arbiter, they denounced the Retirement Plan cited by Read-Rite as spurious.[38] However, respondents no longer brought up this issue in their memorandum before this Court. Thus, the same is deemed waived. In the Court's resolution that required the parties to submit their respective memoranda, it is explicitly

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[36] See *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 375 Phil. 697, 713 (1999).

[37] *Rollo*, pp. 589-595.

[38] *Id*. at 219-220.

stated that "[n]o new issues may be raised by a party in his/its memorandum, and the issues raised in his/its pleadings but not included in the memorandum shall be deemed waived or abandoned."[39]

As to the final ruling in *Zamora*, the same is a minute resolution of the Court dated November 12, 2007 in G.R. No. 179022 that affirmed the judgment of the Court of Appeals. In *Alonso v. Cebu Country Club, Inc.*,[40] we declared that a minute resolution may amount to a final action on a case, but the same cannot bind non-parties to the action. Further, in *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*,[41] we expounded on the consequence of issuing a minute resolution in this wise:

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
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> With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. **However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent**. x x x. (Emphasis supplied; citations omitted.)

As respondents were not parties in the *Zamora* case in G.R. No. 179022, they cannot rely on the minute resolution therein to obtain a dismissal of the instant petition.

All told, the Court of Appeals erred in denying Read-Rite's petition on the basis of the final rulings in the *Ayore* and *Zamora* cases and in awarding additional voluntary separation benefits

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[39] *Id*. at 678.

[40] 426 Phil. 61, 86 (2002).

[41] 616 Phil. 387, 420-421 (2009).

to respondents on top of the involuntary separation benefits they already received.

The Court agrees with Read-Rite that the award of involuntary separation benefits in favor of respondents should be in accordance with the provisions of not only the Compensation Benefits Manual but also the Read-Rite Retirement Plan. The latter provides for involuntary separation benefit that is equivalent to the applicable minimum benefit prescribed by law on involuntary separation ***or*** the benefit computed in accordance with Section 3, Article VII of the Retirement Plan, ***whichever is greater***. Therefore, the amount of involuntary separation benefits that were awarded to respondents must be in accordance with the above-mentioned provision.

To reiterate, each of the respondents already received involuntary separation benefits of one month pay per year of service. This award is clearly more than that prescribed in Article 283 (now Article 298) of the Labor Code, as amended, which only grants separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher, in cases of retrenchment.

On the other hand, Read-Rite's Retirement Plan provides that an employee's normal retirement benefit shall be equal to twenty-six (26) multiplied by his final basic daily salary (or approximately his one month salary) multiplied by his years of credited service.[42] An employee receives the full amount (or 100%) of the normal retirement benefit if he has at least twenty (20) years of service but only a fraction thereof (ranging from 50%-95%) if he has at least ten (10) but less than twenty (20) years of service. In the case at bar, respondents received their full one month's salary multiplied by their number of years of service, even those who were employed by Read-Rite for less than twenty (20) years.

Verily, respondents were paid involuntary separation benefits which exceeded what they were entitled to under the law or the Compensation Benefits Manual and the Retirement Plan.

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[42] *See* Section 1, Article VII of the Retirement Plan, *rollo* p. 314.

Finally, we uphold the ruling of the Labor Arbiter and the NLRC that the respondents' individual quitclaims are valid and binding upon them. Jurisprudence teaches that:

> Not all quitclaims are *per se* invalid or against policy, except: (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person; or (2) where the terms of settlement are unconscionable on their face; in these cases, the law will step in to annul the questionable transaction. Indeed, there are legitimate waivers that represent a voluntary and reasonable settlement of laborers' claims which should be respected by the Court as the law between the parties. Where 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, and may not later be disowned simply because of a change of mind.[43] (Citations omitted.)

In this case, there is want of proof that respondents were coerced or deceived into signing their individual quitclaims. As consideration therefor, respondents each received involuntary separation benefits of one month pay per year of service. This consideration is reasonable and not unconscionable under the circumstances given that respondents are only entitled thereto, as previously explained. In any event, respondents no longer argued against the validity of their quitclaims before this Court.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 17, 2010 and the Resolution dated February 2, 2011 of the Court of Appeals in CA-G.R. SP No. 104622 are hereby **REVERSED** and **SET ASIDE**. The Decision dated July 1, 2005 of the Labor Arbiter in NLRC Case No. RAB-IV-02-15180-02-L and NLRC Case No. RAB-IV-02-17002-03-L is **REINSTATED**. No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Peralta,[*] *Jardeleza,* and *Tijam, JJ.,* concur.

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[43] *Coats Manila Bay, Inc. v. Ortega*, 598 Phil. 768, 779-780 (2009).

[*] Per Raffle dated August 14, 2017.

THIRD DIVISION

[G.R. No. 215999. August 16, 2017]

SPS. FELIX A. CHUA and CARMEN L. CHUA, JAMES B. HERRERA, EDUARDO L. ALMENDRAS, MILA NG ROXAS, EUGENE C. LEE, EDICER H. ALMENDRAS, BENEDICT C. LEE, LOURDES C. NG, LUCENA INDUSTRIAL CORPORATION, LUCENA GRAND CENTRAL TERMINAL, INC., represented by FELIX A. CHUA, *petitioners, vs.* **UNITED COCONUT PLANTERS BANK, ASSET POOL A (SPV-AMC), REVERE REALTY AND DEVELOPMENT CORPORATION, JOSE C. GO and the REGISTRAR OF DEEDS OF LUCENA CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; GENERALLY LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTION THERETO APPLIED; THERE IS A NEED TO REVIEW THE RECORDS TO DETERMINE WHICH FINDINGS BY THE LOWER COURTS SHOULD BE PREFERRED FOR BEING CONFORMABLE TO THE RECORDS.— While the RTC and the CA both dealt with and examined the same set of facts and agreements of the parties, they ended up with totally opposing factual findings. The Court's review jurisdiction is generally limited to reviewing errors of law because the Court is not a trier of facts and is not the proper venue to settle and determine factual issues. Nevertheless, this rule is not ironclad, and a departure therefrom may be warranted where the findings of fact of the CA as the appellate court are contrary to the factual findings and conclusions of the trial court, like now. In this regard, there is a need to review the records to determine which findings by the lower courts should be preferred for being conformable with the records.

2. CIVIL LAW; CONTRACTS; CONSTRUCTION; BY ENTERING INTO A REAL ESTATE MORTGAGE INVOLVING THE PROPERTIES HELD IN TRUST BY RESPONDENT REVERE FOR PETITIONERS, REVERE

BREACHED ITS UNDERTAKING UNDER THE DEEDS OF TRUST.— The deeds of trust expressly provided that: "The TRUSTEE hereby acknowledges and obliges itself not to dispose of, sell, transfer, convey, lease or mortgage the said twelve (12) parcels of land without the written consent of the TRUSTORS first obtained." By entering into the Revere REM, therefore, Revere openly breached its undertakings under the deeds of trust in contravention of the express prohibition therein against the disposition or mortgage of the properties. It is also worth mentioning that the records are bereft of any allegation that Revere had obtained the approval of petitioners or that the latter had acquiesced to the mortgage of the properties in favor of UCPB. Absent proof showing that petitioners had transferred the ownership of some or all of the properties covered by the deeds of trust in favor or Revere or Jose Go, the deeds of trust remained as the controlling documents as to the parcels of land therein covered.

3. **ID.; ID.; ID.; BY APPROVING THE LOAN APPLICATION OF REVERE WITHOUT MAKING PRIOR VERIFICATION OF THE MORTGAGED PROPERTIES' REAL OWNERS, RESPONDENT BANK BECAME A MORTGAGEE IN BAD FAITH.—** UCPB could not now feign ignorance of the deeds of trust. As the RTC aptly pointed out, UCPB's own Vice President expressly mentioned in writing that UCPB would secure from Jose Go the titles necessary for the execution of the mortgages. As such, UCPB's actual knowledge of the deeds of trust became undeniable. In addition, UCPB, being a banking institution whose business was imbued with public interest, was expected to exercise much greater care and due diligence in its dealings with the public. Any failure on its part to exercise such degree of caution and diligence would invariably stigmatize its dealings with bad faith. It should be customary and prudent for UCPB, therefore, to adopt certain standard operating procedures to ascertain and verify the genuineness of the titles to determine the real ownership of real properties involved in its dealings, particularly in scrutinizing and approving loan applications. By approving the loan application of Revere obviously without making prior verification of the mortgaged properties' real owners, UCPB became a mortgagee in bad faith.

4. **ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; CONCEPT; CONDITIONS THAT MUST CONCUR FOR**

THE PRINCIPLE TO APPLY; UPHOLDING THE COURT OF APPEALS' DECISION WOULD VIOLATE THE PRINCIPLE AGAINST UNJUST ENRICHMENT.— There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment requires the concurrence of two conditions, namely: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the expense of another. The main objective of the principle against unjust enrichment is to prevent a person from enriching himself at the expense of another without just cause or consideration. This principle against unjust enrichment would be infringed if we were to uphold the decision of the CA despite its having no basis in law and in equity.

APPEARANCES OF COUNSEL

Morales Risos-Vidal & Daroy-Morales for petitioners.
Hortencio G. Domingo for respondent Asset Pool A.
Carag Zaballero Llamado & Abiera for respondent UCPB.
De Sagun Law Office for respondents Revere Realty and Jose Go.

D E C I S I O N

BERSAMIN, *J.*:

This appeal assails the decision promulgated on March 25, 2014[1] and the resolution promulgated on December 23, 2014,[2] whereby, the Court of Appeals (CA) respectively reversed and set aside the decision[3] rendered on January 6, 2009 by the Regional Trial Court (RTC), Branch 59, in Lucena City and

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[1] *Rollo,* pp. 11-51; penned by Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justice Jane Aurora C. Lantion and Associate Justice Nina G. Antonio-Valenzuela.

[2] *Id*. at 52-59; penned by Judge Virgilio C. Alpajora.

[3] *Id*. at 612-632.

granted the appeal of respondent United Coconut Planters Bank (UCPB), Revere Realty and Development Corporation (Revere), Jose Go and The Register of Deeds of Lucena City; and denied the petitioners' motion for reconsideration.

Antecedents

On March 3, 1997, petitioner Spouses Felix and Carmen Chua, for themselves and representing their co-petitioners, entered into a Joint Venture Agreement (JVA) with Gotesco Properties, Inc. (Gotesco) for the development of their 44-hectare property situated in Ilayang Dupay, Lucena City into a mixed use, residential and commercial subdivision. Gotesco was then represented by respondent Jose Go.[4] It appears, however, that the development project under this JVA did not ultimately materialize.[5]

Pursuant to the JVA, several deeds of absolute sale were executed over petitioners' 12 parcels of land situated in Lucena City in favor of Revere, a corporation controlled and represented by Jose Go. The deeds of absolute sale were complemented by a deed of trust dated April 30, 1998[6] under which it was confirmed that Revere did not part with any amount in its supposed acquisition of the 12 parcels of land. The deed of trust further confirmed petitioners' absolute ownership of the properties. Also on the same date, Gotesco, also represented by Jose Go, and petitioners, represented by Felix Chua, executed another deed of trust covering 20 parcels of land distinct from the 12 parcels of land already covered by the first deed of trust.[7]

Prior to the execution of the JVA, petitioners and Jose Go had separate outstanding loan obligations with UCPB.

On June 2, 1997, the Spouses Chua executed a real estate mortgage (REM) in favor of UCPB involving several parcels

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[4] *Id*. at 612.

[5] *Id*. at 14.

[6] *Id*. at 215-217.

[7] *Id*. at 218-220.

of land registered in the names of petitioners to secure the loans obtained in their personal capacities and in their capacities as corporate officers and stockholders of the Lucena Grand Central Terminal, Inc. (LGCTI).[8]

On March 21, 2000, petitioners entered into a Memorandum of Agreement (MOA) with UCPB to consolidate the obligations of the Spouses Chua and LGCTI, which was determined at ₱204,597,177.04 as of November 30, 1999. The parties thereby agreed to deduct the sum of ₱103,893,450.00 from said total in exchange for 30 parcels of land including the improvements thereon;[9] and that the remaining balance of ₱68,000,000.00 would be converted by UCPB into equity interest in LGCTI.

To implement the March 21, 2000 MOA, UCPB drafted a REM covering the properties listed in the MOA, which petitioners signed to secure a credit accommodation for ₱404,597,177.04. Under its terms, this REM covered the payment of all loans, overdrafts, credit lines and other credit facilities or accommodations obtained or hereinafter obtained by the mortgagors, LGCTI, Spouses Chua and Jose Go.[10]

On even date, Jose Go, acting in behalf of Revere, and UCPB executed another REM (Revere REM) involving the properties held in trust by Revere for petitioners. The execution of the Revere REM was unknown to petitioners.[11] Revere submitted a secretary's certificate signed by Lourdes Ortiga to the effect that the Board of Directors had approved the mortgage of various corporate properties situated in Ilayang Dupay, Lucena City to secure any and all obligation of the Spouses Chua, LGCTI, and Jose Go.

Enforcing petitioners' REM as well as the Revere REM, UCPB foreclosed the mortgages, and the properties were sold for a total bid price of ₱227,700,000.00.

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[8] *Id*. at 14.

[9] *Id*. at 225.

[10] *Id*. at 246.

[11] *Id*. at 614.

On February 14, 2003, UCPB and LGCTI executed a deed of assignment of liabilities whereby LGCTI would issue 680,000 preferred shares of its stocks to UCPB to offset its remaining obligations totaling ₱68,000,000.00.

On September 4, 2003, UCPB wrote a letter to the Spouses Chua and LGCTI regarding the transfer of LGCTI shares of stock to its favor pursuant to the deed of assignment of liabilities.[12]

In November 11, 2003, Spouses Chua wrote UCPB to request an accounting of Jose Go's liabilities that had been mistakenly secured by the mortgage of petitioners' properties, as well as to obtain a list of all the properties subject of their REM as well as of the Revere REM for re-appraisal by an independent appraiser. The Spouses Chua further requested that the proceeds of the foreclosure sale of the properties be applied only to petitioners' obligation of ₱204,597,177.04; and that the rest of the properties or any excess of their obligations should be returned to them.[13] However, UCPB did not heed petitioners' requests.

Thus, on February 3, 2004, petitioners filed their complaint against UCPB, Revere, Jose Go, and the Register of Deeds of Lucena City in the RTC in Lucena City.[14] The RTC issued a writ of preliminary injunction at the instance of petitioners.

On October 4, 2004, the RTC declared Jose Go and Revere in default. On February 22, 2005, the RTC denied the motion for reconsideration of Jose Go and Revere.[15]

Rulings of the RTC

On September 6, 2005, the RTC, through Judge Virgilio C. Alpajora, rendered a partial judgment against Jose Go and Revere, *viz*.:

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[12] *Id*. at 21.

[13] *Id*. at 283.

[14] *Id*. at 21.

[15] *Id*. at 21.

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants JOSE C. GO and REVERE REALTY DEVELOPMENT CORPORATION, as follows:

a) Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties held in trust for plaintiff by defendants REVERE and GO.

b) Declaring that defendants REVERE and GO are not the owners of the properties covered by the deeds of trust and did not have any authority to constitute a mortgage over them to secure their personal and corporate obligations, for which they should be liable.

c) Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and GO in favor of co-defendant UNITED COCONUT PLANTERS BANK.

d) Ordering defendants REVERE and GO to reconvey in favor of the plaintiff the thirty-two (32) real properties listed in the deeds of trust and originally registered in the names of the plaintiffs under the following titles, to wit: TCT Nos. T-40450, 40452, 40453, 64488, 71021, 71022, 71023, 71024, 71025, 71136, 55033, 55287, 58945, 58946, 58947, 58948, 54186, 54187, 54189, 54190, 54191, 55288, 54186, 54187, 54188, 55030, 55031, 50426, 50427, 50428, 50429, and 50430.

e) Ordering defendants REVERE and GO to pay plaintiffs the amount of Php1,000,000.00 and as by way of moral damages, and Php200,000.00 and by way of attorney's fees.

SO ORDERED.[16]

On November 9, 2005, the RTC modified the partial judgment upon UCPB's motion for reconsideration, but otherwise affirmed it as against Revere and Jose Go, disposing thusly:

WHEREFORE, premises considered, the Partial Judgment dated September 6, 2005 is reconsidered and clarified as to United Coconut Planters Bank, as follows:

a) The contested portion of the Partial Judgment ordering reconveyance is directed at defendants Revere Realty and Development

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[16] *Id*. at 623.

Corp. and Jose Go and not at defendant United Coconut Planters Bank; and

b) The resolution of the issue of whether or not defendant UCPB is obliged to reconvey the properties listed in the Partial Judgment in favor of the plaintiffs, as well as the other issues between UCPB and the plaintiffs, shall be determined after the parties shall have presented their evidence.

SO ORDERED.[17]

Meanwhile, Asset Pool A moved to be substituted for UCPB as a party-defendant on February 15, 2006 on the basis that UCPB had assigned to it the rights over petitioners' ₱68,000,000.00 obligation. The RTC approved the substitution on March 14, 2006.[18]

On January 6, 2009, the RTC rendered judgment in favor of petitioners, thusly:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants UNITED COCONUT PLANTERS BANK, ASSET POOL A, REGISTRAR OF DEEDS OF LUCENA CITY and *EX-OFFICIO* SHERIFF OF LUCENA CITY, thus:

a) Declaring that the loan obligations of plaintiffs to defendant UNITED COCONUT PLANTERS BANK under the Memorandum of Agreement dated March 21, 2000 have been fully paid;

b) Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties listed therein were merely held-in-trust for plaintiffs by defendants REVERE and JOSE GO and/or corporations owned or associated with him;

c) Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and JOSE GO in favor of co-defendant UNITED COCONUT PLANTERS BANK and the Deed of Assignment of Liability dated February 14, 2003 executed by plaintiffs in favor of UNITED COCONUT PLANTERS BANK;

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[17] *Id*. at 623-624.

[18] *Id*. at 624.

d) Ordering defendant REGISTRAR OF DEEDS of Lucena City to cancel any and all titles derived or transferred from TCT Nos. T-40452 (89339), 40453 (89340), 84488 (89342), 71021 (89330), 71022 (89331), 71023 (89332), 71025 (95580-95581), 71136 (95587-95590), 55033 (89384) and issue new ones returning the ownership and registration of these titles of the plaintiffs. For this purpose, defendant UNITED COCONUT PLANTERS BANK is directed to execute the appropriate Deeds of Reconveyance in favor of the plaintiffs over the eighteen (18) real properties listed in the Real Estate Mortgage dated March 21, 2000 executed by defendants Revere Realty and JOSE GO and originally registered in the names of the plaintiffs.

e) Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

f) Declaring the Real Estate Mortgage dated June 02, 1997 as having been extinguished by the Memorandum of Agreement date March 21, 2000, and converting the writ of preliminary injunction issued on March 22, 2004 to a permanent one, forever prohibiting UNITED COCONUT PLANTERS BANK and ASSET POOL A and all persons/ entities deriving rights under them from foreclosing on TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135. The court hereby orders said defendants, or whoever is in custody of the said certificates of title, to return the same to plaintiffs and to execute the appropriate release of mortgage documents.

g) Finally, ordering defendant UNITED COCONUT PLANTERS BANK, to pay plaintiffs:

(i) The excess of the foreclosure proceeds in the amount of Php23,102,822.96, as actual damages;

(ii) Legal interest on the amount of Php223,102,822.96 at the rate of 6% *per annum* from February 3, 2004 until finality of judgment. Once the judgment becomes final and executor, the interest of 12% *per annum,* should be imposed, to be computed from the time the judgment becomes final and executor until fully satisfied, as compensatory damages;

(iii) Php1,000,000.00 as moral damages;

(iv) Php100,000.00 as exemplary damages;

(v) Php2,000,000.00 as attorney's fees; and

(vi) costs of suit;

SO ORDERED.[19]

The RTC declared the Revere REM as null and void for having been entered into outside the intent of the JVA; and opined that the Revere REM did not even bear any of herein petitioners' signatures. It ruled that the application of the proceeds of the foreclosure sale of petitioners' properties to settle Jose Go's liabilities was improper, invalid and contrary to the intent of the March 21, 2000 MOA, the principal contract of the parties.[20]

The RTC observed that UCPB's claim that it had no knowledge of the trust nature of the properties covered by the deeds of trust, which were also included in the MOA was belied by the letter signed by its First Vice President Enrique L. Gana addressed to Spouses Chua wherein he stated that UCPB had undertaken to obtain from Jose Go the certificates of title necessary for the execution of the mortgages, and that should there be any excess or residual value, the same would be applied to any outstanding obligations that Jose Go would have in favor of UCPB; and that, accordingly, it was an error on the part of UCPB to apply any portion of the proceeds to settle the obligations of Jose Go without first totally extinguishing petitioners' obligations.

Decision of the CA

Respondents appealed to the CA.

In the decision promulgated on March 25, 2014,[21] the CA reversed and set aside the judgment of the RTC, disposing instead as follows:

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[19] *Id*. at 631-632.

[20] *Id*. at 624.

[21] *Supra* note 1.

WHEREFORE, the assailed January 6, 2009 Decision of the Regional Trial Court of Lucena City, Branch 59, as well as its September 6, 2005 Partial Judgment are **REVERSED and SET ASIDE**. In its stead, judgment is hereby rendered:

a) Declaring the Real Estate Mortgage dated June 2, 1997 as valid and subsisting – accordingly, the writ of preliminary injunction issued on March 22, 2004 by the Regional Trial Court of Lucena City, Branch 59 is hereby lifted;

b) Declaring as legal and binding the March 21, 2000 Deed of Real Estate Mortgage of defendants REVERE REALTY AND DEVELOPMENT CORPORATION and/or JOSE GO in favor of defendant-appellant UNITED COCONUT PLANTERS BANK;

c) Declaring, pursuant to the parties' March 21, 2000 Deed of Real Estate Mortgage, that the loan obligations of defendant JOSE GO to defendant-appellant UNITED COCONUT PLANTERS BANK have been satisfied up to ₱123,806,550.00; and

d) Declaring that the loan obligations of plaintiffs-appellees SPOUSE CHUA, ET AL. to defendant-appellant UNITED COCONUT PLANTERS BANK under the first Memorandum of Agreement dated March 21, 2000 have been paid up to ₱103,893,450.00.

SO ORDERED.[22]

The CA made reference to three REMs: the first, executed on June 2, 1997, would secure the Spouses Chua's obligations with UCPB; the second, executed on March 21, 2000, was petitioners' REM in connection with the March 21, 2000 MOA; and the Revere REM, executed also on March 21, 2000. It opined that the first REM remained outstanding and was not extinguished as claimed by petitioners; that the Revere REM was valid based on the application of the *complementary contracts construed together* doctrine whereby the accessory contract must be read in its entirety and together with the principal contract between the parties; that it was the intention of the parties to extend the benefits of the two REMs under the first MOA in favor of Jose Go and/or his group of companies; and that petitioners' obligations with UCPB under the first MOA had not been fully settled.

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

Issues

Petitioners raise the following issues:

A. THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN REFUSING TO HOLD THAT THE OBLIGATIONS EVIDENCED BY THE 1997 AND 1998 PROMISSORY NOTES AND SECURED BY THE 1997 REM HAD BEEN EXTINGUISHED BY NOVATION IN THE FORM OF CONSOLIDATION OF ALL OF PETITIONERS' LOANS UNDER THE 21 MARCH 2000 MOA.

B. THE COURT OF APPEALS COMMITTED PALPABLE ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REFUSING TO DELARE THE REVERE REM *VOID AB INITIO* DESPITE THE FACT THAT THE MORTGAGOR WAS ADMITTEDLY MERE TRUSTEE OF THE MORTGAGED PROPERTIES BUT THE TRUE AND ABSOLUTE OWNERS GAVE NO CONSENT TO THE MORTGAGE.

C. THE COURT OF APPEALS COMMITTED PALPABLE ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN APPLYING PART OF THE PROCEEDS OF THE FORECLOSURE OF THE OTHER PLAINTIFFS' AND REVERE REMS TO JOSE GO'S ALLEGED BUT UNPROVEN OBLIGATION, INSTEAD OF APPLYING THE PROCEEDS AGAINST THE REMAINING OBLIGATION OF PETITIONERS, AND DELIVERING THE EXCESS TO THEM.

D. THE COURT OF APPEALS COMMITTED PALPABLE ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REFUSING TO HOLD THAT THE RESTRUCTURED LOAN OF THE PETITIONERS HAD BEEN FULLY SATISFIED.[23]

Did the CA commit reversible errors in finding that the Revere REM was valid and binding on petitioners, and in upholding the propriety of applying the proceeds of the foreclosure sale

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[23] *Id*. at 87-88.

to settle the obligations of Jose Go and his group of companies before fully satisfying the liabilities of petitioners?

Ruling of the Court

The petition for review on *certiorari* is meritorious.

While the RTC and the CA both dealt with and examined the same set of facts and agreements of the parties, they ended up with totally opposing factual findings. The Court's review jurisdiction is generally limited to reviewing errors of law because the Court is not a trier of facts and is not the proper venue to settle and determine factual issues. Nevertheless, this rule is not ironclad, and a departure therefrom may be warranted where the findings of fact of the CA as the appellate court are contrary to the factual findings and conclusions of the trial court, like now. In this regard, there is a need to review the records to determine which findings by the lower courts should be preferred for being conformable with the records.

It is undisputed that petitioners Spouses Chua and LGCTI as well as respondents Jose Go, had existing loan obligations with UCPB prior to the March 1997 JVA. As an offshoot of the JVA, two deeds of trust were executed by the parties involving petitioners' 44-hectare property covered by 32 titles. The deeds of trust were neither expressly cancelled not rescinded despite the fact that the project under the JVA never came to fruition.

On March 21, 2000, UCPB and petitioners entered into the MOA consolidating the outstanding obligations of the Spouses Chua and LGCTI. The relevant portions of the MOA are reproduced:

WITNESSETH:

(A) As of 30 November 1999, the BORROWER has outstanding obligations due in favor of the BANK in the aggregate amount of Two Hundred Four Million Five Hundred Ninety Seven Thousand One Hundred Seventy Seven and 04/100 Pesos (₱204,597,177.04), Philippine currency, inclusive of all interest, charges and fees (the "Obligation").

