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SUPREME COURT

OF THE

PHILIPPINES

FROM

AUGUST 23, 2017 TO SEPTEMBER 11, 2017

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MANILA
2019

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 11616. August 23, 2017]
(Formerly CBD Case No. 08-2141)

LITO V. BUENVIAJE, *complainant, vs.* **ATTY. MELCHOR G. MAGDAMO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; A PRIVILEGE GIVEN TO LAWYERS WHO MEET THE HIGH STANDARDS OF LEGAL PROFICIENCY AND MORALITY.— The practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality. Any violation of these standards exposes the lawyer to administrative liability x x x [, pursuant to] Canon 8 of the Code of Professional Responsibility x x x. In the instant case, Atty. Magdamo's actuations do not measure up to this Canon. The records show that he referred to Buenviaje as a "swindler". He made this imputation with pure malice for he had no evidence that Buenviaje is committing swindling activities. Even if he was suspicious of Buenviaje, he should have refrained from making such malicious reference or name-calling for he should know as a lawyer that the mere filing of a complaint against a person does not guarantee a finding of guilt, and that an accused is presumed innocent until proven guilty. Here, other than the criminal complaint for bigamy which Fe's siblings filed before the prosecutor's office, there were no other cases decided against Buenviaje.

2. ID.; ID.; MUST NOT ASSERT AS A FACT THAT WHICH HAS NOT BEEN PROVED.— Atty. Magdamo is likewise out of line when he made inference to the marriage documents of Buenviaje and Fe as "spurious" as well as his conclusion that "Fe never had a husband or child in her entire life". He should know better that without the courts' pronouncement to this effect, he is in no position to draw conclusions and pass judgment as to the existence, and validity or nullity of the marriage of Buenviaje and Fe. That is not his job to do. While his statements in the Notice given to BPI-Dagupan might be prompted by a good cause, it were nevertheless careless, premature and without basis. At the very least, Atty. Magdamo's actuations are blatant violation of Rule 10.02 of the Code of Professional Responsibility which provides: "Rule 10.02 - A lawyer shall not x x x ***assert as a fact that which has not been proved***."

3. ID.; ID.; A LAWYER'S LANGUAGE SHOULD ALWAYS BE DIGNIFIED AND RESPECTFUL, BEFITTING THE DIGNITY OF THE LEGAL PROFESSION.— We had an occasion to say that the use of disrespectful, intemperate, manifestly baseless, and malicious statements by an attorney in his pleadings or motions is a violation of the lawyer's oath and a transgression of the canons of professional ethics. The Court has constantly reminded lawyers to use dignified language in their pleadings despite the adversarial nature of our legal system. Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum. Atty. Magdamo ought to have realized that this sort of public behavior can only bring down the legal profession in the public estimation and erode public respect for it. In this case, Atty. Magdamo's statements against Buenviaje were not only improper but it also undoubtedly tended to mislead BPI-Dagupan into thinking that the latter is a swindler and a fugitive as it was made without hesitation notwithstanding the absence of any evidentiary support. The Court cannot condone this irresponsible and unprofessional behavior. x x x [I]t must be emphasized anew that, in support of the cause of their clients, lawyers have the duty to present every remedy or defense within the authority of the law. However, a client's cause does not permit an attorney to cross the line between liberty and license. The lawyer's duty to its clients must never be at the expense of truth and justice.

D E C I S I O N

PERALTA, *J.*:

Before us is an Administrative Complaint dated December 28, 2007 filed by Lito Buenviaje[1] (*Buenviaje*) against respondent Atty. Melchor G. Magdamo (*Atty. Magdamo*), docketed as A.C. No. 11616 for violation of the Code of Professional Responsibility.

The antecedent facts are as follows:

In the instant Complaint dated December 28, 2007, Buenviaje alleged that he was married to the late Fe Gonzalo-Buenviaje as evidenced by NSO issued Marriage Contract Register No. 87-13503-A.[2] Fe died on September 17, 2007.

Meanwhile, Atty. Magdamo was the counsel of Fe's sisters, Lydia and Florenia Gonzalo, who filed a criminal case for bigamy against Buenviaje. They claimed that Buenviaje was married to a certain Amalia Ventura in 1978, thus, making him guilty of bigamy.

In an attempt to protect the rights and interests of his clients in securing the monies of their sibling, deceased Fe Gonzalo, Atty. Magdamo sent a Notice of Death of Depositor[3] dated October 11, 2007 to the Bank of the Philippine Islands (*BPI*)-Dagupan Branch where Buenviaje and Fe appeared to have a joint account. The pertinent portion of said Notice reads as follows:

"x x x x x x x x x

FE SOLIS GONZALO was formerly an Overseas Filipina Worker (OFW) Nurse in Switzerland whose lifetime savings is now in an account in BPI-Dagupan. She came back to the Philippines to spend the last days of her life with her family in San Fabian, Pangasinan.

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[1] *Rollo,* pp. 2-6.

[2] *Id. at* 122.

[3] *Id.* at 12.

Unfortunately, ***while she was terminally ill and while residing in Manila so as to be near Saint Luke's Hospital, a clever swindler by the name of LITO BUENVIAJE made it appear on spurious documents that he is the husband of Fe Gonzalo when in truth and in fact LITO BUENVIAJE is married to AMALIA VALERA.***

x x x x x x x x x

Moreover, ever since 24 August 2007, ***LITO V. BUENVIAJE has been a fugitive from justice as he has been hiding from the criminal charge in People of the Philippines versus Lito Buenviaje y Visayana, case number 7H-103365,*** pending in the City of Manila.

x x x x x x x x x

Fe never had a husband or child in her entire life. x x x" (Emphasis ours)

Aggrieved, Buenviaje filed the instant administrative complaint against Atty. Magdamo for violation of Rule 1.01, Canon 7 , Rule 7.03 and Rule 19.01 of the Code of Professional Responsibility. Buenviaje averred that in Atty. Magdamo's Notice of Death of Depositor dated October 11, 2007 sent to the BPI- Dagupan Branch, he untruthfully and maliciously quoted the following statements: (1) "*a clever swindler by the name of Lito Buenviaje made it appear on spurious document that he is the husband of Fe Gonzalo when in truth and in fact Lito Buenviaje is married to Amalia Valera*", (2) "*since August 24, 2007, Lito V. Buenviaje has been a fugitive from justice as he has been hiding from the criminal charge in People of the Philippines versus Lito Buenviaje y Visayana, case number 7H-103365 pending in the City of Manila*", and (3) "*Fe never had a husband or child in her entire life"* to his prejudice.

Buenviaje alleged that he discovered the Notice's existence sometime in December 2007 when he inquired about the remaining balance of his joint account with Fe. He lamented that he was shocked upon reading the letter and felt humiliated at the words written against him as the bank manager and the other bank personnel might have really thought that he was a swindler and a fugitive from justice.[4]

[4] *Id.* at 111-120.

Buenviaje denied Atty. Magdamo's allegation that Fe was never married as they were in fact married in a public civil rites in the presence of many relatives of Fe. As to his alleged marriage with a certain Amalia Valera, Buenviaje admitted that he had extramarital relationship with her and that they had two (2) sons. When they separated and he subsequently worked overseas, it did not stop him from fulfilling his responsibilities as a father to his sons. He was then advised to remit money to Amalia but he was told that he needed a marriage contract to be able to do so, thus, he asked someone to make a marriage contract for remittance purposes and that he was told that there would be no record of it. Buenviaje claimed that at that time, he really believed that no valid marriage took place between him and Amalia and that he was single up to the time he married Fe.

Buenviaje lamented that Atty. Magdamo employed dirty and dishonest means and tactics to ensure that BPI will prevent him from withdrawing money from the joint account that he has with his late wife. He averred that in referring to him as a "swindler", Atty. Magdamo succeeded in intimidating BPI-Dagupan into extrajudicially "freezing" the joint account and in not transacting with him.

Buenviaje also pointed out that Atty. Magdamo, in referring to him as a fugitive from justice, in effect, made BPI-Dagupan believe that a criminal complaint was already pending against him when in truth and in fact, the August 24, 2007 complaint for bigamy filed by Lydia and Florenia was still pending before the Office of the City Prosecutor of Manila at the time that they wrote and served the Notice to BPI-Dagupan.

Buenviaje further added that Atty. Magdamo even made threats to him as evidenced by his text messages to him, to wit: *"Sometime in the morning of 1 October 2007, I sent text messages to Lito's last known Subscriber Identity Module (SIM) number (+639062097612) requesting him to stop his merciless plunder and to voluntarily surrender to the rule of law."*

Finally, Buenviaje questioned Atty. Magdamo's fitness to continue in the practice of law as he has displayed lack of ability to distinguish a fugitive from justice and a respondent in a

criminal investigation; employed of dirty and unprofessional tactics of calling him a "swindler"; and by referring to his marriage contract with his wife as "spurious document". He, thus, prayed that considering Atty. Magdamo's actuations, he should be disbarred or suspended from the practice of law.

On January 9, 2008, the IBP-Commission on Bar Discipline (*IBP-CBD*) directed Atty. Magdamo to submit his answer on the complaint against him.[5]

In its Report and Recommendation[6] dated October 23, 2013, the IBP-CBD recommended that Atty. Magdamo be reprimanded for his unethical actuations.

However, the IBP-Board of Governors, in a Notice of Resolution No. XXI-2014-717 dated October 10, 2014, resolved to adopt and approve with modification the Report and Recommendation of the IBP-CBD, and instead suspend Atty. Magdamo from the practice of law for three (3) months.[7]

Aggrieved, Atty. Magdamo moved for reconsideration. However, in Resolution No. XXII-2016-326[8] dated May 28, 2016, the IBP-Board of Governors resolved to deny Atty. Magdamo's motion for reconsideration and affirm the latter's suspension.

We concur with the findings and recommendation of the IBP-Board of Governors.

The practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality. Any violation of these standards exposes the lawyer to administrative liability. Canon 8 of the Code of Professional Responsibility provides:

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[5] *Id.* at 26.

[6] *Id.* at 138-141.

[7] *Id.* at 137.

[8] *Id.* at 157.

CANON 8 — A lawyer shall conduct himself with courtesy, fairness and candor towards his professional colleagues, and shall avoid harassing tactics against the opposing counsel.

Rule 8.01. — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

In the instant case, Atty. Magdamo's actuations do not measure up to this Canon. The records show that he referred to Buenviaje as a "swindler." He made this imputation with pure malice for he had no evidence that Buenviaje is committing swindling activities. Even if he was suspicious of Buenviaje, he should have refrained from making such malicious reference or name-calling for he should know as a lawyer that the mere filing of a complaint against a person does not guarantee a finding of guilt, and that an accused is presumed innocent until proven guilty. Here, other than the criminal complaint for bigamy which Fe's siblings filed before the prosecutor's office, there were no other cases decided against Buenviaje.

Atty. Magdamo's malicious imputation against Buenviaje is further aggravated by the fact that said imputation was made in a forum which is not a party to the legal dispute between Fe's siblings and Buenviaje. He could have just informed BPI-Dagupan of the death of its client and that there is a pending litigation regarding their client's estate, and he did not have to resort to name-calling and make unnecessary commentaries in order to support his cause. Undoubtedly, his malicious imputation against Buenviaje is unfair as the latter was unnecessarily exposed to humiliation and shame even as there was no actual case yet to be filed in the courts.

Moreover, Atty. Magdamo is likewise out of line when he made inference to the marriage documents of Buenviaje and Fe as "spurious" as well as his conclusion that "Fe never had a husband or child in her entire life." He should know better that without the courts' pronouncement to this effect, he is in no position to draw conclusions and pass judgment as to the existence, and validity or nullity of the marriage of Buenviaje and Fe. That is not his job to do. While his statements in the

Notice given to BPI-Dagupan might be prompted by a good cause, it were nevertheless careless, premature and without basis. At the very least, Atty. Magdamo's actuations are blatant violation of Rule 10.02 of the Code of Professional Responsibility which provides:

> Rule 10.02 - A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or ***assert as a fact that which has not been proved.*** (Emphasis ours)

Equally incredulous is Atty. Magdamo's statement in the Notice that "*Lito V. Buenviaje has been a fugitive from justice as he has been hiding from the criminal charge in People vs. Lito Buenviaje y Visayana, case number 7H-103365, pending in the City of Manila*". Upon review, it appears that case number 7H-103365 is the same bigamy case which Fe's siblings filed against Buenviaje before the Prosecutor's Office of Manila. At the time Atty. Magdamo made the subjects statement in the Notice to BPI-Dagupan, he knew that there was no final resolution yet from the prosecutor's office, no case has yet to be filed in the courts, there was no warrant of arrest against Buenviaje, and more importantly, there was no evidence that Buenviaje had any intent to flee prosecution as he even filed the instant case and participated in the proceedings hereto. A mere charge or allegation of wrongdoing does not suffice. Accusation is not synonymous with guilt. There must always be sufficient evidence to support the charge.[9] As to why Atty. Magdamo made such malicious statements is beyond this Court's comprehension.

We had an occasion to say that the use of disrespectful, intemperate, manifestly baseless, and malicious statements by an attorney in his pleadings or motions is a violation of the lawyer's oath and a transgression of the canons of professional ethics.[10] The Court has constantly reminded lawyers to use

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[9] *Spouses Boyboy v. Yabut, Jr.,* 449 Phil. 664, 668 (2003).

[10] *Baja v. Judge Macandog,* 242 Phil. 123, 132 (1988).

dignified language in their pleadings despite the adversarial nature of our legal system.[11] Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum. Atty. Magdamo ought to have realized that this sort of public behavior can only bring down the legal profession in the public estimation and erode public respect for it.[12]

In this case, Atty. Magdamo's statements against Buenviaje were not only improper but it also undoubtedly tended to mislead BPI-Dagupan into thinking that the latter is a swindler and a fugitive as it was made without hesitation notwithstanding the absence of any evidentiary support. The Court cannot condone this irresponsible and unprofessional behavior.

As this Court emphasized in Re: Supreme Court Resolution dated 28 April 2003 in G.R. Nos. 145817 & 145822:[13]

> The Court cannot countenance the ease with which lawyers, in the hopes of strengthening their cause in a motion for inhibition, make grave and unfounded accusations of unethical conduct or even wrongdoing against other members of the legal profession. ***It is the duty of members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness,*** unless required by the justness of the cause with which they are charged.
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> (emphasis ours)

Finally, it must be emphasized anew that, in support of the cause of their clients, lawyers have the duty to present every remedy or defense within the authority of the law. However, a client's cause does not permit an attorney to cross the line

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[11] *Atty. Barandon, Jr. v. Atty. Ferrer, Sr.,* 630 Phil. 524, 531 (2010).

[12] *Id.* at 532.

[13] *Law Firm of Chavez Miranda Aseoche v. Lazaro,* A.C. No. 7045, September 5, 2016.

between liberty and license.[14] The lawyer's duty to its clients must never be at the expense of truth and justice. As explained in *Choa v. Chiongson:*[15]

> While a lawyer owes absolute fidelity to the cause of his client, full devotion to his genuine interest, and warm zeal in the maintenance and defense of his rights, as well as the exertion of his utmost learning and ability, he must do so only within the bounds of the law. He must give a candid and honest opinion on the merits and probable results of his client's case with the end in view of promoting respect for the law and legal processes, and counsel or maintain such actions or proceedings only as it appears to him to be just, and such defenses only as he believes to be honestly debatable under the law. He must always remind himself of the oath he took upon admission to the Bar that he will not wittingly or willingly promote or sue any groundless, false or unlawful suit nor give aid nor consent to the same; and that he will conduct [himself] as a lawyer according to the best of [his] knowledge and discretion with all good fidelity as well to the courts as to [his] clients. Needless to state, the lawyers fidelity to his client must not be pursued at the expense of truth and the administration of justice, and it must be done within the bounds of reason and common sense. A lawyers responsibility to protect and advance the interests of his client does not warrant a course of action propelled by ill motives and malicious intentions against the other party.

Based on the foregoing, We cannot countenance Atty. Magdamo's use of offensive and disrespectful language in his Notice addressed to BPI-Dagupan. He clearly violated Canons 8 and 10 of the Code of Professional Responsibility, for his actions erode the public's perception of the legal profession. We, thus, sustain the findings and recommendation of the IBP-Board of Governors.

ACCORDINGLY, the Court **AFFIRMS** the October 10, 2014 and May 28, 2016 Resolutions of the Integrated Bar of the Philippines Board of Governors in CBD Case

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[14] *Cruz v. Judge Aliño-Hormachuelos,* 470 Phil. 435, 445 (2004).

[15] 329 Phil. 270, 275-276 (1996).

No. 08-2141 and **ORDERS** the suspension of Atty. Melchor G. Magdamo from the practice of law for three (3) months effective upon his receipt of this Decision.

Let a copy of this Decision be entered in Atty. Magdamo's personal record as an attorney with the Office of the Bar Confidant and a copy of the same be served to the Integrated Bar of the Philippines and to the Office of the Court Administrator for circulation to all the courts in the land.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe,* and *Reyes, Jr., JJ.,* concur.

Caguioa, J., on leave.

THIRD DIVISION

[G.R. No. 180447. August 23, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FERNANDO GERONIMO *y* AGUSTINE, *alias* "NANDING BAKULAW,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— For a successful prosecution of illegal sale of dangerous drugs under Section 5 of R.A. No. 9165, the following elements must be satisfactorily established by the State, namely: (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 the payment therefor. In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-

buyer and the receipt by the seller of the marked money consummate the illegal transaction. What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.

2. ID.; ID.; SEIZURE AND CUSTODY OF PROHIBITED DRUGS; MARKING; REFERS TO THE STARTING POINT IN THE CUSTODIAL CHAIN AND SERVES TO SEGREGATE THE MARKED EVIDENCE FROM THE CORPUS OF ALL OTHER SIMILAR AND RELATED EVIDENCE FROM THE TIME THEY ARE SEIZED FROM THE ACCUSED UNTIL THEY ARE DISPOSED OF AT THE END OF THE CRIMINAL PROCEEDINGS.— The procedure to be followed in the seizure and custody of prohibited drugs have been delineated in Section 21 of Republic Act No. 9165 x x x. Complementing x x x [is] Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 x x x. The x x x rules require the marking of the seized drug immediately upon seizure. Such marking is the starting point in the custodial chain, because succeeding handlers of the seized drug or related items will use the marking as their reference. It further serves to segregate the marked evidence from the corpus of all other similar and related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thereby obviating switching, "planting," or contamination of evidence. It is also crucial in ensuring the integrity of the chain of custody.

3. ID.; ID.; ID.; NOT EVERY CASE OF NON-COMPLIANCE WITH THE PROCEDURE IN THE SEIZURE AND CUSTODY OF PROHIBITED DRUGS PREJUDICES THE STATE'S EVIDENCE PROVIDED THAT THE STATE RENDERS A SUITABLE EXPLANATION OF THE LAPSE OR GAP IN THE COMPLIANCE WITH THE PROCEDURES.— The last paragraph of Section 21(*a*) of the IRR provides a saving mechanism to ensure that not every case of non-compliance irreversibly prejudices the State's evidence. It is significant to note, however, that the application of the saving mechanism to any particular situation is expressly conditioned upon the State rendering a fitting or suitable explanation of the lapse or gap in the compliance with the procedures. The explanation should at least disclose to the trial

court the reason or reasons for the lapse or gap in compliance with the procedure considering that every step in the procedure is an essential link in the chain of custody. Here, the Prosecution tendered no explanation of why none of the members of the buy-bust team had seen to the taking of any photograph of the seized *shabu* immediately after the arrest, or even afterwards. Likewise, there was no explanation given as to why they did not ensure the presence of an elected official, or member of the media, or representative of the Department of Justice during the entrapment and confiscation of the evidence.

4. ID.; ID.; ID.; FAILURE TO ESTABLISH THE CHAIN OF CUSTODY CREATES DOUBT ABOUT THE *SHABU* PRESENTED AS EVIDENCE AT THE TRIAL BEING REALLY THE *SHABU* SEIZED FROM THE ACCUSED; CASE AT BAR.— [T]he saving mechanism under the last paragraph of Section 21(*a*) of the IRR would not apply if there was no credible showing of any effort undertaken by the members of the buy-bust team to keep the *shabu* intact while in transit from the moment of seizure to the police station, and beyond, until the disposal of the *shabu* after the trial. The procedural lapses committed by the buy-bust team x x x underscored the uncertainty about the identity and integrity of the *shabu* presented and admitted as evidence against the accused-appellant. They highlighted the failure of the Prosecution to establish the chain of custody, by which the incriminating evidence would have been properly authenticated. The unavoidable consequence of the non-establishment of the chain of custody was the serious doubt about the *shabu* presented as evidence at the trial being really the *shabu* supposedly seized from the accused-appellant.

5. ID.; ID.; SALE OR POSSESSION OF *SHABU*; IF THE PROSECUTION FAILS TO ESTABLISH THE *CORPUS DELICTI*, THE CRIME IS NOT ESTABLISHED BEYOND REASONABLE DOUBT AND THE ACCUSED DESERVES AN ACQUITTAL.— In every prosecution of the sale and possession of methamphetamine hydrochloride or *shabu* prohibited under Republic Act No. 9165, the State carries the heavy burden of proving the elements of the offense, failing in which the State would not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. If the State does not establish the *corpus delicti*, such as when the dangerous drug subject of the prosecution is missing, or when substantial

gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court, then the crime is not established beyond reasonable doubt. Indeed, any substantial gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt. Thus, the accused-appellant deserves acquittal due to the reasonable doubt that the lapses in the chain of custody engendered.

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

BERSAMIN, *J.*:

The State, not the accused, has the heavy burden of justifying at the trial the lapses or gaps in the chain of custody. Without the justification, the chain of custody is not shown to be unbroken; hence, the integrity of the evidence of the *corpus delicti* was not preserved. The acquittal of the accused should follow.

The Case

The accused-appellant appeals the decision promulgated on April 27, 2007 in CA-G.R. CR-H.C. No. 01793,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered in Criminal Case No. 12873-D on August 5, 2005 by the Regional Trial Court (RTC), Branch 151, in Pasig City[2] pronouncing him guilty beyond reasonable doubt of a violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) as charged.

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[1] *Rollo,* pp. 2-18; penned by Associate Justice Amelita G. Tolentino, with Associate Justices Lucenito N. Tagle and Mariflor P. Punzalan-Castillo concurring.

[2] CA *rollo*, pp. 10-15; penned by Judge Franchito N. Diamante.

Antecedents

The CA summed up the factual antecedents in its decision, as follows:

About 2:00 o'clock in the afternoon of September 4, 2003, while PO1 Janet Sabo and SPO4 Manuel Buenconsejo were at their office at the Mayor Special Action Team (MSAT) at the City Hall Detachment, Pasig City, a confidential informant arrived and reported to them that a certain alias Nanding Bakulaw, who was later identified as appellant Fernando Geronimo, was engaged in illegal drug activities victimizing young individuals in Interior Villa Sanchez, Palatiw, Pasig City. SPO4 Buenconsejo relayed said report to their chief, P/Insp. Rodrigo Villaruel, who immediately formed and conducted a briefing for the buy-bust team composed of SPO4 Buenconsejo, PO3 Hunilassan Salisa, PO2 Arturo San Andres, PO1 Aldrin Mariano, PO1 Rolando Panis and PO1 Janet Sabo.

SPO4 Buenconsejo tasked PO1 Sabo to act as the poseur-buyer. The police operatives entered into their police blotter, the marked money which would be used in the buy-bust operation, after which the two pieces of One Hundred Peso (₱100) bills were handed to PO1 Janet Sabo. The police investigators then faxed a pre-operational request to Philippine Drug Enforcement Agency of PDEA.

About 3 o'clock that afternoon, the group boarded an L-300 Mitsubishi van and proceeded to Palatiw near M.H. Del Pilar, Pasig City. About 3:10, the police operatives reached the pinpointed place and entered the interior of Villa Sanchez. PO1 Sabo and the informant went ahead of the group, who followed the former to the interior of Villa Sanchez. The informant then pinpointed to PO1 Sabo the appellant, alias Nanding Bakulaw, who was the subject of the buy-bust operation and who was standing five (5) meters away. PO1 Sabo and the informant approached alias Nanding Bakulaw. The informant then called appellant out "Bakulaw!", to which appellant replied, "Pare bakit?" The informant replied, "I-score kami" (We will buy shabu). Appellant momentarily stared at them. The asset told appellant that SPO1 Sabo was his companion. Appellant asked the asset how much they intend to buy. The asset replied that he need[ed] ₱200 pesos worth of shabu and at the same time, got the money from his pocket and handed it to appellant. Appellant took the money and placed it inside the pocket of his short pants. Appellant then left and entered his house. After a while, appellant came out

carrying a plastic sachet containing white crystalline substance suspected to be shabu and handed it to PO1 Sabo, who then ascertained its contents and placed the sachet in her pocket. PO1 Sabo then waved a white face towel indicating to her companions the agreed pre-arranged signal. PO1 Sabo then held short pants (sic) and introduced herself as a police officer. The surprised appellant shoved her but she was able to cling into (sic) appellant's short pants. PO3 Salisa then arrived and helped PO1 Sabo by informing appellant of his constitutional rights. PO1 Sabo placed her initials "JAS" on the confiscated shabu. PO1 Sabo also confiscated from appellant the buy bust money consisting of two (2) One Hundred Peso bills which bear the initials "JS" in the upper right portion of the bill.

Appellant was later brought to the Rizal Medical Center for physical examination. Thereafter, appellant was brought to the PNP headquarters. SPO2 Alexander Layno made a letter-request for laboratory examination of the specimen and sent it to the Pasig City Police Station, which were turned over to the PNP Crime Laboratory for examination. Per Chemisty Report No. D1698-o3E, issued by Forensic Chemist Analee R. Forro, the specimen was confirmed positive for methamphetamine hydrocloride, otherwise known as shabu, a prohibited drug. As per stipulation of the prosecution and defense counsel, the testimony of Analee R. Forro was dispensed with.[3]

The accused-appellant was then charged in the RTC with a violation of Section 5 of Republic Act No. 9165 under an information that alleged:

On or about September 4, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully, and feloniously sell, deliver, and give away to PO1 Janet Sabo y Ampuhan, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing four (4) centigrams (0.04 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

CONTRARY TO LAW.[4]

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[3] *Supra* note 1, at 4-6.

[4] CA *rollo,* p. 9.

The accused-appellant pleaded *not guilty* to the information.

At trial, the accused-appellant denied the charges against him, and claimed instead that the arresting police officers had arrived and conducted a search of another house near the house of his sister where he was then watching a show on television with his niece and her three classmates. His version was culled by the CA from his testimony and the testimony of his niece Rosemarie Rosario, as follows:

> In the afternoon of September 4, 2003, accused-appellant Fernando Geronimo was watching television at the second floor of the house of his sister. He was accompanied by his niece and the latter's three (3) classmates when all of a sudden, a man and a woman entered the house and proceeded upstairs. Thereafter, a woman (PO1 Sabo) asked the students if they knew "Bombong Taba". In turn, the students asked the accused-appellant if he xxx was "Bombong Taba" to which he xxx answered: "No." After the students informed the woman that they do not know "Bombong Taba" the duo went down.
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> Moments later, his niece went upstairs and informed him that there were policemen in his nearby house conducting a search. Upon the request of his niece, Fernando proceeded to his house where he noticed that his things were no longer in order. He asked his neighbor the identities of those who entered his house but the latter told him she did not know them. The accused-appellant was about to return inside the house to urinate when he heard a man whom he knew as "Mang Manny" shouted (sic) at him: "Hoy saan ka pupunta". Suddenly, the man approached and poked a gun on (sic) him. He then held back the accused-appellant's shorts, handcuffed him, and brought him to the mayor's office.
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> At around 1:00 to 2:00 o'clock in the afternoon of September 4, 2003, Rosemarie Rosario was inside their house and cooking for lunch. The accused-appellant together with the classmates of her sister were upstairs watching VCD. When Rosemarie went out of the house to buy something from the nearby store, she met five (5) men and a woman. After she came back from the store, she heard a woman uttered (sic): "hindi nyo ba nakita si Bong Taba, sige halughugin nyo na ang mga kwarto". Thereafter, the woman, who appears to be a lesbian, knocked at their door. When Rosemarie opened the door, the woman asked her the identities of those living there. The woman also asked her the identities of those who were

upstairs to which Rosemarie answered: "My uncle and the students". Upon the request of the woman, Rosemarie accompanied her upstairs to see who were there. After she saw the accused-appellant and the students, the woman went downstairs and proceeded outside. Rosemarie on the other hand, peeped through the window where she saw the woman talking with a police officer. Thereafter, the woman's companion searched the house of his uncle. At that instance, Rosemarie went upstairs and informed his uncle about the search prompting the latter to went (sic) outside. Later, she saw her uncle being handcuffed by the policemen.[5]

Judgment of the RTC

As stated, the RTC found the accused-appellant guilty as charged on the basis that he had been caught *in flagrante delicto* illegally selling *shabu*, and disposed thusly:

> WHEREFORE, the Court finds accused FERNANDO GERONIMO y AGUSTINE @ Nanding Bakulaw GUILTY beyond reasonable doubt of the crime of violation of Sec. 5, Art. II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the penalty of LIFE IMPRISONMENT and to pay a fine of Php500,000.00.
>
> SO ORDERED.[6]

The RTC observed that the Prosecution had established the elements of illegal sale of *shabu* by showing that the accused-appellant had been caught *in flagrante delicto* during the buy-bust operation;[7] that the arresting police officers had enjoyed the presumption of regularity in the performance of their official duties; that, in contrast, the accused-appellant's defense of denial had no weight because of his failure to show improper motive on the part of the police officers; that his allegation about his unlawful arrest had been a mere afterthought on his part because he had not thereafter taken any affirmative action against the police officers; and that he had not also called to the attention

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[5] *Supra* note 1, at 6-8.

[6] CA *rollo*, at 15.

[7] *Id*. at 14.

of the investigating prosecutor the manner of his illegal arrest during the inquest proceedings.[8]

Decision of the CA

On appeal, the CA upheld the conviction of the accused-appellant, concurring with the RTC that the Prosecution had established that the arrest was pursuant to a lawful buy-bust operation, for which the police officers did not need a warrant. It pointed out that he was estopped from assailing the illegality of his arrest by his failure to file a motion to quash the information before his arraignment, and by his entering a plea of *not guilty* and actively participating in the trial; and that his denial of the charge could not be given credence.

Ruling of the Court

The appeal has merit.

For a successful prosecution of illegal sale of dangerous drugs under Section 5 of R.A. No. 9165, the following elements must be satisfactorily established by the State, namely: (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 the payment therefor.[9] In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction.[10] What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.[11]

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[8] *Id*.

[9] *People v. Sapitula*, G.R. No. 209212, February 10, 2016, 784 SCRA 18, 24; *People v. Enad*, G.R. No. 205764, February 3, 2016, 783 SCRA 184, 196-197; *People v. Casacop*, G.R. No. 210454, January 13, 2016, 780 SCRA 645, 652; *People v. Ros,* G.R. No. 201146, April 15, 2015, 755 SCRA 518, 535.

[10] *People v. Asislo*, G.R. No. 206224, January 18, 2016, 781 SCRA 131, 146.

[11] *People v. Enad*, *supra*, note 9; *People v. Havana,* G.R. No. 198450, January 11, 2016, 778 SCRA 524, 533; *People v. Ros*, *supra* note 9.

It seemed sufficiently established that the policemen had apprehended the accused-appellant immediately after the consummation of the transaction between him and the poseur-buyer. His apprehension in due course led to the recovery of the marked money paid for the one sachet of white crystalline substance.

But grave doubts that infected the chain of custody cannot now be ignored or simply shunted aside as merely trivial. A scrutiny of the record is thus in order.

The procedure to be followed in the seizure and custody of prohibited drugs have been delineated in Section 21 of Republic Act No. 9165, to wit:

> 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 PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same **in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**;
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> x x x x x x x x x

Complementing the foregoing, Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 states:

> x x x x x x x x x
>
> (a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation,

physically inventory and photograph the same **in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x x x x x x

The foregoing rules require the marking of the seized drug immediately upon seizure. Such marking is the starting point in the custodial chain, because succeeding handlers of the seized drug or related items will use the marking as their reference. It further serves to segregate the marked evidence from the corpus of all other similar and related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thereby obviating switching, "planting," or contamination of evidence.[12] It is also crucial in ensuring the integrity of the chain of custody.

Chain of custody is defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002[13] thusly:

b. "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

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[12] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

[13] *Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of RA No. 9165.*

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;

A review of the records indicates that the aforestated procedure laid down by Republic Act No. 9165 and its IRR was not followed by the agents of the State. Several substantial lapses on the part of the buy-bust team are readily apparent. To start with, no photograph of the seized *shabu* was taken either at the place of the entrapment and arrest, or even later on after the buy-bust team had brought the accused-appellant to their office. The photograph would have visually preserved the seized *shabu* for proving the *corpus delicti*. Secondly, although PO1 Janet Sabo, the poseur-buyer, attested that she had placed her initials "JAS" on the confiscated *shabu* at the place of the entrapment right after the accused-appellant had been apprised of his constitutional rights by PO3 Hunilassan Salisa, none of the members of the buy-bust team saw the need to photograph the seized *shabu* and the confiscated buy-bust bills then and even later on. And, thirdly, no elected official, or member of the media, or representative of the Department of Justice was present.

The last paragraph of Section 21(*a*) of the IRR provides a saving mechanism to ensure that not every case of non-compliance irreversibly prejudices the State's evidence. It is significant to note, however, that the application of the saving mechanism to any particular situation is expressly conditioned upon the State rendering a fitting or suitable explanation of the lapse or gap in the compliance with the procedures.[14] The explanation should at least disclose to the trial court the reason or reasons for the lapse or gap in compliance with the procedure considering that every step in the procedure is an essential link in the chain of custody.

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[14] *People v. Sanchez,* G. R. No. 175832, October 15, 2008, 569 SCRA 194, 212.

Here, the Prosecution tendered no explanation of why none of the members of the buy-bust team had seen to the taking of any photograph of the seized *shabu* immediately after the arrest, or even afterwards. Likewise, there was no explanation given as to why they did not ensure the presence of an elected official, or member of the media, or representative of the Department of Justice during the entrapment and confiscation of the evidence. We should specially note at this juncture that the requirements were not unknown to the members of the buy-bust team, whom we must presume to have been well-instructed on the law demanding the preservation of the links in the chain of custody. They should then have dutifully seen to the compliance with the requirements, and if their compliance was not full, they should at least have the readiness to explain the step or steps omitted from such compliance.

Surely, the saving mechanism under the last paragraph of Section 21(*a*) of the IRR would not apply if there was no credible showing of any effort undertaken by the members of the buy-bust team to keep the *shabu* intact while in transit from the moment of seizure to the police station, and beyond, until the disposal of the *shabu* after the trial.

The procedural lapses committed by the buy-bust team as herein noted underscored the uncertainty about the identity and integrity of the *shabu* presented and admitted as evidence against the accused-appellant.[15] They highlighted the failure of the Prosecution to establish the chain of custody, by which the incriminating evidence would have been properly authenticated. The unavoidable consequence of the non-establishment of the chain of custody was the serious doubt about the *shabu* presented as evidence at the trial being really the *shabu* supposedly seized from the accused-appellant.

In every prosecution of the sale and possession of methamphetamine hydrochloride or *shabu* prohibited under Republic Act No. 9165, the State carries the heavy burden of

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[15] *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647, 657.

proving the elements of the offense, failing in which the State would not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. If the State does not establish the *corpus delicti*, such as when the dangerous drug subject of the prosecution is missing, or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court, then the crime is not established beyond reasonable doubt.[16] Indeed, any substantial gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[17] Thus, the accused-appellant deserves acquittal due to the reasonable doubt that the lapses in the chain of custody engendered.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on April 27, 2007 in CA-G.R. CR-H.C. No. 01793; **ACQUITS** accused-appellant **FERNANDO GERONIMO *y* AGUSTINE *alias* NANDING BAKULAW** on the ground that his guilt was not established beyond reasonable doubt; and **ORDERS** his immediate release from confinement at the National Penitentiary in Muntinlupa City unless there are other lawful causes warranting his continuing confinement thereat.

The Court **DIRECTS** the Director of the Bureau of Corrections to implement the immediate release of **FERNANDO GERONIMO *y* AGUSTINE *alias* NANDING BAKULAW**, and to report on his compliance within ten days from receipt.

No pronouncement on costs of suit.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Leonen, Martires,* and *Gesmundo, JJ.,* concur.

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[16] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

[17] *People v. Sanchez,* G. R. No. 175832, October 15, 2008, 569 SCRA 194, 221.

THIRD DIVISION

[G.R. No. 188313. August 23, 2017]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JALIL LAMAMA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DENIAL AND FRAME-UP; MUST BE PROVED WITH STRONG AND CONVINCING EVIDENCE IN ORDER TO PROSPER; CASE AT BAR.— Lamama interposed denial and frame-up. But such defenses were weak and unreliable. To start with, such defenses have often been viewed with disfavor by the Court due to their being easily concocted, and because of their being common defense ploys in criminal prosecutions for violations of anti-drugs laws. Moreover, such defenses must be proved with strong and convincing evidence in order to prosper, which Lamama utterly failed to do. He presented no proof to corroborate his version of the incident. Also, that he had been the victim of a frame-up lacked plausibility considering his admission that he and the members of the buy-bust team had no grudge between them prior to the arrest. This explains why he did not file a complaint for extortion or false incrimination against the members of the buy-bust team.

2. ID.; ID.; ID.; FACTUAL FINDINGS AND CONCLUSIONS OF THE LOWER COURTS ON THE CREDIBILITY OF WITNESSES ARE ACCORDED RESPECT BY THE SUPREME COURT.— Lamama impugns the RTC and CA's assessment of the witnesses' credibility. In the absence of glaring errors or gross misapprehension of facts on the part of the CA, however, we accord respect to the findings of the trial court on the credibility of witnesses because of the trial judge's unique advantage of directly observing the demeanor of the witnesses as they testified. With more reason do we accord the respect now that the CA affirmed the factual findings as the appellate court. Hence, in the absence of allegation and proof about PO2 Velasquez harboring any ill motive to falsely testify against the accused, the factual findings and conclusions of the lower

courts on the credibility of PO2 Velasquez as a witness should prevail.

3. CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; USE OF DUSTED BUY-BUST MONEY IS NOT AN ELEMENT OF THE OFFENSE.— The dusting of the buy-bust money with ultra-violet powder is not indispensable for the prosecution of illegal sale of *shabu*. There is no requirement either in *Comprehensive Dangerous Drugs Act of 2002* or in its *Implementing Rules and Regulations* that the buy-bust money to be used in the actual buy-bust operation should be dusted with ultra-violet powder. For sure, the use of dusted buy-bust money is not an element of the offense of illegal dealing in drugs. The function for dusting of the buy-bust money with ultra-violet powder is identification, that is, to determine if there was handling of the buy-bust money by the accused in exchange for the illegal drugs being sold.

4. ID.; ID.; ID.; REQUIREMENT ON MARKING, PHOTOGRAPHING AND INVENTORYING; SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.— The buy-bust team substantially complied with the requirements of the law on marking, photographing and inventorying of the dangerous drugs seized. The photographs showed Lamama standing beside the marked three sachets of *shabu* seized from him, and of the barangay officials as well as the ABS-CBN News crew of Dagupan City signing the certificate of inventory in the presence of one another and of the accused. The signed certificate of inventory of the drugs and buy-bust money seized from Lamama was offered by the Prosecution to show compliance with the requirements. Lamama protests that the buy-bust team did not adhere to the requirements because the marking, photographing and inventorying were done at the PDEA Station instead of at the site of the buy-bust arrest; and that the barangay officials in attendance were not those from the barangay where the buy-bust arrest occurred (Barangay Pinmaludpod) but from the barangay where the PDEA Station was located (Barangay Tebeng). The protest of Lamama is unwarranted. The law does not expressly require that the marking, photographing and inventorying be always made at the site of the buy-bust operation, and that the elected officials be always from the place where the buy-bust arrest occurred. It is also

relevant to note that Section 21(a), Article II of the *Implementing Rules and Regulations of RA 9165* addresses the contingency of the law enforcers being unable to literally meet the requirements — like marking, photographing and inventorying at the place of the arrest and seizure — by providing the saving mechanism that "*non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items*." As the terms of the saving mechanism state, the *justifiable grounds* for the non-compliance must be explained during the trial.

5. ID.; ID.; ID.; PENALTY.— [T]he penalty for illegal sale of dangerous drugs is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. Lacking in basis to impose the higher penalty, and particularly in consideration of the effectivity of Republic Act No. 9346 that prohibits the imposition of the death penalty, we affirm the penalty of life imprisonment and fine of ₱500,000.00 meted on Lamama by the lower courts.

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

BERSAMIN, *J.*:

Accused Jalil Lamama[1] (Lamama) appeals the decision promulgated on September 24, 2008,[2] whereby the Court of Appeals (CA) affirmed his conviction for a violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) handed down on December 11, 2006 by the Regional Trial Court (RTC), Branch 48, in Urdaneta City,

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[1] Sometimes referred to as Jalil Lamana.

[2] *Rollo*, pp. 2-15; penned by Associate Justice Rosmari D. Carandang, with Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice) and Associate Justice Mariflor P. Punzalan-Castillo concurring.

and for which he was sentenced to life imprisonment and to pay a fine of ₱500,000.00.[3]

Antecedents

On October 30, 2004, the Office of the City Prosecutor of Urdaneta City, Pangasinan charged Lamama with illegal sale of *methamphetamine hydrochloride* or *shabu* as defined and punished under Section 5 of the *Comprehensive Dangerous Drugs Act of 2002*. The information filed in the RTC alleged:

> That on or about October 29, 2004 at Brgy. Pinmaludpod, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously *sell three (3) plastic bags containing Methamphetamine Hydrochloride (SHABU)*, ***weighing 102.5 grams***.
>
> CONTRARY to Republic Act 9165, otherwise known as "Comprehensive Dangerous Drugs Act of 2002."[4]

The evidence of the Prosecution follows.

In the morning of October 29, 2004, an informant told PO2 Marlo M. Velasquez (PO2 Velasquez) and PO1 Danny Ventura (PO1 Ventura) of the Philippine Drug Enforcement Agency (PDEA), Dagupan City Station, that Lamama was selling *shabu* in Barangay Pinmaludpod, Urdaneta City, Pangasinan. The informant confided that he used to be a drug peddler, and that Lamama was his supplier. The officers reported the information to Chief Insp. Christopher N. Abrahano, their superior, who tasked them to conduct a "casing surveillance" together with the informant. Thereafter, Chief Insp. Abrahano organized a buy-bust operation to be conducted in the area where the "casing surveillance" was to be conducted. PO2 Velasquez was designated as the poseur-buyer, while others would serve as back-up and arresting officers. The buy-bust money consisted of a marked genuine ₱1,000.00 bill and a thick wad of paper cut out to the size of real bills.

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[3] CA *rollo*, pp. 10-16; penned by Judge Aurelio R. Ralar, Jr.

[4] Records, p. 2.

At past 12:00 in the afternoon, the informant contacted Lamama by cellphone to arrange a drug deal for 100 grams of *shabu*.[5]

Upon arriving at the designated place at about 3:20 in the afternoon, the buy-bust team and the informant found Lamama sitting on a Honda Wave motorcycle. PO2 Velasquez and the informant approached Lamama while the other officers took distant positions. The informant introduced PO2 Velasquez to Lamama as the buyer of *shabu*. PO2 Velasquez told Lamama that he wanted to buy *shabu* "if the price is right." Lamama replied that he had 100 grams of *shabu* costing ₱150,000.00. PO2 Velasquez explained that he only had ₱100,000.00 with him; hence, Lamama agreed to sell the 100 grams of *shabu* to PO2 Velasquez for ₱100,000.00 after the latter promised to pay the balance of ₱50,000.00 within two days. Thereupon, Lamama opened the tool box of his motorcycle, took out three plastic sachets containing white crystalline granules, and gave the sachets to PO2 Velasquez. In turn, the latter handed the buy-bust money to Lamama. Upon giving the pre-arranged signal to his fellow officers, PO2 Velasquez immediately introduced himself to Lamama as a PDEA agent. The other officers rushed forward and arrested Lamama.

Subsequently, the buy-bust team brought Lamama to the PDEA Station in Dagupan City where he was booked and investigated. The seized items were then marked and inventoried in detail.[6] Chief Insp. Abrahano signed the written request for laboratory examination by the PNP Crime Laboratory in Urdaneta City of the contents of the seized three plastic sachets.[7]

In her chemistry report dated October 30, 2004, Forensic Chemist Emelda Besarra-Roderos confirmed that the three plastic sachets contained *shabu* with an aggregate weight of 102.5 grams.[8]

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[5] TSN, December 10, 2004, pp. 4-7.

[6] TSN, December 10, 2004, pp. 8-13.

[7] Records, p. 13.

[8] Records, p. 255.

On the other hand, the evidence of the Defense was as follows.

A certain Bulldog Vargas (Vargas) promised to reward Lamama with a commission if the latter would assist in finding a drug supplier. On October 29, 2004, Vargas told Lamama to proceed to a house in Barangay Pinmaludpod where the latter would be introduced to a drug buyer. Although Lamama had nothing to sell, he went to said house. Upon entering the house, he found three plastic sachets of *shabu* on top of a table. Thereafter, several PDEA agents surrounded and arrested him. They brought him with them to the PDEA Station.[9]

On December 11, 2006, the RTC convicted Lamama as charged, its judgment disposing thusly:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs defined and penalized under Sec. 5 of Republic Act 9165 and the Court hereby sentences him to suffer a penalty of Life Imprisonment and shall pay a fine of Five Hundred Thousand Pesos (₱500,000.00).
>
> The illegal drugs presented as evidence in Court marked as Exhibits "A-1, A-2 and A-3" which were remarked as Exhibit "N" and submarkings, Exhibit "O" and submarkings, and Exhibit "P" and submarkings are hereby forfeited in favor of the government and shall be forwarded to the office of PDEA for proper disposition pursuant to Par.7, Sec. 21 of R.A. 9165.
>
> The period of imprisonment of which herein accused has undergone shall be credited in the service of the term of his imprisonment.[10]

On appeal, the CA affirmed the RTC's judgment.[11]

Hence, this appeal, in which Lamama asserts that the RTC and the CA erred in believing the testimony of PO2 Velasquez, the poseur-buyer, to the effect that the informant had been a drug dealer, and that Lamama had been his supplier; that such

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[9] TSN, May 8, 2006, pp. 3-7.

[10] CA *rollo*, p. 16.

[11] *Supra* note 1.

testimony was incredible and contrary to human experience because no informant who was a former drug dealer would dare approach the police authorities to disclose his own past drug activities and the activities of his supplier; that the Prosecution did not present the informant to confirm such testimony; that his guilt was not proved beyond reasonable doubt because: (1) the alleged buy-bust money had not been dusted with ultra-violet powder, thereby negating the conduct of a buy-bust operation and the consummation of the sale; (2) no picture of him with the seized *shabu* was taken immediately after his arrest; (3) no physical inventory of the seized *shabu* was made in his presence or that of his counsel; and (4) the marking of the seized *shabu* was made inside the PDEA office, not at the place of seizure.[12]

Ruling of the Court

The appeal has no merit.

The elements of illegal sale of *shabu* are: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. The commission of the offense of illegal sale of dangerous drugs, like *shabu*, requires the consummation of the selling transaction, which occurs at the moment the buyer receives the drug from the seller and the latter receives the payment.[13]

PO2 Velasquez narrated his transaction with Lamama as follows:

PROS. BELTRAN

x x x x x x x x x

Q And after seeing him (Lamama) Mr. Witness, what did you do next?

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[12] CA *rollo*, pp. 64-72.

[13] *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305, 324.

A The voluntary civilian informant introduced me as a good buyer, sir.

Q What is the response of Aka Jap (Lamama)?

A He said "I have here only 100 grams and it costs Php 150,000.00." and I replied, I have only here Php 100,000.00 (witness demonstrated by showing the portion of the boodle money).

Q Will you demonstrate how did you show to Aka Jap the buy-bust money?

A (Witness demonstrated by showing the envelope with the portion of the envelope with boodle money No. 1,000.)

Q After you have shown that to Aka Jap, what is the response of Aka Jap to your proposal?

A Since my money is only Php 100,000.00, I told him that if he will trust me, my friend, the civilian informant will guarantee the remaining balance will be paid after two (2) days.

Q And what was the response of Aka Jap to you?

A After few minutes of conversation, Aka Jap agreed that I will pay the balance after two (2) days, sir.

Q What happened next?

A Aka Jap opened the tool box of his motor and got from inside three (3) plastic sachets containing shabu, sir.

Q What happened next?

A And the shabu was handed over to me sir.

COURT

Q What is the weight?

A He said I have 100 grams only sir.

PROS. BELTRAN

Q When Aka Jap handed to you those plastic sachets, what did you do with the plastic sachets?

A I looked at the three (3) plastic sachets and examined them carefully and after proof that it is really a shabu, I gave the boodle

money then I brought out my handkerchief and I wiped my face with the handkerchief to signal my companions, sir.[14]

PO1 Ventura, one of the back-up/arresting officers, corroborated PO2 Velasquez on relevant points of the latter's testimony.[15] The Prosecution presented the three plastic sachets of *shabu*, the chemistry report of Chemist Roderos, and the buy-bust money.[16] Per the Chemistry Report by Chemist Roderos, the white crystalline substances contained in the three plastic sachets (having an aggregate weight of 102.5 grams) bought by PO2 Velasquez were found to be positive for *methamphetamine hydrochloride* or *shabu*.[17] Thus, the Prosecution sufficiently established that PO2 Velasquez, acting as poseur-buyer, bought *shabu* from Lamama during the legitimate buy-bust operation.[18]

In contrast, Lamama interposed denial and frame-up. But such defenses were weak and unreliable. To start with, such defenses have often been viewed with disfavor by the Court due to their being easily concocted, and because of their being common defense ploys in criminal prosecutions for violations of anti-drugs laws. Moreover, such defenses must be proved with strong and convincing evidence in order to prosper,[19] which Lamama utterly failed to do. He presented no proof to corroborate his version of the incident. Also, that he had been the victim of a frame-up lacked plausibility considering his admission that he and the members of the buy-bust team had no grudge between them prior to the arrest.[20] This explains why he did not file a

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[14] TSN, December 10, 2004, pp. 9-10.

[15] TSN, December 9, 2004, pp. 5-8.

[16] Records, pp. 245-247.

[17] *Supra* note 5.

[18] TSN, December 10, 2004, p. 10.

[19] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

[20] TSN, May 8, 2006, p. 16.

complaint for extortion or false incrimination against the members of the buy-bust team.

Lamama impugns the RTC and CA's assessment of the witnesses' credibility. In the absence of glaring errors or gross misapprehension of facts on the part of the CA, however, we accord respect to the findings of the trial court on the credibility of witnesses because of the trial judge's unique advantage of directly observing the demeanor of the witnesses as they testified.[21] With more reason do we accord the respect now that the CA affirmed the factual findings as the appellate court.[22] Hence, in the absence of allegation and proof about PO2 Velasquez harboring any ill motive to falsely testify against the accused, the factual findings and conclusions of the lower courts on the credibility of PO2 Velasquez as a witness should prevail.

Lamama has taken issue against PO2 Velasquez's recollections to the effect that the informant introduced himself to the PDEA agents as having dealt in drugs in the past, and that the accused had been his supplier; and against the non-presentation of the informant as a witness during the trial. The issue is of little consequence in this adjudication. What matters more is that the report of the informant on the illegal drug dealing of the accused was objectively confirmed during the legitimate buy-bust operation. Neither was .the presentation of the informant at the trial necessary to a finding of guilt. Informants have generally not been presented in court for security reasons in recognition of the need to hide their identities and to preserve their invaluable service to law enforcement.[23] At any rate, the informant's testimony was not superfluous to the successful prosecution of the case for illegal sale of dangerous drugs due

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[21] *People v. Encila*, G.R. No. 182419, February 10, 2009, 578 SCRA 341, 355; *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 845.

[22] *Id*.

[23] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 445-446.

to the availability of the poseur-buyer himself who transacted with the seller. In this case, the informant's testimony would merely corroborate the testimony of the poseur-buyer, PO2 Velasquez, who had earlier testified on the illegal sale.[24]

The dusting of the buy-bust money with ultra-violet powder is not indispensable for the prosecution of illegal sale of *shabu*.[25] There is no requirement either in *Comprehensive Dangerous Drugs Act of 2002* or in its *Implementing Rules and Regulations* that the buy-bust money to be used in the actual buy-bust operation should be dusted with ultra-violet powder. For sure, the use of dusted buy-bust money is not an element of the offense of illegal dealing in drugs. The function for dusting of the buy-bust money with ultra-violet powder is identification, that is, to determine if there was handling of the buy-bust money by the accused in exchange for the illegal drugs being sold.[26]

In this case, even if the buy-bust money used in the entrapment of Lamama had not been dusted with ultra-violet powder, the Prosecution was still able to positively identify the two ₱1,000.00 bills (the genuine one being placed on top of the paper cut-outs, and the other, which was fake, being placed at the bottom) recovered from him immediately upon his arrest as the same buy-bust money bearing the initials "MV" of PO2 Velasquez.[27] To recall, PO2 Velasquez had written his initials on the bills before the buy — bust operation, and duly identified them during the trial.[28]

The provisions on the inventory, photograph, and marking of the seized drugs are as follows:

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[24] *Supra* note 18, at 272.

[25] *Supra* note 12, at 331; *People v. Padua*, G.R. No. 174097, July 21, 2010, 625 SCRA 220, 238.

[26] *Supra* note 12, at 331.

[27] TSN, December 10, 2004, pp. 5-6.

[28] TSN, December 10, 2004, p. 6.

Section 21, paragraph 1, of *Comprehensive Dangerous Drugs Act of 2002* 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 PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person's from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

Section 21(a), Article II of the *Implementing Rules and Regulations of RA 9165* states:

(a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

The buy-bust team substantially complied with the requirements of the law on marking, photographing and inventorying of the dangerous drugs seized. The photographs showed Lamama standing beside the marked three sachets of

shabu seized from him, and of the barangay officials[29] as well as the ABS-CBN News crew of Dagupan City[30] signing the certificate of inventory in the presence of one another and of the accused.[31] The signed certificate of inventory of the drugs and buy-bust money seized from Lamama was offered by the Prosecution to show compliance with the requirements.[32]

Lamama protests that the buy-bust team did not adhere to the requirements because the marking, photographing and inventorying were done at the PDEA Station instead of at the site of the buy-bust arrest; and that the barangay officials in attendance were not those from the barangay where the buy-bust arrest occurred (Barangay Pinmaludpod) but from the barangay where the PDEA Station was located (Barangay Tebeng).

The protest of Lamama is unwarranted. The law does not expressly require that the marking, photographing and inventorying be always made at the site of the buy-bust operation, and that the elected officials be always from the place where the buy-bust arrest occurred.

It is also relevant to note that Section 21(a), Article II of the *Implementing Rules and Regulations of RA 9165* addresses the contingency of the law enforcers being unable to literally meet the requirements — like marking, photographing and inventorying at the place of the arrest and seizure — by providing the saving mechanism that "*non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items*." As the terms of

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[29] Brgy. Captain Roberto A. Dion, Brgy. Kagawad Helen F. Fermill, and Brgy. Kagawad Gerardo D. Beltran, all of whom are from Brgy. Tebeng, Dagupan City.

[30] Joanne Balaba.

[31] Exhibits 3, 4, 5, and 6.

[32] Records, p. 10.

the saving mechanism state, the *justifiable grounds* for the non-compliance must be explained during the trial.

There were valid reasons for conducting the marking, photographing and inventorying at the PDEA Station instead of at the place of the arrest. It was PO2 Velasquez who explained that he and the rest of the buy-bust team had to leave the scene immediately after the arrest of Lamama to avoid a commotion or reprisal inasmuch as Lamama, who was a notorious person, could have cohorts around.[33] PO2 Velasquez added that the documents and instruments needed for the marking, photographing and inventorying were inside the PDEA Station.[34]

PO2 Velasquez also clarified that the buy-bust team had sought the assistance of officials of Barangay Tebeng instead of the officials of Barangay Pinmaludpod in order to avoid the buy-bust operation against Lamama from being leaked to the latter's cohorts.[35]

More importantly, the integrity of the drugs seized from the accused as evidence was preserved. A careful consideration of the records indicates that the chain of custody of the drugs was unbroken. Upon the delivery of the drugs and confiscation of the buy-bust money, and the arrest of Lamama, PO2 Velasquez lost no time in bringing the three sachets of *shabu* to the PDEA Station, where he marked them with his initials ("MV").[36] PO1 Ventura similarly placed his own initials ("DV") on the three sachets of *shabu* at the PDEA Station.[37] Thereafter, PO2 Velasquez personally delivered the three sachets of *shabu* and the written request for the laboratory examination (prepared and signed by Chief Insp. Abrahano) to the PNP Crime

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[33] TSN, December 9, 2004, p. 17; TSN, September 12, 2005, p. 16; TSN, December 15, 2004, p. 3.

[34] TSN, December 15, 2004, p. 4.

[35] TSN, December 15, 2004, p. 3.

[36] TSN, December 15, 2004, p. 4.

[37] TSN, December 9, 2004, p. 13.

Laboratory Office in Urdaneta City.[38] SPO2 Calub, the desk officer of the PNP Crime Laboratory Office in Urdaneta City, received the three sachets of *shabu* and the request-letter from PO2 Velasquez.[39] Forensic Chemist Roderos conducted the laboratory examination of the contents of the three sachets, and found them positive for *shabu*.[40] When the Prosecution presented the three sachets of *shabu* in court, PO2 Velasquez identified them as the same sachets he had bought from Lamama during the buy-bust operation, and as the same sachets of *shabu* he had submitted to the PNP Crime Laboratory Office in Urdaneta City for laboratory examination.[41] PO2 Velasquez and PO1 Ventura stated that they had placed their respective initials on the three sachets of *shabu*.[42] Forensic Chemist Roderos confirmed her chemistry report finding the three sachets to contain a total of 102.5 grams of *shabu*.[43]

We have ruled that when the marking, photographing and inventorying were done in the police station, the conviction of the accused for illegal sale of *shabu* should be upheld inasmuch as the elements of the offense were competently proven, and the integrity of the dangerous drugs seized as evidence remained intact.[44] In such situations, the non-compliance with the procedural requirements of Section 21, Article II of the *Comprehensive Dangerous Drugs Act of 2002* and its IRR was not a serious or fatal flaw that would make the offender's arrest illegal or the items seized/confiscated from him inadmissible. The most significant factor was that the integrity and the

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[38] Records, p. 12.

[39] *Id*.

[40] *Id*. at 255.

[41] TSN, December 10, 2004, p. 13.

[42] *Supra* note 26 and 27.

[43] TSN, April 25, 2005, pp. 6-9.

[44] *Supra* note 12, at 333; *People v. Ara*, G.R. No. 185011, December 23, 2009, 609 SCRA 304-330; *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 645; *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843.

evidentiary value of the seized items were preserved, and could be relied upon in the determination of the guilt or innocence of the accused.

The offense committed by Lamama is defined and penalized by Section 5 of the *Comprehensive Dangerous Drugs Act of 2002*, *viz.*:

> SEC. 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.

Accordingly, the penalty for illegal sale of dangerous drugs is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00.[45] Lacking in basis to impose the higher penalty, and particularly in consideration of the effectivity of Republic Act No. 9346 that prohibits the imposition of the death penalty,[46] we affirm the penalty of life imprisonment and fine of ₱500,000.00 meted on Lamama by the lower courts.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on September 24, 2008; and **ORDERS** the accused to pay the costs of suit.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Leonen, Martires*, and *Gesmundo, JJ.*, concur.

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[45] *Supra* note 1.

[46] Entitled *An Act Prohibiting the Imposition of Death Penalty in the Philippines*; Approved on June 24, 2006.

THIRD DIVISION

[G.R. No. 201478. August 23, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PAROK LUMUDAG *y* RACMAN @ AKMAD,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— The Prosecution must establish the concurrence of the following elements for the conviction of the accused for illegal sale of dangerous drugs under Section 5 of R.A. No. 9165, namely: (a) that the transaction or sale took place between the accused and the poseur-buyer; and (b) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the *corpus delicti.*

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ASSESSMENT BY THE TRIAL JUDGE THEREON, ONCE AFFIRMED BY THE COURT OF APPEALS, IS BINDING AND CONCLUSIVE UPON THE SUPREME COURT.— Generally, the assessment by the trial judge of the credibility of the witnesses is accorded the highest respect on appeal primarily because of his unique opportunity to directly observe the demeanor of the witnesses, thereby enabling him to determine the truthfulness and reliability of their testimonies. This assessment, once affirmed by the CA, is binding and conclusive upon the Court, unless there is a showing that certain facts or circumstances had been overlooked or misinterpreted that, if properly considered, would substantially affect the ruling of the case.

3. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY OF SEIZED DANGEROUS DRUGS; NON-COMPLIANCE WITH THE REQUIREMENTS THEREON SHALL NOT RENDER VOID AND INVALID THE SEIZURES OF AND CUSTODY OVER THE ITEMS ON

CONDITION THAT THE NON-COMPLIANCE WITH THE REQUIREMENTS WAS UPON JUSTIFIABLE GROUNDS AND THAT THE EVIDENTIARY VALUE OF THE SEIZED ITEMS WAS PROPERLY PRESERVED BY THE APPREHENDING TEAM.— Section 21, paragraph 1, Article II of R.A. No. 9165 and Section 21 (a), Article II of its Implementing Rules and Regulations (IRR) are pertinent. x x x The records reveal that the buy-bust team did not faithfully observe the foregoing statutory requirements, such as performing the physical inventory and photographing of the illegal drug immediately upon seizure and confiscation, and in the presence of a representative of the media and the Department of Justice (DOJ), and of any elected public official who would then be required to sign the inventory and be given copies thereof. The requirements were precisely designed by the law to prevent planting, or switching, or contamination of evidence, and thereby secure the suspects against malicious incriminations. In the field of drug enforcement, the need for the requirements to be literally followed, or at least to be substantially complied with, has become all the more pronounced. By specifying the steps to be taken for preserving the chain of custody, Congress really established firm guarantees against false incriminations of individuals that the lawless elements among the ranks of the law enforcers had often resorted to. It is true that Section 21*(a)* of the IRR x x x provides that the *"non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items."* Yet, such saving mechanism is conditioned upon a clear showing on the part of the agents of the law not only that the non-compliance with the requirements was upon justifiable grounds, but also that the evidentiary value of the seized items was properly preserved by the apprehending team. As the records bear out, however, the required justification was not given herein by any of the members of the buy-bust team.

4. ID.; ID.; ID.; WITHOUT THE CREDIBLE PROOF OF THE UNBROKEN AND UNASSAILABLE CHAIN OF CUSTODY, THE *CORPUS DELICTI* WAS NOT ADDUCED, RENDERING THE CASE OF THE STATE LESS THAN COMPLETE IN TERMS OF PROVING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.— Lumudag has challenged the police officers' failure to comply

with the requirements outlined in Section 21 of R.A. No. 9165 x x x. [W]ithout the State's justification for the lapses or gaps, the chain of custody so essential in the establishment of the *corpus delicti* of the offense charged against Lumudag was not shown to be unbroken and preserved. The non-disclosure of the justification by the members of the buy-bust team underscored the uncertainty about the identity and integrity of the *shabu* admitted as evidence against the accused. The unavoidable consequence of the non-disclosure of the justification was the non-establishment of the chain of custody, which, in turn raised serious doubt on whether or not the *shabu* presented as evidence was the *shabu* supposedly sold by Lumudag, or whether or not *shabu* had really been sold by him. We should always demand that in every prosecution of the sale and possession of methamphetamine hydrochloride prohibited under Republic Act No. 9165, the State must alone discharge the heavy burden of proving the elements of the offense, and should the State not discharge its burden, we should then unhesitatingly hold and pronounce that the guilt of the accused had not been proven beyond reasonable doubt. Without the credible proof of the unbroken and unassailable chain of custody, the evidence of the *corpus delicti* was not adduced. This could mean either that the dangerous drug truly the subject of the prosecution had been lost or gone missing, or that the substantial gaps in the chain of custody of the prohibited substance worked against the authenticity of the dangerous substance presented as evidence in court. Without question, any substantial gap rendered the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.

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

BERSAMIN, *J.*:

The State bears the burden of establishing the guilt of the accused beyond reasonable doubt. Any doubt regarding the evidence of guilt is resolved in favor of the accused.

The Case

Parok Lumudag *y* Racman, *alias* Akmad, appeals the decision promulgated on July 13, 2011 in CA-G.R. C.R.-H.C. No. 04286,[1] whereby the Court of Appeals (CA) affirmed his conviction for violation of Section 5, Article II, of Republic Act No. 9165 *(Comprehensive Dangerous Drugs Act of 2002)* by the Regional Trial Court (RTC), Branch 2, in Manila.[2]

Antecedents

On September 9, 2008, the Office of the City Prosecutor of Manila filed the following information charging Lumudag with illegal sale of *shabu,* defined and penalized by Section 5 of R.A. No. 9165, to wit:

> That on or about September 6, 2008, in the city of Manila, Philippines, the said accused, not being lawfully authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell ZERO POINT ZERO SIXTEEN (0.016) gram of white crystalline substance containing methylamphetamine hydrochloride commonly known as SHABU, a dangerous drug.
>
> Contrary to law.[3]

The CA summarized the respective versions of the parties in the assailed decision, as follows:

> On 6 September 2008, a confidential informant reported to Col. Roderick Mariano, Chief of the District Anti-Illegal Drug (DAID) Office at U.N. Avenue Police Station in Manila the alleged drug peddling activities of a certain alias Akmad along Arlegui St., Quiapo, Manila. Col. Mariano formed a team to conduct a buy bust operation

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[1] *Rollo,* pp. 2-14; penned by Associate Justice Mariflor P. Punzalan-Castillo, with Associate Justice Josefina Guevara-Salonga and Associate Justice Franchito N. Diamante concurring.

[2] CA records, pp. 9-14; penned by Judge Alejandro G. Bijasa.

[3] *Id*. at 9.

headed by SPO4 Rafael Melencio, PO2 Richard Donato as the poseur buyer, and PO3 Eliseo Tolentino. PO2 Donato prepared the ₱200.00 marked bill as buy bust money and coordinated with the Philippine Drug Enforcement Agency (PDEA).

At around 6:00 p.m. of the same day, PO2 Donato and PO3 Tolentino proceeded to Arlegui St., Quiapo, Manila on board the tricycle of the former, together with the confidential informant. The other police officers boarded a Tamaraw FX vehicle. When they arrived near the target area, PO2 Donato and the confidential informant walked toward MLQU (Manuel L. Quezon University) where accused-appellant was waiting. The informant approached accused-appellant and introduced PO2 Donato as a buyer of shabu. The latter handed the ₱200.00 marked money to accused-appellant. After receiving the money, accused-appellant took out from his pocket one (1) heat sealed plastic sachet and handed the same to PO2 Donato. The latter immediately executed the pre-arranged signal prompting the other police officers to approach and effect the arrest of accused-appellant.

PO2 Donato marked the confiscated drug "DAID". Afterward, accused-appellant was brought to the police station. The confiscated drug was submitted to the Manila Police District Crime Laboratory (MPDCLO) for laboratory examination. The forensic chemist, Police Senior Inspector (PSI) Erickson L. Calabocal, conducted a qualitative examination. PSI Calabocal found that the specimen tested positive for shabu or methamphetamine hydrochloride, a prohibited drug.

On the other hand, evidence for the defense sought to establish the following:

On 6 September 2008, accused-appellant, a vendor residing at Barter St., Quiapo, Manila, was throwing his garbage at said street. The bag of garbage accidentally fell on a pool of water on the road, thus hitting/splashing one of the men riding a motorcycle. One of the men alighted from the motorcycle and poked a gun at accused-appellant. He was brought to the DAID at U.N. Avenue Police Station where the police officers mauled him and demanded money from him. Accused-appellant learned of the charge against him when he was detained at the Manila City Jail. PO3 Tolentino was one of the persons who arrested him. Accused-appellant denied the charge filed against him.[4]

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[4] *Rollo,* pp. 3-5.

Judgment of the RTC

On December 1, 2009, the RTC convicted Lumudag of the crime charged, disposing:

WHEREFORE, from the foregoing, judgment is hereby rendered, finding the accused, Parok Lumudag y Racman @Akmad, **GUILTY**, beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

SO ORDERED.[5]

Decision of the CA

Lumudag appealed,[6] submitting that:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE MATERIALLY INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THE ELEMENTS OF THE CRIME CHARGED.

III.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE ARRESTING OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF

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[5] CA records, p. 14.

[6] *Id*. at 16.

REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.[7]

On July 13, 2011, the CA promulgated the assailed decision affirming the conviction of Lumudag, to wit:

WHEREFORE, premises considered, the instant appeal is ***DISMISSED.*** The Decision of the RTC of Manila, Branch 2 dated 1 December 2009 is ***AFFIRMED.***

SO ORDERED.[8]

Issues

In this appeal, Lumudag seeks the reversal of his conviction for being contrary to the facts, law and applicable jurisprudence.[9]

Ruling of the Court

The appeal has merit.

The Prosecution must establish the concurrence of the following elements for the conviction of the accused for illegal sale of dangerous drugs under Section 5 of R.A. No. 9165, namely: (a) that the transaction or sale took place between the accused and the poseur-buyer; and (b) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the *corpus delicti.*[10]

The RTC and CA found and considered credible the testimony of poseur-buyer PO2 Richard Donato on the sale of *shabu* to him by Lumudag during the buy-bust operation. Relevant excerpts of PO2 Donato's testimony follow:

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

[8] *Rollo,* p. 14.

[9] *Id*. at 16.

[10] *People v. Gonzales,* G.R. No. 182417, April 3, 2013, 695 SCRA 123, 130.

Q: So, what happened when you were introduced? Who are you then in relation to the introduction?
A: That I am the buyer of shabu, sir.

Q: Was there any response of Akmad?
A: He agreed, sir.

Q: When he agreed what was his action?
A: And then, the CI introduced me of my willingness to buy a shabu, sir.

Q: So, when he agreed, what happened next?
A: And then, I handed the buy bust money worth of ₱200 to him, sir.

Q: In other words, after you were introduced you immediately gave the money?
A: Yes, sir, as willingness to buy and he agree to buy the shabu, sir.

Q: Were you saying anything when you gave the money?
A: None, sir.

Q: So, when it was handed to Akmad what happened next?
A: He took out one heat-sealed plastic sachet, sir, suspected to be shabu.

Q: So, he received the money?
A: Yes, sir.

Q: So, what happened when it was in his possession, the money?
A: He received the money, sir.

Q: So, what happened next?
A: He took out one heat-sealed plastic suspected to be shabu and gave it to me, sir.

Q: Coming from where?
A: At the right front pocket of maong pants, sir.

Q: So, he gave it to you?
A: Yes, sir.

Q: What was the content of the plastic sachet?
A: One heat-sealed plastic sachet suspected shabu, sir.[11]

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[11] CA records, pp. 79-80.

Generally, the assessment by the trial judge of the credibility of the witnesses is accorded the highest respect on appeal primarily because of his unique opportunity to directly observe the demeanor of the witnesses, thereby enabling him to determine the truthfulness and reliability of their testimonies. This assessment, once affirmed by the CA, is binding and conclusive upon the Court, unless there is a showing that certain facts or circumstances had been overlooked or misinterpreted that, if properly considered, would substantially affect the ruling of the case.[12]

In this case, however, it was wrong on the part of the RTC and the CA to accord complete credence to the testimonies of the State's witnesses, particularly that of poseur-buyer PO2 Donato. We are troubled by a pestering doubt about the authenticity of the evidence of the *corpus delicti* presented in court. In this connection, Lumudag vigorously points out that the Prosecution did not prove that there had been faithful compliance with the rule on chain of custody, with the result that the evidence of the *corpus delicti* became suspect.

Section 21, paragraph 1, Article II of R.A. No. 9165 and Section 21 (a), Article II of its Implementing Rules and Regulations (IRR) are pertinent.

Section 21 of R.A. No. 9165 relevantly 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 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:
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> 1) The apprehending team having initial custody and control of drugs shall, immediately after seizure and confiscation, physically

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[12] *People v. Medenceles,* G.R. No. 181250, July 18, 2012, 677 SCRA, 161, 167.

inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x x x x x x

Section 21 (a), Article II of the IRR of R.A. No. 9165 reads:

x x x x x x x x x

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x x x x x x

The records reveal that the buy-bust team did not faithfully observe the foregoing statutory requirements, such as performing the physical inventory and photographing of the illegal drug immediately upon seizure and confiscation, and in the presence of a representative of the media and the Department of Justice (DOJ), and of any elected public official who would then be required to sign the inventory and be given copies thereof. The requirements were precisely designed by the law to prevent planting, or switching, or contamination of evidence, and thereby

secure the suspects against malicious incriminations. In the field of drug enforcement, the need for the requirements to be literally followed, or at least to be substantially complied with, has become all the more pronounced. By specifying the steps to be taken for preserving the chain of custody, Congress really established firm guarantees against false incriminations of individuals that the lawless elements among the ranks of the law enforcers had often resorted to.

It is true that Section 21(*a*) of the IRR, *supra*, provides that the "*non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items*." Yet, such saving mechanism is conditioned upon a clear showing on the part of the agents of the law not only that the non-compliance with the requirements was upon justifiable grounds, but also that the evidentiary value of the seized items was properly preserved by the apprehending team. As the records bear out, however, the required justification was not given herein by any of the members of the buy-bust team.

Lumudag has challenged the police officers' failure to comply with the requirements outlined in Section 21 of R.A. No. 9165 only for the first time on appeal.[13] The delay of his challenge hardly matters. It was really not up to the Defense to raise such issue at the start because the disclosure of the necessary justification for any lapse or gap in following the requirements was *always* the sole responsibility of the State by virtue of the obligation of the members of the buy-bust team themselves to explain why the lapses or gaps had occurred.[14] To state otherwise is to contravene the constitutional guarantee of due process of law, particularly the presumption of innocence in favor of the accused. Verily, without the State's justification for the lapses

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[13] *Rollo,* p. 13.

[14] *People v. Sanchez,* G. R. No. 175832, October 15, 2008, 569 SCRA 194, 212.

or gaps, the chain of custody so essential in the establishment of the *corpus delicti* of the offense charged against Lumudag was not shown to be unbroken and preserved.

The non-disclosure of the justification by the members of the buy-bust team underscored the uncertainty about the identity and integrity of the *shabu* admitted as evidence against the accused.[15] The unavoidable consequence of the non-disclosure of the justification was the non-establishment of the chain of custody, which, in turn, raised serious doubt on whether or not the *shabu* presented as evidence was the *shabu* supposedly sold by Lumudag, or whether or not *shabu* had really been sold by him.

We should always demand that in every prosecution of the sale and possession of methamphetamine hydrochloride prohibited under Republic Act No. 9165, the State must alone discharge the heavy burden of proving the elements of the offense, and should the State not discharge its burden, we should then unhesitatingly hold and pronounce that the guilt of the accused had not been proven beyond reasonable doubt. Without the credible proof of the unbroken and unassailable chain of custody, the evidence of the *corpus delicti* was not adduced. This could mean either that the dangerous drug truly the subject of the prosecution had been lost or gone missing, or that the substantial gaps in the chain of custody of the prohibited substance worked against the authenticity of the dangerous substance presented as evidence in court.[16] Without question, any substantial gap rendered the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[17]

Thus, Lumudag deserves acquittal from the crime charged on the ground of reasonable doubt of his guilt.

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[15] *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647, 657.

[16] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

[17] *People v. Sanchez, supra*, note 14, at 221.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on July 13, 2011 in CA-G.R. CR-H.C. No. 04286; **ACQUITS** accused-appellant **PAROK LUMUDAG *y* RACMAN *alias* AKMAD** on the ground that his guilt was not established beyond reasonable doubt; and **DIRECTS** his immediate release from confinement at the National Penitentiary in Muntinlupa City unless there are other lawful causes warranting his continuing confinement thereat.

The Court **ORDERS** the Director of the Bureau of Corrections to implement the immediate release of **PAROK LUMUDAG *y* RACMAN *alias* AKMAD**, and to report on his compliance within ten days from receipt.