(B) To partially satisfy the Obligation to the extent of ONE HUNDRED THREE MILLION EIGHT HUNDRED NINETY THREE

THOUSAND FOUR HUNDRED FIFTY PESOS (₱103,893,450.00), Philippine currency, the BORROWER has agreed that the BANK shall acquire title to the real property enumerated and described in the schedule attached hereto and made an integral part hereof as Annex "A", together with all the improvements thereon, if any (collectively called, the "Property").

(C) The balance of the Obligation, in the total amount of Sixty Eight Million Pesos (₱68,000,000.00), Philippine currency, shall be converted by the BANK to equity interest in LGCTI, with conformity of the BORROWER.

(D) The Spouses Chua have requested the BANK to grant the Spouses Chua: (i) a continuing option to re-purchase the Property and (ii) develop the Property, under a joint-venture arrangement with the BANK.

(E) The BANK has acceded to the aforementioned request of the Spouses Chua, subject to the terms and conditions of this Agreement.

In consideration of the foregoing premises, and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

SECTION 1.0.

CONTRACTUAL INTENT

Section 1.1. Intent of the Parties – Subject to the provisions of this Agreement, and the satisfactory performance by the BORROWER of the obligations and undertakings set forth herein, the parties hereto declare, confirm and agree that:

(a) title to the Property shall be transferred and conveyed to the BANK; the BANK shall have the sole discretion to determine and implement the appropriate actions for the conveyance of such title in favor of the BANK;

(b) the BANK shall: (i) grant the Spouses Chua a continuing right of first refusal over the Property and (ii) consider entering into and concluding with the Spouses Chua a contractual arrangement for the development of the Property; and

(c) the parties shall implement the appropriate acts and deeds necessary or required for the execution, delivery and performance of this Agreement and the completion of the transactions contemplated herein, conformably with the terms and conditions set forth hereunder.

x x x x x x x x x

SECTION 5.0.

MISCELLANEOUS PROVISIONS

Section 5.1. Binding Effect — This Agreement shall take effect upon its execution and the rights and obligation contained hereunder shall be valid and binding on the parties and their respective successors-in-interest.

Section 5.2. Governing Law — The provisions of this Agreement shall be governed, and be construed in all respects, by the laws of the Philippines.

Section 5.3. Further Assurance — LGCTI and the Spouses Chua warrant that they shall execute and deliver any and all additional documents or instruments and do such acts and deeds as may be necessary to fully implement and consummate the transactions contemplated under this Agreement.

Section 5.4. Entire Agreement — This Agreement constitutes the entire, complete and exclusive statement of the terms and conditions of the agreement between the parties with respect to the subject matter referred to herein. No statement or agreement, oral or written, made prior to the signing hereof and no prior conduct or practice by either party shall vary or modify the written terms embodied hereof, and neither party shall claim any modification of any provision set forth herein unless such modification is in writing and signed by both parties.[24]

It is clear that petitioners exchanged their 30 parcels of land to effectively reduce their total unpaid obligations to only ₱68,000,000.00. To settle the balance, they agreed to convert it into equity in LGCTI in case they would default in their payment. To implement the MOA, they signed the REM drafted by UCPB, which included the properties listed in the MOA as security for the credit accommodation of ₱404,597,177.04. Unknown to them, however, Jose Go, acting in behalf of Revere, likewise executed another REM covering the properties that Revere was holding in trust for them. When UCPB foreclosed

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[24] *Id*. at 225-228.

the mortgages, it applied about ₱75.09 million out of the ₱227,700,000.00 proceeds of the foreclosure sale to the obligations of Revere and Jose Go. Moreover, UCPB pursued petitioners for their supposed deficiency amounting to ₱68,000,000.00, which was meanwhile assigned to respondent Asset Pool A by UCPB.

We cannot subscribe to the CA's declaration that the 1997 REM still subsisted separately from the consolidated obligations of petitioners as stated in the March 21, 2000 MOA. As early as the latter part of 1999, correspondence and negotiation on the matter were already occurring between UCPB, on one hand, and the Spouses Chua and LGCTI, on the other. Specifically, in its November 10, 1999 letter to petitioners, UCPB wrote: "This will formalize our earlier discussions on the manner of settlement of your **personal** and that of LGCTI's **outstanding obligations**."[25] The *outstanding obligations* adverted to referred to the Spouses Chua's unsettled, unpaid and remaining debt with UCPB. In discussing how the Spouses Chua could settle their obligations, there was no distinction whatsoever between the loans obtained in 1997 and those made in subsequent years. To be readily inferred from the tenor of the correspondence was that the Spouses Chua's obligations were already consolidated.

The MOA referred to the outstanding obligations of LGCTI and the Spouses Chua as being in the amount of ₱204,597,177.04 *as of* November 30, 1999. This meant that *all* of the Spouses Chua's obligations with UCPB on or prior to November 30, 1999 had already been combined. It was plain enough to see that the MOA constituted the entire, complete and exclusive agreement between the parties. Its Section 5.4 of the MOA expressly stipulated that: "x x x No statement or agreement, oral or written, made prior to the signing hereof and no prior conduct or practice by either party shall vary or modify the written terms embodied hereof, and neither party shall claim any modification of any provision set forth herein unless such

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[25] *Rollo*, pp. 233-234 (bold underscoring supplied for emphasis only).

modification is in writing and signed by both parties."[26] Furthermore, the REM executed by petitioners in support of the MOA indicated that the mortgage would secure the payment of all loans, overdrafts, credit lines and other credit facilities or accommodations obtained or hereinafter to be obtained by the mortgagors. In light of the pertinent provisions of the MOA, the only rational interpretation was that the parties agreed to consolidate the Spouses Chua's past and future obligations, which would be secured by the REM executed between the parties.

There is no question about the validity of the March 21, 2000 MOA as well as the REM executed by petitioners in support of this MOA. However, much controversy attended the Revere REM. Nonetheless, the RTC pointed out in its decision:

> The Court therefore affirms the nullity of the Revere REM dated March 21, 2000 (*Exhibit "I", Exhibit "7-APA)* executed by Revere in favor of defendant UCPB. **There is no proof that plaintiffs have consented to the application of the properties listed in *Annex "B"* thereof to the loan obligation of defendant Jose Go. UCPB is therefore lawfully bound to return to plaintiffs TCT Nos. T-40452 (89339), 40453 (89340), 84488 (89342), 71021 (89330), 71022 (89331), 71023 (89332), 71025 (95580-95581), 71136 (95587-95590), 55033 (89384), conformably with this court's disquisition in the Partial Judgment rendered on September 6, 2005.**[27]

We have to note that the REM was executed by Revere through Jose Go purportedly in connection with the March 21, 2000 MOA on the very same day that petitioners' REM were executed. Yet, petitioners disclaimed any knowledge or conformity to the Revere REM. With the two deeds of trust executed in favor of Revere not having been expressly cancelled or rescinded, the properties mortgaged by Revere to UCPB were still owned by petitioners for all intents and purposes.

For clarity, we excerpt relevant portions of the deeds of trust, to wit:

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[26] *Id*. at 228.

[27] *Id*. at 625.

DEED OF TRUST[28]

KNOW ALL MEN BY THESE PRESENTS:

This DEED OF TRUST made, executed, and entered into by and between:

SPOUSES FELIX and CARMEN CHUA, both of legal age, Filipinos and with postal address at Ilayang Dupay, Lucena City and ADELA C. CHUA, of legal age, Filipino, married to Luis A. Chua and a resident of LIC Bldg., Brgy. Gulang-gulang, Lucena City, hereinafter called the TRUSTORS:

- and-

REVERE REALTY AND DEVELOPMENT CORPORATION, a corporation duly organized and existing under the laws of the Philippines with office address at 2478 Agatha St., San Andres Bukid, Manila, herein represented by the President, MRS. LYDIA SEVILLA and hereinafter called the TRUSTEE.

WITNESSETH

WHEREAS, the TRUSTORS are the lawful and absolute owners of twelve (12) parcels of land situated at Lucena City and previously covered by the following transfer Certificates of Title and may be described as follows:

x x x x x x x x x

WHEREAS, by virtue of several Deeds of Absolute Sale executed by the TRUSTOR in favor of the TRUSTEE, the twelve (12) parcels of land were transferred in the name of the TRUSTEE and are now covered by the following Transfer Certificates of Title:

x x x x x x x x x

WHEREAS, the TRUSTEE hereby acknowledges and confirms that it did not pay the TRUSTORS the consideration stated in the Deeds of Absolute Sale covering the twelve (12) parcels of land and said Deeds of Absolute Sale were executed by the TRUSTORS in compliance with the terms and conditions stated in the Joint Venture Agreement dated March 3, 1997 executed by and between the TRUSTORS and GOTESCO PROPERTIES, INC.;

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[28] *Rollo*, pp. 215-216.

WHEREAS, the TRUSTEE hereby acknowledges and confirms that she is the authorized representative of GOTESCO PROPERTIES, INC., with respect to the said Joint Venture Agreement and the transfer of the twelve (12) parcels of land in her name is necessary for the consolidation and subdivision of the properties in connection with the preparation of the plans and designs of the project of the said Joint Venture Agreement;

NOW THEREFORE, for and in consideration of the foregoing premises and mutual covenants hereinafter set forth:

1. The TRUSTEE hereby acknowledges and confirms:

   1.1 The absolute title and ownership of the TRUSTORS over the twelve (12) parcels of land above described;

   1.2 Its role as TRUSTEE, to have and hold the said twelve (12) parcels of land for the sole and exclusive use, benefit, enjoyment of the TRUSTORS;

2. The TRUSTEE hereby acknowledges and obliges itself not to dispose of, sell, transfer, convey, lease or mortgage the said twelve (12) parcels of land without the written consent of the TRUSTORS first obtained; (bold emphasis added)

3. The TRUSTEE hereby covenants and agrees to execute, deliver and perform any and all arrangements, and acts, which in the opinion of the TRUSTEES are necessary, required and/or appropriate for the exercise by the TRUSTORS of their rights, title and interests over the said twelve (12) parcels of land. (Emphasis supplied)

The deeds of trust expressly provided that: "The TRUSTEE hereby acknowledges and obliges itself not to dispose of, sell, transfer, convey, lease or mortgage the said twelve (12) parcels of land without the written consent of the TRUSTORS first obtained." By entering into the Revere REM, therefore, Revere openly breached its undertakings under the deeds of trust in contravention of the express prohibition therein against the disposition or mortgage of the properties. It is also worth mentioning that the records are bereft of any allegation that Revere had obtained the approval of petitioners or that the latter had acquiesced to the mortgage of the properties in favor of UCPB. Absent proof showing that petitioners had transferred the ownership of some or all of the properties covered by the

deeds of trust in favor or Revere or Jose Go, the deeds of trust remained as the controlling documents as to the parcels of land therein covered.

Additionally, UCPB could not now feign ignorance of the deeds of trust. As the RTC aptly pointed out, UCPB's own Vice President expressly mentioned in writing that UCPB would secure from Jose Go the titles necessary for the execution of the mortgages. As such, UCPB's actual knowledge of the deeds of trust became undeniable. In addition, UCPB, being a banking institution whose business was imbued with public interest, was expected to exercise much greater care and due diligence in its dealings with the public. Any failure on its part to exercise such degree of caution and diligence would invariably stigmatize its dealings with bad faith. It should be customary and prudent for UCPB, therefore, to adopt certain standard operating procedures to ascertain and verify the genuineness of the titles to determine the real ownership of real properties involved in its dealings, particularly in scrutinizing and approving loan applications. By approving the loan application of Revere obviously without making prior verification of the mortgaged properties' real owners, UCPB became a mortgagee in bad faith.[29]

The CA pronounced that the parties had intended to extend the benefits of the two REMs under the first MOA to Jose Go and/or his group of companies. It premised its pronouncement on the express stipulation in petitioners' REM to the effect that it was "*the intention of the parties to secure as well the payment of all loans, overdrafts x x x by the MORTGAGORS and/or by LGCTI, Spouses Chua, and Jose Go.*" In addition, it cited the Spouses Chua's conformity to UCPB's letter dated November 10, 1999 to the effect that should there be any excess or residual value after the settlement of the Spouses Chua and LGCTI's obligations, said excess would be applied to any outstanding obligations that Jose Go might have with UCPB. We must point out, however, that the statements adverted to

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[29] See *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*, G.R. No. 171101, July 5, 2011, 653 SCRA 154; *Alano v. Planter's Development Bank*, G.R. No. 171628, June 13, 2011, 651 SCRA 766.

by the CA had been supplied by UCPB itself — the first being contained in the REM drafted by UCPB, and the second being written by UCPB in its letter to the Spouses Chua. Assuming that petitioners were not just misled into signing or agreeing to the stipulations in said documents, it was still error for the CA to hold that Revere's or Jose Go's obligations enjoyed a primacy or precedence over the ₱68,000,000.00 obligation of petitioners.

The discussion of the RTC in its decision on this aspect, being apt and in point, is reiterated with approval:

> The conformity of the plaintiffs through Felix A. Chua only appears on the Plaintiffs' REM dated March 21, 2000 *(Exhibit "G", Exhibit "6-APA")*. By virtue of this Plaintiffs' REM, there is basis to apply the properties listed in *Annex "A"* thereof to the obligations of both plaintiffs and defendant Jose Go, but subject to the condition that plaintiffs' obligations be totally extinguished first. **However, up to the termination of the trial of this case, neither defendant UCPB nor APA presented any evidence to prove the precise amount of Jose Go's loan obligations with the bank. It must be emphasized that the Plaintiffs' REM refers to Jose Go's obligations to the bank, not the obligations of any of the corporations owned by him in the majority.**
>
> **The Apportionment of Bid Price signed by UCPB's own witness Milagros Alcabao (*Exhibit "S", Exhibit "10-APA")* does not show Jose Go's obligations, if any. What the Apportionment reveals is the amount of Php75,093,180.00 was set aside for "Revere Realty & Development Corporation and Lucena Industrial Corporation." While the name of plaintiff Lucena Industrial Corporation ("LIC") and Revere Realty and Development Corporation appears in said Apportionment, it has not been shown that there was any loan contracted by LIC and Revere to which the amount of Php75,093,180.00 may be applied. Because the twenty-three (23) properties listed in favor of Revere and LIC were sourced from the two (2) Deeds of Trust and partly from the null and void Revere REM dated March 21, 2000 (*Exhibit "I", Exhibit "7-APA")*, it is only proper that this particular apportionment valued by the bank at Php75,093,180.00 should likewise be struck down**.[30]
> (Bold underscoring supplied for emphasis)

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[30] *Rollo*, p. 625.

On the other hand, the CA maintained that petitioners' obligations to UCPB under the March 21, 2000 MOA had not been fully satisfied, *viz.*:

> The plaintiffs-appellees concede in their **First MOA** that the **outstanding obligations** of Spouses Chua and LGCTI to UCPB were **restructured and fixed** at the aggregate amount of **₱204,597,177.04;** that part of this restructured debts (of up to **₱103,893,450.00)** will be settled by **transferring the titles** of the properties listed in **Annex "A"** to the Bank; and the remaining balance (in the amount of ₱68 million) will be **converted into equity interest** in LGCTI. Since the contract is the law between the parties, it necessarily follows that **only by adhering to the terms of the First MOA would the entire obligations of Spouses Chua and LGCTI be deemed fully paid.**
>
> In pursuance of the foregoing conceded terms, and in accordance with the provisions of Plaintiffs' REM and Revere's REM, UCPB foreclosed the REM on all of the properties listed in Annex "A" of the First MOA for a **total bid price of ₱227,700,000.00**. The foreclosure and auction sale were deemed to cover not only plaintiffs-appellees' obligations and REM, they covered as well the REM of Jose Go and Revere as again, in **UCPB's conformed upon November 10, 1999 letter to Spouses Chua,** et al., the latter undertook the following obligations:
>
> x x x x x x x x x
>
> The imperatives of the parties' obligations under their contracts as above-discussed therefore require the proceeds of the foreclosure in the total amount of **₱227,700,000.00** be applied, *first*, to plaintiffs-appellees' **₱103,893,450.00**, as agreed upon in the First MOA, and the remaining balance of **₱123,806,550.00** to Jose Go's outstanding obligations with UCPB.[31]

This disquisition of the CA would have resulted in an absurd situation wherein a considerable portion of petitioners' properties were to be used to settle Jose Go's personal liabilities, which were ₱20,000,000.00 more than what were to be applied to petitioners' own obligations. Aside from enabling this ludicrous interpretation of the agreements, petitioners were still left with

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[31] *Rollo*, pp. 46-47.

a hefty ₱68,000,000.00 balance in their obligations with UCPB. This absurd situation does not find support in their contracts as well as in the course of ordinary human experience. To reiterate, the ₱68,000,000.00 obligation was not separate and distinct from the outstanding obligations consolidated by the March 21, 2000 MOA. In fact, the February 14, 2003 MOA involving the transfer of 680,000 preferred shares of stock to UCPB provided that:

> 4. This Agreement shall take effect upon execution hereof provided however, that in the event the assignment of liabilities in exchange for the Preferred Shares does not materialize for any cause whatsoever, this **Agreement shall be cancelled and automatically cease to have any force and effect**, thereby restoring to each of the parties hereto whatever rights and liabilities they may each have in relation to the other parties prior to this Agreement.[32] (Bold emphasis supplied)

Considering that such issuance of preferred shares in favor of UCPB did not take place despite the execution of the second MOA in 2003, the February 14, 2003 MOA was deemed cancelled and the ₱68,000,000.00 must perforce revert as part of petitioners' outstanding balance that was now fully and completely settled.

A review of the MOA dated March 21, 2000 would reveal that petitioners' outstanding obligation referred to, after deducting the amount of the thirty properties, was reduced to only ₱68,000,000.00. To settle this balance, petitioners agreed to convert this into equity in LGCTI *in case they defaulted in their payment*. In this case, what prompted the foreclosure sale of the mortgaged properties was petitioners' failure to pay their obligations. When the proceeds of the foreclosure sale were applied to their outstanding obligations, the payment of the balance of the ₱68,000,000.00 was deliberately left out, and the proceeds were conveniently applied to settle ₱75,000,000.00 of Revere and/or Jose Go's unpaid obligations with UCPB. This application was in blatant contravention of the agreement that Revere's or Jose Go's obligations would be paid only if there were excess in the application of the foreclosure proceeds.

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[32] *Rollo*, pp. 233-235.

Accordingly, the CA should have applied the proceeds to the entire outstanding obligations of petitioners, and only the excess, if any, should have been applied to pay off Revere and/or Jose Go's obligations.

Based on the foregoing, therefore, we conclude that the deed of assignment of liabilities covering the deficiency in its obligation to UCPB in the amount of ₱68,000,000.00 was null and void. According to the apportionment of bid price executed by UCPB's account officer, the bid amounting to ₱227,700,000.00 far exceeded the indebtedness of the Spouses Chua and LGCTI in the amount of ₱204,597,177.04, which was inclusive of the ₱68,000,000.00 subject of the deed of assignment of liabilities as well as the ₱32,703,893,450.00 corresponding to the interests and penalties that UCPB waived in favor of petitioners.[33]

It can be further concluded that UCPB could not have validly assigned to Asset Pool A any right or interest in the ₱68,000,000.00 balance because the proper application of the proceeds of the foreclosure sale would have necessarily resulted in the full extinguishment of petitioners' entire obligation. Otherwise, unjust enrichment would ensue at the expense of petitioners. There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment requires the concurrence of two conditions, namely: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the expense of another.[34] The main objective of the principle against unjust enrichment is to prevent a person from enriching himself at the expense of another without just cause or consideration. This principle against unjust enrichment would be infringed if we were to uphold the decision of the CA despite its having no basis in law and in equity.

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[33] *Rollo*, p. 974.

[34] *Flores v. Lindo Jr.,* G.R. No. 183984, April 13, 2011, 648 SCRA 772, 782-783.

The Court notes that one of the parcels of land covered by the Revere REM was that registered under Transfer Certificate of Title (TCT) No. 89334 of the Registry of Deeds of Lucena City. According to the decision of the CA,[35] the parcel of land registered under TCT No. 89334 had been subdivided into Lot No. 3852 (TCT No. 95582 and TCT No. 95583) and Lot No. 3854 (TCT No. 95580 and TCT No. 95581). However, the judgment of the RTC did not include TCT No. 89334 although it should have. To rectify the omission, which was obviously inadvertent, we should include TCT No. 89334 due to its being admittedly one of the parcels of land of petitioners covered by the Revere REM.

Finally, the interest of 6% *per annum* on the judgment upon its finality shall be imposed in accordance with the pronouncement of the Court in *Nacar v. Gallery Frames*.[36]

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **SETS ASIDE** the decision of the Court of Appeals promulgated on March 25, 2014 in CA-G.R. No. 93644; **REINSTATES** the judgment rendered on January 6, 2009 by the Regional Trial Court, Branch 59, in Lucena City, with the addition of TCT No. 89334, to wit:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants UNITED COCONUT PLANTERS BANK, ASSET POOL A, REGISTRAR OF DEEDS OF LUCENA CITY and *EX-OFFICIO* SHERIFF OF LUCENA CITY, thus:
>
> a. Declaring that the loan obligations of plaintiffs to defendant UNITED COCONUT PLANTERS BANK under the Memorandum of Agreement dated March 21, 2000 have been fully paid;
>
> b. Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties listed therein were merely held-in-trust for plaintiffs by defendants REVERE and JOSE GO and/or corporations owned or associated with him;

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[35] See CA decision, p. 10 (footnote no. 25), at *rollo*, p. 20.

[36] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

c. Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and JOSE GO in favor of co-defendant UNITED COCONUT PLANTERS BANK and the Deed of Assignment of Liability dated February 14, 2003 executed by plaintiffs in favor of UNITED COCONUT PLANTERS BANK;

d. Ordering defendant REGISTRAR OF DEEDS of Lucena City to cancel any and all titles derived or transferred from TCT Nos. T-40452 (89339), 40453 (89340), 84488 (89342), 71021 (89330), 71022 (89331), 71023 (89332), 71025 (95580-95581), 71136 (95587-95590), 55033 (89384), 89334 and issue new ones returning the ownership and registration of these titles of the plaintiffs. For this purpose, defendant UNITED COCONUT PLANTERS BANK is directed to execute the appropriate Deeds of Reconveyance in favor of the plaintiffs over the eighteen (18) real properties listed in the Real Estate Mortgage dated March 21, 2000 executed by defendants Revere Realty and JOSE GO and originally registered in the names of the plaintiffs.

e. Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

f. Declaring the Real Estate Mortgage dated June 02, 1997 as having been extinguished by the Memorandum of Agreement date March 21, 2000, and converting the writ of preliminary injunction issued on March 22, 2004 to a permanent one, forever prohibiting UNITED COCONUT PLANTERS BANK and ASSET POOL A and all persons/ entities deriving rights under them from foreclosing on TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135. The court hereby orders said defendants, or whoever is in custody of the said certificates of title, to return the same to plaintiffs and to execute the appropriate release of mortgage documents.

g. Finally, ordering defendant UNITED COCONUT PLANTERS BANK, to pay plaintiffs:

i. The excess of the foreclosure proceeds in the amount of Php23,102,822.96, as actual damages;

ii. Legal interest on the amount of Php223,102,822.96 at the rate of 6% *per annum* from February 3, 2004 until finality

of judgment. Once the judgment becomes final and executory, the interest of 6% *per annum,* should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied, as compensatory damages;

iii. Php1,000,000.00 as moral damages;

iv. Php100,000.00 as exemplary damages;

v. Php2,000,000.00 as attorney's fees; and

vi. Costs of suit;

SO ORDERED.

and **DIRECTS** respondents, except the Registrar of Deeds of Lucena City and the *Ex-Officio* Sheriff of Lucena City, to pay the costs of suit.

SO ORDERED.

Martires, Tijam,[*] and *Gesmundo, JJ.,* concur.

Caguioa,[**] *J.,* on leave.

SECOND DIVISION

[G.R. No. 217777. August 16, 2017]

PRISCILLA Z. ORBE, *petitioner, vs.* **LEONORA O. MIARAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE PROSECUTOR IS GIVEN A

[*] Designated additional Member, per Raffle dated August 14, 2017, due to the inhibition of Justice Marvic Mario Victor F. Leonen.

[**] Designated additional Member, per Raffle dated August 14, 2017, due to the inhibition of Justice Presbitero J. Velasco, Jr.

WIDE LATITUDE OF DISCRETION IN THE DETERMINATION OF PROBABLE CAUSE; IT MAY BE INTERFERED WITH ONLY BY THE COURT WHEN THERE IS GRAVE ABUSE OF DISCRETION.— Under Section 5, Rule 110 of the Rules of Court, all criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. As the representative of the State, the public prosecutor determines in a preliminary investigation whether there is probable cause that the accused committed a crime. Probable cause is defined as "such facts and circumstances that will engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial." The general rule is that in the conduct of a preliminary investigation, the prosecutor is given a wide latitude of discretion to determine what constitutes sufficient evidence as will establish probable cause. However, when the respondent establishes that the prosecutor committed grave abuse of discretion amounting to lack or excess of jurisdiction in determining whether there is probable cause, the courts may interfere. Under the doctrine of separation of powers, the courts have no right to decide matters where full discretionary authority has been delegated to the Executive Branch, or to substitute their own judgements for that of the Executive Branch, in the absence of grave abuse of discretion. The abuse of discretion must be "so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or hostility."

2. **ID.; ID.; ID.; THE OFFICE OF THE CITY PROSECUTOR GRAVELY ERRED WHEN IT APPLIED AN ALREADY SUPERSEDED JURISPRUDENCE AS BASIS FOR DISMISSING THE COMPLAINT FOR LACK OF PROBABLE CAUSE.—** In this case, the OCP found that no probable cause existed against respondent and Anne Kristine for the commission of the crime of estafa. In its Resolution dated 10 August 2012, relying mainly on the case of *United States v. Clarin*, the OCP found that there was a partnership agreement between the parties, thus resolving that the failure of a partner to account for partnership funds may only give rise to a civil obligation, not a criminal case for estafa. x x x We disagree with the ruling of the Court of Appeals when it

sustained the OCP on the issue of whether there is probable cause to file an Information. The OCP was in the best position to determine whether or not there was probable cause that the crime of estafa was committed. However, the OCP erred gravely, amounting to grave abuse of discretion, when it applied *United States v. Clarin* as basis for dismissing the complaint for lack of probable cause. *United States v. Clarin* has already been superseded by *Liwanag v. Court of Appeals*. x x x In this case, the OCP erred gravely when it based its conclusion on the *Clarin* case. *Liwanag* applies to the partnership agreement executed between petitioner and respondent. Petitioner's initial contributions of ₱183,999.00 and ₱20,000.00 were all for specific purposes: for the **buying and selling of garments** and for the salaries of the factory workers, respectively. When respondent failed to account for these amounts or to return these amounts to petitioner upon demand, there is probable cause to hold that respondent misappropriated the amounts and had not used them for their intended purposes. The Information for estafa should thus proceed.

3. CRIMINAL LAW; REVISED PENAL CODE; *ESTAFA*; THE ACTION FOR *ESTAFA* IN CASE AT BAR HAS NOT YET BEEN BARRED BY PRESCRIPTION; THE FIFTEEN-YEAR PRESCRIPTIVE PERIOD IS INTERRUPTED BY THE FILING OF THE COMPLAINT.— Under Article 315 of the Revised Penal Code, the penalty for estafa shall be determined by the amount allegedly swindled by the accused. x x x The total amount allegedly swindled by respondent is ₱203,999.00 for the buying of garments and workers' salaries plus US$1,000.00 for the plane tickets which exceeds ₱22,000.00. Taking into consideration the whole amount with the additional one year for each additional ₱10,000.00, the penalty imposable on respondent shall be *prision mayor* in its maximum period to *reclusion temporal*, the total penalty not exceeding twenty (20) years. Under Article 25 of the Revised Penal Code, the penalties of *prision mayor* and *reclusion temporal* are included in the enumeration of afflictive penalties. Furthermore, Article 90 of the Revised Penal Code states that crimes punishable by afflictive penalties, such as the crime of estafa, prescribe in fifteen (15) years. The said prescriptive period x x x shall commence to run from the day on which the crime is discovered by the offended party[.] x x x In this case, the fifteen-year prescriptive period commenced in April 1996 when the petitioner discovered that one of the checks that

respondent issued as payment was dishonored for having been drawn against insufficient funds. At around that time, petitioner likewise discovered that there was no buying, selling and exportation of garments or any other transactions that took place in the United States. The fifteen-year period was interrupted on 7 February 2011 when petitioner filed a complaint for estafa against respondent and Anne Kristine before the OCP of Quezon City. In *People v. Olarte*, "the filing of the complaint, even if it be merely for purposes of preliminary examination or investigation, should and does interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on its merits." As of the filing of the complaint on 7 February 2011, the prescriptive period had run for fourteen (14) years and ten (10) months. Thus, the fifteen-year period has not yet prescribed.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Ricardo C. Pilares, Jr. and *Ismael Miaral* for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review on certiorari[1] under Rule 45 of the Rules of Court seeks to annul the 24 September 2014 Decision[2] and the 24 March 2015 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 134555, which annulled and set aside the 27 August 2013[4] and 7 January 2014[5] Orders of the Regional Trial Court (RTC) of Quezon City, Branch 104.

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[1] *Rollo*, pp. 12-30.

[2] *Id*. at 37-51. Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Isaias P. Dicdican and Agnes Reyes-Carpio concurring.

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

[4] *Id*. at 80-83. Penned by Presiding Judge Catherine P. Manodon.

[5] *Id*. at 84-85.

The RTC Orders denied the Motion to Withdraw Information[6] for Estafa filed by Quezon City Prosecutor Donald T. Lee in Criminal Case Q-12-174206, entitled *People of the Philippines v. Leonora O. Miaral, et al.*

The Facts

On 6 March 1996, Leonora O. Miaral (respondent) agreed to engage in the garment exportation business with her sister, Priscilla Z. Orbe (petitioner). They executed a partnership agreement[7] where they agreed to contribute Two Hundred Fifty Thousand Pesos (₱250,000.00) each to Toppy Co., Inc. and Miaral Enterprises, and to equally divide the profits they may earn. The partnership agreement reads:

Agreement

Agreement is executed [on the] 6th day of March 1996 by:

Mrs. Nora O. Miaral
11-0 Legaspi Towers, R[o]xas Blvd., Mla.
as (Party [A])

and Mrs. Priscilla Orbe of No. ___, Villa Verde Subd., Novaliches, Quezon City
as (Party B).

Both parties agreed on the ff:

Both parties A & B shall invest ₱250,000.00 each in cash & or goods into a buying & selling of stock lots of garments to be exported to the United States particularly in Los Angeles, California. Authorized purchaser may be Party A or B;

That the exportation of garments shall be done by Toppy Co., Inc. using Toppy's available quota;

That the importation of garments shall be done by Miaral Enterprises in U.S.A.

That whatever income in sales both retail & wholesale shall be divided into equal share after deducting all expenses in export & import

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[6] *Id*. at 170.

[7] *Id*. at 90-91.

including taxes & sea/air freight expenses in connection with the buying and selling of stocks & garments.

That this Contract is renewable yearly as both parties may wish.

Conforme:

(Sgd.) (Sgd.)

Party A Party B

Signed in the presence of

_____ _____

Petitioner initially invested the amount of One Hundred Eighty-Three Thousand Nine Hundred Ninety-Nine Pesos (₱183,999.00).[8] She subsequently tendered the amount of Twenty Thousand Pesos (₱20,000.00) for the payment of salaries of the workers at the factory.[9]

On one trip to the United States of America in April of 1996, respondent told petitioner that petitioner could join respondent, her daughter Anne Kristine, and her granddaughter Ara in the trip to the United States. Respondent convinced petitioner to pay for the plane tickets of respondent, Anne Kristine and Ara amounting to Two Thousand Seventy One Dollars (US$2,071.00) with a promise to pay petitioner once they arrive in the United States.[10]

Upon arrival, respondent issued three (3) checks drawn in a bank in the United States as payment. However, one of the checks was dishonored for having been drawn against insufficient funds.[11] Petitioner likewise discovered that there was no exportation of garments to the United States or any other transactions in the United States that took place.

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[8] *Id*. at 92.

[9] *Id*. at 93.

[10] *Id*. at 14.

[11] *Id*. at 94.

Petitioner demanded from respondent and Anne Kristine the total payment of Two Hundred Three Thousand Nine Hundred Ninety-Nine Pesos (₱203,999.00) and One Thousand Dollars (US$1,000.00). Despite demands, respondent and Anne Kristine failed to return the money.[12]

On 7 February 2011, petitioner filed a complaint[13] for estafa against respondent and Anne Kristine before the Office of the City Prosecutor (OCP) of Quezon City.

In their counter-affidavit,[14] respondent and Anne Kristine denied petitioner's allegations and claimed, among others, that the partnership agreement they entered into rules out a successful prosecution for estafa. They also claimed that the action had already prescribed since the complaint was filed 15 years after the agreement. They contended that it was petitioner who owed them the amount of Two Hundred Seven Thousand Eighty-Seven Pesos and Sixty-Five Centavos (₱207,087.65) because she issued several checks in the name of respondent and Anne Kristine. Lastly, they alleged that Anne Kristine could not be held liable because she was merely acting under her mother's direction.

In her reply-affidavit,[15] petitioner claimed that the twenty-four (24) checks amounting to Two Hundred Seven Thousand Eighty-Seven Pesos and Sixty-Five Centavos (₱207,087.65) were only borrowed from her as an accommodation party, and that it was respondent who ordered her to close her account with the Republic Planters Bank.

The OCP of Quezon City issued a Resolution dated 15 July 2011,[16] the dispositive portion of which reads:

WHEREFORE, it is respectfully recommended that, upon approval of this Resolution, the attached Information for Estafa under Article

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[12] *Id*. at 96.

[13] *Id*. at 87-89.

[14] *Id*. at 98-100.

[15] *Id*. at 107-108.

[16] *Id*. at 112-115.

315, paragraph 2(a) of the Revised Penal Code be filed against respondents Leonora O. Miaral and Anne Kristine O. Miaral.[17]

Respondent and Anne Kristine filed a Motion for Reconsideration with Motion for Inhibition[18] dated 27 January 2012, on the ground that petitioner failed to establish the elements of the crime charged. Subsequently, they filed a Motion to Suspend Proceedings and to Lift/Recall Warrant of Arrest[19] on 14 February 2012.

On 10 August 2012, the OCP of Quezon City issued a Resolution resolving the Motion for Reconsideration with Motion for Inhibition filed by respondent and Anne Kristine, assailing the 15 July 2011 Resolution, the dispositive portion of which reads:

> Premises considered, the resolution dated July 15, 2011 is hereby set aside on the ground that the transaction between the parties is civil in nature. The attached Motion to Withdraw Information against movants in Crim. Case No. Q-12-174206 is to be filed in court for the purpose.[20]

Accordingly, the City Prosecutor filed with the RTC a Motion to Withdraw Information.[21] On 27 August 2013, the RTC issued an Order[22] denying the Motion to Withdraw Information, and directing the arraignment of respondent and Anne Kristine.

On 14 October 2013, respondent and Anne Kristine moved for the reconsideration of said Order.[23] On 30 October 2013, petitioner filed her corresponding comment,[24] contending that

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[17] *Id*. at 115.

[18] *Id*. at 116-120.

[19] *Id*. at 147-148.

[20] *Id*. at 166-169.

[21] *Id*. at 170.

[22] *Id*. at 80-83.

[23] *Id*. at 171-184.

[24] *Id*. at 203-207.

the alleged partnership entered into by the parties merely existed on paper. In fact, respondent and Anne Kristine deceived her into contributing substantial sums of money for a sham investment. The Motion for Reconsideration was denied by the RTC in its Order dated 7 January 2014.[25]

The Ruling of the Court of Appeals

On 25 March 2014, respondent filed with the Court of Appeals a Petition for Certiorari[26] under Rule 65 of the Rules of Court, assailing the Orders of the RTC dated 27 August 2013 and 7 January 2014. In its Decision[27] dated 24 September 2014, the Court of Appeals granted the petition, and reversed and set aside the assailed Orders of the RTC. It further directed the RTC to issue an order for the withdrawal of the Information for estafa against respondent and Anne Kristine.[28]

Petitioner filed a Motion for Reconsideration[29] dated 18 October 2014 which was denied by the Court of Appeals on 24 March 2015.[30]

Hence, this petition.

The Issues

Petitioner presents the following issues in this petition:

1. Whether the Court of Appeals committed reversible error in ruling that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction;

2. Whether the Court of Appeals committed reversible error in reversing and setting aside the 27 August 2013 and 7 January

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[25] *Id*. at 84-85.

[26] *Id*. at 55-79.

[27] *Id*. at 37-51.

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

[29] *Id*. at 186-196.

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

2014 Orders of the RTC, and in directing the issuance of an Order for the Withdrawal of the Information for estafa against respondent and Anne Kristine; and

3. Whether the action for estafa penalized under Article 315 2(a) of the Revised Penal Code has been barred by prescription.

The Ruling

The petition is meritorious.

The Court of Appeals erred in overturning the Orders of the RTC and in ruling that the RTC gravely abused its discretion when it denied the Motion to Withdraw Information.

Under Section 5, Rule 110 of the Rules of Court, all criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. As the representative of the State, the public prosecutor determines in a preliminary investigation whether there is probable cause that the accused committed a crime.[31] Probable cause is defined as "such facts and circumstances that will engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial."[32]

The general rule is that in the conduct of a preliminary investigation, the prosecutor is given a wide latitude of discretion to determine what constitutes sufficient evidence as will establish probable cause.[33] However, when the respondent establishes that the prosecutor committed grave abuse of discretion

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[31] *Sanrio Company Ltd. v. Lim*, 569 Phil. 630, 639 (2008).

[32] *Metropolitan Bank and Trust Company v. Reynado,* 641 Phil. 208, 222 (2010), citing *Baviera v. Paglinawan,* 544 Phil. 107, 120 (2007).

[33] *Glaxosmithkline Philippines, Inc. v. Malik*, 530 Phil. 662, 668-669 (2006), citing *Punzalan v. Dela Peña*, 478 Phil. 771, 781 (2004).

amounting to lack or excess of jurisdiction in determining whether there is probable cause, the courts may interfere. Under the doctrine of separation of powers, the courts have no right to decide matters where full discretionary authority has been delegated to the Executive Branch, or to substitute their own judgements for that of the Executive Branch, in the absence of grave abuse of discretion.[34] The abuse of discretion must be "so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or hostility."[35]

In this case, the OCP found that no probable cause existed against respondent and Anne Kristine for the commission of the crime of estafa. In its Resolution[36] dated 10 August 2012, relying mainly on the case of *United States v. Clarin*,[37] the OCP found that there was a partnership agreement between the parties, thus resolving that the failure of a partner to account for partnership funds may only give rise to a civil obligation, not a criminal case for estafa. The OCP held:

> After a careful and more circumspect evaluation of the evidence on record in relation to the issues in the Motion for Reconsideration, provisions of law involved and pertinent jurisprudence on the matter, we find the existence of a partnership agreement between complainant and her sister, respondent Leonora O. Miaral to have been duly established. The Agreement signed by them on March 6, 1996 clearly speaks for itself, among others a ₱250,000.00 investment each with equal profit sharing minus all expenses. It also defined in unequivocal terms the buy and sell business, exporting of garments to be undertaken by respondent Leonora Miaral's Toppy Co. Inc. and importation of garments by Miaral Enterprises in the United States.

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[34] *Callo-Claridad v. Esteban*, 707 Phil. 172, 183 (2013), citing *Metropolitan Bank and Trust Company v. Tobias III*, 680 Phil. 173, 186 (2012).

[35] *Id*.

[36] *Rollo,* pp. 166-169.

[37] 17 Phil. 84 (1910).

Such being the case, Estafa either by means of deceit or misappropriation will not lie against respondents, because "partners are not liable for estafa of money or property received for the partnership when the business commenced and profits accrued." (U.S. *vs*. Clarin, 17 P[h]il. 85). It was further held in said case that "when two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves, a contract is formed which is a partnership."

Furthermore, "failure of a partner to account for partnership funds may give rise to a civil obligation only not estafa." (People *vs.* Alegre, Jr., C.A. 48 O.G. 5341) x x x.[38]

We disagree with the ruling of the Court of Appeals when it sustained the OCP on the issue of whether there is probable cause to file an Information. The OCP was in the best position to determine whether or not there was probable cause that the crime of estafa was committed. However, the OCP erred gravely, amounting to grave abuse of discretion, when it applied *United States v. Clarin*[39] as basis for dismissing the complaint for lack of probable cause. *United States v. Clarin* has already been superseded by *Liwanag v. Court of Appeals.*[40]

In *Clarin*, four individuals entered into a contract of partnership for the business of **buying and selling mangoes**. When one of the partners demanded from the other three the return of his monetary contribution, this Court ruled that "the action that lies with the [capitalist] partner x x x for the recovery of his money is not a criminal action for estafa, but a civil one arising from the partnership contract for a liquidation of the partnership and a levy on its assets, if there should be any."[41] Simply put, if a partner demands his money back, the duty to return the contribution does not devolve on the other partners; the duty now belongs to the partnership itself as a separate and distinct personality.

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[38] *Rollo*, p. 168.

[39] *Supra* note 37.

[40] 346 Phil. 211 (1997).

[41] *Supra* note 37, at 86.

In 1997, a case with similar circumstances was decided differently. In *Liwanag v. Court of Appeals*,[42] three individuals entered into a contract of partnership for the business of **buying and selling cigarettes**. They agreed that one would contribute money to buy the cigarettes while the other two would act as agents in selling. When the capitalist partner demanded from the industrial partners her monetary contribution because they stopped informing her of business updates, this time, this Court held the industrial partners liable for estafa.

In this case, the OCP erred gravely when it based its conclusion on the *Clarin* case. *Liwanag* applies to the partnership agreement executed between petitioner and respondent. Petitioner's initial contributions of ₱183,999.00 and ₱20,000.00 were all for specific purposes: for the **buying and selling of garments** and for the salaries of the factory workers, respectively. When respondent failed to account for these amounts or to return these amounts to petitioner upon demand, there is probable cause to hold that respondent misappropriated the amounts and had not used them for their intended purposes. The Information for estafa should thus proceed.

In *Liwanag*, this Court held:

> Thus, even assuming that a contract of partnership was indeed entered into by and between the parties, **we have ruled that when money or property [had] been received by a partner for a specific purpose** (such as that obtaining in the instant case) **and he later misappropriated it, such partner is guilty of estafa**.[43] (Emphasis supplied)

Furthermore, the RTC made its own independent assessment whether or not probable cause exists that the crime was committed by respondent and Anne Kristine. When the RTC is confronted with a Motion to Withdraw Information on the ground of lack of probable cause, its duty is to make an independent assessment of the totality of the evidence presented by both parties, including

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[42] *Supra* note 40.

[43] 346 Phil. 211, 217 (1997).

affidavits, counter-affidavits, evidence appended to the complaint, and records produced by the OCP on court order.[44] "Independent assessment" does not mean mere approval or disapproval of the prosecution's stand; it also means that the RTC must itself be convinced that indeed there is or there is no sufficient evidence against the accused.[45]

Both the 27 August 2013 and 7 January 2014 Orders of the RTC were based on facts and allegations of both parties. The RTC held:

> From the evidence adduced by the parties, the Court finds that there is probable cause that the crime charged was committed by the accused when they convinced the complainant to invest money in a business partnership which appears to be non-existent. It was not controverted that Leonora received the total amount of ₱183,999.00 from the complainant. **Accused failed to present evidence to show the existence of a business partnership apart from relying on the Agreement dated March 6, 1996. Neither was there any evidence presented showing that complainant's money was used to purchase garments to be sold abroad.** Basic is the rule that one who alleges must prove. In this case, the accused failed to establish, by clear and convincing evidence, their defense of partnership.[46] (Emphasis supplied)

The question is not so much whether the RTC has the authority to grant or not to grant the OCP's Motion to Withdraw Information, because it has such authority, but whether, in the exercise of that authority, the RTC acted justly and fairly.[47] This Court finds that it did.

The action for estafa penalized under paragraph 2(a),Article 315 of the Revised Penal Code has not yet been barred by prescription.

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[44] *Ledesma v. Court of Appeals*, 344 Phil. 207, 217 (1997).

[45] *Fuentes v. Sandiganbayan,* 527 Phil. 58, 65 (2006).

[46] *Rollo*, p. 82

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

Under Article 315 of the Revised Penal Code, the penalty for estafa shall be determined by the amount allegedly swindled by the accused. The first paragraph of Article 315 reads:

> ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and **if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos**; but the **total penalty** which may be imposed **shall not exceed twenty years**. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. (Emphasis supplied)

The total amount allegedly swindled by respondent is ₱203,999.00 for the buying of garments and workers' salaries plus US$1,000.00 for the plane tickets which exceeds ₱22,000.00. Taking into consideration the whole amount with the additional one year for each additional ₱10,000.00, the penalty imposable on respondent shall be *prision mayor* in its maximum period to *reclusion temporal*, the total penalty not exceeding twenty (20) years.

Under Article 25 of the Revised Penal Code, the penalties of *prision mayor* and *reclusion temporal* are included in the enumeration of afflictive penalties. Furthermore, Article 90 of the Revised Penal Code states that crimes punishable by afflictive penalties, such as the crime of estafa, prescribe in fifteen (15) years.

The said prescriptive period is computed under Article 91 of the Revised Penal Code, as follows:

> ART. 91. *Computation of prescription of offenses.* — The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings

terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

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In this case, the fifteen-year prescriptive period commenced in April 1996 when the petitioner discovered that one of the checks that respondent issued as payment was dishonored for having been drawn against insufficient funds. At around that time, petitioner likewise discovered that there was no buying, selling and exportation of garments or any other transactions that took place in the United States.

The fifteen-year period was interrupted on 7 February 2011 when petitioner filed a complaint for estafa against respondent and Anne Kristine before the OCP of Quezon City. In *People v. Olarte*,[48] "the filing of the complaint, even if it be merely for purposes of preliminary examination or investigation, should and does interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on its merits."

As of the filing of the complaint on 7 February 2011, the prescriptive period had run for fourteen (14) years and ten (10) months. Thus, the fifteen-year period has not yet prescribed.

WHEREFORE, we **GRANT** the petition. We **REVERSE** the 24 September 2014 Decision and the 24 March 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 134555. We **REINSTATE** the Orders of the Regional Trial Court of Quezon City, Branch 104, dated 27 August 2013 and 7 January 2014, directing the arraignment of Leonora O. Miaral and Anne Kristine Miaral. The case against Leonora O. Miaral and Anne Kristine Miaral may still proceed because prescription has not set in.

SO ORDERED.

Peralta, Perlas-Bernabe, and *Reyes, Jr., JJ.*, concur.

Caguioa, J., on official leave.

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[48] 125 Phil. 895, 902 (1967).

SECOND DIVISION

[G.R. No. 221857. August 16, 2017]

JESUS O. TYPOCO, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 222020. August 16, 2017]

NOEL D. REYES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; LIMITED TO QUESTIONS OF LAWS; ISSUES RAISED IN CASES AT BAR ARE QUESTIONS OF FACTS.— It is settled that the appellate jurisdiction of the Court over decisions and final orders of the Sandiganbayan is limited only to questions of laws; as its factual findings, as a rule, are conclusive upon the Court. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation. Issues raised before the Court on whether the prosecution's evidence proved the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was properly accorded the accused, whether there was sufficient evidence to support a charge of conspiracy, or whether the defense of good faith was correctly appreciated, are all, in varying degrees, questions of fact.

2. CRIMINAL LAW; REVISED PENAL CODE; FALSIFICATION OF PUBLIC DOCUMENTS; ELEMENTS, PRESENT.— Petitioners were charged with the crime of falsification of public documents under Article 171 of the Revised Penal Code. The elements of falsification by a public officer or employee or notary public as defined in Article 171 of the Revised Penal Code are that: (1) the offender is a public officer or employee or notary public; (2) the offender takes advantage of his official

position; and (3) he or she falsifies a document by committing any of the acts mentioned in Article 171 of the Revised Penal Code. The first element is indisputably present in this case. Petitioners were public officers being the Governor and Officer-in-Charge of the General Services Office of the Province of Camarines Norte at the time of the commission of the offense. As to the second element, the offender takes advantage of his official position in falsifying a document when (1) he has the duty to make or to prepare, or otherwise to intervene, in the preparation of the document; or (2) he has the official custody of the document which he falsifies. In the case at bar, petitioners took advantage of their respective official positions because they had the duty to make or prepare or otherwise intervene, in the preparation of the subject PO. Accused Pandeagua prepared the subject PO and petitioner Reyes was the one who issued the same. Upon order of petitioner Reyes, the date in the subject PO was changed by accused Pandeagua, and petitioner Typoco approved the subject PO. As to the third element, the Sandiganbayan found petitioners guilty of the offense of falsification of public document defined and penalized under paragraphs (5) and (6), Article 171 of the Revised Penal Code[.]

3. **ID.; ID.; ID.; ID.; REQUIREMENTS OF "ALTERING TRUE DATES" AND "MAKING ALTERATION OR INTERCALATION IN A GENUINE DOCUMENT" TO CONSTITUTE FALSIFICATION OF PUBLIC DOCUMENTS.—** The act of "altering true dates" requires that: (a) the date mentioned in the document is essential; and (b) the alteration of the date in a document must affect either the veracity of the document or the effects thereof. On the other hand, "making alteration or intercalation in a genuine document" requires a showing that: (a) there be an alteration (change) or intercalation (insertion) on a document; (b) it was made on a genuine document; (c) the alteration or intercalation has changed the meaning of the document; and (d) the change made the document speak something false.

4. **ID.; ID.; ID.; CONSPIRACY AMONG THE PETITIONERS EXISTS DESPITE ACQUITTAL OF THE OTHER ACCUSED.—** [C]onspiracy among the petitioners exists despite the acquittal of accused Pandeagua and Cabrera. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit

it. To determine conspiracy, there must be a common design to commit a felony. A conspiracy is in its nature a joint offense. The crime depends upon the joint act or intent of two or more persons. Yet, it does not follow that one person cannot be convicted of conspiracy. As long as the acquittal or death of a co-conspirator does not remove the basis of a charge of conspiracy, one defendant may be found guilty of the offense. The Sandiganbayan correctly found that there was conspiracy between petitioners as shown in their respective participations in the alteration of the date on the PO in question. x x x The Sandiganbayan, however, acquitted accused Pandeagua and Cabrera. It held that accused Pandeagua considering that she made the alteration in obedience to the instruction of her superior (petitioner Reyes), had nothing to do with the procurement in question except in the preparation of the procurement documents, her duties and responsibilities being clerical in nature. x x x Likewise, accused Cabrera, the owner of CDMS, was acquitted upon the testimony of accused Pandeagua that when she made the alteration on May 23, 2005, accused Cabrera had already signed the unaltered PO on April 21, 2005. Accused Cabrera had no knowledge or concurred in the act of alteration there being no showing that she had access to or custody of the procurement documents.

5. ID.; ID.; ID.; INTENT TO INJURE A THIRD PERSON IS NOT AN ESSENTIAL ELEMENT OF THE CRIME OF FALSIFICATION OF PUBLIC DOCUMENT; THE PRINCIPAL THING BEING PUNISHED IS THE VIOLATION OF THE PUBLIC FAITH AND THE DESTRUCTION OF TRUTH AS PROCLAIMED IN THE DOCUMENT.— In falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person because in the falsification of a public document, what is punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed. The law is clear that wrongful intent on the part of the accused to injure a third person is not an essential element of the crime of falsification of public document. It is jurisprudentially settled that in the falsification of public or official documents, whether by public officers or private persons, it is not necessary that there be present the idea of gain or the intent to injure a third person for the reason that, in contradistinction to private documents, the principal thing

punished is the violation of the public faith and the destruction of truth as therein solemnly proclaimed. In falsification of public documents, therefore, the controlling consideration is the public character of a document; and the existence of any prejudice caused to third persons or, at least, the intent to cause such damage becomes immaterial.

6. ID.; ID.; ID.; *ARIAS* DOCTRINE IS UNAVAILING IN THE CASES AT BAR; WHERE THE IRREGULARITIES ARE VERY APPARENT ON THE FACE OF THE DOCUMENTS, *ARIAS* DOCTRINE IS INAPPLICABLE.— [W]hen a matter is irregular on the document's face, so much so that a detailed examination becomes warranted, the *Arias* doctrine is unavailing. Petitioner Typoco, therefore cannot rely on the *Arias* doctrine because the falsification of the documents in it was not apparent. As discussed above, aside from the alteration in the subject PO, the other documents were also obviously tampered which could have not escaped his attention. Petitioner Typoco's defense that he relied on his subordinates does not find support in the circumstances surrounding his actions. x x x [T]he irregularities are very apparent on the face of the documents. Had petitioner Typoco exercised the due diligence expected of him, he would have easily noticed the irregularities on the documents. As held in *Cesa v. Office of the Ombudsman*, when there are facts that point to an irregularity and the officer failed to take steps to rectify it, even tolerating it, the *Arias* doctrine is inapplicable.