No pronouncement on costs of suit.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Leonen, Martires,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 205483. August 23, 2017]

MARIO MAGAT, SR., MARIO S. MAGAT, JR. MARIO S. MAGAT, III, MA. MARGARITA M. ESTAVILLA, MA. MARJORIE S. MAGAT, all substitute parties and heirs of the deceased party, JULIANA S. MAGAT, *petitioners, vs.* **TANTRADE CORPORATION and PABLO S. BORJA, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW TO THE COURT OF APPEALS; MOTIONS FOR EXTENSION

TO FILE THE PETITION ARE PERMISSIBLE; DISCUSSED.— Rule 42 takes a particularly liberal stance with regard to the period for filing petitions. It explicitly enables extensions, while other modes of appeal do not. In contrast with Rule 42, Rule 40, or the rules on appeals to the Regional Trial Courts from the Municipal Trial Courts, and Rule 41, or the rules on appeals to the Court of Appeals of decisions of the Regional Trial Courts rendered in the exercise of their original jurisdiction, make no similar reference to any extension to file such appeals. They even proscribe motions for extension to file motions for new trial or reconsideration. Rule 42 enables not just one (1) but two (2) extensions of 15 days each. An initial extension may be given, provided that it is sought through a proper motion, docket and lawful fees are paid, and a deposit for costs is made before the expiration of the reglementary period. After this initial extension, Rule 42 permits a second extension of another 15 days. This second extension shall, however, only be "for the most compelling reason." The grants of both first and second extensions are addressed to the sound discretion of the Court of Appeals. Mere compliance with the requirements of timely filing a proper motion, tendering payment and making a deposit, and averring compelling reasons does not guarantee the Court of Appeals' solicitude. The general rule remains to be the filing of a verified petition "within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration." Extensions are proper only under exceptional circumstances.

2. ID.; ID.; ID.; ID.; EXTENSIONS ARE WARRANTED UNDER EXCEPTIONAL CIRCUMSTANCES OR COMPELLING REASONS; ILLUSTRATED.— By the very nature of pleading exceptions as justifications for liberality, it devolves upon the party seeking an extension to file an appeal to establish the merits of his or her plea: [E]xceptional circumstances or compelling reasons may have existed in the past when we either suspended the operation of the Rules or exempted a particular case from their application. But, these instances were the exceptions rather than the rule, and we invariably took this course of action only upon a meritorious plea for the liberal construction of the Rules of Court based on attendant exceptional circumstances. These uncommon exceptions allowed us to maintain the stability of our rulings, while allowing for the unusual cases when the dictates of justice demand a

correspondingly different treatment. Under this unique nature of the exceptions, a party asking for the suspension of the Rules of Court comes to us with the heavy burden of proving that he deserves to be accorded exceptional treatment. Every plea for a liberal construction of the Rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction. This Court finds petitioners here to have effectively pleaded grounds that warrant the extensions prayed for. x x x Ultimately, this Court considers it to be in the better interest of justice had the Court of Appeals been more perceptive of petitioners' plight and granted them the extension sought, in order that they could have fully litigated their cause. Their pleaded justifications were hardly frivolous.

APPEARANCES OF COUNSEL

Wilfredo S. Toledo for petitioners.
Lagunay & Lagunay for respondent Tantrade Corp.
Artemio C. Villas for respondent Pablo S. Borja, Jr.

D E C I S I O N

LEONEN, *J.*:

Petitioners in this case substituted as heirs for a deceased party. They crossed islands to file their appeal before the Court of Appeals. They had to contend with their financial difficulties. Yet, they were able to meet the periods required under Rule 42 for their motions for extension to file their petition for review. It was reversible error, if not callousness, on the part of the Court of Appeals to have summarily dismissed their appeal. Justice and the letter of the law demand that this case be reinstated and remanded.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the

[1] *Rollo*, pp. 3-51.

assailed May 31, 2011[2] and January 15, 2013[3] Resolutions of the Court of Appeals in CA-G.R. SP No. 05929 be reversed and set aside.

The assailed May 31, 2011 Resolution denied the Urgent Motion for Extension of Time to File Petition for Review under Rule 42[4] filed by Mario Magat, Sr., Mario S. Magat, Jr., Mario S. Magat III, Ma. Margarita M. Estavilla, and Ma. Marjorie S. Magat (petitioners). It likewise ordered that petitioners' appeal be dismissed.[5] The assailed January 15, 2013 Resolution denied petitioners' Motion for Reconsideration.[6]

On December 15, 2006,[7] respondent Tantrade Corporation (Tantrade) filed a Complaint for Collection of a Sum of Money with Damages praying that the original defendant, now deceased Juliana S. Magat (Juliana), be ordered to pay ₱266,481.50 plus interest, attorney's fees, litigation expenses, and exemplary damages, for unpaid purchases of construction materials.[8]

Juliana denied making any such purchases for herself. She claimed that it was her contractor, respondent Pablo S. Borja, Jr. (Borja), who purchased such supplies from Tantrade, pursuant to their Owner-Contractor Agreement. Thus, she impleaded respondent Borja as a third-party defendant.[9]

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[2] *Id*. at 205-206. The Resolution was penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Pampio A. Abarintos and Gabriel T. Ingles of the Nineteenth Division, Court of Appeals, Cebu City.

[3] *Id*. at 243-245. The Resolution was penned by Executive Justice Pampio A. Abarintos and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino of the Special former Eighteenth Division, Court of Appeals, Cebu City.

[4] *Id*. at 155-163.

[5] *Id*. at 206.

[6] *Id*. at 243-245.

[7] *Id*. at 52.

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

[9] *Id*. at 12.

In its April 8, 2010 Decision,[10] the Municipal Trial Court in Cities, Branch 2, Tagbilaran City found Juliana liable to pay Tantrade ₱305,833.10 plus interest.[11] It ruled that purchase orders signed by Juliana indicated that she bound herself to pay Tantrade for the purchased materials.[12] However, it added that under the Owner-Contractor Agreement, Borja bound himself to furnish all labor, materials, tools, and equipment for the construction of Juliana's building. Thus, it ordered Borja to reimburse Juliana the amount which she was ordered to pay Tantrade.[13]

Juliana appealed before the Regional Trial Court but passed away while her appeal was pending. Hence, she was substituted by her heirs, now petitioners in this case.[14]

In its January 27, 2011 Decision,[15] the Regional Trial Court, Branch 47, Tagbilaran City affirmed *in toto* the Municipal Trial Court in Cities Decision. In its April 18, 2011 Order,[16] it denied petitioners' Motion for Reconsideration. Petitioners' counsel received a copy of the Regional Trial Court April 18, 2011 Order on May 9, 2011.[17]

On May 23, 2011, one (1) day before the lapse of the 15-day period to file a Petition for Review under Rule 42 of the 1997 Rules of Civil Procedure, petitioners filed their Urgent Motion for Extension of Time to File Petition for Review under Rule 42 (First Motion for Extension).[18] They asked for an additional 15 days from May 24, 2011, or until June 8, 2011,

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[10] *Id.* at 131-143. The Decision, docketed as Civil Case No. 5590, was penned by Judge Emma Eronico-Supremo.

[11] *Id.* at 142.

[12] *Id.* at 139-140.

[13] *Id.* at 142.

[14] *Id.* at 145.

[15] *Id.* at 144-147. The Decision, docketed as Civil Case No. 7776, was penned by Presiding Judge Suceso A. Arcamo.

[16] *Id.* at 157.

[17] *Id.*

[18] *Id.* at 155-163.

to file their appeal.[19] They justified their First Motion for Extension by citing financial constraints. They explained that they were still reeling from expenses due to the long hospitalization and death of Juliana, and thus, could not immediately finance their appeal. Petitioners' counsel further stated that petitioners' inability to finance their appeal had also prevented him from timely preparing the Petition for Review.[20]

Despite their declared financial difficulties, petitioners managed to pay the docket and other fees and to make a deposit for costs, as required for a Petition for Review under Rule 42. These were done alongside the filing of their First Motion for Extension.[21]

In its assailed May 31, 2011 Resolution,[22] the Court of Appeals denied the First Motion for Extension. It faulted petitioners for "procrastination"[23] as they filed a motion for extension a day before the end of the reglementary period. It further bewailed that "the Court could not be expected to have acted on such very limited time especially so when the *Rollo* was received by the office of the ponente only after its raffle on May 24, 2011."[24]

On June 6, 2011, or two (2) days before the expiration of the 15-day extension that petitioners originally prayed for in the First Motion for Extension, petitioners filed their Second Urgent Motion for Extension of Time (Second Motion for Extension). They had not yet received a copy of the assailed Court of Appeals May 31, 2011 Resolution by this time. They sought another 15 day extension, or until June 23, 2011, to file their Petition for Review. Petitioners' counsel explained that petitioners remained hard-pressed with their finances.[25]

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[19] *Id*. at 157. The *rollo* erroneously cited June 8, 2009.

[20] *Id*.

[21] *Id*. at 6.

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

[23] *Id*. at 206.

[24] *Id*.

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

On June 22, 2011, a day before the end of the second 15-day extension they prayed for, petitioners filed with the Court of Appeals their Petition for Review under Rule 42.[26]

It was only on June 29, 2011 that petitioners received a copy of the assailed Court of Appeals May 31, 2011 Resolution.[27] On July 11, 2011, they filed a Motion for Reconsideration.[28] They explained that the "[d]istance between Tagbilaran City and Cebu City, the length of time to prepare the main petition and the certified copies of pleadings and other court records, and the lack of money to finance the filing of a Petition for Review"[29] hindered them from immediately filing their appeal.

Not impressed with petitioners' reasons, the Court of Appeals issued its assailed January 15, 2013[30] Resolution, denying petitioners' Motion for Reconsideration.

Hence, this Petition was filed.

For resolution is the issue of whether or not the Court of Appeals committed a reversible error in denying the extensions sought by petitioners and in dismissing their appeal.

Rule 42 of the 1997 Rules of Civil Procedure governs appeals taken to the Court of Appeals from decisions of Regional Trial Courts rendered in the exercise of their appellate jurisdiction. Its Section 1 specifies the period for filing petitions for review:

> Section 1. How appeal taken; time for filing. — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. *The*

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[26] *Id.* at 169-204.

[27] *Id.* at 7.

[28] *Id.*

[29] *Id.* at 244.

[30] *Id.* at 243-245.

petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. ***Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.*** (Emphasis supplied)

It is evident from the last two (2) sentences of Section 1 that motions for extension to file Rule 42 petitions are permissible.

Rule 44 takes a particularly liberal stance with regard to the period for filing petitions. It explicitly enables extensions, while other modes of appeal do not. In contrast with Rule 42, Rule 40, or the rules on appeals to the Regional Trial Courts from the Municipal Trial Courts, and Rule 41, or the rules on appeals to the Court of Appeals of decisions of the Regional Trial Courts rendered in the exercise of their original jurisdiction, make no similar reference to any extension to file such appeals. They even proscribe motions for extension to file motions for new trial or reconsideration.[31]

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[31] RULES OF COURT, Rule 40, Sec. 2 provides:

Section 2. When to appeal. – An appeal may be taken within fifteen (15) days after notice to the appellant of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file notice of appeal and a record on appeal within thirty (30) days after notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

RULES OF COURT, Rule 41, Sec. 3 provides:

Section 3. Period of ordinary appeal. – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

Rule 42 enables not just one (1) but two (2) extensions of 15 days each. An initial extension may be given, provided that it is sought through a proper motion, docket and lawful fees are paid, and a deposit for costs is made before the expiration of the reglementary period. After this initial extension, Rule 42 permits a second extension of another 15 days. This second extension shall, however, only be "for the most compelling reason."

The grants of both first and second extensions are addressed to the sound discretion of the Court of Appeals. Mere compliance with the requirements of timely filing a proper motion, tendering payment and making a deposit, and averring compelling reasons does not guarantee the Court of Appeals' solicitude. The general rule remains to be the filing of a verified petition "within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration." Extensions are proper only under exceptional circumstances. Rule 42's indulgence is not a license for interruptions born by caprice or indolence:

> As a rule, periods prescribed to do certain acts must be followed with fealty as they are designed primarily to speed up the final disposition of the case. Such reglementary periods are indispensable interdictions against needless delays and for an orderly discharge of judicial business. Deviations from the rules cannot be tolerated. More importantly, its observance cannot be left to the whims and caprices of the parties. What is worrisome is that parties who fail to file their pleading within the periods provided for by the Rules of Court, through their counsel's inexcusable neglect, resort to beseeching the Court to bend the rules in the guise of a plea for a liberal interpretation thereof, thus, sacrificing efficiency and order. As we emphasized in *Sublay v. NLRC*, we cannot respond with alacrity to every claim of injustice and bend the rules to placate vociferous protestors crying and claiming to be victims of a wrong.[32]

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

[32] *LTS Philippines Corp. v. Maliwat*, 489 Phil. 230, 234-235 (2005). [Per *J*. Callejo, Sr., Second Division] *citing Sublay v. NLRC*, 381 Phil. 198 (2000) [Per *J*. Bellosillo, Second Division].

The need to comply with reglementary periods to file appeals is an adjunct of the basic principle that the right to appeal is merely vested by statute. Thus, anyone who appeals must diligently comply with the governing rules. The non-admission of belatedly filed appeals amounts to decision on the merits:

> There are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review, for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the statute or rules . . . [T]he perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional and the failure to perfect the appeal renders the judgment of the court final and executory. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case.
>
> These periods are carefully guarded and lawyers are well-advised to keep track of their applications. After all, a denial of a petition for being time-barred is a decision on the merits.[33] (Citations omitted)

By the very nature of pleading exceptions as justifications for liberality, it devolves upon the party seeking an extension to file an appeal to establish the merits of his or her plea:

> [E]xceptional circumstances or compelling reasons may have existed in the past when we either suspended the operation of the Rules or exempted a particular case from their application. But, these instances were the exceptions rather than the rule, and we invariably took this course of action only upon a meritorious plea for the liberal construction of the Rules of Court based on attendant exceptional circumstances. These uncommon exceptions allowed us to maintain the stability of our rulings, while allowing for the unusual cases when the dictates of justice demand a correspondingly different treatment.
>
> Under this unique nature of the exceptions, a party asking for the suspension of the Rules of Court comes to us with the heavy burden of proving that he deserves to be accorded exceptional treatment.

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[33] *Videogram Regulatory Board v. Court of Appeals*, 332 Phil. 820, 828-829 (1996), [Per *J.* Panganiban, Third Division].

Every plea for a liberal construction of the Rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction.[34]

This Court finds petitioners here to have effectively pleaded grounds that warrant the extensions prayed for. More basic, however, this Court finds it to be a serious error for the Court of Appeals to decry petitioners' supposed "procrastination" when, to begin with, petitioners acted well within the periods sanctioned by Rule 42. Petitioners did not ask the Court of Appeals to sanction an aberrant situation beyond Rule 42, Section 1's contemplation. Thus, this case is not even about suspending, relaxing, or extraordinarily applying Rule 42, Section 1.

The Court of Appeals made much of how petitioners filed their First Motion for Extension a day before the end of the reglementary period. It ruled how "[it] could not be expected to have acted on such very limited time especially so when the *Rollo* was received by the office of the ponente only after its raffle on May 24, 2011."[35]

This Court is baffled by the Court of Appeals' bemoaning.

Rule 42 allows 15 days to file petitions for review. Within the same period, appellants are expressly permitted by the penultimate sentence of Rule 42, Section 1 to file motions for extension. It is true that in seeking an extension, rather than immediately filing a petition, appellants wager on the Court of Appeals' favorable action. Still, it remains that they have 15 days to seek an extension. They should not be faulted for maximizing the period that Rule 42 allows. In doing so, they are not "procrastinating" but are merely exercising a legitimate option. If the Court of Appeals takes issue with the filing of motions for extension a day before the end of the proper period,

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[34] *Pates v. COMELEC*, 609 Phil. 260, 266 (2009), [Per *J*. Brion, *En Banc*] citing *Prudential Guarantee and Assurance, Inc. v. Court of Appeals*, 480 Phil. 134 (2004) [Per *J*. Carpio Morales, Third Division].

[35] *Rollo*, p. 206.

it should advocate a revision of Rule 42 instead of faulting parties which act within the bounds of this rule.

Petitioners can neither be faulted for the receipt by the ponente's office of the *Rollo* on May 24, 2011. Party-litigants have no control over the internal processes of courts, including the time it takes for justices to receive the records. They simply have nothing to do with that. Party-litigants need not, could not, and should not intrude into a court's internal dynamics. They only need to comply with what the rules require. They have done their part once they timely file their submissions.

To legitimately seek an initial extension, petitioners had to file a proper motion and to ensure that docket and lawful fees were paid and deposit for costs was made before the expiration of the reglementary period. Save for the Court of Appeals' assertion of procrastination, there is no intimation that petitioners failed in any of these requirements. No other technical defect has been attributed to petitioners' First Motion for Extension. They also timely paid the docket and other fees, and deposited for costs. They did these alongside the filing of their First Motion for Extension before the lapse of 15 days following their receipt of a copy of the Regional Trial Court April 18, 2011 Order on May 9, 2011.[36]

Petitioners did not abuse court processes when they sought a second extension. Their Second Motion for Extension was filed *two (2) days* before the end of the first 15-day extension. It was filed, not only within, but in advance of the lapse of the period for seeking the second extension sanctioned by the final sentence of Rule 42, Section 1. It is true that by the time the Second Motion for Extension was filed on June 6, 2011, the Court of Appeals had already denied petitioners' First Motion for Extension in its assailed May 31, 2011 Resolution. Petitioners, however, would not be notified of that denial until June 29, 2011. The most that petitioners can be charged with is optimism that, barring timely notification to the contrary, their First Motion for Extension was granted. They may have been guileless, but they were not malicious.

[36] *Id*. at 157.

Petitioners did not exhaust the additional 15 days they sought and filed their Petition for Review *a day ahead* of what would have been their deadline. When they did this on June 22, 2011, they had yet to learn that the Court of Appeals had declined their initial plea for an extension. Their lack of knowledge belies intent to disrespect the Court of Appeals or to run afoul of the Rules of Court. Moreover, their filing of subsequent submissions in advance of their deadlines demonstrates sincerity in preventing undue delay.

Ultimately, this Court considers it to be in the better interest of justice had the Court of Appeals been more perceptive of petitioners' plight and granted them the extension sought, in order that they could have fully litigated their cause.

Their pleaded justifications were hardly frivolous. Petitioners stepped into the shoes of a defendant who passed away. Certainly, substituting for a deceased party is not forced upon heirs[37] and petitioners' inclusion in litigation was due to their free volition. Still, petitioners' predicament of grappling with the potentially stained name of a deceased wife and mother, who could no

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[37] RULES OF COURT, Rule 3, Section 16:

Section 16. Death of Party; Duty of Counsel. - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

longer defend herself against allegations of unpaid debts, and whose estate faced possible diminution or dissipation likely made it pressing for them to pursue her case. Doing so, however, meant shouldering costs that were not initially theirs to bear. By the unfortunate fortuity of Juliana's passing, petitioners found themselves defending a case that was not their own and bearing all the costs — financial or otherwise — that it entailed.

By the time they had been compelled to litigate, Juliana's case was already in its advanced stages. By then, pursuing an appeal literally entailed crossing the sea to another island. The Court of Appeals should have considered that the required docket fees and deposit for costs under Rule 42 were not all that petitioners had to shoulder. There, too, was the need for proper legal representation in the advanced stages of litigation and having to bear the adversity of having twice lost in lower courts.

Petitioners were simultaneously afflicted with the tragedy of death and constrained by their means. These were compelling reasons warranting a solicitous stance towards them. Justice is better served by extending consideration to them and enabling an exhaustive resolution of the parties' claims. This is especially so as petitioners' utmost good faith was demonstrated; they having seen to it that, even as they were imploring the Court of Appeals' understanding, each of the technical requirements of Rule 42 was satisfied.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals' assailed May 31, 2011 and January 15, 2013 Resolutions in CA-G.R. SP No. 05929 are **REVERSED and SET ASIDE**. The Petition for Review under Rule 42 of the 1997 Rules of Civil Procedure filed by petitioners before the Court of Appeals is **REINSTATED** and the Court of Appeals is directed to resolve its merits with dispatch.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires*, and *Gesmundo, JJ.*, concur.

THIRD DIVISION

[G.R. No. 205638. August 23, 2017]

DEE HWA LIONG FOUNDATION MEDICAL CENTER and ANTHONY DEE, *petitioners, vs.* **ASIAMED SUPPLIES AND EQUIPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; AS A RULE, ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS MUST BE ALLEGED, SUBSTANTIATED AND PROVED; CASE AT BAR.— Only questions of law are allowed in a petition for review under Rule 45 of the Rules of Court. It is a general rule that factual findings of the Regional Trial Court are conclusive, especially when they have been affirmed by the Court of Appeals. The factual findings of the Court of Appeals bind this Court. Although jurisprudence has provided several exceptions to this rule, exceptions must be alleged, substantiated, and proved by the parties so this Court may evaluate and review the facts of the case. x x x Petitioners have failed to show how the Court of Appeals' factual determination based on the evidence presented is an error of law. Indeed, petitioners' argument that respondent was aware of the conditionality of the contract hinges on an appreciation of evidence. Petitioners have failed to allege, substantiate, or prove any exception to the general rule allowing only questions of law to be raised in a petition for review so that this Court may evaluate and review the evidence presented and the facts of the case.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; A CONTRACT MAY BE CONTAINED IN SEVERAL INSTRUMENTS WITH NON-CONFLICTING TERMS; CASE AT BAR.— Both the Regional Trial Court and the Court of Appeals found that the delivery invoices formed part of the Contract of Sale. Petitioners claim that the delivery invoice receipts signed by petitioner Anthony and Mateo could not modify or be considered part of the Contract of Sale. A contract may be contained in several instruments with non-conflicting terms. In *BF Corp. v. Court of Appeals*, a contract need not be

contained in a single writing. It may be collected from several different writings which do not conflict with each other and which, when connected, show the parties, subject matter, terms and consideration, as in contracts entered into by correspondence. A contract may be encompassed in several instruments even though every instrument is not signed by the parties, since it is sufficient if the unsigned instruments are clearly identified or referred to and made part of the signed instrument or instruments. Similarly, a written agreement of which there are two copies, one signed by each of the parties, is binding on both to the same extent as though there had been only one copy of the agreement and both had signed it.

3. **REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; ERROR OF LAW; APPLICATION OF THE RULES OF COURT IN CASE AT BAR, NOT SHOWN TO BE AN ERROR OF LAW.—** [T]he Court of Appeals' order that respondent be allowed to procure an administrator for the estate of petitioner Anthony was based on Rule 3, Section 16 of the Rules of Court x x x. Petitioners fail to show how the application of the Rules of Court was an error of law. The only basis for petitioners' objection to the order requiring the appointment of an administrator for the estate of petitioner Anthony is a liberal interpretation of the rules. Thus, their argument fails.

APPEARANCES OF COUNSEL

Santos Santos & Santos Law Offices for petitioners.
Amora Del Valle & Associates for respondent.

D E C I S I O N

LEONEN, *J.*:

Generally, a petition for review under Rule 45 of the Rules of Court may only raise questions of law.

This is a Petition for Review on Certiorari[1] filed under Rule 45 of the Rules of Court praying that the August 30, 2012

[1] *Rollo*, pp. 11-35.

Decision[2] and the January 23, 2013 Resolution[3] of the Court of Appeals in CA G.R. CV No. 91410 be reversed and set aside.

On August 2, 2002, petitioner Dee Hwa Liong Foundation Medical Center (DHLFMC) and respondent Asiamed Supplies and Equipment Corporation (Asiamed) entered into a Contract of Sale.[4] This Contract of Sale stated that DHLFMC agreed to purchase from Asiamed a GammaMed Plus Brachytherapy machine and a Gammacell Elan 3000 blood irradiator (collectively, the machines) for the price of ₱31,000,000.00. Regarding payment, the Contract of Sale provided:

1. PURCHASE PRICE

DEE HWA LIONG FOUNDATION MEDICAL CENTER agrees to purchase the equipment through ASIAMED SUPPLIES and EQUIPMENT CORPORATION at the total price of THIRTY ONE MILLION PESOS (₱31,000,000.00) Philippine Currency . . .

Such payment is to be made no later than (2) two working days upon delivery of the equipment and prior to the installation of the same.

. . . . . .

5. BUYERS GUARANTEE

DEE HWA LIONG FOUNDATION MEDICAL CENTER warrants unto ASIAMED SUPPLIES & EQUIPMENT CORPORATION the genuineness, validity and enforceability of any check, note or evidence of obligation as forelisted and DEE HWA LIONG FOUNDATION MEDICAL CENTER, at the agreed payment terms[,] shall pay to ASIAMED SUPPLIES & EQUIPMENT CORPORATION the amount due.[5]

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[2] *Id*. at 36-46, The Decision was penned by Associate Justice Agnes Reyes Carpio and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla of the Eighth Division, Court of Appeals, Manila.

[3] *Id*. at 7-8. The Resolution was penned by Associate Justice Agnes Reyes Carpio and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla of the Eighth Division, Court of Appeals, Manila.

[4] RTC records, pp. 13-16.

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

These machines were delivered on May 20, 2003 and July 17, 2003.[6] A Sales Invoice[7] and two (2) Delivery Invoices[8] were signed by petitioner Anthony Dee (Anthony) and DHLFMC Vice President for Administration, Mr. Alejandro Mateo (Mateo).[9] These invoices provided:

> Interest of 12% per annum is to be charged on all overdue accounts, and a sum equal to 25% of the amount due is further charged but in no case shall be less than ₱50.00 for attorney's fees and cost of collection in case of suit.[10]

On January 26, 2004, Asiamed filed a Complaint[11] against DHLFMC and Anthony (petitioners) for sum of money, with prayer for issuance of a writ of preliminary attachment, before the Regional Trial Court, docketed as Civil Case No. 04-108948. Asiamed alleged that DHLFMC agreed to pay the total purchase price of ₱31,000,000.00 no later than two (2) days from receiving the machines. Despite receiving the machines on May 20, 2003 and July 17, 2003, DHLFMC only paid the amounts of ₱3,500,000.00 on July 25, 2003, ₱1,000,000.00 on September 16, 2003, and ₱800,000.00 on October 30, 2003.[12] Asiamed demanded payment, but DHLFMC refused to pay the balance.[13]

In their Answer, DHLFMC and Anthony alleged that the purchase of the equipment was conditioned on the approval of a loan from Planters Development Bank (Planters Bank). However, this loan was not approved.[14]

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[6] CA *Rollo*, p. 29.

[7] RTC records, p. 29.

[8] *Id*. at 30 and 31.

[9] *Rollo*, p. 216.

[10] RTC records, pp. 30-31.

[11] *Id*. at 1.

[12] *Id*. at 3-5.

[13] *Id*. at 5.

[14] *Id*. at 155-156.

The Regional Trial Court issued a Writ of Preliminary Attachment[15] dated January 30, 2004, and the Brachytherapy equipment was pulled out by Sheriff Manuelito Viloria (Sheriff Viloria) on February 2, 2004. Sheriff Viloria also placed other medical equipment on constructive levy. Petitioners filed a motion to discharge the writ of preliminary attachment, which the Regional Trial Court denied. The Regional Trial Court also denied petitioners' motion for reconsideration.[16]

After trial, the Regional Trial Court rendered a Decision dated June 18, 2008[17] finding that the parties had entered into a Contract of Sale and that the pieces of equipment subjects of the contract were received by petitioners, who failed to pay the balance of the contract:

> With the foregoing, there is no dispute [that] the parties entered into the Contract of Sale (Exh. "A" & Exh. "1"). The two medical equipment, Brachytherapy machine and Blood irradiator were delivered to [petitioners] who received them in good condition. [Asiamed]'s engineers installed said machine[s] properly in [petitioner] hospital. As [petitioners] did not pay the balance of ₱25.7 million, their lawyer resorted to dilatory schemes, like raising the issues of excessive levy and oppressive manner of attachment. The self serving testimonies of Atty. Estaris and Dr. Reyes are irrelevant to this case. Besides, there was no excessive levy as there are only 3 items pulled out by Special Sheriff Mariano (Exh. "32"). The bulk of [petitioners'] medical items were by constructive levy only and were enforced by Sheriff Viloria of Br. 7 (Exhs. "30" & "31"). The said items are still in the possession of [petitioner] hospital.[18]

The dispositive portion stated:

> WHEREFORE, judgment is hereby rendered against [petitioners] who are ordered to pay, jointly and severally, [respondent]:

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[15] *Id.* at 45-46.

[16] *Rollo*, pp. 152-153.

[17] *Id.* at 47-49.

[18] *Id.* at 48.

a) the sum of ₱25.7 million representing the balance of the purchase price with interest thereon at 12% per annum from October 28, 2003 until fully paid;

b) the sum of ₱2.5 million for attorney's fees; and

c) the costs of suit.

[Petitioners'] counterclaim is denied for lack of merit.

SO ORDERED.[19]

Thus, petitioners appealed to the Court of Appeals.

The Court of Appeals denied the appeal in its Decision[20] dated August 30, 2012. As understood by the Court of Appeals, petitioners' main argument was that the Contract of Sale had been rescinded because a loan from Planters Bank was not approved. However, the Court of Appeals found that the text of the Contract of Sale did not support this contention. Further, even assuming that the Planters Bank loan approval was a condition for the effectivity of the Contract of Sale, petitioners did not prove that Planters Bank did not approve the loan.[21] On petitioner Anthony's liability, the Court of Appeals held that petitioners were estopped from raising the separate juridical personality of DHLFMC as a defense for Anthony. This was in consideration of petitioners' denial of the allegation that DHLFMC "[was] an entity representing itself to be a corporation duly organized and existing," stating that they "never represented that [petitioner] DHLFMC [was] a corporate entity duly organized and existing."[22]

The Court of Appeals also granted respondent Asiamed's motion for substitution, allowing it to procure the appointment of an administrator for the estate of petitioner Anthony, who passed away during the pendency of the case:

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[19] *Id.* at 49.

[20] *Id.* at 36-46.

[21] *Id.* at 40-41.

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

Lastly, We note that [petitioner] Anthony Dee had already passed away, without Us being informed by his counsel of such fact, in violation of Rule 3, Section 16 of the Rules of Court. Thus, the [respondent] filed a Motion for Substitution of [petitioner] Anthony D. Dee praying that it be allowed to procure the appointment of an administrator for the Estate of Anthony Dee in accordance with the provisions of the Rules of Court. Considering that [petitioner] Anthony Dee's counsel has not given Us the name and address of his legal representative or representatives, We, therefore, grant [respondent]'s aforesaid motion.[23] (Citation omitted)

The dispositive portion of this Decision read:

WHEREFORE, premises considered, the assailed Decision of the court a quo is hereby AFFIRMED.

Further, [respondent]'s Motion for Substitution of Defendant-Appellant Anthony D. Dee is GRANTED. [Respondent] is hereby ORDERED to procure the appointment of an administrator for the estate of the deceased within thirty (30) days from notice hereof.

SO ORDERED.[24]

Thus, on March 25, 2013, petitioners filed this present Petition assailing the Court of Appeals Decision and Resolution.[25] In the Resolution dated July 8, 2013, this Court denied the petition for failure of petitioners to show any reversible error in the assailed Decision and Resolution.[26]

On September 5, 2013, petitioners filed a Motion for Reconsideration.[27] In its Resolution dated November 13, 2013, this Court required respondent to comment on the Motion for Reconsideration.[28]

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

[24] *Id*. at 45.

[25] *Id*. at 11.

[26] *Id*. at 70.

[27] *Id*. at 71-82.

[28] *Id*. at 83.

Respondent filed an Omnibus Opposition/Comment[29] on February 7, 2014. Petitioners filed their Reply on March 18, 2014.[30] In a Resolution dated June 11, 2014, this Court gave due course to this petition and required the parties to submit their respective memoranda.[31]

In their Memorandum,[32] petitioners insist that the Contract of Sale was rescinded[33] and that respondent conformed to this rescission.[34] The sale was conditioned on the loan application from Planters Bank, which was not approved.[35] By virtue of the rescission, the parties should have been restored to their respective positions before entering the Contract of Sale.[36]

Petitioners aver that petitioner Anthony should not have been held jointly and severally liable for the breach of contract, invoking the separate personality of a corporation.[37] They point out that no mention was made of petitioner Anthony's personal liability and that the officers of a corporation are generally not liable for the consequences of their acts done on behalf of the corporation.[38] Further, respondent did not prove that petitioner Anthony acted with bad faith or malice.[39]

Petitioners argue that the Court of Appeals and the Regional Trial Court erred in finding them liable for interest, penalty charges, and attorney's fees based on Delivery Invoice Nos. 2680 and 2683, which stipulated:

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[29] *Id*. at 90-128.

[30] *Id*. at 140-149.

[31] *Id*. at 150.

[32] *Id*. at 151-184.

[33] *Id*. at 162.

[34] *Id*. at 164.

[35] *Id*. at 163.

[36] *Id*. at 165-166.

[37] *Id.* at 166.

[38] *Id*. at 167.

[39] *Id*. at 168.

Interest of 12% per annum is to be charged on all overdue accounts, and a sum equal to 25% of the amount due is further charged but in no case shall be less than ₱50.00 for attorney's fees and cost of collection in case of [suit]. The herein listed below are shipped at the buyer's risk and cost of goods remain the property of ASIA MED SUPPLIES & EQUIPMENT CORP. until paid in full.[40]

Petitioners claim that these are in the nature of contracts of adhesion. The delivery invoices were unilaterally prepared by respondent, without petitioners' conformity.[41] These stipulations attempted to modify the Contract of Sale. However, petitioners insist that the delivery invoices cannot be deemed to have modified the Contract of Sale, considering that they lacked the informed consent of petitioner DHLFMC.[42] In any case, the penalty stipulated in the delivery invoices was unconscionably high and should be reduced.[43]

Petitioners point out that there was an attachment, which petitioner repeatedly demanded to be set aside. By virtue of this attachment, there were four (4) pieces of medical equipment, including the Brachytherapy subject of the Contract of Sale, that were placed in the custody of respondent, which had a total value of ₱37,420,983.25.[44] In relation to this, there was an attachment bond posted in the amount of ₱27,000,000.00 on behalf of respondent. The Regional Trial Court was informed on March 23, 2006 that the attachment bond expired. Despite this, the Regional Trial Court did not immediately set aside the attachment and only did so on August 22, 2007.[45] However, the pieces of medical equipment are still in the possession of respondent. Thus, petitioners insist that it is unfair to require

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[40] *Id*. at 169.

[41] *Id*. at 170.

[42] *Id*. at 171.

[43] *Id*. at 172.

[44] *Id*. at 173.

[45] *Id*. at 172-173.

petitioner DHLFMC to pay the amount of ₱25,700,000.00.[46] Petitioners claim that there was no basis for the attorney's fees awarded to respondent.[47] Finally, petitioners insist they are entitled to the grant of their counterclaims[48] as respondent initiated the case against petitioners prematurely as a form of harassment.[49] As for the appointment of an administrator for the estate of deceased petitioner Anthony, petitioners allege that it would be superfluous and dilatory, considering that his surviving spouse, Carmelita Dee, represents him.[50]

On the other hand, respondent argues in its Memorandum[51] that the Contract of Sale was not rescinded.[52] The disapproved loan from Planters Bank has no effect on the Contract of Sale, considering it was not even mentioned there.[53] Respondent insists that rescission was not proven during trial[54] and adds that the issues of the attachment are irrelevant to their claim for the collection of a sum of money.[55] It claims that petitioners were properly held liable for the amount of ₱25,700,000.00 considering that they only paid ₱5,300,000.00 out of the total ₱31,000,000.00 agreed upon in the Contract of Sale.[56] As for the 12% interest on all overdue accounts and the 25% attorney's fees, respondent maintains that petitioners agreed to these provisions when they signed the delivery invoices.[57] Petitioner Anthony was properly

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[46] *Id*. at 173.

[47] *Id*. at 173-175.

[48] *Id*. at 175.

[49] *Id*. at 179.

[50] *Id*. at 180.

[51] *Id*. at 186-223.

[52] *Id*. at 197.

[53] *Id*.

[54] *Id*. at 200.

[55] *Id*. at 206.

[56] *Id*. at 213.

[57] *Id*. at 214.

held jointly and severally liable together with petitioner DHLFMC because of his patent bad faith in not paying the amount stipulated in the Contract of Sale.[58] The circumstances in this case are among the instances when an officer may be held jointly and severally liable with the corporation sued.[59] Respondent points out that petitioner Anthony raised this issue for the first time on appeal.[60] Finally, it asserts that the petition was filed without valid substitution of parties under Rule 3, Section 16 of the Rules of Court.[61] The petition was signed by petitioner Anthony's purported widow. However, there was no showing that she was designated and qualified as the administrator of the estate of petitioner Anthony.

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

First, whether or not the Contract of Sale was rescinded;

Second, whether or not petitioner Anthony Dee was properly held solidarity liable with petitioner Dee Hwa Liong Foundation Medical Center;

Third, whether or not the interest rate and attorney's fees stipulated in the delivery invoices are binding on the parties; and

Finally, whether or not the Court of Appeals erred in granting respondent Asiamed Supplies and Equipment Corporation's motion to procure the appointment of an administrator for the estate of deceased petitioner Anthony Dee.

This Court denies the petition.

I

Only questions of law are allowed in a petition for review under Rule 45 of the Rules of Court.[62] It is a general rule that

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[58] *Id*. at 220.

[59] *Id*. at 219.

[60] *Id*. at 220.

[61] *Id*. at 222.

[62] RULES OF COURT, Rule 45, Sec. 1.

factual findings of the Regional Trial Court are conclusive, especially when they have been affirmed by the Court of Appeals. The factual findings of the Court of Appeals bind this Court. Although jurisprudence has provided several exceptions to this rule, exceptions must be alleged, substantiated, and proved by the parties so this Court may evaluate and review the facts of the case.[63]

Here, the Court of Appeals made a tactual determination that the effectivity of the Contract of Sale did not depend on any alleged loan application from Planters Bank. It relied on the evidence presented, particularly the Contract of Sale, which did not mention any loan from Planters Bank.[64] Petitioners assail this determination, insisting that respondent was aware that the Contract of Sale was conditional. Petitioners cite the testimony during cross-examination of respondent's vice president for sales, Edward Dayao (Dayao), where he said that he "was told that there was supposed to be a ₱200 million Joan with Planters [Bank]."[65] Petitioners cite respondent's vice president for operation, Onofre Reyes (Reyes), who testified that Dayao directed him to modify the earlier agreement with petitioner Anthony, in light of the alleged disapproved loan:

> A Before Mr. Dee went to the United States of America, there w[as a] series of talks between Mr. Dayao, between us and Mr. Dee. Mr. Dee, since he can no longer pay because of what happened to the bank that the loan was no longer approved, Mr. Dee wanted to return the machine. There was [a] series of talks that took place about the returning of the machine[,] sir.
>
> Q And what was the reaction of Mr. Dayao to this?
> A Mr. Dayao is amenable provided he will no longer return the initial payment made by Mr. Dee.

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[63] *Pascal v. Burgos*, G.R. No. 171722, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> 12 [Per *J.* Leonen, Second Division].

[64] *Rollo*, p. 40.

[65] *Id.* at 162.

Q So what happened?
A He caused me to make a letter pertaining to that kind of transaction[,] sir.[66]

However, the above-mentioned letter drafted by Reyes pertaining to the modification of the earlier agreement remained unsigned.[67] Nonetheless, petitioners refer to the draft as evidence that rescission was being undertaken and argue that respondent's demand for the balance of the obligation was consequently premature.[68]

Petitioners have failed to show how the Court of Appeals' factual determination based on the evidence presented is an error of law. Indeed, petitioners' argument that respondent was aware of the conditionality of the contract hinges on an appreciation of evidence. Petitioners have failed to allege, substantiate, or prove any exception to the general rule allowing only questions of law to be raised in a petition for review so that this Court may evaluate and review the evidence presented and the facts of the case.

II

On petitioner Anthony's liability, the Court of Appeals found that petitioners admitted that they never represented that petitioner DHLFMC is a corporate entity with separate personality from petitioner Anthony. Thus, they are estopped from raising its separate personality as a defense for petitioner Anthony:

It is important to remember, however, that [respondent]'s complaint alleged, among other things, that "[petitioner] DEE HWA LIONG FOUNDATION MEDICAL CENTER, is an entity representing itself to be a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines." **In reply thereto, [petitioners] answered that "[petitioners] deny the allegations**

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[66] *Id*. at 164-165.

[67] *Id*. at 165.

[68] *Id*.

relating to the corporate circumstances of [petitioner] DHLFMC in paragraph no. 2 of the Complaint, ... the truth being that the [petitioners] never represented that [petitioner] DHLFMC is a corporate entity duly organized and existing under and by virtue of the laws of the Republic of the Philippines[.]" From the foregoing, it cannot be denied that the [petitioners) are estopped from raising a corporation's separate juridical personality as a defense to shield [petitioner] Anthony Dee from any liability.[69] (Emphasis supplied, citations omitted)

Petitioners do not dispute that they specifically denied the allegation regarding petitioner DHLFMC's corporate circumstances. Petitioners fail to show how the Court of Appeals appreciation of this specific denial is an error of law. Petitioners merely insist that petitioner Anthony was not shown to have acted in bad faith, and thus, cannot be held solidarily liable with petitioner DHLFMC.[70] However, petitioners do not point to anything on record to counter their own specific denial that would establish DHLFMC's existence as a corporation with separate juridical personality. Thus, this argument must fail.

III

Petitioners argue that respondent unilaterally imposed the interest and penalty charges.[71] However, they do not dispute that these charges were specifically provided for in the delivery invoices, which they signed. The Court of Appeals did not mention the stipulations on interest and penalty contained in the delivery invoices; thus, it can be gathered that they sustained the Regional Trial Court, which held:

The 12% interest and 25% attorney's fees in case of litigation are explicitly sta[t]ed in the sales and delivery invoices. "Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." (Civil Code of the Philippines). As there is no written agreement to

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

[70] *Id*. at 167-169.

[71] *Id*. at 171-172.

rescind, [respondent] is not bound by [petitioners]' notice of rescission. "Art. 1308 - The contract must bind both contracting parties; the validity or compliance cannot be left to the will of one of them." (Ibid). All told, plaintiff has established a preponderance of evidence in its favor. Interest shall accrue from October 28, 2003 when formal demand was made while lawyer's fee will be toned down to about 10% of the amount due.[72]

Both the Regional Trial Court and the Court of Appeals found that the delivery invoices formed part of the Contract of Sale. Petitioners claim that the delivery invoice receipts signed by petitioner Anthony and Mateo could not modify or be considered part of the Contract of Sale.

A contract may be contained in several instruments with non-conflicting terms. In *BF Corp. v. Court of Appeals*,[73]

> A contract need not be contained in a single writing. It may be collected from several different writings which do not conflict with each other and which, when connected, show the parties, subject matter, terms and consideration, as in contracts entered into by correspondence. A contract may be encompassed in several instruments even though every instrument is not signed by the parties, since it is sufficient if the unsigned instruments are clearly identified or referred to and made part of the signed instrument or instruments. Similarly, a written agreement of which there are two copies, one signed by each of the parties, is binding on both to the same extent as though there had been only one copy of the agreement and both had signed it.[74] (Citations omitted)

Petitioners claim that the delivery invoice receipts are contracts of adhesion and that they were unwittingly signed, without informed consent.[75] However, it is not disputed that the delivery invoices provided for the interest and attorney's fees or that petitioner Anthony and Mateo signed these invoices.[76] Thus,

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[72] *Id.* at 49.

[73] 351 Phil. 507 (1998) [Per *J.* Romero, Third Division].

[74] *Id.* at 523.

[75] *Rollo*, p. 171.

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

the Regional Trial Court and the Court of Appeals ruled that the parties mutually agreed to the interest and attorney's fees as a factual matter. Although petitioners allege that these invoices lacked petitioner DHLFMC's informed consent, there is no attempt to prove this. It is also not proven that the stipulations were somehow hidden or obscured such that DHLFMC could not have read them, making it impossible tor DHLFMC to agree to the terms. In any case, it is a question of fact, which is not proper for review in a petition for review. Absent any other factual or legal basis, the mere allegation that the documents were signed without the informed consent of petitioner DHLFMC will not suffice to cause this Court to review these documents.

Petitioners claim that the circumstances of the attachment aggravate respondent's undue enrichment at petitioner DHLFMC's expense.[77] However, the circumstances of the attachment do not affect the validity of the Contract of Sale. Petitioners provide no legal basis for reversing the assailed decision based on the manner in which the attachment was carried out.

IV

Finally, the Court of Appeals' order that respondent be allowed to procure an administrator for the estate of petitioner Anthony[78] was based on Rule 3, Section 16 of the Rules of Court, which provides:

> Section 16. Death of party; duty of counsel. — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.
>
> The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or

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[77] *Id*. at 172.

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

administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

Petitioners fail to show how the application of the Rules of Court was an error of law. The only basis for petitioners' objection to the order requiring the appointment of an administrator for the estate of petitioner Anthony is a liberal interpretation of the rules.[79] Thus, their argument fails.

WHEREFORE, the petition is **DENIED**. The Court of Appeals Decision dated August 30, 2012 and Resolution dated January 23, 2013 in CA-G.R. CV No. 91410 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires*, and *Gesmundo, JJ.*, concur.

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[79] *Id*. at 180.

THIRD DIVISION

[G.R. No. 208314. August 23, 2017]

ANTONIO B. MANANSALA, *petitioner, vs.* **MARLOW NAVIGATION PHILS., INC./MARLOW NAVIGATION CO. LTD./CYPRUS, AND/OR EILEEN MORALES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); EXECUTION THREOF IS A CONDITION *SINE QUA NON* PRIOR TO DEPLOYMENT FOR OVERSEAS WORK AND IS DEEMED INCORPORATED IN SEAFARER EMPLOYMENT CONTRACTS.— Filipinos hired as seafarers are contractual employees whose employment is governed by their respective contracts with their employers: "[t]heir employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires." Seafarers must be registered with the Philippine Overseas Employment Administration (POEA). The POEA Standard Employment Contract (POEA-SEC) must be executed by seafarers and their employers "as a condition *sine qua non* prior to the deployment for overseas work" and is "deemed incorporated in [seafarer] employment contract[s]."

2. ID.; ID.; REQUIRES EMPLOYER TO COMPENSATE A SEAFARER FOR WORK-RELATED ILLNESSES; WORK-RELATED ILLNESS, DEFINED.— The POEA-SEC requires the employer to compensate a seafarer for work-related illnesses. It defines "work-related illness" as follows: x x x 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.

3. ID.; ID.; COMPENSABILITY OF OCCUPATIONAL DISEASES; THE OCCUPATIONAL DISEASE AND ENSUING DEATH OR DISABILITY MUST BE WORK-RELATED.— Section 32-A of the POEA-SEC provides a non-exhaustive list of diseases considered as occupational. The mere

occurrence of a listed illness does not automatically engender compensability. The first paragraph of Section 32-A requires the satisfaction of all of its listed general conditions "[f]or an occupational disease and the resulting disability or death to be compensable," x x x 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. To enable compensation, an occupational disease and ensuing death or disability must, thus, be "work-related"; that is to say that there must be a "reasonable linkage between the disease suffered by the employee and his work."

4. ID.; ID.; COMPENSABILITY OF PRE-EXISTING ILLNESSES; REQUIRES THAT LINKAGE BETWEEN THE DISEASE OR ITS AGGRAVATION AND THE WORKING CONDITIONS OF A SEAFARER MUST BE PROVEN BY SUBSTANTIAL EVIDENCE.— Common sense dictates that an illness could not possibly have been "contracted as a result of the seafarer's exposure to the described risks" if it has been existing before the seafarer's services are engaged. Still, pre- existing illnesses may be aggravated by the seafarer's working conditions. To the extent that any such aggravation is brought about by the work of the seafarer, compensability ensues: Settled is the rule that for 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 sufficient 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*. Consistent with the basic standard in labor cases and other administrative proceedings, the linkage between the disease or its aggravation and the working conditions of a seafarer must be proven by substantial evidence. In *Jebsens Maritime v. Undag*: x x x Substantial evidence is more than a mere scintilla. *The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely*

apparent. Compensability is not limited to Section 32-A's listed occupational diseases. For as long as seafarers are able to show by substantial evidence that they suffered disabilities occasioned by a disease contracted on account of or aggravated by working conditions, compensation is availing.

5. ID.; ID.; ID.; POEA-SEC BARS THE COMPENSABILITY OF DISABILITY ARISING FROM A PRE-EXISTING ILLNESS WHEN ATTENDED BY AN EMPLOYEE'S FRAUDULENT MISREPRESENTATION; A CASE AT BAR.— The POEA-SEC bars the compensability of disability arising from a pre-existing illness when attended by an employee's fraudulent misrepresentation. Section 20(E) of the POEA-SEC states: 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. The POEA-SEC's terminology is carefully calibrated: it does not merely speak of incorrectness or falsity, or of incompleteness or inexactness. Rather, to negate compensability, it requires *fraudulent misrepresentation*. To speak of fraudulent misrepresentation is not only to say that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To amount to fraudulent misrepresentation, falsity must be coupled with intent to deceive and to profit from that deception. Consequently, reasonable leeway may be extended for inability to make complete and fastidiously accurate accounts when this inability arises from venial human limitation and frailty. This is a normal tendency for laypersons — such as seafarers — rendering accounts of their own medical conditions. x x x This Court finds petitioner to have knowingly and fraudulently misrepresented himself as not afflicted with hypertension or diabetes. He did not merely make inaccuracies in good faith but engaged in serial dishonesty. Thus, this Court affirms the Decision of the Court of Appeals.

6. ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISPUTED DISABILITY ASSESSMENT; REFERRAL TO A THIRD DOCTOR IS

MANDATORY IN THE EVENT OF DIVERGING FINDINGS BY A COMPANY-DESIGNATED PHYSICIAN AND A SEAFARER'S PERSONALLY CHOSEN PHYSICIAN; NOT COMPLIED WITH IN CASE AT BAR.— It works no less in petitioner's favor that he failed to observe the procedure outlined by the POEA-SEC concerning disputed disability assessments by company-designated physicians. Section 20(B)(3) of the POEA-SEC requires referral to a third physician in the event of diverging findings by a company-designated physician and a seafarer's personally chosen physician. x x x Petitioner made no effort to comply with the required referral. He did not even consult a personally chosen physician before filing his Complaint. Upon repatriation, the company-designated physician, Dr. Barrairo, assessed petitioner and twice rendered Grade 10 disability assessments in September 2010. Disagreeing with these assessments, petitioner would proceed to file his Complaint on October 21, 2010. In need of support for his Complaint, only two months after would petitioner pick a personal physician, Dr. San Luis, to seek another opinion. Only on December 20, 2010 would Dr. San Luis declare that petitioner "should be permanently disabled (sic)." Beyond this, there is no indication that petitioner did more to ascertain his proper disability grade. Petitioner's non-compliance constrains us to not lend credibility to his personal physicians assessment.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Offices for petitioner.
Hansel Joseph Michael L. Tillman and *Luzvie T. Gonzaga* for respondents.

D E C I S I O N

LEONEN, *J.*:

As laypersons, seafarers cannot be expected to make completely accurate accounts of their state of health. Unaware of the nuances of medical conditions, they may, in good faith, make statements that turn out to be false. These honest mistakes

do not negate compensability for disability arising from pre-existing illnesses shown to be aggravated by their working conditions. However, when a seafarer's proper knowledge of pre-existing conditions and intent to deceive an employer are established, compensability is negated.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed April 10, 2013 Decision[2] and July 18, 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 124546 be reversed and set aside.

The assailed Court of Appeals Decision affirmed the National Labor Relations Commission's December 13, 2011 Decision[4] and February 28, 2012 Resolution,[5] which, in turn, affirmed the Labor Arbiter's April 20, 2011 Decision.[6] The Labor Arbiter dismissed Antonio B. Manansala's (Manansala) Complaint for payment of total and permanent disability benefits. The assailed Court of Appeals Resolution denied Manansala's Motion for Reconsideration.[7]

On April 8, 2010, Manansala's services were engaged by Marlow Navigation Phils., Inc., for and on behalf of its principal, Marlow Navigation Co. Ltd./Cyprus, for him to serve as a "fitter" on board the vessel M/V Seaboxer.[8]

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[1] *Rollo*, pp. 3-19.

[2] *Id*. at 20-30. The Decision was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Agnes Reyes-Carpio of the Eighth Division, Court of Appeals, Manila.

[3] *Id*. at 31-32. The Resolution was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Agnes Reyes-Carpio of the Eighth Division, Court of Appeals, Manila.

[4] No copy annexed to the Petition or to any of the pleadings submitted.

[5] No copy annexed to the Petition or to any of the pleadings submitted.

[6] No copy annexed to the Petition or to any of the pleadings submitted.

[7] *Id*. at 33-44.

[8] *Id*. at 20-21.

Before boarding the vessel, Manansala underwent a Pre-Employment Medical Examination (PEME) on March 23, 2010[9] at the EL ROI Medical Clinic and Diagnostic Center, Inc.[10] In his examination, Manansala was required to disclose information regarding all existing and prior medical conditions. The examination specifically required information on 29 illnesses and/or conditions, among which were hypertension and diabetes. Manansala's examination certificate indicates that he denied having hypertension and diabetes, specifically answering "NO" when asked about hypertension and diabetes mellitus. Following his examination, Manansala was declared fit for sea duty and was deployed.[11]

On May 30, 2010, while on board the M/V Seaboxer, Manansala suffered a stroke,[12] "experienc[ing] moderate headache at the vertex associated with dizziness and blurring of vision and right[-]sided weakness."[13] He was, then, admitted to the ADK Hospital in the Maldives[14] where a brain CT scan conducted on him showed that he was suffering from an "[a]cute infarct at the left MCA territory."[15] Because of this, Manansala was repatriated on June 8, 2010.[16]

Manansala was confined at the De Los Santos Medical Center from June 10, 2010 to June 23, 2010,[17] under the primary care of company-designated physician, Dr. Teresita Barrairo (Dr. Barrairo).[18] While under Dr. Barrairo's care, he "repeatedly denied that he ha[d] any past history of diabetes and hypertension."[19]

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[9] *Id*. at 111, Memorandum for the Respondents.

[10] *Id*. at 21.

[11] *Id.*

[12] *Id*.

[13] *Id*. at 94, Memorandum for the Petitioner.

[14] *Id*. at 111, Memorandum for the Respondent.

[15] *Id*. at 94.

[16] *Id*. at 21.

[17] *Id*.

[18] *Id*. at 111.

[19] *Id*. at 26.

On September 7, 2010,[20] Dr. Barrairo issued to Manansala an interim Grade 10 disability rating.[21] She issued a final Grade 10 Disability assessment on September 30, 2010.[22]

On October 21, 2010, Manansala filed a Complaint against the respondents for total and permanent disability benefits, as well as damages and attorney's fees.[23] When the mandatory conferences failed, the parties were ordered to file their respective position papers and responsive pleadings.[24]

Two (2) months after he filed his Complaint, on December 20, 2010, Manansala's own doctor, Dr. Amado San Luis (Dr. San Luis), issued a medical opinion stating that Manansala must be considered permanently disabled:

> Medical Opinion
>
> . . . .
>
> 4. Patient should be permanently disabled (sic) because of the inherent risk of his work as a seaman that will predispose him to repeated stroke or other cardiovascular attacks. Because of the presence of diabetes, hypertension, hyperlipidemia and stroke, he is considered a high risk of (sic) developing another stroke.[25]

The same opinion indicated that Manansala admitted to having had a long history of hypertension and diabetes. He even admitted to taking Enalapril and Metformin as maintenance medications.[26]

On Apri1 20, 2011, the Labor Arbiter rendered a Decision finding that Manansala was suffering from pre-existing, rather

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[20] *Id*. at 21.

[21] *Id*. at 111.

[22] *Id*. at 112, Memorandum for the Respondents.

[23] *Id*. at 22.

[24] *Id*. at 95, Memorandum for the Petitioner.

[25] *Id*. at 22.

[26] *Id*. at 26.

than work-related, ailments. Therefore, he was not entitled to disability benefits.[27]

On December 13, 2011, the National Labor Relations Commission rendered a Decision affirming that of the Labor Arbiter.[28] In a Resolution dated February 28, 2012, the National Labor Relations Commission denied Manansala's Motion for Reconsideration.[29]

Manansala filed a Petition for Certiorari before the Court of Appeals. In its assailed April 10, 2013 Decision, the Court of Appeals sustained the decision of the National Labor Relations Commission.[30] In its assailed July 18, 2013 Resolution,[31] the Court of Appeals denied Manansala's Motion for Reconsideration.

Hence, Manansala filed the present Petition. He now asserts that he properly disclosed his pre-existing illnesses during his medical examination and that his stroke was work-related.[32]

For resolution is the sole issue of whether or not petitioner Antonio B. Manansala is entitled to total and permanent disability benefits occasioned by work-related illnesses.

He is not.

I

Filipinos hired as seafarers are contractual employees whose employment is governed by their respective contracts with their employers: "[t]heir employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires."[33]

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[27] *Id.* at 22.

[28] *Id.*

[29] *Id.* at 22-23.

[30] *Id.* at 96, Memorandum for the Petitioner.

[31] *Id.*

[32] *Id.* at 97-98, Memorandum for the Petitioner.

[33] *Millares v. National Labor Relations Commission*, 434 Phil. 524, 538 (2002) [Per. *J.* Kapunan, Special First Division].

Seafarers must be registered with the Philippine Overseas Employment Administration (POEA).[34] The POEA Standard Employment Contract (POEA-SEC) must be executed by seafarers and their employers "as a condition *sine qua non* prior to the deployment for overseas work"[35] and is "deemed incorporated in [seafarer] employment contract[s]."[36]

The POEA-SEC[37] requires the employer to compensate a seafarer for work-related illnesses.[38] It defines "work-related illness" as follows:

> Definition of Terms:
>
> . . . .
>
> 12. Work-Related Illness — 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.[39]

The benefits that the employer must pay "when the seafarer suffers work-related injury or illness during the term of his contract"[40] are outlined in Section 20(B) of the POEA-SEC.[41]

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[34] LABOR CODE, Art. 20.

[35] *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 909 (2008) [Per. *J.* Brion, Second Division].

[36] *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 385 (2014) [Per. *J.* Brion, Second Division].

[37] POEA Memorandum Circular No. 09-2000.

[38] POEA Memorandum Circular No. 09-2000, Sec. 20(B).

[39] POEA Memorandum Circular No. 09-2000, Definition of Terms.

[40] POEA Memorandum Circular No. 09-2000, Sec. 20(B).

[41] 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;

The compensation to be given to a seafarer depends on the severity of the disability suffered. Section 32 of the POEA-

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 for 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.

SEC provides a schedule of disabilities and their corresponding impediment grades.[42] The grades range from 1 to 14, with 1 being the most severe and entailing the highest amount of compensation.[43]

II

Section 32-A of the POEA-SEC provides a non-exhaustive list[44] of diseases considered as occupational. The mere occurrence of a listed illness does not automatically engender compensability.

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[42] POEA Memorandum Circular No. 09-2000, Sec. 32 provides:

Section 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

. . . . . .

SCHEDULE OF DISABILITY ALLOWANCES

Impediment Grade	Impediment		
1	US$50,000	X	120.00%
2	-	X	88.81%
3	-	X	78.36%
4	-	X	68.66%
5	-	X	58.96%
6	-	X	50.00%
7	-	X	41.80%
8	-	X	33.59%
9	-	X	26.12%
10	-	X	20.15%
11	-	X	14.93%
12	-	X	10.45%
13	-	X	6.72%
14	-	X	3.74%

[43] Philippine Overseas Employment Administration Standard Employment Contract (2000), Sec. 32.

[44] Occupational Diseases:

1. Cancer of the epithelial lining of the bladder (Papillomar of the bladder)
2. Cancer, epitheliomatous 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 or residue of these substances.
3. Deafness

The first paragraph of Section 32-A requires the satisfaction of all of its listed general conditions "[f]or an occupational disease and the resulting disability or death to be compensable":

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4. Decompression sickness
   (a) Caissons disease
   (b) Aeroembolism
5. Dermatitis due to irritants and sensitizers
6. Infection (Brucellosis)
7. Ionizing radiation disease, inflammation, ulceration or malignant disease of skin or subcutaneous tissues of the bones or leukemia, or anemia of the aplastic type due to X-rays, ionizing particle, radium or radioactive substances.
8. Poisoning and its sequelae caused by:
   (a) Ammonia
   (b) Arsenic or its toxic compound
   (c) Benzene or its toxic homologues, nitro and aminotoxic derivatives of benzene or its homologue
   (d) Beryllium or its toxic compounds
   (e) Brass, zinc or nickel
   (f) Carbon dioxide
   (g) Carbon bisulfide
   (h) Carbon monoxide
   (i) Chlorine
   (j) Chrome of its toxic compounds
   (k) Dinitrophenol or its homologue
   (l) Halogen derivatives of hydrocarbon of the aliphatic series
   (m) Lead or its toxic compounds
   (n) Manganese or its toxic compounds
   (o) Mercury or its toxic compounds
   (p) Nitrous fumes
   (q) Phosgene
   (r) Phosphorous or its toxic compounds
   (s) Sulfur dioxide
9. Diseases Caused by abnormalities in temperature and humidity
   (a) Heat stroke/cramps/exhaustion
   (b) Chilblain/frostbite/freezing
   (c) Immersion foot/general hypothermia

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.

To enable compensation, an occupational disease and ensuing death or disability must, thus, be "work-related";[45] that is to say that there must be a "reasonable linkage between the disease suffered by the employee and his work."[46]

Common sense dictates that an illness could not possibly have been "contracted as a result of the seafarer's exposure to the described risks"[47] if it has been existing before the seafarer's services are engaged. Still, pre-existing illnesses may be aggravated by the seafarer's working conditions. To the extent that any such aggravation is brought about by the work of the seafarer, compensability ensues:

Settled is the rule that for 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 sufficient that there is a reasonable linkage between the disease suffered by the employee and his work

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10. Vascular disturbance in the upper extremities due to continuous vibration from pneumatic tools or power drills, riveting machines or hammers
11. Cardio-Vascular Diseases

. . . .

12. Cerebro-Vascular Accidents

. . . .

[45] *Magsaysay Maritime Services v. Laurel*, 707 Phil. 210, 221 (2013) [Per *J*. Mendoza, Third Division]

[46] *Dayo v. Status Maritime Corporation,* 751 Phil. 778, 789 (2015) [Per *J*. Leonen, Second Division].

[47] POEA Memorandum Circular No. 09-2000, Sec. 32-A.

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.*[48] (Emphasis supplied).

Consistent with the basic standard in labor cases and other administrative proceedings, the linkage between the disease or its aggravation and the working conditions of a seafarer must be proven by substantial evidence. In *Jebsens Maritime v. Undag*:[49]

> In labor cases as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence. Substantial evidence is more than a mere scintilla. *The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent.*[50] (Emphasis supplied, citations omitted)

Compensability is not limited to Section 32-A's listed occupational diseases. For as long as seafarers are able to show by substantial evidence that they suffered disabilities occasioned by a disease contracted on account of or aggravated by working conditions, compensation is availing:

> 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

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[48] *Magsaysay Maritime Services v. Laurel*, 707 Phil. 210, 225 (2013) [Per *J*. Mendoza, Third Division].

[49] 678 Phil. 938 (2011) [Per *J*. Mendoza, Third Division].

[50] *Id*. at 946-947.

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 his entitlement to disability benefits by substantial evidence of his illness' work-relatedness.[51]

III

The POEA-SEC bars the compensability of disability arising from a pre-existing illness when attended by an employee's fraudulent misrepresentation. Section 20(E) of the POEA-SEC states:

> 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.

The POEA-SEC's terminology is carefully calibrated: it does not merely speak of incorrectness or falsity, or of incompleteness or inexactness. Rather, to negate compensability, it requires *fraudulent misrepresentation*.

To speak of fraudulent misrepresentation is not only to say that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To amount to fraudulent misrepresentation, falsity must be coupled with intent to deceive and to profit from that deception.

Consequently, reasonable leeway may be extended for inability to make complete and fastidiously accurate accounts when this

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[51] *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 387-388 (2014) [Per J. Brion, Second Division].

inability arises from venial human limitation and frailty. This is a normal tendency for laypersons — such as seafarers — rendering accounts of their own medical conditions.

IV

Prospective seafarers undergo a pre-employment medical examination (PEME) to determine if they are fit to work. Republic Act No. 8042, as amended, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, tasks the Department of Health to regulate the operations of clinics conducting PEMEs for migrant workers.[52]

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[52] Rep. Act No. 8042, as amended by Republic Act No. 10022, Sec. 23(c) provides:

Section 23. Role of Government Agencies. – The following government agencies shall perform the following to promote the welfare and protect the rights of migrant workers and, as far as applicable, all overseas Filipinos:

. . . . . .

(c) Department of Health. – The Department of Health (DOH) shall regulate the activities and operations of all clinics which conduct medical, physical, optical, dental, psychological and other similar examinations, hereinafter referred to as health examinations, on Filipino migrant workers as requirement for their overseas employment. Pursuant to this, the DOH shall ensure that:

(c.1) The fees for the health examinations are regulated, regularly monitored and duly published to ensure that the said fees are reasonable and not exorbitant;

(c.2) The Filipino migrant worker shall only be required to undergo health examinations when there is reasonable certainty that he or she will be hired and deployed to the jobsite and only those health examinations which are absolutely necessary for the type of job applied for or those specifically required by the foreign employer shall be conducted;

(c.3) No group or groups of medical clinics shall have a monopoly of exclusively conducting health examinations on migrant workers for certain receiving countries;

(c.4) Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics that will conduct his/her health examinations and that his or her rights as a patient are respected. The decking practice, which requires an overseas Filipino worker to go first to an office for registration and then farmed out to a medical clinic located elsewhere, shall not be allowed;

Department of Health Administrative Order No. 2007-0025, which was in effect when petitioner took his PEME, articulated guidelines on PEMEs for seafarers.[53] It

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(c.5) Within a period of three (3) years from the effectivity of this Act, all DOH regional and/or provincial hospitals shall establish and operate clinics that can serve the health examination requirements of Filipino migrant workers to provide them easy access to such clinics all over the country and lessen their transportation and lodging expenses; and

(c.6) All DOH-accredited medical clinics, including the DOH-operated clinics, conducting health examinations for Filipino migrant workers shall observe the same standard operating procedures and shall comply with internationally-accepted standards in their operations to conform with the requirements of receiving countries or of foreign employers/principals.

Any foreign employer who does not honor the results of valid health examinntions conducted by a DOH-accredited or DOH-operated clinic shall be temporarily disqualified from participating in the overseas employment program, pursuant to POEA rules and regulations.

In case an overseas Filipino worker is found to be not medically fit upon his/her immediate arrival in the country of destination, the medical clinic that conducted the health examination/s of such overseas Filipino worker shall pay for his or her repatriation back to the Philippines and the cost of deployment of such worker.

Any DOH-accredited clinic which violates any provision of this section shall, in addition to any other liability it may have incurred, suffer the penalty of revocation of its DOH accreditation.

Any government official or employee who violates any provision of this subsection shall be removed or dismissed from service with disqualification to hold any appointive public office for five (5) years. Such penalty is without prejudice to any other liability which he or she may have incurred under existing laws, rules or regulations.

[53] DOH Admin Order No. 2007-0025, VI provides:

VI. SPECIFIC GUIDELINES

. . . . . .

B. On PEME

1. The PEME shall be administered on the following: Seafarers, including cadets, trainees, regular employees of local shipping lines, contractual employees of foreign-owned shipping companies, and pre-licensure examinees.
2. The PEME to be conducted shall, among others, undettake and consider the following procedures and criteria, accordingly:

identified minimum test requirements, summarized as follows:[54]

a.) Past medical history of the examinee shall be taken. When necessary, previous medical records of each seafarer candidate/serving seafarer shall be reviewed.

b.) The current Joint National Committee Recommendation on Prevention, Detection, Evaluation and Treatment of High Blood Pressure shall be used for reference. Minimum PEME test requirements for seafarers shall follow the Minimum PEME Test Requirements posted at the DOH website www.doh.gov.ph

c.) Distant and near vision, including color perception test (Ishihara Plates), shall form part of the initial and periodic PEME requirements. Test for primary colors shall be considered in case of defective Ishihara result. It shall not impair the seafarer's capability to work provided it is cleared by an accredited eye specialist or low vision specialist. Results of visual acuity shall be expressed in both decimal and Snellen's notation provided in the format of the PEME Fitness Certification for Seafarers posted at the DOH website www.doh.gov.ph

d.) Audiometric exam shall form part of the initial and regular PEME requirements. Hearing acuity shall be measured from 500 Hz to 8000 Hz.

e.) Full clinical notes and results of the laboratory, x-ray, ECG, and other examinations shall be kept along with the form describing the examinee's previous medical history duly signed by the examinee as stated in the Instructions to Accredited Medical Clinics posted at the DOH website www.doh.gov.ph

f.) Physical Capabilities required for entry-level seafarers shall be based on shipboard task. function, event or condition as mentioned under Job Requirements and Fitness Standards posted at the DOH website www.doh.gov.ph

g.) In case of crew members of ships in coastal trade, offshore supply vessels, tugboats and barges, the international fitness standard and health requirement of these guidelines may be modified by national maritime authorities, and restricted service health certificates may be issued to the crew members. Nevertheless, the safety of the vessel at sea must be maintained, seafarers' duties must be performed safely, and their health must be safeguarded.

[54] DOH Admin Order No. 2007-0025, VI(B)(2)(b).

TEST	PEME "A" New Candidates	PEME "B" Serving Seafarers (below 40 years old)	PEME "C" Serving Seafarers (40 years old and above)
Audiometry	√	√	√
Blood Uric Acid	X	X	√
Chest X-ray	√	√	√
Color Perception Test	√	√	√
Complete Blood Count and Blood Typing	√	√	√
Complete Physical Examination and Medical History	√	√	√
Dental Examination	√	√	√
ECG	√	X	√
Fasting Blood Sugar	X	X	
Hepatitis B Screening	√	√	√
HIV		OPTIONAL	
Psychometric examinations	√	√	√
Routine Stool	√	√	√
Routine Urinalysis	√	√	√
RPR	√	√	√
Total Cholesterol	X	X	√
Triglyceride	X	X	√
Visual Acuity	√	√	√

As to their source, there are two categories of information obtained in PEMEs. First is information obtained from and colored by the prospective seafarer's opinion, i.e., information on medical history gained from probing questions asked to prospective seafarers and answered by them to the best of their knowledge. Second is information generated by procedures conducted by health professionals. From these, a determination

is made on whether a prospective seafarer is fit, unfit, or temporarily unfit for sea duty:[55]

C. On the Assessment of PEME Results

1. PEME recommendations shall be given as follows:

a.) ***Fit for Sea Duty*** – The seafarer is assessed as able to perform safely the duties of his position aboard a ship in the absence of medical care, without danger to his health or to the safety of the vessel, crew and passengers.

b.) ***Unfit for Sea Duty*** – The seafarer is assessed to be not fit for sea duty.

c.) ***Temporarily Unfit for Sea Duty*** – The seafarer is assessed to be temporarily unfit for sea duty when, at the time of PEME, the result shows an abnormal finding, a suspected medical or surgical condition, or a disclosed significant past medical history which needs further investigation and reevaluation. The examinee shall be given thirty (30) days to undergo further assessment in accordance with the established referral system of the accredited medical clinic. Within the said period, the seafarer may either be medically upgraded to fitness or downgraded to unfitness indefinitely based on the results of the follow-up evaluation.[56] (Emphasis in the original)

Between the prospective seafarer and an examining physician, the latter is in a better position to assess fitness for the rigors of sea duty. Apart from one's literal body, a prospective seafarer's only other contribution to a medical examination is a set of responses to questions. A seafarer's personal health assessment is borne by his or her amateur opinion, or otherwise unrefined understanding of nuanced medical conditions. In contrast, the procedures attendant to a PEME are conducted and supervised by professionals with scientific and technical capabilities. Their examinations generate verifiable empirical data, which are then evaluated by a physician.

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[55] DOH Admin Order No. 2007-0025, VI (C).

[56] DOH Administrative Order No. 2007-0025, VI (C).

A PEME is not expected to be an in-depth examination of a seafarer's health.[57] Still, it must fulfill its purpose of ascertaining a prospective seafarer's capacity for safely performing tasks at sea. Thus, if it concludes that a seafarer, even one with an existing medical condition, is "fit for sea duty," it must, on its face, be taken to mean that the seafarer is well in a position to engage in employment aboard a sea vessel "without danger to his health."[58]

A recommendation stating that a seafarer is "fit for sea duty" when standardized procedures would readily reveal that he or she is not can only mean that medical examiners failed to diligently screen a seafarer. The persons responsible for the examination are then bound by their negligence. Ultimately, it is more appropriate that the examining physician, a trained professional, and not the seafarer, who is a layperson, be faulted for discounting the presence of diseases even after subjecting the seafarer to a series of procedures.

For its part, a recruiting employer is expected to know the physical demands of a seafarer's engagement. It is then equally expected to peruse the results of PEMEs to ensure that, health wise, its recruits are up to par. An employer who admits a physician's "fit to work" determination binds itself to that conclusion and its necessary consequences. This includes compensating the seafarer for the aggravation of negligently or deliberately overlooked conditions

V

Essential hypertension is among the occupational diseases enumerated in Section 32-A of the POEA-SEC. Section 32-A, paragraph 2(20) of the POEA-SEC reads:

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[57] *Estate of Ortega v. Court of Appeals*, 576 Phil. 601, 620 (2008) [Per *J.* Tinga, Second Division].

[58] DOH Administrative Order No. 2007-0025, VI (C).

20. Essential Hypertension

Hypertension classified as primary or essential is considered compensable if it causes impairment of function 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*** (e) C-T scan. (Emphasis supplied)

Primary or essential hypertension is the most common form of hypertension.[59] It is a "consequence of an interaction between environmental and genetic factors."[60] Hypertension doubles the risk of cardio-vascular diseases,[61] the most common cause of death in hypertensive patients.[62] Hypertensive patients are also susceptible to having a stroke.[63]

The following degrees of severity have been associated with identifying hypertension:[64]

Severity	SBP, mmHg	DBP, mmHg
Normal	<120	and <80
Prehypertension	120-139	or 80-89
Stage 1 hypertension	140-159	or 90-99
Stage 2 hypertension	≥160	or ≥100

Literature on hypertension concedes a degree of ambiguity and acknowledges variance in its effects and incidents:

High blood pressure is a trait as opposed to a specific disease and represents a quantitative rather than a qualitative deviation from the norm. Any definition of hypertension is therefore, arbitrary.

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[59] MCGRAW-HILL EDUCATION, *HARRISON'S PRINCIPLES OF INTERNAL MEDICINE* 1616 (19th ed.).

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

. . . . . .

The cardiovascular risks associated with a given blood pressure are dependent upon the combination of risk factors in the specific individual. These include age, gender, weight, physical inactivity, smoking, family history, serum cholesterol, diabetes mellitus and pre-existing vascular disease. Effective management of hypertension therefore requires a holistic approach that is based on the identification of those at highest cardiovascular risk and the adoption of multifactorial interventions, targeting not only blood pressure but all modifiable cardiovascular risk factors.

In light of these observations[,] a practical definition of hypertension is 'the level of blood pressure at which the benefits of treatment outweigh the costs and hazards.'[65]

Consistent with this, "most [hypertensive] patients remain asymptomatic";[66] and frequently, patients only discover that they are hypertensive because of a routine examination or because complications have arisen.[67]

The POEA-SEC's treatment of essential hypertension recognizes its gradations. To enable compensation, the mere occurrence of hypertension, even as it is work-related and concurs with the four basic requisites of the first paragraph of Section 32-A, does not suffice. The POEA-SEC requires an element of gravity. It speaks of essential hypertension only as an overture to the "impairment of function of body organs like kidneys, heart, eyes and brain." This impairment must then be of such severity as to be "resulting in permanent disability."[68] Section 32-A, paragraph 2(20), thus, requires three successive occurrences: first, the contracting of essential hypertension; second, organ impairment arising from essential hypertension; and third, permanent disability arising from that impairment.

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[65] P. BLOOMFIELD, A. BRADBURY, N.R. GRUBB & D.E. NEWBY, *Cardiovascular Disease*, *DAVIDSON'S PRINCIPLES AND PRACTICE OF MEDICINE* 551 (20th ed.).

[66] *Id*.

[67] *Id*.

[68] POEA Memorandum Circular No. 09-2000, Sec. 32-A (20).

In keeping with the requisite gravity occasioning essential hypertension, the mere averment of essential hypertension and its incidents do not suffice. In addition to the substantive requirements of essential hypertension's being the cause of organ impairment leading to permanent disability, the POEA-SEC identifies documentary requirements for considering a claim under Section 32-A, paragraph 2(20). As is evident from the use of the conjunctive word "and," this enumeration is inclusive and cumulative, rather than alternative. Accordingly, all documentary requirements must be submitted and satisfied; otherwise, a claim for benefits should not be entertained. These prerequisites are: first, a chest x-ray report; second, an electrocardiogram (ECG) report; third, a blood chemistry report; fourth, a funduscopy report; and fifth, a C-T Scan.

The POEA-SEC also includes cardio-vascular diseases in its list of occupational diseases. They are compensable if, in addition to the requirements of the first paragraph of Section 32-A, *any* of the conditions listed in Section 32-A, paragraph 2(11) are attendant:

> 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 thut 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.
>
> 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.

Diabetes is not among Section 32-A's listed occupational diseases. As with hypertension, it is a complex medical condition typified by gradations. Blood sugar levels classify as normal,

pre-diabetes, or diabetes depending on the glucose level of a patient.[69]

	Normal	Pre-diabetes	Diabetes Mellitus
FPG	<5.6 mmol/L	5.6-6.9 mmol/L	≥7.0 mmol/L
2-h PG	<7.8 mmol/L	7.8-11.0 mmol/L	≥11.1 mmol/L
HbA1C	<5.6%	5.7-6.4%	≥6.5%

Diabetes "is a clinical syndrome characterised by hyperclycaemia due to absolute or relative deficiency of insulin."[70] It can cause several symptoms depending on its type, Type 1 or Type 2.[71] Patients with Type 1 diabetes show more prominent symptoms, while patients with Type 2 diabetes are mostly asymptomatic.[72] However, the symptoms between these two types may overlap. Other symptoms may even be inexplicit such as fatigue.[73] Diabetes can lead to several complications, among which is suffering a stroke.[74]

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[69] MCGRAW-HILL EDUCATION, *HARRISON'S PRINCIPLES OF INTERNAL MEDICINE* 2399 (19th ed.).

[70] B.M. FRIER & M. FISHER, *Diabetes Mellitus*, *DAVIDSON'S PRINCIPLES AND PRACTICE OF MEDICINE* 808 (20th ed.).

[71] *Id*. at 818.

[72] *Id*.

[73] *Id*.

[74] *Id*. at 829 lists the complications of diabetes, as follows:

A. Microvascular / neuropathic

1. Retinopathy, Cataract
- Impaired vision
2. Nephropathy
- Renal failure
3. Peripheral neuropathy
- Sensory loss
- Motor weakness
4. Autonomic neuropathy
- Postural hypotension
- Gastrointestinal problems (gastroparesis; altered bowel habit)

Hypertension and diabetes are hardly elementary conditions that afflicted laypersons could handily grasp. Even the POEA-SEC's appreciation of essential hypertension proceeds from an understanding that hypertension *per se* does not equate to disability warranting cessation of work and entailing compensation. Rather, it concedes that hypertension is identified by degrees of severity.

Hypertension and diabetes can be difficult to recognize because of gradations whose demarcations are not readily perceptible and because they can be asymptomatic. This is especially true in their mild stages. Even in relatively advanced stages, their symptoms may be generic that they are as easily mistaken to be indicating other conditions.[75]

The greater possibility, then, is that a seafarer's self-assessment of personal medical conditions will fail to capture nuances that can make the difference between fitness and unfitness for work. As laypersons, they do not have the requisite medical knowledge to properly characterize their illnesses. Even if they are aware of their own medical conditions, they may, in their non-professional opinion but still in good faith, be convinced that

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5. Foot disease
- Ulceration
- Arthropathy

B. Macrovascular

1. Coronary circulation
    - Myocardial ischaemia / infarction
2. Cerebral circulation
    - Transient ischaemic attack
    - Stroke
3. Peripheral circulation
    - Claudication
    - Ischaemia

[75] Symptoms of Hyperglycaemia may include nocturia, change in weight, blurring of vision, nausea, headache, mood change, irritability, and apathy *see* B.M. FRIER & M. FISHER, *Diabetes Mellitus*, *DAVIDSON'S PRINCIPLES AND PRACTICE OF MEDICINE* 818 (20th ed.); Hypertension may also have nonspecific symptoms such as "dizziness, palpitations, easy fatigability, and impotence" see MCGRAW-HILL EDUCATION, *HARRISON'S PRINCIPLES OF INTERNAL MEDICINE* 1621 (19thed.).

their conditions are not so severe and that they can manage to perform work aboard a vessel. Seafarers cannot be held to account under an inordinate standard. The POEA-SEC takes exception to fraudulent misrepresentation, not to honest mistakes.

VI

This Court finds petitioner to have knowingly and fraudulently misrepresented himself as not afflicted with hypertension or diabetes. He did not merely make inaccuracies in good faith but engaged in serial dishonesty. Thus, this Court affirms the Decision of the Court of Appeals.

During his PEME, petitioner was recorded to have "categorically answered 'No' when asked whether he has ever suffered from or has been told to have hypertension and diabetes."[76] After repatriation and while being treated by Dr. Barrairo, the company-designated physician, he again "denied that he ha[d] any past history of diabetes and hypertension."[77]

However, in the medical opinion and evaluation prepared by his own physician, Dr. San Luis, petitioner was indicated to not only have admitted that "he ha[d] a past history of hypertension and diabetes,"[78] but even that he was "regularly taking Enalapril and Metformin respectively to treat the said illnesses."[79]

Forced into a corner by his own conflicting declarations, petitioner attempted to extricate himself by disavowing the declarations he made in his PEME and claiming that it was the examining physician who failed to accurately reflect his responses on his examination certificate.[80]

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[76] *Rollo*, p. 26.

[77] *Id*.

[78] *Id*.

[79] *Id*.

[80] *Id*.

Petitioner's assertion is an admission that he fully knew of his conditions at the moment he was examined, rendering it pointless for this Court to consider whether he was merely confused at the time of his examination. Additionally, his assertion burdens him with the task of proving his claims. As he was duty-bound to truthfully answer questions during his examination, petitioner must show that despite his knowledge, he did not willfully or deceptively withhold information. Likewise, his imputation of the examining physician's liability despite the examination certificate's indication that his responses were duly recorded is an affirmative defense or an alternative version of events that becomes his burden to prove.

Petitioner failed to discharge his burden. On the contrary, the confluence of circumstances belies his claims.

Petitioner adequately understood the significance of the declarations attributed to him in his examination certificate. Petitioner's engagement aboard the M/V Seaboxer was not his first stint as a seafarer. He had been a seafarer since 1994,[81] although he worked for respondents, on and off, only since 2007.[82] His prolonged seafaring experience must have familiarized him with the conduct of PEMEs and the need for him to give truthful answers. He explicitly declared, too, that he was "aware of the contents of Section 20.E [on misrepresentation] in the POEA [Standard Employment Contract]."[83] Certainly, his awareness of Section 20(E) must have impressed upon him not only the potential complications of what he claims to be a false declaration foisted on him by the examining physician but also the urgency of rectifying that error. Instead, he remained silent and did nothing. Petitioner's concession by omission militates against him.

This Court has nothing to rely on but petitioner's bare recollection. This does not satisfy. He should have actively

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[81] *Id*. at 97.

[82] *Id*. at 93-94.

[83] *Id*. at 27.

endeavored to demonstrate that the false declarations in his examination certificate were anomalous, stray errors. As a seafarer since 1994, he must have completed several other medical examinations. His good faith could have been substantiated by prior acts in analogous situations. He could have presented copies of the certificates for his previous medical examinations, but he did not. These would have shown that while the responses he offered about his conditions in prior instances had been properly recorded, the examining physician during his March 23, 2010 examination failed to render an accurate account.

It is, of course, possible that prior to his most recent medical examination on March 23, 2010, petitioner had not been diagnosed with hypertension or diabetes. This would make it impossible for him to present evidence of countervailing prior declarations. However, even conceding this, petitioners good faith is belied by other circumstances attending this case.

Petitioner's good faith could have been demonstrated by his subsequent acts. Knowing full well that a false declaration was made on his examination certificate, petitioner should, at the very least, not have compounded it. Instead of this, however, he maintained before Dr. Barrairo upon repatriation that he had no history of either hypertension or diabetes. It was only before his personally chosen physician did petitioner admit to not only a history of diabetes and hypertension but even to the maintenance medications he had been taking to address those illnesses.

A measure of good faith can be appreciated on the part of a seafarer who is unable to grasp the nuances of his or her medical condition. This Court is unable to appreciate this good faith here. Petitioner knew that his illnesses were of such severity that he needed to take maintenance medicine. Despite this, he consistently maintained that he had no history of hypertension or diabetes. Finally confronted with his own discrepant statements, he denied accountability by shifting the blame to a person who was beyond the reach of the proceedings he had initiated.

We are not a trier of facts and only questions of law may be brought before this Court in Rule 45 petitions. Faced with nothing more than petitioner's self-serving, unsubstantiated backtracking on his own inconsistencies, we see no need to deviate from the uniform findings of the Labor Arbiter, the National Labor Relations Commission and the Court of Appeals. Petitioner's disavowals were not statements made in good faith but were part of a serial utterance of lies.

VII

It works no less in petitioner's favor that he failed to observe the procedure outlined by the POEA-SEC concerning disputed disability assessments by company-designated physicians. Section 20(B)(3) of the POEA-SEC requires referral to a third physician in the event of diverging findings by a company-designated physician and a seafarer's personally chosen physician:

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:

. . . . . .

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.* (Emphasis supplied)

INC Shipmanagement, Inc. v. Rosales[84] explained the significance of this referral and emphasized that it is "mandatory":

> This referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties. We have followed this rule in a string of cases, among them, *Philippine Hammonia, Ayungo v. Beamko Shipmanagement Corp., Santiago v. Pacbasin Shipmanagement, Inc., Andrada v. Agemar Manning Agency*, and *Masangkay v. Trans-Global Maritime Agency, Inc.* Thus, at this point, the matter of referral pursuant to the provision of the POEA-SEC is a settled ruling.[85] (Citations omitted)

Petitioner made no effort to comply with the required referral. He did not even consult a personally chosen physician before filing his Complaint. Upon repatriation, the company-designated physician, Dr. Barrairo, assessed petitioner and twice rendered Grade 10 disability assessments in September 2010.[86] Disagreeing with these assessments, petitioner would proceed to file his Complaint on October 21, 2010.[87] In need of support for his

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[84] *INC Shipmanagement, Inc. v. Rosales*, 744 Phil. 774 (2014) [Per *J.* Brion, Second Division].

[85] *Id.* at 787.

[86] *Rollo*, p. 21.

[87] *Id.* at 22.

Complaint, only two months after would petitioner pick a personal physician, Dr. San Luis, to seek another opinion. Only on December 70, 2010 would Dr. San Luis declare that petitioner "should be permanently disabled (sic)."[88] Beyond this, there is no indication that petitioner did more to ascertain his proper disability grade.

Petitioner's non-compliance constrains us to not lend credibility to his personal physicians assessment. In any event, the record demonstrates why this assessment deserves no credence as against that of the company-designated physician. He was under the care and supervision of Dr. Barrairo throughout the more than four months that intervened between his repatriation and the filing of his Complaint.[89] For a period, he was kept under Dr. Barrairo's close observation as he was confined at the De Los Santos Medical Center from June 10, 2010 to June 23, 2010.[90] Dr. Barrairo's prolonged care and observation of him yielded two disability assessments: first, an interim assessment on September 7, 2010; and another, a verified assessment on September 30, 2010.[91] In contrast, petitioner's personal physician examined him on only one occasion and only under such circumstances that petitioner needed backing for his Complaint.[92]

Jurisprudence holds that, in analogous cases, company-designated physicians' assessments are to be upheld.[93] This could

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[88] *Id.*

[89] *Id.* at 21.

[90] *Id.*

[91] *Id.*

[92] *Id.* at 22.

[93] As in *Santiago v. Pacbasin Ship Management*, 686 Phil. 255, 268-269 (2012) [Per *J.* Mendoza, Third Division]:

At any rate, said finding ought not to be given more weight than the disability grading given by the company-designated doctor. The POEA Standard Employment Contract clearly provides that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or

have entitled petitioner to Grade 10 disability benefits. However, his failure to observe Section 20(B)(3)'s requirements is not all that there is to this case. We cite his non-referral to a third physician, not as a mitigating circumstance, but to emphasize how multi-layered exigencies militate against him. We have explained at length how petitioner engaged in fraudulent misrepresentation, deceptively concealing his pre-existing hypertension and diabetes. This, in itself, is fatal to his cause. In keeping with Section 20(E) of the POEA-SEC, petitioner is, thus, disqualified from receiving any compensation.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed April 10, 2013 Decision and July 18, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 124546 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*) *Bersamin, Martires*, and *Gesmundo, JJ.*, concur.

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unfitness for work shall be determined by the company-designated physician. However, if the doctor appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer as the decision final and binding on both of them. In this case, Santiago did not avail of this procedure. There was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. Thus, this Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability. (Citation omitted)

THIRD DIVISION

[G.R. No. 210677. August 23, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ABUNDIO M. SARAGENA,** *accused-appellant.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; TO OVERCOME SUCH PRESUMPTION, PROOF BEYOND REASONABLE DOUBT IS REQUIRED; DISCUSSED.— Absent proof beyond reasonable doubt, accused-appellant is presumed innocent of the crime charged. Section 14(2) of Article III of the Constitution provides that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved[.]" To overcome this constitutional presumption, prosecution must establish accused's guilt beyond reasonable doubt. Proof beyond reasonable doubt does not require absolute certainty; it only requires moral certainty or the "degree of proof which produces conviction in an unprejudiced mind," x x x The legal presumption of innocence prevails if the judge's mind cannot rest easy on the certainty that the accused committed the crime. x x x This rule is borne by the need to evenly balance the State's encompassing powers to prosecute and the defense's arduous struggle for liberty. It addresses the inherent inequality in resources, command, capacity, and authority between the State and an accused.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT 9165); ILLEGAL SALE OF DANGEROUS DRUGS; FAILURE TO PRESENT THE POSEUR-BUYER CASTS DOUBT ON THE CHARGE THAT AN ILLEGAL SALE OF DRUGS TOOK PLACE; CASE AT BAR.— According to accused-appellant, SPO3 Magdadaro's allegation of having "clearly" seen the exchange of money and the pack of shabu between accused-appellant and PO1 Misa is "quite disturbing." It is unclear how SPO1 Paller and SPO3 Magdadaro allegedly witnessed the purported sale. The alleged illegal drug was of very small quantity, It weighed only 0.03 grams, approximately as light as a grain of

rice or an ant. The alleged transaction between PO1 Misa and accused-appellant happened five (5) to eight (8) meters away from SPO3 Magdadaro. While PO1 Misa was allegedly buying shabu from accused-appellant, SPO1 Paller and SPO3 Magdadaro were hiding at the side of the stage. Accused-appellant's house was at the back of this stage where they hid. Likewise, it was already 7:00 p.m. and the night time would have impaired their vision. PO1 Misa, the only person who could attest to the commission of the crime, was not presented in court. The poseur-buyer "had personal knowledge of the transaction since he conducted the actual transaction." His testimony is crucial in establishing the alleged facts and circumstances surrounding the purported sale. The failure to present the poseur-buyer casts doubt on the charge that an illegal sale of drugs took place. SPO1 Paller and SPO3 Magdadaro's location, the nightfall, and the miniscule amount of the alleged illegal drug further call into question prosecution's claim that SPO1 Paller and SPO3 Magdadaro witnessed the scene.

3. ID.; ID.; ID.; *CORPUS DELICTI*; INTEGRITY OF THE CONFISCATED ILLEGAL DRUG MUST BE PRESERVED; CASE AT BAR.— The *corpus delicti* is the body of the crime that would establish that a crime was committed. In cases involving the sale of drugs, the *corpus delicti* is the confiscated illicit drug itself, the integrity of which must be preserved. Accused-appellant argues that the conduct of the post-seizure custody of the shabu allegedly recovered from him violated the chain of custody rule. His contention is meritorious. The police officers' lapses are numerous and unjustified that there are serious grounds to doubt the preservation of the integrity of the *corpus delicti*. To begin with, no evidence was adduced to show *specifically* how the police officers handled, stored, and safeguarded the seized shabu pending its offer as evidence. x x x There was no showing that accused-appellant signed a receipt of the inventory of the pack of shabu, that it was marked in his presence, that photographs were taken, or that he was made to sign a confiscation receipt relating to the seized pack of shabu. This Court emphasizes that "ostensibly approximate compliance" does not suffice; rather, there must be actual compliance with Section 21 of Republic Act No. 9165. Not doing so is tantamount to a failure to establish the *corpus delicti*, a crucial element of the crime charged.

4. ID.; ID.; DANGEROUS DRUGS BOARD REGULATION NO. 01-02; CHAIN OF CUSTODY RULE; EXPLAINED; VIOLATED IN CASE AT BAR.— Section 1(b) of the Dangerous Drugs Board Regulation No. 01-02, which implements Republic Act No. 9165, explains chain of custody rule as follows: "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. This Court agrees with the Court of Appeals that the prosecution failed to follow the chain of custody rule under Section 21 of Republic Act No. 9165.

5. ID.; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2013; (REPUBLIC ACT 9165, AS AMENDED); CHAIN OF CUSTODY IMPLEMENTING RULES & REGULATIONS; STEPS TO ESTABLISH THE LINKS NECESSARY FOR A CHAIN OF CUSTODY OF THE SEIZED SPECIMEN; CASE AT BAR.— *People v. Kamad* stated that the prosecution must prove four (4) links in the chain of custody of evidence. Read with the Chain of Custody Implementing Rules and Regulations, *Kamad* provided for the following steps to establish the links necessary for a chain of custody of the specimen seized from the accused: First, the apprehending officer seizes and then marks the dangerous drug taken from the accused. The chain of custody of evidence must show the time and place that the seized item is marked and the names of the officers who marked it. Second, the apprehending officer turns over the seized dangerous drug to the investigating officer. The chain of custody of evidence must establish the names of officers who inventoried, photographed, and/or sealed the seized item. Third, the investigating officer turns over the seized dangerous drug to the forensic chemist for laboratory examination. The chain of custody of evidence must show the names of officers who had custody and received the evidence from one officer to another within the chain. Fourth, the forensic chemist turns over and submits the marked confiscated dangerous drug to the court. Similarly, the chain of custody of evidence must show

the names of officers who had custody and received the evidence from one officer to another within the chain. "[E]ach and every link in the custody must be accounted for" until the seized item is presented before the court. In this case, there are gaps in the linkages in the chain of custody. Some key witnesses were absent during trial. PO1 Misa, the poseur-buyer, was not presented in court. As a result, prosecution has not established how the purported transaction with accused-appellant occured.

6. ID.; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT 9165); ILLEGAL SALE OF DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; WHEN COMPLIANCE THEREWITH MAY BE EXCUSED UNDER EXCEPTIONAL CIRCUMSTANCES.— A proviso in the old Section 21 (a) of Republic Act No. 9165 Implementing Rules and Regulations states that the failure to comply with the chain of custody rule may be excused in exceptional circumstances, *provided* that (a) there are justifiable grounds for it, and (b) the integrity and evidentiary value of the seized items were properly preserved: [N]on-compliance with these requirements [a] under justifiable grounds, [b] as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. The Court of Appeals disregarded the operative phrase—that the prosecution must provide "justifiable grounds" for noncompliance, in addition to showing that the prosecution maintained the integrity of the seized item. x x x The Chain of Custody Implementing Rules and Regulations require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. Here, the prosecution has not given a justifiable ground for applying the exception. All it has done is to assert a self-serving claim that the integrity of the seized pack has been preserved despite the numerous procedural lapses it has committed. The fatal errors of the apprehending team can only lead this Court to seriously doubt the integrity of the *corpus delicti*.

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.*:

When the quantity of the confiscated substance is miniscule, the requirements of Section 21 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, must be strictly complied with.[1]

The prosecution's failure to present the police officer who acted as the poseur-buyer in the buy-bust operation, which allegedly involved 0.03 grams of shabu, coupled with the improbability that the two (2) apprehending police officers witnessed the transaction at night time, engenders reasonable doubt on the guilt of the accused. The prosecution's failure to sufficiently establish the chain of custody in accordance with the law further amplifies the doubt on accused's guilt.

In its April 2, 2013 Decision,[2] the Court of Appeals upheld Abundio Mamolo Saragena's[3] (Saragena) conviction in the Regional Trial Court Judgment dated August 21, 2008.[4]

This Court reverses his conviction and acquits him of the sale of dangerous drugs under Section 5 of Republic Act No. 9165.

On September 23, 2005,[5] SPO1 Roldan Paller (SPO1 Paller) received information that a certain

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[1] *People v. Holgado*, 741 Phil. 78, 81 (2014) [Per *J.* Leonen, Third Division].

[2] *Rollo*, pp. 3–11. The Decision, docketed as CA-G.R. CEB-CR-HC No. 00939, was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino of the Nineteenth Division, Court of Appeals, Cebu City.

[3] *Id.* at 20.

[4] CA *rollo*, pp. 40–43. The Judgment, docketed as Crim. Case No. CBU-73766, was penned by Presiding Judge Enriqueta Loquillano-Belarmino of Branch 57, Regional Trial Court, Cebu City.

[5] The records state that it was only on September 23, 2005 when SPO1 Paller received a tip about "Tatay's" alleged sale of dangerous drugs (*Rollo*,

"Tatay"[6] was selling illegal drugs at Sitio Sindulan, Brgy. Mabolo, Cebu City.[7] "Tatay's" exact address was unknown.[8]

A buy-bust team was formed, composed of SPO3 Raul Magdadaro (SPO3 Magdadaro) as team leader, PO1 Roy Misa (PO1 Misa)[9] as poseur-buyer, and SPO1 Paller as back-up.[10] SPO1 Paller called the Philippine Drug Enforcement Agency for coordination on the buy-bust operation.[11] SPO1 Paller, SPO3 Magdadaro, and PO1 Misa held a briefing before jump-off. A buy-bust money of ₱100.00, bearing the serial no. VT129780, was handed to PO1 Misa.[12]

On June 23, 2005, at about 7:00 p.m., the buy-bust team headed to Sitio Sindulan in their service vehicle.[13] An informant helped them locate the house of accused-appellant,[14] Saragena, alias "Tatay."[15] The police officers parked three (3) corners away from accused-appellant's house.[16]

As the designated poseur-buyer, PO1 Misa walked towards accused-appellant's house.[17] SPO1 Paller and SPO3 Magdadaro trailed behind him.[18] Accused-appellant's house was located

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p. 4). Curiously, the buy-bust operation that supposedly resulted from this tip happened three months earlier, on June 23, 2005 (CA *rollo*, p. 40).

[6] CA *rollo*, pp. 29–30.

[7] *Rollo*, p. 4.

[8] CA *rollo*, p. 30.

[9] The Regional Trial Court spells his first name as "Roy" (CA *rollo*, p. 40), while the Court of Appeals spells it as "Rey." (*rollo*, p. 4).

[10] *Rollo*, pp. 4–5.

[11] *Id*. at 5.

[12] CA *rollo*, p. 40.

[13] *Id*.

[14] *Id*. at 5.

[15] *Id*. at 40.

[16] *Id*. at 40–41.

[17] *Id*. at 41.

[18] *Id*.

at the back of a stage.[19] As PO1 Misa drew closer to the target site, SPO1 Paller and SPO3 Magdadaro hid themselves at the side of the stage,[20] beside the basketball court.[21] The distance between the designated poseur-buyer and the two (2) back-up officers were about five (5) to eight (8) meters.[22]

Outside accused-appellant's house,[23] PO1 Misa convinced the suspect to sell him shabu.[24] PO1 Misa handed the 100.00 bill as payment, for which he received a "pack of white crystalline substance."[25] SPO1 Paller and SPO3 Magdadaro then rushed to the scene[26] and introduced themselves as police officers.[27] SPO1 Paller conducted a body search on accused-appellant and recovered the buy-bust money. Accused-appellant was brought to the police station.[28]

PO1 Misa retained custody of the plastic pack, while SPO1 Paller took the buy-bust money from accused-appellant.[29] At the police station,[30] PO1 Misa turned over the plastic pack to their team leader, SPO3 Magdadaro,[31] who then marked it with the letters "AS."[32] The incident was logged in the police blotter.[33]

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[19] *Id.*

[20] *Rollo*, p. 5.

[21] CA *rollo*, p. 30.

[22] *Id.*

[23] *Id.* at 61.

[24] *Id.* at 41.

[25] *Id.* at 61.

[26] *Id.* at 41.

[27] *Rollo*, p. 5.

[28] *Id.*

[29] CA *rollo*, p. 41.

[30] *Id.* at 67.

[31] *Rollo*, p. 5.

[32] CA *rollo*, p. 41.

[33] *Id.*

SPO3 Magdadaro wrote a letter-request for laboratory examination of the seized and marked plastic pack, signed by Chief Police Superintendent Armando Macolbacol Radoc.[34] PO1 Misa, accompanied by SPO1 Paller,[35] delivered SPO3 Magdadaro's letter-request and the seized plastic pack to the Philippine National Police Crime Laboratory in Cebu City.[36] A certain PO2 Roma received the letter-request and the specimen from PO1 Misa and then delivered these items to P/S Insp. Pinky Sayson-Acog (P/S Insp. Acog),[37] a forensic chemist.[38]

On June 23, 2005,[39] P/S Insp. Acog found the plastic pack marked as "AS" to be positive for methamphetamine hydrochloride.[40] She entered her findings in her Chemistry Report No. D-890-2005,[41] marked the specimen as "D-890-05," and put her initials, "PSA."[42]

On the other hand, according to the defense, accused-appellant was at home when three (3) armed police officers kicked the door of his house.[43] He recognized PO1 Misa, SPO1 Paller, and SPO3 Magdadaro as they frequented illegal cockfights[44] and would take turns asking for the defeated fighting cock.[45] The police officers held accused-appellant.[46] One (1) of them

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[34] *Rollo*, p. 5.

[35] CA *rollo*, pp. 68–69.

[36] *Rollo*, p. 5.

[37] CA *rollo*, p. 41.

[38] *Rollo*, p. 5.

[39] CA *rollo*, p. 69.

[40] *Rollo*, pp. 5–6. The CA Decision referred to the substance as "methylamphetamine hydrochloride."

[41] CA *rollo*, p. 41.

[42] *Id.* at 70.

[43] *Id.* at 41.

[44] *Rollo*, p. 6.

[45] CA *rollo*, p. 28.

[46] *Id.* at 41.

searched his pockets but found nothing. They also searched his house.[47]

Despite the lack of contraband found, accused-appellant was sent to the Mabolo Police Station. He inquired why he was being arrested. The buy-bust team told him that they were able to buy shabu from him.[48] Denying this accusation, accused-appellant asserted that they planted the evidence.[49]

An Information was filed against accused-appellant for the illegal sale of a dangerous drug under Section 5 of Republic Act No. 9165, as follows:

> That on or about the 23rd day of June, 2005, at about 7:00 P.M. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to a poseur buyer:
>
> one (1) heat[-]sealed transparent plastic pocket containing 0.03 gram[s] of white crystalline substance locally known as "SHABU" containing methylamphetamine (sic) hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.[50]

On August 21, 2008, the Regional Trial Court convicted[51] accused-appellant of the crime charged. The dispositive portion of the Decision read:

> In fine, the prosecution has successfully discharged its task to adduce evidence to obtain a conviction.
>
> For all the foregoing, accused is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of one million pesos.

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[47] *Id*.

[48] *Id*.

[49] *Id*. at 42.

[50] *Id*. at 40.

[51] *Id*. at 40–43. The Decision was penned by Presiding Judge Enriqueta Loquillano-Belarmino of Branch 57 of the Regional Trial Court of Cebu City.

The plastic pack of shabu is order[ed] forfeited in favor of the government.

SO ORDERED.[52]

Accused-appellant appealed[53] before the Court of Appeals.

The Court of Appeals found that the police officers failed to comply with the compulsory procedure on the seizure and custody of dangerous drugs under Section 21 of Republic Act No. 9165 or the chain of custody rule. Nevertheless, it justified the noncompliance by applying the exception in the same provision.[54]

On April 2, 2013, the Court of Appeals convicted[55] accused-appellant. The dispositive portion of the Decision read:

> After due consideration, We resolve that accused-appellant has not overcome the evidence presented by the prosecution against him. This Court finds accused-appellant **GUILTY** beyond reasonable doubt of violation of Section 5, Article II, Republic Act No. 9165.
>
> **WHEREFORE**, the instant appeal is **DENIED**. The RTC's judgment dated August 21, 2008 is **AFFIRMED**.
>
> **SO ORDERED**.[56] (Emphasis in the original)

For resolution of this Court is the sole issue of whether or not accused-appellant Abundio Mamolo Saragena is guilty beyond reasonable doubt of violation of Section 5 of Republic Act No. 9165. Subsumed in this issue is the matter of whether or not the law enforcement officers substantially complied with the chain of custody rule.

This Court rules in favor of accused-appellant.

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[52] *Id.* at 43.

[53] *Id.* at 24–39.

[54] *Rollo*, p. 8.

[55] *Id.* at 3–11.

[56] *Id.* at 10–11.

I

Absent proof beyond reasonable doubt, accused-appellant is presumed innocent of the crime charged.

Section 14(2) of Article III of the Constitution provides that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved[.]" To overcome this constitutional presumption, prosecution must establish accused's guilt beyond reasonable doubt.[57]

Proof beyond reasonable doubt does not require absolute certainty; it only requires moral certainty or the "degree of proof which produces conviction in an unprejudiced mind."[58] Thus:

> Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest ea[sy] upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a criminal charge, but moral certainty is required as to every proposition of proof requisite to constitute the offense.[59]

The legal presumption of innocence prevails if the judge's mind cannot rest easy on the certainty that the accused committed the crime. In *People v. Santos*:[60]

> The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required. Corollarily, the prosecution must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required quantum of evidence [of proof beyond reasonable doubt], the defense may logically not even present evidence on its own behalf. In which

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[57] *People v. Santos, Jr.,* 562 Phil. 458, 467 (2007) [Per *J*. Tinga, Second Division].

[58] *People v. Berroya*, 347 Phil. 410, 423 (1997) [Per *J*. Romero, Third Division].

[59] *People v. Santos, Jr.,* 562 Phil. 458, 467 (2007) [Per *J*. Tinga, Second Division].

[60] 562 Phil. 458 (2007) [Per *J*. Tinga, Second Division].

case, the presumption of innocence shall prevail and hence, the accused shall be acquitted.[61]

This rule is borne by the need to evenly balance the State's encompassing powers to prosecute and the defense's arduous struggle for liberty.[62] It addresses the inherent inequality in resources, command, capacity, and authority between the State and an accused.[63] In *People v. Berroya*:[64]

> [P]roof beyond reasonable doubt lies in the fact that "(i)n a criminal prosecution, the State is arrayed against the subject; it enters the contest with a prior inculpatory finding in its hands; with *unlimited means of command*; with counsel usually of authority and capacity, who are regarded as public officers, and therefore as speaking semi-judicially, and with an attitude of tranquil majesty often in striking contrast to that of defendant engaged in a perturbed and distracting struggle for liberty[,] if not for life. These inequalities of position, the law strives to meet by the rule that there is to be no conviction when there is a reasonable doubt of guilt."[65] (Emphasis supplied, citation omitted)

II

There is great possibility of abuse in drug cases, especially those involving miniscule amounts. This Court has recognized that buy-bust operations could be initiated based on dubious claims of shady persons, or that small amounts of illicit drugs could be planted as evidence on innocent individuals, in view of the secrecy surrounding drug deals in general. Thus:

> "[B]y the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be

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[61] *Id.* at 467–468.

[62] *People v. Berroya*, 347 Phil. 410, 423 (1997) [Per *J.* Romero, Third Division].

[63] *Id.*

[64] 347 Phil. 410 (1997) [Per *J.* Romero, Third Division].

[65] *Id.* at 423.

planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, *the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses*[.][66] (Emphasis supplied)

Therefore, courts must subject "the prosecution evidence through the crucible of a *severe testing* . . . [T]he presumption of innocence requires them to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused."[67] In deliberating the accused's guilt, courts must exercise "utmost diligence and prudence."[68] More importantly, they must be on their guard in trying drug cases; otherwise, they risk meting severe penalties to innocent persons.[69]

Here, there is reasonable doubt that the sale of shabu took place.

Section 5 of Republic Act No. 9165 penalizes any person who sells a dangerous drug, regardless of quantity. To successfully convict an accused under this provision, the prosecution must establish the identities of the buyer and the seller, the item sold, and the consideration given for it. There must be an actual sale, consummated through delivery and payment. Finally, the *corpus delicti* must be presented in court as evidence.[70]

According to accused-appellant, SPO3 Magdadaro's allegation of having "clearly" seen the exchange of money and the pack of shabu between accused-appellant and PO1 Misa is "quite disturbing."

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[66] *People v. Tan,* 401 Phil. 259, 273 (2000) [Per *J*. Melo, Third Division].

[67] *People v. Santos, Jr.,* 562 Phil. 458, 472 (2007) [Per *J*. Tinga, Second Division].

[68] *People v. Tan,* 401 Phil. 259, 273 [Per *J*. Melo, Third Division].

[69] *Id*.

[70] *People v. Pagaduan*, 641 Phil. 432, 448 (2010) [Per *J*. Brion, Third Division].

It is unclear how SPO1 Paller and SPO3 Magdadaro allegedly witnessed the purported sale. The alleged illegal drug was of very small quantity. It weighed only 0.03 grams,[71] approximately as light as a grain of rice[72] or an ant.[73] The alleged transaction between PO1 Misa and accused-appellant happened five (5) to eight (8) meters away from SPO3 Magdadaro.[74] While PO1 Misa was allegedly buying shabu from accused-appellant, SPO1 Paller and SPO3 Magdadaro were hiding at the side of the stage. Accused-appellant's house was at the back of this stage where they hid.[75] Likewise, it was already 7:00 p.m. and the night time would have impaired their vision.

PO1 Misa, the only person who could attest to the commission of the crime, was not presented in court.[76] The poseur-buyer "had personal knowledge of the transaction since he conducted the actual transaction."[77] His testimony is crucial in establishing the alleged facts and circumstances surrounding the purported sale.[78]

The failure to present the poseur-buyer casts doubt on the charge that an illegal sale of drugs took place. SPO1 Paller and SPO3 Magdadaro's location, the nightfall, and the miniscule

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[71] *Id.* at 40.

[72] A grain of rice has a mass of roughly 0.2 to 0.3 grams. See Tho Lai Hoong, Tho Mun Yi, and Josephine Fong, *Interactive Science for Inquiring Minds*, Vol. A (2009), at 36. A weight of 0.03 grams is equivalent to 0.001058219 ounces. 0.001058219 ounces is "about as heavy as a [g]rain of [r]ice." See The Measure of Things, available at http://www.bluebulbprojects.com/MeasureOfThings/results.php?comp= weight&unit=oz&amt=0.001058219.

[73] Vosniadou, Stella, ed., *International Handbook of Research on Conceptual Change*, 2nd edition (2013), at 160.

[74] CA *rollo*, p. 30.

[75] CA *rollo*, p. 41.

[76] *Rollo*, p. 4.

[77] *People v. Casacop*, 755 Phil. 265, 274 (2015) [Per *J.* Leonen, Second Division].

[78] *Id.*

amount of the alleged illegal drug further call into question prosecution's claim that SPO1 Paller and SPO3 Magdadaro witnessed the scene.

Even if there was a sale, the *corpus delicti* was not proven as the chain of custody was defective.

The *corpus delicti* is the body of the crime that would establish that a crime was committed.[79] In cases involving the sale of drugs, the *corpus delicti* is the confiscated illicit drug itself,[80] the integrity of which must be preserved.[81]

Accused-appellant argues that the conduct of the post-seizure custody of the shabu allegedly recovered from him violated the chain of custody rule.[82] His contention is meritorious. The police officers' lapses are numerous and unjustified that there are serious grounds to doubt the preservation of the integrity of the *corpus delicti*.

To begin with, no evidence was adduced to show *specifically* how the police officers handled, stored, and safeguarded the seized shabu pending its offer as evidence. The records merely state:

a. PO1 Misa, as the poseur-buyer, transacted with accused-appellant with the buy-bust money. Upon receipt of the buy-bust money, accused-appellant gave PO1 Misa a plastic pack of white crystalline substance.
b. PO1 Misa turned over the specimen drug to SPO3 Magdadaro at the police station.
c. SPO3 Magdadaro marked the plastic pack of white crystalline substance as "AS."

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[79] *People v. Pagaduan*, 641 Phil. 432, 447 (2010) [Per *J*. Brion, Third Division].

[80] *Id*.

[81] *People v. Caiz*, G.R. No. 215340, July 13, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/215340.pdf> 1 [Per *J*. Leonen, Second Division].

[82] *Rollo*, p. 7.

d. SPO3 Magdadaro then drafted a letter-request for laboratory examination of the specimen drug signed by Chief Police Superintendent Armando Macolbacol Radoc.
e. PO1 Misa then delivered the letter-request for laboratory examination of the specimen drug, and the actual specimen drug marked as "AS" to the crime laboratory.
f. SPO2 Roma received the letter-request and the specimen drug.
g. SPO2 Roma immediately delivered the letter-request and the specimen drug to [PS]Insp. Acog, the forensic chemist of the PNP Crime Laboratory.
h. [PS]Insp. Acog made the chemical analysis and concluded that the specimen white crystalline substance tested positive for methylamphetamine hydrochloride.
i. [PS]Insp. Acog was presented before the court *a quo* for identification of the subject specimen marked as "AS."[83]

There was no showing that accused-appellant signed a receipt of the inventory of the pack of shabu, that it was marked in his presence, that photographs were taken, or that he was made to sign a confiscation receipt relating to the seized pack of shabu.[84]

This Court emphasizes that "ostensibly approximate compliance" does not suffice; rather, there must be actual compliance with Section 21 of Republic Act No. 9165.[85] Not doing so is tantamount to a failure to establish the *corpus delicti*, a crucial element of the crime charged.[86]

This case arose from a buy-bust operation. While a buy-bust operation can indeed enable authorities to uncover illicit transactions otherwise kept under wraps, this Court has recognized that such an operation poses a significant drawback—

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[83] *Id.* at 9–10.

[84] CA *rollo*, pp. 31–32.

[85] *People v. Holgado*, 741 Phil. 78, 94 (2014) [Per *J.* Leonen, Third Division].

[86] *Lescano v. People*, G.R. No. 214490, January 13, 2016<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/214490.pdf> 7 [Per *J.* Leonen, Second Division].

that is, "[i]t is susceptible to police abuse, the most notorious of which is its use as a tool for extortion."[87]

To avert such possibility, the prosecution must establish beyond reasonable doubt that the dangerous drug offered during trial was the same that was bought during the buy-bust operation.[88] The chain of custody rule under Republic Act No. 9165 fulfills this rigorous requirement.[89]

Section 1(b) of the Dangerous Drugs Board Regulation No. 01-02, which implements Republic Act No. 9165, explains chain of custody rule as follows:

> "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

This Court agrees with the Court of Appeals that the prosecution failed to follow the chain of custody rule under Section 21 of Republic Act No. 9165.

Paragraph 1 of Section 21 of the original Republic Act No. 9165 (2002) provides the requirements for ensuring the integrity and evidentiary value of the seized item:

> (1) The apprehending team having initial custody and control of the drugs *shall*, immediately after seizure and confiscation, *physically inventory* and *photograph* the same in the presence of [a] the accused or the person/s from whom such items

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[87] *People v. Dahil*, 750 Phil. 212, 226 (2015) [Per J. Mendoza, Second Division].

[88] *People v. De Leon*, 624 Phil. 786, 800 (2010) [Per J. Velasco Jr., Third Division].

[89] *Id.*

> were confiscated and/or seized, or his/her representative or counsel, [b] a representative from the media and the Department of Justice (DOJ), and [c] any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied)

This is reiterated in paragraph 1 of Section 21 of the amended[90] Republic Act No. 9165 (2013):

> (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 [a] the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, [b] with an elected public official and [c] 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. (Emphasis supplied)

The chain of custody rule is further clarified by Section 1(A) of the Guidelines on the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165, as amended (Chain of Custody Implementing Rules and Regulations).[91]

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[90] Amended by Rep. Act No. 10640.

[91] Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1 provides:

> Section 1. Implementing Guidelines. — 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:

The Chain of Custody Implementing Rules and Regulations require the apprehending team to mark, inventory, and photograph the evidence in the following manner:

A.Marking, Inventory and Photograph; Chain of Custody Implementing Paragraph "a" of the IRR

A.1. The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:

A.1.1. The marking, physical inventory and photograph of the seized/confiscated items shall be conducted where the search warrant is served.

A.1.2. The marking is the placing by the apprehending officer or the poseur-buyer of his/her initial and signature on the item/s seized.

A.1.3. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.

A.1.4. In cases when the execution of search warrant is preceded by warrantless seizures, the marking, inventory and photograph of the items recovered from the search warrant shall be performed separately from the marking, inventory and photograph of the items seized from warrantless seizures.

A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.

A.1.6. A representative of the NPS is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected.

A.1.7. To prevent switching or contamination, the seized items, which are fungible and indistinct in character, and which have been marked after the seizure, shall be sealed in a container or evidence bag and signed by the apprehending/seizing officer for submission to the forensic laboratory for examination.

First, the apprehending officer or the poseur-buyer must place his or her initials and signature on the seized item.[92] Here, PO1 Misa did not place his initials "RM" on the confiscated pack; rather, it was SPO3 Magdadaro who wrote "AS" on it,[93] presumably standing for accused-appellant's initials for Abundio Saragena, instead of the police officer's initials. It was also not shown whether PO1 Misa or SPO3 Magdadaro signed the plastic pack.

Second, in a warrantless search as in this case, the marking of the drug must be done in the presence of the accused-appellant[94] and at the earliest possible opportunity.[95] The earliest possible opportunity to mark the evidence is immediately at the place where it was seized, if practicable,[96] to avoid the risk that the

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A.1.8. In case of seizure of plant sources at the plantation site, where it is not physically possible to count or weigh the seizure as a complete entity, the seizing officer shall estimate its count or gross weight or net weight, as the case may be. If it is safe and practicable, marking, inventory and photograph of the seized plant sources may be performed at the plantation site. Representative samples of prescribed quantity pursuant to Board Regulation No. 1, Series of 2002, as amended, and/or Board Regulation No. 1, Series of 2007, as amended, shall be taken from the site after the seizure for laboratory examination, and retained for presentation as the *corpus delicti* of the seized/confiscated plant sources following the chain of custody of evidence.

[92] *See* Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.A.1.2.

[93] CA *rollo*, p. 41.

[94] *See* Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.A.1.3.

[95] *People v. Dahil*, 750 Phil. 212, 233–234 (2015) [Per *J.* Mendoza, Second Division].

[96] *See* Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.A.1.3.

seized item might be altered while in transit.[97] In *People v. Sabdula*:[98]

> [C]rucial in proving chain of custody is the marking of the seized drugs or other related items *immediately after they are 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*. Long before Congress passed R.A. No. 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs casts reasonable doubt on the authenticity of the *corpus delicti.*
>
> 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.[99] (Emphasis supplied, citation omitted)

Here, the records do not show why the officers had to wait to arrive at the police station[100] before marking the seized plastic pack. The earliest available opportunity to mark it was in accused-appellant's house. Likewise, there is no showing that the seized item was marked in the presence of accused-appellant. All that the prosecution established was that, while at the police station, PO1 Misa turned over the plastic pack to SPO3 Magdadaro, who marked it with the letters "AS."[101] Other details are left out for this Court to guess.

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[97] *People v. Dahil*, 750 Phil. 212, 233 (2015) [Per J. Mendoza, Second Division].

[98] 733 Phil. 85 (2014) [Per J. Brion, First Division].

[99] *Id*. at 95.

[100] *Rollo*, p. 5.

[101] *Id*.

As in *People v. Dahil*,[102] this Court cannot determine "how the unmarked drugs were handled," making it possible for the seized item to have been altered, thus:

> The Court must conduct guesswork on how the seized drugs were transported and who took custody of them while in transit. Evidently, the alteration of the seized items was a possibility *absent their immediate marking thereof.*[103] (Emphasis supplied)

Third, the physical inventory and photograph of the seized item must be done in the presence of (a) the accused, the accused's representative, or the accused's counsel; (b) any elected public official; *and* (c) a representative of the Department of Justice's National Prosecution Service or a media practitioner. These three (3) persons required by law should sign the copies of the inventory of the seized item and be given a copy of the certificate of inventory.[104] This insulates the buy-bust operation "from any taint of illegitimacy or irregularity."[105]

Here, it was not shown that the buy-bust team conducted a physical inventory or took photographs of the contraband after its confiscation. Moreover, none of the witnesses testified that (a) accused-appellant, his representative or counsel, (b) any elected official, and (c) a representative from the media or from the National Prosecution Service signed a confiscation receipt.

Section 1(A.1.6) of the Chain of Custody Implementing Rules and Regulations states that "[a] representative of the N[ational] P[rosecution] S[ervice] is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected."

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[102] 750 Phil. 212 (2015) [Per *J*. Mendoza, Second Division].

[103] *Id*. at 233.

[104] *See* Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.A.1.5.

[105] *People v. Mendoza*, 736 Phil. 749, 762 (2014) [Per *J*. Bersamin, First Division].

The presence of these three (3) persons required by law can be ensured in a planned operation such as a buy-bust operation. Here, the buy-bust operation was arranged and scheduled in advance: the police officers formed an apprehending team, coordinated with the Philippine Drug Enforcement Agency,[106] prepared the buy-bust money, and held a briefing.[107] Yet, they failed to ensure that a National Prosecution Office representative, or if unavailable, any media practitioner, would be present during the seizure of shabu. They also failed to ensure that any incumbent public official such as a barangay captain or kagawad would be there at the same time.

Securing the presence of these persons is not impossible. *Lescano v. People*[108] affirmed that it is not enough for the apprehending officers to merely mark the seized pack of shabu; the buy-bust team must also conduct a physical inventory and take photographs of the confiscated item in the presence of these persons required by law.[109]

Finally, the apprehending team shall "document the chain of custody each time a specimen is handled, transferred or presented in court until its disposal, and every individual in the chain of custody shall be identified following the laboratory control and chain of custody form."[110]

People v. Kamad[111] stated that the prosecution must prove four (4) links in the chain of custody of evidence. Read with the Chain of Custody Implementing Rules and Regulations, *Kamad* provided for the following steps to establish the links

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[106] *Rollo*, pp. 4-5.

[107] CA *rollo*, p. 40.

[108] *Lescano v. People*, G.R. No. 214490, January 13, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/214490.pdf> [Per *J.* Leonen, Second Division].

[109] *Id.* at 11.

[110] Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1. B.5.

[111] *People v. Kamad*, 624 Phil. 289 (2010) [Per *J.* Brion, Second Division].

necessary for a chain of custody of the specimen seized from the accused:

First, the apprehending officer seizes and then marks the dangerous drug taken from the accused.[112] The chain of custody of evidence must show the time and place that the seized item is marked and the names of the officers who marked it.[113]

Second, the apprehending officer turns over the seized dangerous drug to the investigating officer.[114] The chain of custody of evidence must establish the names of officers who inventoried, photographed, and/or sealed the seized item.[115]

Third, the investigating officer turns over the seized dangerous drug to the forensic chemist for laboratory examination.[116] The chain of custody of evidence must show the names of officers who had custody and received the evidence from one officer to another within the chain.[117]

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[112] *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per *J*. Brion, Second Division].

[113] Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.A.1.11 provides:

A.1.11. The chain of custody of evidence shall indicate the time and place of marking, the names of officers who marked, inventoried, photographed and sealed the seized items, who took custody and received the evidence from one officer to another within the chain, and further indicating the time and date every time the transfer of custody of the same evidence were made in the course of safekeeping until submitted to laboratory personnel for forensic laboratory examination. The latter shall continue the chain as required in paragraph B.5 below.

[114] *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per *J*. Brion, Second Division].

[115] *See* Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.A.1.11.

[116] *People v. Kamad,* 624 Phil. 289, 304 (2010) [Per *J*. Brion, Second Division].

[117] *See* Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.A.1.11.

Fourth, the forensic chemist turns over and submits the marked confiscated dangerous drug to the court.[118] Similarly, the chain of custody of evidence must show the names of officers who had custody and received the evidence from one officer to another within the chain.[119]

"[E]ach and every link in the custody must be accounted for" until the seized item is presented before the court.[120] In this case, there are gaps in the linkages in the chain of custody. Some key witnesses were absent during trial.

PO1 Misa, the poseur-buyer, was not presented in court.[121] As a result, prosecution has not established how the purported transaction with accused-appellant occurred.

PO1 Misa also delivered the drug specimen to the Philippine National Police Crime Laboratory for examination.[122] During the post-seizure custody and handling of the dangerous drug, a certain PO2 Roma received the specimen from PO1 Misa before delivering it to P/S Insp. Acog.[123] However, the prosecution failed to present the testimony of PO2 Roma, who was also part of the chain of custody. In *People v. Salcena*:[124]

[A]n *unbroken chain becomes indispensable* and essential in the prosecution of drug cases owing to its susceptibility to alteration,

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[118] *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per *J*. Brion, Second Division].

[119] *See* Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.A.1.11.

[120] *People v. Salcena*, 676 Phil. 357, 381 (2011) [Per *J*. Mendoza, Third Division].

[121] PO1 Misa allegedly "died months after the incident," but no proof of his death is attached to the petition. Prosecution also did not mention the date of his alleged death. *See* CA *rollo*, p. 41.

[122] *Rollo*, p. 5.

[123] *Id*.

[124] *People v. Salcena*, 676 Phil. 357 (2011) [Per *J*. Mendoza, Third Division].

tampering, contamination and even substitution and exchange. Accordingly, *each and every link in the custody must be accounted for, from the time the shabu was retrieved from [accused-appellant] during the buy-bust operation to its submission to the forensic chemist until its presentation before the R[egional] T[rial] C[ourt].* In the case at bench, the prosecution failed to do so.[125] (Emphasis supplied, citation omitted)

III

The chain of custody rule must be strictly complied with. *Mallillin v. People*[126] explained that strict compliance goes into the nature of the dangerous drug itself, this being the subject of prosecution under Republic Act No. 9165. Thus:

> 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 [narcotic substances,] 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.[127] (Emphasis supplied)

People v. Casacop[128] held that the buy-bust team "should have been more meticulous in complying with Section 21 of Republic Act No. 9165 to preserve the integrity of the seized

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[125] *Id*. at 381.

[126] *Mallillin v. People*, 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

[127] *Id*. at 588–589.

[128] *People v. Casacop*, 755 Phil. 265 (2015) [Per J. Leonen, Second Division].

shabu."[129] This is especially true where the weight of the seized item is a miniscule amount that can be easily planted and tampered with.[130]

The Court of Appeals correctly found that the police officers failed to comply with the chain of custody rule under Section 21 of Republic Act No. 9165.[131] However, this Court reverses the Court of Appeals judgment for erroneously applying the exception here.[132]

A proviso in the old Section 21(a) of Republic Act No. 9165 Implementing Rules and Regulations states that the failure to comply with the chain of custody rule may be excused in exceptional circumstances, *provided* that (a) there are justifiable grounds for it, and (b) the integrity and evidentiary value of the seized items were properly preserved:

> [N]on-compliance with these requirements [a] under justifiable grounds, [b] as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.[133]

The Court of Appeals disregarded the operative phrase—that the prosecution must provide "justifiable grounds" for noncompliance, in addition to showing that the prosecution maintained the integrity of the seized item.

In *People v. Jafaar*,[134] this Court held that the exception under then Section 21(a) of Republic Act No. 9165 Implementing

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[129] *Id.* at 283.

[130] *People v. Holgado,* 741 Phil. 78, 100 (2014) [Per *J.* Leonen, Third Division].

[131] *Rollo*, p. 7.

[132] *Id.* at 8.

[133] Then Implementing Rules and Regulations of R.A. No. 9165, Art. II, Sec. 21(a).

[134] *People v. Jaafar*, G.R. No. 219829, January 18, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/219829.pdf> [Per *J.* Leonen, Second Division].

Rules and Regulations "will only be triggered by the existence of a ground that justifies departure from the general rule."[135]

The Court of Appeals' ruling falls further in the face of Sections 1(A.1.9) and 1(A.1.10) of the Chain of Custody Implementing Rules and Regulations, which provide:

> A.1.9. Noncompliance, *[a] under justifiable grounds,* with the requirements of Section 21 (1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items *[b] provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.*
>
> A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of RA No. 9165, as amended, *shall be clearly stated in the sworn statements/affidavits of the apprehending/ seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/ confiscated items.* Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of RA No. 9165 shall be presented. (Emphasis supplied)

The Chain of Custody Implementing Rules and Regulations require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.[136]

Here, the prosecution has not given a justifiable ground for applying the exception. All it has done is to assert a self-serving claim that the integrity of the seized pack has been preserved[137] despite the numerous procedural lapses it has committed. The

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[135] *Id*. at 8.

[136] Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.A.1.10.

[137] CA *rollo*, pp. 64-71.

fatal errors of the apprehending team can only lead this Court to seriously doubt the integrity of the *corpus delicti*.

Law enforcers "cannot feign ignorance of the exacting standards under Section 21 of Republic Act No. 9165. [They] are presumed and are required to know the laws they are charged with executing."[138]

The prosecution's procedural shortcut finds no basis in fact or law. Its failure to comply with the chain of custody rule is equivalent to its failure to establish the *corpus delicti*, and therefore, its failure to prove that the crime was indeed committed.[139] In *People v. Dela Cruz*:[140]

> Non-compliance [with the chain of custody rule] is tantamount to failure in establishing identity of *corpus delicti*, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused.[141]

Accused-appellant is presumed innocent until the contrary is proved beyond reasonable doubt. The prosecution had the burden of overcoming such presumption, which it miserably failed to do so.

In closing, this Court reiterates its ruling in *People v. Holgado*:[142]

> 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

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[138] *People v. Jaafar*, G.R. No. 219829, January 18, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/219829.pdf> 10 [Per *J.* Leonen, Second Division].

[139] *People v. Pagaduan*, 641 Phil. 432, 449–450 (2010) [Per *J.* Brion, Third Division].

[140] 744 Phil. 816 (2014) [Per *J.* Leonen, Second Division].

[141] *Id.* at 827.

[142] 741 Phil. 78 (2014) [Per *J.* Leonen, Third Division].

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.[143]

WHEREFORE, premises considered, the Court of Appeals April 2, 2013 Decision in CA-G.R. CEB-CR-HC No. 00939 is **REVERSED** and **SET ASIDE**. Accused-appellant Abundio Mamolo Saragena is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is confined for any other lawful cause.

Let a copy of this decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) days from receipt of this decision the action he has taken. Copies shall also be furnished the Director General of the Philippine National Police and the Director General of the Philippine Drugs Enforcement Agency for their information.

The Regional Trial Court is directed to turn over the seized sachet of shabu to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgment be issued immediately.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

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[143] *Id*. at 100.

SECOND DIVISION

[G.R. No. 211004. August 23, 2017]

QUEEN ERRIKA L. SADDI, *petitioner, vs.* **MARICRIS RENOMERON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER, DEFINED; COMPLAINT FOR UNLAWFUL DETAINER, WHEN SUFFICIENT.— Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. It is settled that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

2. ID.; ID.; ID.; ID.; AN IMPROPER REMEDY WHEN RESPONDENT'S POSSESSION WAS UNLAWFUL FROM THE START; CASE AT BAR.— [P]etitioner failed to satisfy the requirement that her supposed act of tolerance was present right from the start of the possession by defendant. Petitioner failed to clearly allege who specifically permitted respondent to occupy the subject property before she sought to eject respondent from the property and how and when such tolerance came about. It is worth noting that the absence of the first requisite is important in the light of respondent's claim that she has been occupying the property as a co-owner thereof even before the property was purchased by petitioner. As respondent's possession was unlawful from the start, an action for unlawful detainer

would be an improper remedy. Without a doubt, the registered owner of real property is entitled to its possession. However, the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper remedy, and once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper. In this case, petitioner, as the plaintiff in the case below, failed to satisfy the essential requirement that plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered. Hence, the jurisdictional requirement of possession by mere tolerance of the vendee-owner had not been amply alleged and proven.

APPEARANCES OF COUNSEL

Nancy Villanueva Teylan for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review[1] of the Decision[2] of the Court of Appeals dated July 15, 2013, setting aside the Decision dated June 15, 2012 of the Regional Trial Court of Marikina, Branch 272 and dismissing petitioner's complaint for ejectment. Petitioner's motion for reconsideration was denied in a Resolution[3] dated January 20, 2014.

The facts are as follows:

On January 26, 2011, plaintiff-herein petitioner Queen Errika L. Saddi (*Saddi*) filed a complaint for ejectment[4] against

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Vicente S. E. Veloso (*Chairperson*), Twelfth Division, Court of Appeals, and concurred in by Associate Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr. (Members); *rollo,* pp. 22-37.

[3] *Id.* at 38.

[4] Docketed as Civil Case No. 11-8343, CA *rollo*, p. 29.

respondent Maricris Renomeron (*Renomeron*) before the Metropolitan Trial Court of Marikina City, Branch 75 (*MeTC*).

In her Complaint,[5] Saddi alleged that she is a resident of No. 18 Graphite Street, Twin River Subdivision, Parang, Marikina City, while the defendant, herein respondent Renomeron is a resident of No. 10 Graphite Street, Twin River Subdivision, Parang, Marikina City. On July 20, 2010, Saddi bought the property (120 square meters) located at No. 10 Graphite St., Twin River Subdivision, Parang, Marikina City from Rosalinda Restar-Ambata (*Ambata*), covered by TCT No. 009-2010001546 (in the name of Saddi).[6] The said property was formerly owned by the late Spouses Claro S. Restar and Concepcion T. Restar who died without issue.[7] The only heir of the Spouses Claro and Concepcion Restar is the sister of Claro S. Restar, Rosalinda Estar-Ambata.[8]

Saddi alleged that on August 4, 2010, while she was in prior possession of the property, as new owner, Renomeron, by strategy or stealth, introduced herself as the adopted daughter of Miguela T. Renomeron, the alleged sister of the late Concepcion Restar. Renomeron requested Saddi to allow her to stay in the subject property until August 8, 2010, since she was still looking for an apartment. Out of pity and consideration, Saddi allowed Renomeron to stay on the condition that she will leave the place on August 8, 2010 pursuant to an Eviction Letter[9] dated August 4, 2010. On August 8, 2010, Saddi requested Renomeron to leave or vacate the property so that she could renovate and introduce improvements thereon, but Renomeron refused to vacate the subject premises despite several demands, depriving Saddi of the actual physical possession of the said property. Saddi demanded what right Renomeron had for not vacating

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[5] *Id.*

[6] *Id*. at 37, 39.

[7] *Id*. at 34.

[8] *Id*. at 35.

[9] *Id*. at 42.

the premises despite her promise, but Renomeron could not show Saddi any document evincing her right over the property except for her bare claim that she is the adopted daughter of Miguela T. Renomeron.

Saddi alleged that Renomeron is a mere intruder in the subject property legally owned and registered in her name. She claimed that Renomeron prevented her from entering the property to make an inventory of the personal properties found thereat by padlocking the gates of the property.

Saddi referred the matter to the *barangay* for mediation and conciliation, which was futile because Renomeron refused to vacate the property. The Office of the Lupon Tagapamayapa of Barangay Parang issued to her a Certificate to File Action.[10]

On December 1, 2010, Saddi sent Renomeron a final demand letter[11] dated November 26, 2010, asking Renomeron to pay ₱3,000.00 as monthly rent beginning August 8, 2010 and to vacate the premises within 15 days from receipt of the demand letter.[12] Despite numerous demands, Renomeron failed and refused to vacate the property.

Saddi prayed for the trial court to render judgment in her favor and to order Renomeron and all persons claiming rights under her to vacate the premises; to pay her reasonable rent in the amount of ₱3,000.00 per month until she vacates the subject premises; to pay her moral damages in the amount of ₱25,000.00, attorney's fees in the amount of ₱50,000.00, appearance fee of ₱3,000.00 per hearing until the final determination of the case, and the costs of suit.

In her Answer,[13] defendant-herein respondent Maricris Renomeron specifically denied all the allegations in the Complaint except for the allegations on the respective address

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[10] *Id.* at 43.

[11] *Id.*at 44.

[12] *Id.* at 43.

[13] *Id.* at 45-71.

of the parties. By way of special and affirmative defenses, Renomeron alleged that Rosalinda Restar-Ambata is not the sole owner of the subject property, and that the Affidavit of Self-Adjudication executed by Ambata is null and void because she falsely declared that she is the only heir of the late Spouses Claro and Concepcion Restar.

Renomeron alleged that when Claro Restar died on September 8, 2004,[14] he was survived by his wife Concepcion[15] and other collateral relatives, including Rosalinda Restar-Ambata. When Concepcion Restar died on October 7, 2008,[16] she was survived by her sisters, namely, Miguela Tonido Renomeron (*Miguela*), Victoria Tonigo Manidlagan (*Victoria*) and Fe Lucinaro-Cesar (*Fe*). Miguela is the full-blood sister of Concepcion Restar, since they were born of the same parents, Pastor Dumagat Tonido (*Pastor*) and Graciana Acedera,[17] while Victoria and Fe are the half-blood sisters of Concepcion, as they were born of the same father, Pastor.[18] On March 1, 2009, Victoria died and was survived by her children, namely, Rodelio Tonido Manidlagan, Joan Tonido Manidlagan-Salceda, Julius Tonido Manidlagan, Restituto Tonido Manidlagan, Jr., Aris Tonido Manidlagan, and Marivic Tonido Manidlagan-Ambagan.[19] On June 16, 2010, Miguela died and was survived by her daughter Maricris Renomeron, the defendant and respondent herein.[20]

Renomeron claimed that the Deed of Sale between Saddi and Ambata over the property located at No. 10 Graphite Street, Twin River Subdivision, Parang, Marikina City is null and void, because Ambata could not have effectively transferred ownership of those undivided portions of the property that belong to the

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[14] *Id.* at 53.

[15] *Id.* at 55.

[16] *Id.* at 56.

[17] *Id.* at 58.

[18] *Id.* at 58-60.

[19] *Id.* at 61-68.

[20] *Id.* at 69-70.

other heirs and co-owners in accordance with the law on succession. The transfer of ownership over the property on account of the Deed of Sale executed between Saddi and Ambata would constitute an impossible service because there are other owners over the property who have even greater interest than Ambata. Renomeron contends that Saddi is not a buyer in good faith because she did not inquire as to the true ownership of the property. Considering that Saddi knew that Renomeron was occupying the subject property since they are neighbors, it should have warned Saddi that Renomeron had a right to occupy the same, thus, requiring her to make the necessary inquiry on her right to occupy the same.

Renomeron claimed that she has been occupying the subject property even before August 4, 2010. Hence, she never introduced herself to Saddi as the "adopted" daughter of Miguela T. Renomeron just to have an accommodation while looking for an apartment. Renomeron stated that she is the daughter of Miguela T. Renomeron and attached her Certificate of Live Birth[21] to her Answer.

Further, Renomeron stated that there can be no strategy or stealth on her part, because as alleged in the complaint, Saddi herself allowed her to stay in the subject property. She is not in possession of the property because of the tolerance of the owner, but, rather, she is in possession of the property as an heir or co-owner even before the alleged sale of the property. Renomeron alleged that she is not an intruder because the Deed of Sale over the property executed by Ambata in favor of Saddi, on the basis of which the property subject matter of this case was registered in the name of Saddi, is null and void. Renomeron alleged that she did not receive the final demand letter sent by Saddi on December 1, 2010.

Preliminary conference was conducted and terminated on August 17, 2011.

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[21] *Id.* at 70.

In her Position Paper,[22] plaintiff-herein petitioner Saddi stated, among others that were already alleged in the Complaint, that Renomeron was not in prior physical possession of the property. From the time that the subject property was sold to her, she already had the actual, material and physical possession of the property by operation of law. The allegation of Renomeron that she is an alleged heir is an issue that should be ventilated in another forum and not in an ejectment case where the only issue to be resolved is the issue of possession.

In her Position Paper,[23] defendant-herein respondent Renomeron averred that she is entitled to the physical possession of the property being a co-owner thereof and elaborated thereon as already alleged in her Answer. She claimed that she has been residing at the subject property even before Saddi bought the same in July 2010. Even her mother Miguela Tonido Renomeron resided at the subject property as shown in her given address in her Death Certificate,[24] which is 10 Graphite Street, Twin River Subdivision, Parang, Marikina City. She could not have employed strategy or stealth to acquire possession over the property because she was already in possession of the same even before Saddi bought the property. Possession of a hereditary property is deemed transmitted to the heir without interruption and from the moment of the death of the decedent, in case inheritance is accepted.[25]

The MeTC stated that the issues raised by the parties are: (1) Whether or not defendant (Renomeron) employed strategy or stealth in entering the subject premises and, thus, is a mere intruder and not in prior physical possession of the subject property for which an action for ejectment is proper; (2) whether or not plaintiff (Saddi) is entitled to damages and to reasonable rent; and (3) whether or not the defendant (Renomeron) is entitled to the physical possession of the subject property.[26]

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[22] *Id*. at 107-116.

[23] *Id*. at 72-106.

[24] *Id*. at 69.

[25] *Id.* at 76, citing Article 533 of the New Civil Code.

[26] CA *rollo*, p. 120.

The MeTC's Ruling

In a Decision dated November 2, 2011, the MeTC held that plaintiff- herein petitioner Saddi is entitled to the possession of the subject property.

The MeTC held that under Section 1, Rule 70 of the Rules of Court, a person deprived of the possession of any land or building, or a lessor, vendor, *vendee*, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action for unlawful detainer against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

The MeTC found that Renomeron's stay in the subject property was not through strategy or stealth, because as alleged in the Complaint, Saddi herself allowed Renomeron to stay in the subject property after she purchased it from Ambata on July 20, 2010. When Saddi terminated the tolerance she extended to Renomeron and demanded that she vacate the subject property and the latter refused, Renomeron's right to the possession of the property had expired and she is considered to be unlawfully detaining the property.[27]

The MeTC stated that while Renomeron claims that she is in prior physical possession of the subject property in the concept of an heir and part owner thereof, it is a well-settled rule that in ejectment cases, the only issue that need be resolved is the physical or material possession of the property involved and not the ownership thereof.[28] Moreover, the issues regarding the validity of the Deed of Sale, the Affidavit of Self-Adjudication

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[27] *Id*.

[28] *Id.* at 121, citing *Tecson v. Gutierrez*, 493 Phil. 132, 138 (2005); *Pajuyo v. Court of Appeals*, 474 Phil. 557, 594 (2004).

and the title in the name of Saddi can only be assailed in the action expressly instituted for that purpose.[29]

The MeTC held that Saddi is not entitled to moral damages. In forcible entry and unlawful detainer, the only damage that can be recovered is the fair rental value or reasonable compensation for the use and occupation of the leased property as well as attorney's fees and cost of suit.[30]

The dispositive portion of the Decision of the MeTC reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff, Queen Errika L. Saddi, and against the defendant, Maricris Renomeron, and all other persons claiming rights under her, as follows:
>
> a) Ordering the defendant and all persons claiming right under her to vacate the subject premises and peacefully surrender possession thereof to the plaintiff;
>
> b) Ordering the defendant to pay plaintiff ₱3,000.00 per month as reasonable compensation for the use and occupation of the subject premises computed from November 26, 2010 until the subject premises are vacated;
>
> c) Ordering the defendant to pay plaintiff the amount of ₱10,000.00 as and by way of attorney's fees; and
>
> d) Ordering the defendant to pay the costs of suit.
>
> SO ORDERED.[31]

Renomeron appealed the MeTC Decision to the Regional Trial Court of Marikina City, Branch 272 (*RTC*) and raised these issues: (1) The lower court erred in holding that in ejectment cases, the only issue that needs to be resolved is the physical or material possession of the property involved and not the ownership thereof; and (2) the lower court erred in holding that there is unlawful detainer.

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[29] *Id.,* citing *Apostol v. Court of Appeals*, 476 Phil. 403, 414 (2004).

[30] *Id.,* citing *Teraña v. Judge De Sagun*, 605 Phil. 22, 41 (2009); Sec. 17, Rule 70, Rules of Court.

[31] *Id.* at 121.

The RTC's Ruling

In a Decision dated June 15, 2012, the RTC affirmed the MeTC Decision. It held:

In the case at bar, the herein plaintiff presented Transfer Certificate of Title No. 009-2010001546 as proof of her ownership of the subject property. Hence, more than a bare allegation is required to defeat the face value of plaintiff's TCT, which enjoys a legal presumption of regularity of issuance (*Heirs of Velasquez vs. CA, 382 Phil. 438*) although this Court is not unmindful of the ruling that the mere issuance of a TCT does not exclude the possibility that the property may be under co-ownership, as what the defendant-appellants are alleging. However, the adjudication made regarding the issue of ownership should be regarded as provisional and would not bar the filing of any action involving title to the property by the same parties. (*De Luna vs. CA, et al., 212 SCRA 276*). The foregoing doctrine is a necessary consequence of the nature of forcible entry and unlawful detainer cases where the only issue to be settled is the physical or material possession over the real property, that is, possession *de facto* and not possession *de jure.*

Anent the second issue, a scrutiny of the Complaint clearly shows that plaintiff-appellee intended recovery of possession over the subject property in that her claim for possession is supported by the execution of the Affidavit of Self-Adjudication by Rosalinda Ambata Restar marked as Annex "B", a Deed of Absolute Sale marked as Annex "C", and TCT No. 0092010001546 under the name of the herein plaintiff-appellee, Queen Errika Saddi, evidencing the transfer of ownership over the property. As found by the court *a quo*, the plaintiff allowed defendant to stay in the subject property after she purchased it from Rosalinda Ambata Restar. When the plaintiff asked the defendant to vacate the same, as shown by the Eviction Letter addressed to the defendant-appellant which even reflects her signature therein, and defendant refused to do so, the latter's possession by tolerance became unlawful. Pursuant to Section 1, Rule 70 of the Rules of Court, there is unlawful detainer when one unlawfully withholds possession of the property after the expiration or termination of his right to hold possession under any contract, express or implied. x x x[32]

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[32] *Id.* at 131.

The motion for reconsideration of Renomeron was denied by the RTC in its Order[33] dated July 16, 2012.

Renomeron filed a petition for review before the Court of Appeals, arguing that the RTC gravely erred in affirming the decision of the MeTC. She contended that: (1) she is entitled to the physical possession of the subject property as a co-owner, being one of Concepcion Restar's heirs, as the child of Miguela, Concepcion Restar's sister; (2) she has been residing at the subject property as evidenced by the Death Certificate of Miguela wherein it was indicated therein that her residence was "No. 10 Graphite St., Twin River Subdivision 2, Parang, Marikina City," the address of the subject property; (3) Ambata had no right to self-adjudicate the subject property to herself as there are other heirs, including herself (Renomeron); (4) the Deed of Sale between Ambata and Saddi is void as there are other heirs/co-owners of the property, including herself; (5) Saddi is a buyer in bad faith; and (6) she (Renomeron) and Saddi are neighbors, so Saddi should have known that she has been living in the subject property.

The CA's Ruling

The Court of Appeals stated that well settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint. In forcible entry, the plaintiff must allege in the complaint and prove that he was in prior physical possession of the property in dispute until he was deprived thereof by the defendant by any of the means provided in Section 1, Rule 70 of the Rules either by force, intimidation, threat, strategy or stealth.[34] In unlawful detainer, there must be an allegation in the complaint of how the possession of defendant started or continued, that is, by virtue of lease or any contract, and that defendant holds possession of the land or building "after the

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[33] *Id.* at 138.

[34] *Rollo,* p. 32, citing *Quizon v. Juan*, 577 Phil. 470, 477-478 (2008).

expiration or termination of the right to hold possession by virtue of any contract, express or implied."[35]

The Court of Appeals said that both the MeTC and the RTC considered the case as one for unlawful detainer, but the pertinent allegations in the Complaint read:

x x x x x x x x x

3. On **July 20, 2010**, plaintiff bought the property located at No. 10 Graphite Street, Twin River Subdivision, Parang, Marikina City from Rosalinda Restar-Ambata, the only heir, and covered by TCT No. 009-2010001546. The said property was formerly owned by the late Spouses Claro S. Restar and Concepcion T. Restar. Spouses Restar that [sic] died intestate and without an [sic] issue and the only heir is the sister of Claro S. Restar herein Rosalinda Restar Ambata. Photocopy of the previous title, Affidavit of Self-Adjudication, the Deed of Sale and the new title in the name of the plaintiff are hereto attached as **Annexes "A", "B", "C" and "D"** and made an integral part of this Complaint.

4. On **August 4, 2010**, while plaintiff is in prior physical possession of the property as new owner, defendant by **strategy or stealth**, introduced [herself] to the plaintiff as the "adopted daughter" of Miguela T. Renomeron[,] herein alleged sister of the late Concepcion Restar, requested plaintiff to accommodate or grant her to stay in the subject property until August 8, 2010 since she was still looking for an apartment. Out of pity and consideration, plaintiff allowed defendant to stay on the condition that she will leave the place on August 8, 2010 pursuant to an eviction letter dated August 4, 2010. x x x

5. However, after **August 8, 2010**, when requested by the plaintiff to leave or vacate so that she could start renovating and introduce improvement over the said property, defendant refused to vacate despite several demands and thus deprived plaintiff of actual, material or physical possession of said property.

x x x x x x x x x[36]

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[35] *Id.*

[36] CA *rollo*, pp. 29-30. (Emphasis in the original)

The Court of Appeals found that Saddi's allegations in her Complaint ran counter to the requirements of an unlawful detainer suit that the possession of the defendant be originally legal and his/her possession was permitted by the owner through an express or implied contract.[37] The appellate court said that in this case, paragraph 4 of the Complaint clarified that Renomeron's occupancy was inceptively unlawful as she allegedly employed "strategy or stealth" in gaining possession of the property. In an unlawful detainer case, the defendant's possession must inceptively be legal and becomes illegal only upon the plaintiff's demand for the defendant to vacate the property and the defendant's subsequent refusal.[38] Hence, the Court of Appeals held that Saddi took a misstep in filing her suit below.

The Court of Appeals stated that although Saddi alleged that she merely tolerated Renomeron's occupancy, the Eviction Letter[39] dated August 4, 2010, however, reads:

To: Ms. Maricris Renomeron
#10 Graphite St. Twin River
Subdivision Parang, Marikina City

August 04, 2010

Eviction Letter

This is to inform you, that I, Queen Errika Saddi, am the new owner of the house and lot located at #10 Graphite St. Twin River Subdivision, Parang Marikina City, requesting for you to vacate the said place. I'm giving you 4 days (August 05, 2010 to August 08, 2010) to transfer or move-out all of your belongings in the said premises or we will do some legal actions.

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[37] *Rollo,* p. 33, citing *Jose v. Alfuerto*, 699 Phil. 307, 316 (2012).

[38] *Id.*

[39] CA *rollo*, p. 42.

Thank you

(Sgd.)
Queen Errika Saddi

(Sgd.)
Maricris Renomeron

(Sgd.)
Ruby Rowena L. Saddi

The Court of Appeals found that the pertinent allegations in the Complaint as well as the tenor of the Eviction Letter contradict, rather than support, Saddi's theory that her cause of action is for unlawful detainer. *First*, her arguments advance the view that Renomeron's occupation of the property was unlawful at its inception, as she allegedly entered the property through "strategy or stealth;" also, the "tolerated stay" as stated in the Eviction Letter was in fact a period for her to pack up her things. *Second*, they contradict the essential requirement in unlawful detainer cases that plaintiff's supposed act of sufferance or tolerance must be present right from the start of a possession that is later sought to be recovered.[40]

The Court of Appeals held:

> The tenor of the Eviction Letter likewise implies that private respondent was purportedly evicting the petitioner as the former is the new owner of the property. However, it has been held that complainants in an unlawful detainer case cannot simply anchor their claims on the validity of the owner's title. Possession *de facto* must also be proved. A close assessment of the law and the concept of the word "tolerance" confirms Our view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer - not of forcible entry. x x x[41]

The Court of Appeals stated that an ejectment case cannot be a substitute for a full-blown trial for the purpose of determining rights of possession or ownership.

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[40] *Rollo*, pp. 34-35.

[41] *Id.* at 35, citing *Unida v. Heirs of Urban*, 499 Phil. 64, 70 (2005), citing *Sarona, et al. v. Villegas*, *et al.*, 131 Phil. 365, 373 (1968).

The dispositive portion of the Decision of the Court of Appeals reads:

> WHEREFORE, the petition for review is GRANTED. The assailed June 15, 2012 Decision is SET ASIDE. The Complaint for Ejectment docketed as Civil Case No. 11-8343 before the Metropolitan Trial Court of Marikina City, Branch 75, is hereby DISMISSED.
>
> SO ORDERED.[42]

Saddi filed this petition, raising this issue:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE METROPOLITAN TRIAL COURT AND THE REGIONAL TRIAL COURT OF MARIKINA AND IN DECLARING THAT THE HEREIN PETITIONER SHOULD HAVE FILED A CASE FOR *ACCION PUBLICIANA* INSTEAD OF EJECTMENT.[43]

The issue is whether or not petitioner's Complaint against respondent had sufficiently alleged and proven a cause of action for unlawful detainer.

Petitioner contends that the Court of Appeals failed to take into consideration that the tolerance or permission given by her to the respondent was from the beginning of her possession when she stepped into the shoes of the seller. Petitioner states that she is the registered owner of the subject property and is in possession of the property from the time it was sold to her by the seller by operation of law. Respondent was allowed to occupy only a portion of the property, but when she (petitioner) allowed her to stay in the meantime, respondent refused to vacate the premises after the lapse of the period given to her and occupied the entire property, depriving her (petitioner) of actual physical possession of the subject property.

In her Comment,[44] respondent contends that petitioner cannot claim that she merely tolerated her (respondent's) possession

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[42] *Rollo*, p. 37.

[43] *Id.* at 11.