APPEARANCES OF COUNSEL

RRV Legal Consultancy Firm for petitioner Jesus O. Typoco, Jr.
Tristram E. Gonzales for petitioner Noel D. Reyes.

D E C I S I O N

PERALTA, *J.*:

Before this Court are consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1]

[1] Penned by Associate Justice Rodolfo A. Ponferrada, with Associate Justices Efren N. De la Cruz and Rafael R. Lagos, concurring; *rollo* (G.R. No. 222020), pp. 26-55.

dated October 15, 2015, and Resolution[2] dated December 8, 2015 of the Sandiganbayan (*SB*) in SB-11-CRM-0159 finding petitioners Jesus O. Typoco, Jr. (*Typoco*) and Noel D. Reyes (*Reyes*) guilty beyond reasonable doubt of the offense of Falsification of Public Document defined and penalized under Article 171, paragraphs (5) and (6) of the Revised Penal Code.

The factual antecedents are as follows:

Petitioners and their co-accused Aida B. Pandeagua (*Pandeagua*) and Angelina H. Cabrera (*Cabrera*) were charged with Falsification of Public Documents defined and penalized under Article 171 of the Revised Penal Code. Petitioners were found guilty as charged, but their co-accused Pandeagua and Cabrera were acquitted for insufficiency of evidence. Also, the petitioners and the aforementioned accused, together with Arnulfo G. Salagoste (*Salagoste*), were charged with Violation of Section 3(e) of Republic Act (*R.A*) 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act,* but all the accused were acquitted of the charge.[3]

The instant petitions review the conviction of the petitioners of the crime of falsification, hence, the discussion will merely focus on the charge of falsification. The accusatory portion of the Amended Information for falsification states:

That on or about 21 April 2005, or sometime prior or subsequent thereto, in Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Jesus O. Typoco, Jr., Salary Grade 30; Noel D. Reyes, Salary Grade 22; and Aida B. Pandeagua, Salary Grade 9, holding the position of Governor, OIC-General Service Office, and Buyer II, respectively, all public officers,

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[2] *Id*. at 63-70.

[3] The Sandiganbayan held that in spite of the evidence showing that there was violation of Section 3(e) of R.A. 3019 because the contract for the purchase of medicines was awarded without public bidding, the accused cannot be convicted of the said offense considering that "the offense charged is the act of falsifying" and "the offense proved is act of awarding the contract" without public bidding, thus the offense proved is not charged in the Information; *id.* at 53.

taking advantage of their public positions, acting together, conspiring and confederating with one another and with one Angelina H. Cabrera, owner of Cabrera's Drugstore and Medical Supply, did then and there falsify Purchase Order No. 0628 involving the purchase of various medicine by the Provincial Government by changing its original date from April 21, 2005 to May 20, 2005 in order to conceal that an order has been (sic) made with Cabrera's Drugstore and Medical Supply prior to the bidding conducted on May 18, **2005** to the damage and prejudice of the Provincial Government.

CONTRARY TO LAW.[4]

When arraigned for the charge of falsification, petitioners and their co-accused Pandeagua and Cabrera pleaded not guilty to the offense charged. At the pre-trial conference of the two cases which were consolidated, petitioners and their co-accused admitted their respective official capacities as public officers at the time of the commission of the offense as contained in the Pre-Trial Order:

I. STATEMENT OF ADMITTED FACTS:

"The accused individually admitted their respective official capacities as public officers at the time of the alleged commission of the offenses charged as follows:

- Jesus O. Typoco, Jr. – Governor;
- Noel D. Reyes – Officer-in-Charge, General Services Office;
- Aida B. Pandeagua – Buyer II, General Services Office; and
- Arnulfo G. Salagoste – Provincial Health Officer

all of the Provicial Government of Camarines Norte, while accused Angelina H. Cabrera was a private individual during that same period of time.

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

Thereafter, joint trial on the merits ensued. To prove its case, the prosecution presented the testimony of Nemia Y. Noora (*Noora*), State Auditor III of the Commission on Audit (*COA*),

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[4] *Rollo* (G.R. No. 222020), p. 72. (Emphasis ours)

[5] *Id*. at 28.

assigned in Daet, Camarines Norte. She testified on the results of the post-audit conducted by their office relative to the transactions of the provincial government of Camarines Norte which included the purchase of medicines from Cabrera Drugstore and Medical Supplies (*CDMS*).[6] The testimony of Provincial Accountant Myrna de Velez Sendon was dispensed with in view of the stipulations between the parties as to the authenticity of some documents and as to the lack of personal knowledge of witness on the execution of the documents.[7] On the other hand, the defense presented the respective judicial affidavits of petitioners and their co-accused.[8]

The evidence disclosed the following facts:[9]

In 2005, the Office of the Provincial Governor of Camarines Norte adopted a "Medical Indigency Program" with a project cost of ₱4,500,000.00. The program was aimed to provide the indigent families of the two hundred eighty-two (282) barangays of the province with medicines and hospitalization services, particularly those beyond the poverty line. The program was based on a Project Design[10] prepared by the accused Salagoste and approved by petitioner Typoco.

In the implementation of the aforesaid program, accused Salagoste procured from CDMS various medicines and medical supplies in the total amount of ₱1,649,735 for the use of the Camarines Norte Provincial Hospital *(CNPH*) under Purchase Request (*PR*) No. 0628[11] and Purchase Order (*PO*) No. 0628,[12] both dated April 21, 2005. PR No. 0628 was prepared by accused Pandeagua and approved by petitioner Typoco. The subject PO

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[6] *Id*. at 29.

[7] *Id*. at 30.

[8] *Id*. at 31-38.

[9] *Id*. at 39-42.

[10] Exhibit "H", *id*. at 151.

[11] Exhibit "G", *id.* at 150.

[12] Exhibit "CC", *id.*at 164.

No. 0628 was also prepared by accused Pandeagua, issued by petitioner Reyes and approved by petitioner Typoco.

The said procurement was supported by Disbursement Voucher (*DV*) No. 101-05-04-2398[13] dated April 26, 2005, with CDMS as claimant, for the payment of the various medicines to be utilized by CNPH patients in the amount of One Million Six Hundred Forty-Nine Thousand Seven Hundred Thirty-Five Pesos (₱1,649,735.00). In the said DV, accused Salagoste certified that the expenses were necessarily lawful and incurred under his supervision, while petitioner Typoco approved the payment.

On April 28, 2005, CDMS delivered the procured medicines under the subject PO No. 0628 as evidenced by Sales Invoice No. 4325.[14] The medicines were inspected on the same day by Property Inspector Raymund L. Quinones as revealed in the Inspection and Acceptance Report (*IAR*)[15] thereby consummating the subject procurement of medicines covered by the subject PO.[16]

On May 18, 2005, a public bidding for the procurement of the same medicines covered by PO No. 0628 was conducted by the Bids and Committee (*BAC*) of the Province of Camarines Norte. The bid of CDMS in the amount of ₱1,645,140.00 was declared as the Lowest Calculated and Responsive Bid pursuant to BAC Resolution No. 2005-05[17] dated May 18, 2005.[18]

On May 19, 2005, petitioner Typoco issued the corresponding Notice of Award (Exhibit "L") to accused Cabrera, owner of CDMS.[19]

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[13] Exhibit "E", *id.* at 147.

[14] Exhibit "M", *id.* at 156.

[15] Exhibit "P", *id.* at 159.

[16] *Rollo* (G.R. No. 222020), p. 39.

[17] Exhibit "7" – Cabrera, *id.* at 40.

[18] *Id.*

[19] *Id.*

On May 20, 2005, a Contract[20] was executed by and between the Province of Camarines Norte and CDMS whereby the latter as supplier shall provide the former the various medicines covered by PR No. 0628 for and in consideration of the amount of ₱1,645,140.00. On the same day, the supplier issued Sales Invoice No. 4325 (Exhibit "M") as proof of the delivery of the procured medicines in the total amount of ₱1,649,735.00.[21]

On May 24, 2005, the Provincial Government of Camarines Norte issued Check No. 0144730[22] to CDMS covering the amount of ₱1,420,802.72 as payment for the procured medicines. The check, signed by petitioner Typoco and Provincial Treasurer Lorna Coreses, was received by CDMS as evidenced by Official Receipt No. 1528[23] dated May 25, 2005.[24]

In October 2005, the foregoing disbursement for the payment of medicines was the subject of a post-audit that was conducted by a team of COA Auditors with State Auditor III Noora as team leader. In the Audit Observation Memorandum (*AOM*) No. 2006-005[25] dated April 18, 2006 addressed to petitioner Typoco the following audit observations were made:

"x x x on the disbursement for payment of medicines for Medical Indigency Program amounting to ₱1,649,735.00 showed that:

- There are alterations in the Purchase Order and Purchase Request
- The dates of Delivery Receipt and Acceptance in the Sales Invoice were tampered *vis-a vis* in the Inspection and Acceptance Report of the agency.
- List of individual recipients of the drugs and medicines are not submitted to us.[26]

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[20] Exhibit "K", *id.* at 154.

[21] *Id.* at 40.

[22] Exhibit "Y", *id.* at 161.

[23] Exhibit "X", *id.* at 160.

[24] *Id.* at 40.

[25] Exhibit "A", *id.* at 84.

[26] *Rollo* (G.R. No. 222020), p. 40.

An annual financial audit on the Provincial Government of Camarines Norte was conducted by the COA. The results of the audit were embodied in its Annual Audit Report[27] which revealed that: "(1) there was no attached list of individual recipients to the voucher, (2) the date of inspection was changed, and (3) Sales Invoice No. 4325 and PO were undated/apparently changed."[28]

Moreover, in the testimony of Noora, she cited the following deficiencies that the audit team found in the procurement of medicines, to wit:

1. the respective dates of the Purchase Order, the Inspection and Acceptance Report, and the Sales Invoice were tampered/altered as there were erasures therein;
2. the list of the individual recipients of the drugs and medicines were not submitted and unnumbered;
3. the Request and Issue Slip (RIS) that was requested by Dr. Arnulfo Salagoste and approved by former Governor Jesus O. Typoco, Jr. was undated and unnumbered;
4. the Report Utilization[29] that was certified by accused Dr. Arnulfo Salagoste and Engr. Noel O. Reyes and approved by accused Governor Jesus O. Typoco, Jr. as to its accuracy and correctness was undated so that the audit team had no way to determine when the delivered medicines were actually disposed; and
5. there was no request/invitation from the BAC for the COA to attend the bidding.[30]

Petitioner Typoco did not submit any reply/comment to the audit report despite his request for an extension of one (1) month.

All the documentary exhibits formally offered by the prosecution consisting of Exhibits "A", "H", "J" to "K", "M"

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[27] Exhibit "C", *id.* at 88.

[28] *Rollo* (G.R. No. 222020), p. 41.

[29] Exhibit "O", *id.* at 158.

[30] *Rollo* (G.R. No. 222020), p. 41.

to "P", "X" to "AA", and "CC" to "FF"[31] were admitted by the Sandiganbayan.

During the trial of the case, petitioner Typoco, denied any irregularity in the transaction. He insisted that the real date of the subject PO No. 0628 is "05/20/05" and that a competitive public bidding was conducted prior to the award of the contract. His chronology of events highlighted the dates (as altered) of the preparation and accomplishment of the various documents.

On the part of petitioner Reyes, he admitted having noticed the alteration of the date in PO No. 0628, but insisted that the alteration was an honest mistake on the part of co-accused Pandeagua who was also the one who encoded the wrong entries in the PO. Thus, the alleged alteration was supposedly a correction intended to reflect the true date of the preparation/ accomplishment of the documents. Petitioner Reyes utilized the timeline indicated in the altered dates to explain the circumstances surrounding the transaction.

Accused Pandeagua admitted having prepared PO No. 0628. She likewise admitted having changed the date appearing therein from April 21, 2005 to 20 May 2005 upon the instructions of petitioner Reyes.[32]

All the documentary exhibits formally offered by the defense consisting of Exhibits "3" to "18"[33] were admitted by the Sandiganbayan.

On October 15, 2015, the Sandiganbayan rendered a Decision, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered as follows:

1. In ***SB-11-CRM-0159*** – finding the accused JESUS O. TYPOCO, JR. and NOEL D. REYES **GUILTY** beyond reasonable doubt of the offense of falsification of public

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[31] *Rollo* (G.R. No. 221857), pp. 86-98.

[32] *Rollo* (G.R. No. 222020), pp. 252-253.

[33] *Rollo* (G.R. No. 221857), pp. 186-192.

document defined and penalized under paragraphs (5) and (6) of Article 171 of the Revised Penal Code as charged in the Information and, with the application of the Indeterminate Sentence Law and without any mitigating or aggravating circumstance, hereby sentencing each of them to suffer the indeterminate penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *prision correccional,* as minimum, to EIGHT (8) YEARS and ONE (1) DAY of *prision mayor,* as maximum, with accessories thereof and to pay a fine of TWO HUNDRED THOUSAND PESOS (₱200,000.00) with costs against the accused, and **ACQUITTING** accused *AIDA B. PANDEAGUA* and *ANGELINA H. CABRERA* for insufficiency of evidence with cost *de oficio.*

2. In **SB-11-CRM-0160** – **ACQUITTING** the accused *JESUS O. TYPOCO, JR., ARNULFO G. SALAGOSTE, NOEL D. REYES, AIDA B. PANDEAGUA and ANGELINA H. CABRERA* with cost *de oficio*.

SO ORDERED.[34]

The Sandiganbayan found no civil liability against the accused, considering that the procured medicines were delivered by CDMS as evidenced by Sales Invoice No. 0628 dated April 28, 2005; the medicines were inspected by the Property Inspector as per Inspection and Acceptance Report; and there being no evidence of under delivery or overpricing or damage. Nonetheless, considering that the list of intended recipients were not submitted, the Sandiganbayan Decision was without prejudice to whatever liability that may arise for failure to deliver the subject medicines to their intended recipients.

Subsequently, Petitioner Reyes filed a petition for review on *certiorari*[35] before this Court docketed as G.R. No. 222020. Petitioner Typoco followed suit and its petition[36] was docketed as G.R. No. 221857. In this Court's Resolution[37] dated February

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[34] *Id.* at 54.

[35] *Rollo* (G.R. No. 222020), pp. 3-25.

[36] *Rollo* (G.R. No. 221857), pp. 3-26.

[37] *Id.* at 313-314.

10, 2016, We ordered the consolidation considering that both cases involve similar parties and assail the same Decision and Resolution of the Sandiganbayan.

In G.R. No. 222020, petitioner Reyes anchored his petition on the following assigned errors:

THE HONORABLE SANDIGANBAYAN, FIRST DIVISION, GRAVELY ERRED IN FINDING THE PETITIONER GUILTY OF THE CRIME OF FALSIFICATION OF PUBLIC DOCUMENTS AS IT IS NOT IN ACCORD WITH LAW AND PERTINENT JURISPRUDENCE.

THE HONORABLE SANDIGANBAYAN, FIRST DIVISION, GRAVELY ERRED IN NOT CONSIDERING *"TO THE DAMAGE AND PREJUDICE OF THE PROVINCIAL GOVERNMENT"* AS ALLEGED IN THE INFORMATION UNDER SB-11-CRM-0519, NEGATING AN ESSENTIAL ELEMENT OF CRIMINAL INTENT TO FALSIFICATION OF PUBLIC DOCUMENT TO WHICH PETITIONER WAS FOUND GUILTY AS IT IS NOT IN ACCORD WITH LAW AND PERTINENT JURISPRUDENCE.

THE HONORABLE SANDIGANBAYAN, FIRST DIVISION, ERRED IN FINDING THAT PETITIONER CONSPIRED WITH HIS CO-ACCUSED TYPOCO, JR. THERE BEING NO CRIME COMMITTED TO CONSPIRE INTO WHICH IS NOT IN ACCORD WITH LAW AND PERTINENT JURISPRUDENCE.[38]

In G.R. No. 221857, petitioner Typoco anchored his petition on the following assigned errors:

THE HONORABLE SANDIGANBAYAN, FIRST DIVISION, GRAVELY ERRED IN FINDING THE PETITIONER GUILTY OF THE CRIME OF FALSIFICATION OF PUBLIC DOCUMENTS BEYOND REASONABLE DOUBT WHICH IS NOT IN ACCORD WITH LAW AND/OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

THE HONORABLE SANDIGANBAYAN, FIRST DIVISION, GRAVELY ERRED IN FINDING THAT THE PETITIONER CONSPIRED WITH HIS CO-ACCUSED BEYOND REASONABLE

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[38] *Rollo* (G.R. No. 222020), p. 7.

DOUBT WHICH IS NOT IN ACCORD WITH LAW AND/OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

THE HONORABLE SANDIGANBAYAN, FIRST DIVISION, GRAVELY ERRED IN THE NON-APPLICATION OF THE DOCTRINE LAID DOWN IN ARIAS AND MAGSUCI CASE WHICH IS NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

THE HONORABLE SANDIGANBAYAN, FIRST DIVISION, GRAVELY ERRED IN NOT CONSIDERING *"TO THE DAMAGE AND PREJUDICE OF THE PROVINCIAL GOVERNMENT"* AS ALLEGED IN THE INFORMATION UNDER SB-11-CRM-0519, IN THE APPRECIATION OF THE CASE WHICH IS NOT IN ACCORD WITH THE LAW AND APPLICABLE PERTINENT DECISIONS OF THE SUPREME COURT.[39]

Petitioner Reyes asserted in his petition that the correction was made on the subject PO without criminal intent. And that, in as much as the information for the crime of falsification of public document which includes *damage and prejudice to the Provincial Government* bolsters lack of intent to falsify, the absence of the same should have resulted to the acquittal of the petitioner on reasonable doubt. Petitioner Reyes averred that the acquittal of accused Pandeagua who was the one who actually made the act of alteration negates the finding that he was a co-conspirator and broke the alleged chain of conspiracy. He further claimed that the only purpose of the alleged alteration on the date appearing on the PO is no other than to reflect the truth. The error happened because the PO was merely copied from the PR and through the "copy and paste" command from the computer, all the encoded entries in the PR were transferred to the PO.

Petitioner Typoco stated in his petition that the circumstances and the evidence presented by the prosecution failed to prove his guilt in the commission of the crime of falsification. He may have acted negligently when he affixed his signature on the subject PO which document was forwarded to him with all the necessary signatures of his subordinates, but no criminal

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[39] *Rollo* (G.R. No. 221857), pp. 7-8.

intent, much more conspiracy, on his part, can be attributed to him when he signed the same. He stressed that he relied in good faith on his subordinates and provincial officers. According to petitioner Typoco, the only purpose of the alleged alteration on the date appearing on the PO is no other than to reflect the truth. And that, in as much as the information for the crime of falsification of public document includes *damage and prejudice to the Provincial Government* which bolsters lack of intent to falsify, absence of the same should have resulted to his acquittal.

In the Consolidated Comment[40] on the petition, the Office of the Ombudsman countered that both petitions raise questions of fact which are simply outside the ambit of a Rule 45 petition. It argued that damage and prejudice are not elements of the crime of falsification under Article 171. Although alleged in the Information, lack of proof thereof is not essential to constitute the crime. The chronological timeline of the preparation, approval and issuance of the procurement documents simply point to a concurrence of sentiments and a perfect blending of conspiratorial acts to achieve a common purpose.

In the separate Reply of petitioners Typoco[41] and Reyes,[42] they reiterate that there was no falsification to speak of since the alteration appearing in the subject PO was made in order to reflect the truth as discussed in their respective petitions.

We deny both petitions.

It is settled that the appellate jurisdiction of the Court over decisions and final orders of the Sandiganbayan is limited only to questions of laws; as its factual findings, as a rule, are conclusive upon the Court.[43]

A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites

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[40] *Rollo* (G.R. No. 222020), pp. 245-266.

[41] *Rollo* (G.R. No. 221857), pp. 353-363.

[42] *Rollo* (G.R. No. 222020), pp. 268-277.

[43] *Rivera v. People,* 749 Phil. 124, 141 (2014).

calibration of the whole evidence considering mainly the credibility of witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[44]

Issues raised before the Court on whether the prosecution's evidence proved the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was properly accorded the accused, whether there was sufficient evidence to support a charge of conspiracy, or whether the defense of good faith was correctly appreciated, are all, in varying degrees, questions of fact. As a rule, the factual findings of the Sandiganbayan are conclusive on this Court, subject to limited exceptions.[45] We find none of these exceptions in the present case.[46]

Petitioners were charged[47] with the crime of falsification of public documents under Article 171 of the Revised Penal Code. The elements of falsification by a public officer or employee or notary public as defined in Article 171 of the Revised Penal Code are that: (1) the offender is a public officer or employee or notary public; (2) the offender takes advantage of his official position; and (3) he or she falsifies a document by committing any of the acts mentioned in Article 171 of the Revised Penal Code.[48]

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[44] *Id.*

[45] The factual findings of the Sandiganbayan are conclusive upon this Court, except under any of the following circumstances:

(1) The conclusion is a finding grounded entirely on speculation, surmise and conjectures;
(2) The inference made is manifestly an error or founded on a mistake;
(3) There is grave abuse of discretion;
(4) The judgment is based on misapprehension of facts; and
(5) The findings of fact are premised on want of evidence and are contradicted by evidence on record. [*Sanchez v. People*, 716 Phil. 397, 403 (2013)].

[46] *Jaca v. People,* 702 Phil. 210, 238 (2013); *SPO1 LihayLihay v. People,* 715 Phil. 722, 728 (2013).

[47] Amended Information, *rollo* (G.R. No. 222020), pp. 71-73.

[48] *Garong v. People,* G.R. No. 172539, November 16, 2016.

The first element is indisputably present in this case. Petitioners were public officers being the Governor and Officer-in-Charge of the General Services Office of the Province of Camarines Norte at the time of the commission of the offense.

As to the second element, the offender takes advantage of his official position in falsifying a document when (1) he has the duty to make or to prepare, or otherwise to intervene, in the preparation of the document; or (2) he has the official custody of the document which he falsifies.[49] In the case at bar, petitioners took advantage of their respective official positions because they had the duty to make or prepare or otherwise intervene, in the preparation of the subject PO. Accused Pandeagua prepared the subject PO and petitioner Reyes was the one who issued the same. Upon order of petitioner Reyes, the date in the subject PO was changed by accused Pandeagua, and petitioner Typoco approved the subject PO.

As to the third element, the Sandiganbayan found petitioners guilty of the offense of falsification of public document defined and penalized under paragraphs (5) and (6), Article 171 of the Revised Penal Code, which pertinently state:

Article 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of prision mayor and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

x x x x x x x x x

The act of "altering true dates" requires that: (a) the date mentioned in the document is essential; and (b) the alteration

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[49] *Id.,* citing *People v. Santiago Uy,* 53 O.G. 7236 and *U.S. v. Inosanto,* 20 Phil. 376 (1911).

of the date in a document must affect either the veracity of the document or the effects thereof.[50]

On the other hand, "making alteration or intercalation in a genuine document" requires a showing that: (a) there be an alteration (change) or intercalation (insertion) on a document; (b) it was made on a genuine document; (c) the alteration or intercalation has changed the meaning of the document; and (d) the change made the document speak something false.[51]

In the case at bar, the original date of the PO is essential because it affects not only the veracity or effect thereof but also determinative of the time when it was prepared and approved so that the change or alteration made the document speak something false. We quote herein the ratiocination of the Sandiganbayan:

> In this regard, the Court takes note that accused Aida Pandeagua admitted that she was the public officer who prepared Purchase Request (PR) No. 0628 and PO No. 0628 on April 21, 2005, and Disbursement Voucher (DV) No. 101-04-04-2398 on April 26, 2005; that at the time she prepared said documents, she did not find anything irregular or mistake in the respective dates that she had typewritten therein until her superior in the GSO, accused Noel Reyes, instructed her to change the original date of the subject PO from **"4/21/05"** to **"5/20/05"** when it was returned to their office on May 23, 2005; and that at the time she prepared the subject PO on April 21, 2005, ***there was yet no bidding for the said purchase of medicines.***
>
> Undoubtedly, this alteration or change in the original date of the subject PO constitutes falsification of official document because it affected not only its veracity but it also changed the time when it was prepared and approved to make the document speak something false, *i.e.,* that said PO was approved on "5-20-05" by accused Jesus O. Typoco, Jr. in favor of Cabrera Drugstore and Medical Supplies and after a public bidding was conducted on May 18, 2005, when in truth and fact the PO in question was already approved on April 21, 2005 without any public bidding. Hence, the crime of falsification

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[50] Reyes, *The Revised Penal Code*, Book II, 13th Ed., pp. 202-203.

[51] *Rollo* (G.R. No. 222020), p. 204.

of document by a public official under paragraphs 5 and 6 of Article 171 of the Revised Penal Code has been sufficiently established to sustain a verdict of conviction.[52]

It was sufficiently shown from the evidence adduced that PO No. 0628 was actually prepared on April 21, 2005 prior to the conduct of public bidding, and that petitioner Reyes gave the directive to change the original date in the subject PO only on May 23, 2005, after the conduct of public bidding. Hence, the changing of the date in the subject PO from April 21, 2005[53] to May 20, 2005[54] was not a mere correction but an act of falsification to make it appear that a bidding was conducted prior to ordering the medicines from CDMS.

Moreover, conspiracy among the petitioners exists despite the acquittal of accused Pandeagua and Cabrera. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To determine conspiracy, there must be a common design to commit a felony. A conspiracy is in its nature a joint offense. The crime depends upon the joint act or intent of two or more persons. Yet, it does not follow that one person cannot be convicted of conspiracy. As long as the acquittal or death of a co-conspirator does not remove the basis of a charge of conspiracy, one defendant may be found guilty of the offense.[55]

The Sandiganbayan correctly found that there was conspiracy between petitioners as shown in their respective participations in the alteration of the date on the PO in question. It found that it was petitioner Reyes who instructed accused Pandeagua to alter or change the date "4/20/05" in the PO with "5/20/05" to make it appear that it was on May 20, 2005 that the procurement covered by the PO was approved by petitioner Typoco after the conduct of a public bidding on May 18, 2005. After the

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[52] *Rollo* (G.R. No. 221857), p. 46.