[44] *Id.* at 57-73.

of the subject property when petitioner only stepped in after the spurious sale between her and Ambata, considering that she (respondent) has been in possession of the property even before the said sale on July 20, 2010. In fact, her mother, Miguela (heir of Concepcion, being her full-blood sister), was residing in the said property with her. It was stated in Miguela's Death Certificate that her residence is at No. 10 Graphite Street, Twin River Subdivision 2, Parang, Marikina City. Likewise, in item number 25 of the Death Certificate, it is shown that she is the informant therein: Maricris Renomeron, daughter of the deceased Miguela, and she has the same address as that of the deceased. Respondent claims that she is entitled to the physical possession of the subject property and she may not be ejected from the property as her possession of the same is by virtue of being a co-owner thereof.

The Court's Ruling

The petition is unmeritorious. Unlawful detainer is not the proper remedy for the instant case.

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.[45]

It is settled that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

(1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
(2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
(3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

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[45] *Canlas v. Tubil*, 616 Phil. 915, 924 (2009).

(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[46]

In ***Spouses Golez v. Heirs of Bertulo***,[47] the Court held:

> To justify an action for unlawful detainer, it is essential that the plaintiff's supposed acts of **tolerance must have been present right from the start of the possession** which is later sought to be recovered. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy.

The allegations in the complaint determine both the nature of the action and the jurisdiction of the court.[48]

Paragraph 4 of the Complaint alleged that **on August 4, 2010**, petitioner, as the new owner of the subject property, allowed respondent to stay in the subject property on the condition that respondent will leave the place on August 8, 2010 pursuant to an Eviction Letter **dated August 4, 2010**, which Eviction Letter was attached to the Complaint as Annex "E." The Eviction Letter **dated August 4, 2010**, however, states that petitioner, as new owner, was requesting respondent to vacate the said place and was giving her four days to transfer or move out all her belongings in the said premises, evincing that respondent was in possession of the property even before August 4, 2010, the date when petitioner alleged that respondent asked her permission to stay in the property. Hence, as found by the Court of Appeals, the alleged tolerated four-day stay was actually for Renomeron to pack up her belongings from the premises and leave. Obviously, Renomeron was in prior possession of the property as petitioner was ejecting her from the property and gave her four days to pack up her belongings and vacate the property. Thus, petitioner failed to satisfy the requirement that her supposed act of tolerance was present right from the start of the possession by defendant.

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[46] *Cabrera v. Getaruela*, 604 Phil. 59, 66 (2009), citing *Fernando v. Spouses Lim*, 585 Phil. 141, 155-156 (2008).

[47] G.R. No. 201289, March 30, 2016.

[48] *Id.*

Petitioner failed to clearly allege who specifically permitted respondent to occupy the subject property before she sought to eject respondent from the property and how and when such tolerance came about. It is worth noting that the absence of the first requisite is important in the light of respondent's claim that she has been occupying the property as a co-owner thereof even before the property was purchased by petitioner. As respondent's possession was unlawful from the start, an action for unlawful detainer would be an improper remedy.

Without a doubt, the registered owner of real property is entitled to its possession.[49] However, the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property.[50] To recover possession, he must resort to the proper remedy, and once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper.[51] In this case, petitioner, as the plaintiff in the case below, failed to satisfy the essential requirement that plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered. Hence, the jurisdictional requirement of possession by mere tolerance of the vendee-owner had not been amply alleged and proven.

In fine, the Court of Appeals did not commit reversible error in dismissing petitioner's complaint for unlawful detainer.

WHEREFORE, the Decision of the Court of Appeals dated July 15, 2013 and its Resolution dated January 20, 2014 in CA-G.R. SP No. 125915 setting aside the Decision dated June 15, 2012 of the Regional Trial Court of Marikina, Branch 272 and dismissing the Complaint for Ejectment are hereby **AFFIRMED**.

SO ORDERED.

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[49] *Suarez v. Sps. Emboy,* 729 Phil. 315, 329 (2014).

[50] *Id.*

[51] *Id.*

Carpio (*Chairperson*), *Perlas-Bernabe*, and *Reyes, Jr., JJ.,* concur.

Caguioa, J., on leave.

SECOND DIVISION

[G.R. No. 216491. August 23, 2017]

THE HEIRS OF PETER DONTON, through their legal representative, FELIPE G. CAPULONG, *petitioners, vs.* **DUANE STIER and EMILY MAGGAY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS.— At the outset, the Court deems it necessary to underscore that a re-examination of factual findings cannot be done acting on a petition for review on *certiorari* because the Court is not a trier of facts but reviews only questions of law. Thus, in petitions for review on *certiorari*, only questions of law may generally be put into issue. This rule, however, admits of exceptions, such as **when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record** and **when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.** Finding a confluence of certain exceptions in this case, the general rule that only legal issues may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court does not apply, and the Court retains the authority to pass upon the evidence presented and draw conclusions therefrom.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; MEANS PROBABILITY OF THE TRUTH, OR EVIDENCE WHICH IS MORE CONVINCING TO THE COURT AS WORTHIER OF BELIEF THAN THAT WHICH IS OFFERED IN OPPOSITION THERETO.— In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." It is a phrase which, in the last analysis, means probability of the truth, or evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.

3. ID.; ID.; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PROOF OF GENUINENESS OF HANDWRITING; THE FACT OF FORGERY CAN BE ESTABLISHED BY A COMPARISON BETWEEN THE ALLEGED FORGED SIGNATURE AND THE AUTHENTIC AND GENUINE SIGNATURE OF THE PERSON WHOSE SIGNATURE IS THEORIZED TO HAVE BEEN FORGED.— [F]orgery, as a rule, cannot be presumed and must be proved by clear, positive and convincing evidence, and the burden of proof lies on the party alleging forgery — in this case, petitioners. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.

4. ID.; ID.; ID.; ID.; ID.; A FINDING OF FORGERY DOES NOT DEPEND ENTIRELY ON THE TESTIMONIES OF HANDWRITING EXPERTS BECAUSE THE JUDGE MUST CONDUCT AN INDEPENDENT EXAMINATION OF THE QUESTIONED SIGNATURE IN ORDER TO ARRIVE AT A REASONABLE CONCLUSION AS TO ITS AUTHENTICITY.— [T]he opinion of handwriting experts is not necessarily binding upon the court, the expert's function being to place before the court data upon which the court can form its own opinion. This principle holds true especially when the question involved is mere handwriting similarity or dissimilarity, which can be determined by a visual comparison of specimens of the questioned signatures with those of the

currently existing ones. A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity.

5. ID.; ID.; ADMISSION AGAINST INTEREST; BINDS THE PERSON WHO MAKES THE SAME, AND ABSENT ANY SHOWING THAT THIS WAS MADE THROUGH PALPABLE MISTAKE, NO AMOUNT OF RATIONALIZATION CAN OFFSET IT.— More than the Certification issued by the BOI, which clearly states that Stier is an American citizen, the records contain other documents validating the information. For instance, in paragraph 1 of respondents' Answer with Counterclaim, they *admitted* paragraphs 1, 2, and 3 of the Complaint insofar as their personal circumstances are concerned x x x. Similarly, one of the attachments to the Manifestation filed by respondents before the RTC is an Affidavit executed by Stier himself x x x. The x x x statements made by Stier are *admissions against interest* and are therefore binding upon him. An admission against interest is the best evidence which affords the greatest certainty of the facts in dispute since no man would declare anything against himself unless such declaration is true. Thus, an admission against interest binds the person who makes the same, and absent any showing that this was made through palpable mistake, no amount of rationalization can offset it, especially so in this case where respondents failed to present even one piece of evidence in their defense.

6. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; ALIENS, WHETHER INDIVIDUALS OR CORPORATIONS, HAVE BEEN DISQUALIFIED FROM ACQUIRING LANDS OF THE PUBLIC DOMAIN AS WELL AS PRIVATE LANDS.— [T]he courts *a quo* erred in ruling that Stier's American citizenship was not established in this case, effectively rendering the sale of the subject property as to him void *ab initio*, in light of the clear proscription under Section 7, Article XII of the Constitution against foreigners acquiring real property in the Philippines x x x. Thus, lands of the public domain, which include private lands, may be transferred or conveyed only to individuals or entities qualified to acquire or hold private lands or lands of the public domain.

Aliens, whether individuals or corporations, have been disqualified from acquiring lands of the public domain as well as private lands.

7. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; VOID CONTRACTS; A CONTRACT THAT VIOLATES THE CONSTITUTION AND THE LAW IS NULL AND VOID AND VESTS NO RIGHTS AND CREATES NO OBLIGATIONS.— [T]he sale of the subject property to Stier is in violation of the Constitution; hence, null and void *ab initio*. A contract that violates the Constitution and the law is null and void and vests no rights and creates no obligations. It produces no legal effect at all. Furthermore, Stier is barred from recovering any amount that he paid for the subject property, the action being proscribed by the Constitution.

APPEARANCES OF COUNSEL

Capulong & Ladrido for petitioners.

The Law Firm of Habitan Ferrer Chan Tagapan Habitan & Associates 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 June 13, 2014 and the Resolution[3] dated January 21, 2015 rendered by the Court of Appeals (CA) in CA-G.R. CV No. 97138, which affirmed the Decision[4] dated December 14, 2009 and the Order[5] dated May 4, 2011 of the

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[1] *Rollo*, pp. 57-65.

[2] *Id.* at 82-92. Penned by Associate Justice Normandie B. Pizarro with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Manuel M. Barrios concurring.

[3] *Id.* at 93-94.

[4] Records, Vol. II, pp. 418-424. Penned by Judge Ma. Luisa C. Quijano-Padilla.

[5] *Id.* at 455-457.

Regional Trial Court of Quezon City, Branch 215 (RTC) dismissing the complaint for annulment of title and reconveyance of property with damages originally filed by now-deceased[6] Peter Donton (Donton), the predecessor of herein petitioners Heirs of Peter Donton (petitioners), for insufficiency of evidence.

The Facts

The subject matter of this case is a parcel of land with improvements located at No. 33, Don Jose Street, Murphy, Cubao, Quezon City, consisting of 553.60 square meters,[7] more or less (subject property). It was previously covered by Transfer Certificate of Title (TCT) No. N-137480[8] of the Registry of Deeds of Quezon City under the name of Donton until its registration in the names of respondents Duane Stier (Stier) and Emily Maggay (Maggay; collectively, respondents) under TCT No. N-225996.[9]

Sometime in June 2001, while Donton was in the United States, he discovered that herein respondents took possession and control of the subject property, as well as the management of his business operating thereat.[10] Donton's lawyers in the Philippines made demands upon respondents to vacate the subject property and to cease and desist from operating his business, but to no avail.[11] Thus, Donton was forced to return to the Philippines, where he learned that respondents, through alleged fraudulent means, were able to transfer the ownership of the subject property in their names.[12] Accordingly, his title, TCT

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[6] See Certificate of Death; records, Vol. I, p. 263, including dorsal portion thereof.

[7] *Id.* at 12.

[8] *Id.* at 10.

[9] *Id.* at 11.

[10] Records, Vol. II, p. 418.

[11] *Id.*

[12] *Id.* at 418-419.

No. N-137480, had been cancelled and a new one, TCT No. N-225996, had been issued in respondents' names.

Hence, he filed the instant complaint[13] for annulment of title and reconveyance of property with damages against respondents and the Register of Deeds of Quezon City, alleging that the signature on the Deed of Absolute Sale[14] dated July 16, 2001, by virtue of which he purportedly sold the subject property to respondents, was a forgery.[15] He denied signing or executing the document in favor of respondents, especially considering that on the date of its purported execution, *i.e.*, July 16, 2001, he was allegedly still in the United States, having departed from the Philippines on June 27, 2001 and returned only on August 30, 2001.[16] He averred that respondents conspired with the employees of the Registry of Deeds of Quezon City to defraud him, and that Stier is an American citizen and a non-resident alien who is, therefore, not allowed by law to own any real property in the Philippines.[17] Accordingly, he prayed that TCT No. N-225996 in respondents' names be annulled and cancelled; that a new title be issued in his name as the rightful owner of the subject property; and that respondents be ordered to pay him ₱1,000,000.00 as moral damages, ₱200,000.00 as exemplary damages, ₱200,000.00 as attorney's fees, and ₱200,000.00 as litigation expenses.[18]

In their Answer with Counterclaim,[19] respondents claimed that the subject property had been lawfully transferred to them, asserting that on September 11, 1995, Donton executed an Occupancy Agreement[20] whereby he acknowledged that Stier

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[13] Records, Vol. I, pp. 1-6.

[14] *Id.* at 194-195.

[15] *Id.* at 3.

[16] See Copy of Donton's passport with immigration stamps; *id.* at 196-197.

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

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

[19] *Id.* at 35-40.

[20] *Id.* at 41.

had been residing thereat since January 5, 1995; that Stier had extended a loan to him in the amount of ₱3,000,000.00 on July 5, 1997, secured by a mortgage over the subject property and its improvements; and that until full payment thereof, Donton allowed Stier to occupy the same. Respondents likewise claimed that Donton executed a Special Power of Attorney (SPA) dated September 11, 1995 in favor of Stier, giving him full authority to sell, mortgage, or lease the subject property.[21] Unfortunately, Donton failed to pay his obligation to Stier; thus, they initially executed a "unilateral contract of sale"[22] dated June 25, 2001 over the subject property. Eventually, however, they executed the Deed of Absolute Sale dated July 16, 2001. As such, respondents argued that Donton cannot feign ignorance of the sale of the subject property to them. By way of counterclaim, respondents prayed for the awards of moral damages in the amount of ₱1,000,000.00, exemplary damages in the amount of ₱200,000.00, and ₱400,000.00 as attorney's fees, and litigation expenses.[23]

During trial, Donton presented the findings of Rosario C. Perez (Perez), Document Examiner II of the Philippine National Police (PNP) Crime Laboratory in Camp Crame, who, after comparing the alleged signature of Donton on the Deed of Absolute Sale to his standard ones,[24] found "significant divergences in the manner of execution, line quality, stroke structure, and other individual handwriting characteristics" between them, and concluded that they were not written by one and the same person.[25] Perez herself testified on the results of her examination.

In an Order[26] dated February 9, 2004, the RTC allowed the substitution of petitioners as plaintiffs after Donton passed away on November 22, 2003.

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[21] *Id*. at 37.

[22] *Id*. at 42.

[23] *Id*. at 39.

[24] See Sample Signature of Donton; *id*. at 215.

[25] See Questioned Document Report No. 153-02; *id*. at 203-204.

[26] *Id*. at 273.

On the other hand, respondents waived[27] their right to present their evidence.

The RTC Ruling

In a Decision[28] dated December 14, 2009, the RTC dismissed the complaint on the ground of *insufficiency of evidence*,[29] finding that the Deed of Absolute Sale, being a public and notarial document, enjoys the presumption of regularity, and thus cannot be simply defeated by Danton's bare allegation of forgery of his signature thereon.[30]

Likewise, the RTC refused to give probative weight to the expert testimony offered by Perez after the latter admitted that she conducted the examination of the sample signatures not by virtue of a court order, but at the instance of Donton and the Criminal Investigation and Detection Group (CIDG).[31] She also admitted that she did not know the source of the documents procured by the CIDG that she used in her examination. On this score, the RTC held that the forensic examination and testimony of Perez were self-serving,[32] further explaining that it was not bound to accept the findings of a handwriting expert.[33] Therefore, the same cannot be used to invalidate the Deed of Absolute Sale and the title issued to respondents.

Petitioners moved[34] to set aside the RTC Decision, which the RTC treated as a motion for reconsideration and which it subsequently denied in an Order[35] dated May 4, 2011. In denying

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[27] Records, Vol. II, p. 416.

[28] *Id*. at 418-424.

[29] *Id*. at 424.

[30] *Id*. at 421.

[31] *Id*. at 422.

[32] *Id*.

[33] *Id*. at 424.

[34] *Id*. at 431-435.

[35] *Id*. at 455-457.

petitioners' motion, the RTC reiterated the disquisitions in its Decision and added that petitioners failed to prove that Stier is an American citizen.[36] It explained that the only evidence that petitioners presented was a Certification[37] from the Bureau of Immigration (BOI) certifying that one Duane Otto Stier, an American citizen, visited the Philippines on September 2, 2001 and left on October 6, 2001. As such, the RTC reasoned that the same was not sufficient to prove Stier's citizenship; at most, it merely proved the alleged travel of the latter.[38] Similarly, petitioners failed to show that Stier is married, as alleged in the complaint. With respect to petitioners' contention that Maggay had no capacity to acquire real property, the RTC found the same to be bereft of probative value, being merely an opinion.[39] Finally, the allegation that Donton was in the United States from June 27, 2001 until August 30, 2001, and therefore not in the Philippines on July 16, 2001 at the time of the execution of the sale lost its credibility in the face of his admission that he was in the Philippines in the last week of July 2001.[40]

Aggrieved, petitioners appealed[41] to the CA.

The CA Ruling

In a Decision[42] dated June 13, 2014, the CA denied the appeal and affirmed the assailed RTC Decision and Order, finding that petitioners failed to substantiate their allegation that Donton's signature on the Deed of Absolute Sale was forged.[43] It held that the aforesaid document was notarized and therefore enjoys

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[36] *Id*. at 456.

[37] Records, Vol. I, p. 202.

[38] Records, Vol. II, p. 456.

[39] *Id*.

[40] *Id*.

[41] *Id*. at 458.

[42] *Rollo*, pp. 82-92.

[43] See *id*. at 90.

the presumption of validity, which can only be overturned by clear and convincing evidence.[44] Further, upon examination of Donton's passport stamps, which petitioners offered in evidence to prove that Donton could not have signed the Deed of Absolute Sale on July 16, 2001, the CA held that although he departed from the Philippines on June 27, 2001, there was no entry stamp of his admittance to the United States sometime between said date and August 30, 2001, the date of his return to the Philippines.[45]

As regards the findings and testimony of Perez, the CA held that "[n]otwithstanding Perez's expert testimony that the questioned signature and the standard signatures [of Donton] were not signed by the same person,"[46] the RTC was correct in declaring her testimony as self-serving. It considered that Perez did not know the source of the documents, and that it was the CIDG that provided her with Donton's standard signatures. She admitted that she had no actual knowledge of whether the documents given to her for examination came from Donton, and that she merely proceeded to examine them without verifying the source.[47] Thus, the source of the documents being unverified, it cannot be concluded that the signatures thereon are the genuine signatures of Donton.

Finally, the CA sustained the RTC in ruling that petitioners failed to substantiate their allegation that Stier is an American citizen and married, and that Maggay had no capacity to purchase real property. On this score, the CA quoted with approval the RTC's findings that the BOI-issued Certification procured and presented in evidence by petitioners was insufficient to prove Stier's alleged American citizenship, and that there was dearth of evidence to further prove their allegation that he is married, or that Maggay had no capacity to purchase real property.[48]

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[44] *Id.* at 91.

[45] *Id.* at 88.

[46] *Id.* at 89.

[47] *Id.* at 90.

[48] *Id.* at 90-91.

Petitioners' motion for reconsideration[49] was denied in a Resolution[50] dated January 21, 2015; hence, this petition.

The Issue Before the Court

The issue for the Court's consideration is whether or not the CA erred in ruling that petitioners failed to discharge the burden of proof required to be entitled to the reliefs prayed for in this case, namely, the annulment of title and reconveyance of property with damages.

The Court's Ruling

The petition is partly meritorious.

At the outset, the Court deems it necessary to underscore that a re-examination of factual findings cannot be done acting on a petition for review on *certiorari* because the Court is not a trier of facts but reviews only questions of law.[51] Thus, in petitions for review on *certiorari*, only questions of law may generally be put into issue.

This rule, however, admits of exceptions, such as **when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record** and **when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion**.[52] Finding a confluence of certain exceptions in this case, the general rule that only legal issues may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court does not apply,

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[49] See Motion for Reconsideration dated July 5, 2014; CA *rollo*, pp. 146-155.

[50] *Rollo*, pp. 93-94.

[51] *Maersk-Filipinas Crewing, Inc. v. Vestruz*, 754 Phil. 307, 317 (2015), *citing Jao v. BCC Products Sales, Inc.*, 686 Phil. 36, 41 (2012).

[52] *New City Builders, Inc. v. National Labor Relations Commission*, 499 Phil. 207, 213 (2005), citing *The Insular Life Assurance Company, Ltd. v. CA*, 472 Phil. 11, 22-23 (2004).

and the Court retains the authority to pass upon the evidence presented and draw conclusions therefrom.[53]

In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." It is a phrase which, in the last analysis, means probability of the truth, or evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[54]

The main thrust of petitioners' contention in this case is that Donton's signature on the Deed of Absolute Sale is a forgery. They maintain that it was not possible for him to have signed the said document considering that he was not in the Philippines on July 16, 2001, the date of execution and notarization thereof, he being in the United States at the time. To bolster this argument, they offered in evidence, among others, the immigration stamps on Donton's passport,[55] showing that the latter departed from the Philippines on June 20, 2001 and returned on August 30, 2001.

However, as the courts *a quo* have aptly opined, the foregoing immigration stamps are *insufficient* to prove that Donton was physically absent from the country to have been able to appear before the notary public on July 16, 2001, the date of the acknowledgment of the Deed of Absolute Sale. It is well to point out, as the RTC did, that petitioners failed to prove Donton's arrival or entry in the United States, where he alleged to have gone, and his departure therefrom to return to the Philippines on August 30, 2001. Without evidence of such admittance to and departure from the United States between June 27, 2001

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[53] *Maersk-Filipinas Crewing, Inc. v. Vestruz*, *supra* note 51, at 317-318.

[54] *Spouses Ramos v. Obispo and Far East Bank and Trust Company*, 705 Phil. 221, 232 (2013).

[55] Records, Vol. I, p. 197.

and August 30, 2001, the Court cannot discount the possibility that Donton may have returned to the Philippines anytime between those dates to execute the Deed of Absolute Sale. This is especially so in light of his own admission in the complaint that he returned to the Philippines "sometime in the last week of July 2001"[56] allegedly to ascertain the truth and veracity of the information he received that the subject property had been transferred to respondents. These inconsistencies heavily militate against him, effectively tainting his credibility as a witness and rendering doubtful the veracity of his testimony.

Furthermore, forgery, as a rule, cannot be presumed and must be proved by clear, positive and convincing evidence, and the burden of proof lies on the party alleging forgery – in this case, petitioners. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.[57] Pertinently, Section 22, Rule 132 of the Revised Rules of Court provides:

> Section. 22. *How genuineness of handwriting proved.* – The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given **by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge**. (Emphasis supplied)

In *Gepulle-Garbo v. Spouses Garabato*,[58] the Court explained the factors involved in the examination and comparison of handwritings in this wise:

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[56] *Id.* at 2, paragraph 6.

[57] *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855-856 (2015).

[58] *Supra* note 57.

x x x [T]he authenticity of a questioned signature cannot be determined solely upon its general characteristics, similarities or dissimilarities with the genuine signature. Dissimilarities as regards spontaneity, rhythm, pressure of the pen, loops in the strokes, signs of stops, shades, etc., that may be found between the questioned signature and the genuine one are not decisive on the question of the former's authenticity. The result of examinations of questioned handwriting, even with the benefit of aid of experts and scientific instruments, is, at best, inconclusive. There are other factors that must be taken into consideration. The position of the writer, the condition of the surface on which the paper where the questioned signature is written is placed, his state of mind, feelings and nerves, and the kind of pen and/or paper used, play an important role on the general appearance of the signature. Unless, therefore, there is, in a given case, absolute absence, or manifest dearth, of direct or circumstantial competent evidence on the character of a questioned handwriting, much weight should not be given to characteristic similarities, or dissimilarities, between that questioned handwriting and an authentic one.[59]

To prove forgery, petitioners offered in evidence the findings and testimony given by expert witness Perez, who declared that she found "significant divergences in the manner of execution, line quality, stroke structure and other individual handwriting characteristics" between the signature that appears on the Deed of Absolute Sale and the standard signatures of Donton, thereby concluding that they were not written by one and the same person.[60] On cross-examination, however, Perez admitted that she had no actual knowledge of the source of the specimen signatures given to her for examination, as it was the CIDG personnel who provided her with the same.[61] Thus, as the CA correctly observed, Perez's findings deserve little or no probative weight at all, considering that the signatures which she used for comparison came from an unverified source. Perforce, petitioners are left with no conclusive evidence to

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[59] *Id.* at 856, citing *Jimenez v. Commission on Ecumenical Mission, United Presbyterian Church, USA*, 432 Phil. 895, 908-909 (2002).

[60] See Questioned Document Report No. 153-02; records, Vol. I, pp. 203-204.

[61] TSN, March 26, 2003, pp. 23-24.

prove their allegation that Donton's signature on the Deed of Absolute Sale was forged.

It bears stressing that the opinion of handwriting experts are not necessarily binding upon the court, the expert's function being to place before the court data upon which the court can form its own opinion. This principle holds true especially when the question involved is mere handwriting similarity or dissimilarity, which can be determined by a visual comparison of specimens of the questioned signatures with those of the currently existing ones. A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity.[62]

In fine, the Court, therefore, upholds the findings of the courts *a quo* in this respect.

Be that as it may, the Court, however, differs from the findings of the courts *a quo* with respect to Stier's citizenship. More than the Certification[63] issued by the BOI, which clearly states that Stier is an American citizen, the records contain other documents validating the information. For instance, in paragraph 1[64] of respondents' Answer with Counterclaim,[65] they *admitted* paragraphs 1, 2, and 3 of the Complaint insofar as their personal circumstances are concerned, and paragraph 2 of the Complaint states:

"2. Defendant **DUANE STIER** is of legal age, married, **an American citizen, a non-resident alien** with postal address at Blk. 5, Lot 27, A, B, Phase 1, St. Michael Home Subd., Binangonan, Rizal; x x x"[66] (Emphases supplied)

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[62] *Supra* note 57, at 856-857.

[63] Records, Vol. I, p. 202.

[64] *Id*. at 35.

[65] *Id*. at 35-40.

[66] *Id*. at 2.

Similarly, one of the attachments to the Manifestation[67] filed by respondents before the RTC is an Affidavit[68] executed by Stier himself, stating:

"I, DUANE STIER, of legal age, married, **American citizen** x x x"[69] (Emphasis supplied)

The foregoing statements made by Stier are *admissions against interest* and are therefore binding upon him. An admission against interest is the best evidence which affords the greatest certainty of the facts in dispute since no man would declare anything against himself unless such declaration is true. Thus, an admission against interest binds the person who makes the same, and absent any showing that this was made through palpable mistake, no amount of rationalization can offset it,[70] especially so in this case where respondents failed to present even one piece of evidence in their defense.[71]

Hence, the courts *a quo* erred in ruling that Stier's American citizenship was not established in this case, effectively rendering the sale of the subject property as to him void *ab initio*, in light of the clear proscription under Section 7, Article XII of the Constitution against foreigners acquiring real property in the Philippines, to wit:

Section 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

Thus, lands of the public domain, which include private lands, may be transferred or conveyed only to individuals or entities qualified to acquire or hold private lands or lands of the public domain. Aliens, whether individuals or corporations, have been

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[67] *Id*. at 223-226.

[68] *Id*. at 242-244.

[69] *Id*. at 242.

[70] *Stanley Fine Furniture v. Gallano*, 748 Phil. 624, 631-632 (2014).

[71] See Order dated February 5, 2009; records, Vol. II, p. 416.

disqualified from acquiring lands of the public domain as well as private lands.[72]

In light of the foregoing, even if petitioners failed to prove that Donton's signature on the Deed of Absolute Sale was a forgery, the sale of the subject property to Stier is in violation of the Constitution; hence, null and void *ab initio*. A contract that violates the Constitution and the law is null and void and vests no rights and creates no obligations. It produces no legal effect at all.[73] Furthermore, Stier is barred from recovering any amount that he paid for the subject property, the action being proscribed by the Constitution.[74]

Nevertheless, considering that petitioners failed to prove their allegation that Maggay, the other vendee, had no capacity to purchase the subject property, the sale to her remains valid but only up to the extent of her undivided one-half share therein.[75] Meanwhile, the other undivided one-half share, which pertained to Stier, shall revert to Donton, the original owner, for being the subject of a transaction void *ab initio*. Consequently, the Deed of Absolute Sale, together with TCT No. N-225996 issued in respondents' favor, must be annulled only *insofar as Stier is concerned, without prejudice, however, to the rights of any subsequent purchasers for value of the subject property*.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated June 13, 2014 and the Resolution dated January 21, 2015 of the Court of Appeals in CA-G.R. CV No. 97138, which affirmed the dismissal of the complaint filed by petitioners

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[72] *Frenzel v. Catito*, 453 Phil. 885, 904 (2003), citing *Po v. CA*, 239 SCRA 341, 346 (1994).

[73] See *Krivenko v. Register of Deeds of Manila*, 79 Phil. 461, 492-493 (1947); *Rellosa v. Hun*, 93 Phil. 827, 835 (1953); *Caoile v. Peng*, 93 Phil. 861 (1953); *Po v. CA*, *supra* note 72; *Chavez v. Presidential Commission on Good Government*, 366 Phil. 863, 869 (1999).

[74] See *Fullido v. Grilli*, 785 SCRA 278, 301; *Frenzel v. Catito*, *supra* note 72 at 908.

[75] See *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap*, 740 Phil. 35, 51 (2014).

on the ground of insufficiency of evidence, are hereby **REVERSED** and **SET ASIDE**, and a **NEW ONE** is entered: (1) annulling the Deed of Absolute Sale dated July 16, 2001 insofar as respondent Duane Stier is concerned; (2) annulling Transfer Certificate of Title No. N-225996 insofar as respondent Duane Stier is concerned; and (3) directing the Registry of Deeds of Quezon City to issue a new title in the name of Peter Donton and Emily Maggay, all without prejudice to the rights of any subsequent purchasers for value of the subject property.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson)*, *Peralta*, and *Reyes, Jr., JJ.*, concur

Caguioa, J., on leave.

SECOND DIVISION

[G.R. No. 218911. August 23, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONARDO SIAPNO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; SERIOUS ILLEGAL DETENTION; DULY ESTABLISHED IN CASE AT BAR; PENALTY.— If the victim is a child, the deprivation of liberty also includes the intention of the accused to deprive the parents of the custody of the child. Moreover, the victim's lack of consent is presumed when the victim is a minor. In this case, based on testimonial and documentary evidence extant

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[*] Acting Chief Justice per Special Order No. 2469 dated August 22, 2017.

from the records, the prosecution was able to establish the presence of all the elements of serious illegal detention under Article 267 of the RPC. Siapno, a private individual, knowingly and without lawful authority detained a minor, causing deprivation of the victim's liberty and of the mother's custody over her child. The prescribed penalty for serious illegal detention under Article 267 of the RPC is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance in the commission of the offense, the proper penalty to be imposed is *reclusion perpetua* together with the accessory penalty provided by law.

2. ID.; ID.; ID.; CIVIL LIABILITY.— In line with prevailing jurisprudence, the CA correctly ordered Siapno to pay the victim x x x ₱50,000.00 as moral damages. Pursuant to Article 2219 of the Civil Code, he is liable for moral damages due to the serious anxiety and fright suffered by the child when she was detained.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, ***J.*:**

This is an appeal from the September 24, 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. C.R. HC No. 05646, which affirmed with modification the June 22, 2012 Decision[2] of the Regional Trial Court *(RTC)*, Branch 94, Quezon City, convicting accused-appellant Leonardo Siapno *(Siapno)* of the crime of Serious Illegal Detention under Article 267 of the Revised Penal Code *(RPC)*.

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Florito S. Macalino and Pedro B. Corales concurring; *rollo,* pp. 2-15; CA *rollo,* pp. 80-93.

[2] Records, pp. 94-103; CA *rollo,* pp. 29-39.

The Information dated July 31, 2009 alleged:

That on or about the 30th day of July, 2009, in Quezon City, Philippines, the said accused, a private individual, did then and there, willfully, unlawfully and feloniously detain and threaten to kill one CHLOE TIBAY *y* CAPISONDA, a minor, 1 year old, thereby depriving the said offended party of her liberty, to the damage and prejudice of the said CHLOE TIBAY *y* CAPISONDA.

CONTRARY TO LAW.[3]

In his arraignment, Siapno entered a plea of not guilty.[4] Trial ensued while he was detained at the Quezon City jail.[5]

The prosecution presented Dulce Corazon C. Tibay *(Dulce),* Edgar V. Ramel *(Edgar),* Joselito S. Campo *(Joselito)*, and Dr. Shanne Lore Dettabali *(Shanne)*. Only Siapno testified for the defense. Their testimonies revealed as follows:

On July 30, 2009, Dulce was at home together with her one year and seven month old daughter, Chloe Tibay *(Chloe)*. At around 2:00 p.m., somebody knocked at their gate so she opened it while carrying Chloe. A man, who introduced himself as Ryan delos Reyes from Morong, Rizal, was looking for her husband, Ronald Tibay *(Ronald)*, and requested to talk to him so that he could relay to his brother, Arnold Tibay *(Arnold)*, to end his relationship with a certain Len delos Reyes *(Len)*. She told him to return on a Sunday since Ronald was not around. The man left, but returned 15 minutes later to tell that he could not wait for Sunday. She then called her husband to ask him if she could just give his cellphone number for them to talk, as to which Ronald agreed. The man left and went to a street corner to call Ronald. Thereafter, he returned and told that he was not able to talk to him. He then pushed the gate and grabbed Chloe. He poked a fan knife *("balisong")* at the child's neck and dragged Dulce inside the house. The man told her that *"madadamay*

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[3] Records, p. 1.

[4] *Id*. at 22.

[5] *Id*. at 18.

ang anak mo, papatayin ko ito," but she pleaded to him. She struggled to be released and was able to ran out of the gate and seek help from a passerby, who called the *barangay tanods* or Barangay Police Security Officers (*BPSOs*) of Barangay Roxas, Quezon City. Meantime, the man went inside the comfort room *(CR)* of the house and locked himself up together with Chloe, who was scared and crying. After about three minutes, the BPSOs arrived. They went inside the house and negotiated with the man. Several minutes passed, one of the BPSOs went out from the CR together with the child and gave Chloe to Dulce. Subsequently, they proceeded to the *barangay* hall to report the incident in the blotter and then to the Kamuning Police Station where she gave a sworn statement and came to know of the real name of the man as accused-appellant Siapno. Moreover, a medico-legal examination was conducted on Chloe.

Edgar, who was a BPSO, testified that there was a hostage taking that took place about 2:30 p.m. on July 30, 2009. When the desk officer-on-duty received a call about the incident, he and other BPSOs Joselito Campo (*Joselito*), Leonardo[6] Cacdac *(Cacdac)*, Leonardo Marquez *(Marquez)*, and Teodolfo[7] Bantay *(Bantay)* immediately proceeded to No. 15 Jasmin Street, Roxas District, Quezon City. Upon arrival at the place, Dulce, who was crying, approached them and asked helped, telling that her daughter was taken away by Siapno who poked a knife at her neck and brought her inside their house. They immediately went inside the house and discovered that Siapno was inside the CR since they could hear a child crying therein. They then talked to him, telling him to surrender and that the policemen were coming. Minutes after, Siapno told them that he would voluntarily surrender. Later, he suddenly opened the door, threw a knife inside the CR, and released the child, who was immediately taken by Bantay. The *tanods* brought Siapno, Dulce,

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[6] Spelled as "Leandro" in the *Pinagsamang Sinumpaang Salaysay* (Records, p. 7).

[7] Spelled as "Teodolo" in the *Pinagsamang Sinumpaang Salaysay* and "Leopoldo" in the testimony of Joselito S. Campo (Records, p. 7; TSN, March 1, 2011, p. 10).

and Chloe to the *barangay* hall and to the police precinct. Edgar noticed that Chloe sustained an injury in the neck caused by the knife which they confiscated from Siapno. Said knife was brought to the court by its custodian, SPO1 Gina Abay. Edgar identified it as the same knife which they took from the possession of Siapno. The prosecution and the defense stipulated that SPO1 Abay was the one who investigated Dulce.

Joselito corroborated the testimony of Edgar. He declared that while they were roving the area around 2:00 p.m. on July 30, 2009, somebody called them *via* radio requesting for help. He responded together with Edgar, Cacdac, Marquez, and Bantay. When they arrived at Dulce's residence, there was a commotion inside because Siapno got her child *("kinuha nya yong bata")*. Dulce was in the garage, while they could hear Chloe crying inside the CR. They tried to open its door, but it was locked. They talked to Siapno, telling him to go out since the *tanods* were there and that the policemen were arriving. About five minutes after, Siapno opened the door, handed over the child, and threw the fan knife at the CR's floor. Joselito took the knife and gave it to Bantay. They then went to the *barangay* hall to have the incident entered in the blotter.

Upon the request of the Chief of Police of QCPD Station 10, Dr. Shanne, who was the Medico-Legal Officer of the Quezon City Police District Crime Laboratory, conducted the physical examination of Chloe. Based on her medico-legal report, she found reddening of the right clavicular line area of the child which may have been caused by a knife that is not sharp, or one that is pointed but does not touch the skin or no pressure was employed.

On the other hand, Siapno claimed that he has known Dulce a long time ago as she is the wife of Ronald, who is the cousin of his (Siapno) cousin, Samuel Tibay, Jr. He met her on several occasions every time they (Dulce's family) would go to Pililia, Rizal. On July 30, 2009, he went to Ronald's residence because he wanted to talk to him about his brother's relationship with Len, who is the wife of his brother, Marcelino Siapno. Dulce told him to come back on Sunday because her husband was at

work. Considering that he came all the way from Pililia, he requested if he could just call him. When Dulce gave Ronald's cellphone number, he tried to find a pay phone in the nearby market of Roxas District but to no avail. When he went back, Dulce got angry at him as she opened the gate. She called him *makulit*, uttered harsh words, and demanded that their family leave their place in Pililia because it belongs to her husband. They had a verbal altercation. Dulce, who was carrying Chloe in her left arm, tried to close the gate, but he pushed it and managed to enter. As if scared, she suddenly shouted and became hysterical. Despite his effort to prevent her from getting out, she was able to run outside while screaming. In the process, he got hold of Chloe and was left in his arms. He was surprised. Less than five minutes later, the BPSOs arrived as he stood in the driveway carrying the child. They told him to give Chloe, which he immediately did. Subsequently, he was handcuffed, brought to the *barangay* hall, and turned over to Police Station 10. He denied the commission of the acts imputed against him and surmised that the case was fabricated by Dulce in view of his family's refusal to vacate their residence in Pililia, with respect to which there is a pending land dispute.

On June 22, 2012, the RTC convicted Siapno of the crime charged. The *fallo* of the Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding accused Leonardo Siapno Guilty beyond reasonable doubt of the crime of Serious Illegal Detention and is sentenced to suffer the penalty of ***RECLUSION PERPETUA*** and to pay the costs.
>
> **SO ORDERED.**[8]

According to the trial court, all the elements of serious illegal detention under Article 267 of the RPC are present in this case: (1) Siapno is a private individual, being a technician by profession; (2) he forcibly took custody of Chloe without the intention of giving her up until and unless his demand to talk to Ronald was met; (3) his detention of the victim was

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[8] Records, p. 103; CA *rollo*, p. 39.

unwarranted because he had no legal justification in taking custody of the child, much more of bringing her inside the CR; and (4) at the time of the commission of the offense, Chloe was a minor, being only one year, seven months, and twenty-seven days old.

The appeal was found to be without merit. The CA affirmed the judgment of conviction, but modified the penalty imposed. It ordered:

> **WHEREFORE,** in light of all the foregoing, the judgment dated June 22, 2012 of Branch 94 of the Regional Trial Court of Quezon City in Criminal Case No. Q-09-160093 is hereby **AFFIRMED with MODIFICATION**.
>
> Accused-appellant Leonardo Siapno is hereby found guilty beyond reasonable doubt of the crime of Serious Illegal Detention and is meted the penalty of reclusion perpetua. He is likewise ordered to pay the victim, Chloe Capisonda Tibay, the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, which shall bear interest at the rate of six percent (6%) per annum, until fully paid.
>
> **SO ORDERED**.[9]

Siapno insisted that he got hold of Chloe purely by accident, with no intention of ever taking the child from her mother, and that he remained in the driveway of the house all the time, never taking the victim as hostage inside the CR. However, the appellate court ruled that this version of facts is incredible. For the CA, a mother like Dulce would hold tightly to her child while trying to flee from someone whom she was scared of. And assuming that Chloe was inadvertently dropped at Siapno's arms, it is contrary to human experience that a mother would leave her child with a person whom she views as a threat to their safety. Moreover, the incident was witnessed by two barangay *tanods* who positively identified Siapno as the person who, while in possession of a knife, took Chloe as hostage in the CR of the family home. The testimonies of Edgar and Joselito

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[9] *Rollo,* pp. 14-15; CA *rollo,* pp. 92-93.

were consistent, spontaneous, straightforward, and credible. No allegation was made, much less proven, to show that they had ill motive to falsely testify against Siapno.

Before Us, the Office of the Solicitor General *(OSG)* and the Public Attorney's Office *(PAO)* manifested that they would dispense with the filing of a Supplemental Brief considering that no new issues material to the case which were not elaborated were discovered and that the issues were already fully and exhaustively discussed in their respective briefs filed before the CA.[10]

The Court finds that accused-appellant Siapno failed to sufficiently show reversible error in the judgment of conviction as to warrant the exercise of Our appellate jurisdiction.

Time and again, we have ruled that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. The trial court has the singular opportunity to observe the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.

Kidnapping and serious illegal detention is defined and punished under Article 267 of the Revised Penal Code (RPC), as amended by Republic Act (RA) 7659:

> ART. 267. *Kidnapping and serious illegal detention*. – Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

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[10] *Rollo,* pp. 25-33.

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were presented in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

The crime has the following elements: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping is illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female or a public official.

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The essence of the crime of kidnapping is the actual deprivation of the victims liberty, coupled with the intent of the accused to effect it. It includes not only the imprisonment of a person but also the deprivation of his liberty in whatever form and for whatever length of time. It involves a situation where the victim cannot go out of the place of confinement or detention, or is restricted or impeded in his liberty to move.[11]

If the victim is a child, the deprivation of liberty also includes the intention of the accused to deprive the parents of the custody

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[11] *People v. Jacalne,* 674 Phil. 139, 145-147 (2011) (Citations omitted).

of the child.[12] Moreover, the victim's lack of consent is presumed when the victim is a minor.[13]

In this case, based on testimonial and documentary evidence extant from the records, the prosecution was able to establish the presence of all the elements of serious illegal detention under Article 267 of the RPC. Siapno, a private individual, knowingly and without lawful authority detained a minor, causing deprivation of the victim's liberty and of the mother's custody over her child.

The prescribed penalty for serious illegal detention under Article 267 of the RPC is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance in the commission of the offense, the proper penalty to be imposed is *reclusion perpetua* together with the accessory penalty provided by law.[14]

In line with prevailing jurisprudence,[15] the CA correctly ordered Siapno to pay the victim ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. Pursuant to Article 2219 of the Civil Code, he is liable for moral damages due to the serious anxiety and fright suffered by the child when she was detained. An interest at the 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.[16]

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[12] *People v. Baluya,* 664 Phil. 140, 150 (2011).

[13] *People v. Siongco, et al.,* 637 Phil. 488, 500-501 (2010).

[14] *People v. Lerio,* G.R. No. 209039, December 9, 2015, 777 SCRA 373, 382; *People v. Jacalne, supra* note 11, at 149; *People v. Anticamara, et al.,* 666 Phil. 484, 515 (2011); and *People v. Madsali, et al.,* 625 Phil. 431, 457 (2010).

[15] *People v. Jacalne, supra* note 11, at 149; *People v. Anticamara, et al., supra* note 14, at 517-518; and *People v. Madsali, et al., supra* note 14, at 459.

[16] See Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, effective July 1, 2013, in *Nacar v. Gallery Frames*, *et al.,* 716 Phil. 267 (2013).

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The September 24, 2014 Decision of the Court of Appeals in CA-G.R. C.R. HC No. 05646, which affirmed with modification the June 22, 2012 Decision of the Regional Trial Court, Branch 94, Quezon City, convicting accused-appellant Leonardo Siapno of the crime of Serious Illegal Detention under Article 267 of the Revised Penal Code, is **AFFIRMED WITH MODIFICATION**. Siapno is sentenced to suffer the penalty of *reclusion perpetua*, with the accessory penalty provided by law and ordered to pay the victim ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. All damages awarded shall earn an interest rate of six percent (6%) *per annum* to be computed from the finality of the judgment until fully paid.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe,* and *Reyes, Jr., JJ.,* concur.

Caguioa, J., on leave.

SECOND DIVISION

[G.R. No. 221732. August 23, 2017]

FERNANDO U. JUAN, *petitioner, vs.* **ROBERTO U. JUAN (substituted by his son JEFFREY C. JUAN) and LAUNDROMATIC CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; LIBERAL CONSTRUCTION OF THE RULES MAY BE INVOKED IN SITUATIONS WHERE THERE MAY BE SOME

EXCUSABLE FORMAL DEFICIENCY OR ERROR IN THE PLEADING, PROVIDED THAT THE SAME DOES NOT SUBVERT THE ESSENCE OF THE PROCEEDING AND IT AT LEAST CONNOTES A REASONABLE ATTEMPT AT COMPLIANCE WITH THE RULES.— Rules of procedure must be used to achieve speedy and efficient administration of justice and not derail it. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. It is, [thus] settled that liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules. x x x In this case, this Court finds that a liberal construction of the rules is needed due to the novelty of the issues presented. Besides, petitioner had a reasonable attempt at complying with the rules. After all, the ends of justice are better served when cases are determined on the merits, not on mere technicality.

2. **MERCANTILE LAW; REPUBLIC ACT NO. 8293 (THE INTELLECTUAL CODE OF THE PHILIPPINES); COPYRIGHT AND TRADE NAME, DISTINGUISHED.—** By their very definitions, copyright and trade or service name are different. Copyright is the right of literary property as recognized and sanctioned by positive law. An intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them. Trade name, on the other hand, is any designation which (a) is adopted and used by person to denominate goods which he markets, or services which he renders, or business which he conducts, or has come to be so used by other, and (b) through its association with such goods, services or business, has acquired a special significance as the name thereof, and (c) the use of which for the purpose stated in (a) is prohibited neither by legislative enactment nor by otherwise defined public policy.

3. **ID.; ID.; COPYRIGHT LAW; A MUSICAL COMPOSITION WITH WORDS IS PROTECTED UNDER THE COPYRIGHT LAW AND NOT UNDER THE TRADEMARKS, SERVICE MARKS AND TRADE NAMES**

LAW.— Section 172.1 of R.A. 8293 enumerates the following original intellectual creations in the literary and artistic domain that are protected from the moment of their creation, thus: 172.1 Literary and artistic works, hereinafter referred to as "*works*", are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular: x x x (f) ***musical compositions, with or without words***; x x x. As such, "Lavandera Ko," being a musical composition with words is protected under the copyright law (Part IV, R.A. No. 8293) and not under the trademarks, service marks and trade names law (Part III, R.A. No. 8293).

4. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE, DEFINED; AN ARTICLE APPEARING IN A WEBSITE LACKS A REQUISITE FOR IT TO BE OF JUDICIAL NOTICE TO THE COURT BECAUSE SUCH ARTICLE IS NOT WELL AND AUTHORITATIVELY SETTLED; CASE AT BAR.— [T]he RTC's basis or source, an article appearing in a website, in ruling that the song entitled "Lavandera Ko" is protected by a copyright, cannot be considered a subject of judicial notice that does not need further authentication or verification. Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them. Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not *bona fide* disputed. x x x The article in the website cited by the RTC patently lacks a requisite for it to be of judicial notice to the court because such article is not well and authoritatively settled and is doubtful or uncertain. It must be remembered that some articles appearing in the internet or on websites are easily edited and their sources are unverifiable, thus, sole reliance on those articles is greatly discouraged.

APPEARANCES OF COUNSEL

Norman R. Gabriel for petitioner.
Kapunan Garcia and Castillo Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

For this Court's resolution is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated January 25, 2016, of petitioner Fernando U. Juan that seeks to reverse and set aside the Decision[1] dated May 7, 2015 and Resolution[2] dated December 4, 2015 of the Court of Appeals (CA) dismissing his appeal for failure to comply with the requirements of Section 13, Rule 44 and Section 1, Rule 50 of the Rules of Court.

The facts follow.

Respondent Roberto U. Juan claimed that he began using the name and mark "Lavandera Ko" in his laundry business on July 4, 1994. He then opened his laundry store at No. 119 Alfaro St., Salcedo St., Makati City in 1995. Thereafter, on March 17, 1997, the National Library issued to him a certificate of copyright over said name and mark. Over the years, the laundry business expanded with numerous franchise outlets in Metro Manila and other provinces. Respondent Roberto then formed a corporation to handle the said business, hence, Laundromatic Corporation (*Laundromatic*) was incorporated in 1997, while "Lavandera Ko" was registered as a business name on November 13, 1998 with the Department of Trade and Industry (*DTI*). Thereafter, respondent Roberto discovered that his brother, petitioner Fernando was able to register the name and mark "Lavandera Ko" with the Intellectual Property Office (*IPO*) on October 18, 2001, the registration of which was filed on June 5, 1995. Respondent Roberto also alleged that a certain Juliano Nacino (*Juliano*) had been writing the franchisees of the former threatening them with criminal and civil cases if they did not

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[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with the concurrence of Associate Justices Florito S. Macalino and Melchor Quirino C. Sadang; *rollo,* pp. 37-45.

[2] *Id.* at 47-48.

stop using the mark and name "Lavandera Ko." It was found out by respondent Roberto that petitioner Fernando had been selling his own franchises.

Thus, respondent Roberto filed a petition for injunction, unfair competition, infringement of copyright, cancellation of trademark and name with/and prayer for TRO and Preliminary Injunction with the Regional Trial Court (*RTC*) and the case was raffled off at Branch 149, Makati City. The RTC issued a writ of preliminary injunction against petitioner Fernando in Order dated June 10, 2004. On July 21, 2008, due to the death of respondent Roberto, the latter was substituted by his son, Christian Juan (*Christian*). Pre-trial conference was concluded on July 13, 2010 and after the presentation of evidence of both parties, the RTC rendered a Resolution dated September 23, 2013, dismissing the petition and ruling that neither of the parties had a right to the exclusive use or appropriation of the mark "Lavandera Ko" because the same was the original mark and work of a certain Santiago S. Suarez (*Santiago*). According to the RTC, the mark in question was created by Suarez in 1942 in his musical composition called, "Lavandera Ko" and both parties of the present case failed to prove that they were the originators of the same mark. The dispositive portion of the RTC's resolution reads as follows:

> WHEREFORE, premises considered, this court finds both the plaintiff-Roberto and defendant-Fernando guilty of making misrepresentations before this court, done under oath, hence, the Amended Petition and the Answer with their money claims prayed for therein are hereby DISMISSED.
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> Therefore, the Amended Petition and the Answer are hereby DISMISSED for no cause of action, hence, the prayer for the issuance of a writ of injunction is hereby DENIED for utter lack of merit; and the Writ of Preliminary Injunction issued on June 10, 2004 is hereby LIFTED AND SET ASIDE.
>
> Finally, the National Library is hereby ordered to cancel the Certificate of Registration issued to Roberto U. Juan on March 17, 1997 over the word "Lavandera Ko," under certificate no. 97-362. Moreover, the Intellectual Property Office is also ordered to cancel Certificate of Registration No. 4-1995-102749, Serial No. 100556,

issued on October 18, 2001, covering the work LAVANDERA KO AND DESIGN, in favor of Fernando U. Juan.

The two aforesaid government agencies are hereby requested to furnish this Court of the copy of their cancellation.

Cost de oficio.

SO ORDERED.[3]

Herein petitioner elevated the case to the CA through a notice of appeal. In his appeal, petitioner contended that a mark is different from a copyright and not interchangeable. Petitioner Fernando insisted that he is the owner of the service mark in question as he was able to register the same with the IPO pursuant to Section 122 of R.A. No. 8293. Furthermore, petitioner Fernando argued that the RTC erred in giving credence to the article of information it obtained from the internet stating that the Filipino folk song "Lavandera Ko" was a composition of Suarez in 1942 rather than the actual pieces of evidence presented by the parties. As such, according to petitioner, such information acquired by the RTC is hearsay because no one was presented to testify on the veracity of such article.

Respondent Roberto, on the other hand, contended that the appeal should be dismissed outright for raising purely questions of law. He further raised as a ground for the dismissal of the appeal, the failure of the petitioner to cite the page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44 of the Rules of Court and petitioner's failure to provide a statement of facts. Respondent also argued that assuming that the Appellant's Brief complied with the formal requirements of the Rules of Court, the RTC still did not err in dismissing the petitioner's answer with counterclaim because he cannot be declared as the owner of "Lavandera Ko," since there is prior use of said mark by another person.

The CA, in its Decision dated May 7, 2015, dismissed the petitioner's appeal based on technical grounds, thus:

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

WHEREFORE, premises considered, the instant appeal is DISMISSED for failure to comply with the requirements of Section 13, Rule 44 and Section 1, Rule 50 of the Rules of Court.

SO ORDERED.[4]

Hence, the present petition after the denial of petitioner Fernando's motion for reconsideration.

Petitioner Fernando raises the following issues:

A.

WHETHER OR NOT THE DISMISSAL OF THE APPEAL BY THE COURT OF APPEALS ON PURELY TECHNICAL GROUNDS WAS PROPER CONSIDERING THAT THE CASE BEFORE IT CAN BE RESOLVED BASED ON THE BRIEF ITSELF.

B.

WHETHER OR NOT A MARK IS THE SAME AS A COPYRIGHT.

C.

WHETHER OR NOT FERNANDO U. JUAN IS THE OWNER OF THE MARK "LAVANDERA KO."

D.

WHETHER OR NOT AN INTERNET ARTICLE IS SUPERIOR THAN ACTUAL EVIDENCE SUBMITTED BY THE PARTIES.[5]

According to petitioner Fernando, the CA should have considered that the rules are there to promote and not to defeat justice, hence, it should have decided the case based on the merits and not dismiss the same based on a mere technicality. The rest of the issues are similar to those that were raised in petitioner's appeal with the CA.

In his Comment[6] dated April 22, 2016, respondent Roberto insists that the CA did not commit an error in dismissing the

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[4] *Id.* at 45.

[5] *Id.* at 15.

[6] *Id.* at 90-106.

appeal considering that the formal requirements violated by the petitioner in the Appellant's Brief are basic, thus, inexcusable and that petitioner did not proffer any valid or substantive reason for his non-compliance with the rules. He further argues that there was prior use of the mark "Lavandera Ko" by another, hence, petitioner cannot be declared the owner of the said mark despite his subsequent registration with the IPO.

The petition is meritorious.

Rules of procedure must be used to achieve speedy and efficient administration of justice and not derail it.[7] Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties.[8] It is, [thus] settled that liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules.[9] In *Aguam v. CA*,[10] this Court ruled that:

> x x x 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." "Law suits, 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,

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[7] *Lynman Bacolor, et al. v. VL Makabali Memorial Hospital, Inc., et al*., G.R. No. 204325, April 18, 2016.

[8] *Zacarias Cometa, et al. v. CA, et al.*, 404 Phil. 107, 120 (2001), citing *Casa Filipina Realty Corporation v. Office of the President*, 311 Phil. 170, 181 (1995), citing *Rapid Manpower Consultants, Inc. v. NLRC,* 268 Phil. 815, 821 (1990).

[9] *Pagadora v. Ilao*, 678 Phil. 208, 222 (2011), citing *Mediserve, Inc. v. Court of Appeals*, 631 Phil. 282, 295 (2010).

[10] 388 Phil. 587, 592-593 (2000). (Citations omitted).

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.

In this case, this Court finds that a liberal construction of the rules is needed due to the novelty of the issues presented. Besides, petitioner had a reasonable attempt at complying with the rules. After all, the ends of justice are better served when cases are determined on the merits, not on mere technicality.[11]

The RTC, in dismissing the petition, ruled that neither of the parties are entitled to use the trade name "Lavandera Ko" because the copyright of "Lavandera Ko", a song composed in 1942 by Santiago S. Suarez belongs to the latter. The following are the RTC's reasons for such ruling:

The resolution of this Court – NO ONE OF THE HEREIN PARTIES HAS THE RIGHT TO USE AND ENJOY "LAVANDERA KO"!

Based on the date taken from the internet – References: CCP encyclopedia of Philippine Art, Vol. 6 http://www.himig.com.ph (http://kahimyang.info/ kauswagan/articles/1420/today - in - philippine - history this information was gathered: "In 1948, Cecil Lloyd established the first Filipino owned record company, the Philippine Recording System, which featured his rendition of Filipino folk songs among them the "Lavandera ko" (1942) which is a composition of Santiago S. Suarez." Thus, the herein parties had made misrepresentation before this court, to say the least, when they declared that they had coined and created the subject mark and name. How can the herein parties have coined and created the subject mark and work when these parties were not yet born; when the subject mark and work had been created and used in 1942.

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[11] *Ateneo de Naga University v. Manalo*, 497 Phil. 635, 646 (2005).

The heirs of Mr. Santiago S. Suarez are the rightful owners of subject mark and work – "Lavandera ko".

Therefore, the writ of injunction issued in the instant case was quite not proper, hence the same shall be lifted and revoked. This is in consonance with the finding of this court of the origin of the subject mark and work, *e.g.,* a music composition of one Santiago S. Suarez in 1942.

Moreover, Section 171.1 of R.A. 8293 states: "Author" is the natural person who has created the work." And, Section 172.1 of R.A. No. 8293 provides: Literary and artistic works, hereinafter referred to as "works", are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

(d) Letters;

(f) Musical compositions, with or without words;"

Thus, the subject mark and work was created by Mr. Santiago S. Suarez, hence, the subject mark and work belong to him, alone.

The herein parties are just false claimants, done under oath before this court (paragraph 4 of Roberto's affidavit, Exhibit A TRO, page 241, Vol. I and paragraph 2 of Fernando's affidavit, Exhibit 26 TRO, page 354, Vol. I), of the original work of Mr. Santiago S. Suarez created in 1942.

Furthermore, Section 21 of R.A. 8293 declares: "Patentable Inventions – any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable shall be patentable. It may be, or may relate to, a product, or process, or an improvement of any of the foregoing." Thus, the herein subject mark and work can never be patented for the simple reason that it is not an invention. It is a title of a music composition originated from the mind of Mr. Santiago S. Suarez in 1942.

Thus, the proper and appropriate jurisprudence applicable to this instant case is the wisdom of the High Court in the case of Pearl & Dean (Phil.), Incorporation v. Shoemart, Incorporated (G.R. No. 148222, August 15, 2003), the Supreme Court ruled: "The scope of a copyright is confined to literary and artistic works which are original intellectual creations in the literary and artistic domain protected from the moment of their creation." The Supreme Court concluded: "The description of the art in a book, though entitled to the benefit

of copyright, lays no foundation for an exclusive claim to the art itself. The object of the one is explanation; the object of the other is use. The former may be secured by copyright. The latter can only be secured, if it can be secured at all, by letters patent." (Pearl & Dean v. Shoemart, *supra*, citing the case of Baker v. Selden, 101 U.S. 99; 1879 U.S. Lexis 1888; 25 L. Ed. 841; 11 Otto 99, October, 1879 Term).

It is noted that the subject matter of Exhibit "5" (Annex 5) Of Fernando (IPO certificate of registration) and Exhibit B of Roberto (Certificate of Copyright Registration) could not be considered as a literary and artistic work emanating from the creative mind and/or hand of the herein parties for the simple reason that the subject work was a creation of the mind of Mr. Santiago S. Suarez in 1942. Thus, neither of the herein parties has an exclusive right over the subject work "Lavandera Ko" for the simple reason that herein parties were not the maker, creator or the original one who conceptualized it. Section 171.1 defines the author as the natural person who has created the work. (R.A. No. 8293). Therefore, it can be said here, then and now, that said registrations of the word "Lavandera Ko" by the herein parties cannot be protected by the law, Republic Act No. 8293. Section 172.2 (R.A. No. 8293) is quite crystal clear on this point, it declares: "Works are protected by the sole fact of their creation, irrespective of their mode or form of expressions, as well as of their content, quality and purpose." Herein parties were not the creators of the subject word. It was a creation of Santiago S. Suarez in 1942.

Finally, in the case of Wilson Ong Ching Kian Chuan v. Court of Appeals and Lorenzo Tan (G.R. No. 130360, August 15, 2001), the Supreme Court ruled: "A person to be entitled to a copyright must be the original creator of the work. He must have created it by his own skill, labor and judgment without directly copying or evasively imitating the work of another." Again, herein parties, both, miserably failed to prove and establish on how they have created this alleged work before registering it with the National Library and the Intellectual Property Office, hence their claim of ownership of the word "Lavandera Ko" is not conclusive or herein parties are both great pretenders and imitators. Therefore, it is hereby declared that registration with the IPO by Fernando is hereby cancelled, for one and many others stated herein, because of the admission of Fernando that he coined the name from the lyrics of a song popularized in the 1950's by singer Ruben Tagalog. Admission is admissible without need of evidence. (Section 4, Rule 129 of the Revised Rules of Court).

Considering that herein parties had made misrepresentations before this court, hence, both the herein parties came to this court with unclean hands. Thus, no damage could be awarded to anyone of the herein parties.[12]

The above ruling is erroneous as it confused trade or business name with copyright.

The law on trademarks, service marks and trade names are found under Part III of Republic Act (*R.A.*) No. 8293, or the *Intellectual Property Code of the Philippines,* while Part IV of the same law governs copyrights.

"Lavandera Ko," the mark in question in this case is being used as a trade name or specifically, a service name since the business in which it pertains involves the rendering of laundry services. Under Section 121.1 of R.A. No. 8293, "mark" is defined as any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. As such, the basic contention of the parties is, who has the better right to use "Lavandera Ko" as a service name because Section 165.2[13] of the said law, guarantees the protection of trade names and business names even prior to or without registration, against any unlawful act committed by third parties. A cause of action arises when the subsequent use of any third party of such trade name or business name would likely mislead the public as such act is considered unlawful. Hence, the RTC erred in denying the parties the proper determination as to who has the ultimate right to use the said trade name by ruling that neither of them

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[12] *Rollo,* pp. 58-60.

[13] 165.2. (a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act ommitted by third parties.

(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

has the right or a cause of action since "Lavandera Ko" is protected by a copyright.

By their very definitions, copyright and trade or service name are different. Copyright is the right of literary property as recognized and sanctioned by positive law.[14] An intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.[15] Trade name, on the other hand, is any designation which (a) is adopted and used by person to denominate goods which he markets, or services which he renders, or business which he conducts, or has come to be so used by other, and (b) through its association with such goods, services or business, has acquired a special significance as the name thereof, and (c) the use of which for the purpose stated in (a) is prohibited neither by legislative enactment nor by otherwise defined public policy.[16]

Section 172.1 of R.A. 8293 enumerates the following original intellectual creations in the literary and artistic domain that are protected from the moment of their creation, thus:

> 172.1 Literary and artistic works, hereinafter referred to as *"works,"* are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:
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> (a) Books, pamphlets, articles and other writings;
> (b) Periodicals and newspapers;
> (c) Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
> (d) Letters;
> (e) Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
> (f) ***Musical compositions, with or without words***;

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[14] *Black's Law Dictionary*, Fifth Edition, (1979), p. 304.

[15] *Id*.

[16] *Id*. at 1339, citing *Walters v. Building Maintenance Service, Inc., Tex.Civ.App*., 291 S.W.2d 377, 382.

(g) Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;

(h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;

(i) Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;

(j) Drawings or plastic works of a scientific or technical character;

(k) Photographic works including works produced by a process analogous to photography; lantern slides;

(l) Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;

(m) Pictorial illustrations and advertisements;

(n) Computer programs; and

(o) Other literary, scholarly, scientific and artistic works.

As such, "Lavandera Ko," being a musical composition with words is protected under the copyright law (Part IV, R.A. No. 8293) and not under the trademarks, service marks and trade names law (Part III, R.A. No. 8293).

In connection therewith, the RTC's basis or source, an article appearing in a website,[17] in ruling that the song entitled "Lavandera Ko" is protected by a copyright, cannot be considered a subject of judicial notice that does not need further authentication or verification. Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them.[18] Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not *bona fide* disputed.[19] In *Spouses Latip v.*

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[17] http://www.himig.com.ph (http://kahimyang.info/kauswagan/articles/1420/today-in-philippine-history.

[18] *Republic v. Sandiganbayan, et al.*, 678 Phil. 358, 425 (2011), citing Ricardo J. Francisco, 7 *The Revised Rules of Court in the Philippines*, *Evidence*, Part I, 1997 ed., p. 69.

[19] *Id.,* citing Oscar M. Herrera, 5 *Remedial Law*, 1999, p. 72.

Chua,[20] this Court expounded on the nature of judicial notice, thus:

> 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:
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> > 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.
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> On this point, *State Prosecutors v. Muro* is instructive:
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> > 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.
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> > 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.
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> > 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

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[20] 619 Phil. 155, 164-166 (2009). (Citations omitted)

> 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.

The article in the website cited by the RTC patently lacks a requisite for it to be of judicial notice to the court because such article is not well and authoritatively settled and is doubtful or uncertain. It must be remembered that some articles appearing in the internet or on websites are easily edited and their sources are unverifiable, thus, sole reliance on those articles is greatly discouraged.

Considering, therefore, the above premise, this Court deems it proper to remand the case to the RTC for its proper disposition since this Court cannot, based on the records and some of the issues raised by both parties such as the cancellation of petitioner's certificate of registration issued by the Intellectual Property Office, make a factual determination as to who has the better right to use the trade/business/service name, "Lavandera Ko."

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated January 25, 2016, of petitioner Fernando U. Juan is **GRANTED.** Consequently, the Decision dated May 7, 2015 and Resolution dated December 4, 2015 of the Court of Appeals are **REVERSED** and **SET ASIDE**. This Court, however, **ORDERS** the **REMAND** of this case to the RTC for its prompt disposition.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe,* and *Reyes, Jr., JJ.,* concur.

Caguioa, J., on leave.

SECOND DIVISION

[G.R. No. 222711. August 23, 2017]

LEY CONSTRUCTION AND DEVELOPMENT CORPORATION, represented by its President, JANET C. LEY, *petitioner, vs.* **MARVIN MEDEL SEDANO, doing business under the name and style "LOLA TABA LOLO PATO PALENGKE AT PALUTO SA SEASIDE,"** *respondent.*

MARVIN MEDEL SEDANO, doing business under the name and style "LOLA TABA LOLO PATO PALENGKE AT PALUTO SA SEASIDE," *respondent (third-party plaintiff), vs.* **PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,** *respondent (third-party defendant).*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; VENUE OF ACTIONS; VENUE FOR PERSONAL ACTIONS SHALL LIE WITH THE COURT WHICH HAS JURISDICTION WHERE THE PLAINTIFF OR THE DEFENDANT RESIDES, AT THE ELECTION OF THE PLAINTIFF; EXCEPTION.— [T]he venue for personal actions shall – as a general rule – lie with the court which has jurisdiction where the plaintiff or the defendant resides, at the election of the plaintiff. As an exception, parties may, through a written instrument, restrict the filing of said actions in a certain exclusive venue.

2. ID.; ID.; ID.; VENUE STIPULATION; WHEN VALID AND BINDING.— In *Pilipino Telephone Corporation v. Tecson*, the Court held that an exclusive venue stipulation is valid and binding, provided that: (*a*) the stipulation on the chosen venue is exclusive in *nature or in intent*; (*b*) it is expressed in writing by the parties thereto; and (*c*) it is entered into before the filing of the suit. After a thorough study of the case, the Court

is convinced that all these elements are present and that the questioned stipulation in the lease contract, *i.e.*, Section 21 thereof, is a valid venue stipulation that limits the venue of the cases to the courts of Pasay City. x x x The x x x provision clearly shows the parties' intention to limit the place where **actions or cases arising from a violation of the terms and conditions of the contract of lease** may be instituted. This is evident from the use of the phrase "exclusive of all others" and the specification of the locality of Pasay City as the place where such cases may be filed.

3. **ID.; ID.; ID.; ID.; NOT CONSTRUED AS A STIPULATION ON JURISDICTION BUT ONE WHICH MERELY LIMITS VENUE; CASE AT BAR.—** [T]he fact that x x x [the] stipulation generalizes that all actions or cases x x x shall be filed with the RTC of Pasay City, to the exclusion of all other courts, does not mean that the same is a stipulation which attempts to curtail the jurisdiction of all other courts. It is fundamental that jurisdiction is conferred by law and not subject to stipulation of the parties. Hence, following the rule that the law is deemed written into every contract, the said stipulation should not be construed as a stipulation on jurisdiction but rather, one which merely limits venue. Moreover, "[t]he parties are charged with knowledge of the existing law at the time they enter into the contract and at the time it is to become operative." Thus, without any clear showing in the contract that the parties intended otherwise, the questioned stipulation should be considered as a stipulation on venue (and not on jurisdiction), consistent with the basic principles of procedural law.

4. **ID.; ID.; ID.; OBJECTIONS TO IMPROPER VENUE MUST BE RAISED AT THE EARLIEST OPPORTUNITY, AS IN AN ANSWER OR A MOTION TO DISMISS, OTHERWISE, IT IS DEEMED WAIVED.—** That respondent had filed several motions for extension of time to file a responsive pleading, or that he interposed a counterclaim or third-party complaint in his answer does not necessarily mean that he waived the affirmative defense of improper venue. The prevailing rule on objections to improper venue is that the same must be raised at the earliest opportunity, as in an answer or a motion to dismiss; otherwise, it is deemed waived. Here, respondent

timely raised the ground of improper venue since it was one of the affirmative defenses raised in his Answer with Third-Party Complaint. As such, it cannot be said that he had waived the same.

5. ID.; ID.; ID.; WHEN THE COUNTERCLAIM AND THIRD-PARTY COMPLAINT ARE NOT COVERED BY THE VENUE STIPULATION, THE RESPONDENT HAS THE RIGHT TO INVOKE THE SAME WHILE RAISING THE GROUND FOR IMPROPER VENUE AGAINST PETITIONER'S COMPLAINT, WHICH ACTION, IS COVERED BY THE STIPULATION; CASE AT BAR.— [T]he counterclaim of respondent was alleged to be a compulsory counterclaim, which he was prompted to file only because of petitioner's complaint for collection of sum of money, else the same would be barred. In fact, his counterclaim only sought reimbursement of his overpayment to petitioner in the amount of ₱400,000.00, as well as damages for the filing of a purported baseless suit. Thus, his counterclaim is not covered by the venue stipulation, since he is not asserting a violation of the terms and conditions of the lease contract, but rather an independent right which arose only because of the complaint. The same goes for his third-party complaint, whereby he only pleaded that the rental payments remitted to PNCC for the period August 2011 to December 2011 be reimbursed to him in the event that petitioner's complaint is found to be meritorious. Since his counterclaim and third-party complaint are not covered by the venue stipulation, respondent had, therefore, every right to invoke the same whilst raising the ground of improper venue against petitioner's complaint, which action was, on the contrary, covered by the stipulation. Thus, there is no inconsistency in respondent's posturing, which perforce precludes the application of the *Pantranco* ruling, as well as negates the supposition that he had waived the defense of improper venue.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for petitioner.
Trinidad Law Firm for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Orders dated June 15, 2015[2] and January 27, 2016[3] of the Regional Trial Court (RTC) of Valenzuela City, Branch 75 (Valenzuela-RTC) in Civil Case No. 40-V-12, which dismissed petitioner Ley Construction and Development Corporation's (as represented by its President, Janet C. Ley; petitioner) complaint for collection of sum of money and damages, without prejudice, on the ground of improper venue.

The Facts

On March 13, 2012, petitioner filed a Complaint for Collection of Sum of Money and Damages[4] against respondent Marvin Medel Sedano (respondent), doing business under the name and style "*Lola Taba Lolo Pato Palengke at Paluto sa* Seaside," before the Valenzuela-RTC, docketed as Civil Case No. 40-V-12. In its complaint, petitioner alleged that on January 14, 2005, it leased[5] a 50,000-square meter (sq.m.) parcel of land located at Financial Center Area, Pasay City (now, Lot 5-A Diosdado Macapagal Boulevard, Pasay City) from respondent third-party defendant, the Philippine National Construction Corporation (PNCC).[6] On September 11, 2006, petitioner subleased[7] the 14,659.80-sq.m. portion thereof to respondent for a term of ten (10) years beginning November 15, 2005, for a monthly

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[1] *Rollo*, pp. 20-44.

[2] *Id*. at 54-61. Penned by Presiding Judge Lilia Mercedes Encarnacion A. Gepty.

[3] *Id*. at 62-63.

[4] Dated February 24, 2012. *Id*. at 68-77.

[5] See Contract of Lease dated January 5, 2005; *id*. at 80-83.

[6] See *id*. at 80.

[7] See Contract of Lease notarized on September 11, 2006 (lease contract); *id*. at 64-67.

rent of ₱1,174,780.00, subject to a ten percent (10%) increase beginning on the third year and every year thereafter (lease contract).[8] Respondent allegedly failed to pay the rent due for the period August 2011 to December 2011, amounting to a total of ₱8,828,025.46, and despite demands,[9] refused to settle his obligations;[10] hence, the complaint.

In his Answer with Third-Party Complaint,[11] respondent countered that he religiously paid rent to petitioner until PNCC demanded[12] that the rent be paid directly to it, in view of the petitioner's eviction from the subject property by virtue of a court order.[13] Thus, during the period from August 2011 until December 2011, he remitted the rentals to PNCC.[14] Should he be found liable to petitioner, respondent maintained that the RTC should hold PNCC liable to reimburse to him the amounts he paid as rentals; hence, the third-party complaint.[15]

Respondent likewise pointed out that the venue was improperly laid since Section 21[16] of the lease contract provides that "[a]ll actions or case[s] filed in connection with this case shall be filed with the Regional Trial Court of Pasay City, exclusive of all others."[17] Hence, the complaint should be dismissed on the ground of improper venue.

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[8] *Id*. at 64. See also *id*. at 69-70.

[9] See demand letter dated October 27, 2011; *id*. at 91-92.

[10] See *id*. at 70-71.

[11] Dated June 22, 2012. *Id*. at 111-117.

[12] See demand letter dated August 10, 2011; *id*. at 120.

[13] See *id*. at 112. See also Decision in Civil Case No. M-PSY-08-07675-CV dated July 4, 2011; *id*. at 121-131.

[14] See official receipts for rental payments; *id*. at 132-135.

[15] See *id*. at 115-116.

[16] *Id*. at 66.

[17] See *id*. at 66. See also *id*. at 114.

Finally, respondent argued that he paid petitioner the amounts of ₱3,518,352.00 as deposit and advance rentals under the lease contract, and that he made a ₱400,000.00 overpayment, all of which amounts were not liquidated or credited to respondent during the subsistence of the lease contract. Thus, respondent interposed a counterclaim, seeking petitioner to reimburse the said amounts to him, and to pay him moral and exemplary damages, including litigation expenses, in view of petitioner's filing of such baseless suit.[18]

In its Comment/Opposition[19] to respondent's affirmative defense of improper venue, petitioner argued that Section 21 of the lease contract is not a stipulation as to venue, but a stipulation on jurisdiction which is void.[20] This is because such stipulation deprives other courts, *i.e.*, the Municipal Trial Courts, of jurisdiction over cases which, under the law, are within its exclusive original jurisdiction, such as an action for unlawful detainer.[21] Petitioner further posited that respondent had already submitted himself to the jurisdiction of the Valenzuela-RTC and had waived any objections on venue, since he sought affirmative reliefs from the said court when he asked several times for additional time to file his responsive pleading, set-up counterclaims against petitioner, and impleaded PNCC as a third-party defendant.[22]

Meanwhile, in its Answer to Third Party Complaint with Counterclaim,[23] PNCC contended that respondent has no cause of action against it, since he acknowledged PNCC's right to receive rent, as evidenced by his direct payment thereof to PNCC.[24] Respondent also entered into a contract of lease with

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[18] See *id*. at 114-115.

[19] Dated December 13, 2013. *Id*. at 191-198.

[20] See *id*. at 192-193.

[21] *Id*.

[22] See *id*. at 194-196.

[23] Dated January 16, 2013. *Id*. at 138-142B.

[24] *Id*. at 141.

PNCC after learning that petitioner had been evicted from the premises by virtue of a court ruling.[25]

The Valenzuela-RTC Ruling

In an Order[26] dated June 15, 2015, the Valenzuela-RTC granted respondent's motion and dismissed the complaint on the ground of improper venue. It held that Section 21 of the lease contract between petitioner and respondent is void insofar as it limits the filing of cases with the RTC of Pasay City, even when the subject matter jurisdiction over the case is with the Metropolitan Trial Courts.[27] However, with respect to the filing of cases cognizable by the RTCs, the stipulation validly limits the venue to the RTC of Pasay City.[28] Since petitioner's complaint is one for collection of sum of money in an amount that is within the jurisdiction of the RTC, petitioner should have filed the case with the RTC of Pasay City.[29]

The Valenzuela-RTC also found no merit in petitioner's claim that respondent waived his right to question the venue when he filed several motions for extension of time to file his answer. It pointed out that improper venue was among the defenses raised in respondent's Answer. As such, it was timely raised and, therefore, not waived.[30]

Aggrieved, petitioner moved for reconsideration[31] which was, however, denied by the Valenzuela-RTC in its Order[32] dated January 27, 2016; hence, the present petition.

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[25] *Id.*

[26] *Id.* at 54-61.

[27] *Id.* at 57.

[28] *Id.*

[29] *Id.* at 59.

[30] See *id.* 59-60.

[31] Not attached to the *rollo*.

[32] *Rollo*, pp. 62-63.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the Valenzuela-RTC erred in ruling that venue was improperly laid.

The Court's Ruling

The petition has no merit.

Rule 4 of the Rules of Court governs the rules on venue of civil actions, to wit:

Rule 4
VENUE OF ACTIONS

Section 1. *Venue of real actions*. – Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

Section 2. *Venue of personal actions*. – **All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.**

Section 3. *Venue of actions against nonresidents*. – If any of the defendants does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff, or any property of said defendant located in the Philippines, the action may be commenced and tried in the court of the place where the plaintiff resides, or where the property or any portion thereof is situated or found.

Section 4. *When Rule not applicable*. – This Rule shall not apply

(a) In those cases where a specific rule or law provides otherwise; or

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

Based on these provisions, the venue for personal actions shall – as a general rule – lie with the court which has jurisdiction where the plaintiff or the defendant resides, at the election of the plaintiff.[33] As an exception, parties may, through a written instrument, restrict the filing of said actions in a certain exclusive venue.[34] In *Briones v. Court of Appeals*,[35] the Court explained:

> Written stipulations as to venue may be restrictive in the sense that the suit may be filed only in the place agreed upon, or merely permissive in that the parties may file their suit not only in the place agreed upon but also in the places fixed by law. As in any other agreement, what is essential is the ascertainment of the intention of the parties respecting the matter.
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> As regards restrictive stipulations on venue, jurisprudence instructs that it must be shown that such stipulation is exclusive. In the absence of qualifying or restrictive words, such as "exclusively," "waiving for this purpose any other venue," "shall only" preceding the designation of venue, "to the exclusion of the other courts," or words of similar import, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place.[36]

In *Pilipino Telephone Corporation v. Tecson*,[37] the Court held that an exclusive venue stipulation is valid and binding, provided that: (*a*) the stipulation on the chosen venue is exclusive in *nature or in intent*; (*b*) it is expressed in writing by the parties thereto; and (*c*) it is entered into before the filing of the suit.[38]

After a thorough study of the case, the Court is convinced that all these elements are present and that the questioned stipulation in the lease contract, *i.e.*, Section 21 thereof, is a

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[33] Section 2, Rule 4, RULES OF COURT.

[34] Section 4 (b), Rule 4, RULES OF COURT.

[35] G.R. No. 204444, January 14, 2015, 746 SCRA 240.

[36] *Id*. at 247, citing *Legaspi v. Rep. of the Phils.*, 581 Phil. 381, 386 (2008).

[37] 472 Phil. 411 (2004).

[38] *Id*. at 414.

valid venue stipulation that limits the venue of the cases to the courts of Pasay City. It states:

> **21. Should any of the party (sic) renege or violate any terms and conditions of this lease contract, it shall be liable for damages. All actions or case[s] filed in connection with this lease shall be filed with the Regional Trial Court of Pasay City, exclusive of all others.**[39] (Emphases and underscoring supplied)

The above provision clearly shows the parties' intention to limit the place where **actions or cases arising from a violation of the terms and conditions of the contract of lease** may be instituted. This is evident from the use of the phrase "exclusive of all others" and the specification of the locality of Pasay City as the place where such cases may be filed.

Notably, the fact that this stipulation generalizes that all actions or cases of the aforementioned kind shall be filed with the RTC of Pasay City, to the exclusion of all other courts, does not mean that the same is a stipulation which attempts to curtail the jurisdiction of all other courts. It is fundamental that jurisdiction is conferred by law and not subject to stipulation of the parties.[40] Hence, following the rule that the law is deemed written into every contract,[41] the said stipulation should not be construed as a stipulation on jurisdiction but rather, one which merely limits venue. Moreover, "[t]he parties are charged with knowledge of the existing law at the time they enter into the contract and at the time it is to become operative."[42] Thus, without any clear showing in the contract that the parties intended otherwise, the questioned stipulation should be considered as

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[39] *Rollo*, p. 66.

[40] See *Radiowealth Finance Company, Inc. v. Nolasco*, G.R. No. 227146, November 4, 2016.

[41] *Heirs of San Miguel v. Court of Appeals*, 416 Phil. 943, 954 (2001).

[42] *Communication Materials and Design, Inc. v. Court of Appeals*, 329 Phil. 487, 508 (1996), citing *Topweld Manufacturing, Inc. v. ECED, S.A.*, 222 Phil. 424, 435 (1985).

a stipulation on venue (and not on jurisdiction), consistent with the basic principles of procedural law.

In this case, it is undisputed that petitioner's action was one for collection of sum of money in an amount[43] that falls within the exclusive jurisdiction of the RTC.[44] Since the lease contract

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[43] More than ₱8,000,000.00.

[44] Section 19 (8) of *Batas Pambansa Bilang* 129, entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," otherwise known as "THE JUDICIARY REORGANIZATION ACT OF 1980" (August 14, 1981), as amended by Republic Act No. (RA) RA 7691, entitled "AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE *BATAS PAMBANSA BLG.* 129, OTHERWISE KNOWN AS THE 'JUDICIARY REORGANIZATION ACT OF 1980,'" approved on March 25, 1994), provides:

> Section 1. Section 19 of *Batas Pambansa Blg.* 129, otherwise known as the "Judiciary Reorganization Act of 1980," is hereby amended to read as follows:
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> Section 19. *Jurisdiction in civil cases*. – Regional Trial Courts shall exercise exclusive original jurisdiction.
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> x x x x x x x x x
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> (8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds One hundred thousand pesos (₱100,000.00) or, in such other cases in Metro Manila, where the demand exclusive of the abovementioned items exceeds Two Hundred thousand pesos (₱200,000.00).

This had been amended by Section 5 of RA 7691 which reads:

> Section 5. After five (5) years from the effectivity of this Act, the jurisdictional amounts mentioned in Sec. 19 (3), (4), and (8); and Sec. 33 (1) of *Batas Pambansa Blg.* 129 as amended by this Act, shall be adjusted to Two hundred thousand pesos (₱200,000.00). Five (5) years thereafter, such jurisdictional amounts shall be adjusted further to Three hundred thousand pesos (₱300,000.00): *Provided, however*, That in the case of Metro Manila, the abovementioned jurisdictional amounts shall be adjusted after five (5) years from the effectivity of this Act to Four hundred thousand pesos (₱400,000.00).

already provided that all actions or cases involving the breach thereof should be filed with the RTC of Pasay City, and that petitioner's complaint purporting the said breach fell within the RTC's exclusive original jurisdiction, the latter should have then followed the contractual stipulation and filed its complaint before the RTC of Pasay City. However, it is undeniable that petitioner filed its complaint with the Valenzuela-RTC; hence, the same is clearly dismissible on the ground of improper venue, without prejudice, however, to its refiling in the proper court.

That respondent had filed several motions for extension of time to file a responsive pleading, or that he interposed a counterclaim or third-party complaint in his answer does not necessarily mean that he waived the affirmative defense of improper venue. The prevailing rule on objections to improper venue is that the same must be raised at the earliest opportunity, as in an answer or a motion to dismiss; otherwise, it is deemed waived.[45] Here, respondent timely raised the ground of improper venue since it was one of the affirmative defenses raised in his Answer with Third-Party Complaint.[46] As such, it cannot be said that he had waived the same.

Further, it should be pointed out that the case of *Pangasinan Transportation Co., Inc. v. Yatco* (*Pantranco*)[47] cited in the instant petition[48] should not apply to this case, considering that the invocation of the ground of improper venue therein was not based on a contractual stipulation, but rather on respondent Elpidio O. Dizon's alleged violation of the Rules of Court, as he filed his case for damages before the Court of First Instance of Rizal, Branch IV (Quezon City), despite testifying that he was actually a resident of Dagupan City. In that case, the Court ruled that the filing of a counterclaim and third party-complaint,

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[45] *City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 523 (2014).

[46] *Rollo*, pp. 114 and 116.

[47] 128 Phil. 767 (1967).

[48] See *rollo*, pp. 41-42.

and additionally, the introduction of evidence of petitioner Pantranco (respondent in the case for damages) after the denial of its motion to dismiss on the ground of improper venue, "necessarily implied a submission to the jurisdiction of [the trial court therein], and, accordingly, a waiver of such right as Pantranco may have had to object to the venue, upon the ground that it had been improperly laid."[49] The rationale for the *Pantranco* ruling is that a party cannot invoke a violation of a rule on venue against his counter-party, when he himself is bound by the same rule, but nonetheless, seeks his own relief and in so doing, violates it.

In contrast, the counterclaim of respondent was alleged to be a compulsory counterclaim,[50] which he was prompted to file only because of petitioner's complaint for collection of sum of money, else the same would be barred.[51] In fact, his counterclaim only sought reimbursement of his overpayment to petitioner in the amount of ₱400,000.00, as well as damages for the filing of a purported baseless suit. Thus, his counterclaim is not covered by the venue stipulation, since he is not asserting a violation of the terms and conditions of the lease contract, but rather an independent right which arose only because of the complaint. The same goes for his third-party complaint, whereby he only pleaded that the rental payments remitted to PNCC for the period August 2011 to December 2011 be reimbursed to him in the event that petitioner's complaint is found to be meritorious. Since his counterclaim and third-party complaint are not covered by the venue stipulation, respondent

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[49] *Id.* at 769.

[50] See *rollo*, p. 114.

[51] "A compulsory counterclaim is any claim for money or other 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 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**." (*Cruz-Agana v. Santiago-Lagman*, 495 Phil. 188, 193-194 [2005], emphasis and underscoring supplied.)

had, therefore, every right to invoke the same whilst raising the ground of improper venue against petitioner's complaint, which action was, on the contrary, covered by the stipulation. Thus, there is no inconsistency in respondent's posturing, which perforce precludes the application of the *Pantranco* ruling, as well as negates the supposition that he had waived the defense of improper venue.

WHEREFORE, the petition is **DENIED**. Accordingly, the Orders dated June 15, 2015 and January 27, 2016 of the Regional Trial Court of Valenzuela City, Branch 75 in Civil Case No. 40-V-12 are hereby **AFFIRMED**.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Peralta*, and *Reyes, Jr., JJ.*, concur

Caguioa, J., on leave.

SECOND DIVISION

[G.R. No. 224631. August 23, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUPERTO RUBILLAR, JR. *y* GABERON,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; CONFERS THE APPELLATE COURT FULL JURISDICTION OVER THE CRIMINAL CASE AND RENDERS SUCH COURT COMPETENT TO EXAMINE

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[*] Acting Chief Justice per Special Order No. 2469 dated August 22, 2017.

RECORDS, REVISE THE JUDGMENT APPEALED FROM, INCREASE THE PENALTY, AND CITE THE PROPER PROVISION OF THE PENAL LAW.— [A]n appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. **ID.; ID.; ID.; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—** In deciding Rape cases, it is well to emphasize that such crime is a serious transgression with grave considerations and consequences both to the accused and the complainant. On the one hand, the accused is presumed innocent and shall not be convicted unless his guilt is proven beyond reasonable doubt, in which case, he shall be meted with a severe penalty. On the other hand, the Court is ever mindful that a young woman would not publicly announce that she was raped if it were not true. No woman would want to expose herself to the process, the trouble, and the humiliation of a rape trial unless she actually has been a victim of abuse and her motive is but to seek atonement for her abuse. In these lights, a painstaking review of the judgment of conviction is required. Relatedly, three (3) principles guide the Court in reviewing rape cases: (*a*) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (*b*) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (*c*) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. Following these legal precepts, the victim's sole testimony must stand the test of credibility.

3. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.—** To be convicted of Rape under x x x [Article 266-A (1) (a) of the RPC], the prosecution must prove the following elements beyond reasonable doubt: (*a*) offender had carnal knowledge of the victim; and (*b*) such act was accomplished through force, threat, or intimidation.

4. ID.; ID.; ID.; SWEETHEART THEORY; EFFECTIVELY AN ADMISSION OF CARNAL KNOWLEDGE OF THE VICTIM AND CONSEQUENTLY PLACES ON THE ACCUSED THE BURDEN OF PROVING THE ALLEGED RELATIONSHIP BY SUBSTANTIAL EVIDENCE.— In the present case, Rubillar's invocation of the "sweetheart theory" is essentially an admission of him having carnal knowledge with AAA, albeit maintaining that the same was consensual. Thus, it is crucial to determine whether or not AAA indeed consented to the sexual act, considering that the gravamen of Rape is sexual congress with a woman without her consent. Stated differently, the only question left for the Court to resolve is whether the prosecution has proven the second element beyond reasonable doubt. The "sweetheart theory" is an affirmative defense often raised to prove the non-attendance of force or intimidation. As afore-stated, it is "effectively an admission of carnal knowledge of the victim and consequently places on accused-appellant the burden of proving the alleged relationship by substantial evidence." x x x The "sweetheart theory" operates to impair the victim's testimony or create doubt on her version of the facts when the defense presents sufficient evidence of a relationship between the accused and the victim but the latter simply denies it. Notably, a woman who was sexually abused by a lover has no practicable reason to deny her relationship with the accused in a rape trial because admitting such relationship would not negate her allegation of rape, as the Court has consistently ruled that "a 'love affair' does not justify rape, for the beloved cannot be sexually violated against her will." Nonetheless, if she denies the relationship but it was found existing, she runs the risk of tainting her testimony when her version of the facts is inconsistent with the presence of an intimate relationship between them.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; A CONVICTION IN A CRIMINAL CASE MUST BE SUPPORTED BY PROOF BEYOND REASONABLE DOUBT, WHICH MEANS MORAL CERTAINTY THAT THE ACCUSED IS GUILTY AND THE BURDEN OF PROOF RESTS UPON THE PROSECUTION.— Considering the totality of the evidence presented in this case, the Court doubts whether Rubillar employed force or intimidation upon AAA during their sexual encounter. It must be clarified, however,

that the Court's finding does not mean absolute certainty that Rubillar did not coerce AAA to engage in the act. It is simply that the evidence presented by the prosecution falls short of the quantum of proof required to support a conviction. Jurisprudence has consistently held that "[a] conviction in a criminal case must be supported by proof beyond reasonable doubt, which means a moral certainty that the accused is guilty; the burden of proof rests upon the prosecution." If the prosecution fails to do so, "the presumption of innocence of the accused must be sustained and his exoneration be granted as a matter of right. For the prosecution's evidence must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense," as in this case.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Ty & Partners Law Firm for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Ruperto Rubillar, Jr. *y* Gaberon (Rubillar) assailing the Decision[2] dated August 24, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01219-MIN, which affirmed the Judgment[3] dated June 22, 2012 of the Regional Trial Court of Davao City, Branch 11 (RTC) in Crim. Case No. 61,680-07 finding Rubillar guilty beyond reasonable doubt of Rape under the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,[4] otherwise known as the "Anti-Rape Law of 1997."

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[1] See Notice of Appeal dated March 14, 2016; *rollo*, pp. 23-24.

[2] *Id.* at 3-22. Penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Pablito A. Perez concurring.

[3] *CA Rollo*, pp. 85-97. Penned by Judge Virginia Hofileña-Europa.

[4] Defined and penalized under Article 266-A in relation to 266-B of the RPC, as amended by RA 8353, entitled "AN ACT EXPANDING THE DEFINITION

The Facts

The instant case stemmed from an Information[5] filed before the RTC charging Rubillar of Rape, the accusatory portion of which states:

> That on or about October 12, 2006, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with force and intimidation, [willfully], unlawfully and feloniously had carnal knowledge of [AAA[6]] against her will, to her damage and prejudice.
>
> CONTRARY TO LAW.[7]

The parties presented conflicting versions of facts.

Based on AAA's testimony, the prosecution alleged that at around one (1) o'clock in the afternoon of October 12, 2006, AAA was waiting for a jeepney to go to the public market when Rubillar, her father's *kumpare*, arrived and offered her a ride, to which AAA assented.[8] About four (4) kilometers from where

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OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES," approved on September 30, 1997.

[5] Dated June 8, 2007. Records, p. 1.

[6] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence Against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013].)

[7] Records, p. 1.

[8] AAA trusted Rubillar as he was their neighbor, her father's friend, and the husband of a distant relative. (See *rollo*, p. 5)

they left, Rubillar stopped the motorcycle and made AAA wear a helmet supposedly to avoid apprehension by the traffic police. However, said helmet had a heavily-tinted face shield, thereby making it difficult for AAA to see. Thereafter, Rubillar drove at a fast speed without stopping at traffic lights. This prompted AAA to tell Rubillar to already drop her off, but the latter drove faster and told her to shut up. They eventually reached a place unfamiliar to AAA – later ascertained as Davao Motel – where Rubillar then drove his motorcycle inside and thereupon, was assisted by a man. AAA wanted to ask for help from the man but he immediately left. When they were left alone, Rubillar dragged her upstairs and pushed her to the bed. Despite AAA's resistance, Rubillar placed himself on top of her, forcibly held her hands, undressed her, and kissed her. He then inserted his penis into AAA's vagina and made a push and pull motion. Afterwards, Rubillar told her to wash herself in the comfort room and, subsequently, to put on the helmet. Rubillar allegedly threatened to kill her should she tell anyone about what happened. They then rode the motorcycle and Rubillar dropped her off at the public market. AAA proceeded to buy groceries and rode a jeepney going home. Thereafter, AAA ran away from home due to fear and embarrassment. Her sister took her home in January 2007 and only then did AAA tell her parents what happened. They reported the incident to the police.[9]

The prosecution presented other witnesses to testify on subsequent events. Senior Police Officer 1 Annabelle Dacudao testified that she accompanied AAA to the motel to conduct an ocular inspection. It was then that AAA found out the name of the motel and the room where she was brought, *i.e.*, Room 6. Further, Dr. Margarita Isabel Amoroso Artes stated that she examined AAA and found a "definitive penetrating injury" on her hymen.[10]

For his part, Rubillar admitted having carnal knowledge of AAA, but maintained that they were sweethearts since August

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[9] See *rollo,* pp. 4-6. See also CA *rollo,* pp. 85-89.

[10] See CA *rollo*, pp. 89-90.

2006[11] and their sexual act was consensual. He narrated that per AAA's request, they met at ten (10) o'clock in the morning on the day of the incident to go to AAA's on-the-job training office[12] in Calinan. Rubillar noted that AAA brought her own helmet and that he stopped at the red traffic lights on their way there. After AAA's errand at the office, they proceeded to the machine shop in Cabaguio Street where Rubillar paid for the repairs of a jeepney. As it was about noontime already, he asked AAA to lunch. However, AAA invited him to go to the motel in front of the machine shop instead, to which he agreed. Thus, they checked in at the motel where a room boy met them and led them to a room. In his counter-affidavit,[13] Rubillar alleged that AAA paid for the motel[14] but in his testimony, he claimed to have paid the room boy while AAA went up to the second floor.[15] After receiving the payment, the room boy closed the door and left them. Rubillar then followed AAA upstairs where they talked, kissed, and later on engaged in sexual intercourse twice. He emphasized that the sexual acts were done without force. They left soon thereafter because that day was his daughter's birthday.[16]

Rubillar's claim that he had a relationship with AAA was thereafter corroborated by numerous witnesses.[17] *First*, Dioter Odiongan (Odiongan), AAA's ex-boyfriend, testified that on September 30, 2006, he attended the festivities in Tagakpan where he saw AAA with Rubillar. AAA then introduced Rubillar to him as her boyfriend and that he saw them hugging each other.[18] *Second*, Wilson Laguardia (Laguardia), Rubillar's

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[11] See TSN, October 4, 2007, pp. 33-34.

[12] See TSN, April 18, 2011, p. 8.

[13] Dated April 10, 2007. Records, pp. 8-11.

[14] See *id*. at 10.

[15] See TSN, October 4, 2007, pp. 18-22.

[16] See CA *rollo*, pp. 90-91; records, pp. 8-10; TSN, October 4, 2007, pp. 18-25; and TSN, February 7, 2011, pp. 8-28.

[17] See CA *rollo,* pp. 90-93.

[18] See TSN, September 19, 2007, pp. 13-16.

neighbor, stated that in a disco event on October 4, 2006, Rubillar introduced AAA to him as his girlfriend and thereafter borrowed his motorcycle for them to use.[19] *Third*, Maria Jeneza Kalan (Kalan), who is allegedly AAA's best friend since elementary, narrated that in September 2006, AAA confided to her and Yvonne Calo (Calo) that she was Rubillar's girlfriend. Kalan added that in January 2007, AAA stayed at her house for two days when the latter ran away from home. When Kalan asked why she ran away, AAA replied that "she cannot take any more her mother" and that she is going to elope with Rubillar to Bukidnon.[20] On cross-examination, Kalan clarified that AAA showed no letter, token, or any gift from the accused[21] and that she never saw them together in public either before or after the alleged rape incident.[22] *Lastly*, Calo, who was allegedly AAA's best friend in high school and half-sister of Rubillar's wife, rebutted AAA's statement that she never talked (had no encounter) with Rubillar prior to the incident and that she was unfamiliar with the places where the motorcycle passed by going to the motel in Davao City, such as the GSIS building, considering that they used to pass by it whenever they went to the main branch of their school during special school activities. According to Calo, Rubillar used to fetch her and AAA several times from their on-the-job training office in Calinan in July 2006, and she noticed that AAA was "very close" to Rubillar and always sat beside him in the jeepney.[23]

Another witness, Pastor Minn Baon (Baon) testified that at around 1:30 in the afternoon of October 12, 2006, along Cabaguio Street, she saw AAA and Rubillar aboard a motorcycle, which passed by quickly about ten meters away from her. She noticed that AAA was embracing Rubillar, with her head on his right shoulder and her eyes looking directly ahead. Baon added that

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[19] See *id*. at 3-5.

[20] See TSN, September 28, 2009, pp. 4-9.

[21] See TSN, September 28, 2009, p. 15.

[22] See TSN, September 28, 2009, p. 19.

[23] See TSN, April 18, 2011, pp. 3-10.

AAA wore a pink blouse underneath a black jacket and a blue helmet with a transparent cover/face shield.[24]

Finally, the defense presented the motel manager and the cashier on duty at the time of the incident. The motel manager explained that the motel has a policy that whenever one of the customers appears forced to enter a room, the room boy must first ask for payment before the customers are led to an assigned room to give enough time to verify and alert the guard or call the Sta. Ana Police. The cashier on duty testified that there was no unusual incident reported to her on that day.[25] The cashier added that the room boy assigned to Room No. 6 on the day of the incident had passed away.[26]

The RTC Ruling

In a Judgment[27] dated June 22, 2012, the RTC found Rubillar guilty beyond reasonable doubt of Rape and, accordingly, imposed the penalty of *reclusion perpetua* and ordered him to pay ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages.[28]

The RTC found AAA's testimony straightforward and credible as she positively recounted the incidents that led to the commission of the crime against her. On the other hand, it did not give credence to Rubillar's defense of sweetheart theory, opining that he was not able to satisfactorily prove their relationship through love letters, photos, or even saved text messages between them. The RTC added that even if it were true that they were clandestine lovers, conviction is still warranted as long as the element of force or intimidation attended the sexual act. In this relation, it disagreed with Rubillar's claim that AAA's lack of resistance amounted to consent, pointing

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[24] See TSN, October 4, 2007, pp. 2-7.

[25] See CA *rollo,* pp. 91-92.

[26] See TSN, November 10, 2010, pp. 4-7.

[27] CA *rollo,* pp. 85-97.

[28] See *id*. at 97.

out that while testifying, the latter recounted several times how she attempted to resist Rubillar's advances. The RTC further noted that Rubillar had moral ascendency over AAA considering the former's advanced age and relationship with her father.[29]

Aggrieved, Rubillar appealed[30] to the CA.

The CA Ruling

In a Decision[31] dated August 24, 2015, the CA upheld Rubillar's conviction, finding the prosecution to have established all the elements of the crime charged. More particularly, the CA held that Rubillar employed force and intimidation from the moment he drove the motorcycle at a high speed, frightened her that he would bump the motorcycle if she would not shut up, dragged her to the room, pushed her to the bed, and pinned her down to insert his penis. The CA also gave credence to the medical examination conducted on AAA showing attenuation of hymen. Further, it ruled that even assuming that Rubillar and AAA were lovers, it would not exculpate Rubillar from the crime of rape, explaining that in rape cases, the complainant's testimony is credible where no strong motive for falsely testifying against the accused is shown, as in this case.[32]

Hence, the instant appeal.

The Issue Before the Court

The main issue for the Court's resolution is whether or not Rubillar's conviction for Rape should be upheld.

The Court's Ruling

The appeal is meritorious.

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[29] *Id.* at 94-97.

[30] See Notice of Appeal dated September 14, 2012; CA *rollo*, pp. 6-8.

[31] *Rollo*, pp. 3-22.

[32] See *id.* at 11-21.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[33] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[34]

In deciding Rape cases, it is well to emphasize that such crime is a serious transgression with grave considerations and consequences both to the accused and the complainant. On the one hand, the accused is presumed innocent and shall not be convicted unless his guilt is proven beyond reasonable doubt, in which case, he shall be meted with a severe penalty. On the other hand, the Court is ever mindful that a young woman would not publicly announce that she was raped if it were not true. No woman would want to expose herself to the process, the trouble, and the humiliation of a rape trial unless she actually has been a victim of abuse and her motive is but to seek atonement for her abuse. In these lights, a painstaking review of the judgment of conviction is required.[35]

Relatedly, three (3) principles guide the Court in reviewing rape cases: (*a*) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (*b*) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (*c*) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[36] Following these legal precepts, the victim's sole testimony must stand the test of credibility.

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[33] *People v. Dahil*, 750 Phil. 212, 225 (2015).

[34] See *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[35] See *People v. Magayon*, 640 Phil. 121, 131 (2010).

[36] *Id.* at 131-132.

Guided by the foregoing principles and after meticulously evaluating the entire case records, the Court holds that the victim's sole testimony examined in light of the other evidence presented in court, failed to establish Rubillar's guilt beyond reasonable doubt, as will be explained hereunder.

Rape under Article 226-A (1) (a) of the RPC, as amended, provides:

Article 266-A. Rape: *When And How Committed*. – Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

   a) Through force, threat or intimidation;

x x x x x x x x x

To be convicted of Rape under this provision, the prosecution must prove the following elements beyond reasonable doubt: (*a*) offender had carnal knowledge of the victim; and (*b*) such act was accomplished through force, threat, or intimidation.[37]

In the present case, Rubillar's invocation of the "sweetheart theory" is essentially an admission of him having carnal knowledge with AAA, albeit maintaining that the same was consensual. Thus, it is crucial to determine whether or not AAA indeed consented to the sexual act, considering that the gravamen of Rape is sexual congress with a woman without her consent.[38] Stated differently, the only question left for the Court to resolve is whether the prosecution has proven the second element beyond reasonable doubt.[39]

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[37] See *People v. Comboy*, *supra* note 34, at 522.

[38] See *People v. Rivera*, 717 Phil. 380, 388-389 (2013).

[39] Proof beyond reasonable doubt does not require absolute certainty, but only moral certainty or that degree of proof that produces conviction in an unprejudiced mind. (See Section 2, Rule 133 of the Rules of Court.) In *Macayan, Jr.v. People* (756 Phil. 202, 213 [2015]), the Court held that "[r]equiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be 'presumed innocent until the contrary is proved.'"

The "sweetheart theory" is an affirmative defense often raised to prove the non-attendance of force or intimidation. As aforestated, it is "effectively an admission of carnal knowledge of the victim and consequently places on accused-appellant the burden of proving the alleged relationship by substantial evidence."[40] In *People v. Patentes* (*Patentes*),[41] the Court discussed the evidence required in order to support such defense, to wit:

> We are mindful that appellant's bare invocation of the sweetheart theory cannot alone stand. It must be corroborated by documentary, testimonial, or other evidence. Usually, these are letters, notes, photos, mementos, **or credible testimonies of those who know the lovers**.[42] (Emphasis and underscoring supplied)

The "sweetheart theory" operates to impair the victim's testimony or create doubt on her version of the facts when the defense presents sufficient evidence of a relationship between the accused and the victim but the latter simply denies it. Notably, a woman who was sexually abused by a lover has no practicable reason to deny her relationship with the accused in a rape trial because admitting such relationship would not negate her allegation of rape, as the Court has consistently ruled that "a 'love affair' does not justify rape, for the beloved cannot be sexually violated against her will."[43] Nonetheless, if she denies the relationship but it was found existing, she runs the risk of tainting her testimony when her version of the facts is inconsistent with the presence of an intimate relationship between them. The Court proceeds to resolve this case with this mindset.

In this case, Rubillar's allegation of relationship with AAA was overwhelmingly corroborated by his other witnesses. *First,* Odiongan testified that prior to the alleged incident, AAA

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[40] See *People v. Rivera*, *supra* note 38, at 392.

[41] 726 Phil. 590 (2014).

[42] *Id*. at 604.

[43] *People v. Nogpo, Jr.*, 603 Phil. 722, 743 (2009), citing *People v. Garces, Jr.*, 379 Phil. 919, 937 (2000).

introduced Rubillar to him as his new boyfriend and that he saw them in an intimate embrace.[44] *Second*, Laguardia recalled that Rubillar introduced AAA to him as his girlfriend through a text message, then, borrowed his motorcycle, which Rubillar and AAA used for about an hour.[45] *Third* and most relevant is the testimony of Kalan, AAA's long time friend, who testified that AAA explicitly told her that Rubillar was his boyfriend once before the alleged incident and a second time after AAA ran away from home, to wit:

ATTY. PANTOJAN

> The testimony of the witness is being offered to prove that she knows the accused in this case being a neighbor in Tagakpan, Tugbok, Davao City; that she also knows [AAA,] the complaining witness in this case and being a long time friend and likewise a neighbor at [Davao City]; that [AAA] **sometime in September of 2006 confided and told her that she is the girlfriend of the accused** and **after the alleged incident** that took place on October 12, 2006, [AAA] again **informed the witness that she is the accused [sic] girlfriend and at that time, they both decided to elope to Bukidnon.** That would be the gist of the [witness's] testimony this morning, Your Honor.

x x x x x x x x x

DIRECT EXAMINATION OF
MARIE JENEZA KALAN

x x x x x x x x x

Q: The complaining witness is [AAA], do you know her?
A: Yes, I know her.

Q: Why do you know her?
A: She is my best friend.

x x x x x x x x x

Q: The complainant in this case [AAA] filed a case against the accused for rape which was allegedly committed on

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[44] See TSN, September 19, 2007, pp. 13-16.

[45] See TSN, September 19, 2007, pp. 3-5.

October 12, 2006. Now, the accused and this [AAA], if you know, **what are [sic] they to each other before** October 12, 2006?

x x x x x x x x x

A: They are (sic) sweethearts.

Q: Who told you that the accused and [AAA] were sweethearts?
A: [AAA.]

Q: When did [AAA] tell you that she and the accused were sweethearts?
A: September 2006, I forgot the exact date.

Q: Where did [AAA] tell you of that?
A: In our house.

Q: Who were with you at that time that [AAA] told you that she is the sweetheart of the accused?
A: My other best friend.

Q: What is the name of your other best friend?
A: Ivon Calo.

x x x x x x x x x

Q: How many times did [AAA] tell you that she is the girlfriend of the accused?
A: Twice.

Q: When was the second time that [AAA] told you that she is the girlfriend of the accused?
A: January 2007.

Q: Where?
A: The same in our house.[46] (Emphases supplied)

It appears from these testimonies that Rubillar and AAA mutually acknowledged their clandestine relationship and revealed it to some people close to them. The Court stresses that the finding of a then subsisting relationship between the complainant and the accused raises suspicions on the truthfulness

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[46] TSN, September 28, 2009, pp. 3-7.

of AAA's testimony, wherein she vehemently denied having a relationship with the accused.

Considering that the defense had sufficiently established the fact of relationship, AAA's version of what happened on the day of the incident now appears incredulous *vis-a-vis* Rubillar's version. On the one hand, AAA stated that she had not talked with her father's friend, Rubillar, prior to the alleged incident and that he was merely waiting for a jeepney when Rubillar offered her a ride.[47] She then went on board the motorcycle and later on, got scared when Rubillar drove at a fast speed, seemingly without stopping at traffic lights, and went directly to a motel room, wherein they were assisted by a room boy. She alleged that she was too scared to tell the room boy or even attempt to escape even though she felt that she was about to be sexually abused. She added that Rubillar dragged her up the stairs and chased her around the room before he eventually caught up with her, let her lie down on the bed, placed himself on top of her, and undressed them both.

On the other hand, Rubillar narrated that AAA asked for a ride on his motorcycle to go to her on-the-job training office in Calinan, and after she finished her errand there, they went to a repair shop so that Rubillar could pay for the repairs of his jeepney. Thereafter, AAA invited him to the motel across the shop wherein they talked and had their first and only sexual encounter. Rubillar added that they left soon because that day was his daughter's birthday.

Assessing both versions and considering the established fact of relationship between them, there is reasonable doubt as to whether or not the element of force or intimidation attended the sexual act. To reiterate, AAA's denial of the relationship in her version of the facts created doubt on the credibility of her story.

The truthfulness of AAA's testimony is also rendered questionable by Calo's testimony. While AAA claimed that

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[47] See TSN, March 30, 2011, pp. 2-6.

she never talked to Rubillar prior to October 12, 2006, Calo rebutted the same when she testified that Rubillar used to fetch her and AAA from their on-the-job training office in Calinan in July 2006 and that she observed that they appeared "very close" during the trips.[48]

Calo further rebutted AAA's statement that she was unfamiliar with Davao City proper before October 12, 2006, in this wise:

Q: This time, it was Atty. Pantojan who asked [a] question and the question appears on page 33 of the transcript of the stenographic notes and it goes this way, "Do you recognize GSIS Davao City, when you passed by GSIS on your way where the accused brought you?" Answer: "I don't know if we passed by Ulas, how will I know if we passed by GSIS, to be frank, I am not familiar with the places in downtown. I just ..... from the truck I was riding and looked outside because the place was far. The relatives of Birang knew that I am not familiar with downtown." What can you say to this Answer of [AAA] to the question of Atty. Pantojan?

A: It is not true because our school is located at Bajada and **we passed by GSIS so it's impossible that she does not know the place.**

Q: This school in Bajada, when did [AAA] go to that school in Bajada?

A: Everytime we have activities like Foundation, we usually go there with [AAA].

Q: What particular month and year did you go there with [AAA]?

A: December 2005.

Q: In the year 2005, if you can remember, how many times did you and [AAA] go to Bajada?

A: Several times.

Q: Of course everytime you go with [AAA] to Bajada, what were the places that you passed by from Tagakpan to Bajada?

A: We passed by Ulas and then GSIS and that we passed by Aldevinco and then going to Bajada.[49] (Emphasis supplied)

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[48] See TSN, April 18, 2011, pp. 3-10.

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

The Court adds that the conduct of the victim immediately following the alleged sexual assault is significant in establishing the truth or falsity of the charge of rape.[50] In this case, while about to leave the motel, AAA could have ran away instead of boarding Rubillar's motorcycle. Also, getting off at the public market to do the errands of her mother is not usual for someone who has been raped. Moreover, AAA stated that she left her family's house because she did not want her mother and others to be involved in the alleged rape incident, but Kalan testified that she left the house to elope with "Berang" (Rubillar's alias). Plainly, AAA's act of leaving home to elope with her alleged malefactor is uncharacteristic of one who has been raped and seeks retribution for it. Kalan continued her testimony as follows:

Q: When was the second time that [AAA] told you that she is the girlfriend of the accused?
A: January 2007.

Q: Where?
A: The same in our house.

Q: How come that [AAA] was in your house at that time?
A: She went to our house at that time because she ran away from, home.

Q: How did you know that?
A: She herself told me that and to my parents.

Q: When you saw her in your house in January 2007, what did she bring with her?

x x x x x x x x x

A: Suit case.

Q: Who were with you at that time when [AAA] was there with [a] suit case?
A: My parents and my siblings.

Q: And for how long did [AAA] stay in your house at that time?
A: For two days.

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[50] See *People v. Patente*s, *supra* note 41, at 603.

Q: And on the first time that you saw her in your house, what, if any, did you talk about?
A: The first thing I asked her [was] why she ran away from home.

Q: And what was her answer to you?
A: First, she answered that first, she said, that **she cannot take any more her mother.**

Q: And what else did she tell you about her?
A: She told me that she is going to elope with Berang at Bukidnon.

Q: And what else?
A: Those are the things she told me.

Q: When [AAA] told you this, what was your reaction, if any?
A: I advised her.

Q: What did you advise her?
A: I told he that[, AAA,] that is not good because Berang is married.

Q: What did she tell you with regards (sic) to your advised (sic)?
A: She said she doesn't care.

Q: When for the first time that [AAA] told you that she is the girlfriend of the accused, what did you say to her by way of reply, if any?
A: I told her that [AAA] (sic) she knows his wife.

Q: And what was her reply to that?
A: She said that she cannot stand parting with the man because she loves him so much.[51] (Emphases supplied)

The value of a witness's testimony should be compatible with human knowledge, observation, and common experience, such that whatever is repugnant to these standards becomes incredible and must lie outside judicial cognizance.[52] While it is true that not all victims react the same way after suffering

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[51] TSN, September 28, 2009, pp. 7-9.

[52] See *People v. De Guzman*, 690 Phil. 701, 712 (2012).

forced coitus,[53] it appears highly unlikely for a victim of rape to cry out that she was sexually abused and, thereafter, to elope with her offender. Otherwise stated, the testimonies of Kalan and Calo rendered AAA's testimony highly suspect. At this point, it is worthy to note that AAA failed to give any reason why her two close friends would testify against her claim of rape in court.

Considering the totality of the evidence presented in this case, the Court doubts whether Rubillar employed force or intimidation upon AAA during their sexual encounter. It must be clarified, however, that the Court's finding does not mean absolute certainty that Rubillar did not coerce AAA to engage in the act. It is simply that the evidence presented by the prosecution falls short of the quantum of proof required to support a conviction. Jurisprudence has consistently held that "[a] conviction in a criminal case must be supported by proof beyond reasonable doubt, which means a moral certainty that the accused is guilty; the burden of proof rests upon the prosecution."[54] If the prosecution fails to do so, "the presumption of innocence of the accused must be sustained and his exoneration be granted as a matter of right. For the prosecution's evidence must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense,"[55] as in this case.

As a final note, the Court reminds the members of the bench of their solemn duty to decide cases based on the law and to "free themselves of the natural tendency to be overprotective of every woman claiming to have been sexually abused and demanding punishment for the abuser. While they ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, judges should equally bear in mind that their responsibility is to render justice according to law."[56] As elucidated in *Patentes*:

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[53] See *People v. Baldo*, 599 Phil. 382, 389 (2009).

[54] *People v. Patentes*, *supra* note 41, at 606.

[55] *Astorga v. People*, 480 Phil. 585, 596 (2004).

[56] *People v. Patentes*, *supra* note 41, at 593.

The testimony of the offended party x x x should not be received with precipitate credulity for the charge can easily be concocted. Courts should be wary of giving undue credibility to a claim of rape, especially where the sole evidence comes from an alleged victim whose charge is not corroborated and whose conduct during and after the rape is open to conflicting interpretations. While judges ought to be cognizant of the anguish and humiliation that a rape victim undergoes as she seeks justice, they should equally bear in mind that their responsibility is to render justice based on the law.[57]

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 24, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01219-MIN is hereby **REVERSED.** Accused-appellant Ruperto Rubillar, Jr. *y* Gaberon is **ACQUITTED** on the ground of reasonable doubt. His immediate release from confinement is hereby ordered unless he is detained for some other charge.

SO ORDERED.

Carpio (*Chairperson*), *Peralta,* and *Reyes, Jr., JJ.,* concur.

Caguioa, J., on leave.

EN BANC

[A.C. No. 7253. August 29, 2017]

ATTY. PLARIDEL C. NAVA II, *complainant, vs.* **PROSECUTOR OFELIA M. D. ARTUZ,**[*] *respondent.*

[A.M. No. MTJ-08-1717. August 29, 2017]
(Formerly OCA IPI No. 07-1911-MTJ)

ATTY. PLARIDEL C. NAVA II, *complainant, vs.* **JUDGE OFELIA M. D. ARTUZ, MUNICIPAL TRIAL COURT IN CITIES of ILOILO CITY**, **BRANCH 5,** *respondent.*

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[57] *Id*. at 606.

[*] "Ofelia M. Artuz" in some parts of the records.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; DEFINED.— Misconduct has been defined as any unlawful conduct, on the part of the person concerned with the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause. It implies wrongful, improper, or unlawful conduct, not a mere error of judgment, motivated by a premeditated, obstinate or intentional purpose, although it does not necessarily imply corruption or criminal intent, and must have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office.

2. ID.; ID.; ID.; DISHONESTY; DEFINED.— [D]ishonesty has been defined as "intentionally making a false statement on any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, appointment, or registration. [It] is a serious offense which reflects a person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity. It is a malevolent act that has no place in the judiciary, as no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary."

3. ID.; ID.; ID.; GRAVE MISCONDUCT, DISHONESTY AND FALSIFICATION OF OFFICIAL DOCUMENT; MAKING FALSE STATEMENTS IN THE PERSONAL DATA SHEET, A CASE OF.— [T]he Court agrees that Artuz deliberately and calculatedly lied in her answers to the subject questions in her two (2) PDS to conceal the truth and make it appear that she is qualified for the judgeship position which she now holds. x x x In several cases, the Court has held that a duly accomplished PDS is an official document and any false statements made in one's PDS is ultimately connected with one's employment in the government. An employee making false statement in his or her PDS becomes liable for falsification. x x x Time and again, the Court has emphasized that a judge should conduct himself or herself in a manner which merits the respect and confidence of the people at all times, for he or

she is the visible representation of the law. Having been a public prosecutor and now a judge, it is her duty to ensure that all the laws and rules of the land are followed to the letter. Judge Artuz's dishonesty, and tenacity to commit the same, misled the JBC and tarnished the image of the judiciary. Her act of making false statements in her PDS is reprehensible, depraved, and unbecoming of the exalted position of a judge. All told, Artuz committed Grave Misconduct, Dishonesty, and Falsification of official document warranting the penalty of dismissal from service. Under Sections 46 (A) and 52 (a), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), in relation to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, Dishonesty, Grave Misconduct, and Falsification of official document are grave offenses that carry the extreme penalty of dismissal from service for the first offense, with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for holding public office.

4. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; THE ADMINISTRATIVE CASES AGAINST A JUDGE FOR GRAVE MISCONDUCT, DISHONESTY AND FALSIFICATION ARE AUTOMATICALLY CONSIDERED AS DISCIPLINARY PROCEEDINGS AGAINST HER AS A MEMBER OF THE BAR.— [T]he Court invites attention to A.M. No. 02-9-02-SC, entitled "*Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar.*" Under this rule, the administrative case against a judge for Grave Misconduct, Dishonesty, and Falsification — which are also grounds for the disciplinary action against members of the Bar — are automatically considered as disciplinary proceedings against him or her as a member of the Bar. This is the proper course for the Court to take as a violation of the fundamental tenets of judicial conduct, embodied in the new Code of Judicial Conduct for the Philippine Judiciary, the Code of Judicial Conduct and the Canons of Judicial Ethics x x x.

5. LEGAL ETHICS; JUDGES; MEMBERSHIP IN THE BAR IS AN INTEGRAL QUALIFICATION FOR MEMBERSHIP

IN THE BENCH.— Artuz's misconduct likewise constitutes a contravention of Section 27, Rule 138 of the Rules of Court, which enjoins a judge, at the pain of disbarment or suspension, from committing acts of deceit or for willfully disobeying the orders of the Court x x x. Membership in the bar is an integral qualification for membership in the bench; his or her moral fitness as a judge also reflects her moral fitness as a lawyer. Thus, a judge who disobeys the basic rules of judicial conduct also violates her oath as a lawyer. In view of the foregoing, the Court hereby requires Artuz to show cause why she should not likewise be suspended, disbarred, or otherwise proceeded against, as a member of the Bar.

D E C I S I O N

PER CURIAM:

For resolution are the two (2) consolidated cases filed by complainant Atty. Plaridel C. Nava II (Nava) against respondent then Prosecutor, now Presiding Judge, Ofelia M. D. Artuz (Artuz) of the Municipal Trial Court in Cities of Iloilo City, Branch 5, (MTCC, Br. 5): (*a*) A.C. No. 7253 that sought to disbar Artuz, then a Prosecutor at the time of the filing of the petition; and (*b*) A.M. No. MTJ-08-1717 (formerly OCA IPI No. 07-1911-MTJ) that sought to nullify the nomination and appointment of Artuz as Presiding Judge of the MTCC, Br. 5, for being patently illegal, improper, and irregular.

The Facts

A.C. No. 7253

In the Petition for Disbarment[1] dated February 10, 2006 (disbarment case), Nava claimed that on July 28, 2005, he filed a Request for Inhibition and Re-raffle[2] of his client's case before the Office of the City Prosecutor of Iloilo City on the ground

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[1] *Rollo* (A.C. No. 7253), pp. 1-11.

[2] Dated July 28, 2005. *Id*. at 13.

that he and Artuz, as then the assigned prosecutor handling his client's case, are not in good terms because they are adversaries in various administrative and criminal cases.[3] In response to his request, Artuz filed her comment,[4] where she willfully and viciously maligned, insulted, and scorned him and his father, who is not a party to the case;[5] thus, Nava asserted that Artuz violated Canon 8 of the Code of Professional Responsibility (CPR) that enjoins lawyers to conduct themselves with courtesy, fairness, and candor toward their colleagues in the profession.[6] He added that Artuz: (*a*) made malicious and false accusations in her comment when she accused him of crimes which are baseless and purely conjectural; (*b*) had maliciously filed criminal cases against him, along with others, before the Department of Justice (DOJ) intended to harass, annoy, vex, and humiliate them; and (*c*) had maligned her former superior and colleague, City Prosecutor Efrain V. Baldago,[7] which acts constitute grave misconduct and are violative of the CPR and of Republic Act No. (RA) 6713.[8]

In a Resolution[9] dated August 2, 2006, the Court referred the disbarment case to the DOJ for appropriate action.

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[3] *Id*. at 2.

[4] See Comment to the Request for Inhibition and Re-raffle dated July 29, 2005; *id*. at 14.

[5] *Id*. at 4. See also *id*. at 30.

[6] *Id*. at 5.

[7] *Id*. at 6-10.

[8] Entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES," otherwise known as the "CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES," approved on February 20, 1989.

[9] *Rollo* (A.C. No. 7253), p. 22.

Meanwhile, record shows that Nava filed before the Judicial and Bar Council (JBC) an opposition[10] dated January 4, 2006, to the application for judgeship of Artuz. Notwithstanding, Artuz was appointed on September 28, 2006[11] and took her Oath of Office as Presiding Judge of the MTCC, Br. 5 on October 9, 2006.[12] Thus, the record of the disbarment case was retrieved from the DOJ[13] and referred to the Office of the Court Administrator (OCA) for appropriate action.[14]

A.M. No. MTJ-08-1717

In the petition[15] for nullification of the nomination and appointment of Artuz as Presiding Judge of MTCC, Br. 5 filed on October 17, 2006 (nullification case), Nava alleged that Artuz is unfit and incompetent to be appointed as a trial judge as she faces "several criminal and administrative cases, the nature of which involves her character, competence, probity, integrity and independence which should not have been disregarded in her application to the judiciary."[16] These cases are: (*a*) four (4) disbarment cases – A.C. No. 6605 filed by a certain Zenaida

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[10] *Rollo* (A.M. No. MTJ-08-1717), pp. 42-55. Nava claimed that the administrative complaints against Artuz, filed before the DOJ and the Supreme Court, were not acted upon because then Acting Justice Secretary Raul Gonzalez, who was then one of the members of the JBC, is closely related to Artuz within the 4th degree of consanguinity (see *id*. at 59). Nava, together with one "Atty. Amelita K. Del Rosario Benedicto," likewise filed before the JBC a Petition dated September 24, 2006 (*id*. at 75-102), to recall Artuz's nomination as Judge of MTCC, Br. 5 (see *id*. at 101).

[11] See Appointment letter of Artuz: *id*. at 253.

[12] See *Panunumpa sa Katungkulan*; *id*. at 252.

[13] See Resolution dated February 11, 2008 (*rollo* [A.C. No. 7253], pp. 24-25); the letter dated February 26, 2008 of then Second Division Clerk of Court Ludichi Yasay-Nunag (*id*. at 26); and the Indorsement dated June 21, 2013 of Senior Deputy State Prosecutor Richard Anthony D. Fadullon (*id*. at 27).

[14] See Internal Resolution dated July 1, 2013; *id*. at 29.

[15] Dated October 13, 2006. *Rollo* (A.M. No. MTJ-08-1717), pp. 7-39.

[16] *Id*. at 1.

Ramos, A.C. No. 7253 filed by him, a case filed by a certain Julieta Laforteza on July 11, 2006,[17] and another filed by a certain Herminia Dilla on November 9, 2005; (*b*) four (4) criminal cases filed before the Office of the Ombudsman-Visayas (Ombudsman) – OMB-V-C-06-0218-D, OMB-V-C-06-0219-D, OMB-V-C-06-220-D, and OMB-V-C-06-221-D; and (*c*) one (1) criminal case – I.S. No. 2175-05, and one (1) administrative case filed on October 23, 2003, both pending before the DOJ.[18]

Nava reiterated that during her incumbency as a public prosecutor, Artuz received numerous judicial fines and admonition for tardiness, absences without prior notice, and lack of interest to prosecute cases. In fact, some of the cases she handled were dismissed due to her dismal performance.[19] Further, Nava narrated specific incidents showing Artuz's character as vindictive, oppressive, and discourteous.[20]

In her defense,[21] Artuz alleged that the nullification case is a desperate retaliatory move on Nava's part because of the disbarment case she filed against him, where he was found guilty of gross misconduct and suspended from the practice of law for a period of two (2) months.[22] She claimed that the charges filed against her were already dismissed or outrightly not given due course.[23] She thus prayed that the nullification case be dismissed, since she met all the qualifications and has none of the disqualifications for a judicial position.[24]

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[17] Per the Supreme Court's Case Administration System, there is an administrative case, docketed as A.C. No. 7307 filed by Julieta Laforteza on August 4, 2006.

[18] *Rollo*, (A.M. No. MTJ-08-1717), pp. 11-13.

[19] *Id*. at 14.

[20] See *id*. at 20-38.

[21] See Compliance dated May 28, 2007; *id*. at 208-210.

[22] *Id*. at 208.

[23] *Id*. at 209.

[24] *Id*. at 210.

Meanwhile, on October 19, 2006, the OCA wrote separate letters for the DOJ and the Ombudsman, requesting information as to the date of filing and status of the criminal and administrative cases filed against Artuz before their respective offices, and whether she has been duly notified thereof.[25]

In a letter[26] dated January 29, 2007, the DOJ, through Assistant Chief State Prosecutor Richard Anthony D. Fadullon, stated that it only learned of the criminal cases filed against then Prosecutor Artuz through Regional State Prosecutor Domingo J. Laurea, Jr. (RSP Laurea). The latter furnished said office of copy of his 2nd Indorsement[27] dated March 16, 2006, forwarding the records of the cases to Officer-in-Charge Virginia Palanca-Santiago of the Deputy Ombudsman's Office (OIC Santiago), due to RSP Laurea's inhibition from the said cases. As regards the administrative cases filed against Artuz, in her capacity as then public prosecutor, the DOJ stated that there was already a draft resolution as of October 2005; its contents, however, could not, at that time, be disclosed as it was still subject for review by the Office of the DOJ Secretary.

On the other hand, in a letter[28] dated November 22, 2006 (which the OCA-Legal Office received only on September 4,

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[25] The Letter to the Ombudsman particularly inquired on the status, *etc*. of these cases: OMB-V-C-06-0218-D for Perjury, OMB-V-C-06-0219-D for Violation of Republic Act No. 7438, OMB-V-C-06-0221-D for Libel, and OMB-V-C-06-0220-D for Libel (*id*. at 187); while the Letter to the DOJ inquired on the following cases: IS No. 2175-05 for Arbitrary Detention, Grave Oral Defamation, Intriguing Against Honor and Unjust Vexation, and a complaint filed on October 23, 2003 for Gross Misconduct and Violation of Code of Conduct of Public Officials (*id*. at 188).

[26] *Id*. at 189.

[27] *Id*. at 190-191.

[28] *Id*. at 247. In a Letter dated June 29, 2007, the OCA requested anew OIC Santiago for information on the status, *etc*. of the criminal cases against Artuz, then pending before the Ombudsman, stating that per Registry Return Receipt No. 2947, the Ombudsman received the OCA's October 19, 2006 letter on November 17, 2006 and had not replied to date (*id*. at 246). It appears, however, that OIC Santiago's letter-reply was received by the OCA as early as December 15, 2006, but was only received by the OCA-Legal Office on September 4, 2007 (see *id*. at 247).

2007), OIC Santiago informed the OCA that OMB-V-C-06-0218-D, OMB-V-C-06-0219-D, OMB-V-C-06-0220-D, and OMB-V-C-06-0221-D, all entitled "*Herminia Dilla v. Ofelia Artuz,*" were received by the Ombudsman on March 24, 2006; that Artuz was notified of the three (3) cases wherein she filed her counter-affidavit and position paper; and that two (2) of the cases are pending resolution, while the other two (2) were already forwarded to the *Tanodbayan* for appropriate action.

On February 27, 2007, the OCA requested[29] from the Secretary of the JBC a certified copy of Artuz's Personal Data Sheet (PDS),[30] which she submitted relative to her application to the judiciary. On March 13, 2007, then Clerk of Court and *Ex Officio* JBC Secretary Ma. Luisa D. Villarama forwarded to the OCA the application documents of Artuz on file with the JBC, including the latter's PDS subscribed and sworn to on October 28, 2005 (October 28, 2005 PDS).[31]

In a Memorandum[32] dated October 3, 2007, the OCA noted that the nullification case is deemed mooted by Artuz's appointment to the judiciary, but nonetheless opined that the Court can review her appointment, pursuant to its administrative supervision powers under Section 6, Article VIII of the Constitution.[33] Thus, it recommended that Artuz "be [directed] to show cause within ten (10) days from receipt of notice why no disciplinary action should be taken against her for not disclosing in her [October 28, 2005 PDS] filed with the JBC the fact that she has been formally charged and that she has pending criminal, administrative and disbarment cases."[34]

The Court adopted the OCA's recommendation in a Resolution[35] dated November 28, 2007.

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[29] *Id*. at 193.

[30] *Id*. at 196-199.

[31] See letter with attachments; *id*. at 194-201.

[32] *Id*. at 1-6. Signed by then Court Administrator Christopher O. Lock.

[33] *Id*. at 5.

[34] *Id*. at 6.

[35] *Id*. at 256-257.

On February 7, 2008,[36] Artuz filed her Compliance,[37] to the November 28, 2007 Resolution, alleging that the disbarment case against her has already been dismissed by the Court on December 6, 2007.[38] She likewise denied the accusations against her and claimed that she will never exchange her thirty-one (31) years of government service by perjuring her records, much less her PDS. Finally, she reiterated that she had complied with all the requirements of the JBC and possessed all the qualifications and none of the disqualifications for the appointment to the judiciary.[39] The Court referred her compliance to the OCA for evaluation, report, and recommendation.[40]

In a Resolution[41] dated August 20, 2008, the Court, upon the recommendation of the OCA in its Memorandum[42] dated July 11, 2008, resolved to: (*a*) consider as unsatisfactory her compliance with the Court's November 28, 2007 show cause Resolution for her failure to sufficiently explain why no disciplinary action should be taken against her for not disclosing in her October 28, 2005 PDS the fact that she has been formally charged; (*b*) re-docket the complaint as a regular administrative matter, *i.e.*, A.M. No. MTJ-08-1717; and refer the administrative matter to the Executive Judge of the Regional Trial Court of Iloilo City (RTC) for further investigation.

During the investigation, Artuz reiterated her previous allegations that the nullification case is frivolous, malicious, and a harassment citing her complaint for disbarment against

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[36] The OCA stated February 27, 2008 in its November 3, 2015 Memorandum (see *id*. at 579).

[37] Dated February 6, 2008. *Id*. at 258-259.

[38] *Id*. at 258.

[39] *Id*. at 259.

[40] See Court Resolution dated February 27, 2008; *id*. at 282.

[41] *Id*. at 288-289.

[42] *Id*. at 284-287. Signed by then Deputy Court Administrator Reuben P De La Cruz and then Court Administrator (now retired Supreme Court Justice) Jose Portugal Perez. The OCA, in its November 3, 2015 Memorandum, however, stated the date as "October 3, 2007" (see *id*. at 579).

Nava which resulted in the latter's suspension from the practice of law for a period of two (2) months.[43] Artuz presented: (1) a Certification[44] dated January 30, 2007 issued by the DOJ, certifying that she has no pending administrative case; (2) a Certification[45] dated June 15, 2004 issued by the Office of the Ombudsman, stating that she has no pending criminal and administrative cases; and (3) the Court's Resolution[46] dated November 21, 2005, noting the dismissal of her disbarment case.

On February 16, 2011, the Court, on Artuz's motion,[47] relieved Executive Judge (EJ) Antonio M. Natino from investigating the matter and directed First Vice EJ Danilo P. Galvez (EJ Galvez), RTC, Iloilo City to continue with the investigation.[48]

In his Investigation Report[49] dated September 30, 2014, EJ Galvez submitted that Artuz missed the point of the administrative matter as she failed to explain why she omitted or falsely answered the subject questions in her October 28, 2005 PDS submitted before the JBC.[50] He noted that, while a disbarment case filed against her had been pending before the DOJ since October 23, 2003, Artuz nonetheless did not answer the PDS question requiring disclosure of any pending case or complaint filed against her. Worse, she answered "NO" when asked whether she had been charged with, convicted of, or sanctioned for violation of any law, decree, ordinance, or regulation, or otherwise found guilty of an administrative offense in the same

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[43] See portions of Artuz's Answer dated February 26, 2009 (*id*. at 343-346) and Amended Answer dated January 21, 2010 (*id*. at 453-459).

[44] *Id*. at 264.

[45] *Id*. at 501.

[46] *Id*. at 502.

[47] Not attached to the records. See copy of the October 8, 2010 Order of EJ Antonio M. Natino noting the August 25, 2010 Motion for Inhibition filed by Artuz; *id.* at p. 531.

[48] *Id*. at 540-541.

[49] *Id*. at 563-572.

[50] See *id*. at 567-568.

PDS.[51] In another PDS[52] dated November 6, 2006, which she filed before the Office of the Administrative Services, OCA (OAS-OCA), Artuz likewise answered "NO" to the question "*Have you ever been formally charged?*."[53] EJ Galvez opined that Artuz omitted and falsely answered these questions purposely to deceive the JBC which was then deliberating on her application.[54]

In a Resolution[55] dated February 23, 2015, the Court referred the September 30, 2014 Investigation Report of EJ Galvez to the OCA for evaluation, report, and recommendation.

The OCA's Evaluation and Recommendation

In the Memorandum[56] dated November 3, 2015 issued in A.M. MTJ-08-1717, the OCA recommended that Artuz be found guilty of Grave Misconduct, Dishonesty, and Falsification of Public Documents, and accordingly be dismissed from service effective immediately.[57]

The OCA agreed with EJ Galvez's observation that Artuz not only missed the point of the investigation, but also the opportunity to explain her side as to why she did not disclose in her two (2) PDS – submitted on October 28, 2005 and November 6, 2006 (subject PDS) – the material fact that she had been formally charged.[58] To the OCA, Artuz deliberately

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[51] See *id*. at 197.

[52] *Id*. at 254-255, including dorsal portions. Erroneously referred to as the "January 12, 2006 PDS" in EJ Galvez's Investigation Report (*id*. at 572) and the OCA's Memorandum dated November 3, 2015 (*id*. at 581).

[53] *Id*. at 255, dorsal portion; italics supplied.

[54] *Id*. at 572.

[55] *Id*. at 576.

[56] *Id*. at 577-585.

[57] While the OCA, in its Memorandum, also recommended that Artuz be found guilty of Insubordination, the OCA's discussions do not support a finding of Insubordination. Records are likewise bereft of evidence to support this conclusion. See *id*. at 585.

[58] See *id*. at 581.

lied in her answers in the subject PDS to conceal the truth and make it appear that she is qualified for a judgeship position to which she was eventually appointed.[59] Had she disclosed this material fact, the JBC would have surely disqualified her from nomination for judgeship based on its rules. Her act of making an obviously false statement in her two (2) PDS is a clear indication that she does not deserve any position in the judiciary.[60] Worse, she repeatedly disregarded the Court's directives to show cause why no disciplinary action should be taken against her for not disclosing in the subject PDS the fact that she had been formally charged and that she had pending criminal, administrative, and disbarment cases.[61]

In this light, the OCA held that Artuz's act of making untruthful statements in her two (2) PDS amounts to dishonesty and falsification of an official document which carries the extreme penalty of dismissal from service with forfeiture of all retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in the government service.

In the interim, the OCA, in a Memorandum[62] dated August 7, 2014, issued in A.C. No. 7253, recommended that A.C. No. 7253 (disbarment case) be consolidated with A.M. No. MTJ-08-1717 (nullification case), which the Court adopted in a Resolution[63] dated June 17, 2015.

The Issues Before the Court

The essential issues for the Court's resolution are whether or not Artuz is guilty of: (*a*) Grave Misconduct, Dishonesty, and Falsification of official document for her failure to disclose in the subject PDS the material fact that she had been formally

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[59] *Id*. at 582.

[60] *Id*. at 583.

[61] *Id*. at 584.

[62] *Rollo* (A.C. No. 7253), pp. 30-32; signed by OCA Chief of Office, Legal Office Wilhelmina D. Geronga and Court Administrator Jose Midas P. Marquez.

[63] *Id*. at 34.

charged; and (*b*) Grave Misconduct and violating the CPR and RA 6713.

The Court's Ruling

The Court agrees with the findings and recommendations of the OCA in A.M. No. MTJ-08-1717 that Judge Artuz is guilty of Grave Misconduct, Dishonesty, and Falsification of official document for her false statements in her two (2) PDS and for her willful defiance of Court directives.

Misconduct has been defined as any unlawful conduct, on the part of the person concerned with the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause.[64] It implies wrongful, improper, or unlawful conduct, not a mere error of judgment, motivated by a premeditated, obstinate or intentional purpose, although it does not necessarily imply corruption or criminal intent, and must have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office.[65]

On the other hand, dishonesty has been defined as "intentionally making a false statement on any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, appointment, or registration. [It] is a serious offense which reflects a person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity. It is a malevolent act that has no place in the judiciary, as no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary."[66]

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[64] *Rodriguez v. Eugenio*, 550 Phil. 78, 93 (2007). See also *Ramos v. Limeta*, 650 Phil. 243, 248-249 (2010).

[65] See *Rodriguez v. Eugenio*, *id.*; and *Corpuz v. Rivera*, A.M. No. P-16-3541 (Formerly OCA IPI No. 12-3915-P), August 30, 2016.

[66] *OCA v. Bermejo,* 572 Phil. 6, 14 (2008). See also *Civil Service Commission v. Longos,* 729 Phil. 16, 19 (2014).

Proceeding from these definitions, the Court agrees that Artuz deliberately and calculatedly lied in her answers to the subject questions in her two (2) PDS to conceal the truth and make it appear that she is qualified for the judgeship position which she now holds. Indeed, it is inconceivable for her not to have been aware of any of the pending cases against her since an administrative case filed against her had been pending before the DOJ since October 23, 2003, or long before she submitted her application with the JBC.[67] Had she disclosed this material fact in her October 28, 2005 PDS, the JBC may have disqualified her from nomination for judgeship, or disregarded her application. Because of this intentional omission, the judiciary may have lost someone truly deserving of the judgeship post. Moreover, when she filed her November 6, 2006 PDS, Artuz was already clearly aware of the pending charges against her before the Ombudsman, *i.e.*, OMB-V-C-06-0219-D, OMB-V-C-06-0220-D, and OMB-V-C-06-0221-D, all of which appear to have been filed, at most, in the early part of 2006, and received[68] by the Ombudsman on March 24, 2006 through the March 16, 2006 Indorsement of RSP Laurea.[69] In several cases, the Court has held that a duly accomplished PDS is an official document and any false statements made in one's PDS is ultimately connected with one's employment in the government. The employee making false statement in his or her PDS becomes liable for falsification.[70]

Artuz, as a member of the Bar, is presumed to be a learned individual, who knew, and is in fact expected to know, exactly what the subject questions called for, what they mean, and what repercussions will befall her should she make false declarations

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[67] See Investigation Report of EJ Galvez; *rollo* (A.M. No. MTJ-08-1717), p. 567.

[68] See *id*. at 247.

[69] See *id*. at 190-191.

[70] See *Civil Service Commission v. de Dios,* 753 Phil. 240 (2015); *Villordon v. Avila,* 692 Phil. 388 (2012); *Samson v. Caballero,* 612 Phil. 737 (2009); *Civil Service Commission v. Bumogas,* 558 Phil. 540 (2007); *Re: Spurious Certificate of Eligibility of Tessie G. Quires,* 523 Phil. 21 (2006); and *Ratti v. Mendoza-De Castro*, 478 Phil. 871 (2004) to name a few.

thereon. Obviously, she knew that she was committing an act of dishonesty, but nonetheless decided to proceed with this action, in her October 28, 2005 PDS, and even tenaciously repeated the same in her November 6, 2006 PDS submitted after she had been appointed to the judiciary.

Worse, notwithstanding the several opportunities given her (through her May 28, 2007 and February 6, 2008 compliances and during the investigation of the nullification case), Artuz did not explain, in disregard of the Court's directive, why no disciplinary action should be taken against her for not disclosing in the subject PDS the fact that she has been formally charged and has pending cases. Instead, she attempted to wriggle her way out of her predicament by maintaining that the cases against her had been dismissed or outrightly not given due course. She even argued and insisted that these charges were motivated by ill will and were initiated for the purpose of humiliating her and putting her under public contempt and ridicule. Finally, she adamantly denied committing perjury in her PDS and insisted that she has all of the qualifications and none of the disqualifications for appointment to the judiciary.

In this regard, EJ Galvez aptly observed that Artuz indeed missed the point of the investigation.[71] Whether or not the cases were already dismissed and whatever motive impelled the complainants and petitioners to file these cases against her were completely irrelevant as the questions: "*Is there any pending civil, criminal or administrative (including disbarment) case or complaint filed against you pending in any court, prosecution office, or any other office, agency or instrumentality of the government or the Integrated Bar of the Philippines?*," "*Have you ever been charged with or convicted of or otherwise imposed a sanction for the violation of any law, decree, ordinance or regulation by any court, tribunal, or any other government office, agency or instrumentality in the Philippines or in foreign country, or found guilty of an administrative* [*offense*] *or imposed any administrative sanction?*" (in the October 28, 2005 PDS),[72] and

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[71] See *rollo* (A.M. No. MTJ-08-1717), pp. 571-572.

[72] *Id.* at 197; italics supplied.

"*Have you ever been formally charged?*" (in the November 6, 2006 PDS)[73] simply called for information on cases filed against her at any time in the past or in the present, regardless of their current status, *i.e.,* whether decided, pending, or dismissed/ denied for any reason. To note, jurisprudence[74] elucidates that a person shall be considered formally charged when:

> (1) In administrative proceedings — (a) upon the filing of a complaint at the instance of the disciplining authority; or (b) upon the finding of the existence of a prima facie case by the disciplining authority, in case of a complaint filed by a private person.
>
> (2) In criminal proceedings — (a) upon the finding of the existence of probable cause by the investigating prosecutor and the consequent filing of an information in court with the required prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy; (b) upon the finding of the existence of probable cause by the public prosecutor or by the judge in cases not requiring a preliminary investigation nor covered by the Rule on Summary Procedure; or (c) upon the finding of cause or ground to hold the accused for trial pursuant to Section 13 of the Revised Rule on Summary Procedure.[75]

Without a doubt, Artuz had been formally charged under both contexts and yet, chose to conceal the same in her PDS, for which she should be held administratively liable.

Time and again, the Court has emphasized that a judge should conduct himself or herself in a manner which merits the respect and confidence of the people at all times, for he or she is the visible representation of the law.[76] Having been a public prosecutor and now a judge, it is her duty to ensure that all the laws and rules of the land are followed to the letter. Judge Artuz's dishonesty, and tenacity to commit the same, misled the JBC and tarnished the image of the judiciary. Her act of

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[73] *Id.* at 255, dorsal portion; italics supplied.

[74] See *Plopinio v. Zabala-Cariño*, 630 Phil. 259 (2010).

[75] *Id.* at 268-269.

[76] See *Cañada v. Suerte*, 570 Phil. 25, 36 (2008).

making false statements in her PDS is reprehensible, depraved, and unbecoming of the exalted position of a judge.

All told, Artuz committed Grave Misconduct, Dishonesty, and Falsification of official document warranting the penalty of dismissal from service. Under Sections 46 (A)[77] and 52 (a),[78] Rule 10 of the Revised Rules on Administrative Cases in the Civil Service[79] (RRACCS), in relation to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292,[80] Dishonesty, Grave Misconduct, and Falsification of official document are grave offenses that carry the extreme

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[77] Section 46 (A), Rule 10 of the RRACCS reads:

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

A. The following grave offenses shall be punishable by dismissal from the service:

1. Serious Dishonesty;

x x x x x x x x x

3. Grave Misconduct;

x x x

6. Falsification of official document;

x x x

See also Rule IV, Section 52 (A) of the Uniform Rules in Administrative Cases in the Civil Service (URACCS), Resolution No. 991936 (September 27, 1999), CSC Memorandum Circular No. 19, dated September 14, 1999.

[78] Section 52 (a), Rule 10 of the RRACCS states:

Sec. 52. *Administrative Disabilities Inherent in Certain Penalties.* –

a. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.

See also IV, Section 58 (a) of the Uniform Rules in Administrative Cases in the Civil Service (URACCS), Resolution No. 991936, CSC Memorandum Circular No. 19, Series of 1999.

[79] Promulgated on November 8, 2011, through CSC Resolution No. 1101502.

[80] Otherwise known as the Administrative Code of 1987.

penalty of dismissal from service for the first offense, with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for holding public office.[81]

In this regard, the Court invites attention to A.M. No. 02-9-02-SC,[82] entitled "*Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar.*" Under this rule, the administrative case against a judge for Grave Misconduct, Dishonesty, and Falsification – which are also grounds for the disciplinary action against members of the Bar – are automatically considered as disciplinary proceedings against him or her as a member of the Bar. This is the proper course for the Court to

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[81] Section 86 of the URACCS has removed forfeiture of accrued leave credits as an accessory to the penalty of dismissal, thereby repealing Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, (see *Igoy v. Soriano,* 527 Phil. 322 [2006] and *Ombudsman v. Court of Appeals and Macabulos*, 576 Phil. 784 [2008]). Section 58, Rule IV of the URACCS, as reiterated in Section 52, Rule 10 of the RRACCS forfeits retirement benefits only as an accessory to the penalty of dismissal.

[82] See *En Banc* Resolution dated September 17, 2002, which took effect on October 1, 2002. Pertinent portions of which read:

> **Some administrative cases against** Justices of the Court of Appeals and the *Sandiganbayan*; **judges of regular and special courts**; and court officials who are lawyers **are based on grounds which are likewise grounds for the disciplinary action of members of the Bar** for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.
>
> **In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent** justice**, judge** or court official concerned **as a member of the Bar**. The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinary sanctioned as a member of the Bar. **Judgment in both respects may be incorporated in one decision or resolution**. (Emphases supplied)

take as a violation of the fundamental tenets of judicial conduct, embodied in the new Code of Judicial Conduct for the Philippine Judiciary, the Code of Judicial Conduct and the Canons of Judicial Ethics, constitutes a breach of the following Canons of the CPR:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

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

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION x x x.

CANON 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 – a lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead or allow the court to be misled by any artifice.

CANON 11 – A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.[83]

Artuz's misconduct likewise constitutes a contravention of Section 27, Rule 138 of the Rules of Court, which enjoins a judge, at the pain of disbarment or suspension, from committing acts of deceit or for willfully disobeying the orders of the Court:

Section 27. *Disbarment and suspension of attorneys by Supreme Court, grounds therefor.* – **A member of the bar may be disbarred** or suspended from his office as attorney by the Supreme Court **for any deceit**, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, **or for any violation of the oath** which he is required to take before admission to practice, **or for a willful disobedience of any lawful order of a superior court**, or for corruptly or willfully appearing as an attorney for a party to a case without

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[83] See *Samson v. Caballero, supra* note 70, at 748.

authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphases supplied)

Membership in the bar is an integral qualification for membership in the bench; his or her moral fitness as a judge also reflects her moral fitness as a lawyer. Thus, a judge who disobeys the basic rules of judicial conduct also violates her oath as a lawyer.[84]

In view of the foregoing, the Court hereby requires Artuz to show cause why she should not likewise be suspended, disbarred, or otherwise proceeded against, as a member of the Bar.

As regards A.C. No. 7253, the record does not show that Artuz had been given an opportunity to defend and answer the allegations against her for Grave Misconduct and violation of the CPR and RA 6713. The Court, therefore, finds it proper to require Artuz to file her comment before it takes action on this disbarment case.

Accordingly, the Court hereby requires Artuz, within a non-extendible period of fifteen (15) days from notice, to show cause why she should not be suspended, disbarred, or otherwise proceeded against, as a member of the Bar for her actions in A.M. No. MTJ-08-1717, and file her Comment in A.C. No. 7253.

WHEREFORE, the Court resolves the following:

In **A.M. No. MTJ-08-1717**: the Court finds Ofelia M. D. Artuz (Artuz), Presiding Judge of Municipal Trial Court in Cities, Branch 5, Iloilo City, **GUILTY** of Grave Misconduct, Dishonesty, and Falsification of official documents. Accordingly, she is **DISMISSED** from service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations, without prejudice to her criminal liabilities.

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[84] See *id*.

She is likewise **REQUIRED** to **SHOW CAUSE** within fifteen (15) days from notice why she should not be disbarred, specifically for her apparent violations of Rule 1.01, Canon 1, Canon 7, Rule 10.01, Canon 10, and Canon 11 of the Code of Professional Responsibility, as well as Section 27, Rule 138 of the Rules of Court, as discussed in this Decision.

In **A.C. No. 7253**: Artuz is **REQUIRED** to file her **COMMENT** to the Petition for Disbarment within fifteen (15) days from notice.

SO ORDERED.

Carpio, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, and *Reyes, Jr., JJ.,* concur.

Velasco, Jr., J., no part, prior action in OCA.

Sereno, C.J. and *Gesmundo, J.,* on leave.

Leonardo-de Castro, J., on official time.

Tijam, J., on official leave.

EN BANC

[G.R. No. 185420. August 29, 2017]

LANAO DEL NORTE ELECTRIC COOPERATIVE, INC., as represented by its General Manager ENGR. RESNOL C. TORRES, *petitioner, vs.* **PROVINCIAL GOVERNMENT OF LANAO DEL NORTE, as represented by its Governor HON. MOHAMAD KHALID Q. DIMAPORO and its Provincial Treasurer, MILDRED J. HINGCO, Provincial Assessor, NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), as represented by its Administrator HON.**

EDITA S. BUENO, POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT (PSALM), as represented by its President and CEO HON. JOSE C. IBAZETA, DEPARTMENT OF ENERGY (DOE), as represented by its Secretary HON. ANGELO T. REYES, THE COMMISSION ON AUDIT (COA), as represented by its Chairman HON. REYNALDO A. VILLAR, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; PRINCIPLE OF HIERARCHY OF COURTS; CONCURRENCE IN JURISDICTION TO ISSUE WRITS OF *CERTIORARI,* PROHIBITION, *MANDAMUS*, *QUO WARRANTO*, *HABEAS CORPUS* AND INJUNCTION DOES NOT GIVE PETITIONERS UNBRIDLED FREEDOM OF CHOICE OF COURT FORUM; DIRECT INVOCATION OF THE SUPREME COURT'S ORIGINAL JURISDICTION TO ISSUE THESE WRITS, WHEN ALLOWED.—** It is an established rule that while this Court, the CA and the Regional Trial Courts exercise concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction, such concurrence in jurisdiction does not give petitioners unbridled freedom of choice of court forum. x x x Accordingly, a direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is an established policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further overcrowding of the Court's docket. These exceptional circumstances x x x do not obtain in the extant case.