[53] *Supra* note 12.

[54] Exhibit "DD", *rollo* (G.R. No. 222020), p. 165.

[55] *Rivera v. People, supra* note 43, at 153.

bidding, petitioner Typoco immediately issued the Notice of Award to CDMS, then a Contract for the procurement of medicines was executed by and between the Province of Camarines Norte and CDMS. The Sandiganbayan opined that the respective acts of petitioners — Reyes directing the alteration of the date on the PO to make it appear that the PO was approved after the bidding was conducted on May 18, 2005, and Typoco in entering into a contract with CDMS knowing fully well that the procurement of medicines had already been done before the bidding — are indicative of a joint purpose, concerted action and concurrence of sentiments.

The Sandiganbayan, however, acquitted accused Pandeagua and Cabrera. It held that accused Pandeagua considering that she made the alteration in obedience to the instruction of her superior (petitioner Reyes), had nothing to do with the procurement in question except in the preparation of the procurement documents, her duties and responsibilities being clerical in nature. In the judicial affidavit of accused Pandeagua, she stated — *"I merely prepared or typed the said documents according to the specific instructions of my superiors."*[56]

Likewise, accused Cabrera, the owner of CDMS, was acquitted upon the testimony of accused Pandeagua that when she made the alteration on May 23, 2005, accused Cabrera had already signed the unaltered PO on April 21, 2005. Accused Cabrera had no knowledge or concurred in the act of alteration there being no showing that she had access to or custody of the procurement documents.

Conspiracy need not be shown by direct proof of an agreement of the parties to commit the crime, as it can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime.[57] An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part of and another

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[56] Judicial Affidavit of Pandeagua, p. 3, *rollo* (G.R. No. 221857), p. 282.

[57] *Galeos v. People,* 657 Phil. 500, 526 (2011).

performing another so as to complete it with a view to the attainment of the same object, and their acts although apparently independent were, in fact, concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[58]

As correctly argued by the Office of the Ombudsman through the Office of the Special Prosecutor, the chronological timeline of the preparation, approval and issuance of the procurement documents simply point to a concurrence of sentiments and a perfect blending of conspiratorial act to achieve a common purpose. Hence, the unity of criminal design and execution was very patent.

In addition, petitioners argue that damage to the government should have been proven considering that this was alleged in the Information. We do not agree. In falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person because in the falsification of a public document, what is punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.[59]

The law is clear that wrongful intent on the part of the accused to injure a third person is not an essential element of the crime of falsification of public document. It is jurisprudentially settled that in the falsification of public or official documents, whether by public officers or private persons, it is not necessary that there be present the idea of gain or the intent to injure a third person for the reason that, in contradistinction to private documents, the principal thing punished is the violation of the public faith and the destruction of truth as therein solemnly proclaimed. In falsification of public documents, therefore, the controlling consideration is the public character of a document;

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[58] *Ambil, Jr. v. Sandiganbayan,* 669 Phil. 32, 57 (2011).

[59] *Galeos v. People, supra* note 57, at 521, citing *Regidor, Jr. v. People*, 598 Phil. 714, 732 (2009); *Lastrilla v. Granda,* 516 Phil. 667, 688 (2006); *Lumancas v. Intas,* 400 Phil. 785, 798 (2000), and *People v. Po Giok To,* 96 Phil. 913, 918 (1955).

and the existence of any prejudice caused to third persons or, at least, the intent to cause such damage becomes immaterial.[60]

Furthermore, both petitioners claim that the alteration was made only to reflect the truth. Obviously, such is a not the case as revealed by the other documents/exhibits of the prosecution. The subject PO was not the only one falsified; the Acceptance and Inspection Report and Sales Invoice were likewise tampered:

a. The date of inspection as stated in the Inspection and Acceptance Report was changed from *"4-28-05*" to "*5-23-05"*. In the same document, the date of acceptance was also tampered and changed from "5-20-05" to "5-23-05". As in fact, there appears a note on the face of the disbursement voucher which reads: *"Note: Supporting paper #15 inspection report inspected 5/20/05*".

b. The date of the Sales Invoice was changed from "*4-28-05*" to "*5-23-05*". The original date is the same as the original date of inspection. The new date appearing on the document is now "*5-28-2005*" which also means that the supplies were delivered on "*5-28-2005*". This alteration makes the new inspection date *"5-23-05"* questionable as it would be impossible to inspect the medicines on "*5-23-05*" if the delivery had been made on "*5-28-2005*".

This Court's observation was properly discussed by the Office of the Ombudsman in its comment to the petitions, thus:

For his part, petitioner Reyes claims that he ordered the alteration of the date in the purchase order "to reflect the truth." Aside from this bare allegation, however, Reyes has not presented any feasible explanation for all the other alterations and irregularities attending the documents supporting the transaction. For one, he has not explained why the disbursement voucher in the name of Cabrera Drugstores and Medical Supplies was also dated 26 April 2005, when the bidding was allegedly conducted on 18 May 2005. For another, he has not

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[60] *Fullero v. People,* 559 Phil. 524, 542 (2007).

explained why the dates in the inspection and acceptance report and the sales invoice also had to be altered, if the original date indicated in the purchase order was a mistake. On the contrary, the dates in all the documents submitted by the local government of Camarines Norte to the COA clearly show that the order and delivery of machines transpired before the alleged conduct of bidding. It becomes utterly obvious that the alteration made on the purchase order and the other documents was for the sole purpose of making it appear that the order and delivery of medicines were done after the alleged bidding on 18 May 2005. The truth, however, is that an order had been placed as early as 21 April 2005, without the requisite public bidding.[61]

Petitioner Typoco invokes the *Arias* doctrine which states that "all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations."[62]

The factual circumstances which led to the Court's ruling in *Arias* were such that there was nothing else in the documents presented before the head of office therein that would have required the detailed examination of each paper or document, *viz.*:

> We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly-sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise personally look into the reimbursement voucher's accuracy, propriety, and sufficiency. **There has to be some added reason why he should examine each voucher in such detail**. Any executive head of even small government agencies or commissions

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[61] *Rollo* (G.R No. 222020), p. 258. (Underlining supplied)

[62] *Rivera v. People, supra* note 43, at 151.

can attest to the volume of papers that must be signed. x x x[63] (Emphasis supplied)

Simply put, when a matter is irregular on the document's face, so much so that a detailed examination becomes warranted, the Arias doctrine is unavailing.[64] Petitioner Typoco, therefore cannot rely on the *Arias* doctrine because the falsification of the documents in it was not apparent. As discussed above, aside from the alteration in the subject PO, the other documents were also obviously tampered which could have not escaped his attention.

Petitioner Typoco's defense that he relied on his subordinates does not find support in the circumstances surrounding his actions. As Governor and concurrent Chairman of the BAC, he was the approving authority in the transaction with CDMS. As such, he was expected to exercise due diligence in the performance of his duties.

We need to stress that the COA Annual Audit Report on the Province of Camarines Norte for the Year ended December 31, 2005 (Exhibit "C") revealed that: (a) there was no attached list of individual recipients to the voucher; (b) the date of inspection was changed; and (c) Sales Invoice No. 4325 and the subject PO were undated/apparently changed.[65]

Further, in the Audit Observation Memorandum (*AOM*) No. 2006-005 dated April 18, 2006 addressed to petitioner Typoco, the following audit observations were made: (a) there are alterations in the Purchase Order and Purchase Request; (b) the dates of Delivery Receipt and Acceptance in the Sales Invoice were tampered *vis-a vis* in the Inspection and Acceptance Report; and (c) the list of individual recipients of the drugs and medicines were not submitted.[66]

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[63] *Garcia v. Office of the Ombudsman,* 747 Phil. 445, 464 (2014).

[64] *Id.*

[65] Sandiganbayan Decision, *rollo* (G.R. No. 222020), p. 41.

[66] *Id.,* at 40.

Thus, the irregularities are very apparent on the face of the documents. Had petitioner Typoco exercised the due diligence expected of him, he would have easily noticed the irregularities on the documents. As held in *Cesa v. Office of the Ombudsman*,[67] when there are facts that point to an irregularity and the officer failed to take steps to rectify it, even tolerating it, the *Arias* doctrine is inapplicable.[68]

To clarify, the *Arias doctrine* is not an absolute rule. It is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability. Thus, this ruling cannot be applied to exculpate petitioner Typoco in view of the peculiar circumstances in this case which should have prompted him, as head of office, to exercise a higher degree of circumspection and, necessarily, go beyond what his subordinates had prepared.[69]

In the case of *LihayLihay v. People,*[70] We ruled that:

> In this relation, it must be clarified that the ruling in *Arias v. Sandiganbayan* (*Arias*) cannot be applied to exculpate petitioners in view of the peculiar circumstances in this case which should have prompted them to exercise a higher degree of circumspection, and consequently, go beyond what their subordinates had prepared. In particular, the tampered dates on some of the RIVs, the incomplete certification by GSC SAO Mateo on the date of receipt of the CCIE items, the missing details on the Reports of Public Property Purchased and the fact that sixteen checks all dated January 15, 1992 were payable to PNP SSS should have aroused a reasonable sense of suspicion or curiosity on their part if only to determine that they were not approving a fraudulent transaction. x x x[71]

As held in the case of *Bacasmas v. Sandiganbayan, et al.*[72] when there are reasons for the heads of offices to further examine

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[67] 576 Phil. 345, 355 (2008).

[68] *Ombudsman v. Delos Reyes, Jr.,* 745 Phil. 366, 384 (2014).

[69] *Rivera v. People, supra* note 43, at 152.

[70] *Supra* note 46.

[71] *SPO1 LihayLihay v. People, id.* at 731. (Underscoring ours).

[72] 713 Phil. 639, 662 (2013).

the documents in question, they cannot seek refuge by invoking the *Arias* doctrine:

> Petitioners cannot hide behind our declaration in *Arias v. Sandiganbayan* charge just because they did not personally examine every single detail before they, as the final approving authorities, affixed their signatures to certain documents. The Court explained in that case that conspiracy was not adequately proven, contrary to the case at bar in which petitioners' unity of purpose and unity in the execution of an unlawful objective were sufficiently established. Also, unlike in Arias, where there were no reasons for the heads of offices to further examine each voucher in detail, petitioners herein, by virtue of the duty given to them by law as well as by rules and regulations, had the responsibility to examine each voucher to ascertain whether it was proper to sign it in order to approve and disburse the cash advance.

The case of *Cruz v. Sandiganbayan*[73] carved out an exception to the *Arias* doctrine, stating that:

> Unlike in *Arias,* however, there exists in the present case an exceptional circumstance which should have prodded petitioner, if he were out to protect the interest of the municipality he swore to serve, to be curious and go beyond what his subordinates prepared or recommended. In fine, the added reason contemplated in *Arias* which would have put petitioner on his guard and examine the check/s and vouchers with some degree of circumspection before signing the same was obtaining in this case.

Lastly, in criminal cases, to justify a conviction, the culpability of the accused must be established by proof beyond reasonable doubt. The burden of proof is on the prosecution, as the accused enjoys a constitutionally enshrined disputable presumption of innocence. The court, in ascertaining the guilt of the accused, must, after having marshalled the facts and circumstances, reach a moral certainty as to the accused's guilt. Moral certainty is that degree of proof which produces conviction in an unprejudiced mind. Otherwise, where there is reasonable doubt, the accused must be acquitted.[74]

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[73] 504 Phil. 321, 334 (2005).

[74] *Rivera v. People, supra* note 43, at 153-154.

In this case, the Court is convinced that the guilt of the petitioners was proven beyond reasonable doubt and that the Sandiganbayan did not err in its findings and conclusion. The totality of the facts and circumstances demonstrates that they committed the crime of falsification by a public officer under Article 171, paragraphs 5 and 6, of the Revised Penal Code. The moral certainty required in criminal cases has been satisfied.

WHEREFORE, the Decision dated October 15, 2015 and Resolution dated December 8, 2015 of the Sandiganbayan in SB-11-CRM-0159 are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, Jardeleza,[*] and *Reyes, Jr., JJ.,* concur.

Caguioa, J., on wellness leave.

THIRD DIVISION

[G.R. No. 227309. August 16, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOCELYN CARLIT *y* GAWAT,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THAT MUST BE ESTABLISHED FOR A SUCCESSFUL PROSECUTION THEREOF.— In a catena of cases, this Court laid down the essential elements to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous

[*] Additional Member in lieu of Associate Justice Antonio T. Carpio, per Raffle dated August 16, 2017.

drugs, *viz*: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and payment therefor. Briefly, the delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*. Presenting in court the *corpus delicti* is not rote function, but a tedious undertaking. Much had already been said about the unique characteristic of narcotic substances — that they are not readily identifiable and prone to tampering, alteration, or substitution — which justifies the Court's imposition of a more exacting standard before they could be accepted as evidence, if only to render it improbable that the integrity or identity of the original item had been compromised.

2. ID.; ID.; ID.; THE PROSECUTION FAILED TO PROVE EVERY LINK IN THE CHAIN OF CUSTODY IN CASE AT BAR.— We have consistently held in drug cases that every link of the chain of custody must be proved. It is quite regrettable though that the prosecution fell short of satisfying this standard when it opted to present only two witnesses herein, PO3 Carvajal and PSI Malojo Todeño. To refresh, the substance of PO3 Carvajal's testimony was that he was the poseur-buyer who received the sachet containing the dangerous drug from Carlit, and that he was the only arresting officer who handled the same until it was turned over to PSI Todeño at the PNP Crime Laboratory. PSI Todeño confirmed receiving the narcotic substance from PO3 Carvajal for testing, and added that her specimen was then handed to one PO2 Manuel, the evidence custodian, for safekeeping. This is where the chain breaks. x x x Unfortunately, PO2 Manuel was never presented as witness in this case. Needless to say, the probability of the integrity and identity of the *corpus delicti* being compromised is present in every single time the prohibited item is being stored or transported, be it from the PNP crime laboratory directly to the court or otherwise. It was therefore imperative for the prosecution to have presented as witness PO2 Manuel, and anyone else for that matter who may have handled the drug after him. For during the interim time — from when the specimen was placed under his custody until the time it was brought to court — the threat of tampering, alteration, or substitution of the *corpus delicti* still existed. Without PO2 Manuel's testimony,

there is no guarantee that the *corpus delicti* of the offense had been preserved.

3. ID.; ID.; ID.; ID.; INABILITY TO COORDINATE WITH THE MEDIA AND THE LOCAL OFFICIAL DOES NOT CONSTITUTE JUSTIFIABLE GROUND FOR NON-COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 OF RA 9165; FAILURE TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT WARRANTS HER ACQUITTAL.— PO3 Carvajal did not offer any explanation for these lapses. Rather, he admitted that they were no longer able to coordinate with the media and the local official because he was instructed by their team leader to immediately bring Carlit to the police station. To Our mind, this does not constitute justifiable ground for skirting the statutory requirements under Section 21 of R.A. 9165. x x x Plainly, there was a failure of the prosecution to prove that the chain of custody was unbroken due to (1) its failure to offer the testimony of the evidence custodian, and (2) non-compliance with Paragraph 1, Section 21 of RA 9165, as amended, without justifiable reason. As such, the guilt of the accused-appellant was not proven beyond reasonable doubt, warranting her acquittal of the crime charged.

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

VELASCO, JR., *J.*:

Nature of the Case

This treats the appeal from the August 20, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06510. The challenged ruling affirmed the conviction of accused-appellant Jocelyn G. Carlit (Carlit) for illegal sale of dangerous

[1] *Rollo*, pp. 2-12. Penned by Associate Justice Francisco P. Acosta, concurred in by Associate Justices Noel G. Tijam (Chairperson, 4th Division) and Eduardo B. Peralta.

drugs, in violation of Section 5 of Republic Act No. (R.A.) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Culled from the records are the following facts:

x x x x PO3 Christian Carvajal was assigned at [the] Dagupan City Police Station when, on 26 February 2011, he was tasked to act as poseur buyer in the buy bust operation against Jocelyn Carlit in the squatters area in Mayombo District of the city. Their office received information that Carlit is engaged in illegal activities, hence, the buy bust operation. During their preparation, they recorded the buy bust money to be used in the police blotter. The police officer did not know whether there was coordination with the [Philippine Drug Enforcement Agency].

It was around 2:00 o'clock in the afternoon when he, with a civilian asset, went to conduct the buy bust at Highlander, Mayombo District, Dagupan City. They approached the Accused [herein accused-appellant] and personally bought shabu from her, handing the buy bust money consisting of five (5) 100-peso bills, while the Accused handed a sachet of shabu. After he got hold of the shabu, the police officer introduced himself as a police officer and arrested the Accused. The shabu was marked in the police station with the officer's initials and also recovered the buy bust money from the Accused. The officer declared that he did not know the Accused prior to the buy bust and confirmed the identity only through the asset. The officer said that the Accused and his supervising officer were both present when he prepared the confiscation receipt which was signed by a DOJ representative although there was no media. At the police station, the police blotter, request for laboratory examination and coordination with the PDEA as well as his affidavit were prepared. The police officer also narrated that he was the only one in sole possession of the specimen from its seizure up to the station where it was only shown to the investigator and thereafter brought by him to the crime laboratory, where it was received by PSI Myrna Malojo.

The specimen weighing 0.07 gram tested positive as methamphetamine hydrochloride according to PSI Myrna Malojo Todeño who received the same and who conducted the examination. She placed her findings in an Initial Laboratory Report and then the Final Chemistry Report No. D-023-11L. The officer identified the

plastic sachet containing the specimen with her marking the same with "D-023-11L." The specimen was then handed to the evidence custodian PO2 Manuel.[2] (words in brackets added)

An information was therefore filed against Carlit, charging her with the illegal sale of dangerous drugs, specifically, methamphetamine hydrochloride or shabu. The accusatory portion of the information reads:

> That on or about the 26th day of February 2011, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOCELYN CARLIT *y* GAWAT, did then and there, willfully, unlawfully and criminally, sell and deliver to a customer Methamphetamine Hydrochloride contained in one (1) heat sealed plastic sachet, weighing more or less 0.07 grams in exchange for ₱500.00 without authority to do so.
>
> Contrary to Article II, Section 5, R.A. 9165.[3]

The case was docketed as Criminal Case No. 2011-0115-D entitled *People of the Philippines vs. Jocelyn Carlit* and raffled to the Regional Trial Court, Branch 42 in Dagupan City (RTC).

On arraignment, Carlit pleaded "not guilty" to the offense charged. The case proceeded to preliminary and pre-trial conferences, wherein the State and the defense had stipulated only on the identity of the accused as the person arraigned.[4] Thereafter, trial on the merits ensued.

The prosecution offered the testimony of two witnesses to prove the culpability of the accused. The first to take the witness stand was PSI Myrna Malojo Todeño (PSI Todeño), the forensic chemist stationed at the Philippine National Police (PNP) Crime Laboratory. According to her, she was the one who received the suspected drug item at the crime laboratory, examined the specimen, and authored the initial and final chemistry reports declaring that the subject item tested positive for methamphetamine

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[2] *Rollo*, pp. 3-4.

[3] *Id*. at 2-3.

[4] CA *Rollo*, p. 29.

hydrochloride. She likewise testified that after conducting the examination, she turned over the items to their evidence custodian, one PO2 Manuel.

PO3 Christian Carvajal (Carvajal), the poseur-buyer, was the second and final prosecution witness presented. His testimony served as the basis of the narration of facts by the courts *a quo.* Coupled with the testimony of the forensic chemist, it was determined that Carvajal's testimony was sufficient to establish the chain of custody and sustain a conviction since he was in sole possession of the specimen from its seizure up to when it was shown to the investigator at the police station, and thereafter when it was brought by him to the crime laboratory where it was received by PSI Todeño.

On the other hand Carlit, in her defense, testified that she was on her way to her mother's house when she came across three (3) policemen, including Carvajal, who were looking for her. Before she was able to answer, the officers directed her to an alley that coincidentally leads to where she was going. Upon reaching her mother's house, the police officers asked her sister Jocelyn to confirm her [Carlit's] identity. But because Jocelyn would not answer without being told of the reason for the questioning, one of the police officers, one PO Decano, forced accused-appellant into the house where she was handcuffed. Carlit denied the allegation that she was selling shabu at the time she was arrested. Maria Fe De Vera, who allegedly witnessed the allegedly unlawful arrest of her sister-in-law, Carlit, corroborated the testimony of accused-appellant.

The Ruling of the RTC

After evaluating the evidence on record, the RTC held that the prosecution established with moral certainty that accused-appellant was caught *in flagrante delicto* in a legitimate buy-bust operation. The exchange of marked money for a sachet of shabu between PO3 Carvajal, on the one hand, and Carlit, on the other, constituted a violation of Section 5 of R.A. 9165, so the trial court ruled. Absent any finding that the buy-bust team was inspired by some improper motive in effecting the arrest, the RTC held that the testimony of PO3 Carvajal deserved full weight and credit.

Thus, unconvinced by the defense that Carlit had raised, the trial court found the accused-appellant guilty as charged in its September 20, 2013 Decision,[5] the dispositive portion of which reads:

> WHEREFORE, premises considered, the court hereby finds the accused GUILTY of the crime of Violation of Section 5 o[f] Art. II of RA 9165, beyond reasonable doubt, and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos.
>
> Let the shabu subject matter of this case be disposed of in the manner provided by law.
>
> SO ORDERED.[6]

Subsequently, the case was elevated to the CA.

The Ruling of the CA

In her brief, Carlit interposed the defense of denial. She claimed that she was illegally arrested, and that the shabu that she allegedly sold to PO3 Carvajal was not from her. She further questioned the chain of custody of the purported object of the sale, and points out that the buy-bust team failed to inventory, mark, and photograph the drugs in her presence, with a representative of the Department of Justice and a barangay official, immediately after her arrest.

On August 20, 2015, the CA rendered the assailed judgment denying Carlit's appeal, thusly:

> WHEREFORE, the Appeal is hereby DENIED for lack of merit. The assailed Decision dated 20 September 2013 of the Regional Trial Court, Branch 42, Dagupan City, is AFFIRMED *in toto*.
>
> SO ORDERED.[7]

The accused appealed this decision to this Court *via* Notice of Appeal dated September 21, 2015.

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[5] *Id*. at 28-41. Penned by Presiding Judge A. Florentino R. Dumlao, Jr.

[6] *Id*. at 41.

[7] *Rollo*, p. 12.

The Issue

The crux of the controversy ultimately boils down to the question of whether or not the courts *a quo* correctly convicted Carlit for illegal sale of dangerous drugs.

The Courts' Ruling

The appeal must be granted.

The prosecution failed to prove every link in the chain of custody

Section 5 of R.A. 9165 provides:

> Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

In a catena of cases, this Court laid down the essential elements to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous drugs, *viz*: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and payment therefor. Briefly, the delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.[8]

Presenting in court the *corpus delicti* is not rote function, but a tedious undertaking. Much had already been said about

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[8] *People v. Rosauro,* G.R. No. 209588, February 18, 2015, 751 SCRA 204, 214.

the unique characteristic of narcotic substances — that they are not readily identifiable and prone to tampering, alteration, or substitution[9] — which justifies the Court's imposition of a more exacting standard before they could be accepted as evidence, if only to render it improbable that the integrity or identity of the original item had been compromised. This is where the observance of the chain of custody comes in. As We have opined in *People v. Salvador (Salvador)*:

> "The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established." "'Chain of Custody' means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court. Such record of movements and custody of seized item shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition."
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> There are links that must be established in the chain of custody in a buy-bust situation, namely: "**first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court**."[10] (emphasis added)

The aforecited doctrine was likewise served as basis for the CA in sustaining Carlit's conviction. Ironically, however, Our teaching in *Salvador* was grossly misapplied in this case.

We have consistently held in drug cases that every link of the chain of custody must be proved. It is quite regrettable though

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[9] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 634.

[10] G.R. No. 190621, February 10, 2014, 715 SCRA 617, 635.

that the prosecution fell short of satisfying this standard when it opted to present only two witnesses herein, PO3 Carvajal and PSI Malojo Todeño.

To refresh, the substance of PO3 Carvajal's testimony was that he was the poseur-buyer who received the sachet containing the dangerous drug from Carlit, and that he was the only arresting officer who handled the same until it was turned over to PSI Todeño at the PNP Crime Laboratory.

PSI Todeño confirmed receiving the narcotic substance from PO3 Carvajal for testing, and added that her specimen was then handed to one PO2 Manuel, the evidence custodian, for safekeeping.

This is where the chain breaks.

Clear in *Salvador* is that the final link of the chain must be on how the drug item seized came into the court's physical custody. Unfortunately, PO2 Manuel was never presented as witness in this case. Needless to say, the probability of the integrity and identity of the *corpus delicti* being compromised is present in every single time the prohibited item is being stored or transported, be it from the PNP crime laboratory directly to the court or otherwise. It was therefore imperative for the prosecution to have presented as witness PO2 Manuel, and anyone else for that matter who may have handled the drug after him. For during the interim time — from when the specimen was placed under his custody until the time it was brought to court — the threat of tampering, alteration, or substitution of the *corpus delicti* still existed.

Without PO2 Manuel's testimony, there is no guarantee that the *corpus delicti* of the offense had been preserved. This alone is sufficient to warrant accused-appellant Carlit's acquittal in the extant case. In consonance with Our teaching in *People v. Barba*:

> x x x x A conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance

illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[11]

Moreover, the arresting officers failed to observe the procedural guidelines laid down in Paragraph 1, Section 21 of R.A. 9165, as amended by R.A. 10640,[12] which provides:

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, **immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof:** Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That **noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items**

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[11] G.R. No. 182420, July 23, 2009, 593 SCRA 711, 717.