2. **ID.; CIVIL PROCEDURE; FORUM SHOPPING; WHEN COMMITTED.—** Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court,

then in another. It can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by **filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata***). If the forum shopping is not willful and deliberate, the subsequent cases shall be dismissed without prejudice on one of the two grounds mentioned above. **But if the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice.**

3. **ID.; ID.; ID.; ELEMENTS.—** The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; REAL PROPERTY TAXES; IN COLLECTING REAL PROPERTY TAXES, THE LOCAL GOVERNMENT UNITS ARE NOT PROHIBITED FROM RESORTING TO ADMINISTRATIVE REMEDY OF LEVY ON REAL PROPERTY AGAINST ELECTRIC COOPERATIVES.—** While LANECO does not dispute its liability to the PGLN for real property tax, it nevertheless advances that its properties cannot be the subject of an administrative action thru levy pursuant to Section 60 of R.A. No. 9136 x x x. In support of its position, LANECO refers to Sections 1 to 5, Rule 31 of the Implementing Rules and Regulations (IRR) of R.A. No. 9136, as well as the pertinent provisions of EO 119. x x x Contrary to LANECO's stand, the provisions of law cited do not prohibit local government units from resorting to the administrative remedy of levy on

real property. Nothing in the aforecited provisions withdrew the remedy of tax collection by administrative action from the LGUs. Instead, these provisions merely ascribe limitations on, and lay down the consequences of, any **voluntary transfer and disposition of assets** by the electric cooperatives themselves. They do not limit the LGUs' remedies against electric cooperatives to judicial actions in collecting real property taxes. To adopt LANECO's position would be reading into the clear provisions of R.A. No. 9136 more than what it actually provides. The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

5. ID.; ID.; ID.; ID.; LOCAL GOVERNMENT TAXES; SERVE AS LIEN OVER THE PROPERTY SUBJECT OF THE TAX.— We likewise do not find merit in LANECO's argument that the levy caused by the PGLN upon its real properties impairs the government contracts entered into by NEA and PSALM and violates the constitutional right of national agencies to enter into a contract. x x x It bears to stress that, regardless of whether the mortgages constituted on LANECO's properties constitute as lien thereon, these cannot defeat the right of the PGLN to make those properties answerable for delinquent real property taxes, since local government taxes serve as superior lien over the property subject of the tax, as clearly laid out in Section 257 of the LGC x x x.

APPEARANCES OF COUNSEL

Era and Associates Law Office for petitioner.

Provincial Legal Office for respondent Provincial Government of Lanao del Norte.

Office of the Government Corporate Counsel for respondent PSALM.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

Before this Court is a Petition for Prohibition and Mandamus under Rule 65 of the Rules of Court, with prayer for injunctive

relief to enjoin and prevent the respondent Provincial Government of Lanao del Norte (PGLN) from levying and auctioning off all the assets, properties, and equipment of petitioner Lanao del Norte Electric Cooperative, Inc. (LANECO) to satisfy its unpaid real property taxes.

Factual Antecedents

Pursuant to Republic Act (R.A.) No. 6038, otherwise known as the National Electrification Administration Act, LANECO was granted a franchise on January 8, 1972 to distribute electricity over the municipalities of Linamon, Kauswagan, Bacolod, Maigo, Kolambugan, Tubod, Baroy, Lala, Salvador, Kapatagan, Sapad, Magsaysay, and Karomatan.[1] On December 14, 1995, the NEA expanded the coverage of LANECO's franchise by including barangays Abaga, Maria Cristina, and Nangka, all in the municipality of Balo-i, Lanao del Norte.[2]

In order to finance its operations, LANECO contracted several loans from respondent National Electrification Administration (NEA) from 1972 until 1991, secured by real estate mortgage contracts over its properties.[3] The NEA also gave LANECO grants and subsidies from 1996 to 2006 to fund its various rural electrification programs in the countryside.[4] LANECO's total loans from the NEA amounted to ₱117,645,358.00, a substantial portion of which, however, had already been paid.[5]

Upon the enactment of R.A. No. 9136, or the Electric Power Industry Reform Act of 2001, respondent Power Sector Assets and Liabilities Management (PSALM) assumed LANECO's loan balance of ₱32,507,813.70 to the NEA pursuant to Section 60[6]

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[1] *Rollo*, p. 21.

[2] *Id*. at 38.

[3] *Id*. at 30.

[4] *Id*. at 34-36.

[5] *Id*. at 32-33.

[6] SEC. 60. Debts of Electric Cooperatives. – Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA and other government agencies incurred for the purpose of financing the

thereof.[7]

Meanwhile, Congress enacted R.A. No. 7160, otherwise known as the Local Government Code of 1991 (LGC), which conferred power to local government units (LGUs) to impose taxes on real properties located within their territories.[8] Thus, on January 7, 1993, and in accordance with Sections 232[9] and 233[10] of the LGC, the Sangguniang Panlalawigan of the PGLN enacted Provincial Tax Ordinance No. 1, Series of 1993, entitled "*An Ordinance Adopting the Provincial Revenue Code of the Province of Lanao del Norte pursuant to the Provisions of Republic Act No. 7160, otherwise known as the Local Government Code of 1991*" (Provincial Revenue Code).[11]

On January 26, 2006, LANECO received a letter from respondent Provincial Treasurer of the PGLN, demanding

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rural electrification program shall be assumed by the PSALM Corp. in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of this Act which shall be implemented and completed within three (3) years from the effectivity of this Act. The ERC shall ensure a reduction in the rates of electric cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. Within five (5) years from the condonation of debt, any electric cooperative which shall transfer ownership or control of its assets, franchise or operations thereof shall repay PSALM Corp. the total debts including accrued interests thereon.

[7] *Id*. at 38.

[8] *Id*. at 37.

[9] SECTION 232. Power to Levy Real Property Tax. – A province or city or a municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted.

[10] SECTION 233. Rates of Levy. – A province or city or a municipality within the Metropolitan Manila Area shall fix a uniform rate of basic real property tax applicable to their respective localities as follows:

(a) In the case of a province, at the rate not exceeding one percent (1%) of the assessed value of real property; and

(b) In the case of a city or a municipality within the Metropolitan Manila Area, at the rate not exceeding two percent (2%) of the assessed value of real property.

[11] *Id*. at 37-38.

payment of ₱22,841,842.60 representing real property taxes assessed against the cooperative for the municipalities of Bacolod, Baroy, Kolambugan, Balo-i, Kapatagan, Magsaysay, Maigo, and Tubod for the period of 1995 to 2005. The Provincial Treasurer sent additional billings to LANECO on July 28, 2006, this time for payment of its real property taxes for the municipalities of Kauswagan, Lala, Salvador, and Kolambugan, in the amount of ₱8,270,469.04.[12] In a letter dated September 26, 2006, the Provincial Treasurer made a final demand for the payment of the aforestated amounts, thus:

x x x x x x x x x

To avoid publication and/or Advertisement of Public Auction of all your delinquent real properties in the province in a newspaper of general circulation, please cause the payment of your real property taxes' obligations to this Office within fifteen (15) days upon receipt of this FINAL DEMAND.[13]

On several occasions, LANECO allegedly requested the PGLN for the original or a certified true copy of the Provincial Revenue Code to be used by the Energy Regulatory Commission (ERC) as basis to allow LANECO to pay its real property taxes and subsequently pass it on to its member-consumers, but the PGLN supposedly refused to do so.[14]

Aggrieved, LANECO questioned the validity of the real property tax assessments and the Provincial Revenue Code in a Petition for Declaratory Relief with Preliminary Prohibitory Injunction,[15] docketed as Special Civil Action No. 003-07-2006 before the Regional Trial Court (RTC) of Lanao del Norte, Branch 7.

However, on ex-parte motion[16] by LANECO, the case was dismissed as the parties agreed to resolve the issues before the

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[12] *Id*. at 58.

[13] *Id*. at 59.

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

[15] *Id*. at 424-430.

[16] *Id*. at 813-814.

Bureau of Local Government Finance, instead of pursuing court action.

Nevertheless, the PGLN continued to demand payment from LANECO through a letter[17] dated June 19, 2008. LANECO reiterated its claim that it attempted to secure an original or certified true copy of the Provincial Revenue Code for submission to the ERC on several occasions but was unable to do so.[18] On November 12, 2008, it requested for a certified true copy of the ordinance from the Office of the Municipal Assessor of the Municipality of Kolambugan. The latter, however, simply referred the request to the Sangguninang Panlalawigan. The Sangguniang Panlalawigan, in turn, issued a certification[19] on November 25, 2008 stating that its Legislative Building was gutted by fire, including all the records/documents of its offices, on December 7, 2003.

Hence, LANECO filed the present petition on December 5, 2008 to raise the issue of whether or not respondent PGLN is acting in excess of its authority amounting to grave abuse of discretion and want of jurisdiction in enforcing the collection of unpaid real property tax through administrative action, *i.e.*, levy and auction of its assets, instead of through judicial action. LANECO theorizes that the PGLN's recourse through administrative action by levying on its real property allegedly violates Section 60 of R.A. No. 9136 and Executive Order No. (EO) 119, series of 2002.[20] Nevertheless, on December 8, 2008, LANECO's counsel discovered that the PGLN issued another Notice of Delinquency of Delinquent Properties of Lanao del Norte Electric Cooperative and caused its publication on the December 1, 2008 issue of *Gold Star Daily*.[21]

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[17] *Id*. at 436.

[18] *Id*. at 61.

[19] *Id*. at 438.

[20] *Id*. at 1553.

[21] *Id*.

The Petition

While LANECO does not dispute its liability to pay real property taxes to the PGLN, it argues that the PGLN will commit grave abuse of discretion amounting to lack or excess of jurisdiction if it resorts to administrative action through levy to enforce the payment of unpaid real property taxes. Instead, the petition proposes that the PGLN has another remedy of filing a collection case against LANECO under Section 60 of R.A. No. 9136. It also asserts that it is prohibited from disposing, transferring, and conveying its assets, properties, and the management and control of electric cooperatives while under the rehabilitation and modernization program.

LANECO further claims that the PGLN should be prohibited from auctioning off its assets, otherwise, it would violate the constitutional rights of the national agencies to enter into a contract. It also avers that the PGLN gravely abused its discretion in refusing to provide the original or a certified true copy of the Provincial Revenue Code to allow LANECO to determine the correctness of its assessment and its demand letter.

Incidents that transpired after the filing of the petition

On December 9, 2008, LANECO filed a Petition[22] for Declaratory Relief with prayer for the issuance of a TRO and/or preliminary prohibitory injunction against the PGLN before the RTC of Tubod, Branch 7, **assailing the validity and constitutionality of the franchise tax provisions of the Provincial Revenue Code contained in Sections 84 to 87 thereof.** The said case was entitled "*LANECO versus The Sangguniang Panlalawigan of Lanao del Norte, et al.*" and docketed as **Special Civil Case No. 012-07-2008**. The trial court granted the preliminary prohibitory injunction prayed for therein in an Order dated July 29, 2009.[23]

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[22] *Id*. at 649-731.

[23] *Id*. at 1369.

In the interim, LANECO filed before this Court three Urgent Ex-Parte Motions[24] or the issuance of a TRO on the following dates: 1) December 5, 2008; 2) December 15, 2008; and 3) January 22, 2009. In a Resolution dated March 24, 2009, LANECO's 3rd Urgent Ex-Parte Motion for the Issuance of a Temporary Restraining Order was denied by this Court for lack of merit.

On April 3, 2009, LANECO learned that the PGLN, through its Provincial Treasurer, issued a Memorandum dated March 30, 2009, directing the Municipal Treasurers of Baroy, Kolambugan, Bacolod, Kapatagan, Magsaysay, Maigo, Lala, and Tubod to issue warrants of levy on its properties thereat.[25] Consequently, on April 7, 2009, LANECO received the warrants of levy from the Municipality of Tubod for deficient real property tax amounting to ₱10,066,234.48. LANECO thereafter received warrants of levy of its real property from the Municipality of Baroy on April 17, 2009 for deficient real property tax amounting to ₱3,260,452.58.

Thus, on August 14, 2009, LANECO filed yet another Petition[26] for Prohibition with prayer for the issuance of a TRO and/or preliminary prohibitory injunction against the PLGN, including the Provincial Treasurer and its deputized municipal treasurers, with the RTC of Tubod, Branch 7. Docketed as **Special Civil Case No. 015-07-2009**, **LANECO prayed for the annulment of the provisions imposing real property tax in the Provincial Revenue Code, and for the court to prohibit the PGLN from continuously implementing the real property tax provisions of the Provincial Revenue Code, and collecting real property tax from it**.

In a Decision[27] dated May 11, 2010, the trial court in **Special Civil Case No. 012-07-2008** declared the Provincial Revenue Code invalid, unconstitutional, and ineffective:

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[24] *Id*. at 3-17; 501-532; 536-554.

[25] *Id*. at 1554.

[26] *Id*. at 1673-1726.

[27] *Id*. at 1726-1738.

WHEREFORE, in the light of the foregoing consideration, and the evidence of petitioner preponderates on its side, by application of pertinent laws and jurisprudence, the Court Orders the 1993 Provincial Revenue Code of Lanao del Norte, as invalid, unconstitutional, non-existing. The Court issues a permanent injunction against the respondents Local Government of Lanao del Norte and [Provincial] Treasurer in assessment, imposition, and collection of the franchise tax against petitioner.

SO ORDERED.[28]

On the other hand, in a Decision[29] promulgated on May 17, 2010, the RTC resolved **Special Civil Case No. 015-07-2009** in favor of LANECO in this wise:

WHEREFORE, in the light of the foregoing consideration, and by preponderance of evidence in favor of petitioner, the Court renders judgment directing the respondent Office of Provincial Treasurer of Lanao del Norte, at the instance of the incumbent Provincial Treasurer, Mildred J. Hingco, her deputized municipal treasurers in Lanao del Norte, and respondent Office of Provincial Assessor of Lanao del Norte, and respondent Office of Provincial Assessor of Lanao del Norte, through Rogelio Aguaviva, Provincial Assessor, and his deputized municipal assessors, to cease and desist in the furtherance of the assessment, imposition and collection of the real property taxes vis-[à]-vis petitioner on the ground that on May 11, 2010, this Court, in the action for [Declaratory] Relief, Special Civil Case No. 012-07-2008 ,[ ]declared as invalid, and unconstitutional and ineffective the 1993 Revenue Code of Lanao del Norte, of which the provisions of collection, imposition and assessment of real property taxes are found therein.

The Court also cancels the warrants of levy issued by the respondent Office of the Provincial Treasurer of Lanao del Norte, as well as the annotations of the levy on the tax declarations and certificates of titles (sic) of the levied real properties, by respondent Office of Provincial Assessor of Lanao del Norte and its deputized municipal assessors in the same province and the Register of Deeds of Lanao del Norte. The preliminary prohibitory injunction issued by the Court

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[28] *Id*. at 1738.

[29] *Id*. at 1740 to 1759.

on September 3, [2009], is ordered declared permanent injunction (sic). No costs to the proceedings.

SO ORDERED.[30]

The ruling was arrived at in view of the declaration in Special Civil Case No. 012-07-2008 that the Provincial Revenue Code is invalid and unconstitutional. Consequently, the court ordered the cancellation of the warrants of levy issued against LANECO and directed the Provincial Treasurer and her deputized municipal treasurers, the Provincial Assessor, and his assessors, to cease and desist from assessing, imposing, and collecting real property taxes on LANECO.

On January 10, 2011, the PGLN filed a Manifestation and Motion,[31] informing this Court that LANECO filed a Petition for Declaratory Relief and Injunction,[32] with prayer for the issuance of a writ of preliminary prohibitory injunction, before the RTC of Tubod, Branch 7, docketed as Special Civil Case No. 020-07-2010. This petition questions Provincial Ordinance No. 001-2006, otherwise known as "An Ordinance Enacting the Provincial Revenue Code of Lanao del Norte of 2006," on the ground that the said tax ordinance is unconstitutional, invalid, and ineffective for failure to comply with the required public hearings, consultations, and publication.

To date, the Court is only apprised of the pendency of three other cases between the parties: 1) Special Civil Case No. 012-07-2008, 2) Special Civil Case No. 015-07-2009, and c) Special Civil Case No. 020-07-2010. The PGLN manifested that Special Civil Case Nos. 012-07-2008 and 015-07-2009 are still pending appeal before the CA as of January 10, 2011.

Respondents' comments to the petition

Pursuant to this Court's directive in its Resolution dated December 16, 2008, respondents filed their respective comments to the petition.

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[30] *Id*. at 1758-1759.

[31] *Id*. at 1800-1807.

[32] *Id*. at 1809-1863.

Respondents NEA, DOE, and COA filed a consolidated Comment, alleging that LANECO is guilty of forum shopping for filing several petitions before the RTC, aside from the present petition, which all raised similar issues pertaining to the validity of the Provincial Revenue Code of the PGLN. They reject LANECO's argument that the non-impairment clause of the Constitution was violated with the imposition of real property taxes on it by the PGLN. They also assert that LANECO failed to exhaust available administrative remedies when it directly resorted to filing the present petition before this Court instead of filing the correct petition before the ERC. Nevertheless, they implore this Court to exercise caution so as not to defeat the state policies under Presidential Decree No. (PD) 269, R.A. No. 9136, EO 119, and their respective implementing rules and regulations.[33]

In their Comment, the PGLN and its officers denied the allegations in the petition, stating that their actions do not contradict the policies of the National Government since they are merely employing the administrative remedy of levy of real properties under Section 256 of the LGC. They also assert that LANECO is not without any remedy since it may still redeem the properties by remitting payment of the real property taxes due. They argue that the levy was only limited to LANECO's delinquent properties.[34]

The PGLN and its officers also claim that Section 60 of R.A. No. 9136 is inapplicable to unpaid real property taxes since it merely refers to financial obligations in form of debts of electric cooperatives to NEA and other government agencies. Moreover, they assert that the levy does not automatically transfer ownership of the subject properties. Finally, they maintain that LANECO violated the rule on forum shopping for filing the present petition and other cases before the RTC.

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[33] *Id*. at 597-731.

[34] *Id*. at 777-797.

As for the comment of respondent PSALM, it agreed with LANECO that the warrant of levy issued by the PGLN should be quashed on the ground that it emanated from an invalid assessment since LANECO was not informed in writing of the law and the facts upon which the tax assessment was made. It also claims that the first lien of the National Government, through the NEA, prevails over the local government's levy.[35]

Subsequently, LANECO filed a Reply and Manifestation (with Leave of Court)[36] dated March 12, 2009 and a Consolidated Reply[37] dated March 16, 2010, essentially refuting the allegations made by respondents in their respective memoranda, wherein they each reiterated their positions.

The Issues

The parties, in the main, raise the following issues for the resolution of this Court:

1. Whether or not the filing of the instant petition constitutes forum shopping;

2. Whether or not the rule on exhaustion of administrative remedy applies;

3. Whether or not the PGLN gravely abused its discretion when it levied on the real properties of LANECO to enforce payment of unpaid real property taxes, in violation of Section 60 of R.A. No. 9136 and EO 119; and

4. Whether or not the PGLN would commit grave abuse of discretion amounting to lack or excess of jurisdiction if it proceeds to auction the delinquent real properties of LANECO.

The Court's Ruling

At the outset, We note that the petition is replete with procedural infirmities that would warrant the outright dismissal of the case.

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[35] *Id*. at 578 to 587.

[36] *Id*. at 732-776.

[37] *Id*. at 1307-1362.

Violation of the principle of hierarchy of courts

It is an established rule that while this Court, the CA and the Regional Trial Courts exercise concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, such concurrence in jurisdiction does not give petitioners unbridled freedom of choice of court forum.[38] In *Belmonte v. Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices, Office of the Ombudsman*,[39] the Court had the occasion to explain the rationale behind this rule:

> Even in the absence of such provision, the petition is also dismissible because it simply ignored the doctrine of hierarchy of courts. **True, the Court, the CA and the RTC have original concurrent jurisdiction to issue writs of certiorari, prohibition and mandamus. The concurrence of jurisdiction, however, does not grant the party seeking any of the extraordinary writs the absolute freedom to file a petition in any court of his choice. The petitioner has not advanced any special or important reason which would allow a direct resort to this Court.** Under the Rules of Court, a party may directly appeal to this Court only on pure questions of law. In the case at bench, there are certainly factual issues as Vivas is questioning the findings of the investigating team.
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> **Strict observance of the policy of judicial hierarchy demands that where the issuance of the extraordinary writs is also within the competence of the CA or the RTC, the special action for the obtainment of such writ must be presented to either court.** As a rule, the Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate lower courts; or where exceptional and compelling circumstances, such as cases of national interest and with serious implications, justify the availment of the extraordinary remedy of writ of certiorari, prohibition, or mandamus calling for the exercise of its primary jurisdiction. The judicial policy

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[38] *Rayos v. City of Manila*, G.R. No. 196063, December 14, 2011, 662 SCRA 684, 689.

[39] G.R. No. 197665, January 13, 2016, 780 SCRA 483.

must be observed to prevent an imposition on the precious time and attention of the Court.[40] (Emphasis in the original)

Accordingly, a direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is an established policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further overcrowding of the Court's docket.[41] These exceptional circumstances, as will be shown hereunder, do not obtain in the extant case.

For one, LANECO's proffered justifications of its direct resort to this Court – that the same was warranted under Section 78[42] of R.A. No. 9163, and that it is the most speedy and adequate remedy available to it – do not persuade. While Section 78, indeed, vests the Supreme Court with authority to restrain or enjoin the implementation of the provisions of the law, it does not necessarily mean that all cases involving electric cooperatives should be filed thereat. Certainly, this case does not involve questions on the implementation of R.A. No. 9136, which makes Section 78 thereof inapplicable.

As for the claim that direct resort to this Court is the most speedy and adequate remedy available to the LANECO, the same is belied by the fact that LANECO had previously filed several cases before the RTC, questioning the PGLN's right to assess it with both real property and franchise taxes. LANECO's act of filing these cases before the RTC betrays its cognizance of the RTC's power to settle questions regarding

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[40] *Id*. at 495-496, citing *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*, G.R. No. 191424, August 7, 2013, 703 SCRA 290.

[41] *Rayos v. City of Manila*, *supra* note 38.

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

the rights of local government units to impose and collect real property tax from electric cooperatives.

LANECO is guilty of forum shopping

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.[43] It can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by **filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*)**.[44] If the forum shopping is not willful and deliberate, the subsequent cases shall be dismissed without prejudice on one of the two grounds mentioned above. **But if the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice**.[45]

The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following

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[43] *Grace Park International Corporation v. Eastwest Banking Corporation*, G.R. No. 210606, July 27, 2016, 798 SCRA 645, 651.

[44] *Asia United Bank v. Goodland Company, Inc*., G.R. No. 191388, March 9, 2011, 645 SCRA 205, 215.

[45] *Heirs of Marcelo Sotto v. Palicte*, G.R. No. 159691, February 17, 2014, 716 SCRA 175, 188.

elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

Herein, LANECO argues that it did not commit forum shopping since the case before Us prays for the issuance of a writ of prohibition against the PGLN for levying on its real properties due to the deficient real property taxes assessed against it, while Special Civil Case No. 015-07-2009 allegedly prays for the prohibition on the part of the PGLN from continuously implementing the real property tax provisions of its Provincial Revenue Code and, concomitantly, from collecting real property taxes from it.

This argument is utterly bereft of merit.

There is no dispute that there is identity of parties, subject matter, and reliefs prayed for between the present petition and Special Civil Case No. 015-07-2009. Similar to Special Civil Case No. 015-07-2009, LANECO questions before Us the propriety of the assessment for real property tax against it. Ineluctably, LANECO bases its claims in both cases on a single cause of action: that the PGLN has no authority to assess and collect from it, and conversely, LANECO had no obligation to pay real property tax to the PGLN.

The similarities in the reliefs prayed for herein and in Special Civil Case No. 015-07-2009 are likewise clearly evident. In Special Civil Case No. 015-07-2009, LANECO prayed to enjoin the Provincial and Municipal Treasurers of the PGLN from assessing and collecting real property tax from it and to annul the real property tax provisions of the Provincial Revenue Code. Notably, the trial court, in Special Civil Case No. 015-07-2009, issued a permanent injunction a) directing the Provincial Treasurer to cease and desist in assessing, imposing, and collecting real property taxes from LANECO, and b) cancelling the warrants of levy issued and the annotations of the levy

made on the tax declarations and certificates of title of its properties. Meanwhile, in the present case, LANECO prayed for the annulment of the PGLN's assessment, demand letter, notice of publication, and auction of the machineries, equipment, buildings and infrastructure for allegedly violating LANECO's right to due process in failing to furnish it with a copy of the Provincial Revenue Code. The Court is now being asked to grant substantially similar reliefs as those that have already been granted by the trial court, creating the possibility of conflicting decisions.

Without a doubt, LANECO is guilty of forum shopping. Its deliberate act of filing multiple cases before several fora is clearly intended to secure a positive outcome in its favor. This intention is made all the more evident by LANECO's subsequent filing of Special Civil Case No. 015-07-2009, after this Court had not immediately issued a preliminary prohibitory injunction or TRO in its favor.

The Provincial Government of Lanao del Norte did not commit grave abuse of discretion in levying on the real properties of LANECO

While LANECO does not dispute its liability to the PGLN for real property tax, it nevertheless advances that its properties cannot be the subject of an administrative action thru levy pursuant to Section 60 of R.A. No. 9136, which purportedly prohibits electric cooperatives from disposing, transferring, and conveying its assets and properties within the period of the rehabilitation and modernization program. In support of its position, LANECO refers to Sections 1 to 5, Rule 31 of the Implementing Rules and Regulations (IRR) of R.A. No. 9136, as well as the pertinent provisions of EO 119. These provisions respectively state:

Section 60. *Debts of Electric Cooperatives.* – Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA and other government agencies incurred for the purpose of financing the rural electrification program shall be assumed by the PSALM Corp. The ERC shall ensure a reduction in the rates of electric

cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. Within five (5) years from the condonation of debt, any electric cooperative which shall transfer ownership or control of its assets, franchise or operations thereof shall repay PSALM Corp. the total debts including accrued interests thereon.

x x x x x x x x x

RULE 31. DEBTS OF ELECTRIC COOPERATIVES (ECs)

Section 1. Guiding Principle.

Pursuant to Section 60 of the Act, all outstanding financial obligations of ECs to NEA and other government agencies incurred for the purpose of financing the Rural Electrification Program shall be assumed by the PSALM in accordance with the program approved by the President of the Philippines.

Section 2. Scope.

This Rule shall cover all outstanding financial obligations by the ECs to NEA and other government agencies, incurred as of 26 June 2001 for the purpose of financing the Rural Electrification Program. Financial obligation shall refer to the indebtedness, whether through regular or restructured loans, liabilities, or amounts payable by the ECs to NEA and other government agencies as of 26 June 2001, to finance their rural electrification projects, subject to the terms and conditions of duly-executed loan and mortgage contracts between NEA and/or other government agencies, as creditors and the ECs, as debtors/borrowers.

Section 3. Condonation of Debts of ECs.

From the effectivity of the Act, all outstanding financial obligations of ECs to NEA and other government agencies incurred for the purpose of financing the Rural Electrification Program shall be assumed by the PSALM in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of the Act which shall be implemented and completed within three (3) years from the effectivity of the Act.

These debts shall include all outstanding financial obligations incurred by the ECs for the purpose of financing the Rural Electrification Program, exclusively utilized for capital expenditures for the acquisition or construction, operation and maintenance, and/or expansion and

rehabilitation of distribution, generation and Subtransmission Assets/ facilities and pre-operating expenses for newly-established ECs: Provided, however, That such outstanding financial obligations shall include interest, surcharges and penalties on ECs' Rural Electrification Loans, released from NEA and other government agencies to ECs as of 26 June 2001; duly booked by NEA, validated by COA, and confirmed by the ECs.

Section 4. Assumption of EC Loans by PSALM.

PSALM shall assume all outstanding financial obligations of the ECs to NEA and other government agencies incurred for the purpose of financing the Rural Electrification Program; such outstanding financial obligations of the ECs involving "Rural Electrification Loans" shall be determined in accordance with the program approved by the President of the Philippines. Correspondingly, having assumed the ECs' obligations, the PSALM shall repay NEA and the other government agencies, in accordance with a prescribed amortization schedule agreed between the parties.

The outstanding financial obligations from other government agencies referred to in Section 60 of the Act shall include loans contracted from the following: x x x

Provided, however, That such loans were contracted in accordance with NEA policies and with prior NEA authorization, except for loans transferred to APT, now PMO.

Section 5. Transfer of Ownership or Control of Assets, Franchise or Operation.

Within five (5) years from the completed Condonation of debt, any EC which shall transfer ownership or Control of its assets, franchise or operations shall repay PSALM the total debts, including accrued interest thereon: Provided, however, That the ECs may enter into loan or financing agreements to allow flexibility in sourcing funds and improvement and management system for needed rehabilitation and modernization programs: Provided, further, That it does not involve permanent transfer or Control of the assets, franchise and operations: Provided, finally, That DOF and NEA shall jointly issue the necessary guidelines to protect the member-consumers of the ECs involved.

x x x x x x x x x

EXECUTIVE ORDER NO. 119

RESTRUCTURING PROGRAM FOR ELECTRIC COOPERATIVES

x x x x x x x x x

SECTION 2. COVERAGE**.** As specified under Section 60 of EPIRA, the Program for PSALM to assume the outstanding financial obligations incurred by ECs covers only those obligations incurred for the purpose of financing the Rural Electrification Program. The Implementing Rules and Regulations of EPIRA, as approved by JCPC and promulgated by DOE, defines "Financing for Rural Electrification" as referring to loans and grants extended to ECs, for the construction or acquisition, operation and maintenance of distribution, generation, and subtransmission facilities for the purpose of supplying electric service, and those loans for the restoration, upgrading and expansion of such facilities, in areas which are considered rural at the time of the grant of such loans (hereinafter referred to as "Rural Electrification Loans").

Thus, the Program shall comprise the following:

a. Financial, institutional, technical and managerial restructuring of ECs, pursuant to Section 58 of EPIRA;

b. Assumption by PSALM of Rural Electrification Loans, pursuant to Section 60 of EPIRA;

c. Amortization of payments to NEA and/or other government creditor agencies for Rural Electrification Loans assumed by PSALM, pursuant to Section 60 of EPIRA; and

d. Reorganization of NEA to enable it to perform its additional mandates under Section 58 of EPIRA, and in accordance with Section 5(a)(5) of Presidential Decree No. 269, as amended by Presidential Decree No. 1645.

x x x x x x x x x

SECTION 7. ASSUMPTION AND PAYMENT BY PSALM OF RURAL ELECTRIFICATION LOANS**.** Pursuant to Section 60 of EPIRA, PSALM shall assume all Rural Electrification Loans upon compliance by the concerned EC with Section 5 of this Executive Order, and thereupon, such EC shall cease to be a debtor of NEA or of other creditor government agencies.

Thereafter, PSALM and NEA or other creditor government agencies shall enter into contracts and/or agreements, necessary and proper, to undertake the payment of the assumed Rural Electrification Loans through an amortization schedule to be agreed upon between PSALM on the one hand, and NEA or other creditor government agencies, on the other. Where necessary, such contracts and/or agreements may include mutual stipulations on the modification and/or amendments of existing contracts of mortgage and other security between ECs and NEA or other creditor government agencies. *Provided, however*, That any such contracts of mortgage and other security with respect to the Rural Electrification Loans assumed by PSALM shall not be released by NEA and/or other creditor government agencies without the written consent of PSALM. (Emphases supplied)

x x x x x x x x x

LANECO additionally cites certain provisions of a Contract dated October 3, 2003 executed between NEA and PSALM, which purportedly establishes the obligation of PSALM to assume the financial obligations of electric cooperatives to the NEA which had been incurred to finance rural electrification programs. Based on these suppositions, LANECO posits that the prohibition imposed on electric cooperatives to dispose of its assets "extends to Local Government Units in enforcing collection of real property tax by way of Administrative Action through levy on property."[46]

This conclusion finds no support in law.

Contrary to LANECO's stand, the provisions of law cited do not prohibit local government units from resorting to the administrative remedy of levy on real property. Nothing in the aforecited provisions withdrew the remedy of tax collection by administrative action from the LGUs. Instead, these provisions merely ascribe limitations on, and lay down the consequences of, any **voluntary transfer and disposition of assets** by the electric cooperatives themselves. They do not limit the LGUs' remedies against electric cooperatives to judicial actions in collecting real property taxes. To adopt LANECO's

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[46] *Rollo*, p. 1599.

position would be reading into the clear provisions of R.A. No. 9136 more than what it actually provides. The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[47]

Furthermore, LANECO failed to establish how the administrative remedy of levy on real properties will impair the rights of NEA and PSALM. Instead, it merely reiterated its argument that R.A. No. 9136 prohibits the disposition of its assets and properties during the period of rehabilitation and modernization program. In fact, it failed to differentiate how exclusive resort to judicial action as opposed to the administrative remedy of levy would be a better option to preserve the rights of NEA and PSALM. It is the option of the LGU to choose which remedy to avail.

We likewise do not find merit in LANECO's argument that the levy caused by the PGLN upon its real properties impairs the government contracts entered into by NEA and PSALM and violates the constitutional right of national agencies to enter into a contract. These issues have been similarly raised, and resolved, before this Court in *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) v. The Secretary, Department of Interior and Local Government, and the Secretary, Department of Finance*:

> It is ingrained in jurisprudence that the constitutional prohibition on the impairment of the obligation of contracts does not prohibit every change in existing laws. To fall within the prohibition, the change must not only impair the obligation of the existing contract, but the impairment must be substantial. What constitutes substantial impairment was explained by this Court in ***Clemons v. Nolting***:
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> A law which changes the terms of a legal contract between parties, either in the time or mode of performance, or imposes new conditions, or dispenses with those expressed, or authorizes for its satisfaction

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[47] *Camp John Hay Development Corporation v. Central Board of Assessment Appeals*, G.R. No. 169234, October 2, 2013, 706 SCRA 547, 559.

something different from that provided in its terms, is law which impairs the obligation of a contract and is therefore null and void.

Moreover, **to constitute impairment, the law must affect a change in the rights of the parties with reference to each other and not with respect to non-parties**.[48] (Emphasis and underscoring supplied)

It bears to stress that, regardless of whether the mortgages constituted on LANECO's properties constitute as lien thereon, these cannot defeat the right of the PGLN to make those properties answerable for delinquent real property taxes, since local government taxes serve as superior lien over the property subject of the tax, as clearly laid out in Section 257 of the LGC:

SECTION 257. Local Governments Lien. – The basic real property tax and any other tax levied under this Title constitutes a lien on the property subject to tax, superior to all liens, charges or encumbrances in favor of any person, irrespective of the owner or possessor thereof, enforceable by administrative or judicial action, and may only be extinguished upon payment of the tax and the related interests and expenses.

The PGLN, therefore, is well within its right to assess LANECO with real property taxes, and to exercise its remedies under Section 256[49] of the LGC for the collection thereof, including by administrative action thru levy on its real properties. Accordingly, We find no cogent reason to rule that the PGLN committed grave abuse of discretion in resorting to the administrative remedy of levy as to warrant the issuance of a writ of prohibition.

IN VIEW OF THE FOREGOING, the petition is **DISMISSED** for lack of merit.

SO ORDERED.

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[48] G.R. No. 143076, June 10, 2003, 403 SCRA 558, 573.

[49] Section 256. *Remedies For The Collection Of Real Property Tax*. – For the collection of the basic real property tax and any other tax levied under this Title, the local government unit concerned may avail of the remedies by administrative action thru levy on real property or by judicial action.

Carpio, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, and *Reyes, Jr., JJ.,* concur.

Sereno, C.J. and *Gesmundo, J.,* on leave.

Jardeleza, J., no part.

Leonardo-de Castro, J., on official time.

Tijam, J., on official leave.

FIRST DIVISION

[A.C. No. 6980. August 30, 2017]

CESAR O. STA. ANA, CRISTINA M. STA. ANA and ESTHER STA. ANA-SILVERIO, *complainants, vs.* **ATTY. ANTONIO JOSE F. CORTES,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDINGS; CONSIDERED AS *SUI GENERIS* AS THEY INVOLVE NO PRIVATE INTEREST AND AFFORD NO REDRESS FOR PRIVATE GRIEVANCE.— Respondent's contention that the DOJ had resolved to withdraw the criminal complaints filed against him and his co-accused, the spouses Cledera, does not persuade. The dismissal or withdrawal of the criminal complaints/information/s at the instance of the DOJ, is of no moment. As a member of the Bar, respondent should know that administrative cases against lawyers are *sui generis*, or a class of their own. "Disciplinary proceedings involve no private interest and afford no redress for private grievance." Disbarment cases are aimed at purging the legal profession of individuals who obdurately scorn and despise the exalted standards of the noble profession of law. It is within this Court's power, as a check and balance to its own system, to ensure undeviating integrity by members of the Bar – both on the professional and the personal level. It is only by

maintaining this integrity and this loyalty to the law, to the Courts of Justice and to their client and the public at large, that lawyers are enabled to maintain the trust reposed upon them and to deliver justice inside and outside the courtroom.

APPEARANCES OF COUNSEL

Romeo N. Bartolome for complainants.

R E S O L U T I O N

DEL CASTILLO,[*] *J.*:

This is a complaint for disbarment filed by complainants against Atty. Antonio Jose F. Cortes (respondent) against whom they imputed deceit and falsification of public documents in the sale of two parcels of property located at Bo. Lantic, Carmona, Cavite and covered by Transfer Certificates of Title (TCT) Nos. T-1069335 and T-1069336; and in the donation of 66 pieces of property by Atty. Cesar Casal (Atty. Casal) and his wife, Pilar P. Casal (Pilar).

Factual Antecedents

In a sworn letter dated August 4, 2005, complainants alleged that respondent was left with the care and maintenance of several properties either owned or under the administration of Atty. Casal since the latter's death; that respondent abused his authority, as such administrator, and engineered the sale or transfer of the said properties, specifically the two parcels of land covered by TCT Nos. T-1069335 and T-1069336, which were owned originally by their (complainants') ancestors; that on May 19, 2004, respondent, in connivance with Cesar Inis (Inis) and A Casal's alleged adopted daughter, Gloria Casal Cledera (Gloria), and her husband, Hugh Cledera (the spouses Cledera), sold the above-mentioned parcels of land to the Property Company of Friends, Inc. (PCFI).[1]

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[*] Acting Chairperson; per Special Order No. 2476 dated August 29, 2017.

[1] Deed of Sale attached as Annex "D", Complaint, *rollo*, pp. 13-16.

Complainants further averred that as the said properties were originally in the names of Inis, Ruben Loyola (Loyola), Angela Lacdan (Lacdan) and Cesar Veloso Casal (Veloso), these persons, in conspiracy with respondent, caused to be executed a Special Power of Attorney[2] (SPA) dated May 4, 2004, under which Loyola, Lacdan and Veloso purportedly authorized their co-owner Inis to sell the said properties; that this SPA was, however, forged or falsified, because Loyola was already dead on August 15, 1994, whereas Lacdan died on August 31, 2001, and at the time of the execution of the SPA in Catmona, Cavite, Veloso was in fact in Tacloban City; and that indeed, as a consequence of respondent's wrongdoing, criminal cases for Estata through Falsification of Public Document were filed against respondent and the spouses Cledera.[3]

Complainants moreover claimed that respondent notarized 12 falsified Deeds of Donation, dated September 17 and 18, 2003, and supposedly executed in Carmona, Cavite, under which it was made to appear that Atty. Casal purportedly donated 66 pieces of property to Gloria; that they (complainants) caused to be verified/examined Atty. Casal's "superimposed" signatures on these deeds of donation by the Questioned Documents Division of the National Bureau of Investigation (NBI); and that in its Disposition Forms, the NBI concluded that "the signatures appearing on the said questioned documents are mere xerox copies which do not truly and clearly reflect the minute details of the writing strokes and other aspects relative to the preparation of the questioned signatures."[4]

In his answer, respondent asserted that all the criminal complaints against him had been dismissed, and the criminal information/s instituted therefor had been withdrawn by the Department of Justice (DOJ), hence, he had been exonerated of all the charges against him. Respondent adverted to the Resolution of Regional State Prosecutor Ernesto C. Mendoza, which in part declared —

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[2] Annex "C", Complaint, *id*. at 9-11.

[3] Docketed as I.S. Nos. B-04-4452, B-B-04-4453 and B-04-4454.

[4] Annexes "N" and "O", Complaint, *rollo*, pp. 110-111.

> x x x the signatures of Cesar E. Casal appearing on the said questioned documents are mere xerox copies which do not truly and clearly reflect the minute details of the writing strokes and other aspects relative to the preparation of the questioned signatures.

Nowhere in this report was there a categorical statement that the document was falsified or the signatures were forged. x x x[5]

In a Resolution[6] dated November 27, 2006, the Court resolved to refer this administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

Report and Recommendation of the IBP

The Investigating Commissioner summarized the charges against respondent as follows:

(a) *First*, [r]espondent was involved in the preparation of the Loyola SPA, which was used to sell the [s)ubject [p]roperties to PCFI, despite the fact that two (2) of the alleged signatories therein were already dead at the time the Loyola SPA was executed;

(b) *Second*, [r]espondent prepared and notarized 12 Deeds of Donation, which [appear] to be spurious because the signatures of Atty. Casal thereon were only superimposed;

(c) *Third*, [r]espondent notarized the 12 Deeds of Donation in Quezon City, within his territorial jurisdiction as a notary public x x x despite the fact that Atty. Casal signed the same in x x x Cavite, or outside his jurisdiction as a notary public;

(d) *Fourth*, [r]espondent caused the preparation of the Casal SPA, which appears to be spurious because the signature of Atty. Casal thereon was only superimposed; and

(e) *Fifth*, [r]espondent knowingly used the spurious Casal SPA and executed a Deed of Sale in favor of PCFI involving other properties.[7]

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[5] Respondent's Verified Position Paper, *id*. at 404.

[6] *Id*. at 325.

[7] *Id*. at 575-576.

After due proceedings, the Investigating Commissioner submitted a Report[8] dated May 14, 2010, finding respondent not only guilty of dishonesty and deceitful conduct, but also guilty of having violated his oath as a notary public.

In finding respondent guilty of using a falsified document, the Investigating Commissioner noted that although there was no direct evidence that it was respondent himself who prepared or drafted the SPA, there was evidence nonetheless that respondent did actively participate, or take part, in the offer and sale of the properties to the PCFI; and that since the execution of the forged or falsified SPA is a crucial or critical component of the eventual consummation of the sale to PCFI, respondent could not be heard to say that he had no knowledge of the use of a falsified document.[9]

As regards the 12 Deeds of Donation allegedly executed by Atty. Casal, the Investigating Commissioner lent more credence to the unbiased or impartial report of the NBI's finding that the signatures of Atty. Casal were *per se* mere xerox copies; and that moreover, respondent had violated Section 240[10] of the Revised Administrative Code, when he caused to be acknowledged the Deeds of Donation in his law office in Quezon City, despite the fact that these were supposedly signed and executed by Atty. Casal in Cavite. The Investigating Commissioner opined that respondent "ought to have known that since he was outside his territorial jurisdiction as a notary public, he could not have performed the acts of a notary public at the time of the signing of the 12 Deeds of Donation, including the taking of oath of the parties."[11]

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[8] *Id*. at 570-585; penned by Commissioner Leland R. Villadolid, Jr.

[9] Report, par. 4.8, *id*. at 579.

[10] Sec. 240. *Territorial jurisdiction*.– The jurisdiction of a notary public in a province shall be co-extensive with the province. The jurisdiction of a notary public in the City of Manila shall be co-extensive with said city. No notary shall possess authority to do any notarial act beyond the limits of his jurisdiction.

[11] *Rollo*, p. 582.

The Investigating Commissioner thus recommended:

1. ATTY. ANTONIO JOSE F. CORTES be suspended from the practice of law for a period ranging from six (6) months to two (2) years with a STERN WARNING that repetition of the same or similar acts or conduct shall be dealt with more severely; and

2. ATTY. ANTONIO JOSE F. CORTES be barred from being commissioned as a notary public for a period of two (2) years, and in the event that he is presently commissioned as notary public, that his commission be immediately revoked and suspended for such period.[12]

In its Resolution[13] dated May 10, 2013, the IBP Board of Governors adopted and approved the findings of the Investigating Commissioner but modified the recommended penalty to a one-year suspension from the practice of law, with revocation of respondent's notarial license, plus a two-year disqualification from reappointment as notary public. The pertinent portion of the Resolution reads:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering Respondent's violation of the Notarial Law, Atty. Antonio Jose F. Cortes is hereby SUSPENDED from the practice of law for one (1) year and his Notarial Commission immediately REVOKED if presently commissioned. Further, he is DISQUALIFIED from reappointment as Notary Public for two (2) years.

No motions for reconsideration having been filed by any of the parties, the case is before us for final resolution.

Our Ruling

Lawyers are instruments in the administration of justice. As vanguards of our legal system, they are expected to maintain not

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[12] *Id*. at 585.

[13] *Id*. at 569.

only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing. [It is only in living up to the very high standards and tenets of the legal profession that] the people's faith and confidence in the judicial system can be ensured. Lawyers may be disciplined - whether in their professional or in their private capacity — for any conduct that is wanting in morality, honesty, probity and good demeanor.[14]

In the instant case, respondent acted with deceit when he used the falsified documents to effect the transfer of properties owned or administered by the late Atty. Casal. In a letter[15] sent by Atty. Florante O. Villegas, counsel for the PCFI, to the spouses Cledera, the former explicitly stated that respondent did have a hand in the negotiation leading to the sale of the properties covered by TCT Nos. T-1069335 and T-1069336. In clarifying that it only entered into a Deed of Absolute Sale because of the "offer and representation that spouses Cesar and Pilar Casal are the true owners of the subject parcels of land,"[16] the PCFI, through its legal counsel, declared:

> We understand that you, **together with Atty. Antonio Jose F. Cortes**, offered to sell the said parcels ofland to our client, and that on September 17, 2003, an agreement of Purchase and Sale was executed between Spouses Cesar E. Casal and Pilar P. Casal (**represented by Atty. Cortes as their attorney-in-fact**) and our client.[17] (Emphasis supplied)

Moreover, Mr. Guillermo C. Choa, President of the PCFI, narrated in his affidavit[18] the events leading to another sale likewise involving properties co-owned by Atty. Casal through the use of the spurious SPA, to wit:

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[14] *Yu v. Atty. Palaña*, 580 Phil. 19, 24-25 (2008).

[15] Annex "L", Complaint, *rollo*, pp. 39-40.

[16] *Id*. at 40.

[17] *Id*. at 39.

[18] Annex "A", Reply to Respondent's Comment, *id*. at 294-296.

3) That sometime in August 2003, Sps. Hugh Cledera and Gloria Casal Cledera and **Atty. Antonio Jose F. Cortes offered to me for sale several parcels of land owned by Cesar E. Casal** (father of Gloria Casal Cledera) including Lot 5, Psu 10120 and Lot 6, Psu 101205 containing an area of 39,670 square meters and 47,638 square meters, more or less, located at Bo. Lantic, Carmona, Cavite which was then registered in the name of Eduardo Gan, et al. under TCT No. T-79153 of the Register of Deeds for the Province of Cavite.

4) **That Sps. Hugh Cledera and Gloria Casal Cledera together with Atty. Cortes also presented to me the following documents**, *to wit*:

a) TCT No. T-79153 of the Registry of Deeds for the Province of Cavite.

b) Deed of Absolute Sale dated December 15, 1990 executed by heirs of Eduardo B. Gan, et al. in favor of Cesar E. Casal, Cesar Inis, Ruben Loyola and Angela Lacdan.

c) Deed of Absolute Sale dated December 19, 1990 executed by Cesar Veloso Casal, et al. in favor of Sps. Cesar and Pilar Casal.

x x x x x x x x x

6) That in the *Agreement of Purchase and Sale*, it was agreed that the seller shall register the several Deeds of Sale and deliver the titles over said properties to Pro-friends (PCFI). **In the above-mentioned *Agreement of Purchase and Sale*, Sps. Casal were represented by their duly authorized attorney-in-fact, Atty. Antonio Jose F. Cortes**, of legal age, Filipino, with address at 2/F ELCO Bldg., 202 E. Rodriguez, Sr., Blvd., Quezon City. **Present during negotiations** for the terms and conditions to be contained in the *Agreement of Purchase and Sale* **aside from myself and Atty.Cortes** were Sps. Hugh and Gloria Cledera, the son-in-law and daughter, respectively of Sps. Casal; x x x[19] (Emphasis supplied)

Likewise, it cannot be denied that it was respondent who engineered the execution of the 12 Deeds of Donation involving 66 pieces of Atty. Casal's property. Respondent was personally present dwing the alleged signing of the Deeds of Donation in

[19] *Id.* at 294-295.

Cavite, which deeds he brought afterwards to his law office in Quezon City, and notarized the same. Indeed, in his Affidavit, respondent stated:

> 11. **When I presented the documents for signature** of the donors-spouses, Cesar E. Casal and Pilar P. Casal, the late Cesar E. Casal stamped the rubber facsimile of his genuine signature in all the spaces provided in all copies of the Deeds of Donation. At the same time and place, I also saw his wife Pilar P. Casal affixed [sic] her own signature in the Deeds of Donation. Also present during the signing occasion was the donee herself, Dr. Gloria P. Casal, as well as, [sic] her husband, Dr. Hugh Cledera who affixed their signatures in all the copies of the Deeds of Donation **in my presence**.
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> 12. Thereafter, **I gathered and brought all the signed copies of the Deeds of Donation to my office in Quezon City, and notarized them**. Record shows that I notarized them and entered the documents in my Notarial Registry on September 17 and 18, 2003.[20] (Emphasis supplied)

By using the falsified SPA and by knowingly notarizing documents outside of his notarial commission's jurisdiction, respondent was evidently bereft of basic integrity which is an indispensable *sine qua non* of his ongoing membership, in good standing, in the legal profession, and as a duly-commissioned notary public.

In actively participating in the offer and sale of property to PCFI, respondent was guilty of deceit and dishonesty by leveraging on the use of a spurious Special Power of Attorney

There can be no debate either as to the fact that respondent made use of a forged or falsified SPA in his dealings with PCFI. As the lawyer who assisted in the sale of the properties through the use of the falsified SPA in question, he ought to know that the use of such falsified or forged SPA gives rise to grievous legal consequences which must inevitably enmesh him

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[20] *Id*. at 123.

professionally. As a member of the Bar in apparent good legal standing, he effectively held himself out as a trustworthy agent for the principals he was purportedly representing in the transaction/s in question.

Respondent's act of notarizing a forged Deed of Donation outside of his jurisdiction is a violation of his duties as a notary public, as well as a blatant falsification of public document

This Court agrees with the fmdings of the IBP Board of Governors which upheld the impartial report of the NBI and its findings that the signatures on the Deeds of Donation were mere photocopies attached to the said Deeds.[21] Given the fact that respondent admitted to having been with the late Atty. Casal at the time of the execution of the Deed, it would not be far-fetched to say that the use of the said mere photocopies was with his knowledge and consent. What is more, his act of bringing the Deeds of Donation that were executed in Carmona, Cavite, to his law office in Quezon City, and notarizing them there, not only violated Section 240 of the Revised Administrative Code but "also [partook] of malpractice of law and falsification."[22]

Section 240 of the Revised Administrative Code explicitly states:

> Sec. 240. *Territorial jurisdiction*. – The jurisdiction of a notary public in a province shall be co-extensive with the province. The jurisdiction of a notary public in the City of Manila shall be co-extensive with said city. **No notary shall possess authority to do any notarial act beyond the limits of his jurisdiction.**[23] (Emphasis supplied)

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[21] *Id*. at 110.

[22] See *Judge Laquindanum v. Atty. Quintana*, 608 Phil. 727, 737 (2009), citing *Tan Tiong Bio v. Atty. Gonzales*, 557 Phil. 496, 504 (2007).

[23] REVISED ADMINISTRATIVE CODE of 1917, Volume I, Book V, Chapter 12.

Needless to say, respondent cannot escape from the clutches of this provision.

The dismissal of the criminal complaints against respondent did not change the sui generis character of disbarment proceedings

Respondent's contention that the DOJ had resolved to withdraw the criminal complaints filed against him and his co-accused, the spouses Cledera,[24] does not persuade. The dismissal or withdrawal of the criminal complaints/ information/s at the instance of the DOJ, is of no moment. As a member of the Bar, respondent should know that administrative cases against lawyers are *sui generis*, or a class of their own. "Disciplinary proceedings involve no private interest and afford no redress for private grievance."[25] Disbarment cases are aimed at purging the legal profession of individuals who obdurately scorn and despise the exalted standards of the noble profession of law. It is within this Court's power, as a check and balance to its own system, to ensure undeviating integrity by members of the Bar – both on the professional and the personal level. It is only by maintaining this integrity and this loyalty to the law, to the Courts of Justice and to their client and the public at large, that lawyers are enabled to maintain the trust reposed upon them and to deliver justice inside and outside the courtroom.

WHEREFORE, Atty. Antonio Jose F. Cortes is hereby **SUSPENDED** from the practice of law for one (1) year and his Notarial Commission immediately **REVOKED**, if he is presently commissioned. Furthermore, he is **DISQUALIFIED** from reappointment as Notary Public for two (2) years, reckoned from the date of finality of this Resolution.

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[24] See Comment, *rollo*, pp. 138-152, Respondent's Mandatory Conference Brief; *id*. at 330-335, and Respondent's Verified Position Paper, *id*. at 396-410.

[25] *Yu v. Atty. Palaña*, *supra* note 14 at 26.

Furnish a copy of this Resolution 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.

SO ORDERED.

Jardeleza and *Tijam, JJ.*, concur.

Sereno, C.J., on leave.

Leonardo-de Castro, J., on official leave.

FIRST DIVISION

[A.C. No. 8903. August 30, 2017]

EDIGARDO V. BONDOC, *complainant, vs.* **ATTY. OLIMPIO R. DATU,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; MAY BE PENALIZED FOR FAILING TO MANIFEST DEVOTION AND DILIGENCE TO PROTECT THE INTEREST OF THEIR CLIENTS.— Canon 17 of the Code of Professional Responsibility reminds lawyers that they owe fidelity to the cause of their client. Inextricably linked to this duty is Rule 18.03 of Canon 18 which impresses upon lawyers not to neglect a legal matter entrusted to them. x x x This court has consistently penalized lawyers who fall short of their obligation to manifest devotion and diligence to protect the interest of the client by failing to file his or her client's initiatory action after receiving attorney's fees. x x x [T]his court finds that Datu fell short of the fidelity and diligence that he owed his client Bondoc. Datu failed to protect Bondoc's interest by: (1) not acting on the complaint

he promised to file on behalf of Bondoc; (2) acting on the matter only after 18 months and after Bondoc's persistent inquiries; and (3) by believing Mercado's alleged payment to Bondoc without as much as demanding any proof of this payment. Rather than securing Bondoc's interest, Datu chose to side with Mercado. This is not the kind of unwavering loyalty and diligence that is expected of members of the legal profession.

2. ID.; ID.; FAILURE TO DELIVER THE FUNDS AND PROPERTY OF THEIR CLIENTS WHEN DUE OR UPON DEMAND MERITS THE IMPOSITION OF DISCIPLINARY ACTION.— [H]aving failed to render legal services, Datu has the legal and moral obligation to return the ₱25,000 which he received. Rule 16.03 of Canon 16 mandates that "[a] lawyer shall deliver the funds and property of his client when due or upon demand x x x." Failure to do so merits the imposition of disciplinary action. In addition to the imposition of disciplinary action, this Court, in a number of cases, has also ordered the return of the attorney's fees received with legal interest.

APPEARANCES OF COUNSEL

Public Attorney's Office for complainant.

D E C I S I O N

JARDELEZA, *J.*:

The Case

On February 22, 2011, the Office of the Bar Confidant (OBC) received a *Sinumpaang Salaysay*[1] signed by complainant Edigardo V. Bondoc, (Bondoc) seeking the disbarment of respondent Atty. Olimpio R. Datu (Datu) for alleged violations of the Code of Professional Conduct. Acting on this matter, this Court required Datu to file his comment.[2] After this, the parties were required to attend a series of mandatory conferences

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[1] *Rollo*, p. 1.

[2] *Id.* at 5.

before the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline. Upon filing of their position papers at the end of the mandatory conference, the Commission on Bar Discipline rendered its report and recommendation. The IBP adopted the recommendation with modification and forwarded the resolution to this Court.

The Facts

Bondoc claims that sometime in November 2006, he consulted Datu regarding a civil case for damages that he intended to file against a certain John Paul Mercado (Mercado). Bondoc disclosed to Datu that he figured in a vehicular accident caused by Mercado. Because of his injuries, Bondoc had to be hospitalized and was forced to spend ₱100,000 in medical expenses. Mercado attempted to settle the matter with him but he was paid the small sum of ₱30,000. Bondoc thus sought to hire Datu to file a civil case for damages. Datu assured Bondoc that given the facts, he had a strong case. Bondoc and Datu then agreed that Datu will handle the filing of the case. In return, Bondoc undertook to pay Datu ₱25,000 in attorney's fees. Bondoc complied with his obligation by paying Datu in two installments. He paid ₱15,000 on February 6, 2007 and ₱10,000 on August 6, 2007. The checks covering these payments were received by a certain Tess Pano, a staff in Datu's office. Bondoc also turned over to Datu all the documents pertinent to the civil damages case. He then regularly followed up on the progress of the case. However, Datu persistently told him to give the court more time.[3]

Meanwhile, on February 12, 2008, Bondoc consulted Datu about a complaint for *estafa* and illegal recruitment which he intended to file against Ronald De Auzen (Auzen) and Nor-ain M. Blah (Blah). He relayed to Datu that he had already sent demand letters with the assistance of a certain SPO2 Jose Alamin Ho of the Pampanga Police and that he only needed help in drafting affidavits. Datu offered his services in drafting the

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

affidavits for Bondoc and two other persons also intending to file cases against Auzen and Blah. For this service, Datu charged the total amount of ₱1,200.[4]

More than a year later, Datu still made no reports to Bondoc regarding the civil case for damages. When Bondoc inquired with the trial court in San Fernando City, he was informed that no civil suit for damages was filed against Mercado in his behalf. Bondoc then asked Datu about the status of the case without disclosing that he had already inquired with the court. Datu requested Bondoc to return the next day. When he returned, Datu showed him a letter[5] dated May 5, 2008 which Datu supposedly sent to Mercado inviting the latter to a meeting to discuss a possible settlement of the case. On the date set for the conference, only Bondoc attended. Datu related to Bondoc that he had talked to Mercado's lawyer who informed him that Mercado had already paid Bondoc ₱500,000 in settlement. Bondoc denied this and presented to Datu the acknowledgment receipt showing that he was only paid ₱30,000. Bondoc further claims that he requested Datu to pursue the case and the latter acceded. However, notwithstanding the several months that had passed, Datu still took no steps to file the civil case. Because of this, Bondoc demanded the return of the ₱25,000 which he paid. Datu, however, refused.[6]

In his comment,[7] Datu vehemently denied Bondoc's allegations. He claims that sometime in November 2006, Bondoc went to his office to hire him as a lawyer in connection with the case for civil damages which Bondoc intended to file against Mercado. Datu states that Bondoc told him he only received a measly sum of ₱30,000 from Mercado because of the accident. Believing that Bondoc had a meritorious cause of action, Datu agreed to represent him. Bondoc returned to his office in February 2007 to deliver two checks, worth ₱15,000, to cover his attorney's

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[4] *Id*. at 54.

[5] *Id*. at 69.

[6] *Id*. at 55.

[7] *Id*. at 10-15.

fees.[8] Datu alleges that he sent a letter to Mercado inviting him to a conference with Bondoc before the case was filed in court. To prove this, he attached as Annex 1 of his comment a letter[9] dated May 5, 2008. He then claims that Mercado's counsel called him and told him that Mercado had already settled the matter and paid Bondoc ₱500,000.[10] As proof of this, Datu attached to his comment an unsigned document purporting to be the affidavit[11] of a certain Hector Mercado claiming to be the father of Mercado and asserting that he settled his son's liability to Bondoc through the payment of ₱500,000. Datu states that he confronted Bondoc about this matter who eventually admitted that he did, in fact, receive ₱500,000. Because of this, Datu no longer filed the complaint.[12]

Datu further claims that Bondoc also employed his legal services for the filing of an *estafa* and illegal recruitment case. He alleges that he drafted the complaint-affidavit for Bondoc and two other complainants. They purportedly agreed that Bondoc will give Datu a personal computer as payment for his attorney's fees. Datu also said that Bondoc also obtained his services in drafting demand letters. However, due to an unexpected turn of events, their lawyer-client relationship was terminated. According to Datu, he was surprised when Bondoc started demanding the refund of ₱15,000. He explained that while it is true that Bondoc gave him two checks in the amount of ₱8,000, Bondoc had supposedly intended this as payment of Datu's attorney's fees for his legal services to certain Spouses Gonzales. Bondoc had allegedly owed the Spouses Gonzales a sum of money.[13]

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[8] *Id*. at 10-11.

[9] *Id*. at 16.

[10] *Id*. at 11.

[11] *Id*. at 17.

[12] *Id*. at 11.

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

IBP Commissioner Jaime G. Oracion (Commissioner Oracion) recommended that Datu be found liable for violating Rule 16.03 of Canon 16, Canon 17, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility, suspended from the practice of law for three months, and ordered to pay Bondoc ₱25,000 with legal interest.[14] The IBP Board of Governors adopted Commissioner Oracion's recommendation with modification. It increased the amount from ₱25,000 to ₱30,000 and decreased the period of suspension from three months to one month.[15]

The Ruling of the Court

We agree with the IBP's findings that Datu breached his obligation under the Code of Professional Responsibility.

Bondoc's allegation is clear and simple. He obtained Datu's services to file a civil case for damages. Datu agreed and received ₱25,000 as attorney's fees. This amount was paid in two installments - ₱15,000 on February 6, 2007 and ₱10,000 on August 6, 2007. However, instead of filing the civil case for damages, Datu did nothing. He only acted more than a year later when Bondoc demanded for an update as to the progress of the case. Further, even when Datu finally decided to render the legal service he promised, all he did was to draft a letter inviting Mercado to a meeting. This meeting never took place. After this, Datu chose to no longer act on the matter. Datu admitted these in his pleadings.[16]

While Datu insists that he properly performed his obligation as Bondoc's lawyer in the case for civil damages, the evidence clearly shows that the only effort that Datu made was to write a letter to Mercado 18 months from the time that Bondoc obtained his services. This letter purportedly invited Mercado to a meeting. This meeting, however, did not push through as Datu claims that Mercado's counsel had informed him that Mercado had already settled the matter by paying Bondoc ₱500,000. While

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[14] *Id*. at 117.

[15] *Id*. at 112.

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

Bondoc asserts that he denied Mercado's version and even presented to Datu the acknowledgment receipt showing that he received a mere ₱30,000, Datu, instead of endeavoring to ascertain the truth of Mercado's claim, merely decided to believe Mercado's story hook, line and sinker. Datu attempts to prove his claim by presenting an affidavit allegedly signed by a certain Hector Mercado stating that Bondoc had already been paid ₱500,000. The document, however, is both unsigned and undated. Datu claims that this document was lifted from his computer files. Elementary rules of evidence prevent us from giving weight to this affidavit. Neither has its due execution or authenticity been established.[17]

While Datu claims that he has no obligation to return Bondoc's payment because he purportedly rendered other legal services, no proof exists in the record to show that he legally represented Bondoc in any case for which the latter owes him payment. Datu points to a complaint-affidavit which he allegedly assisted Bondoc in drafting. The document attached to prove this does not in any way show that Datu indeed provided such assistance. He also asserts that he drafted demand letters for Bondoc. We note that there are two sets of demand letters presented to establish this allegation. None of these letters prove Datu's story. One set of demand letters themselves clearly state that they were drafted with the assistance of a certain SPO2 Jose Alamin Ho.[18] Meanwhile, the other set shows Datu as counsel but these letters are unsigned and show no indication that they were duly sent out to, and received by, the proper parties.[19]

Finally, Datu also claims that in addition to the ₱15,000 that he received from Bondoc, he also received ₱8,000. According to him, this was not intended as payment for the services he rendered to Bondoc. Datu alleges that this was payment for his legal services to the Spouses Gonzalez, to whom Bondoc owed a sum of money. There is, however, nothing in the record to

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[17] RULES OF COURT, Rule 132, Sec. 20.

[18] *Rollo*, pp. 65-66.

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

prove that Datu represented the Spouses Gonzalez in any proceeding.

Canon 17 of the Code of Professional Responsibility reminds lawyers that they owe fidelity to the cause of their client. Inextricably linked to this duty is Rule 18.03 of Canon 18 which impresses upon lawyers not to neglect a legal matter entrusted to them. In *Camara v. Reyes*[20] (*Camara*), we reiterated that the duty of fidelity and the obligation not to neglect a legal matter entrusted by the client mean nothing short of entire devotion to the client's genuine interest and warm zeal in the defense of his or her rights. Lawyers must exert their best efforts to preserve their clients' cause. Unwavering loyalty displayed to a client also serves the ends of justice. Hence, in *Camara*, where the respondent Atty. Reyes, after receiving his attorney's fees, took no steps to protect his client's interest, we found him liable under Rule 18.03 of Canon 18 and suspended him for a period of six months.[21]

This case also bears semblance to the case *Sencio v. Calvadores*[22] (*Sencio*). In *Sencio*, Atty. Calvadores received the amount of ₱12,000 as attorney's fees. He undertook to prosecute the civil aspect of his client's case which involved the death of the latter's son in a vehicular accident. While the client persistently asked for updates and Atty. Calvadores continuously reassured her, she eventually found out that no case was ever filed.[23] We found Atty. Calvadores liable under Canon 17 and Rule 18.03 of Canon 18. In this case, we reminded members of the legal profession that "[o]nce a lawyer agrees to handle a case, he should undertake the task with dedication and care; less than that, he is not true to his oath as a lawyer."[24] For his violation, we suspended Atty. Calvadores for six months.[25]

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[20] 612 Phil. 1 (2009).

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

[22] 443 Phil. 490 (2003).

[23] *Id*. at 492.

[24] *Id*. at 494. Citation omitted.

[25] *Id*. at 495.

This court has consistently penalized lawyers who fall short of their obligation to manifest devotion and diligence to protect the interest of the client by failing to file his or her client's initiatory action after receiving attorney's fees. This is the import of our ruling in the cases *Camara*, *Sencio*, as well as in *Reyes v. Vitan*[26] and *Solidon v. Macalalad*.[27] In all these cases, we imposed a penalty of suspension for a period of six months.

Applying these rulings to the present case, this court finds that Datu fell short of the fidelity and diligence that he owed his client Bondoc. Datu failed to protect Bondoc's interest by: (1) not acting on the complaint he promised to file on behalf of Bondoc; (2) acting on the matter only after 18 months and after Bondoc's persistent inquiries; and (3) by believing Mercado's alleged payment to Bondoc without as much as demanding any proof of this payment. Rather than securing Bondoc's interest, Datu chose to side with Mercado. This is not the kind of unwavering loyalty and diligence that is expected of members of the legal profession.

Further, having failed to render legal services, Datu has the legal and moral obligation to return the ₱25,000 which he received. Rule 16.03 of Canon 16 mandates that "[a] lawyer shall deliver the funds and property of his client when due or upon demand x x x." Failure to do so merits the imposition of disciplinary action. In addition to the imposition of disciplinary action, this Court, in a number of cases,[28] has also ordered the return of the attorney's fees received with legal interest.

Thus, in accordance with our consistent ruling, the proper penalty that should be imposed in this case is suspension from the practice of law for a period of six months. Further, Datu must also return the ₱25,000 he received from Bondoc with legal interest.

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[26] 496 Phil. 1 (2005).

[27] 627 Phil. 284 (2010).

[28] *Solidon v. Macalalad*, *supra*; *Sencio v. Calvadores*, *supra* note 22.

WHEREFORE, in view of the foregoing, we **AFFIRM WITH MODIFICATION** Resolution No. XX-2013-374 of the IBP Board of Governors. We impose upon Atty. Olimpio R. Datu the penalty of **SIX MONTHS SUSPENSION** from the practice of law for violation of Rule 16.03, Rule 18.03, and Canon 17 of the Code of Professional Responsibility, effective upon finality of this Decision. He is also **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Atty. Olimpio R. Datu is also **ORDERED** to **RETURN** to Edigardo V. Bondoc the amount of ₱25,000 with legal interest from the date of finality of this Decision until the full amount is returned.

Let copies of this Decision be furnished to the Office of the Bar Confidant and noted in Atty. Olimpio R. Datu's record as a member of the Bar.

SO ORDERED.

Del Castillo[*] (*Acting Chairperson*) and *Tijam, JJ.,* concur.

Sereno, C.J. and *Leonardo-de Castro, J.,* on official leave.

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[*] Designated Acting Working Chairperson as per Special Order No. 2473 dated August 24, 2017.

FIRST DIVISION

[A.M. No. MTJ-17-1905. August 30, 2017]
(Formerly OCA I.P.I. No. 13-2582-MTJ)

ATTY. PABLO B. MAGNO,[*] *complainant, vs.* **JUDGE JORGE EMMANUEL M. LORREDO, METROPOLITAN TRIAL COURT, BRANCH 26, MANILA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; CODE OF JUDICIAL CONDUCT; MANDATES ALL MEMBERS OF THE BENCH TO BE MODELS OF PROPRIETY AT ALL TIMES; CASE AT BAR.— A member of the bench "is the visible representation of the law." Thus, the law frowns upon even any manifestation of impropriety in a magistrate's activities. In fact, it has often been ruled that a judge must be like Ceasar's wife – above suspicion and beyond reproach. Indeed, the CJC mandates all members of the bench to be models of propriety at all times. x x x In the present case, Judge Lorredo's insulting statements during the preliminary conference and in his pleadings before the Court are obviously offensive, distasteful, and inexcusable. Certainly, while Judge Lorredo's concern on the misrepresentation committed by Atty. Magno before the RTC is understandable, he should not have disregarded the rules on proper decorum at the expense of the integrity of the court. As correctly observed by the OCA in its Memorandum, Judge Lorredo failed to exercise caution in his speech, keeping in mind that his conduct in and outside the courtroom is always under constant observation.

2. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY OF PERFORMANCE OF OFFICIAL ACTS; PREVAILS UNTIL OVERCOME BY CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY; CASE AT BAR.— In *Magsucang v. Judge Balgos*, the Court elucidated

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[*] It is indicated in the Complaint that complainant is Atty. Pablo P. Magno.

that: A judge enjoys the presumption of regularity in the performance of his function no less than any other public officer. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officers act being lawful or unlawful, construction should be in favor of its lawfulness.

3. POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE PROCEEDINGS, THE BURDEN OF PROOF THAT RESPONDENT COMMITTED THE ACTS COMPLAINED OF RESTS ON THE COMPLAINANT; CASE AT BAR.— [I]t is well settled that in administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant. Mere allegations, however, in the complaint must be supported by evidence to establish that a judge has overstepped the parameters of his official prerogative. Here, the Court finds that Atty. Magno failed to submit any evidence that will corroborate his assertion of irregularities against Judge Lorredo, as alleged in the Supplemental Complaint.

4. LEGAL ETHICS; JUDGES; DISCIPLINE OF JUDGES; CONDUCT UNBECOMING OF A JUDGE IS CLASSIFIED AS A LIGHT OFFENSE; IMPOSABLE PENALTY; CASE AT BAR.— Conduct unbecoming of a judge is classified as a light offense under Section 10, Rule 140. The same is penalized under Section 11 (c) thereof by any of the following: (i) fine of not less than ₱1,000 but not exceeding ₱10,000; (ii) censure; (iii) reprimand; and (iv) admonition with warning. In *Correa v. Judge Belen*, the Court, taking into consideration that the complaint is not Judge Belen's first infraction, fined him in the amount of ₱10,000 for his use of intemperate language and inappropriate actions in dealing with counsels, such as the complainant therein, appearing in his courtroom. Here, considering that this is the first offense of Judge Lorreda, the Court finds that the recommendation of the OCA for the imposition of fine in the amount of ₱5,000 is commensurate.

RESOLUTION

TIJAM, *J.*:

In a verified Complaint[1] dated March 6, 2013, complainant Atty. Pablo B. Magno (Atty. Magno) charges respondent Judge Jorge Emmanuel M. Lorredo (Judge Lorredo), Metropolitan Trial Court of Manila (MeTC), Branch 26, with bias and partiality, arrogance and oppression, and violation of the Code of Judicial Conduct (CJC).

ANTECEDENT FACTS

On March 3, 2010, Que Fi Luan (Luan), as represented by his attorney-in-fact and legal counsel, Atty. Magno, filed a complaint for forcible entry against Rodolfo Dimarucut (Rodolfo) docketed as Civil Case No. 186797-CV.[2]

Due to Rodolfo's death, Atty. Magno filed an Amended Complaint, seeking, among others, that the complaint for forcible entry be treated as an unlawful detainer case impleading Teresa Alcober (Teresa) and Teresita Dimarucut, daughter and widow of Rodolfo, respectively.[3]

In an Order dated September 8, 2010, however, the MeTC, through respondent Judge Lorredo, dismissed the complaint for failure of Luan to appear for mediation.[4]

On appeal, the Regional Trial Court (RTC) reversed the Order of the MeTC in a Decision[5] dated June 29, 2011. It held that the MeTC hastily ordered the dismissal of the case for failure of the parties to appear for a mediation conference without proper notification to the parties. Accordingly, the RTC remanded the case to the MeTC for further proceedings.

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[1] *Rollo*, pp. 1-9.

[2] *Id*. at 2.

[3] *Id*.

[4] *Id*.

[5] *Id*. 86-88.

After the finality of the RTC Decision, the MeTC set the case for preliminary conference. For failure, however, of defendants' counsel therein to appear, the same was cancelled. Nonetheless, in the course thereof, Judge Lorredo asked Atty. Magno: *"What did you do to convince those up there* [RTC], *that you were able to secure that kind of decision.*" In reply, Atty. Magno answered: "*I never follow up on my cases, Your Honor.*"[6]

Thereafter, Judge Lorredo vented his anger on Teresa's husband and asked him where their lawyer was. Immediately, he informed Judge Lorredo that their lawyer will not be able to attend the hearing due to ailment.[7]

Also, during the preliminary conference, Judge Lorredo told Teresa's husband that their lawyer is "*mahina*" or "*hihina-hina*". He further stated that "*[g]inawa ko na nga ang desisyon dito sa kasong ito, at panalo kayo, ngayon talo pa kayo sa RTC."*[8]

Consequently, Atty. Magno filed the instant case and claimed that Judge Lorredo violated the Rules of Court and the CJC in connection with his remarks during the preliminary conference which insinuated that the former was able to get a favorable decision from the RTC by committing unethical practice.[9]

In its 1st Indorsement,[10] the Office of the Court Administrator (OCA) required Judge Lorredo to file his Comment within 10 days from receipt thereof.

In his Comment,[11] Judge Lorredo denied the charges against him. He alleged that the questions thrown against Atty. Magno during the preliminary conference were made out of curiosity

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

[7] *Id.* at 4.

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

[9] *Id*. at 329.

[10] *Id*. at 92.

[11] *Id*. at 93-95.

considering that the latter's representation before the RTC was allegedly based on a lie.

According to Judge Lorredo, Atty. Magno lied to the RTC when he claimed that he was not notified of the scheduled mediation conference.[12] As proof, Judge Lorredo submitted a copy of the Minutes[13] during the July 23, 2010 hearing stating that the case is referred to mediation on "August 4, 2010" at 2:00 p.m.

To put his questions in proper context, Judge Lorredo, likewise, submitted a copy of the Minutes of the preliminary conference to prove that he did not show any bias or partiality in his line of questioning. The relevant portion of the Minutes reads:

COURT:	Sino yong abogado mo sa appeal?
MR. ALCOBER:	Atty. Montera, your honor.
COURT:	Nandito ba non… Atty. kanino pirma 'to? Ipakita mo nga Alie, kung kaninong pirma to.
ATTY. MAGNO:	Akin, your honor.
COURT:	Ang argument mo sa RTC hindi mo sinabi na mediation kayo?
ATTY. MAGNO:	Sinabi ninyo pero there was no setting, your honor. Atty. Montera was not here, also the defendant.
COURT:	Hindi nong August 2010 …….. pumirma ka nga eh.
ATTY. MAGNO:	I don't know if it is in the afternoon or it was in the morning, your honor.
COURT:	Pirma mo 'to?
ATTY. MAGNO:	Yes, your honor.

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[12] *Id*. at 94.

[13] *Id*. at 134.

COURT:	Pero paano mo napaniwala yong court sa taas na hindi ko sinet eh klaro na pumirma ka pa. Ano bang nangyari?
ATTY. MAGNO:	I did not follow it up. Hindi ako nag follow ….. I'm not the lawyer who follow[ed] it up, your honor.
COURT:	Di ba yon ang theory mo sa RTC?
ATTY. MAGNO:	Yes, your honor.
COURT:	Na hindi ko sinet ang mediation.
ATTY. MAGNO:	There was no specific setting on that very day.
COURT:	Eto o[,]2 P.M. pumirma ka. Nagtataka lang ako kung paano mo napaniwala ang RTC.
ATTY. MAGNO:	I'am (sic) a lawyer who does not follow up cases, your honor
	x x x x x x x x x
COURT:	Pero klaro tayo na sinet ko yung mediation pumirma ka eh.
ATTY. MAGNO:	Pirma ko yan ho.
COURT:	Nagtataka lang ako. How could you tell the RTC na walang mediation. Sinet ko nga eh.
ATTY. MAGNO:	I have pleadings your honor.
COURT:	Bat mo ba sinabi na
ATTY. MAGNO:	The RTC reversed the order because ……. the parties should be given another chance because the mediator set it for the first time. The mediator did not issue any order.
COURT:	Anyway, mahina ang abogado ayan mo (sic) sinet ko na eh. Nanalo pa ang kalaban mo don. Kasalanan ng abogado mo yan. Hindi pinag-aaralan yung record. Sinasabihan kita. Nanalo pa sila kahit may setting ako. Anyway, since nandito ka. I'm setting this case for mediation. Both of you, you appear

> in mediation. Set this case for mediation. Mandatory let him sign for mediation. You choose a date.[14]

On August 14, 2013, Atty. Magno filed a Supplemental Complaint[15] wherein he further charged Judge Lorredo for the following: (i) falsification of the Minutes during the July 23, 2010 hearing by adding the date "4" to indicate that he set the mediation conference on August 4, 2010; (ii) not calling his cases promptly at 8:30 a.m.; (iii) prays his usual prayer instead of the centennial prayer required by the Court before the start of the hearing; (iv) failure to require the parties to hand-carry the order setting mediation to the mediation center to ensure that the parties are notified personally of mediation setting; and (v) knowingly and maliciously rendered an unjust and illegal decision in Civil Case No. 186797-CV.

In its 1st Indorsement[16] dated August 28, 2013, the OCA required Judge Lorredo to file his Comment to the Supplemental Complaint within 10 days from receipt thereof.

In his Comment to the Supplemental Complaint,[17] Judge Lorredo denied all the charges against him. Also, he referred Atty. Magno as "petty, dull and slow thinking" and asseverated that the latter's allegations were "amusing" but "incredibly, super silly."

THE RECOMMENDATION OF OCA

In a Memorandum[18] dated March 3, 2016, the OCA recommended that Judge Lorredo be found guilty of conduct unbecoming a judge and be fined in the amount of ₱5,000 with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

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[14] *Id*. at 97-99.

[15] *Id*. at 204-218.

[16] *Id*. at 316.

[17] *Id*. at 317-320.

[18] *Id*. at 328-334.

The OCA held that it is improper for a member of the bench to humiliate a lawyer, litigant, or witness. Instead, he must carefully choose his words, written or spoken, with utmost care and sufficient control.

THE RULING OF THE COURT

After a careful review of the records of the case, the Court finds that the recommendation of the OCA is proper under the circumstances.

Respondent Judge Lorredo should be more circumspect in his language in the discharge of his duties

A member of the bench "is the visible representation of the law."[19] Thus, the law frowns upon even any manifestation of impropriety in a magistrate's activities. In fact, it has often been ruled that a judge must be like Ceasar's wife – above suspicion and beyond reproach.[20]

Indeed, the CJC mandates all members of the bench to be models of propriety at all times. Canon 4 thereof provides:

CANON 4

PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

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SEC. 6. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to

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[19] *Atty. Correa v. Judge Belen*, 641 Phil. 131, 136 (2010).

[20] *Atty. Gandeza, Jr. v. Judge Tabin*, 669 Phil. 536, 543 (2011).

preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

In the present case, Judge Lorredo's insulting statements during the preliminary conference and in his pleadings before the Court are obviously offensive, distasteful, and inexcusable. Certainly, while Judge Lorredo's concern on the misrepresentation committed by Atty. Magno before the RTC is understandable, he should not have disregarded the rules on proper decorum at the expense of the integrity of the court.

As correctly observed by the OCA in its Memorandum, Judge Lorredo failed to exercise caution in his speech, keeping in mind that his conduct in and outside the courtroom is always under constant observation. The Memorandum in part states:

> [Judge Lorredo] acted inappropriately when he repeatedly badgered [Atty. Magno] about how the latter was able to "convince" the RTC, Manila and secure a reversal of his decision. [Judge Lorredo] did not even attempt to hide his sarcasm and hold back his irritation towards [Atty. Magno] when he indiscriminately and unashamedly used the word "stupid" in his Supplemental Rejoinder and referred to [Atty. Magno] as "petty, dull and slow thinking" and "pathological or compulsive liar" in his Comment on the Supplemental Complaint.[21]

Atty. Magno failed to present sufficient evidence to prove his allegations in his Supplemental Complaint

In *Magsucang v. Judge Balgos*,[22] the Court elucidated that:

> A judge enjoys the presumption of regularity in the performance of his function no less than any other public officer. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no

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[21] *Rollo*, p. 333.

[22] 446 Phil. 217 (2003).

> less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officers act being lawful or unlawful, construction should be in favor of its lawfulness.[23]

Moreover, it is well settled that in administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant.[24] Mere allegations, however, in the complaint must be supported by evidence to establish that a judge has overstepped the parameters of his official prerogative.[25] Here, the Court finds that Atty. Magno failed to submit any evidence that will corroborate his assertion of irregularities against Judge Lorredo, as alleged in the Supplemental Complaint.

Penalty to be imposed against Judge Lorredo for conduct unbecoming of a judge

Conduct unbecoming of a judge is classified as a light offense under Section 10, Rule 140. The same is penalized under Section 11 (c) thereof by any of the following: (i) fine of not less than ₱1,000 but not exceeding ₱10,000; (ii) censure; (iii) reprimand; and (iv) admonition with warning.

In *Correa v. Judge Belen*,[26] the Court, taking into consideration that the complaint is not Judge Belen's first infraction, fined him in the amount of ₱10,000 for his use of intemperate language and inappropriate actions in dealing with counsels, such as the complainant therein, appearing in his courtroom.

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[23] *Id.* at 224.

[24] *Re: Letter-Complaint of Atty. Ariel Samson C. Cayetuna, et al., All Employees of Justice Michael P. Elbinias against Associate Justice Michael P. Elbinias, CA Mindanao Station,* 654 Phil. 207, 222 (2011).

[25] *Magsucang v. Judge Balgos, supra* note 23.

[26] *Atty. Correa v. Judge Belen, supra* note 19.

Here, considering that this is the first offense of Judge Lorreda, the Court finds that the recommendation of the OCA for the imposition of fine in the amount of ₱5,000 is commensurate.

As a final note, the Court reiterates that members of the bench, as dispensers of justice, should always observe judicial temperament and to avoid offensive or intemperate language.[27] This is the price that judges have to pay for their exalted positions in the administration of justice.[28] Improper conduct on their part erodes public confidence in the judiciary.[29] Consequently, they are called upon to avoid any impression of impropriety in order to protect the image and integrity of the judiciary.[30]

WHEREFORE, the Court finds Judge Jorge Emmanuel M. Lorredo, Presiding Judge of the Metropolitan Trial Court of Manila, Branch 26, **GUILTY** of Conduct Unbecoming of a Judge and **FINE** him in the amount of ₱5,000 with a **STERN WARNING** that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Del Castillo (*Acting Chairperson*) and *Jardeleza, JJ.,* concur.

Sereno, C.J. (*Chairperson*) and *Leonardo-de Castro, J.,* on official leave.

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[27] *Re: Anonymous Complaint Dated February 18, 2005 of a Court Personnel Against Judge Francisco C. Gedorio, Jr., RTC, Branch 12, Ormoc City* , 551 Phil. 174 (2007).

[28] *Id*. at 180.

[29] *Id*. at 180-181.

[30] *Id*. at 181.

FIRST DIVISION

[A.M. No. RTJ-10-2223. August 30, 2017]
(Formerly A.M. OCA IPI No. 08-3003-RTJ)

MS. FLORITA PALMA and MS. FILIPINA MERCADO, *complainants, vs.* **JUDGE GEORGE E. OMELIO, Regional Trial Court, Br. 14, Davao City (then of Municipal Trial Court in Cities, Br. 4, Davao City), JUDGE VIRGILIO G. MURCIA, Municipal Trial Court in Cities, Br. 2, and Clerk of Court MA. FLORIDA C. OMELIO, Municipal Trial Court in Cities, Office of the Clerk of Court, both of the Island Garden City of Samal,** *respondents.*

SYLLABUS

LEGAL ETHICS; JUDGES; GROSS MISCONDUCT; OVERSTEPPING THE BOUNDS OF AUTHORITY TO SOLEMNIZE MARRIAGE, A CASE OF; PENALTY.— AO 125-2007 dated August 9, 2007 provided for the *Guidelines on the Solemnization of Marriage by the Members of the Judiciary* and laid down the rules "to enable the solemnizing authorities of the Judiciary to secure and safeguard the sanctity of marriage as a social institution." x x x Records show that Judge Murcia and Judge Omelio both violated AO 125-2007. Although both judges were clothed with authority to solemnize marriages, in this instance however, they overstepped the bounds of their authority. x x x [I]t was established that by signing the Certificate of Marriage, Judge Murcia made it appear that he solemnized the marriage of Julius and Khristine without the contracting parties and their witnesses personally appearing before him and sans payment of the solemnization fee. On the other hand, Judge Omelio's contention that he merely re-enacted the wedding ceremony of Julius and Khristine upon the request of the groom's parents was similarly debunked by Julius' admission that it was actually Judge Omelio who solemnized his marriage with Khristine on February 28, 2008 at their residence in Davao City. Besides, his defense of reenactment would not justify his infraction. x x x Worse, although he was supposedly merely doing a re-enactment, Judge Omelio claimed to have allowed

additional witnesses/godparents to affix their signatures in the marriage certificate that was issued and signed by Judge Murcia. Finally, all the guests were deceived into believing that Judge Omelio was solemnizing a real marriage and not just a mere re-enactment. "No less than our Constitution declares that marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State." Marriage should not be trivialized, especially by the solemnizing officers themselves. x x x "A judge should know, or ought to know, his or her role as a solemnizing officer." Both Judge Murcia and Judge Omelio were remiss in this regard. x x x [T]he x x x acts of respondents amounted to gross misconduct constituting violation of the Code of Judicial Conduct, a serious charge punishable by (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, excluding accrued leave credits; and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; (b) suspension from office without salary or other benefits for more than three (3) but not exceeding six (6) months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. Notably, during the pendency of this administrative matter, CoC Omelio passed away; hence the complaint against her should be dismissed. Likewise, during the pendency of this administrative matter, Judge Omelio had already been meted the penalty of dismissal from service. In this regard, we find the recommended penalty of ₱40,000.00 each for both Judge Omelio and Judge Murcia commensurate under the circumstances.

D E C I S I O N

DEL CASTILLO,* ***J.*****:**

On July 8, 2007, a certain Filipina Mercado (Mercado) sent an electronic mail[1] (e-mail) to the pio@supremecourt.gov.ph regarding an alleged "marriage scam" in Davao City perpetrated

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* Acting Chairperson per Special Order No. 2476 dated August 29, 2017.

1 *Rollo*, p. 8.

by Municipal Trial Court in Cities (MTCC) Judges George E. Omelio (Judge Omelio) and Rufino Ferraris (Judge Ferraris).[2] Mercado claimed to have personal knowledge of the illegal activities of the said judges as she was once a "fixer."

On March 17, 2008, a certain Florita Palma (Palma) also sent an e-mail[3] to the pio@supremecourt.gov.ph complaining about the alleged dishonorable conduct of respondents Judge Omelio and his wife, Clerk of Court Ma. Florida C. Omelio (CoC Omelio), relative to the solemnization of the marriage of a certain "Echeverria."

Acting thereon, the Office of the Court Administrator (OCA) dispatched an investigating team to Davao City which found as follows:

> Following the only lead given, the investigating team proceeded directly to MTCC, Davao City.
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> x x x The investigators asked [Atty. Fe Maloloy-on, Clerk of Court, OCC[4]-MTCC, Davao City] x x x relative to the alleged marriage scam prevailing in Davao City. She informed the investigators that there were [sic] no reported incident relative thereto but x x x intimated that there were some rumors x x x [however] no complainants x x x came forward to complain about such actions of the judges. When x x x asked x x x [whether] there was a marriage solemnized x x x [involving a certain] Echevarria, she stated that there was none[.] x x x Atty. Maloloy-on however x x x [recalled] an incident wherein a lady called up her office and asked whether the copy of the marriage contract of her child was already [ready] for pick up. When asked about the name of the parties[,] x x x and the [solemnizing] judge, and the date of solemnization[,] the caller merely stated that one of the parties' surname [sic] was Echevarria and it was solemnized by Judge George Omelio on February 29, 2008. x x x Atty. Maloloy-on searched for the record of such marriage but x x x there was none ever recorded in MTCC, Davao City. x x x [S]he relayed the information to the phone caller who x x x got angry and demanded

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[2] *Id*. at 1.

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

[4] Office of the Clerk of Court.

the production of a copy of the marriage contract. Atty. Maloloy-on calmed the phone caller and asked her to drop by her office [but t]he phone caller never dropped by her office and was never heard [of] again.

x x x [A]s there was no marriage solemnized [on] February 29, 2008 wherein one of the party bears the surname of Echevarria, [the investigators proceeded] to MTCC, Island Garden [City] of Samal as Florita Palma mentioned that Judge Omelio was with his wife when he solemnized the marriage at the house of the parties in Davao City. The wife of Judge Omelio, Mrs. Florida Omelio is the Clerk of Court of MTCC, OCC, Island Garden City of Samal.

On June 19, 2008[,] x x x the investigators first proceeded to the Local Civil Registrar of Island City Garden of Samal, to investigate x x x. Surprisingly, a marriage was solemnized in Island Garden City of Samal on [February] 28, 2008 by Judge Virgilio G. Murcia x x x. The parties' names are Julius Regor M. Echevarria and Khristine Marie D. Duo. x x x [T]he investigators asked the Assistant Local Civil Registrar [for] a photocopy of the said marriage contract. x x x The investigators then proceeded to MTCC, Island Garden City of Samal to interview Judge Murcia and Mrs. Omelio. However, Mrs. Omelio was not present and available at that time x x x. Likewise, Judge Murcia was at MTCC, Davao City to hear inhibited cases thereat.

At MTCC, Davao City, the investigators briefed Judge Murcia of the purpose of the investigation x x x When asked whether he solemnized the marriage of Echevarria and Duo at Island Garden City of Samal, he stated that he [could not] really remember the parties considering the numerous marriages he had solemnized in the past. When [asked] whether the signature on the marriage contract of Echevarria and Duo was his, he [admitted] that same was x x x his signature. [When] asked whether he was persuaded by the Omelios into signing a marriage certificate without the parties being present[,] x x x he replied that it was not possible. He claimed that he [was] meticulous in the examination of the marriages he solemnizes and he makes sure that the parties are present when he puts his signature on the marriage contract.

The next day, June 20, 2008 the investigating team x x x proceeded to the address x x x of Julius Regor Echevarria x x x.

x x x [The investigators chanced upon [Mr. Julius Echevarria at his residence]. When asked whether he was married on February 28, 2009 at his residence, he positively affirmed such fact. When

inquired who solemnized said marriage, he readily answered that it was Judge George Omelio. [When] asked how he can positively state that it was Judge Omelio, he said that he knew Judge Omelio as he was known in the community, he even gave the investigators a copy of the pictures of the wedding x x x. [W]hen the investigators x x x asked if he has [sic] a copy of their marriage contract, Mr. Echevarria immediately presented the same. The investigators then pointed out that per copy of the marriage it was Judge Murcia who solemnized their marriage in Island Garden City of Samal and not Judge Omelio. Mr. Echevarria was quite surprised to learn of such fact as it was his first time to notice the same. Thereafter, the mother of Julius Echevarria, Mrs. Tita Echevarria, came x x x. The investigators introduced themselves and stated their purpose. x x x Tita Echevarria appeared irritated and surprised why they were being investigated and immediately demanded the basis of such investigation. The investigators readily showed her a copy of the letter of Florita Palma. After reading the letter, Tita Echevarria stated that she does not know x x x Florita Palma. Julius Echevarria however noticed some similarities in the circumstances of his marriage and that of the one stated in the letter of Florita Palma, except for some minor [inconsistencies] as to the date of solemnization and the person accompanying Judge Omelio. He said that the marriage took place in their house and not anywhere in the Island Garden City of Samal and it was solemnized on February 28 and not February 29, 2008 and that Judge Omelio did not have company when he solemnized the marriage. He likewise stated that he does not know how much was given to Judge Omelio as solemnization fee as his parents were the one [sic] who paid the same. Mrs. Tita Echevarria however [asserted] that they are not interested in filing any complaints or x x x willing to state what they know in an affidavit to be sworn by them. She [begged] the investigators to just leave them be and suggested that if the investigators [were] really bent on catching judges doing some anomaly, they should make an entrapment for that purpose.[5]

Based on the foregoing findings, the OCA directed Judge Omelio, Judge Virgilio G. Murcia (Judge Murcia), and CoC Omelio, to comment on the e-mails and on the report of the investigating team.[6]

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[5] *Rollo*, pp. 2-4.

[6] *Id*. at 13-15.

In his Comment,[7] Judge Omelio narrated that his neighbors, Librado G. Echevarria III and Teresita P. Mapayo (the Echevarrias), went to his office at the MTCC, Branch 4, Davao City, on February 25, 2008, requesting that he solemnize the marriage of their son Julius Regor [Julius]; that since they wanted a beach wedding, he suggested that they see Judge Murcia whose court has jurisdiction over the Island Garden City of Samal; that on February 29, 2008, the Echevarrias invited him and his wife to dinner at their house for those who were not able to attend their son's wedding on February 28, 2008; and that during said dinner, the Echevarrias requested him to "reenact the wedding for purposes of picture taking and posterity,"[8] to which he acceded.

Moreover, Judge Omelio posited that the e-mail/complaints of Palma and Mercado should have been disregarded for being unsigned and not under oath; that the allegations were unfounded and meant only to harass; and, that he did not demand any amount from the Echevarrias.

For her part, CoC Omelio found nothing wrong with her husband, Judge Omelio, acceding to the request of the Echevarrias to reenact the wedding; that if at all, the Echevarrias were the parties in interest, and not Palma, hence the latter had no reason to file the complaint; and that her only participation was to accompany her husband to the dinner party.[9]

Judge Murcia, on the other hand, insisted that his name was never mentioned in the complaint; and that he was impleaded only because his signature appeared in the subject marriage contract. Judge Murcia claimed that he solemnized the subject marriage on February 28, 2008 at about 5:30 in the afternoon in his courtroom; that the contracting parties, as well as their witnesses, appeared before him; and, that all the documents in

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[7] *Id*. at 16-21.

[8] *Id*. at 17.

[9] *Id*. at 22-23.

support of said marriage, as well as the corresponding receipts for the fees, were presented before him.[10]

Since there were factual issues to be clarified, the Court resolved to redocket the complaint into a regular administrative matter and to refer the same to the Court of Appeals (CA) for investigation, report and recommendation.[11]

Upon referral to the CA, the Investigating Justice[12] directed respondents to submit, in lieu of their direct testimonies, their affidavits, as well as those of their witnesses.[13]

CoC Omelio adopted her earlier comment filed with the OCA as integral part of her Affidavit.[14] In addition, she averred that the participation of the Office of the Clerk of Court (OCC) was only the receipt of payment and its remittance to the Chief Accountant of the Supreme Court.

Judge Omelio submitted his Affidavit[15] where he also adopted his comment earlier submitted to the OCA as forming part thereof. In addition, he reiterated that the complaints were mere harassment suits and pure hearsay.

Judge Murcia also adopted his comment filed with the OCA as part of his Affidavit.[16] He maintained that he should not have been impleaded as respondent herein since his name was never mentioned by Palma or Mercado. He contended that the investigation should focus only on the personalities named in the complaint.

The Investigating Justice then directed the respondents to attend a preliminary conference and hearing.

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[10] *Id*. at 27-29.

[11] *Id*. at 45.

[12] Court of Appeals Associate Justice Ramon Paul L. Hernando.

[13] *Rollo*, pp. 53-55.

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

[15] *Id*. at 77-78.

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

Thereafter, the Investigating Justice submitted a Report[17] dated December 15, 2010. As regards Judge Omelio, the Investigating Justice found him to have trifled with marriage as a social institution and held him administratively liable, to wit:

> The act of respondent Judge Omelio in conducting what essentially was a sham wedding is, by all accounts, against public law and public policy. In so conducting a bogus wedding before the public, Judge Omelio had trifled with marriage, an inviolable social institution and the foundation of the family whose nature, consequences and incidents are governed by law x x x. As a jurist, Judge Omelio ought to know that a judge's power to solemnize marriage is to be exercised in accordance with law. This includes the appearance before him in his chamber[s] by the contracting parties x x x where they x x x declare personally that they take each other as husband and wife x x x. While he has undoubtedly the authority to solemnize marriages, he had clearly overstepped the bounds of that authority by administering a fraudulent wedding ceremony; x x x [H]e should have declined the importunings of the groom's parents to conduct a "re-enactment" of the wedding x x x.
>
> x x x Worst, Judge Omelio lied when he declared during his testimony before the undersigned that he had permitted the other [g]odparents to sign at the back of the marriage certificate to make it appear that those persons had witnessed the marriage rites. x x x However, a certified true copy of that marriage contract x x x [revealed] no such additional signatures of [g]odparents at the certificate's back page. His belated disavowal as to this fact in his Manifestation dated 4 November 2010 [was] x x x an afterthought as he realized his lies upon seeing the actual marriage contract himself.
>
> x x x x x x x x x
>
> As to the charge that Judge Omelio had demanded monetary considerations in exchange for solemnizing the marriage of the Echevarrias, there [appeared] no sufficient evidence that such had been the case. Indeed, both complainants had not substantiated their claims, contained in their e-mail letters, that respondent Judge and his wife, co-respondent Mrs. Omelio, had resorted to the unsavory and unlawful activity of asking money from the parties in order for the judge to conduct the sham wedding rites. The claims remained

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[17] *Id.* at 164-176.

as such – just claims without any supporting evidence to prove them. Thus, as to this particular aspect of the administrative case, respondent Judge Omelio, and for that matter, his co-respondent, his spouse Mrs. Omelio, should not be held liable in any way, whether administratively or criminally.

However, for his highly irregular solemnization of a sham marriage, which obviously arose from his misguided comprehension of the appropriate duties and functions of a magistrate and the inviolability of marriage as a social institution, Judge Omelio should be held administratively liable. x x x[18]

As regards Judge Murcia, the Investigating Justice found no infraction on his part in solemnizing the subject marriage. Instead, his liability consisted in failing to collect the necessary solemnization fees, *viz.*:

There [was] no sufficient evidence to show that respondent Judge Murcia had solemnized the marriage of the Echevarrias in a manner violative of the Family Code. Neither was there proof of any corrupt activity that he committed in the course of solemnizing the Echevarria wedding. However, it [was] apparent, based on the judicial report of respondent Mrs. Omelio x x x that no marriage solemnization fee had been paid by the [contracting] parties before the MTCC OCC. x x x This fact [belied] the claim of Judge Murcia that he had carefully perused the documents of the Echevarrias and only when he determined that all was proper did he then solemnize the marriage. Judge Murcia's act of solemnizing the marriage without the appropriate court documentation as to solemnization fees [constituted] a violation of Supreme Court Admin. Circular No. 3-2000 x x x.[19]

Similarly, the Investigating Justice found CoC Omelio administratively liable for failing to collect the solemnization fees, thus:

The records likewise bear out that Mrs. Omelio had not been truthfully forthcoming in her claim that her office had duly collected the marriage solemnization fee of ₱300.00 relative to the civil wedding of the Echevarrias. Her x x x Exh. "A-1" indisputably points to this

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[18] *Id.* at 171-174.

[19] *Id.* at 174-175.

fact. As it was her duty to collect such fees but did not do so, she should be held administratively liable as well. Her defense that it was the Echevarrias who had personally processed the documentation due to urgency [was], to say the least, passing the buck to said parties. As her act [constituted] a violation of both SC Admin. Circular No. 3-2000 and Circular 127-2007, she should be meted a fine in the amount of Php5,000.00 as well. x x x[20]

The Court however noted that, in the Report submitted by the Investigating Justice, it was unclear as to "who between respondent Judges Murcia and Omelio [actually] solemnized the marriage of the Echevarrias, where was the marriage solemnized – in Davao City or in the Island Garden City of Samal, and when was the marriage solemnized x x x."[21] Noting that these questions could be answered by Julius and Khristine themselves, their parents and those who signed the Certificate of Marriage,[22] the Court resolved to refer the matter back to the Investigating Justice for further investigation, report and recommendation.[23]

In the Final Report,[24] the Investigating Justice manifested that efforts to summon the contracting parties, Julius and Khristine, and the groom's parents, proved futile since they were already working in Abu Dhabi, while the bride's parents, Danilo J. Duo and Penegilda D. Duo could not be located at their given address. It was also noted that the "disinterest of the Echevarrias can be traced as early as from the Report dated September 10, 2008 by the former Court Administrator, now Associate Justice of the Supreme Court, Jose P. Perez, who noted that the mother of the groom x x x told the investigating team x x x that 'they are not interested in filing any complaints or are they willing to state what they know in an affidavit to

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[20] *Id*. at 175.

[21] *Id*. at 325.

[22] *Id*.

[23] *Id*. at 328.

[24] *Id*. at 375-384; submitted by Court of Appeals Associate Justice Marilyn B. Lagura-Yap.

be sworn by them x x x.'"[25] Nevertheless, the Investigating Justice opined that despite the absence of the complainants and other witnesses, the issues raised above could still be resolved based on the documents on hand.

The Investigating Justice noted thus:

> The undersigned most respectfully renders the view that despite the absence of the complainants and witnesses, the evaluation of the documents x x x which are now part of the records is sufficient basis to resolve the questions set forth in the above. The evidentiary weight of the documents is not diminished by the absence of complainants and witnesses because these were obtained and authenticated earlier by the investigating team x x x. These documents include the Certificate of Marriage and four colored photographs.
>
> Per page 2 of his Comment x x x, respondent Judge Omelio mentioned his reenactment of the wedding on February 29, 2008 in the Echevarria residence. Per transcript of his testimony, Judge Omelio confirmed having re-enacted (the role of a judge) in the wedding of the Echevarria couple.
>
> A careful scrutiny of the documents establishes the following facts:
>
> 1. Both respondents Judge Murcia and Judge Omelio solemnized the marriage of Julius Regor M. Echevarria and Khristine Marie D. Duo. But it is respondent Judge Murcia whose name and signature appear in the Certificate of Marriage while there are only pictures to show that respondent Judge George E. Omelio also married the couple. x x x
>
> 2. Per Certificate of Marriage, respondent Judge Murcia officiated the marriage in MTCC, Branch 2 Babak District, Island Garden City of Samal, Davao del Norte on February 28, 2008 at 5:30 P.M.
>
> 3. Respondent Judge Omelio re-enacted the marriage of Regor and Khristine Marie, in the residence of the Echevarrias, x x x in Monte Maria Village, Catalunan Grande, Davao City, on February 29, 2008 at around 6:00 o'clock in the evening. x x x

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[25] *Id*. at 376.

Based on the above facts, it cannot be ascertained if respondent Judge Murcia and his Clerk of Court, respondent Ma. Florida C. Omelio falsified the Certificate of Marriage. x x x

With regard to respondent Judge Omelio, he could not be held liable for falsification since he did not have any participation at all in the execution of the Certificate of Marriage. His re-enactment of the marriage did not include the act of preparation of the Certificate of Marriage. Without that public document, it is also difficult to render a finding on whether or not respondent Judge Omelio may be held liable for performing an illegal marriage ceremony which is punished under Article 352 of the Revised Penal Code.[26]

In a Resolution[27] dated December 5, 2012, the Court resolved to refer the Final Report of the Investigating Justice to the OCA for evaluation, report and recommendation.

In a Memorandum[28] dated January 15, 2014, the OCA found all three respondents to have violated Administrative Order No. 125-2007 (AO 125-2007), to wit: Judge Omelio for solemnizing the marriage without signing the Marriage Certificate; Judge Murcia for affixing his signature in the Marriage Certificate without actually performing the marriage; and CoC Omelio for failing to collect the solemnization fee. The OCA also noted that during the pendency of this administrative matter, CoC Omelio passed away while Judge Omelio was dismissed from the service with forfeiture of all his retirement benefits, except accrued leave credits on October 22, 2013 in A.M. Nos. RTJ-11-2259, RTJ-11-2264, & RTJ-11-2273. Thus, the OCA recommended as follows:

IN VIEW OF THE FOREGOING, it is respectfully recommended for the consideration of the Honorable Court that:

1. the complaint against respondent Florida C. Omelio, Clerk of Court, MTCC, Island Garden City of Samal, Davao del Norte, be DISMISSED;

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[26] *Id*. at 377-379.

[27] *Id*. at 387.

[28] *Id*. at 388-401.

2. respondent Judge George E. Omelio, Branch 14, Regional Trial Court, Davao City, Davao del Sur be found GUILTY of gross misconduct and FINED in the amount of ₱40,000.00 to be deducted from the money value of his accrued leave credits; and

3. respondent Judge Virgilio G. Murcia, Branch 2, Municipal Trial Court in Cities, Island Garden City of Samal, Davao del Norte, be likewise found GUILTY of gross misconduct and FINED in the amount of ₱40,000.00.[29]

Our Ruling

We adopt the findings and recommendations of the OCA.

AO 125-2007 dated August 9, 2007 provided for the *Guidelines on the Solemnization of Marriage by the Members of the Judiciary* and laid down the rules "to enable the solemnizing authorities of the Judiciary to secure and safeguard the sanctity of marriage as a social institution."[30] The pertinent portions of AO 125-2007 provide as follows:

Sec. 3. Venue of marriage ceremony solemnized by Judges. – As a general rule, a marriage shall be solemnized publicly in the chambers of the judge or in open court except in the following instances:

x x x x x x x x x

b. A marriage where both parties submit a written request to the solemnizing officer that the marriage be solemnized at a house or place designated by them in a sworn statement to this effect.

Sec. 4. Duties of solemnizing officer before the performance of marriage ceremony. – Before performing the marriage ceremony, the solemnizing officer shall:

a. Ensure that the parties appear personally and are the same contracting parties to the marriage;

b. Personally interview the contracting parties and examine the documents submitted to ascertain if there is compliance with the essential and formal requisites of marriage under the Family Code; and

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[29] *Id.* at 401.

[30] See Fourth Whereas Clause, Administrative Order No. 125-2007 dated August 9, 2007.

x x x x x x x x x

Sec. 6. Duty of solemnizing officer during the solemnization of the marriage. – The solemnizing officer shall require the contracting parties to personally declare before him and in the presence of not less than two witnesses of legal age that the said parties take each other as husband and wife.

Sec. 7. Duties of solemnizing officer after solemnization of the marriage. – After performing the marriage ceremony, the solemnizing officer shall:

a. Ensure that the marriage certificate is properly accomplished and has the complete entries, x x x;

b. See to it that the marriage is properly documented x x x

x x x x x x x x x

Sec. 9. Recording of marriages solemnized and safekeeping of documents. – a. The solemnizing officer shall cause to be kept in the court a record book of all marriages solemnized. x x x

b. The solemnizing officer shall cause to be filed in the court the quadruplicate copy of the marriage certificate, the original of the marriage license, x x x when applicable, the affidavit of the contracting parties regarding the request for change in the venue for the marriage. All documents pertaining to a marriage shall be kept in one file x x x.

Sec. 18. Fees for the Solemnization of Marriage. – For the performance of marriage ceremony and issuance of marriage certificate and subject to further provisions of AM No. 04-2-04-SC (16 August 2004) the legal fees in the following amounts shall be collected:

x x x x x x x x x

(c) For marriages solemnized by Judges of the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, Municipal Circuit Trial Courts and Shari'a Circuit Courts – Three hundred (₱300.00) pesos.

x x x x x x x x x

Sec. 19. Payment of legal fees in Philippine legal tender. All fees shall be x x x properly officially receipted.

Records show that Judge Murcia and Judge Omelio both violated AO 125-2007. Although both judges were clothed with authority to solemnize marriages, in this instance however, they overstepped the bounds of their authority.

As correctly found by the OCA, Judge Murcia affixed his signature in the Marriage Contract of Julius and Khristine without actually solemnizing their marriage. Judge Murcia's claim that the contracting parties personally appeared before him[31] was belied by the groom himself, Julius. When confronted by the investigating team from OCA, Julius denied knowing or appearing before Judge Murcia; moreover, he asserted that he was not married in the sala of Judge Murcia in the Island Garden City of Samal, but at their residence in Davao City. Julius also narrated that it was Judge Omelio, and not Judge Murcia, who acted as the solemnizing officer. Julius even presented pictures which were taken during the wedding at their residence showing Judge Omelio as the solemnizing officer.

What further militates against Judge Murcia's version was the fact that he claimed in his Comment[32] to have examined "all x x x document[s] in support for a valid marriage under the Family Code and the corresponding receipt of payment for marriage solemnization;"[33] he also attested that "all the documents were in place and x x x the appropriate fees were paid."[34] However, during the hearing conducted by the Investigating Justice, Judge Murcia could no longer recall whether there was a receipt issued by the court to the payment of the solemnization fee.[35] In addition, it was unearthed during the proceedings that no solemnization fee was received by the court, no receipt was issued corresponding therefor, and no remittance to the Judiciary Development Fund pertaining to said solemnization fee was

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[31] *Rollo*, p. 214.

[32] *Id.* at 25-29.

[33] *Id.* at 26.

[34] *Id.*

[35] *Id.* at 213.

made.[36] In fine, it was established that by signing the Certificate of Marriage, Judge Murcia made it appear that he solemnized the marriage of Julius and Khristine without the contracting parties and their witnesses personally appearing before him and sans payment of the solemnization fee.

On the other hand, Judge Omelio's contention that he merely re-enacted the wedding ceremony of Julius and Khristine upon the request of the groom's parents was similarly debunked by Julius' admission that it was actually Judge Omelio who solemnized his marriage with Khristine on February 28, 2008 at their residence in Davao City. Besides, his defense of reenactment would not justify his infraction. Interestingly, although Judge Omelio acknowledged said "marriage" as a sham,[37] he insisted that it was not contrary to law as the same was conducted only for picture-taking purposes[38] because they were not able to do so in the sala of Judge Murcia.[39] As a duly-authorized solemnizing officer, Judge Omelio is expected to know that marriage should not be trifled with, and its sanctity and inviolability should never be undermined, especially by such a lame ground as picture-taking. Worse, although he was supposedly merely doing a re-enactment, Judge Omelio claimed to have allowed additional witnesses/godparents to affix their signatures in the marriage certificate that was issued and signed by Judge Murcia.[40] Finally, all the guests were deceived into believing that Judge Omelio was solemnizing a real marriage and not just a mere re-enactment.[41]

"No less than our Constitution declares that marriage, as an inviolable social institution, is the foundation of the family

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[36] *Id*. at 265.

[37] *Id*. at 201.

[38] *Id*.

[39] *Id*. at 202.

[40] *Id*. at 204, 224.

[41] *Id*. at 224.

and shall be protected by the State."[42] Marriage should not be trivialized, especially by the solemnizing officers themselves.

Marriage is recognized under the law as an inviolable social institution, which is the foundation of the family.

> [M]arriage in this country is an institution in which the community is deeply interested. The state has surrounded it with safeguards to maintain its purity, continuity and permanence. The security and stability of the state are largely dependent upon it. It is the interest and duty of each and every member of the community to prevent the bringing about of a condition that would shake its foundation and ultimately lead to its destruction.

Respondent used her authority as a judge to make a mockery of marriage. As a judicial officer, she is expected to know the law on solemnization of marriages. 'A judge is not only bound by oath to apply the law; he [or she] must also be conscientious and thorough in doing so. Certainly, judges, by the very delicate nature of their office[,] should be more circumspect in the performance of their duties.'[43]

"A judge should know, or ought to know, his or her role as a solemnizing officer."[44] Both Judge Murcia and Judge Omelio were remiss in this regard.

At this juncture, we quote herein the findings of the OCA:

We take note of the fact that Julius Echevarria did not execute an affidavit or testify during the investigation. However, his statements before the OCA investigators, as aptly observed by Justice Yap, could still be given evidentiary weight as these were obtained and authenticated by the OCA investigators who made the discreet investigation. The result of the investigation was the subject of the OCA Memorandum to then Chief Justice Puno which already forms part of the records.

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[42] *Republic v. Albios,* 719 Phil. 622, 637 (2013).

[43] *Office of the Court Administrator v. Tormis*, A.C. No. 9920, August 30, 2016.

[44] *Id*.

It was also established that the solemnization fee of ₱300.00 was not paid as required under Administrative Circular No. 3-2000. The Report of Collections for the Judiciary Development Fund for the month of February 2008 submitted by respondent Florida Omelio to the Supreme Court for the MTCC, Branches 1 and 2 of the Island Garden City of Samal does not show any payment of the solemnization fee for the marriage of the Echevarrias. Also, Atty. Fe Maloloy-on, Clerk of Court, OCC-MTCC, Davao City also informed the OCA investigators that there are no records of the Echevarria marriage. The records thus contradict respondent Judge Murcia and respondent Florida Omelio's testimony that the necessary fee was paid.

It is evident from the foregoing that the action of respondent Judges Omelio and Murcia have undermined the very foundation of marriage which is the basic social institution in our society whose nature, consequences and incidents are governed by law. x x x

x x x x x x x x x

Unfortunately, respondents Judges Omelio and Murcia trifled with this sacred social institution. While they have the authority to solemnize marriages, they clearly overstepped the bounds of that authority.[45]

We agree with the OCA that the following acts of respondents amounted to gross misconduct constituting violation of the Code of Judicial Conduct, a serious charge[46] punishable by (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, excluding accrued leave credits; and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; (b) suspension from office without salary or other benefits for more than three (3) but not exceeding six (6) months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. Notably, during the pendency of this administrative matter, CoC Omelio passed away; hence the complaint against her should be dismissed. Likewise, during the pendency of this administrative matter, Judge Omelio had already been meted the penalty of dismissal from service. In this regard, we find the recommended penalty of ₱40,000.00 each for both Judge

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[45] *Rollo*, pp. 398-399.

[46] RULES OF COURT, Rule 140, Section 8.

Omelio and Judge Murcia commensurate under the circumstances.

ACCORDINGLY, the complaint against respondent Clerk of Court Florida C. Omelio, Municipal Trial Court in Cities, Island Garden City of Samal, Davao del Norte, is **DISMISSED**. Respondent Judge George E. Omelio, Regional Trial Court, Branch 14, Davao City, Davao del Sur, is found **GUILTY** of gross misconduct and **FINED** in the amount of ₱40,000.00 to be deducted from the money value of his accrued leave credits. Respondent Judge Virgilio G. Murcia, Municipal Trial Court in Cities, Branch 2, Island Garden City of Samal, Davao del Norte, is found **GUILTY** of gross misconduct and **FINED** in the amount of ₱40,000.00.

SO ORDERED.

Jardeleza and *Tijam JJ.,* concur.

Sereno, C.J. and *Leonardo-de Castro, J.,* on official leave.

THIRD DIVISION

[G.R. No. 180745. August 30, 2017]

ALBERTA DE JOYA IGLESIAS, *petitioner, vs.* **THE OFFICE OF THE OMBUDSMAN, GEORGE M. JEREOS, ROBERTO G. GEOTINA, JUAN T. TAN, KRISTINE MORALES, AND ALBERTO LINA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE DUE PROCESS; DEMANDS THAT

THE PARTY BEING CHARGED IS GIVEN AN OPPORTUNITY TO BE HEARD; CASE AT BAR.— Administrative due process demands that the party being charged is given an opportunity to be heard. Due process is complied with "if the party who is properly notified of allegations against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions." x x x An important component of due process is the right of the accused to be informed of the nature of the charges against him or her. A proper appraisal of the accusations would give the accused an opportunity to adequately prepare for his or her defense. Otherwise, substantial justice would be undermined. In this case, petitioner insists that the February 7, 2005 Resolution of the Office of the Ombudsman was based on new accusations that were not included in the Complaint-Affidavit filed by Atty. Acuña and Pizarro. x x x [The] Court finds that there was a violation of due process with respect to the other charges which were *not in the original complaint*. This Court sternly reminds the Ombudsman that he *cannot* add new findings which were not part of the original complaint. To do so would violate the right of the accused to due process.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO PRIVACY; REQUIREMENT OF SUBMITTING A STATEMENT OF ASSETS, LIABILITIES AND NET WORTH (SALN) DOES NOT VIOLATE THE RIGHT TO PRIVACY OF PUBLIC OFFICERS; CASE AT BAR.— [The] Court endeavors to strike a balance between the accountability of public officers as a result of public office being a privilege, on the one hand, and their right to privacy as protected in the Bill of Rights, on the other. Although this Court has held that the requirement of submitting a SALN does not violate the right to privacy of public officers, it does not mean that they should completely shed this right. Therefore, minor or explainable errors in the SALN, which cannot be related to an attempt to conceal illicit activities, should not be punishable. This Court may relax the rule on strictly complying with the SALN in cases where minor errors were committed since these may simply be used to harass and obstruct public officers in the performance of their duties. However, the errors in this case were so substantial and glaring that they should not escape prosecution.

APPEARANCES OF COUNSEL

Alentajan Law Office for petitioner.

D E C I S I O N

LEONEN, *J.*:

In observing administrative due process, it is essential that the accused be accorded the right to be informed of the accusations against him or her. Fair play requires that the accused be equipped with the necessary information for the preparation of his or her defense.

This is a Petition for Review[1] under Rule 45 of the Rules of Court, praying that the December 22, 2006 Decision[2] and November 21, 2007 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 89585 be nullified and set aside.[4] The Court of Appeals affirmed the Office of the Ombudsman February 7, 2005 Resolution[5] and the Office of the Deputy Ombudsman for Luzon February 21, 2005 Joint Order[6] in OMB L-C-04-0083-B and OMB-L-A-04-0057-B, dismissing petitioner Alberta

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[1] *Rollo*, pp. 9-22.

[2] *Id*. at 188-206. The Decision was penned by Associate Justice Aurora Santiago-Lagman and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Regalado E. Maambong of the Special Fifteenth Division, Court of Appeals, Manila.

[3] *Id*. at 24-33. The Resolution was penned by Associate Justice Aurora Santiago-Lagman and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Normandie B. Pizarro of the Former Special Fifteenth Division, Court of Appeals, Manila.

[4] *Id*. at 19, Petition.

[5] *Id*. at 100-113. The Resolution was penned by Ombudsman Simeon V. Marcelo.

[6] *Id*. at 114-124. The Joint Order was penned by Graft Investigation and Prosecution Officer II Adoracion A. Agbada, concurred in by Director Joaquin F. Salazar, and recommended for approval by Deputy Ombudsman for Luzon Victor C. Fernandez. Ombudsman Simeon V. Marcelo approved the Joint Order.

de Joya Iglesias (Iglesias) from service.[7] Petitioner prays that judgment be rendered absolving her of any criminal and administrative liability and reinstating her to her former position as Acting District Collector in the Port of San Fernando.[8]

Petitioner Iglesias was employed as Acting District Collector by the Bureau of Customs on October 1, 2002. She was assigned at the Port of San Fernando, La Union by Commissioner Antonio Bernardo.[9]

On January 28, 2004, the Department of Finance, through Atty. Leon L. Acuña (Atty. Acuña) and Troy Francis C. Pizarro (Pizarro), filed a Complaint-Affidavit[10] against Iglesias before the Office of the Ombudsman.[11] Atty. Acuña and Pizarro claimed that Iglesias failed to file her Statements of Assets, Liabilities, and Net Worth (SALNs) prior to the year 2000.[12]

They also alleged that Iglesias made false entries in her 2000, 2001, and 2002 SALNs with respect to two (2) real properties in Quezon City and Pangasinan. The Quezon City property's tax declarations revealed that Iglesias purchased the property on August 1, 1996 from the spouses Rosario and Elpidio Ablang. Likewise, the Pangasinan property's Transfer Certificate of Title was issued by virtue of a deed of sale showing that she purchased a portion of this property from Marina Lopez de Joya (Marina). However, in her SALNs, Iglesias indicated that these properties were acquired through inheritance.[13]

Atty. Acuña and Pizarro also discovered three (3) real properties in Pangasinan under Iglesias' name that were not

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[7] *Id*. at 205, Court of Appeals Decision.

[8] *Id*. at 20, Petition.

[9] *Id*. at 189, Court of Appeals Decision.

[10] *Id*. at 53-57.

[11] *Id*. at 189, Court of Appeals Decision.

[12] *Id*. at 54, Complaint-Affidavit.

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

declared in her SALNs.[14] They further asserted that Iglesias acquired several real and personal properties from 1999 to 2002 amounting to ₱15,230,000.00, which was disproportionate to her lawful source of income. They contended that the following properties were unlawfully acquired:[15]

Kind of Property	Year Purchased	Acquisition Cost
Parañaque Residential Property	1999	[₱]3 Million
Novaliches Residential Property	1997	[₱]3.5 Million
Baguio Residential Property	1995	[₱]2 Million
Baguio Residential Property	1994	[₱]2 Million
Dump Trucks	1991	[₱]1.6 Million
Elf	1991	[₱]800,000
Van	1999	[₱]680,000
Van	1999	[₱]850,000
Car	2002	[₱]800,000[16]

Finally, Atty. Acuña and Pizarro averred that Iglesias made false representations when she declared in her letter to then President Gloria Macapagal-Arroyo that she was taking up Masters in Customs Administration, instead of Masters in Management.[17] They also alleged that Iglesias falsified her Personal Data Sheet when she antedated its execution.[18]

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[14] *Id*. at 55.

[15] *Id*. at 56.

[16] *Id*.

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

[18] *Id*. at 56.

They charged Iglesias with the following:

a) Making untruthful statements in her SAL[N]s and failing to disclose all of her properties in her SAL[N]s (Article 171(4)[19] of the Revised Penal Code);

b) Failing to submit her SAL[N]s as required by Sections (sic) 11 in relation to Section 8[20] of Republic Act No. 6713 and Section 7[21] of Republic Act No. 3019;

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[19] REV. PEN. CODE, Art. 171(4) provides:

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:

. . . . . .

4. Making untruthful statements in a narration of facts[,]

[20] Rep. Act No. 6713 (1989), Secs. 8 and 11 provide:

Section 8. Statements and Disclosure. – Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

. . . . . .

Section 11. Penalities. – (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punishd with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency, If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not sxceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him[.]

[21] Rep. Act No. 3019 (1960), Sec. 7, as amended by Pres. Decree No. 1288 (1978), provides:

c) Engaging in acts of dishonesty and misconduct by making false representations about her education to Her Excellency, Gloria Macapagal-Arroyo and by indicating a false date on her Personal Data Sheet; and

d) [A]cquiring, during her incumbency an amount of property and/or money manifestly out of proportion to her salary and to her other lawful income (Section 8,[22] [Republic Act No.] 3019); and

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Section 7. Statement of assets and liabilities. – Every public officer, within thirty days after assuming office and, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or Chief of an independent office, with the Office of the President, a true, detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year; Provided, That public officers assuming office less than two months before the end of the calendar year, may file their first staternent on or before the fifteenth day of April following the close of the said calendar year.

[22] Rep. Act No. 3019 (1960), Sec. 8, as mended by Batas Blg. 195 (1982), provides:

Section 8. *Prima facie* evidence of and dismissal due to unexplained wealth. – If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed.

e) [C]oncealing unlawfully acquired property (Sections 2 and 12 in relation to Section 1(b)(1-3)[23]

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[23] Rep. Act No. 1379 (1955), Secs. 1(b)(1-3), 2, and 12 provide:

Section 1. Definitions. – . . . . . .

(b) "Other legitimately acquired property" means any real or personal property, money or securities which the respondent has at any time acquired by inheritance and the income thereof, or by gift *inter vivos* before his becoming a public officer or employee, or any property (or income thereof) already pertaining to him when he qualified for public office or employment, or the fruits and income of the exclusive property of the respondent's spouse, It shall not include:

1. Property unlawfully cquired by the respondent, but its ownership is concealed by its being recorded in the name of, or held by, the respondent's spouse, ascendants, descendants, relatives, or any other person.
2. Property unlawfully acquired by the respondent, but transferred by him to another person or persons on or after the effectivity of this Act.
3. Property donated to the respondent during his incumbency, unless he can prove to the satisfaction of the court that the donation is lawful.

Section 2. Filing of petition. – Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: *Provided*, That no such petition shall be filed within one year before any general election or within three months before any special election.

The resignation, dismissal or separation of the officer or employee from his office or employment in the Government or in the Government owned or controlled corporation shall not be a bar to the filing of the petition: *Provided, however*, That the right to file such petition shall prescribe after

of Republic Act No. 1379)[.][24]

The administrative case was docketed as OMB-L-A-04-0057-B, while the criminal case was docketed as OMB-L-C-04-0083-B.[25]

On April 12, 2004, Iglesias filed her Counter-Affidavit with Counter-Complaint[26] in the administrative case. She produced copies of her filed annual SALNs since 1989 and attached them to her Counter-Affldavit.[27]

Iglesias countered that she did not falsify the mode of acquisition of the Pangasinan and Quezon City properties in her SALNs.[28] Iglesias and her sister, Rosario de Joya-Ablang (Rosario), inherited the Quezon City property from their parents.[29] She "merely bought out her sister's share of their joint inherited property[.]"[30] Regarding the Pangasinan property, Iglesias reasoned that she acquired the property through purchase and donation when her mother, Marina, sold it to her for an amount well below its true value.[31]

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four years from the date of the resignation, dismissal or separation or expiration of the term of the officer or employee concerned, except as to those who have ceased to hold office within ten years prior to the approval of this Act, in which case the proceedings shall prescribe after four years from the approval hereof.

. . . . . .

Section 12. Penalties. – Any public officer or employee who shall, after the effective date of this Act, transfer or convey any unlawfully acquired property shall be repressed with imprisonment for a term not exceeding five years, or a fine not exceeding ten thousand pesos, or both such imprisonment and fine. The same repression shall be imposed upon any person who shall knowingly accept such transfer or conveyance.

[24] *Rollo*, p. 57, Complaint-Affidavit.

[25] *Id.* at 189, Court of Appeals Decision.

[26] *Id.* at 60-70.

[27] *Id.* at 62.

[28] *Id.* at 62-64.

[29] *Id.* at 62-63.

[30] *Id.* at 63.

[31] *Id.* at 64.

Iglesias explained that she did not declare the three (3) Pangasinan properties because these were classified as public lands and the Department of Environment and Natural Resources had yet to award the properties to her. She contended that she was merely considered an applicant for the grant of the public lands.[32]

On the alleged illegally acquired properties, Iglesias disclosed that she acquired these properties either by purchase or inheritance. She obtained a loan of ₱9,000,000.00 from Philippine National Bank to buy out Rosario's share and to purchase the Novaliches and Baguio properties. She also sold a property in Baguio to purchase the Parañaque property. To pay her obligations, she leased her Quezon City property from July 15, 2000 to January 2004. She acquired another loan of ₱2,000,000.00 from Philippine National Bank-Dagupan Branch to start her trucking business.[33]

Iglesias asserted that the foreclosure of the Quezon City property for non-payment of her loan "belies the false accusation . . . that [she] is a corrupt government official[.]"[34]

Iglesias argued that her educational attainment was correctly stated in her resume. She initially took up a master's degree in Customs Administration but was not able to finish the degree and eventually shifted to Management.[35] Lastly, the false date on her Personal Data Sheet was a typographical error.[36]

She claimed that the allegations against her were false and baseless and that Atty. Acuña and Pizarro should be held "criminally liable for malicious prosecution" and "for making untruthful statements under oath in their Complaint-Affidavit."[37]

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[32] *Id.* at 65.

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

[34] *Id.* at 68.

[35] *Id.* at 65-66.

[36] *Id.* at 66.

[37] *Id.* at 69.

Iglesias filed a Motion for Extension of Time to File Counter-Affidavit in the criminal case. However, she was still unable to file her counter-affidavit.[38]

On April 15, 2004, the Office of the Deputy Ombudsman for Luzon issued an Order[39] in connection with the administrative case, preventively suspending Iglesias for six (6) months while the investigation was on-going.[40]

On August 27, 2004, the Office of the Deputy Ombudsman for Luzon issued an Order requiring the parties to present their arguments in their respective position papers. Iglesias submitted her position paper on September 20, 2004 reiterating her arguments. The Department of Finance submitted its position paper on October 5, 2004 and disclosed new information regarding the business interest of Iglesias in Golden Grove Realty and Development Corporation. Its position paper also included records of cases filed against lglesias.[41]

On October 12, 2004, Graft Investigation and Prosecution Officer I Robert C. Reñido (Prosecution Officer Reñido) of the Office of the Deputy Ombudsman for Luzon issued a Joint Resolution[42] resolving the administrative and criminal cases. Prosecution Officer Reñido considered Iglesias' Counter-Affidavit in the administrative cae as her counter-affidavit in the criminal case "[f]or purposes of exigency and in the interest of justice and due process."[43]

Prosecution Officer Reñido found that Atty. Acuña and Pizarro did not conduct an intensive investigation before they filed the

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[38] *Id*. at 189, Court of Appeals Decision.

[39] *Id*. at 269-272. The Order was penned by Director Emilio A. Gonzalez III and recommended for approval by Deputy Ombudsman for Luzon Victor C. Fernandez.

[40] *Id*. at 189, Court of Appeals Decision.

[41] *Id*. at 82-84, Office of the Deputy Ombudsman for Luzon's Joint Resolution.

[42] *Id*. at 71-99.

[43] *Id*. at 76.

complaint against Iglesias,[44] who was able to submit uthentic copies of her filed SALNs from 1989 to 1999.[45]

He gave merit to Iglesias' explanation that the Quezon City and Pangasinan properties were part of her inheritance from her parents. Since Iglesias inherited a great portion of the Quezon City property from her parent, she did not err in declaring the property as acquired through inheritance.[46] Meanwhile, the Pangasinan property was intended to be donated to Iglesias by her mother. They relied on the credibility of the lawyer who made a deed of sale instead of a deed of donation to facilitate the transaction.[47]

Prosecution Officer Reñido held that Iglesias was correct in not declaring the three (3) Pangasinan properties in her SALNs, as she had not yet acquired them.[48] On the alleged illegally acquired properties, he stated that Iglesias "was able to shed light on how she was able to lawfully acquire [these] assets."[49]

On the allegation that Iglesias falsified her educational attainment, Prosecution Officer Reñido ruled that Iglesias had sufficiently proven that she shifted to Management upon learning that the Civil Service Commission did not require a specific genre of a master's degree.[50] He also found that the alleged falsification of Iglesias' Personal Data Sheet was a mere typographical error.[51]

Prosecution Officer Reñido recommended the dismissal of both cases.[52] Likewise, he recommended that the preventive suspension be lifted upon the Joint Resolution's approval.[53]

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[44] *Id*. at 84-85.

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

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

[47] *Id*. at 87-88.

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

[49] *Id*. at 95.

[50] *Id*. at 90.

[51] *Id*. at 91-92.

[52] *Id*. at 96.

[53] *Id*. at 97.

Director Emilio A. Gonzalez III of the Office of the Deputy Ombudsman for Luzon approved the Joint Resolution. However, Deputy Ombudsman for Luzon Victor C. Fernandez recommended its disapproval.[54]

On February 7, 2005, the Office of the Ombudsman issued a Resolution[55] reviewing the October 12, 2004 Joint Resolution. Ombudsman Simeon V. Marcelo (Ombudsman Marcelo) held that Iglesias failed to justify the substantial increase in her net worth. In just one (1) year, her net worth as declared in her SALN increased from ₱245,000.00 in 1989 to ₱1,685,000.00 in 1990.[56]

Ombudsman Marcelo discovered that Iglesias' cash declaration escalated from ₱250,000.00 in her 1991 SALN to ₱1,770,000.00 in her 1992 SALN. She also acquired the Baguio, Parañaque, and Novaliches properties from 1994 to 2000.[57]

In examining Iglesias' SALNs, Ombudsman Marcelo found that she obtained housing loans of ₱14,000,000.00 in 1994, ₱26,000,000.00 in 1998, and ₱29,000,000.00 in 1999.[58] Since the housing loans were not supported by evidence, Ombudsman Marcelo considered them "spurious or non-existent, meant only to cover up the rapidly increasing assets of [Iglesias]."[59]

According to Ombudsman Marcelo, Iglesias also falsified her Personal Data Sheet "when she denied having any criminal charges ever filed against her . . . despite evidence to the contrary."[60] Iglesias had two (2) pending estafa cases and three (3) dismissed cases before the lower courts, as stated in the National Bureau of Investigation's May 22, 2001 Certification.[61]

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[54] *Id*.

[55] *Id*. at 100-113.

[56] *Id*. at 102.

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

[58] *Id*. at 106-107.

[59] *Id*. at 106.

[60] *Id*. at 109.

[61] *Id*.

She likewise committed falsification when she did not declare the true value of the Pampanga property and reported its worth at only ₱50,000.00.[62]

As for Iglesias' allegation of leasing her Quezon City property and starting a trucking business, Ombudsman Marcelo stated that there was np evidence presented to support her claims. She also failed to declare the alleged trucking business in her SALN.[63]

Ombudsman Marcelo held that the acts of Iglesias constitute dishonesty and grave misconduct, punishable by dismissal from service under Rule IV, Section 52(A) of the Uniform Rules on Administrative Cases in the Civil Service, in relation to Book V, Sections 9 and 22 of the Administrative Code of 1987.[64]

The dispositive portion of the Resolution read:

WHEREFORE, the 12 October 2004 Joint Resolution is DISAPPROVED. Respondent ALBERTA DE JOYA-IGLESIAS is hereby found guilty of the administrative offense of DISHONESTY and GRAVE MISCONDUCT. Thus, she is ordered DISMISSED from the service, with cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for reemployment in the government service.

Moreover, sufficient probable cause exists to hold respondent ALBERTA DE JOYA IGLESIAS liable for violation of Art. 171 (Falsification) and Art. 183 (Perjury) of the Revised Penal Code. Let the Infonnations charging her with the said offenses be forthwith filed against her before the appropriate court.

Additionally, let a Petition for Forfeiture of Unlawfully Acquired Properties be filed before the proper court against respondent in view of the herein found accumulation of unexplained wealth.

The Field Investigation Office (FIO) is hereby ordered to investigate the matter regarding the false valuation made on the Deed of Sale covering the Pampanga property transferred in favor of respondent

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[62] *Id*. at 109-110.

[63] *Id*. at 106-107.

[64] *Id*. at 110-111.

and secure the necessary documentary evidence for the purpose of filing a criminal complaint for Falsification against her.

SO ORDERED.[65] (Emphasis in the original)

Iglesias moved for reconsideration,[66] which was denied by the Office of the Deputy Ombudsman for Luzon in its February 21, 2005 Joint Order.[67]

Iglesias appealed the February 7, 2005 Resolution of the Office of the Ombudsman and the February 21, 2005 Joint Order of the Office of the Deputy Ombudsman for Luzon before the Court of Appeals.[68]

Iglesias argued that she was denied administrative due process. She claimed that there was failure to meet the substantial evidence requirement in administrative proceedings.[69] Further, she asserted that her defense of denial and the presence of mitigating circumstances should have been considered by the Office of the Ombudsman and the Office of the Deputy Ombudsman for Luzon.[70]

In its December 22, 2006 Decision,[71] the Court of Appeals affirmed the assailed February 7, 2005 Resolution and February 21, 2005 Joint Order.[72] It held that there was no denial of due process since Iglesias was able to explain her side in her Counter-Affidavit and her Motion for Reconsideration of the February 7, 2005 Resolution.[73]

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[65] *Id*. at 111-113.

[66] *Id*. at 352-358.

[67] *Id*. at 114-124.

[68] *Id*. at 188-189, Court of Appeals Decision.

[69] *Id*. at 191.

[70] *Id*.

[71] *Id*. at 188-206.

[72] *Id*. at 205.

[73] *Id*. at 192-193.

The Court of Appeals declared that the assailed Resolution and Joint Order rest on substantial evidence; hence, the Office of the Ombudsman and the Office of the Deputy Ombudsman for Luzon did not commit any grave abuse of discretion.[74] It added that Iglesias' defense of denial and the alleged mitigating circumstances were bereft of merit.[75]

Iglesias moved for reconsideration, which was denied[76] by the Court of Appeals in its November 21, 2007 Resolution.[77]

Hence, on January 17, 2008, Iglesias filed this Petition for Review[78] with an application for temporary restraining order against the Office of the Ombudsman and the Department of Finance officers, namely, Commissioner George M. Jereos (Commissioner Jereos), Deputy Commissioner Roberto G. Geotina (Deputy Commissioner Geotina), Acting Collector Juan T. Tan (Tan), Acting Disbursement Officer Kristine Morales (Morales), and Commissioner Alberto Lina (Commissioner Lina) (collectively, respondents).

Petitioner alleges that respondent Tan took her place as Acting District Collector during her preventive suspension. However, after the termination of her six (6)-month suspension, she was not automatically reinstated to her position and respondent Tan was confirmed as Acting District Collector. Petitioner claims that she was demoted as Deputy Collector for Operations without due process.[79]

Petitioner asserts that respondents Commissioner Jereos and Deputy Commissioner Geotina immediately implemented the dismissal order while her motion for reconsideration of the February 7, 2005 Resolution was still pending before the Office

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[74] *Id*. at 193-194.

[75] *Id*. at 194 and 205.

[76] *Id*. at 32.

[77] *Id*. at 24-33.

[78] *Id*. at 9-22.

[79] *Id*. at 10-A.

of the Deputy Ombudsman for Luzon. Thus, respondent Morales immediately withheld her salary and other benefits.[80] Respondent Commissioner Lina was included as a nominal party-respondent.[81]

Petitioner prays that the December 22, 2006 Decision and November 21, 2007 Resolution of the Court of Appeals be nullified and set aside. Petitioner likewise prays that judgment be rendered absolving her of any criminal and administrative liability and reinstating her to her former position as Acting District Collector at the Port of San Fernando.[82]

Petitioner raises the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR CERTIORARI

II.

WHETHER OR NOT THE PETITIONER WAS DENIED DUE PROCESS OF LAW

III.

WHETHER PETITIONER WAS DENIED OF HER RIGHT TO BE INFORMED OF THE CHARGES AGAINST HER[83]

Petitioner argues that she was not given an opportunity to refute the new accusations and charges against her which were not stated in the Complaint-Affidavit. Her filing of a Motion for Reconsideration did "not address the fact that she was never informed of the true allegations against her."[84] Thus, she claims that "her right to be informed of the accusations against her and to be afforded with due process of law has been violated."[85]

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[80] *Id*. at 11.

[81] *Id*. at 10.

[82] *Id*. at 20.

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

[84] *Id*. at 18.

[85] *Id*.

On April 25, 2000, respondents officers of the Department of Finance, through the Office of the Solicitor General, filed their Comment[86] and prayed for the denial of the Petition.[87] They assert that petitioner was properly informed of the charges against her.[88] Moreover, her right to due process was not violated since she was given enough opportunity to counter the allegations:

> In this case, *petitioner was able to file her Counter-Affidavit dated April 6, 2004 in OMB-L-A-04-0057-B. She was likewise given the opportunity to file her counter-affidavit in OMB-L-C-04-0083-B but she failed to do so despite her having filed a Motion for Extension of Time to File Counter-Affidavit dated March 19, 2004.* Based on the Comment dated September 21, 2005 of the Office of the Ombudsman, the petitioner even filed a Motion for Early Resolution and Lifting of Preventive Suspension, and a Position Paper. Moreover, she likewise filed her Motion for Reconsideration dated February 14, 2005.
>
> Clearly, petitioner was given opportunity to explain her side and she moved for reconsideration of the challenged Resolution dated February 7, 2005. She was never denied her right to due process.[89] (Emphasis in the original)

On May 5, 2008, respondent Office of the Ombudsman filed its Comment[90] and likewise prayed for the denial of the Petition. It argues that the Court of Appeals was correct in ruling "that petitioner was afforded due process by the Office of the Ombudsman and [that] the questioned resolutions were supported by substantial evidence and based on the records and evidence at hand."[91]

The Office of the Ombudsman counters that petitioner was not denied due process since "petitioner had the opportunity

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[86] *Id*. at 224-229.

[87] *Id*. at 227.

[88] *Id*. at 225.

[89] *Id*. at 226.

[90] *Id*. at 230-266.

[91] *Id*. at 252.

to present her side, submit countervailing evidence to refute the Department of Finance's claims and even move for a reconsideration of the decision."[92] Further, it asserts that "petitioner was sufficiently informed of the charges against her as shown in her Counter-Affidavit, Motion for Early Resolution and Lifting of Preventive Suspension, Position Paper and the assailed Resolutions of the Office of the Ombudsman."[93]

On May 14, 2008, petitioner filed her Reply and reiterated that she was denied due process since she was not informed of the offenses charged against her.[94]

On July 8, 2009, this Court issued a Resolution[95] requiring the parties to submit their respective memoranda. Petitioner filed her Memorandum[96] on September 18, 2009, while respondent Office of the Ombudsman filed its Memorandum[97] on October 1, 2009. Both parties reiterated their arguments in their earlier pleadings. Respondents officers of the Department of Finance failed to file their memorandum.

On September 30, 2010, petitioner also filed a Supplement to the Supplemental Memorandum.[98]

On October 17, 2011, petitioner again filed a Supplemental Memorandum.[99] She stated that Branch 45, Metropolitan Trial Court of Pasay City issued a Joint Decision[100] acquitting her of three (3) counts of perjury in Criminal Case Nos. 05-1160, 05-1161, and 05-1162.[101] The perjury cases alleged that petitioner

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[92] *Id*. at 254.

[93] *Id*. at 257.

[94] *Id*. at 359-362.

[95] *Id*. at 366-367.

[96] *Id*. at 368-387.

[97] *Id*. at 396-431.

[98] *Id*. at 441-464.

[99] *Id*. at 471-476.

[100] *Id*. at 478-485.

[101] *Id*. at 485.

made untruthful statements in connection with three (3) real properties on her December 31, 2000 SALN.[102] Petitioner contends that since she was able to counter the anomalies in her statements, she "should only be held liable for simple neglect of duty."[103]

On January 21, 2015, petitioner filed her last Supplemental Memorandum.[104] Petitioner informed this Court that the other falsification and perjury cases related to the present case were dismissed by the trial courts, particularly:

a. Criminal Case No. Q-05-137 (pending before the Regional Trial Court of Quezon City, Branch 77) – dismissed on 30 January 2008;

b. Criminal Cases (sic) Nos. 05-1160 to 1162 (For Perjury, pending before the Metropolitan Trial Court of Pasay City, Branch 45) – acquitting the accused on 21 June 2011[;]

c. Criminal Case Nos. (sic) 421447-62-CR (For Perjury, pending before the Metropolitan Trial Court of Manila, Branch 1) – acquitting the accused on 30 April 2014[;]

d. Criminal Case No. 05-238700 (For Falsification of Public Document, pending before the Metropolitan Trial Court of Manila, Branch 30) – acquitting the accused on 23 July 2014[;] [and]

e. Criminal Case Nos. 40970 to 72 (For Perjury, pending before the Municipal Trial Court in Cities of San Fernando City, La Union) – acquitting the accused on 17 October 2014.[105]

This Court resolves the main issue of whether or not petitioner was denied of administrative due process when the Resolution dismissing her appeal was based on allegations that were not contained in the Complaint. Resolving this main issue will pass on the issues of whether or not petitioner was denied of her

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[102] *Id*. at 478-479.

[103] *Id*. at 472, Alberta de Joya Iglesias' Supplemental Memorandum.

[104] *Id*. at 500-508.

[105] *Id*. at 500-501.

right to be informed of the charges against her and whether or not petitioner was denied of her right to due process. Since these issues are interrelated, they will be addressed jointly.

Petitioner's contention has no merit.

Administrative due process demands that the party being charged is given an opportunity to be heard.[106] Due process is complied with "if the party who is properly notified of allegations against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions."[107]

In *F/O Ledesma v. Court of Appeals*:[108]

> Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[109]

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[106] *Mateo v. Romulo*, G.R. No. 177875, August 8, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/177875.pdf> 7 [Per *J*. Bersamin, First Division]; *Fontanilla v. Commissioner Proper*, G.R. No. 209714, June 21, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/209714.pdf> 9 [Per *J*. Brion, *En Banc*]; *Ebdane, Jr. v. Apurillo*, G.R. No. 204172, December 9, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/december2015/204172.pdf> 6 [Per *J*. Perlas-Bernabe, First Division]; *Avancena v. Judge Liwanag*, 454 Phil. 20, 24 (2003) [Per Curiam, *En Banc*]; *PFC Rodriguez v. Court of Appeals*, 435 Phil. 533, 541-542 (2002) [Per *J*. Quisumbing, Second Division]; *Garcia v. Court of Appeals*, 411 Phil. 25, 40 (2001) [Per *J*. Vitug, Third Division]; *Ocampo v. Ombudsman*, 379 Phil. 21, 28 (2000) [Per *J*. Buena, Second Division].

[107] *Gutierrez v. Commission on Audit*, G.R. No. 200628, January 13, 2015, 745 SCRA 435, 453 [Per *J*. Leonen, *En Banc*].

[108] 565 Phil. 731 (2007) [Per *J*. Tinga, Second Division].

[109] *Id*. at 740.

An important component of due process is the right of the accused to be informed of the nature of the charges against him or her.[110] A proper appraisal of the accusations would give the accused an opportunity to adequately prepare for his or her defense. Otherwise, substantial justice would be undermined.[111]

In this case, petitioner insists that the February 7, 2005 Resolution of the Office of the Ombudsman was based on new accusations that were not included in the Complaint-Affidavit filed by Atty. Acuña and Pizarro. She anchors her argument on the findings of the Ombudsman:

"In her **first year** in the government service, respondent reported a net worth of ₱245,000.00 in her 1989 SALN, which swiftly grew to ₱1,685,000.00 during her **second year (1990 SALN)**. The additional ₱1,440,000.00 accumulated by respondent is a 60% jump from her **1989 net worth**. During that same period, respondent was able to purchase a property in Paco, Manila, in the amount of ₱800,000.00, acquired additional jewelry worth ₱250,000.00, and maintained cash in the bank in the amount of ₱400,000.00. This sudden upsurge in respondent's net worth, within the short period of one (1) year, is unjustified considering that she had no other employment, business activity or financial interests from which the acquisitions can be funded other than her employment in the Bureau of Customs.

"Respondent's **1991 and 1992 SALN** likewise reflected the meteoric rise of her assets. From the declared cash of ₱250,000.00 in 1991, the same soared high to the amount of ₱1,770,000.00 which was not sufficiently justified or explained by her income from the government, or her reported total new loans of ₱610,000.00, consisting of jewelry loan in the amount of ₱110,000.00 and an agricultural loan in the amount of ₱500,000.00.

"Apart from the properties in New Manila, Quezon City, and Pampanga which respondent justified as to have been inherited by her from her parents, respondent is likewise the owner of several properties located in Baguio City, Parañaque City, and Novaliches,

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[110] *Sajonas v. National Labor Relations Commission (First Div.)*, 262 Phil. 201, 208 (1990) [Per *J.* Regalado, Second Division].

[111] See *Col. Lubaton v. Judge Lazaro*, 717 Phil. 1, 6 (2013) [Per *J.* Bersamin, First Division].

Quezon City, which she acquired beginning **1994 to 2000**."[112] (Emphasis in the original)

Considering the above, this Court finds that there was a violation of due process with respect to the other charges which were *not in the original complaint*. This Court sternly reminds the Ombudsman that he *cannot* add new findings which were not part of the original complaint. To do so would violate the right of the accused to due process.

However, there were charges in the *original complaint* which should prosper. A reading of the Office of the Ombudsman Resolution reveals that she was dismissed from service not solely on the irregularities found in her 1989 to 1999 SALNs but also because of anomalies found in her 2000 to 2002 SALNs, which she was informed of and was given the opportunity to refute. Petitioner conveniently left out in her pleadings the following findings of the Office of the Ombudsman:

> It should be noted, however, that respondent has two (2) Baguio properties indicated in her 2000-2002 SALNs. The first Baguio property was acquired in 1995, thus, its declaration in her 1996 SALN. From 1996-1999, she had been maintaining that same property. However, as evidenced by her 2000 SALN, she acquired another property in Baguio. Presuming that, as claimed by respondent, the PNB loan paid for the acquisition of the first Baguio property, with what funds did she acquire the second Baguio property?
>
> Moreover, on the same year, respondent also acquired the Para[ñ]aque property. *Although respondent claims that she sold one of the Baguio properties to buy the Para[ñ]aque property, she continued to declare the Baguio properties as her own in her SALN for 2000-2002*. This, therefore, would belie any assertion of sale . . .
>
> *Incidentally, it should be noted that during the years 2000-2002, respondent was no longer declaring any cash in bank as part of her assets.* She did not declare the proceeds received from the sale of the Baguio property to Mario Nicolas despite her admission that she was given the initial payment of ₱1,100,000.00. Granted that she used ₱1,000,000.00 thereof to make the [down payment] on the

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[112] *Rollo*, p. 15, Petition; 359-360, Reply to Comment; and 378, Alberta de Joya Iglesias' Memorandum.

Para[ñ]aque property, this would still leave her with ₱100,000.00 cash in hand, not to forget the balance of ₱1,100,000.00 still owing her, which should have been declared as part of her assets.

As for the monthly amortization for the Para[ñ]aque property that had to be paid to BPI, the claim that the rentals on the New Manila property answered for it does not seem to hold water. *First, respondent claims that in view of the fact that she has defaulted on the payments on the PNB loan, the PNB has since foreclosed the property. The inscription at the back of the title states that the property was foreclosed in 1999. This, thus, precludes respondent from having the place rented. Second, assuming that the said foreclosure is being contested and is now the subject of pending litigation, it is a puzzle how the lease was effected and why it was made for a lengthy period of time. Third, respondent did not specify how much the lease rental was and if it were sufficient to pay for the monthly mortgage owing BPI, and, most importantly, respondent failed to present evidence to substantiate the claim of lease by JIM-Mar Enterprises.*

. . . . . .

As for the trucks and vans, respondent justifies that the same were acquired by virtue of a loan from PNB-Dagupan Branch in the amount of Two Million Pesos (₱2,000,000.00). She claims that the same loan was used to buy the dump trucks, van, and other equipment, and as operating capital for her trucking business. *Respondent, however, failed to present evidence regarding the said loan and the security used to obtain it. She also did not present any evidence regarding the trucking business. Also, she did not disclose this in her SALN as one of her business interests.*

. . . . . .

Further, respondent admitted to committing another act of falsific:ation. *In explaining the classification of the Pampanga property as an inheritance/donation inter vivos, respondent admitted that she misdeclared the true value of the said land as merely ₱50,000.00 in the Deed of Sale conveying the said property in her favor.* This scheme was obviously resorted to in order to evade the payment of higher taxes.[113] (Emphasis supplied)

Even if the findings in relation to petitioner's 1989 to 1999 SALNs were disregarded, petitioner would still be liable for

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[113] *Id.* at 104-110, Ombudsman's Resolution.

the discrepancies in her 2000 to 2002 SALNs. These discrepancies were stated in the Complaint-Affidavit and were given clarification by petitioner in her Counter-Affidavit and Position Paper. Moreover, she was able to move for reconsideration of the Office of the Ombudsman February 7, 2005 Resolution. These circumstances preclude petitioner from claiming that she was denied her right to due process.

On a final note, this Court endeavors to strike a balance between the accountability of public officers as a result of public office being a privilege, on the one hand, and their right to privacy as protected in the Bill of Rights, on the other. Although this Court has held that the requirement of submitting a SALN does not violate the right to privacy of public officers,[114] it does not mean that they should completely shed this right. Therefore, minor or explainable errors in the SALN, which cannot be related to an attempt to conceal illicit activities should not be punishable. This Court may relax the rule on strictly complying with the SALN in cases where minor errors were committed since these may simply be used to harass and obstruct public officers in the performance of their duties. However, the errors in this case were so substantial and glaring that they should not escape prosecution.

WHEREFORE, the Decision dated December 22, 2006 and the Resolution dated November 21, 2007 of the Court of Appeals in CA-G.R. SP No. 89585 are **AFFIRMED** with **MODIFICATION**.

Petitioner Alberta de Joya Iglesias is **GUILTY** of **DISHONESTY** and **GRAVE MISCONDUCT** based on the anomalies found in her 2000 to 2002 Statements of Assets, Liabilities, and Net Worth. Thus, she is **DISMISSED** from service, which includes the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service.

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[114] *Morfe v. Mutuc, et al.*, 130 Phil. 415, 436-437 (1968) [Per *J.* Fernando, *En Banc*].

Accordingly, the criminal case against petitioner Alberta de Joya Iglesias shall proceed on the basis of the anomalies found in her 2000 to 2002 Statements of Assets, Liabilities, and Net Worth.