[12] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC NO. 9165, OTHERWISE KNOWN AS THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

> **are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items**. (Emphasis supplied)

While there have been cases where the Court convicted an accused despite non-compliance with Section 21 of RA 9165, these instances of non-compliance must be for **justifiable grounds**. Thus, the Court explained in *People v. Bartolini* that:

> There have been cases when the Court relaxed the application of Section 21 and held that the subsequent marking at the police station is valid. **However, this non-compliance is not fatal only when there are (1) justifiable grounds and (2) the integrity and evidentiary value of the seized items are properly preserved**. And while the amendment of RA 9165 by RA 10640 now allows the conduct of physical inventory in the nearest police station, the principal concern remains to be the preservation of the integrity and evidentiary value of the seized items. **In this case, however, the prosecution offered no explanation at all for the noncompliance with Section 21, more particularly that relating to the immediate marking of the seized items. This non-explanation creates doubt on whether the buy-bust team was able to preserve the integrity and evidentiary value of the items seized from Bartolini**.[13] (Emphasis supplied)

Similarly, the Court ruled in *People v. Cayas* that:

> While recent jurisprudence has subscribed to the provision in the Implementing Rules and Regulations (IRR) of R.A. 9165 providing that noncompliance with the prescribed procedure is not fatal to the prosecution's case, we find it proper to define and set the parameters on when strict compliance can be excused.
>
> **As a rule, strict compliance with the prescribed procedure is required because of 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.**
>
> The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the proscribed procedures is not observed. This saving clause, however, applies only (**1) where the prosecution**

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[13] G.R. No. 215192, July 27, 2016, 798 SCRA 711, 722-723.

recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.[14] (Emphasis supplied)

In the case at bar, PO3 Carvajal testified that he marked the alleged shabu at the police station, instead of doing so immediately at the place where the arrest was effected as required by law. Moreover, the arresting officers failed to strictly observe Section 21 of R.A. 9165 that requires that "an elected public official and a representative of the National Prosecution Service or the media" be present during the inventory, and be given a copy of the report of the seized items. Such failure of the police officers to secure the presence of a representative from the media or a barangay official raises serious doubts on whether the chain of custody was actually unbroken.

Notably, PO3 Carvajal did not offer any explanation for these lapses. Rather, he admitted that they were no longer able to coordinate with the media and the local official because he was instructed by their team leader to immediately bring Carlit to the police station. To Our mind, this does not constitute justifiable ground for skirting the statutory requirements under Section 21 of R.A. 9165. We are therefore constrained to rule as We did in *Bartolini*, *viz*:

The failure to immediately mark the seized items, taken together with the absence of a representative from the media to witness the inventory, without any justifiable explanation, casts doubt on whether the chain of custody is truly unbroken. Serious uncertainty is created on the identity of the *corpus delicti* in view of the broken linkages in the chain of custody. The prosecution has the burden of proving each link in the chain of custody — from the initial contact between buyer and seller, the offer to purchase the

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[14] G.R. No. 206888, July 4, 2016, 469.

drug, the payment of the buy-bust money, and the delivery of the illegal drug. The prosecution must prove with certainty each link in this chain of custody and each link must be the subject of strict scrutiny by the courts to ensure that law-abiding citizens are not unlawfully induced to commit an offense.[15] (Emphasis supplied)

Plainly, there was a failure of the prosecution to prove that the chain of custody was unbroken due to (1) its failure to offer the testimony of the evidence custodian, and (2) non-compliance with Paragraph 1, Section 21 of RA 9165, as amended, without justifiable reason. As such, the guilt of the accused-appellant was not proven beyond reasonable doubt, warranting her acquittal of the crime charged.

WHEREFORE, the instant appeal is **GRANTED.** The Decision dated August 20, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06510 is hereby **REVERSED** and **SET ASIDE.**

Accordingly, accused-appellant Jocelyn Carlit *y* Gawat is **ACQUITTED** on reasonable doubt. The Director of the Bureau of Corrections is directed to cause the immediate release of accused-appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of her release or reason for her continued confinement within five (5) days from notice.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

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[15] *Supra* note 13, at 724.

EN BANC

[A.C. No. 10253. August 22, 2017]

RAFAEL PADILLA, *complainant, vs.* **ATTY. GLENN SAMSON,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ABANDONING THE CLIENT'S CAUSE WITHOUT JUSTIFICATION AND REFUSAL TO RETURN THE DOCUMENTS AND AMOUNTS RECEIVED FROM THE CLIENT CONSTITUTE VIOLATIONS OF PERTINENT CANONS OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— In the case at bar, Samson completely abandoned Padilla without any justification, notwithstanding his receipt of the professional fees for services rendered as well as the latter's efforts to reach him. His continuous inaction despite repeated follow-ups reveals his cavalier attitude and appalling indifference toward his client's cause, in blatant disregard of his duties as a lawyer. Also, despite numerous demands, Samson has unjustifiably refused to return Padilla's documents and the amount of ₱19,074.00 as overpayment for his legal services. It is a hornbook principle that a lawyer's duty of competence and diligence includes, not merely reviewing the cases entrusted to his care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination even without prodding from the client or the court. Further, Samson failed to file his Answer to the complaint despite due notice from the Court and the IBP. His unwarranted tenacity simply shows, not only his lack of responsibility, but also his lack of interest in clearing his name, which, as pronounced in case law, is indicative of an implied admission of the charges levelled against him. x x x Samson's failure to fulfill this basic undertaking constitutes a violation of his duty to observe candor, fairness, and loyalty in all his dealings and transactions with his clients. x x x [H]is persistent refusal to return Padilla's money and case files despite frequent demands clearly reflects his lack of integrity and moral

soundness. x x x Given the crucial importance of his role in the administration of justice, his misconduct diminished the confidence of the public in the integrity and dignity of the legal profession. Therefore, pursuant to the aforecited principles, the Court finds Samson guilty of violating the pertinent Canons of the CPR, for which he must necessarily be held administratively liable.

2. ID.; ID.; ID.; IN VIEW OF THE FACT THAT RECEIPT OF THE MONEY AND DOCUMENTS REMAINS UNDISPUTED, THE COURT ORDERED THE RETURN OF THE SAME; TWO (2) YEARS SUSPENSION FROM THE PRACTICE OF LAW, IMPOSED.— In previous cases, lawyers who have been held liable for infractions similar to those which Samson committed were suspended from the practice of law for a period of two (2) years. x x x Samson must also return all the properties and documents in his possession relative to Padilla's case, and the amount of ₱19,074.00 as overpayment of fees since the same is intrinsically linked to his professional engagement. While the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent lawyer's administrative and not his civil liability, it must be clarified that said rule remains applicable only when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct from and not intrinsically linked to his professional engagement. And considering the fact that Samson's receipt of said amount and documents from Padilla remains undisputed, the Court finds the return of the same to be in order. x x x [T]he Court **SUSPENDS** Atty. Glenn Samson from the practice of law for a period of two (2) years[.]

D E C I S I O N

PERALTA, *J.*:

This case stemmed from a complaint filed by Rafael Padilla against his former lawyer, Atty. Glenn Samson, for behavior unbecoming of a lawyer.

The following are the procedural and factual antecedents of the case:

Complainant Rafael Padilla filed a Complaint on November 25, 2013 against his former counsel, respondent Atty. Glenn Samson, in connection with his case, entitled *Indelecia Balaga and Enrique Balaga v. Rafael Padilla*, Case No. 00-05-07038-08. Padilla contends that Samson suddenly cut all communications with him, which almost caused him to miss the due date for the filing of a required pleading. He even wrote a demand letter asking Samson to withdraw his appearance and return all the documents pertinent to his case, but to no avail.

Also, Padilla had been asking Samson for the refund of his overpayment amounting to ₱19,074.00. However, Samson failed to offer any response, despite aforementioned demands. Likewise, when ordered by the Court as well as the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) to refute the allegations in Padilla's complaint and explain his side, Samson refused to do so.

On January 26, 2016, the Commission on Bar Discipline of the IBP recommended Samson's suspension for six (6) months.[1] On February 25, 2016, the IBP Board of Governors passed Resolution No. XXII-2016-176,[2] which adopted and approved, with modification, the abovementioned recommendation, hence:

RESOLVED to ADOPT, with modification, the recommendation of the Investigating Commissioner increasing the penalty to one (1) year suspension considering the gravity of the offense committed by the Respondent.

The Court's Ruling

The Court sustains the findings and recommendations of the IBP that Samson should be held administratively accountable.

Ordinarily, lawyers may decline employment and refuse to accept representation, if they are not in a position to carry it out effectively or competently. But once they agree to handle

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[1] Report and Recommendation submitted by Commissioner Eduardo R. Robles; *rollo*, pp. 33-34.

[2] *Rollo*, p. 31.

a case, attorneys are required by the Canons of Professional Responsibility (*CPR*) to undertake the task with zeal, care, and utmost devotion. Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. Every case which a lawyer accepts deserves full attention, diligence, skill, and competence, regardless of importance.[3]

Canons 15, and 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the CPR provide:

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

x x x x x x x x x

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.

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x x x x x x

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

x x x x x x x x x

CANON 19 — A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

Rule 19.01 — A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

x x x x x x x x x

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[3] *Rollon v. Atty. Naraval*, 493 Phil. 24, 29 (2005).

In the case at bar, Samson completely abandoned Padilla without any justification, notwithstanding his receipt of the professional fees for services rendered as well as the latter's efforts to reach him. His continuous inaction despite repeated follow-ups reveals his cavalier attitude and appalling indifference toward his client's cause, in blatant disregard of his duties as a lawyer. Also, despite numerous demands, Samson has unjustifiably refused to return Padilla's documents and the amount of ₱19,074.00 as overpayment for his legal services. It is a hornbook principle that a lawyer's duty of competence and diligence includes, not merely reviewing the cases entrusted to his care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination even without prodding from the client or the court. Further, Samson failed to file his Answer to the complaint despite due notice from the Court and the IBP. His unwarranted tenacity simply shows, not only his lack of responsibility, but also his lack of interest in clearing his name, which, as pronounced in case law, is indicative of an implied admission of the charges levelled against him.[4]

Clients are led to expect that lawyers would always be mindful of their cause and, accordingly, exercise the required degree of diligence in handling their affairs. On the other hand, the lawyer is expected to maintain, at all times, a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether or not he accepts it for a fee. To this end, he is enjoined to employ only fair and honest means to attain lawful objectives.[5]

The CPR requires lawyers to give their candid and best opinion to their clients on the merit or lack of merit of the case. Knowing whether a case would be potentially successful is not only a

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[4] *Pitcher v. Atty. Gagate*, 719 Phil. 82, 93 (2013).

[5] *Id*. at 91.

function, but also an obligation on the part of lawyers. If ever Samson found that his client's cause was defenseless, then he should have met with Padilla so that they would be able to discuss their possible options, instead of abruptly dropping the case without any notice or explanation. Samson's failure to fulfill this basic undertaking constitutes a violation of his duty to observe candor, fairness, and loyalty in all his dealings and transactions with his clients.[6]

Withal, his persistent refusal to return Padilla's money and case files despite frequent demands clearly reflects his lack of integrity and moral soundness; he is clinging to something that does not belong to him, and that he absolutely has no right to keep or use without Padilla's permission. Lawyers are deemed to hold in trust their client's money and property that may come into their possession. Thus, Samson's failure to return Padilla's money upon demand gave rise to the presumption that he had converted it to his own use and thereby betrayed the trust that was reposed upon him, which constitutes a gross violation of professional ethics and a betrayal of public confidence in the legal profession.[7]

The Code does not only exact from lawyers a firm respect for the law, legal processes, and the courts, but also mandates the utmost degree of fidelity and good faith in dealing with the moneys entrusted to them pursuant to their fiduciary relationship. Verily, Samson fell short of the demands required of him as a faithful member of the bar. His inability to properly discharge his duty to his client makes him answerable, not just to Padilla, but also to the Court, to the legal profession, and to the general public. Given the crucial importance of his role in the administration of justice, his misconduct diminished the confidence of the public in the integrity and dignity of the legal profession.[8]

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[6] *Supra* note 3, at 31.

[7] *Id*.

[8] *Id*.

Therefore, pursuant to the aforecited principles, the Court finds Samson guilty of violating the pertinent Canons of the CPR, for which he must necessarily be held administratively liable.

In previous cases, lawyers who have been held liable for infractions similar to those which Samson committed were suspended from the practice of law for a period of two (2) years. In *Jinon v. Atty. Jiz*,[9] a lawyer who neglected his client's case, misappropriated the client's funds, and disobeyed the IBP's directives to submit his pleadings and attend the hearings, was suspended from the practice of law for two (2) years. In *Small v. Atty. Banares*,[10] the Court imposed a similar penalty against a lawyer who failed to render any legal service even after receiving money from the complainant, to return the money and documents he received despite demand, to update his client on the status of her case, to respond to her requests for information, and to file an answer and attend the mandatory conference before the IBP. Also, in *Villanueva v. Atty. Gonzales*,[11] a lawyer who neglected complainant's cause, refused to immediately account for his client's money and to return the documents received, failed to update his client on the status of her case and to respond to her requests for information, and failed to submit his answer and attend the mandatory conference before the IBP, was likewise suspended from the practice of law for two (2) years.[12]

Finally, Samson must also return all the properties and documents in his possession relative to Padilla's case, and the amount of ₱19,074.00 as overpayment of fees since the same is intrinsically linked to his professional engagement. While the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's

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[9] 705 Phil. 321 (2013).

[10] 545 Phil. 226 (2007).

[11] 568 Phil. 379 (2008).

[12] *Supra* note 4, at 93.

administrative and not his civil liability, it must be clarified that said rule remains applicable only when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct from and not intrinsically linked to his professional engagement. And considering the fact that Samson's receipt of said amount and documents from Padilla remains undisputed, the Court finds the return of the same to be in order.[13]

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **SUSPENDS** Atty. Glenn Samson from the practice of law for a period of two (2) years, effective upon finality of this Decision, **ORDERS** him to **RETURN** to complainant Rafael Padilla, within thirty (30) days from notice of this Decision, all the documents and properties entrusted to him by virtue of their lawyer-client relationship and the amount of ₱19,074.00 as overpayment of fees, with interest at the rate of six percent (6%) *per annum*, from November 25, 2013, until fully paid, and **WARNS** him that a repetition of the same or similar offense, including the failure to return said amount and documents, shall be dealt with more severely.

Let copies of this Decision be included in the personal records of Atty. Glenn Samson and entered in his file in the Office of the Bar Confidant.

Let copies of this decision be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines, for their information and guidance.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Jardeleza, J., on official leave.

Caguioa, J., on wellness leave.

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[13] *Id.* at 95.

EN BANC

[OCA IPI No. 10-3423-P. August 22, 2017]

JUDGE RAMON V. EFONDO, MUNICIPAL TRIAL COURT OF GOA, CAMARINES SUR, *complainant, vs.* **EDEN D. FAVORITO, CLERK OF COURT II, MUNICIPAL TRIAL COURT, GOA, CAMARINES SUR,** *respondent.*

[A.M. No. P-11-2889. August 22, 2017]
(Formerly OCA IPI No. 10-10-117-MTC Financial Audit Conducted in the MTC of Goa, Camarines Sur)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **EDEN D. FAVORITO, CLERK OF COURT II, MUNICIPAL TRIAL COURT, GOA, CAMARINES SUR,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MUST LIVE UP TO THE STRICTEST NORMS OF PROBITY AND INTEGRITY IN THE PUBLIC SERVICE.— In almost all administrative cases, this Court has reminded everyone in the public service that public office is a public trust. No less than the fundamental law of the land requires that "[p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." [N]o less can be expected from those involved in the administration of justice. Public servants are even mandated to uphold public interest over personal needs. Everyone, from the highest official to the lowest rank employee, must live up to the strictest norms of probity and integrity in the public service.

2. ID.; ID.; ID.; COURT PERSONNEL; CLERKS OF COURT; SHOULD BE STEADFAST IN THEIR DUTY TO SUBMIT MONTHLY REPORTS ON THE COURT'S FINANCES AND TO IMMEDIATELY DEPOSIT THE VARIOUS

FUNDS RECEIVED BY THEM TO THE AUTHORIZED GOVERNMENT DEPOSITORIES.— [T]he Clerk of Court is an important officer in our judicial system. The said office is the nucleus of all court activities, adjudicative and administrative. The administrative functions are as vital to the prompt and proper administration of justice as his judicial duties are. The Clerk of Court performs a very delicate function. He or she is the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the Clerk of Court is liable for any loss, shortage, destruction or impairment of said funds and property. Needless to say, thus, Clerks of Court should be steadfast in their duty to submit monthly reports on the court's finances pursuant to OCA Circular No. 50-95 and 113-2004 and to immediately deposit the various funds received by them to the authorized government depositories.

3. **ID.; ID.; ID.; GROSS NEGLECT OF DUTY; DELAYED REMITTANCE OF CASH COLLECTIONS BY CLERKS OF COURT AND FAILURE TO SUBMIT MONTHLY REPORTS THEREON, A CASE OF.—** In this case, it is undisputed that respondent failed to perform her duties to submit the required monthly reports as regards the financial records of the court and to remit the court collections. Respondent also admitted to the fact that she used court funds for her personal needs. Worse, it was discovered that respondent also resorted to falsifying and/or tampering with court official receipts to financially gain from court collections. x x x [I]t is evident that respondent not only failed to perform the duties of her office but also failed to live up to the high ethical standards expected of court employees. Delayed remittance of cash collections by Clerks of Court and failure to submit monthly reports thereon constitute gross neglect of duty.

4. **ID.; ID.; ID.; DISHONESTY, DEFINED; MISAPPROPRIATING COURT FUNDS CONSTITUTES DISHONESTY.—** The act of misappropriating court funds, regardless of the purpose therefor, constitutes dishonesty, not only against the public, but against the Court as well, which conduct is definitely very unbecoming of a court personnel. Dishonesty is a serious offense which reflects on the person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity.

D E C I S I O N

***PER CURIAM*:**

These consolidated administrative matters stemmed from a Complaint[1] dated June 15, 2010 filed by Judge Ramon Efondo (Judge Efondo) against respondent Eden D. Favorito, Clerk of Court II, Municipal Trial Court (MTC) of Goa, Camarines Sur and from the Report[2] dated October 6, 2010 on the initial financial audit conducted at the MTC in Goa, Camarines Sur on the financial records of the said MTC, specifically, on the books of accounts of respondent.

Factual Antecedents

In a Letter[3] dated November 23, 2009, addressed to respondent, copy furnished Judge Efondo, the Office of the Court Administrator (OCA), through Deputy Court Administrator (DCA) Jesus Edwin Villasor, called out respondent on her failure to submit the Monthly Reports of Collections, Deposits and Withdrawals as required under OCA Circular No. 113-2004 and failure to regularly remit the court's monthly collections, in violation of SC Circular No. 59-94. In the said letter, the OCA required respondent to show cause why the latter's salary should not be withheld for failure to comply with office rules and regulations on the submission of reports and remittance of collections.

In response to the OCA's letter, respondent admitted not only the said infractions but also that she misappropriated the court collections as she was in financial distress due to the death of her husband. Respondent apologized and promised to remit the said funds at the soonest possible time.[4]

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[1] *Rollo* (OCA IPI No. 10-3423-P), pp. 2-5.

[2] *Rollo* (A.M. No. P-11-2889), pp. 4-14.

[3] *Rollo* (OCA IPI No. 10-3423-P), p. 6.

[4] *Id*. at 7.

Judge Efondo learned about this, which prompted him to request for an immediate audit of the court's financial records.[5] Thus, sometime in April 2010, the audit team from the Fiscal Monitoring Division of the OCA conducted an initial audit of the financial records of the said court, covering the period from March 1, 2004 to April 6, 2010, and found a shortage of Php210,109.30 from the court's funds, itemized in its report dated October 6, 2010. Aside from a detailed account of the shortages, the report also established that respondent falsified several official receipts (OR) and cashbooks by indicating a lesser amount in the triplicate copies of the ORs and cashbooks while indicating the actual amount paid in the original copies thereof.[6] This report was considered as an administrative complaint against respondent docketed as A.M. No. P-11-2889 entitled *OCA v. Eden D. Favorito, Clerk of Court II, MTC, Goa, Camarines Sur* [Formerly OCA IPI No. 10-10-117-MTC].[7]

The OCA, in its Memorandum[8] dated October 6, 2010, adopted the findings and recommendations of the audit team.

Acting thereupon, this Court issued a Resolution[9] dated January 10, 2011, adopting the recommendations of the audit team, as approved by the COA, thus:

> Acting on the audit report of the team which conducted a financial audit on the books of accounts of Mrs. Eden D. Favorito, Clerk of Court of the Municipal Trial Court of Goa, Camarines Sur, the Court resolves to:
>
> (1) ***DOCKET*** this report as a regular administrative complaint against Mrs. Eden D. Favorito for gross dishonesty and gross misconduct;
>
> ***(2)*** ***PLACE*** Mrs. Eden D. Favorito, Clerk of Court II of MTC, Goa, Camarines Sur, ***UNDER PREVENTIVE SUSPENSION***,

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[5] *Id*. at 2.

[6] *Rollo* (A.M. No. P-11-2889), pp. 4-14.

[7] *Id*. at 40-43.

[8] *Id*. at 1-3.

[9] *Id*. at 40-43.

effective immediately, pending resolution of this administrative matter;

(3) ***DIRECT*** Mrs. Favorito to:

(a) ***RESTITUTE***, within ten (10) days from notice, her incurred shortages on the following funds and deposit the same to the corresponding fund bank accounts, and ***FURNISH***, also within (10) days from notice, the Fiscal Monitoring Division, Court Management Office of the Office of the Court Administrator, with copy of the machine validated deposit slips as proof of compliance;

Name of Fund	Period Covered	Amount
Judiciary Development Fund	March 1, 2004 to April 6, 2010	₱4,079.80
Special Allowance for the Judiciary Fund	March 1, 2004 to April 6, 2010	56,851.40
Mediation Fund	May 24, 2006 to April 6, 2010	90,000.00
Legal Research Fund	Nov. 9, 2004 to April 6, 2010	508.10
Land Registration Authority Fund	April 6, 2004 to April 6, 2010	270.00
Fiduciary Fund	March 1, 2004 to April 6, 2010	58,400.00
Total		**₱210,109.30**

(b) ***EXPLAIN*** in writing, within ten (10) days from notice, why:

(b.1) she failed to deposit her collections in their corresponding fund bank account which is a clear violation of the circulars and other issuances of the Court on the proper handling of Judiciary funds;

(b.2) she should not be administratively and criminally charged for altering/falsifying the amounts reflected in the legal fees forms and triplicate copies of Official Receipts of the filing fees received by her, such as:

Case No.	Payor/Litigants	OR Issued	Date of OR	Amount Indicated in the Original Copies of Official Receipts	Amount Indicated in the Legal Fees Form/ Cashbook/ triplicate Official Receipts
Cv 1088	Rural Bank of Goa, Inc.	21591242	July 6, 2006	468.00	40.40
Cv 1088	Rural Bank of Goa, Inc.	21591195	July 6, 2006	202.00	9.60
Cv 1089	Rural Bank of Goa, Inc.	21591243	July 6, 2006	756.00	40.40
Cv 1089	Rural Bank of Goa, Inc.	21591196	July 6, 2006	314.00	9.60

(b.3) she failed to collect the One Thousand Pesos (₱1,000.00) Sheriff's Fee from the plaintiff upon filing of the complaint to defray the actual travel expenses of the Sheriff, Process Server or other Court-Authorized Persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case as mandated in the Amended Administrative Circular No. 35-2004, dated August 20, 2004, Guidelines in Allocation of Legal Fees, particularly Section 10, paragraphs 2 and 3, Rule 141 of the Rules of Court; and

(b.4) she failed to submit regularly her Monthly Reports of Collections for Judiciary Development Fund, Clerk of Court General Fund, Special Allowance for the Judiciary Fund and Mediation Fund, and Monthly Report of Collections/Deposits and Withdrawals for the Fiduciary Fund to the Revenue Section, Accounting Division, Financial Management Office of the Office of the Court Administrator and to the Finance Division, Financial Management Office of the Philippine Judicial Academy;

(4) ***DIRECT*** Ms. Maria Luz T. Buendia, designated Officer-in-Charge as Financial Custodian and Collecting Officer of MTC, Goa, Camarines Sur to:

(a) ***COLLECT*** the One Thousand Pesos (₱1,000.00) Sheriff's Fee from the plaintiff upon filing of the

complaint to defray the actual travel expenses of the Sheriff, Process Server or Court-Authorized Persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case as mandated in the Amended Administrative Circular No. 35-2004, dated August 20, 2004 Re: Guidelines in Allocation of Legal Fees, particularly Section 10, paragraphs 2 and 3, Rule 141 of the Rules of Court; and

(b) ***STRICTLY FOLLOW*** the circulars and other issuances of the Court in the proper handling of judiciary funds to avoid the incurrence of infractions committed by Mrs. Favorito; and

(5) ***DIRECT*** Hon. Ramon V. Efondo, Presiding Judge of MTC, Goa, Camarines Sur, to:

(a) ***INVESTIGATE*** the extent of responsibilities of Mrs. Eden D. Favorito in the Falsification of Official Receipts by verifying case records to determine if there are other cases [aside from the cases (Schedule 7) which were randomly examined by the audit team] where Mrs. Favorito did not reflect the actual fees collected and ***SUBMIT*** his report and recommendation within thirty (30) days from receipt of notice; and

(b) ***PROPERLY MONITOR*** the financial transactions of Ms. Maria Luz T. Buendia, designated collecting officer, to ensure strict adherence to the circulars and other issuances of the Court regarding the proper handling of judiciary funds, otherwise, he will be held equally liable for the infractions committed by the employee/s under his command and supervision.

The Memorandum dated 06 October 2010 of the Office of the Court Administrator is ***NOTED***.

Meanwhile, on June 15, 2010, Judge Efondo filed an administrative complaint against respondent docketed as OCA IPI No. 10-3423-P for insubordination and dishonesty in relation to her infractions above-cited.[10]

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[10] *Rollo* (OCA IPI No. 10-3423-P), pp. 2-5.

In her Comment[11] dated August 19, 2010, respondent denied the accusation of insubordination and explained that her actions were due to her husband's death in 2004, which put her in financial distress as she has three children dependent on her. Respondent also asked for consideration for her to redeem herself and expressed her intention of settling the shortages as soon as possible.

Judge Efondo filed a Supplemental Complaint[12] dated October 18, 2010 against respondent for Malversation thru Falsification of Public/Commercial Documents and prayed for the dismissal of the respondent from service.

In compliance with the January 10, 2011 Resolution of this Court above-cited, Judge Efondo submitted his Investigation Report[13] dated April 14, 2011, citing discovery of additional irregularities in the issuance of ORs by respondent.

In her Comment[14] to the Supplemental Complaint dated February 9, 2011, respondent asked that she be given six months to restitute the shortages and expressed her apologies to the Court for her infractions. She also prayed that she be allowed to resign after she restituted the shortages as found by the audit team so as not to burden the Court with the conduct of further proceedings in the administrative case against her.

On August 24, 2011, this Court issued a Resolution[15] consolidating the two administrative cases against respondent.

Upon receipt of Judge Efondo's Investigation Report, this Court issued a Resolution[16] dated April 18, 2012, directing the OCA to constitute a financial audit team to: (a) conduct an

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

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

[13] *Rollo* (A.M. No. P-11-2889), pp. 44-52.

[14] *Rollo* (OCA IPI No. 10-3423-P), pp. 62-63.

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

[16] *Id*. at 87-88.

audit covering respondent's remaining unaudited period of cash and account from April 7, 2010 to May 3, 2010; and (b) evaluate reported dubious transactions made by respondent involving issuance of ORs.

In compliance with the said resolution, a financial audit was conducted on the books of accounts of the subject MTC on July 10 to 13, 2012, covering the period of April 7, 2010 to June 30, 2012. The audit included the accountability period of Ms. Maria Luz Buendia (Buendia) from May 4, 2010 to June 30, 2012, Court Interpreter 1, who was designated as the collecting officer, vice respondent, effective May 4, 2010. The audit team found that Buendia incurred no shortage on all funds and regularly submitted to the Accounting Division, OCA, the required monthly reports on the court's financial records during her accountability period. On the other hand, it was found that the total shortages, of which respondent is accountable, amounted to Php 246,118, itemized in detail in the said report as follows:

FUND/ACCOUNT NAME	SHORTAGES
Fiduciary Fund	₱58,400.00
Judiciary Development Fund	21,656.30
Special Allowance for the Judiciary Fund	73,783.60
Mediation Fund	91,500.00
Legal Research Fund	508.10
Land Registration Authority	270.00
TOTAL SHORTAGES	**₱246,118.00**

It was also established that several ORs issued by respondent were tampered with. These findings, according to the report, were in full accord with Judge Efondo's findings in his Investigative Report. Notably, respondent failed to restitute the shortages found in the initial audit within the period given to her by this Court.[17]

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[17] *Rollo* (A.M. No. P-11-2889), pp. 201-217.

The audit team, thus, recommended that respondent be found guilty of dishonesty and falsification of public documents and as such, be dismissed from service with forfeiture of all benefits, except her accrued leave credits, and with prejudice to re-employment in government service, among others.[18]

In its Memorandum dated October 17, 2012, the OCA approved the findings and recommendations of the audit team.[19]

The Issue

Should the respondent be held administratively liable?

This Court's Ruling

There is no question as to the guilt of the respondent as, by her own admission, respondent failed to submit the required monthly reports as regards the court funds and, worse, she intentionally used the said funds to make ends meet for her family, alleging that she is going through financial distress due to her husband's death.

The proffered justification for her infractions, however, fails to persuade this Court to exercise leniency and benevolence in resolving the instant administrative matter.

In almost all administrative cases, this Court has reminded everyone in the public service that public office is a public trust. No less than the fundamental law of the land requires that "[p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[20] [N]o less can be expected from those involved in the administration of justice.[21] Public servants are even mandated to uphold public interest over personal

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[18] *Id*. at 215.

[19] *Id*. at 198-200.

[20] *Dela Cueva v. Omaga,* 637 Phil. 14, 21 (2010).

[21] *OCA v. Puno,* 587 Phil. 549, 555 (2008).

needs.[22] Everyone, from the highest official to the lowest rank employee, must live up to the strictest norms of probity and integrity in the public service.[23]

Specifically in this case, the Clerk of Court is an important officer in our judicial system. The said office is the nucleus of all court activities, adjudicative and administrative. The administrative functions are as vital to the prompt and proper administration of justice as his judicial duties are.[24] The Clerk of Court performs a very delicate function. He or she is the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the Clerk of Court is liable for any loss, shortage, destruction or impairment of said funds and property.[25] Needless to say, thus, Clerks of Court should be steadfast in their duty to submit monthly reports on the court's finances pursuant to OCA Circular No. 50-95[26] and 113-2004[27] and to immediately deposit the various funds received by them to the authorized government depositories.[28]

In this case, it is undisputed that respondent failed to perform her duties to submit the required monthly reports as regards the financial records of the court and to remit the court collections. Respondent also admitted to the fact that she used court funds for her personal needs. Worse, it was discovered that respondent also resorted to falsifying and/or tampering with court official receipts to financially gain from court collections.

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[22] *Id*., citing The Code of Conduct and Ethical Standards for Public Officials and Employees provides thus: Public officials and employees shall always uphold the public interest over and above personal interest. See *Judge Dondiego v. Cuevas, Jr.*, 446 Phil. 514, 522 (2003); *Marasigan v. Buena*, 348 Phil. 1, 9 (1998).

[23] *OCA v. Puno, supra* note 21, at 555.

[24] *OCA v. Banag, et al.,* 651 Phil. 308, 324 (2010).

[25] *Id*. at 324.

[26] Guidelines for the proper administration of court fiduciary funds approved on October 11, 1995.

[27] Rules as regards the submission of monthly reports of collections and deposits approved on September 16, 2004.

[28] *OCA v. Banag, et al., supra* note 24, at 325.

Given the findings of the OCA audit team, as well as the findings of Judge Efondo in his investigation, coupled with respondent's admission of the infractions imputed against her, it is evident that respondent not only failed to perform the duties of her office but also failed to live up to the high ethical standards expected of court employees.

Delayed remittance of cash collections by Clerks of Court and failure to submit monthly reports thereon constitute gross neglect of duty.[29] The act of misappropriating court funds, regardless of the purpose therefor, constitutes dishonesty, not only against the public, but against the Court as well, which conduct is definitely very unbecoming of a court personnel.[30] Dishonesty is a serious offense which reflects on the person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity.[31] Collectively, these acts constitute grave misconduct, which cannot be tolerated as it denigrates this institution's image and integrity.[32] Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service provides that such grave offenses are punishable by dismissal from service.[33]

One final note: Every action, good or bad, has consequences. A man brings upon himself what his conduct deserves. That being said, while We commiserate with the plight of the respondent, being a single parent with three children dependent on her, We cannot simply disregard her misconduct. Even the restitution of the shortages will not obliterate her liability.[34] For the same reason, We cannot just accept respondent's proposition to merely let her resign after restitution of the shortages as her actions warrant the exercise of this Court's

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[29] *Id*. at 327.

[30] *Villar v. Angeles, Clerk of Court, Municipal Trial Court, Pantabangan, Nueva Ecija*, 543 Phil. 135 (2006).

[31] *Id*.

[32] *OCA v. Acampado,* 721 Phil. 12, 30 (2013).

[33] *Duque III v. Veloso*, 688 Phil. 318, 326 (2012).

[34] *OCA v. Acampado, supra* note 32, at 31.

disciplining power on court employees. In fact, with the said acts, respondent may even be adjudged to be criminally liable. Indeed, any conduct, act or omission on the part of those who violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[35]

WHEREFORE, premises considered, this Court finds respondent Eden D. Favorito, Clerk of Court II, Municipal Trial Court, Goa, Camarines Sur, **GUILTY** of grave misconduct, dishonesty, and gross neglect of duty and is hereby **DISMISSED** from the service with **FORFEITURE** of all retirement benefits, excluding accrued leave credits, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.

This Court further ORDERS as follows:

(1) The Financial Management Office (FMO), Office of the Court Administrator (OCA) is DIRECTED to:

(a) **PROCESS** the money value of the terminal leave benefit of Eden D. Favorito, dispensing with the usual documentary requirements, and apply the same to the following shortages:

FUND/ACCOUNT NAME	**SHORTAGES**
Fiduciary Fund	₱58,400.00
Judiciary Development Fund	21,656.30
Special Allowance for the Judiciary Fund	73,783.60
Mediation Fund	91,500.00
Legal Research Fund	508.10
Land Registration Authority	270.00
TOTAL SHORTAGES	**₱246,118.00**

and release the remaining amount, if any to Favorito, provided that the release of the said remaining amount

[35] *OCA v. Banag, et al.*, *supra* note 24, at 328.

shall be subjected to the usual clearances and other documentary requirements;

(b) **COORDINATE** with the Fiscal Monitoring Division (FMD), Court Management Office (CMO), OCA, before the release of the checks issued in favor of the Municipal Trial Court of Goa, Camarines Sur, for the preparation of the necessary communication with the incumbent Clerk of Court/Officer-in-Charge thereat; and

(c) **DEPOSIT** the checks issued to the corresponding bank account of the aforesaid funds and **FURNISH** the FMD-CMO, OCA, of the machine-validated deposit slips so the said Office can finalize their audit on the books of accounts of Eden D. Favorito.

(2) The Office of the Administrative Services, OCA is **DIRECTED** to provide the FMO, OCA of the following documents for the said Office to comply with Item No. 1 above:

(a) Official Service Record;
(b) Certification of Leave Credits; and
(c) Notice of Salary Adjustment (NOSA) if any.

(3) The Legal Office, OCA, is **DIRECTED** to file the appropriate criminal charges against Eden D. Favorito.

SO ORDERED.

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

Caguioa, J., on official leave.

EN BANC

[G.R. No. 178379. August 22, 2017]

CRISPIN S. FRONDOZO,[*] DANILO M. PEREZ, JOSE A. ZAFRA, ARTURO B. VITO, CESAR S. CRUZ, NAZARIO C. DELA CRUZ, and LUISITO R. DILOY, *petitioners, vs.* **MANILA ELECTRIC COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; WRITS OF EXECUTION; WHEN MAY BE ASSAILED.— There are instances when writs of execution may be assailed. They are: "(1) the writ of execution varies the judgment; (2) there has been a change in the situation of the parties making execution inequitable or unjust; (3) execution is sought to be enforced against property exempt from execution; (4) it appears that the controversy has been submitted to the judgment of the court; (5) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or (6) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority."

2. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; IMPLIES THAT THE RESPONDENT COURT OR TRIBUNAL ACTED IN A CAPRICIOUS, WHIMSICAL, ARBITRARY OR DESPOTIC MANNER IN THE EXERCISE OF JURISDICTION AS TO BE EQUIVALENT TO LACK OF JURISDICTION.— The situation in this case is analogous to a change in the situation of the parties making execution unjust or inequitable. MERALCO's refusal to reinstate petitioners and to pay their backwages is justified by the 30 May 2003 Decision in CA-G.R. SP No. 72480. On the other hand, petitioners' insistence on the execution of judgment is anchored on the 27 January

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[*] Also referred to in some parts of the records as Crispin S. Fronzodo, Jr.

2004 Decision of the Court of Appeals' Fourteenth Division in CA-G.R. SP No. 72509. Given this situation, we see no reversible error on the part of the Court of Appeals in holding that the NLRC did not commit grave abuse of discretion in suspending the proceedings. Grave abuse of discretion implies that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. x x x Clearly, the NLRC did not act in a capricious, whimsical, arbitrary, or despotic manner. It suspended the proceedings because it cannot revise or modify the conflicting Decisions of the Court of Appeals.

APPEARANCES OF COUNSEL

Rodolfo R. Ranion for petitioner.
Angelito F. Aguila for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on certiorari[1] assailing the 6 March 2007 Decision[2] and the 14 June 2007 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 95747. The Court of Appeals affirmed the 28 February 2006 Resolution[4] and the 26 May 2006 Resolution[5] of the National Labor Relations Commission (NLRC) which granted the prayer for preliminary

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

[2] *Rollo*, pp. 45-59. Penned by Associate Justice Martin S. Villarama, Jr. (a retired member of this Court), with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo concurring.

[3] *Id*. at 61.

[4] *Id*. at 260-268. Penned by Presiding Commissioner Benedicto Ernesto R. Bitonio, Jr., with Commissioners Perlita B. Velasco and Romeo L. Go concurring.

[5] *Id*. at 269-274.

injunction of respondent Manila Electric Company (MERALCO) and denied therein petitioners' motion for reconsideration.

The Antecedent Facts

The case originated from a Notice of Strike (first strike) filed on 16 May 1991 by the MERALCO Employees and Workers Association (MEWA), composed of MERALCO's rank-and-file employees, on the ground of Unfair Labor Practice (ULP). Conciliation conferences conducted by the National Conciliation and Mediation Board (NCMB) failed to settle the dispute and resulted to a strike staged by MEWA on 6 June 1991. In an Order dated 6 June 1991,[6] then Acting Secretary Nieves R. Confesor of the Department of Labor and Employment (DOLE) certified the labor dispute to the NLRC for compulsory arbitration, ordered all the striking workers to return to work, and directed MERALCO to accept the striking workers back to work under the same terms and conditions existing prior to the work stoppage.

On 26 July 1991, MERALCO terminated the services of Crispin S. Frondozo (Frondozo), Danilo M. Perez (Perez), Jose A. Zafra (Zafra), Arturo B. Vito (Vito),[7] Cesar S. Cruz (Cruz), Nazario C. dela Cruz (N. dela Cruz), Luisito R. Diloy (Diloy), and Danilo D. Dizon (Dizon) for having committed unlawful acts and violence during the strike.

On 25 July 1991, MEWA filed a second Notice of Strike (second strike) on the ground of discrimination and union busting that resulted to the dismissal from employment of 25 union officers and workers. Then DOLE Secretary Ruben D. Torres issued an Order dated 8 August 1991[8] that certified the issues raised in the second strike to the NLRC for consolidation with the first strike and strictly enjoined any strike or lockout pending resolution of the labor dispute. The Order also directed

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[6] *Id*. at 75-76.

[7] *Rollo*, p. 41. His son, Arnaldo A. Vito, signed the Verification and Certification of Non-Forum Shopping due to the death of Arturo B. Vito as shown in the death certificate attached to the petition.

[8] *Id*. at 93-94.

MERALCO to suspend the effects of termination of the employees and re-admit the employees under the same terms and conditions without loss of seniority rights.

The labor dispute resulted to the filing of two complaints for illegal dismissal:

(1) NLRC NCR Case No. 00-08-04146-92 filed by Dizon, Diloy, Patricio Maniacop, Wilfredo Lagason, Venancio Arguzon, Jr., Rogelio Antonio, Lauro Garcia, Alfredo Badilla, Jr., and Reynaldo Javier; and

(2) NLRC NCR Case No. 00-12-06878-92 filed by MEWA, Reynaldo M. Caberte (Caberte), Alfredo dela Cruz (A. dela Cruz), Nataner F. Pingol (Pingol), Vincent G. Rallos, Enrique T. Barrientos (Barrientos), Melchor E. Banaga (Banaga), Zafra, Perez, Vito, N. dela Cruz, Cruz, and Frondozo.

The NLRC consolidated the two illegal dismissal cases with NLRC NCR CC No. 000021-91 (*In the Matter of the Labor Dispute at the Manila Electric Company*) and NLRC NCR Case No. 00-05-03381-93 (*MEWA v. MERALCO*). On 23 January 1998, the NLRC's First Division rendered a Decision,[9] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. denying the motion for reconsideration of Patricio Maniacop, et al. [the nine (9) quitclaiming complainants] in NLRC Case No. 00-08-04146-92;

2. upholding Meralco's dismissal of Jose A. Zafra, Alfredo dela Cruz, Reynaldo M. Caberte, Nataner F. Pingol, Vincent G. Rallos, Enrique Barrientos, Danilo M. Perez, Arturo B. Vito, Nazario C. dela Cruz, Melchor E. Banaga, Cesar S. Cruz, and Crispin S. Frondozo in view of the illegal acts they committed during the subject strike;

3. directing complainants Danilo Dizon and Luisito Diloy as well as respondent Meralco to submit a memorandum of arguments relative to NLRC NCR Case No. 00-08-04146-92; and

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[9] *Rollo*, pp. 142-178. Signed by Presiding Commissioner Raul T. Aquino and Commissioners Vicente S.E. Veloso and Alberto R. Quimpo.

4. directing MEWA and Meralco to submit memorandum of arguments in support of their respective position in NLRC NCR CC No. 000021-91.

Labor Arbiter Adolfo C. Babiano is directed to continue handling this case and to submit periodic report[s] thereon.

SO ORDERED.[10]

However, in a Decision promulgated on 14 December 2001,[11] the NLRC First Division modified the 23 January 1998 Decision and ruled:

WHEREFORE, premises considered, the Decision of January 23, 1998 is hereby MODIFIED:

1. Declaring the illegality of the strike of June 6-8, 1991 on the basis of the uncontested facts and allegations of the respondent;

2. As a matter of consequence, the officers and members who participated therein and who committed the illegal acts perforce are hereby deemed to have lost their employment status;

3. The dismissal of complainants Jose Zafra, Vicente G. Rallos, Enrique T. Barrientos, Reynaldo M. Caberte, Cesar S. Cruz, Nazario C. dela Cruz, Arturo B. Vito, Melchor E. Banaga, Alfredo dela Cruz, Nataner F. Pingol, Danilo M. Perez, and Crispin S. Frondozo [is] hereby declared unjustified, their participation in the commission of the prohibited and illegal acts not having been proved;

4. Accordingly, respondent is hereby ordered to reinstate the twelve (12) complainants, without however, payment of backwages, complainants themselves having admitted participation in the strike.

SO ORDERED.[12]

In an Order dated 29 May 2002,[13] the NLRC ruled on the motions for reconsideration filed by MERALCO, Dizon and

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[10] *Id*. at 176-178.

[11] *Id*. at 179-204. Penned by Presiding Commissioner Roy V. Señeres, with Commissioner Alberto R. Quimpo concurring. Commissioner Vicente S.E. Veloso inhibited.

[12] *Id*. at 202-203.

[13] *Id*. at 205-208.

Diloy, and the 12 respondents in NLRC NCR Case No. 00-12-06878-92, as follows:

> WHEREFORE, premises considered, the Decision appealed from is, as it is hereby MODIFIED: ordering respondent MANILA ELECTRIC COMPANY to reinstate to their former or equivalent positions DANILO DIZON and LUISITO DILOY, without loss of seniority rights and payment of backwages computed from the time of their dismissal.
>
> The rest of the decretal portion of the Decision of December 14, 2001 stays.
>
> SO ORDERED.[14]

From the 14 December 2001 Decision and 29 May 2002 Order of the NLRC, two petitions for certiorari were filed before the Court of Appeals:

1. CA-G.R. SP No. 72480 filed by MERALCO; and
2. CA-G.R. SP No. 72509 filed by Frondozo, Barrientos, Pingol, Caberte, Zafra, Perez, Cruz, A. dela Cruz, and Banaga.

MERALCO moved for the consolidation of the two cases but the motion was denied.

On 31 July 2002, the NLRC issued an Entry of Judgment[15] stating that the 29 May 2002 NLRC Order became final and executory on 19 July 2002. On 3 October 2002, Labor Arbiter Veneranda C. Guerrero (Labor Arbiter Guerrero) issued a Writ of Execution[16] directing the reinstatement of the 14[17] respondents. In a Manifestation dated 24 January 2003,[18] MERALCO informed the NLRC of the payroll reinstatement of the 14 respondents.

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[14] *Id*. at 207-208.

[15] *Id*. at 209.

[16] *Id*. at 210-211.

[17] Erroneously stated as 12. The 14 respondents are the 12 complainants in NLRC NCR Case No. 00-12-06878-92 and the two complainants in NLRC NCR Case No. 00-08-04146-92.

[18] *Rollo*, pp. 212-213.

On 30 May 2003, the Court of Appeals' Special Second Division promulgated its Decision in CA-G.R. SP No. 72480[19] in favor of MERALCO. The Court of Appeals found that the strike of 6-8 June 1991 was illegal because it occurred despite an assumption order by the DOLE Secretary and because of the commission of illegal acts marred with violence and coercion. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, petition is hereby granted. The decision of the Labor Arbiter dated 16 January 1998 and ruling of the NLRC dated 23 January 1998 are reinstated. Private respondents Jose Zafra, Vincent G. Rallos, Enrique T. Barrientos, Reynaldo M. Caberte, Cesar S. Cruz, Nazario C. [d]ela Cruz, Arturo B. Vito, Melchor E. Banaga, Alfredo dela Cruz, Nataner F. Pingol, Danilo M. Perez, Crispin S. Frondozo, Danilo Dizon and Luisito Diloy are dismissed from service.
>
> SO ORDERED.[20]

In view of the 30 May 2003 Decision of the Court of Appeals' Special Second Division dismissing the 14 respondents from the service, MERALCO stopped their payroll reinstatement.

On 11 June 2003, Labor Arbiter Guerrero approved the computation of backwages and ordered the issuance of a Writ of Execution for the satisfaction of the judgment award. MERALCO filed a Manifestation calling the attention of Labor Arbiter Guerrero to the 30 May 2003 Decision of the Court of Appeals' Special Second Division in CA-G.R. SP No. 72480. In an Order dated 7 October 2003, Labor Arbiter Guerrero ruled that the Court of Appeals' 30 May 2003 Decision had not attained finality and as such, respondents should be reinstated from the time they were removed from the payroll until their actual/payroll reinstatement based on their latest salary prior to their dismissal. An Alias Writ of Execution[21] was issued on 10 October 2003

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[19] *Id*. at 216-243. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Amelita G. Tolentino concurring.

[20] *Id*. at 243.

[21] *Id*. at 245-246.

for the satisfaction of the judgment award which resulted to the garnishment of MERALCO's funds deposited with Equitable-PCI Bank.

Dizon, Diloy, and the other respondents filed their respective motions for reconsideration in CA-G.R. SP No. 72480, which the Court of Appeals' (Former) Special Second Division denied in its 18 December 2003 Resolution.

On 27 January 2004, the Court of Appeals' Fourteenth Division promulgated its Decision in CA-G.R. SP No. 72509[22] as follows:

> WHEREFORE, in view of the foregoing, the petition is PARTIALLY GIVEN DUE COURSE. The assailed Decision of December 14, 2001 and the Order of May 29, 2002 of public respondent National Labor Relations Commission are hereby MODIFIED in that respondent MERALCO is ordered to pay the petitioners full backwages computed from July 26, 1991, when they were illegally dismissed, up to the date of their actual reinstatement in the service.
>
> SO ORDERED.[23]

MERALCO filed a motion for reconsideration but it was denied in the Resolution of 17 August 2004.

The respondents moved for the issuance of an Alias Writ of Execution for the satisfaction of their accrued wages arising from the recall of their payroll reinstatement. On 10 June 2004, Labor Arbiter Guerrero granted the motion. On 14 June 2004, a Second Alias Writ of Execution[24] was issued directing the Sheriff to cause the reinstatement of the respondents and to collect the amount of ₱2,851,453 representing backwages from 14 December 2001 to 15 January 2003 and from 1 June 2003 to 1 June 2004.[25] MERALCO filed a motion to quash the Second

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[22] *Id*. at 249-254. Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Marina L. Buzon and Jose C. Mendoza concurring.

[23] *Id*. at 253.

[24] *Id*. at 255-257.

[25] *Id*. at 257.

Alias Writ of Execution but it was denied on 2 July 2004. On 20 July 2004, the Sheriff reported that the amount of ₱2,879,967.53 garnished funds had been delivered to and deposited with the NLRC Cashier for the satisfaction of the monetary award.[26] However, the reinstatement portion of the judgment remained unimplemented due to the failure of MERALCO to reinstate the respondents.

On 6 February 2004, Dizon and Diloy filed a petition before this Court assailing the 30 May 2003 Decision and 18 December 2003 Resolution of the Court of Appeals' Special Second Division in CA-G.R. SP No. 72480. The case was docketed as G.R. No. 161159.

On 12 February 2004, Frondozo, Barrientos, Pingol, Caberte, Perez, Cruz, A. dela Cruz, and Banaga filed a petition before this Court assailing the same 30 May 2003 Decision and 18 December 2003 Resolution of the Court of Appeals' Special Second Division in CA-G.R. SP No. 72480. The case was docketed as G.R. No. 161311.

On 11 October 2004, MERALCO filed a petition before this Court questioning the 27 January 2004 and 17 August 2004 Decision of the Court of Appeals' Fourteenth Division promulgated in CA-G.R. SP No. 72509. The case was docketed as G.R. No. 164998.

In a Resolution dated 23 February 2004,[27] this Court's Third Division denied the petition in G.R. No. 161159 on the ground that the petitioners failed to show that a reversible error had been committed by the Court of Appeals in rendering its Decision.

In a Resolution dated 3 March 2004, the Court's Second Division referred G.R. No. 161311 for consolidation with G.R. No. 161159.[28]

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[26] *Id*. at 420.

[27] *Id*. at 399.

[28] *Id*. at 400.

In a Resolution dated 24 May 2004,[29] the Court's Third Division denied with finality the petitioners' motion for reconsideration of the 23 February 2004 Resolution denying the petition in G.R. No. 161159 on the ground that no substantial arguments were raised to warrant a reconsideration of the Court's Resolution. In the same Resolution, the Court denied the petition in G.R. No. 161311 for failure of petitioners therein to show that a reversible error had been committed by the appellate court.

Petitioners in G.R. No. 161311 filed a motion for reconsideration of the 24 May 2004 Resolution denying their petition. In its 28 July 2004 Resolution,[30] the Court's Third Division denied the motion with finality as no substantial arguments were raised to warrant a reconsideration of the Resolution.

The 23 February 2004 Resolution became final and executory on 15 July 2004.[31] The 24 May 2004 Resolution became final and executory on 2 September 2004.[32]

In a Resolution dated 15 June 2005,[33] the Court's First Division denied the petition in G.R. No. 164998 for MERALCO's failure to file a reply, amounting to failure to prosecute. MERALCO filed a motion for reconsideration but it was denied in the Resolution of 22 August 2005. The 15 June 2005 Resolution became final and executory on 4 October 2005.[34]

Meanwhile, MERALCO filed two motions before the NLRC: (1) a motion for reconsideration and/or appeal filed on 5 July 2004 assailing the 10 June 2004 Order of Labor Arbiter Guerrero granting the issuance of the Second Alias Writ of Execution and directing the payment of backwages of ₱2,851,453 to respondents and ordering their reinstatement actually or in the

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[29] *Id*. at 401.

[30] *Id*. at 402.

[31] *Id*. at 475.

[32] *Id*. at 390.

[33] *Id*. at 404.

[34] *Id*. at 391.

payroll, which was accompanied by a bond equivalent to the amount of the accrued backwages; and (2) an urgent motion for the issuance of a temporary restraining order and/or preliminary injunction filed on 13 July 2004 directed against the Second Alias Writ of Execution pending the resolution of its first motion.

The Resolutions of the NLRC

In a Resolution dated 28 February 2006,[35] the NLRC granted the prayer for preliminary injunction of MERALCO. The NLRC considered the difficulty in proceeding with the execution given the conflicting decisions of the Court of Appeals' Special Second Division in CA-G.R. SP No. 72480 and the Court of Appeals' Fourteenth Division in CA-G.R. SP No. 72509 that were also passed upon by this Court, respectively, in G.R. Nos. 161159 and 161311 and in G.R. No. 164998. The NLRC ruled:

> At the outset, it must be stated that while this Commission has broad powers within its sphere of jurisdiction, it cannot encroach on judicial power which is the exclusive domain of the courts. The Court of Appeals has two contrasting rulings, one upholding the legality of complainants' dismissal, and the other declaring such dismissal illegal. This Commission has no power to overrule what has been decided by the courts. This is especially true with respect to judgments that have become final and executory not only at the level of the Court of Appeals, but also of the Supreme Court.
>
> Indeed, there is an insurmountable obstacle in the execution of the decision favoring complainants. If We let execution proceed, We will disregard the Court of Appeals' ruling in the MERALCO petition. On the other hand, We cannot declare complainants to have been legally dismissed as this will contravene the Court of Appeals' ruling in the Frondozo petition.
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> Confronted with this dilemma, and in deference to the exercise of the judicial power as the courts may find appropriate, this Commission has no recourse but to enjoin all proceedings until the parties would

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[35] *Id*. at 260-268. Penned by Presiding Commissioner Benedicto Ernesto R. Bitonio, Jr., with Commissioners Perlita B. Velasco and Romeo L. Go concurring.

have exhausted all available judicial remedies toward the possible reconciliation of the contrasting decisions.

WHEREFORE, there being no speedy or adequate remedy in the ordinary course of law, MERALCO's prayer for preliminary injunction is GRANTED. All proceedings with this Commission as well as with the Labor Arbiter are hereby enjoined and suspended until further orders from the appropriate court.

SO ORDERED.[36]

Two sets of respondents filed their respective motions for reconsideration. In its Resolution promulgated on 26 May 2006,[37] the NLRC denied the motions.

Frondozo, Perez, Zafra, Vito, Cruz, N. dela Cruz, and Diloy filed a petition for certiorari before the Court of Appeals assailing the 28 February 2006 and 26 May 2006 Resolutions of the NLRC.

The Decision of the Court of Appeals

In its 6 March 2007 Decision, the Court of Appeals affirmed the 28 February 2006 and 26 May 2006 Resolutions of the NLRC. According to the Court of Appeals, MERALCO's recourse was due to the two separate petitions before it (CA-G.R. SP No. 72480 and CA-G.R. SP No. 72509) that resulted in two contradictory rulings on the matter of petitioners' dismissal. The Court of Appeals acknowledged that the execution of a final judgment is a matter of right on the part of the prevailing party and is mandatory and ministerial on the part of the court or tribunal issuing the judgment. However, the Court of Appeals stated that a suspension or refusal of execution of judgment or order on equitable grounds can be justified when there are facts or events transpiring after the judgment or order had become final and executory, thus materially affecting the judgment obligation.

The Court of Appeals stated:

In the case at bar, finality of the CA Decision in SP No. 72480 on May 24, 2004, is a supervening event which transpired *after the*

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[36] *Id*. at 266-267.

[37] *Id*. at 269-274.

CA Decision in SP 72509 (which was in favor of petitioners) had become final and executory, and which decision directly contradicts the ruling in the said case. It may also be noted that the Resolution of the Supreme Court's Third Division in G.R. No. 161311 categorically declared that the petition filed by herein petitioners is being denied for their failure to show that a reversible error has been committed by the appellate court in rendering the decision in CA-G.R. SP No. 72480. Hence, with the denial with finality of the petition for review in G.R. No. 161159 (161311) the CA Decision in SP 72480 *upholding the dismissal of petitioners* has clearly become a legal obstacle to the enforcement of the final and executory decision in SP 72509 which in effect declared petitioners to have been illegally dismissed and upheld their right to back wages computed from December 14, 2001 and up to the date of their actual reinstatement.

In fine, no grave abuse of discretion was committed by the NLRC in granting preliminary injunction to private respondent MERALCO and enjoining or suspending all proceedings for the implementation of the 2nd alias writ of execution earlier issued by Labor Arbiter Guerrero with respect to the back wages/monetary award and reinstatement of petitioners pursuant to the May 29, 2002 Decision of the NLRC as affirmed/modified by the CA Decision in SP No. 72509.

As to the contention of petitioners that the NLRC should have instead proceeded to reconcile or harmonize the conflicting decisions rendered by the two (2) divisions of the Court, We find the same untenable and runs against established principles of immutability of final judgments in this jurisdiction. In fact, nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and *unalterable*. It may no longer be modified in any respect, even if modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.

We cannot but concur with the NLRC's pronouncement that MERALCO has no speedy and adequate remedy in the ordinary course of law for the preservation of its rights and interests, at least insofar only and solely as to avoid the injurious consequences of the 2nd *alias writ of execution* relative to the reinstatement aspect of the final decision in CA-G.R. No. SP 72509.[38]

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[38] *Id*. at 58.

The dispositive portion of the Court of Appeals' Decision reads:

> WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. The challenged Resolutions dated February 28, 2006 and May 26, 2006 of the National Labor Relations Commission are hereby AFFIRMED.
>
> No pronouncement as to costs.
>
> SO ORDERED.[39] (Italicization in the original)

The petitioners in CA-G.R. SP No. 95747 filed a motion for reconsideration. In its 14 June 2007 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the petition for review filed before this Court by Frondozo, Perez, Zafra, Vito, Cruz, N. dela Cruz, and Diloy.[40]

Petitioners alleged that the Court of Appeals committed grave abuse of discretion in upholding the 28 February 2006 and 26 May 2006 Resolutions of the NLRC, in not passing upon the issues of reinstatement and release of the garnished amount against MERALCO, and in ruling that the Decision in CA-G.R. SP No. 72480 is considered a bar in the implementation of the Decision in CA-G.R. SP No. 72509.

The Issue

Whether the Court of Appeals committed a reversible error in upholding the NLRC in issuing the writ of preliminary injunction prayed for by MERALCO.

The Ruling of this Court

The petition has no merit.

The Court of Appeals cited the 2005 Revised Rules of Procedure of the NLRC which provides that "[u]pon issuance

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[39] *Id*. at 58-59.

[40] Dizon did not join the other petitioners in the present case before this Court.

of the entry of judgment, the Commission, *motu proprio* or upon motion by the proper party, may cause the execution of the judgment in the certified case." According to the Court of Appeals, the 2005 Revised Rules of Procedure of the NLRC did not make a distinction between decisions or resolutions decided by the Labor Arbiter and those decided by the Commission in certified cases when an order of reinstatement is involved. Thus, even when the employer had perfected an appeal, the Labor Arbiter must issue a writ of execution for actual or payroll reinstatement of the employees illegally dismissed from the service. The Court of Appeals also cited Article 223 of the Labor Code which provides that the reinstatement aspect of the Labor Arbiter's Decision is immediately executory.

In this case, the applicable rule is Article 263 of the Labor Code and the NLRC Manual on Execution of Judgment, as amended by Resolution No. 02-02, series of 2002. Section 1, Rule III of the NLRC Manual on Execution of Judgment provides:

> Section 1. Execution Upon Final Judgment or Order. Execution shall issue only upon a judgment or order that finally disposes of an action or proceeding, except in specific instances where the law provides for execution pending appeal.

Article 263(i) of the Labor Code, on the other hand, provides:

> (i) The Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or the certification or submission of the dispute, as the case may be. The decision of the President, the Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall be final and executory ten (10) calendar days after receipt thereof by the parties.

A judicial review of the decisions of the NLRC may be filed before the Court of Appeals *via* a petition for certiorari under Rule 65 of the Rules of Court but the petition shall not stay the execution of the assailed decision unless a restraining order is issued by the Court of Appeals.[41]

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[41] *Philippine Transmarine Carriers, Inc. v. Legaspi*, 710 Phil. 838 (2013).

In this case, the NLRC issued an Entry of Judgment stating that the 29 May 2002 NLRC Order became final and executory on 19 June 2002; a Writ of Execution was issued; and MERALCO complied with the payroll reinstatement of petitioners. However, with the promulgation of the 30 May 2003 Decision of the Court of Appeals' Special Second Division, finding that the 6-8 June 1991 strike was illegal, illegal acts marred with violence and coercion were committed, and dismissing petitioners from the service, MERALCO stopped the payroll reinstatement. This prompted petitioners to move for the issuance of an Alias Writ of Execution for the satisfaction of their accrued wages arising from the recall of their payroll reinstatement which Labor Arbiter Guerrero granted on 10 June 2004. Later, a second Alias Writ of Execution was issued.

As both the NLRC and the Court of Appeals stated, they were confronted with two contradictory Decisions of two different Divisions of the Court of Appeals. The petitions questioning these two Decisions of the Court of Appeals were both denied by this Court and the denial attained finality. The Court of Appeals sustained the NLRC that the 30 May 2003 Decision of the Court of Appeals' Special Second Division is a subsequent development that justified the suspension of the Alias Writs of Execution.

There are instances when writs of execution may be assailed. They are:

(1) the writ of execution varies the judgment;
(2) there has been a change in the situation of the parties making execution inequitable or unjust;
(3) execution is sought to be enforced against property exempt from execution;
(4) it appears that the controversy has been submitted to the judgment of the court;
(5) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or
(6) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority.[42]

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[42] *Mayor Vargas v. Cajucom*, 761 Phil. 43, 56 (2015).

The situation in this case is analogous to a change in the situation of the parties making execution unjust or inequitable. MERALCO's refusal to reinstate petitioners and to pay their backwages is justified by the 30 May 2003 Decision in CA-G.R. SP No. 72480. On the other hand, petitioners' insistence on the execution of judgment is anchored on the 27 January 2004 Decision of the Court of Appeals' Fourteenth Division in CA-G.R. SP No. 72509. Given this situation, we see no reversible error on the part of the Court of Appeals in holding that the NLRC did not commit grave abuse of discretion in suspending the proceedings. Grave abuse of discretion implies that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[43] Thus, this Court declared:

> The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. x x x.[44]

Clearly, the NLRC did not act in a capricious, whimsical, arbitrary, or despotic manner. It suspended the proceedings because it cannot revise or modify the conflicting Decisions of the Court of Appeals.

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[43] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, 716 Phil. 500 (2013).

[44] *Id*. at 515-516.

However, we need to resolve the issue on the conflicting Decisions in order to put an end to this litigation.

The Court of Appeals stated that "the finality of the CA Decision in SP No. 72480 on May 24, 2004, is a supervening event which transpired after the CA Decision in SP No. 72509 (which was in favor of petitioners) had become final and executory."[45] This is not accurate. The Decision in CA-G.R. SP No. 72480 was promulgated on 30 May 2003. The Decision in CA-G.R. SP No. 72509 was promulgated on 27 January 2004. Even when the cases were elevated to this Court, G.R. No. 161159 and G.R. No. 161311 were resolved first before G.R. No. 164998. The Court's 23 February 2004 Resolution and the 24 May 2004 Resolution, both favoring MERALCO, became final and executory on 15 July 2004 and 2 September 2004, respectively, while the Resolution of 15 June 2005 which denied MERALCO's petition for review became final and executory on 4 October 2005, over a year after the final resolutions in G.R. Nos. 161159 and 161311.

Further, contrary to the finding of the Court of Appeals that CA-G.R. SP Nos. 72480 and 72509 attained finality without this Court actually passing upon the merits of the illegal dismissal aspect, this Court actually ruled on the merits of CA-G.R. SP No. 72480. The Court's Third Division denied the petition in G.R. No. 161159 in its 23 February 2004 Resolution on the ground that the petitioners failed to show that a reversible error had been committed by the Court of Appeals in rendering its Decision in CA-G.R. SP No. 72480. The Court's Third Division also denied the petition in G.R. No. 161311 in its 24 May 2004 Resolution for failure of the petitioners to show that a reversible error had been committed by the appellate court in the same case, CA-G.R. SP No. 72480.

In *Agoy v. Araneta Center, Inc.*,[46] this Court explained that "[w]hen the Court does not find any reversible error in the

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[45] *Rollo*, p. 58.

[46] 685 Phil. 246, 251 (2012).

decision of the CA and denies the petition, there is no need for the Court to fully explain its denial, since it already means that it agrees with and adopts the findings and conclusions of the CA. The decision sought to be reviewed and set aside is correct." Hence, the Court's Third Division adopted the findings and conclusions reached by the Court of Appeals in CA-G.R. SP No. 72480 which dismissed petitioners from the service. The finality of the denial of the petitions in G.R. Nos. 161159 and 161311 should be given greater weight than the denial of the petition in G.R. No. 164998 on technicality. It can also be interpreted that, in effect, the finality of the denial of the petitions in G.R. Nos. 161159 and 161311 also removed the jurisdiction of the Court's First Division and bound it to the final resolution in G.R. Nos. 161159 and 161311. The Court's First Division denied MERALCO's petition for failure to prosecute only on 15 June 2005, long after the denial of the petitions in G.R. Nos. 161159 and 161311 became final and executory on 15 July 2004 and 2 September 2004, respectively.

WHEREFORE, we **DENY** the petition. We **REMAND** this case to the National Labor Relations Commission for the execution of the 23 February 2004 and the 24 May 2004 Resolutions of this Court's Third Division in G.R. Nos. 161159 and 161311 in accordance with this Decision.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Leonen, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Del Castillo and *Perlas-Bernabe, JJ.,* no part.

Jardeleza and *Caguioa, JJ.,* on official leave.

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are well-recognized exceptions: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (North Greenhills Assoc., Inc. *vs.* Atty. Morales, G.R. No. 222821, Aug. 9, 2017) p. 673

— The Court may review the factual findings of the CA when the case falls under the said exceptions; the CA's finding was only speculative, resulting in a grave misapprehension of facts. (*Id.*)

— The rule that factual findings of the Court of Appeals are not reviewable by this Court is subject to certain exceptions, such as when the inference made is manifestly mistaken and when the "findings of fact are conclusions without citation of specific evidence on which they are based." (Lao *vs.* Yao Bio Lim, G.R. No. 201306, Aug. 9, 2017) p. 366

Factual findings of the trial court — As a rule, only questions of law may be appealed to this Court in a petition for review; the Court is not a trier of facts; its jurisdiction being limited to errors of law; moreover, factual findings of the trial court, particularly when affirmed by the Court

issues of the case, and the same is contrary to the admissions of both the appellant and the appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (j) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record. (*Id.*)

— It is settled that the appellate jurisdiction of the Court over decisions and final orders of the Sandiganbayan is limited only to questions of laws; as its factual findings, as a rule, are conclusive upon the Court. (Typoco, Jr. *vs.* People, G.R. No. 221857, Aug. 16, 2017) p. 914

— This Court notes that resolving the contentions raised would necessarily require the re-evaluation of the parties' submissions and the CA's factual findings; this course of action is ordinarily proscribed in a petition for review on *certiorari*, *i.e.*, a Rule 45 petition resolves only questions of law; by way of exception, the Court resolves factual issues when the findings of the RTC differ from those of the CA, as in the case at bar. (Heirs of Sps. De Guzman *vs.* Heirs of Marceliano Bandong, G.R. No. 215454, Aug. 9, 2017) p. 617

— Under the Rules of Court, only questions of law should be raised in a petition for review on *certiorari;* exceptions as recognized by the Court in the case of *Medina v. Mayor Asistio, Jr.*, namely: 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 CA, 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

dangerous drugs; although "chain of custody" is not specifically defined under the law, the term essentially refers to: "[T]he duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." (People *vs.* Saunar, G.R. No. 207396, Aug. 9, 2017) p. 482

— The Court has consistently held in drug cases that every link of the chain of custody must be proved; the prosecution fell short of satisfying this standard when it opted to present only two witnesses herein; the probability of the integrity and identity of the *corpus delicti* being compromised is present in every single time the prohibited item is being stored or transported, be it from the PNP crime laboratory directly to the court or otherwise. (People *vs.* Carlit *y* Gawat, G.R. No. 227309, Aug. 16, 2017) p. 940

— The police admitted that they were no longer able to coordinate with the media and the local official because he was instructed by their team leader to immediately bring the accused to the police station does not constitute justifiable ground for skirting the statutory requirements under Sec. 21 of R.A. 9165; failure of the prosecution to prove that the chain of custody was unbroken; the guilt of the accused-appellant was not proven beyond reasonable doubt, warranting her acquittal of the crime charged. (*Id.*)

— The prosecution failed to establish who held the seized items from the moment they were taken from accused-appellant until they were brought to the police station; the failure of the prosecution to strictly comply with the exacting standards in R.A. No. 9165, as amended, casts serious doubt on the origin, identity, and integrity of the seized dangerous drugs allegedly taken from accused-appellant. (People *vs.* Saunar, G.R. No. 207396, Aug. 9, 2017) p. 482

there must be a common design to commit a felony; yet, it does not follow that one person cannot be convicted of conspiracy; as long as the acquittal or death of a co-conspirator does not remove the basis of a charge of conspiracy, one defendant may be found guilty of the offense; the Sandiganbayan correctly found that there was conspiracy between petitioners. (Typoco, Jr. *vs.* People, G.R. No. 221857, Aug. 16, 2017) p. 914

CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC)

Arbitral awards — Consistent with CIAC's technical expertise is the primacy and deference accorded to its decisions; Sec. 19 of the Construction Industry Arbitration Law establishes that CIAC arbitral awards may not be assailed, except on pure questions of law. (CE Construction Corp. *vs.* Araneta Center, Inc., G.R. No. 192725, Aug. 9, 2017) p. 221

— In appraising the CIAC Arbitral Tribunal's awards, it is not the province of the present Rule 45 Petition to supplant this Court's wisdom for the inherent technical competence of and the insights drawn by the CIAC Arbitral Tribunal throughout the protracted proceedings before it; rationale; without a showing of any of the exceptional circumstances justifying factual review, it is neither this Court's business nor in this Court's competence to pontificate on technical matters; thus, the Court upholds and reinstates the CIAC Arbitral Tribunal's monetary awards. (*Id.*)

Functions — The CIAC was created with the specific purpose of an "early and expeditious settlement of disputes" cognizant of the exceptional role of construction to "the furtherance of national development goals"; it has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as "referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment." (CE Construction Corp.

Voidable contract — Art. 166 of the Old Civil Code explicitly requires the consent of the wife before the husband may alienate or encumber any real property of the conjugal partnership except when there is a showing that the wife is incapacitated, under civil interdiction, or in like situations; general rule that the factual findings of the RTC as affirmed by the CA should not be disturbed by this Court unless there is a compelling reason to deviate therefrom. (Ko *vs.* Aramburo, G.R. No. 190995, Aug. 9, 2017) p. 121

CORPORATIONS

Merger — A merger is the union of two or more existing corporations in which the surviving corporation absorbs the others and continues the combined business; effect; there must be an express provision of law authorizing the merger; the merger does not become effective upon the mere agreement of the constituent corporations, but upon the approval of the articles of merger by the Securities and Exchange Commission issuing the certificate of merger as required by Sec. 79 of the Corporation Code. (Bank of Commerce *vs.* Heirs of Rodolfo Dela Cruz, G.R. No. 211519, Aug. 14, 2017) p. 747

Regular meetings of stockholders or members — Sec. 50 of B.P. Blg. 68 or the Corporation Code prescribes that "regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws"; no irregularity in this case; by its express terms, the Corporation Code allows "the shortening (or lengthening) of the period within which to send the notice to call a special (or regular) meeting." (Lao *vs.* Yao Bio Lim, G.R. No. 201306, Aug. 9, 2017) p. 366

Rights of stockholders — A stockholder's right to vote is inherent in and incidental to the ownership of a capital stock; petitioners unjustifiably and obstinately refused to recognize respondents' shareholdings and to allow them to participate in the 2002 stockholders' meeting and elections of the corporation's directors despite the previous Orders of the Securities and Exchange

— Voluntary and involuntary separation benefits are distinct from one another; as respondents' termination was involuntary in nature, *i.e.*, by virtue of a retrenchment program, they are only entitled to receive involuntary separation benefits under the express provisions of the company's Compensation and Benefits Manual and the Retirement Plan. (*Id.*)

ESTAFA

Elements — The elements of *estafa* by means of deceit under Art. 315(2)(a) of the RPC are: a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and d) that, as a result thereof, the offended party suffered damage. (People *vs.* Sison @ "Margarita S. Aguilar," G.R. No. 187160, Aug. 9, 2017) p. 8

Imposable penalty —The Indeterminate Sentence Law should be applied in determining the penalty for *estafa*; the maximum term is that which, in view of the attending circumstances, could be properly imposed under the RPC and the minimum shall be within the range of the penalty next lower to that prescribed by the RPC for the offense; application. (People *vs.* Sison @ "Margarita S. Aguilar", G.R. No. 187160, Aug. 9, 2017) p. 8

Prescriptive period — Under Art. 315 of the Revised Penal Code, the penalty for *estafa* shall be determined by the amount allegedly swindled by the accused; under Art. 25 of the RPC, the penalties of *prision mayor* and *reclusion temporal* are included in the enumeration of afflictive penalties; prescription stated in Art. 90 of the RPC; application. (Orbe *vs*. Miaral, G.R. No. 217777, Aug. 16, 2017) p. 898

writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority." (Frondozo *vs.* Mla. Electric Co., G.R. No. 178379, Aug. 22, 2017) p. 976

Judgment based on compromise agreement –– Once a compromise agreement is approved by a final order of the court, it transcends its identity as a mere contract binding only upon the parties thereto, as it becomes a judgment that is subject to execution in accordance with the Rules of Court; in implementing a compromise agreement, the courts cannot modify, impose terms different from the terms of the agreement, or set aside the compromises and reciprocal concessions made in good faith by the parties without gravely abusing their discretion. (Cathay Land, Inc. *vs.* Ayala Land, Inc., G.R. No. 210209, Aug. 9, 2017) p. 499

–– The Ayala Group has no right, under the Compromise Agreement, to seek injunctive relief from the courts in case the Cathay Group commits an act contrary to its undertakings in the agreement; its right that is enforceable through a writ of execution is only the suspension or withdrawal of the grant of easement of right of way; the RTC gravely abused its discretion when it granted a remedy that is not available to the Ayala Group, thereby imposing terms different from what was agreed upon by the parties. (*Id.*)

–– The Ayala Group ***prematurely*** moved for execution of the Compromise Agreement in order to prevent the Cathay Group from actually committing a breach of the terms of the agreement; the Ayala Group violated the terms of the agreement which afforded the Cathay Group a period of 30 days from notice to rectify a breach, should it indeed occur. (*Id.*)

set therein satisfied" is deemed to be a "work-related illness"; Sec. 20(B)(4) of the 2000 POEA-SEC declares that "those illnesses not listed in Sec. 32 of this Contract are disputably presumed as work related"; reason and significance of the legal presumption; overturned only when the employer's refutation is found to be supported by substantial evidence; substantial evidence, defined. (*Id.*)

Work-related illness or injury — For an illness or injury to be compensable under the POEA Contract, it must have been work-related and acquired during the term of the seafarer's contract; work-related illness is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Sec. 32-A of this Contract with the conditions set therein satisfied." (Perea *vs.* Elburg Shipmanagement Phils., Inc., G.R. No. 206178, Aug. 9, 2017) p. 445

PATERNITY AND FILIATION

Burden of proof — *S*ince an action for compulsory recognition may be filed ahead of an action for support, the direct filing of an action for support, "where the issue of compulsory recognition may be integrated and resolved," is an equally valid alternative; rationale. (Abella *vs.* Cabañero, G.R. No. 206647, Aug. 9, 2017) p. 466

— The paramount consideration in the resolution of questions affecting a child is the child's welfare, and it is "the policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children"; the burden of proof in proceedings seeking to establish paternity is upon the "person who alleges that the putative father is the biological father of the child." (*Id.*)

PLEA BARGAINING

Concept — Plea bargaining has been defined as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval"; essence of the agreement; the rules on

RECONSTITUTION OF TITLE (R.A. NO. 26)

Concept and purpose –– The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land; purpose. (Dy *vs.* Aldea, G.R. No. 219500, Aug. 9, 2017) p. 657

Requisites –– The fact of loss or destruction of the owner's duplicate certificate of title, which is the primordial element in the validity of reconstitution proceedings, is clearly missing; accordingly, the RTC never acquired jurisdiction over the reconstitution proceedings initiated by the impostor, and its judgment rendered thereafter is null and void. (Dy *vs.* Aldea, G.R. No. 219500, Aug. 9, 2017) p. 657

–– The following requisites must be complied with for an order for reconstitution to be issued: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) that the certificate of title was in force at the time it was lost and destroyed; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title. (*Id.*)

RES GESTAE

Requisites –– A declaration or an utterance is deemed as part of the *res gestae* and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statements are made before the declarant had time to contrive or devise; and (c) the statements must concern the occurrence in question and its immediately attending circumstances; the victim's utterance was made in spontaneity and only in reaction to the startling occurrence; such statement is relevant

TREACHERY

Elements — Treachery exists "when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make"; to be appreciated, two (2) elements should be proven: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted. (People *vs.* Dimapilit *y* Abellado, G.R. No. 210802, Aug. 9, 2017) p. 523

UNJUST ENRICHMENT

Principle of — Given the conclusions on the nullity of the sale and the applicability of the principle of estoppel, the Court deems it proper to order the heirs of respondent to remit to petitioner all the payments received by their predecessor-in-interest in connection with the sale of the property; this ruling is demanded by the equitable principle of unjust enrichment. (Guison *vs.* Heirs of Loreño Terry, G.R. No. 191914, Aug. 9, 2017) p. 140

— The principle of unjust enrichment requires the concurrence of two conditions: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the expense of another; the main objective of the principle is to prevent a person from enriching himself at the expense of another without just cause or consideration. (Sps. Chua *vs.* United Coconut Planters Bank, G.R. No. 215999, Aug. 16, 2017) p. 872

WITNESSES

Credibility of — It is already established that "assignment of values to the testimony of a witness is virtually left, almost entirely, to the trial court which has the opportunity to observe the demeanor of the witness on the stand"; except for significant matters "that might have been overlooked or discarded, the findings of credibility by

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