This is without prejudice to other administrative and criminal charges that may be filed against her.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires*, and *Gesmundo, JJ.*, concur.

THIRD DIVISION

[G.R. No. 185894. August 30, 2017]

BELO MEDICAL GROUP, INC., *petitioner, vs.* **JOSE L. SANTOS and VICTORIA G. BELO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; DEFINED; WILLFUL AND DELIBERATE VIOLATION OF THE RULE THEREON CAN BE A GROUND FOR ALL PENDING CASES' SUMMARY DISMISSAL WITH PREJUDICE AND DIRECT CONTEMPT.—Forum shopping exists when parties seek multiple judicial remedies simultaneously or successively, involving the same causes of action, facts, circumstances, and transactions, in the hopes of obtaining a favorable decision. It may be accomplished by a party defeated in one forum, in an attempt to obtain a favorable outcome in another, "other than by appeal or a special civil action for *certiorari*." Forum shopping trivializes rulings of courts, abuses their processes, cheapens the administration of justice, and clogs court dockets. x x x When willful and deliberate violation is clearly shown, it can be a ground for all pending cases' summary dismissal with prejudice and direct contempt.

2. ID.; A.M. NO. 01-2-04-SC (INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES); INTRA-CORPORATE CONTROVERSY; TYPES OF INTRA-CORPORATE RELATIONSHIP.—To determine whether an intra-corporate dispute exists and whether this case requires the application of these rules of procedure, this Court evaluated the relationship of the parties. The types of intra-corporate relationships were reviewed in *Union Glass & Container Corporation v. Securities and Exchange Commission*:[a] between the corporation, partnership or association and the public; [b] between the corporation, partnership or association and its stockholders, partners, members, or officers; [c] between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; and [d] among the stockholders, partners or associates themselves.

3. ID.; ID.; ID.; RELATIONSHIP TEST AND NATURE OF THE CONTROVERSY TEST; APPLICATION IN CASE AT BAR.— For as long as any of [the] intra-corporate relationships exist between the parties, the controversy would be characterized as intra-corporate. This is known as the "relationship test." *DMRC Enterprises v. Este del Sol Mountain Reserve, Inc.* employed what would later be called as the "nature of controversy test." It became another means to determine if the dispute should be considered as intra-corporate. x x x This Court now uses both the relationship test and the nature of the controversy test to determine if an intra-corporate controversy is present.Applying the relationship test, this Court notes that both Belo and Santos are named shareholders in Belo Medical Group's Articles of Incorporation and General Information Sheet for 2007. The conflict is clearly intra-corporate as it involves two (2) shareholders although the ownership of stocks of one stockholder is questioned. Unless Santos is adjudged as a stranger to the corporation because he holds his shares only in trust for Belo, then both he and Belo, based on official records, are stockholders of the corporation. Belo Medical Group argues that the case should not have been characterized as intra-corporate because it is not between two shareholders as only Santos or Belo can be the rightful stockholder of the 25 shares of stock. This may be true. But this finding can only be made after trial where ownership of the shares of stock is decided. The trial court cannot classify the case based on potentialities. The two

defendants in that case are both stockholders on record. They continue to be stockholders until a decision is rendered on the true ownership of the 25 shares of stock in Santos' name. If Santos' subscription is declared fictitious and he still insists on inspecting corporate books and exercising rights incidental to being a stockholder, then, and only then, shall the case cease to be intra-corporate. Applying the nature of the controversy test, this is still an intra-corporate dispute. The Complaint for interpleader seeks a determination of the true owner of the shares of stock registered in Santos' name. Ultimately, however, the goal is to stop Santos from inspecting corporate books. This goal is so apparent that, even if Santos is declared the true owner of the shares of stock upon completion of the interpleader case, Belo Medical Group still seeks his disqualification from inspecting the corporate books based on bad faith. Therefore, the controversy shifts from a mere question of ownership over movable property to the exercise of a registered stockholder's proprietary right to inspect corporate books.

4. ID.; RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES; APPEALS; PROPER MODE OF APPEAL FROM THE TRIAL COURT, ACTING AS A SPECIAL COMMERCIAL COURT, PURELY ON QUESTIONS OF LAW, IS THROUGH A PETITION FOR REVIEW UNDER RULE 43 BEFORE THE COURT OF APPEALS; CASE AT BAR.—Rule 45 is the wrong mode of appeal. A.M. No. 04-9-07-SC promulgated by this Court En Banc on September 14, 2004 laid down the rules on modes of appeal m cases formerly cognizable by the Securities and Exchange Commission:1. All decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court. x xxOn the other hand, Rule 43 of the Rules of Court allows for appeals to the Court of Appeals to raise questions of fact, of law, or a mix of both. Hence, a party assailing a decision or a final order of the trial court acting as a special commercial court, purely on questions of law, must raise these issues before the Court of Appeals through a petition for review A.M. No. 04-9-07-SC mandates it. Rule 43 allows it. Belo Medical Group argues that since it raises only questions of law, the proper mode of appeal is Rule 45 filed directly to this Court. This is correct assuming there were no rules specific

to intra-corporate disputes. Considering that the controversy was still classified as intra-corporate upon filing of appeal, special rules, over general ones, must apply.

5. ID.; CIVIL PROCEDURE; CAUSE OF ACTIONS; JOINDER OF CAUSES OF ACTION; SHALL NOT INCLUDE SPECIAL CIVIL ACTIONS OR ACTIONS GOVERNED BY SPECIAL RULES; CASE AT BAR.—At the outset, this Court notes that two cases were filed by Belo Medical Group: the Complaint for interpleader and the Supplemental Complaint for Declaratory Relief. Under Rule 2, Section 5 of the Rules of Court, a joinder of cause of action is allowed, provided that it follows the conditions enumerated [therein] x x x. Assuming this case continues on as an interpleader, it cannot be joined with the Supplemental Complaint for declaratory relief as both are special civil actions. However, as the case was classified and will continue as an intra-corporate dispute, the simultaneous complaint for declaratory relief becomes superfluous. The right of Santos to inspect the books of Belo Medical Group and the appreciation for his motives to do so will necessarily be determined by the trial court together with determining the ownership of the shares of stock under Santos' name.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Office for petitioner.

Siguion Reyna Montecillo & Ongsiako for respondent Jose L. Santos.

Sycip Salazar Hernandez & Gatmaitan for respondent Victoria G. Belo.

D E C I S I O N

LEONEN, *J.*:

A conflict between two (2) stockholders of a corporation does not automatically render their dispute as intra-corporate. The nature of the controversy must also be examined.[1]

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[1] *Reyes v. Hon. Regional Trial Court of Makati, etc., et al.*, 583 Phil. 591 (1984) [Per *J.* Brion, Second Division].

In this Petition for Review on Certiorari[2] under Rule 45 of the Rules of Court, Belo Medical Group, Inc. (Belo Medical Group) assails the Regional Trial Court December 8, 2008 Joint Resolution in Civil Case No. 08-397.[3] This Joint Resolution granted respondent Jose L. Santos' (Santos) Motion to Dismiss and Belo Medical Group's Complaint for interpleader and Supplemental Complaint for Declaratory Relief against Santos and Victoria G. Belo (Belo), and declared all other pending incidents as moot.[4]

The controversy began on May 5, 2008[5] when Belo Medical Group received a request from Santos for the inspection of corporate records.[6] Santos claimed that he was a registered shareholder and a co-owner of Belo's shares, as these were acquired while they cohabited as husband and wife.[7] Santos sought advice on his probable removal as director of the corporation considering that he was not notified of meetings where he could have been removed. He also inquired on the election of Alfredo Henares (Henares) as Corporate Secretary in 2007 when Santos had not been notified of a meeting for Henares' possible election. Finally, he sought explanation on the corporation's failure to inform him of the 2007 annual meeting and the holding of an annual meeting in 2008.[8] Santos' concern over the corporate operations arose from the alleged death of a patient in one (1) of its clinics.[9]

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[2] *Rollo*, pp. 3-32.

[3] *Id*. at 33-35. The Joint Resolution was penned by Presiding Judge Cesar O. Untalan of Branch 149, Regional Trial Court, Makati City.

[4] *Id*. at 35.

[5] *Id*. at 7.

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

[7] *Id*. at 43.

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

[9] *Id*. at 70-74, as culled from the April 25, 2008 letters of Santos' counsel to Belo Medical Group and Belo Medical Group's May 14, 2008 reply.

Santos was unsuccessful in inspecting the corporate books as Henares, the officer-in-charge of corporate records, was travelling. Belo Medical Group asked for time in order for Henares to accommodate Santos' request.[10]

After the first attempt to inspect, Belo wrote Belo Medical Group on May 14, 2007 to repudiate Santos' co-ownership of her shares and his interest in the corporation. She claimed that Santos held the 25 shares in his name merely in trust for her, as she, and not Santos, paid for these shares. She informed Belo Medical Group that Santos already had a pending petition with the Regional Trial Court to be declared as co-owner of her properties. She asserted that unless a decision was rendered in Santos' favor, he could not exercise ownership rights over her properties.[11]

Belo also informed Belo Medical Group that Santos had a business in direct competition with it. She suspected that Santos' request to inspect the records of Belo Medical Group was a means to obtain a competitor's business information, and was, therefore, in bad faith.[12]

A second inspection was attempted through a written demand by Santos on May 15, 2008.[13] Again, he was unsuccessful.

Belo wrote to Belo Medical Group on May 20, 2008 to reiterate her objections to Santos' attempts at inspecting corporate books and his inquiry regarding a patient. Belo further manifested that she was exercising her right as a shareholder to inspect the books herself to establish that the 25 shares were not owned by Santos, and that he did not pay for these shares.[14]

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[10] *Id*. at 45, Belo Medical Group's letter to Santos' counsel dated May 14, 2008.

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

[12] *Id*. at 47.

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

[14] *Id*. at 50-51.

Thus, Belo Medical Group filed a Complaint for Interpleader[15] with Branch 149, Regional Trial Court, Makati City on May 21, 2008. Belo Medical Group alleged that while Santos appeared to be a registered stockholder, there was nothing on the record to show that he had paid for the shares under his name. The Complaint was filed "to protect its interest and compel [Belo and Santos] to interplead and litigate their conflicting claims of ownership of, as well as the corresponding right of inspection arising from, the twenty-five (25) [Belo Medical Group] shares between themselves pursuant to **Rule 62** of the 1997 Rules of Civil Procedure . . ."[16] The following reliefs were prayed for:

> (i) issue an Order summoning and requiring defendants Santos and Belo to interplead with each other to resolve their conflicting claims of ownership of the 25 shares of stock of [Belo Medical Group], including their opposing claims of exclusive entitlement to inspect [Belo Medical Group] corporate records;
>
> (ii) after due proceedings render judgment in favor of the proper defendant; and
>
> (iii) allow plaintiff [Belo Medical Group] to recover attorney's fees and litigation expenses in the amount of at least Php1,000,000.00 jointly and solidarity against both defendants and for them to pay the costs of suit.[17]

On the same day, Henares wrote Belo's and Santos' respective counsels to inform them of the Complaint.[18] Despite receipt, Santos' counsel still proceeded to Belo Medical Group's Makati office on May 22, 2008, where, again, they were unsuccessful in inspecting the corporate books.[19]

Santos, for the third time, sent a letter on May 22, 2008 to schedule an inspection of the corporate books and warned that

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[15] *Id*. at 52-59.

[16] *Id*. at 56.

[17] *Id*.

[18] *Id*. at 75.

[19] *Id*. at 76.

continued rejection of his request exposed the corporation to criminal liability.[20] Nothing came out of this last attempt as well.

Belo and Belo Medical Group wrote to Santos on May 27, 2008 to inform him that he was barred from accessing corporate records because doing so would be inimical to Belo Medical Group's interests.[21] Through another letter on May 28, 2008, Santos was reminded of his majority share in The Obagi Skin Health, Inc. the owner and operator of the House of Obagi (House of Obagi) clinics. He was likewise reminded of the service of a notice of the 2007 special meeting of stockholders to his address at Valero Street, Makati City, contrary to his claim.[22]

On May 29, 2008, Belo Medical Group filed a Supplemental Complaint[23] for declaratory relief under Rule 63 of the Rules of Court. In its Supplemental Complaint, Belo Medical Group relied on Section 74[24] of the Corporation Code to deny Santos' request for inspection. It prayed that Santos be perpetually barred from inspecting its books due to his business interest in a

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[20] *Id.* at 76-77

[21] *Id.* at 78-79.

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

[23] *Id.* at 82-92.

[24] CORP. CODE, Sec. 74 provides:

Section 74. *Books to be kept; stock transfer agent*. – Every corporation shall keep and carefully preserve at its principal office a record of all business transactions and minutes of all meetings of stockholders or members, or of the board of directors or trustees, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. Upon the demand of any director, trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the yeas and nays must be taken on any motion or proposition, and a record thereof carefully made. The protest of any director, trustee, stockholder or member on any action or proposed action must be recorded in full on his demand.

competitor.[25] Should the ruling for interpleader be in favor of Santos, Belo Medical Group prayed that the trial court:

a. exercise its power under Rule 63 of the Revised Rules of Civil Procedure and give a proper construction of Sections 74 and 75 of the Corporation Code in relation to the facts presented above, and declare that plaintiff can rightfully decline defendant Santos's request for inspection under those sections and related provisions and jurisprudence; and

b. allow plaintiff to recover attorney's fees and litigation expenses from defendant Santos in the amount of at least PHP1,000,000.00 and the costs of suit.[26]

Belo Medical Group's Complaint and Supplemental Complaint were raffled to Branch 149 of the Regional Trial Court of Makati, a special commercial court,[27] thus classifying them as intra-corporate.[28]

The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and Provided, further, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

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

[26] *Id.* at 90.

[27] Pursuant to A.M. No. 03-03-03-SC (2003).

[28] *Rollo*, p. 13.

Belo filed her Answer *Ad Cautelam* with Cross-Claim to put on record her defenses that Santos had no right to inspect the books as he was not the owner of the 25 shares of stock in his name and that he was acting in bad faith because he was a majority owner of House of Obagi.[29]

Belo further argued that the proceedings should not have been classified as intra-corporate because while their right of inspection as shareholders may be considered intra-corporate, "it ceases to be that and becomes a full-blown civil law question if competing rights of ownership are asserted as the basis for the right of inspection."[30]

Meanwhile, on several dates, the trial court sheriff attempted to personally serve Santos with summons.[31] After unsuccessful attempts,[32] the sheriff resorted to substituted service in Santos' Makati office condominium unit.[33]

On July 4, 2008, Belo Medical Group filed an Omnibus Motion for Clarificatory Hearing and for Leave to File Consolidated Reply,[34] praying that the case be tried as a civil case and not as an intra-corporate controversy. It argued that the Interim Rules of Procedure Governing Intra-Corporate Controversies[35] did not include special civil actions for interpleader and declaratory relief found under the Rules of Court. Belo Medical Group clarified that the issue on ownership of the shares of stock must first be resolved before the issue on inspection could even be considered ripe for determination.[36]

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[29] *Id*. at 114-122.

[30] *Id*. at 118.

[31] *Id*. at 155-156, as indicated in Sheriff Robert V. Alejo's Sheriffs Returns.

[32] *Id*. at 155.

[33] *Id*. at 156.

[34] *Id*. at 128-135.

[35] A.M. No. 01-2-04-SC (2001).

[36] *Id*. at 131.

Belo Medical Group later on moved that Santos be declared in default.[37] Instead of filing an answer, Santos filed a Motion to Dismiss.[38]

Apart from procedural infirmities, Santos argued that Belo Medical Group's Complaint and Supplemental Complaint must be dismissed "for its failure to state, and ultimately, lack of, a cause of action."[39] No ultimate facts were given to establish the act or omission of Santos and Belo that violated Belo Medical Group's rights. There was simply no conflict on the ownership of the 25 shares of stock under Santos' name. Based on the corporation's 2007 Articles of Incorporation and General Information Sheet, Santos was reflected as a stockholder and owner of the 25 shares of stock. No documentary evidence was submitted to prove that Belo owned these shares and merely transferred them to Santos as nominal shares.[40]

Santos further argued that the filing of the complaints was an afterthought to take attention away from Belo Medical Group's criminal liability when it refused Santos' demand to inspect the records of the corporation. For years, neither Belo Medica1 Group nor Belo questioned Santos' standing in the corporation. No change in ownership from Santos to another person was reflected in the company's General Information Sheet.[41]

Santos also invoked the doctrine of piercing the corporate veil as Belo owned 90% of Belo Medical Group. Her claim over the 25 shares was a ploy to defeat Santos' right to inspect corporate records. He asserts that the Complaint for interpleader was an anticipatory move by the company to evade criminal liability upon its denial of Santos' requests.[42]

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[37] *Id*. at 150-158.

[38] *Id*. at 165-189.

[39] *Id*. at 174.

[40] *Id*. at 179.

[41] *Id*. at 180-181.

[42] *Id*. at 182-183.

In addition, Santos argued that a prerequisite to filing these cases is that the plaintiff has not yet incurred liability to any of the parties. Since Belo Medical Group had already incurred criminal liability, it could no longer file a complaint for interpleader or declaratory relief.[43]

Santos denied any conflict of interest because Belo Medical Group's products and services differed from House of Obagi's.[44] Belo Medical Group's primary purpose was the management and operation of skin clinics[45] while the House of Obagi's main purpose was the sale and distribution of high-end facial products.[46]

On October 29, 2008, Belo Medical Group filed its Opposition[47] and argued that the Motion to Dismiss was a prohibited pleading under Section 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies.

Belo Medical Group reiterated that Belo and Santos must litigate against each other to determine who rightfully owned the 25 shares. An accommodation of one of them, absent a resolution to this issue, would make Belo Medical Group liable to the other.[48]

On its supposed criminal liability when it refused Santos access to corporate records, Belo Medical Group explained that the independent liability necessary to defeat complaints for interpleader arose from a final judgment and not merely a cause of action that has accrued.[49]

Finally, Belo Medical Group averred that substantiation must be done during trial. The dismissal of the case would be premature.[50]

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[43] *Id*. at 183-184, 189.

[44] *Id*. at 185.

[45] *Id*. at 192, Articles of Incorporation of Belo Medical Group, Inc.

[46] *Id*. at 36, Articles of Incorporation of the Obago Skin Health, Inc.

[47] *Id*. at 207-221.

[48] *Id*. at 216.

[49] *Id*. at 218 citing *Wack Wack Golf & Country Club, Inc. v. Won*, 162 Phil. 233 (1976) [Per *J*. Castro, *En Banc*].

[50] *Id*. at 219.

Belo's Opposition dated October 29, 2008 raised the same arguments of Belo Medical Group.[51]

Santos filed his Reply to the Oppositions on November 18, 2008.[52] He agreed that the controversy was not intra-corporate but civil in nature, as it involved ownership.[53] However, he stood firm on his arguments that the case should be dismissed due to the Complaints' failure to state a cause of action[54] and the trial court's failure to acquire jurisdiction over his person.[55]

On December 8, 2008, the assailed Joint Resolution[56] was issued by the trial court resolving the following incidents: Belo Medical Group's Omnibus Motion for Clarificatory Hearing and for Leave to File Consolidated Reply and Motion to Declare Santos in Default, and Santos' Motion to Dismiss. The trial court declared the case as an intra-corporate controversy but dismissed the Complaints.[57]

The trial court characterized the dispute as "intrinsically connected with the regulation of the corporation as it involves the right of inspection of corporate records."[58] Included in Santos and Belo's conflict was a shareholder's exclusive right to inspect corporate records. In addition, the issue on the ownership of shares requires the application of laws and principles regarding corporations.[59]

However, the Complaint could not flourish as Belo Medical Group "failed to sufficiently allege conflicting claims of

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[51] *Id*. at 222-254.

[52] *Id*. at 265-290.

[53] *Id*. at 266-272.

[54] *Id*. at 284-288.

[55] *Id*. at 274-284.

[56] *Id*. at 33-35.

[57] *Id*. at 35.

[58] *Id*. at 33.

[59] *Id*.

ownership over the subject shares."[60] In justifying failure to state a cause of action, the trial court reasoned:

> Plaintiff clearly admits in the complaint that defendant Santos is the registered stockholder of the subject shares albeit no records show that he made any payments thereof. Also, notwithstanding defendant Belo's claim that she is the true owner thereof, there was no allegation that defendant Santos is no longer the holder on record of the same or that it is now defendant Belo who is the registered stockholder thereof. In fact, the complaint even alleges that defendant Santos holds the 25 BMGI shares merely as nominal qualifying shares in trust for defendant Belo. Thus, the complaint failed to state a cause of action that would warrant the resort to an action for interpleader.[61]

Though a motion to dismiss is a prohibited pleading under the Interim Rules of Procedure Governing Intra-Corporate Controversies, the trial court ruled that Section 2, Rule 1 of these rules allowed for the Rules of Court to apply suppletorily. According to the Rules of Court, motions to dismiss are allowed in interpleader cases.[62]

Finally, the Complaint for Declaratory Relief was struck down as improper because it sought an initial determination on whether Santos was in bad faith and if he should be barred from inspecting the books of the corporation. Only after resolving these issues can the trial court determine his rights under Sections 74 and 75 of the Corporation Code. The act of resolving these issues is not within the province of the special civil action as declaratory relief is limited to the construction and declaration of actual rights and does not include the determination of issues.[63]

From the Joint Resolution, Belo and Belo Medical Group pursued different remedies.

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[60] *Id.* at 34.

[61] *Id.*

[62] *Id.*

[63] *Id.* at 35 *citing Kawasaki Port Service Corp. v. Amores*, 276 Phil. 249 (1991) [Per *J.* Bidin, Third Division].

Belo filed her Petition for Review before the Court of Appeals docketed as CA G.R. No. 08-397.[64]

Belo Medical Group, on the other hand, directly filed its Petition for Review with this Court, alleging that purely questions of law are at issue.

Belo Medical Group argues that it is enough that there are two (2) people who have adverse claims against each other and who are in positions to make effective claims for interpleader to be given due course.[65] Belo Medical Group cites *Lim v. Continental Development Corporation*,[66] which allowed a complaint for interpleader to continue because two (2) parties claimed ownership over the same shares of stock.[67]

On January 30, 2009, Belo Medical Group filed a Manifestation/Disclosure[68] informing this Court that on January 28, 2009, it received Belo's Petition for Review filed before the Court of Appeals. On February 4, 2009, this Court also received Belo's Manifestation[69] that she filed a Petition for Review before the Court of Appeals, assailing the Joint Resolution primarily because it dismissed her counterclaims. She also furnished this Court a copy of her Manifestation filed with the Court of Appeals to inform it of Belo Medical Group's Petition for Review before this Court.[70]

On April 15, 2009, Belo filed her Comment[71] and manifested that she agrees with the arguments raised by Belo Medical Group.

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[64] *Id*. at 334-388.

[65] *Id*. at 21.

[66] 161 Phil. 453 (1976) [Per *J*. Makasiar, First Division].

[67] *Rollo*, p. 20.

[68] *Id*. at 329-332.

[69] *Id*. at 390-395.

[70] *Id*. at 683-686.

[71] *Id*. at 701-706.

On April 28, 2009, Santos filed his Comment.[72] He argues that the Petition filed by Belo Medical Group should be dismissed as the wrong mode of appeal. It should have filed an appeal under Rule 43, pursuant to the Interim Rules on Intra-Corporate Disputes.[73] He alleges that Belo Medical Group committed forum shopping. It filed the present Petition for Review after Belo had already filed an appeal under Rule 43 before the Court of Appeals. He asserts that Belo and Belo Medical Group have the same interest. Belo, owner of 90% of the shares of stock of the corporation, dictates Belo Medical Group's actions, which were ultimately for Belo's benefit and interests.[74]

Meanwhile, on July 31, 2009, the Court of Appeals dismissed Belo's Petition for Review and ruled that the pending case before this Court was the more appropriate vehicle to determine the issues.[75]

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

First, whether or not Belo Medical Group, Inc. committed forum shopping;

Second, whether or not the present controversy is intra-corporate;

Third, whether or not Belo Medical Group, Inc. came to this Court using the correct mode of appeal; and

Finally, whether or not the trial court had basis in dismissing Belo Medical Group, Inc.'s Complaint for Declaratory Relief.

I

Neither Belo nor the Belo Medical Group is guilty of forum shopping.

Forum shopping exists when parties seek multiple judicial remedies simultaneously or successively, involving the same

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[72] *Id.* at 707-729.

[73] *Id.* at 707.

[74] *Id.* at 718.

[75] *Id.* at 820-831.

causes of action, facts, circumstances, and transactions, in the hopes of obtaining a favorable decision.[76] It may be accomplished by a party defeated in one forum, in an attempt to obtain a favorable outcome in another, "other than by appeal or a special civil action for *certiorari*."[77]

Forum shopping trivializes rulings of courts, abuses their processes, cheapens the administration of justice, and clogs court dockets.[78] In *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*:[79]

> What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues.[80]

Rule 7, Section 5 of the Rules of Court contains the rule against forum shopping:

> Section 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other per ding action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

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[76] See *Asia United Bank v. Goodland Company*, 660 Phil. 504 (2011) [Per *J*. Del Castillo, First Division].

[77] *Yap v. Chua*, 687 Phil. 392, 399 (2012) [Per *J*. Reyes, Second Divison].

[78] *Catayas v. Court of Appeals*, 693 Phil. 451, 456 (2012) [Per *J*. Mendoza, Second Division].

[79] 457 Phil. 740 (2003) [Per *J*. Bellosillo, Second Division].

[80] *Id*. at 748.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice; unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

When willful and deliberate violation is clearly shown, it can be a ground for all pending cases' summary dismissal with prejudice[81] and direct contempt.[82]

Belo Medical Group filed its Petition for Review on Certiorari under Rule 45 before this Court to appeal against the Joint Resolution of the trial court. It did not file any other petition related to the case, as indicated in its verification and certification against forum shopping. It was Belo, a defendant in Belo Medical Groups Complaint, who filed a separate appeal under Rule 43 with the Court of Appeals primarily to protect her counterclaims. Belo and Belo Medical Group both filed their respective Petitions for Review on January 28, 2009, the lat day within the period allowed to do so.[83] The Court of Appeals already ruled that *litis pendencia* was present when Belo and Belo Medical Group filed their respective petitions on the same date before different fora. The two petitions involved the same parties, rights and reliefs sought, and causes of action.[84] This is a decision this Court can no longer disturb.

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[81] See *Ao-as v. Court of Appeals*, 524 Phil. 645 (2006) [Per *J.* Chico-Nazario, First Division).

[82] RULES OF COURT, Rule 7, Sec. 5; *Municipality of Taguig v. Court of Appeals*, 506 Phil. 567, 581 (2005) [Per *J.* Austria-Martinez, Second Division] citing *Biñan Steel Corporation v. Court of Appeals*, 439 Phil. 688 (2002) [Per *J.* Corona, Third Division] and Supreme Court Circular No. 28-91.

[83] *Rollo*, pp. 3 and 390.

[84] *Id.* at 826-829.

Neither Belo Medical Group nor Belo can be faulted for willful and deliberate violation of the rule against forum shopping. Their prompt compliance of the certification against forum shopping appended to their Petitions negates willful and deliberate intent.

Belo Medical Group was not remiss in its duty to inform this Court of a similar action or proceeding related to its Petition. It promptly manifested before this Court its receipt of Belo's Petition before the Court of Appeals. Belo Medical Group and Belo manifested before this Court that Belo filed a Rule 43 petition to protect her counterclaims and to question the same Joint Resolution issued by the trial court. Both did so within five (5) days from discovery, as they undertook in their respective certificates against forum-shopping.

The issue of forum shopping has become moot. The appeal under Rule 43 filed by Belo has been dismissed by the Court of Appeals on the ground of *litis pendencia*.[85] The purpose of proscribing forum shopping is the proliferation of contradictory decisions on the same controversy.[86] This possibility no longer exists in this case.

II

Belo Medical Group filed a case for interpleader, the proceedings of which are covered by the Rules of Court. At its core, however, it is an intra--corporate controversy.

A.M. No. 01-2-04-SC, or the Interim Rules of Procedure Governing Intra-Corporate Controversies, enumerates the cases where the rules will apply:

> Section 1. (a) *Cases Covered* — These Rules shall govern the procedure to be observed in civil cases involving the following:
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> 1. Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners,

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[85] *Id.* at 821-831.

[86] *Philippine Postal Corporation v. Court of Appeals and Guzman*, 722 Phil. 860 (2013) [Per *J.* Perlas-Bernabe, Second Division].

amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

2. Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;
3. Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;
4. Derivative suits; and
5. Inspection of corporate books.[87]

The same rules prohibit the filing of a motion to dismiss:

Section 8. Prohibited Pleadings. — The following pleadings are prohibited:

(1) Motion to dismiss;

(2) Motion for a bill of particulars;

(3) Motion for new trial or for reconsideration of judgment or order, or for re-opening of trial;

(4) Motion for extension of time to file pleadings, affidavits or any other paper, except those filed due to clearly compelling reasons. Such motion must be verified and under oath; and

(5) Motion for postponement and other motions of similar intent, except those filed due to clearly compelling reasons. Such motion must be verified and under oath.

To determine whether an intra-corporate dispute exists and whether this case requires the application of these rules of procedure, this Court evaluated the relationship of the parties. The types of intra-corporate relationships were reviewed in *Union Glass & Container Corporation v. Securities and Exchange Commission*:[88]

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[87] *Id*.

[88] 211 Phil. 222 (1983) [Per *J*. Escolin, *En Banc*].

[a] between the corporation, partnership or association and the public; [b] between the corporation, partnership or association and its stockholders, partners, members, or officers; [c] between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; and [d] among the stockholders, partners or associates themselves.[89]

For as long as any of these intra-corporate relationships exist between the parties, the controversy would be characterized as intra-corporate.[90] This is known as the "relationship test."

DMRC Enterprises v. Este del Sol Mountain Reserve, Inc.[91] employed what would later be called as the "nature of controversy test." It became another means to determine if the dispute should be considered as intra-corporate.

In *DMRC Enterprises*, Este del Sol leased equipment from DMRC Enterprises. Part of Este del Sol's payment was shares of stock in the company. When Este del Sol defaulted, DMRC Enterprises filed a collection case before the Regional Trial Court. Este del Sol argued that it should have been filed before the Securities and Exchange Commission as it involved an intra-corporate dispute where a corporation was being compelled to issue its shares of stock to subscribers. This Court held that it was not just the relationship of the parties that mattered but also the conflict between them:

The purpose and the wording of the law escapes the respondent. Nowhere in said decree do we find even so much as an intimidation that absolute jurisdiction and control is vested in the Securities and Exchange Commission in all matters affecting corporations. To uphold the respondent's argument would remove without legal imprimatur from the regular courts all conflicts over matters involving or affecting corporations, regardless of the nature of the transactions which give rise to such disputes. The courts would then be divested of jurisdiction not by reason of the nature of the dispute submitted to them for

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[89] *Id.* at 231.

[90] See *Philex Mining Corporation v. Hon. Reyes*, 204 Phil. 241 (1982) [Per *J.* Melencio-Herrera, First Division].

[91] 217 Phil. 280 (1984) [Per *J.* Gutierrez, Jr., First Division].

adjudication, but solely for the reason that the dispute involves a corporation. This cannot be done. To do so would not only be to encroach on the legislative prerogative to grant and revoke jurisdiction of the courts but such a sweeping interpretation may suffer constitutional infirmity. Neither can we reduce jurisdiction of the courts by judicial fiat (Article X, Section 1, The Constitution).[92]

This Court now uses both the relationship test and the nature of the controversy test to determine if an intra-corporate controversy is present.[93]

Applying the relationship test, this Court notes that both Belo and Santos are named shareholders in Belo Medical Group's Articles of Incorporation[94] and General Information Sheet for 2007.[95] The conflict is clearly intra-corporate as it involves two (2) shareholders although the ownership of stocks of one stockholder is questioned. Unless Santos is adjudged as a stranger to the corporation because he holds his shares only in trust for Belo, then both he and Belo, based on official records, are stockholders of the corporation. Belo Medical Group argues that the case should not have been characterized as intra-corporate because it is not between two shareholders as only Santos or Belo can be the rightful stockholder of the 25 shares of stock. This may be true. But this finding can only be made after trial where ownership of the shares of stock is decided.

The trial court cannot classify the case based on potentialities. The two defendants in that case are both stockholders on record. They continue to be stockholders until a decision is rendered on the true ownership of the 25 shares of stock in Santos' name. If Santos' subscription is declared fictitious and he still insists

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[92] *Id.* at 287.

[93] See *Aguirres II v. FQB+7, Inc.*, 701 Phil. 216 (2013) [Per *J.* Del Castillo, Second Division]; *Reyes v. Hon. Regional Trial Court of Makati, etc., et al.*, 583 Phil. 591 (2008) [Per *J.* Brion, Second Division]; *Speed Distributing Corp. et al. v. Court of Appeals and Rufina Lim*, 469 Phil. 739 (2004) [Per *J.* Callejo, Sr., Second Division].

[94] *Rollo*, pp. 190-199.

[95] *Id.* at 200-206.

on inspecting corporate books and exercising rights incidental to being a stockholder, then, and only then, shall the case cease to be intra-corporate.

Applying the nature of the controversy test, this is still an intra-corporate dispute. The Complaint for interpleader seeks a determination of the true owner of the shares of stock registered in Santos' name. Ultimately, however, the goal is to stop Santos from inspecting corporate books. This goal is so apparent that, even if Santos is declared the true owner of the shares of stock upon completion of the interpleader case, Belo Medical Group still seeks his disqualification from inspecting the corporate books based on bad faith. Therefore, the controversy shifts from a mere question of ownership over movable property to the exercise of a registered stockholder's proprietary right to inspect corporate books.

Belo Medical Group argues that to include inspection of corporate books to the controversy is premature considering that there is still no determination as to who, between Belo and Santos, is the rightful owner of the 25 shares of stock. Its actions belie its arguments. Belo Medical Group wants the trial court not to prematurely characterize the dispute as intra-corporate when, in the same breath, it prospectively seeks Santos' perpetual disqualification from inspecting its books. This case was never about putting into light the ownership of the shares of stock in Santos' name. If that was a concern at all, it was merely secondary. The primary aim of Belo and Belo Medical Group was to defeat his right to inspect the corporate books, as can be seen by the filing of a Supplemental Complaint for declaratory relief.

The circumstances of the case and the aims of the parties must not be taken in isolation from one another. The totality of the controversy must be taken into account to improve upon the existing tests. This Court notes that Belo Medical Group used its Complaint for interpleader as a subterfuge in order to stop Santos, a registered stockholder, from exercising his right to inspect corporate books.

Belo made no claims to Santos' shares before he attempted to inspect corporate books, and inquired about the Henares' election as corporate secretary and the conduct of stockholders' meetings. Even as she claimed Santos' shares as hers, Belo proffered no initial proof that she had paid for these shares. She failed to produce any document except her bare allegation that she had done so. Even her Answer *Ad Cautelam* with Cross-Claim[96] contained bare allegations of ownership.

According to its Complaint, although Belo Medical Group's records reflect Santos as the registered stockholder of the 25 shares, they did not show that Santos had made payments to Belo Medical Group for these shares, "consistent with Belo's claim of ownership over them."[97] The absence of any document to establish that Santos had paid for his shares does not bolster Belo's claim of ownership of the same shares. Santos remains a stockholder on record until the contrary is shown.

Belo Medical Group cites *Lim v. Continental Development Corporation*[98] as its basis for filing its Complaint for interpleader. In *Lim*, Benito Gervasio Tan (Tan) appeared as a stockholder of Continental Development Corporation. He repeatedly requested the corporation to issue certificates of shares of stock in his name but Continental Development Corporation could not do this due to the claims of Zoila Co Lim (Lim). Lim alleged that her mother, So Bi, was the actual owner of the shares that were already registered in the corporate books as Lim's, and she delivered these in trust to Lim before she died. Lim wanted to have the certificates of shares cancelled and new ones re-issued in his name. This Court ruled that Continental Development Corporation was correct in filing a case for interpleader:

> Since there is an active conflict of interests between the two defendants, now herein respondent Benito Gervasio Tan and petitioner

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[96] *Id.* at 114-122.

[97] *Id.* at 56.

[98] 161 Phil. 453 (1976) [Per *J.* Makasiar, First Division].

Zoila Co Lim, over the disputed shares of stock, the trial court gravely abused its discretion in dismissing the complaint for interpleader, which practically decided ownership of the shares of stock in favor of defendant Benito Gervasio Tan. The two defendants, now respondents in G.R. No. L-41831, should be given full opportunity to litigate their respective claims.

Rule 63, Section 1 of the New Rules of Court tells us when a cause of action exists to support a complaint in interpleader:

> Whenever conflicting claims upon the same subject matter are or may be made against a person, who claims no interest whatever in the subject matter, or an interest which in whole or in part is not disputed by the claimants, he may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves . . .

This provision only requires as an indispensable requisite:

> that conflicting claims upon the same subject matter are or may be made against the plaintiff-in-interpleader who claims no interest whatever in the subject matter or an interest which in whole or in part is not disputed by the claimants (Beltran vs. People's Homesite and Housing Corporation, No. L-25138, 29 SCRA 145).

This ruling, penned by Mr. Justice Teehankee, reiterated the principle in Alvarez vs. Commonwealth (65 Phil. 302), that

> The action of interpleader, under Section 120, is a remedy whereby a person who has personal property in his possession. or an obligation to render wholly or partially, without claiming any right in both comes to court and asks that the persons who claim the said personal property or who consider themselves entitled to demand compliance with the obligation, be required to litigate among themselves, in order to determine finally who is entitled to one or the other thing. The remedy is afforded not to protect a person against a double liability but to protect him against a double vexation in respect of one liability.

An interpleader merely demands as a sine qua non element

> . . . that there be two or more claimants to the fund or thing in dispute through separate and different interests. The claims must be adverse before relief can be granted and the parties sought to be interpleaded must be in a position to make effective claims (33 C.J. 430).

Additionally, the fund thing, or duty over which the parties assert adverse claims must be one and the same and derived from the same source (33 C.J., 328; Martin, Rules of Court, 1969 ed., Vol. 3, 133-134; Moran, Rules of Court, 1970 ed., Vol. 3, 134-136).

Indeed, petitioner corporation is placed in the same situation as a lessee who does not know the person to whom he will pay the rentals due to the conflicting claims over t[h]e property leased, or a sheriff who finds himself puzzled by conflicting claims to a property seized by him. In these examples, the lessee (Pangkalinawan vs. Rodas, 80 Phil. 28) and the sheriff (Sy-Quia vs. Sheriff, 46 Phil. 400) were each allowed to file a complaint in interpleader to determine the respective rights of the claimants.[99]

In *Lim*, the corporation was presented certificates of shares of stock in So Bi's name. This proof was sufficient for Continental Development Corporation to reasonably conclude that controversy on ownership of the shares of stock existed.

Furthermore, the controversy in *Lim* was between a registered stockholder in the books of the corporation and a stranger who claimed to be the rightful transferee of the shares of stock of her mother. The relationship of the parties and the circumstances of the case establish the civil nature of the controversy, which was plainly, ownership of shares of stock. Interpleader was not filed to evade or defeat a registered stockholder's right to inspect corporate books. It was borne by the sincere desire of a corporation, not interested in the certificates of stock to be issued to either claimant, to eliminate its liability should it favor one over the other.

On the other hand, based on the facts of this case and applying the relationship and nature of the controversy tests, it was understandable how the trial court could classify the interpleader case as intra-corporate and dismiss it. There was no ostensible debate on the ownership of the shares that called for an interpleader case. The issues and remedies sought have been muddled when, ultimately, at the front and center of the controversy is a registered stockholder's right to inspect corporate books.

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[99] *Id.* at 460-462.

As an intra-corporate dispute, Santos should not have been allowed to file a Motion to Dismiss.[100] The trial court should have continued on with the case as an intra-corporate dispute considering that it called for the judgments on the relationship between a corporation and its two warring stockholders and the relationship of these two stockholders with each other.

III

Rule 45 is the wrong mode of appeal.

A.M. No. 04-9-07-SC promulgated by this Court En Banc on September 14, 2004 laid down the rules on modes of appeal in cases formerly cognizable by the Securities and Exchange Commission:

> 1. All decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.
>
> 2. The petition for review shall be taken within fifteen (15) days from notice of the decision or final order of the Regional Trial Court. Upon proper motion and the payment of the full amount of the legal fee prescribed in Rule 141 as amended before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days within which to file the petition for review. No further extension shall be granted except for the most compelling reasons and in no case to exceed fifteen (15) days.

On the other hand, Rule 43 of the Rules of Court allows for appeals to the Court of Appeals to raise questions of fact, of law, or a mix of both. Hence, a party assailing a decision or a final order of the trial court acting as a special commercial court, purely on questions of law, must raise these issues before the Court of Appeals through a petition for review.[101] A.M. No. 04-9-07-SC mandates it. Rule 43 allows it.

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[100] See *Aldersgate College, Inc. v. Gauuan, et al.*, 698 Phil. 821 (2012) [Per *J.* Perlas-Bernabe, Second Division].

[101] *San Jose v. Ozamis*, G.R. No. 190590, July 12, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/I90590.pdf> 7 [Per *J.* Carpio, Second Division].

Belo Medical Group argues that since it raises only questions of law, the proper mode of appeal is Rule 45 filed directly to this Court. This is correct assuming there were no rules specific to intra-corporate disputes. Considering that the controversy was still classified as intra-corporate upon filing of appeal, special rules, over general ones, must apply.

Based on the policy of judicial economy and for practical considerations,[102] this Court will not dismiss the case despite the wrong mode of appeal utilized. For one, it would be taxing in time and resources not just for Belo Medical Group but also for Santos and Belo to dismiss this case and have them refile their petitions for review before the Court of Appeals. There would be no benefit to any of the parties to dismiss the case especially since the issues can already be resolved based on the records before this Court. Also, the Court of Appeals already referred the matter to this Court when it dismissed Belo's Petition for Review. Remanding this case to the Court of Appeals would not only be unprecedented, it would further delay its resolution.

IV

At the outset, this Court notes that two cases were filed by Belo Medical Group: the Complaint for interpleader and the Supplemental Complaint for Declaratory Relief. Under Rule 2, Section 5 of the Rules of Court, a joinder of cause of action is allowed, provided that it follows the conditions enumerated below:

> 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;**

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[102] *Cathay Metal Corp. v. Laguna West Multi Purpose Cooperative, Inc.*, 738 Phil. 37, 63 (2014) [Per *J.* Leonen, Third Division].

(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. (Emphasis supplied)

Assuming this case continues on as an interpleader, it cannot be joined with the Supplemental Complaint for declaratory relief as both are special civil actions. However, as the case was classified and will continue as an intra-corporate dispute, the simultaneous complaint for declaratory relief becomes superfluous. The right of Santos to inspect the books of Belo Medical Group and the appreciation for his motives to do so will necessarily be determined by the trial court together with determining the ownership of the shares of stock under Santos' name.

The trial court may make a declaration first on who owns the shares of stock and suspend its ruling on whether Santos should be allowed to inspect corporate records. Or, it may rule on whether Santos has the right to inspect corporate books in the meantime while there has yet to be a resolution on the ownership of shares. Remedies are available to Belo Medical Group and Belo at any stage of the proceeding, should they carry on in prohibiting Santos from inspecting the corporate books.

WHEREFORE, the Petition for Review of Belo Medical Group, Inc. is **PARTIALLY GRANTED**. The December 8, 2008 Joint Resolution of Branch 149, Regional Trial Court, Makati City in Civil Case No. 08-397 is **REVERSED** regarding its dismissal of the intra-corporate case. Let this case be **REMANDED** to the commercial court of origin for further proceedings.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires*, and *Gesmundo, JJ.*, concur.

FIRST DIVISION

[G.R. No. 188144. August 30, 2017]

F.F. CRUZ & COMPANY, INC., *petitioner, vs.* **PHILIPPINE IRON CONSTRUCTION AND MARINE WORKS, INC., and/or ANCHOR METALS CORP.,** *respondents.*

[G.R. No. 188301. August 30, 2017]

PHILIPPINE IRON CONSTRUCTION AND MARINE WORKS, INC., and/or ANCHOR METALS CORP., *petitioners, vs.* **F.F. CRUZ & COMPANY, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45; CONFINED TO REVIEW OF ERRORS OF LAW THAT MAY HAVE BEEN COMMITTED IN THE JUDGMENT UNDER REVIEW.—** A petition for review under Rule 45 is x x x limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari.* This Court will not review facts, as it is not our function to analyze or weigh all over again evidence already considered in the proceedings below. We are confined to the review of errors of law that may have been committed in the judgment under review. "It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court because x x x this Court is not a trier of facts; it reviews only questions of law."

2. **ID.; ID.; ID.; ID.; ID.; EXCEPTION; FACTUAL QUESTIONS MAY BE ENTERTAINED IN PETITIONS FOR REVIEW WHEN THE FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THAT OF THE TRIAL COURT AS A RESULT OF GROSS OR EXTRAORDINARY MISPERCEPTION OR MANIFEST BIAS IN THE COURT OF APPEALS' READING OF THE EVIDENCE.—** Over time, we have entertained petitions for review raising factual

questions in certain narrow and limited instances. One such exception is when the factual findings of the CA are contrary to those of the trial court. The presence of such circumstance alone, however, does not automatically warrant departure from the general rule. x x x A conflict between the factual findings of the CA and the trial court only provides *prima facie* basis for a recourse to the Supreme Court. But before we even give due course to a petition under Rule 45 which raises factual issues—much less undertake a complete reexamination of the records—it is incumbent upon the petitioner to clearly show that manifestly correct findings have been unwarrantedly rejected or reversed by the CA. "[O]nly a showing, on the face of the record, of *gross or extraordinary misperception or manifest bias* in the [CA]'s reading of the evidence will justify this Court's intervention by way of assuming a function usually within the former's exclusive province."

3. **ID.; ID.; ID.; FINDINGS OF FACT OF ADMINISTRATIVE TRIBUNALS ARE CONCLUSIVE WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.—** [T]he rule is that the BMI's findings are binding and conclusive on the courts when it is supported by substantial evidence. This is consistent with the elementary principle in administrative law that findings of fact by administrative tribunals are conclusive when supported by substantial evidence. In finding that F.F. Cruz was guilty of contributory negligence, the CA relied on the factual findings set forth in the BMI report. x x x In finding that F.F. Cruz was negligent, the BMI clearly identified the evidentiary basis in support of its conclusion. The CA cannot thus be faulted for relying on the BMI's factual findings to support its own conclusion that F.F. Cruz was guilty of contributory negligence because such findings are supported by substantial evidence.

APPEARANCES OF COUNSEL

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Fajardo Law Offices for F.F. Cruz & Co., Inc.

Del Rosario & Del Rosario Law Offices for Anchor Metals Corporation.

D E C I S I O N

JARDELEZA, *J.*:

These are consolidated petitions for review on *certiorari* challenging the Decision[1] dated February 25, 2009 and Resolution[2] dated June 8, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 86460. The CA held that Anchor Metals Corporation (AMC) is liable to pay F.F. Cruz and Company (F.F. Cruz) for the damage caused by AMC's vessels to the barges owned by F.F. Cruz, but mitigated the former's liability due to F.F. Cruz's contributory negligence. Both petitions principally challenge the factual findings of the CA: in G.R. No. 188144, F.F. Cruz contests the finding that it was guilty of contributory negligence; in G.R. No. 188301, AMC questions its liability for actual damages.

The Department of Public Works and Highways (DPWH) engaged the services of F.F. Cruz to construct the government pier located in Brooke's Point, Palawan. Sometime in September 1988, F.F. Cruz brought its tugboat M/T "Imma" (Imma), Barge 609, Barge 1001, and Barge Piling Rig "Pilipino" (Pilipino) to the site.[3]

On November 4, 1988, tugboat M/T "Jasaan" (Jasaan) docked at Brooke's Point for the purpose of towing Barge "Florida" (Florida).[4] AMC owned Florida and leased Jasaan from Philippine Iron Construction & Marine Works, Inc. (PICMW) through a bareboat charter agreement.[5]

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[1] *Rollo* (G.R. No. 188144), pp. 56-79. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Josefina Guevara-Salonga and Romeo F. Barza concurring.

[2] *Id.* at 81-82.

[3] *Id*. at 13, 56.

[4] *Id*. at 13-14, 57; *rollo* (G.R. No. 188301), pp. 46-47.

[5] *Rollo* (G.R. No. 188144), pp. 95-97.

In the evening of November 4, 1988, typhoon Welpring hit Brooke's Point. F.F. Cruz's Barge 609 and Pilipino sank, while Barge 1001 collided with the driven piles at the construction site.[6] That same evening, Jasaan towed Florida to a safer place because the latter's anchor line was cut off. In the process, however, the rudder cable snapped and both Jasaan and Florida drifted towards the seashore.[7]

The following day, the master of Imma, Antonio Bundal (Bundal), filed a marine protest alleging that Jasaan and Florida were responsible for the damage to F.F. Cruz's vessels and the driven piles. He alleged that there was an allision[8] between Jasaan and Barge 1001, which caused the latter to hit the driven piles. In turn, Florida bumped Barge 609 causing the latter to eventually sink. Pilipino likewise hit the concrete piles as a result of the allision.[9] The master of Jasaan, Capt. Daniel Pino (Capt. Pino), also filed a marine protest, reporting that both Jasaan and Florida were pushed ashore as a result of the typhoon, causing damages to both vessels.[10]

The Board of Marine Inquiry (BMI) absolved PICMW, AMC, Capt. Pino, and Florida's patron Fausto dela Riarte of any administrative liability. It found that Jasaan and Florida maintained a safe distance of 800 to 900 meters from F.F. Cruz's vessels. Instead, the BMI recommended that Bundal and the patrons of Barge 609, 1001, and Pilipino be faulted for their failure to transfer their barges to a safe distance from the driven piles.[11] The Philippine Coast Guard affirmed the recommendations of the BMI.[12]

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[6] *Id*. at 57, 92-93.

[7] *Id*. at 72; *rollo* (G.R. No. 188301), pp. 335-336.

[8] Defined as "the running of one ship upon another ship that is stationary — distinguished from collision." See https://www.merriam-webster.com/dictionary/allision, last accessed on August 3, 2017.

[9] *Rollo* (G.R. No. 188144), pp. 68-70.

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

[11] *Rollo* (G.R. No. 188301), pp. 355-357.

[12] *Id*. at 171-181.

F.F. Cruz filed a complaint for damages with the Regional Trial Court (RTC) of Quezon City against both AMC and PICMW. The RTC found that there was "clear, positive and credible evidence presented that [Jasaan] and [Florida] bumped and hit the vessels of [F.F. Cruz]."[13] It also held PICMW to be solidarily liable because Jasaan was not seaworthy due to the vessel's lack of a functioning radio equipment and defective rudder.[14] Accordingly, the RTC ordered AMC and PICMW to pay solidarily F.F. Cruz the sum of ₱6,168,028.50 as actual damages and ₱500,000.00 as attorney's fees and litigation expenses, plus costs of suit.[15]

AMC and PICMW filed separate notices of appeal. AMC insisted that the findings of the BMI should be controlling, *i.e.*, that no allision took place, and it should therefore be absolved of any civil liability.[16] Meanwhile, PICMW questioned the finding that Jasaan was not seaworthy.[17] In its 24-page Decision, the CA closely examined the parties' respective evidence. It found that Jasaan and Florida could not have maintained a safe distance of 800 to 900 meters from F.F. Cruz's vessels because it was established by the captain of Jasaan himself that he caused Jasaan to move in order to tow Florida to a safer place after the latter's anchor line was cut. The CA also noted that the testimonies of the witnesses for F.F. Cruz were consistent with one another and support the contents of the marine protest filed by Imma's master. Nonetheless, the CA concurred with the BMI finding that F.F. Cruz failed to properly secure Barge 609 and Barge 1001 at the time of the typhoon and that these vessels were located very near the driven piles. Thus, F.F. Cruz should share equally bear the damages caused to Pilipino and the driven piles. Finally, it absolved PICMW from any

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[13] *Rollo* (G.R. No. 188144), p. 94.

[14] *Id.* at 93-94.

[15] *Id.* at 94.

[16] *Id.* at 60-62.

[17] *Id.* at 68.

liability because the contract it entered into with AMC was a bareboat charter, which means that AMC is effectively considered the owner for the duration of the voyage.[18] F.F. Cruz and AMC filed their respective motions for reconsideration, which the CA denied.

On July 30, 2009, F.F. Cruz filed its petition for review,[19] docketed as G.R. No. 188144. AMC filed its own petition for review[20] on August 13, 2009, docketed as G.R. No. 188301. On October 26, 2009, we consolidated the two petitions.[21]

We deny the petitions.

Section 1 of Rule 45 of the Rules of Court limits the scope of the Supreme Court's reviews on *certiorari*. It provides:

> *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the *Sandiganbayan*, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law**, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.[22] (Emphasis supplied.)

A petition for review under Rule 45 is, thus, limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. This Court will not review facts, as it is not our function to analyze or weigh all over again evidence already considered in the proceedings below. We are confined to the review of errors of law that may have been committed

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[18] *Id.* at 74-77.

[19] *Id.* at 11-55.

[20] *Rollo* (G.R. No. 188301), pp. 41-101.

[21] *Rollo* (G.R. No. 188144), p. 103.

[22] As amended by A.M. No. 07-7-12-SC, December 12, 2007.

in the judgment under review.[23] "It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court because x x x this Court is not a trier of facts; it reviews only questions of law."[24]

Over time, we have entertained petitions for review raising factual questions in certain narrow and limited instances.[25] One such exception is when the factual findings of the CA are contrary to those of the trial court. The presence of such circumstance alone, however, does not automatically warrant departure from the general rule. In *Uniland Resources v. Development Bank of the Philippines*,[26] we explained:

It bears emphasizing that mere disagreement between the Court of Appeals and the trial court as to the facts of a case does not of itself warrant this Court's review of the same. It has been held that the doctrine that the findings of fact made by the Court of Appeals,

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[23] *Far Eastern Surety and Insurance Co., Inc. v. People of the Philippines*, 721 Phil. 760, 769 (2013).

[24] *Diokno v. Cacdac*, 553 Phil. 405 (2007). Citation omitted.

[25] Several instances when this Court may review findings of fact of the Court of Appeals on appeal by *certiorari*, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Metropolitan Bank and Trust Company v. Fadcor, Inc.*, G.R. No. 197970, January 25, 2016, 781 SCRA 561, 566-567. Citation omitted.)

[26] 277 Phil. 839 (1991).

being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence.[27] (Citation omitted.)

A conflict between the factual findings of the CA and the trial court only provides *prima facie* basis for a recourse to the Supreme Court. But before we even give due course to a petition under Rule 45 which raises factual issues—much less undertake a complete reexamination of the records—it is incumbent upon the petitioner to clearly show that manifestly correct findings have been unwarrantedly rejected or reversed by the CA. "[O]nly a showing, on the face of the record, of *gross or extraordinary misperception or manifest bias* in the [CA]'s reading of the evidence will justify this Court's intervention by way of assuming a function usually within the former's exclusive province."[28] Both F.F. Cruz and AMC failed to show that their respective petitions meet this standard.

At the core of the factual dispute is the CA's treatment of the BMI report. The CA partially relied on the report when it held F.F. Cruz liable for contributory negligence, but disagreed with the BMI's findings that AMC was without any fault. We find that the CA properly considered the BMI report in line with prevailing jurisprudence.

In *Aboitiz Shipping Corporation v. New India Assurance Company, Ltd.*, [29] we held that the "findings of BMI are not deemed always binding on the courts."[30] The BMI's exoneration of the vessel's officers and crew merely concerns their respective administrative liabilities. It does not in any way operate to absolve

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[27] *Id.* at 844.

[28] *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189, 212, citing *Fernan v. Court of Appeals*, G.R. No. L-43356, January 30, 1990, 181 SCRA 546, 550. Italics supplied.

[29] 522 Phil. 523 (2006).

[30] *Id.* at 531. (Citation omitted.)

the common carrier from its civil liabilities arising from its failure to exercise extraordinary diligence, the determination of which properly belongs to the courts.[31] As may be clearly deduced from our statement in *Aboitiz*, there are instances when the BMI's findings are considered binding. As we explained in *Philippine American General Insurance Co., Inc. v. MGG Marine Services, Inc.*:[32]

> Although the Board of Marine Inquiry ruled only on the administrative liability of the captain and crew of the M/V Peatheray Patrick-G, it had to conduct a thorough investigation of the circumstances surrounding the sinking of the vessel and the loss of its cargo in order to determine their responsibility, if any. The results of its investigation as embodied in its decision on the administrative case clearly indicate that the loss of the cargo was due solely to the attendance of strong winds and huge waves which caused the vessel to accumulate water, tilt to the port side and to eventually keel over. There was thus no error on the part of the Court of Appeals in relying on the factual findings of the Board of Marine Inquiry, for such factual findings, being supported by substantial evidence are persuasive, considering that said administrative body is an expert in matters concerning marine casualties.[33] (Citation omitted.)

Simply put, the rule is that the BMI's findings are binding and conclusive on the courts when it is supported by substantial evidence. This is consistent with the elementary principle in administrative law that findings of fact by administrative tribunals are conclusive when supported by substantial evidence.[34]

In finding that F.F. Cruz was guilty of contributory negligence, the CA relied on the factual findings set forth in the BMI report. The pertinent portions of the report detailed how F.F. Cruz failed to observe the proper standard of diligence in view of the imminent arrival of typhoon Welpring:

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[31] *Id*.

[32] 428 Phil. 705 (2002).

[33] *Id.* at 715-716.

[34] *Barcelona v. Lim*, 734 Phil. 766, 792 (2014).

10. Proper perusal of Exhibit "A-1" shows that only [Pilipino] was well secured with her mooring lines and anchors immediately before the typhoon passed Brooke's Point, Palawan:

x x x x x x x x x

11. From the above observations, it **appears that Barge 609 and Barge 1001 were not individually or separately well secured at the time the strong typhoon "W[e]lpring" was hitting the area of Palawan particularly Brooke[']s Point**. So that if the mooring lines at fore-ends of said vessels which are numbered 2 and 3 respectively as shown in Exhibit A-1 snapped, as indeed it did, the [Pilipino] would have been affected. Barge 609 and Barge 1001 starboard and port sides respectively tied to the port side of [Pilipino]'s 5-ton anchors which are numbered 7 and 8. So if the fore-ends mooring lines of Barge 609 and Barge 1001 parted away from Anchors Nos. 2 and 3, Anchors Nos. 7 and 8 of [Pilipino] would be overloaded and would have a tendency to drag and its mooring lines subjected to undue tension stresses. The cutting off of the fore-end mooring line of Barge 1001 had resulted to her sudden swinging towards the aft portion of [Pilipino] resulting to the bumping/ramming against the latter. x x x

12. **The F.F. Cruz's vessels were located very near the driven piles of Brooke's Point Pier under construction by F.F. Cruz & Co**. In fact[,] before the typhoon "W[e]lpring" came on November 4, 1988, the vessels were still engaged in the actual driving of the posts/piles. The Barges did not change their position except Barge 609 which was required by P.P.A. to vacate the causeway to give way for M/T Jasaan and Barge Florida to dock; Barge 609 then proceeded to the anchorage and dropped anchor at her position as indicated in Exhibit A-1; they only double their preparation of the previous typhoon "Unsang."

The crew did not move the [b]arges to keep away from the driven concrete piles to avoid the unfinished pier from being hit by their vessels in case the anchors dragged or the mooring lines are cut off at the height of the typhoon. So when the fore-end mooring lines of the barges were cut off or dragged because of the strong winds and big waves, the vessels bumped/rammed the driven piles of the unfinished pier thus damaging their hulls resulting to the sinking of Barge 609 and [Pilipino]. Because of the ramming/bumping/smashing by the F.F. Cruz's vessels, the driven piles that were hit were destroyed and/or had fallen down mercilessly.

x x x x x x x x x

14. x x x [A]s admitted by no other than the Project Engineer of the ongoing project at Brooke's Point x x x and the patrons of the F.F. Cruz's vessels, (M/T Imma, [Pilipino], [Barge] 609 and [Barge] 1001), they did not anymore change the original positions of the vessels or move the vessels at the anchorage, relying only upon their previous preparations when typhoon "Unsang" hit the Philippines x x x.[35] (Emphasis supplied.)

In finding that F.F. Cruz was negligent, the BMI clearly identified the evidentiary basis in support of its conclusion. The CA cannot thus be faulted for relying on the BMI's factual findings to support its own conclusion that F.F. Cruz was guilty of contributory negligence because such findings are supported by substantial evidence.

With regard to the exoneration of AMC, however, the CA correctly disregarded certain portions of the BMI report because they were based entirely on conjecture instead of being grounded on substantial evidence. In absolving AMC, the BMI merely stated that:

The Board cannot believe the foregoing version of F.F. Cruz & Co. because no master/captain with vast experience as mariner, like Captain Pino of M/T Jasaan, would maneuver his vessel to go a longer travel with more resistance by the forces of wind and waves, when in fact there is a shorter distance that his vessels could travel with less effort and no possibility at all that they would hit another vessel in the process of maneuvering towards the beach for safety. x x x[36]

Such presumption is unwarranted given the consistent testimonies of F.F. Cruz's witnesses that they saw Jasaan, with Florida in tow, heading towards the direction of their vessels at the height of typhoon Welpring. In contrast, the CA's conclusion that AMC's vessels were responsible for the allision were based on the positive testimonies of F.F. Cruz's witnesses and the admissions of Jasaan's captain and Florida's patron that they indeed moved during the typhoon. On this score, the findings of the CA are consistent with the trial court.

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[35] *Rollo* (G.R. No. 188301), pp. 351-355.

[36] *Id*. at 350.

In sum, we find no gross or extraordinary misperception or manifest bias on the part of the CA when it found that AMC is the immediate and proximate cause of the allision, but that F.F. Cruz is partly responsible for the damage to Pilipino and the driven piles. We further restate one of the exceptions to the general rule that the Court is not a trier of facts: *when the findings are contrary to that of the trial court as a result of its gross or extraordinary misperception of evidence or manifest bias.*

WHEREFORE, the petitions are **DENIED**. The Decision dated February 25, 2009 and Resolution dated June 8, 2009 of the Court of Appeals in CA-G.R. CV No. 86460 are **AFFIRMED**.

SO ORDERED.

Del Castillo[*] (*Acting Chairperson*) and *Tijam, JJ.,* concur.

Sereno, C.J. and *Leonardo-de Castro, J.,* on official leave.

THIRD DIVISION

[G.R. No. 193625. August 30, 2017]

AICHI FORGING COMPANY OF ASIA, INC., *petitioner, vs.* **COURT OF TAX APPEALS - EN BANC and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; JURISDICTION; THE MATTER OF JURISDICTION CANNOT BE WAIVED BECAUSE IT IS CONFERRED BY LAW AND IS NOT

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[*] Designated Acting Working Chairperson per Special Order No. 2473 dated August 24, 2017.

DEPENDENT ON THE CONSENT OR OBJECTION OR THE ACTS OR OMISSIONS OF THE PARTIES OR ANY ONE OF THEM.— [W]hen a case is on appeal, the Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case. Guided by this principle, we shall discuss the timeliness of AICHI's judicial claim, although not raised by the parties in the present petition, in order to determine whether the CTA validly acquired jurisdiction over it. The matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them. In addition, courts have the power to *motu proprio* dismiss an action over which it has no jurisdiction. The grounds for *motu proprio* dismissal by the court are provided in Rule 9, Section 1 of the Revised Rules of Court x x x.

2. TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX; REFUNDS OR TAX CREDITS OF INPUT TAX; KINDS OF REFUNDABLE AMOUNTS, DISTINGUISHED.— The law contemplates two kinds of refundable amounts: (1) unutilized input tax paid on capital goods purchased, and (2) unutilized input tax attributable to zero-rated sales. The claim for tax refund or credit is initially filed before the CIR who is vested with the power and primary x x x jurisdiction to decide on refunds of taxes, fees or other charges, and penalties imposed in relation thereto. In every case, the filing of the administrative claim should be done ***within two years*.** However, the reckoning point of counting such two-year period varies according to the kind of input tax subject matter of the claim. For the input tax paid on capital goods, the counting of the two-year period starts from the close of the taxable quarter *when the purchase was made*; whereas, for input tax attributable to zero-rated sale, from the close of the taxable quarter *when such zero-rated sale was made* (not when the purchase was made).

3. ID.; ID.; ID.; ID.; 120-DAY PERIOD; INTERPRETED AS BOTH MANDATORY AND JURISDICTIONAL SUCH THAT THE TAXPAYER IS FORCED TO AWAIT THE EXPIRATION OF THE PERIOD BEFORE INITIATING AN APPEAL BEFORE THE COURT OF TAX APPEALS; EXCEPTION.— From the submission of the complete documents to support the claim, the CIR has a period of one

hundred twenty (120) days to decide on the claim. If the CIR decides within the 120-day period, the taxpayer may initiate a judicial claim by filing within 30 days an appeal before the CTA. If there is no decision within the 120-day period, the CIR's inaction shall be deemed a denial of the application. In the latter case, the taxpayer may institute the judicial claim, also by an appeal, within 30 days before the CTA. x x x [T]he Court had interpreted the 120-day period as both mandatory and jurisdictional such that the taxpayer is forced to await the expiration of the period before initiating an appeal before the CTA. This must be so because prior to the expiration of the period, the CIR still has the statutory authority to render a decision. If there is no decision and the period has not yet expired, there is no reason to complain of in the meantime. Otherwise stated, there is no cause of action yet as would justify a resort to the court. x x x Nonetheless, in the subsequent landmark decision of *CIR v. San Roque Power Corporation, Taganito Mining Corporation v. CIR*, and *Philex Mining Corporation v. CIR (San Roque)*, the Court recognized an instance when a prematurely filed appeal may be validly taken cognizance of by the CTA. *San Roque* relaxed the strict compliance with the 120-day mandatory and jurisdictional period, specifically for Taganito Mining Corporation, in view of **BIR Ruling No. DA-489-03,** dated **10 December 2003,** which expressly declared that the "*taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of petition for review*." x x x Subsequently, in *Taganito Mining Corporation v. CIR*, the Court reconciled the doctrines in *San Roque* and the *2010 Aichi case* by enunciating that during the window period from 10 December 2003 (issuance of BIR Ruling No. DA-489-03) to 6 October 2010 (date of promulgation of *Aichi*), taxpayer-claimants need not observe the stringent 120-day period.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; THE COURT CANNOT TAKE COGNIZANCE OF A CASE UNLESS ALL AVAILABLE REMEDIES IN THE ADMINISTRATIVE LEVEL ARE FIRST UTILIZED.— A premature invocation of the court's jurisdiction is fatally defective and is susceptible to dismissal for want of jurisdiction. Such is the very essence of the doctrine of exhaustion of

administrative remedies under which the court cannot take cognizance of a case unless all available remedies in the administrative level are first utilized. Whenever granted by law a specific period of time to act, an administrative officer must be given the full benefit of such period. Administrative remedies are exhausted upon the full expiration of the period without any action.

5. TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX; REFUNDS OR TAX CREDITS OF INPUT TAX; THE APPEAL TO THE COURT OF TAX APPEALS IS ALWAYS INITIATED WITHIN THIRTY DAYS FROM DECISION OR INACTION REGARDLESS WHETHER THE DATE OF ITS FILING IS WITHIN OR OUTSIDE THE TWO-YEAR PERIOD OF LIMITATION.— Aichi already settled the matter concerning the proper interpretation of the phrase "*within two (2) years x x x apply for the issuance of a tax credit certificate or refund*" found in Section 112 (D) of the 1997 Tax Code. *Aichi* clarified that the phrase refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. All that is required under the law is that the appeal to the CTA is brought within 30 days from either decision or inaction. Under the foregoing interpretation, there may be two possible scenarios when an appeal to the CTA is considered fatally defective even when initiated ***within*** the two-year prescriptive period: *first*, when there is no decision and the appeal is taken ***prior*** to the lapse of the 120-day mandatory period, except only the appeal within the window period from 10 December 2003 to 6 October 2010; *second*, the appeal is taken ***beyond*** 30 days from either decision or inaction "deemed a denial." In contrast, an appeal ***outside*** the 2-year period is not legally infirm for as long as it is taken within 30 days from the decision or inaction on the administrative claim that must have been initiated within the 2-year prescriptive period. In other words, the appeal to the CTA is always initiated within 30 days from decision or inaction ***regardless*** whether the date of its filing is within or outside the 2-year period of limitation**.** To repeat, except only to the extent allowed by the window period, there is no legal basis for the insistence that the *simultaneous* filing of both administrative and judicial claims (pursuant to Section 112 of the Tax Code) is permissible for as long as both fall within the 2-year prescriptive period.

6. REMEDIAL LAW; ACTIONS; JUDGMENTS; A JUDGMENT IS RENDERED NULL AND VOID WHERE THERE IS WANT OF JURISDICTION OVER A SUBJECT MATTER.— Considering our holding that the CTA did not acquire jurisdiction over the appeal of AICHI, the decision partially granting the refund claim must therefore be set aside as a void judgment. The rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars anyone, and under which all acts performed and all claims flowing out are void.

7. ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE RESORTED TO ONLY IN THE ABSENCE OF APPEAL OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.— [T]he filing of the present Petition for Certiorari under Rule 65 of the 1997 Rules of Court is procedurally flawed. What the petitioner should have done to question the decision of the CTA En Banc was to file before this Court a petition for review under Rule 45 of the same Rules of Court. x x x A petition for certiorari under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law. In this case, there is a plain, speedy and adequate remedy that is available – appeal by certiorari under Rule 45. Appeal is available because the 20 July 2010 Resolution of the CTA En Banc was a final disposition as it denied AICHI's full claim for refund or tax credit of creditable input taxes. The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. AICHI's resort to certiorari proceedings under Rule 65 is, therefore, erroneous and it deserves nothing less than an outright dismissal.

8. ID.; ID.; ID.; ID.; MAY BE TREATED AS APPEAL BY *CERTIORARI* UNDER RULE 45 PROVIDED THE PETITION HAS BEEN FILED WITHIN THE REGLEMENTARY PERIOD OF FIFTEEN DAYS FROM RECEIPT OF THE ASSAILED DECISION OR RESOLUTION.— In several cases, the Court had allowed the liberal application of the Rules of Court. Thus, we treated as appeal by certiorari under Rule 45 what otherwise was

denominated or styled as a petition for certiorari under Rule 65, provided the petition must have been filed within the reglementary period of 15 days from receipt of the assailed decision or resolution. Outside of this circumstance, there should be a strong and justifiable reason for a departure from the established rule of procedure. As the Court had held, it is only for the most persuasive of reasons can such rules be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Here, the petition was filed on the 60th day following the receipt of the assailed resolution of the CTA En Banc, or outside of the 15-day period of appeal by certiorari under Rule 45 but within the 60-day period for filing a petition for certiorari under Rule 65. Unfortunately, petitioner AICHI had not demonstrated any justifiable reason for us to relax the rules and disregard the procedural infirmity of its adopted remedy.

9. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; THE NEGLIGENCE AND MISTAKES OF COUNSEL BIND THE CLIENT EXCEPT WHEN THE NEGLIGENCE OF COUNSEL IS SO GROSS AS TO CONSTITUTE A VIOLATION OF THE DUE PROCESS RIGHTS OF THE CLIENT.— The well-settled rule is that negligence and mistakes of counsel bind the client. The exception is when the negligence of counsel is so gross as to constitute a violation of the due process rights of the client. Even so, it must be convincingly shown that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests. x x x If indeed the petitioner was earnest in recovering the full amount of its refund claim, it could have avoided the negative consequences of the failure to move for dismissal from the CTA Division's partial denial of its claim by simply making a follow-up from its lawyer regarding the status of its case. Worse, it committed the same mistake again by staying passive even after denial of its motion for reconsideration from the decision of the CTA En Banc. Party-litigants share in the responsibility of prosecuting their complaints with assiduousness and should not be expected to simply sit back, relax, and await a favorable outcome. Absent any other compelling reasons, we cannot apply the exception to the rule that the negligence of counsel binds the client so as to excuse the wrongful resort to a petition for certiorari instead of an appeal.

APPEARANCES OF COUNSEL

Aranas Law Office for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

MARTIRES, *J.*:

The Commissioner of Internal Revenue (*CIR*) is given 120 days to decide[1] an administrative claim for refund/credit of unutilized or unapplied input Value Added Tax (VAT) attributable to zero-rated sales. In case of a decision rendered or inaction after the 120-day period, the taxpayer may institute a judicial claim by filing an appeal before the Court of Tax Appeals (CTA) within 30 days from the decision or inaction.[2] Both 120- and 30-day periods are mandatory and jurisdictional.[3] An appeal taken prior to the expiration of the 120-day period without a decision or action of the Commissioner is premature and, thus, without a cause of action. Accordingly, the appeal must be dismissed for lack of jurisdiction.

The Case

Before the Court is a special civil action for certiorari under Rule 65 of the Rules of Court filed by petitioner Aichi Forging Company of Asia, Inc. (AICHI) seeking the reversal and setting aside of the 18 February 2010 Decision[4] and 20 July 2010 Resolution[5] of the CTA En Banc in CTA-EB Case No. 519, which affirmed the 20 March 2009 Decision and 29 July 2009 Resolution of the CTA Second Division (CTA Division) in CTA Case No. 6540 that partially granted the claim of AICHI for

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[1] Section 112 (D) [now renumbered as 112(C)], 1997 Tax Code.

[2] *Id*.

[3] See *Visayas Geothermal Power Company v. Commissioner,* G.R. No. 205279, 26 April 2017.

[4] *Rollo,* pp. 32-49.

[5] *Id.* at 50-55.

tax refund/credit of unutilized or unapplied input VAT attributable to zero-rated sales.

The Antecedents

AICHI is a domestic corporation duly organized and existing under the laws of the Philippines, and is principally engaged in the manufacture, production, and processing of all kinds of steel and steel by products, such as closed impression die steel forgings and all automotive steel parts. It is duly registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer and with the Board of Investments (BOI) as an expanding producer of closed impression die steel forgings.

On 26 September 2002, AICHI filed with the BIR District Office in San Pedro, Laguna, a written claim for refund and/or tax credit of its unutilized input VAT credits for the third and fourth quarters of 2000 and the four taxable quarters of 2001. AICHI sought the tax refund/credit of input VAT for the said taxable quarters in the total sum of ₱18,030,547.77[6] representing VAT payments on importation of capital goods and domestic purchases of goods and services.[7]

As respondent CIR failed to act on the refund claim, and in order to toll the running of the prescriptive period provided under Sections 229 and 112 (D) of the National Internal Revenue Code (Tax Code), AICHI filed, on 30 September 2002, a Petition for Review before the CTA Division.[8]

The Issues

The issue for resolution before the court was whether AICHI was entitled to a refund or issuance of a tax credit certificate of unutilized input VAT attributable to zero-rated sales and

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[6] Later increased to ₱18,203,933.60, per AICHI's Amended Petition for Review with the CTA.

[7] *Rollo,* pp. 33-36; *Joint Stipulation of Facts and Issues,* as adapted in the 18 February 2010 Decision of the CTA *En Banc.*

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

unutilized input tax on importation of capital goods for the period 1 July 2000 to 31 December 2001 (or six consecutive taxable quarters). Corollary thereto was the issue on whether the administrative claim (refund claim with the BIR) and judicial claim (Petition for Review with the CTA) were filed within the statutory periods for filing the claims.

The Proceedings before the CTA Division

After finding that both the administrative and judicial claims were filed within the statutory two-year prescriptive period,[9] the CTA Division partially granted the refund claim of AICHI.

The CTA Division denied AICHI's refund claim with respect to its purchase of capital goods for the period 1 July 2000 to 31 December 2001 because of the latter's failure to show that the goods purchased formed part of its Property, Plant and

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[9] The finding was based on Section 112 of the NIRC, which provides:

SEC. 112. **Refunds or Tax Credits of Input Tax. –**

(A) *Zero-rated or Effectively Zero-rated Sales*. **–** any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

(B) *Capital Goods*. **–** A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Equipment Account and that they were subjected to depreciation allowance. As to the claim for refund of input VAT attributable to zero-rated sales, the CTA only partially granted the claim due to lack of evidence to substantiate the zero-rating of AICHI's sales. In particular, the CTA denied VAT zero-rating on the sales to BOI-registered enterprises on account of non-submission of the required BOI Certification.[10] The dispositive portion of the decision[11] partially granting the refund claim reads as follows:

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, Respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **SIX MILLION NINE HUNDRED NINETY ONE THOUSAND THREE HUNDRED TWENTY and**

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[10] Section 3 of RMO 9-2000 provides:

SEC. 3. Sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered exporter shall be accorded automatic zero-rating, *i.e.*, without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions:

(1) The supplier must be VAT-registered;

(2) The BOI-registered buyer must likewise be VAT-registered;

(3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a ***Certification*** to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;

(4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of ***zero-rating for its sales to said BOI-registered buyers***; and

(5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec. 4.108-1 of Revenue Regulations No. 7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer. (Emphasis supplied.)

[11] *Rollo,* pp. 341-372.

40/100 PESOS (P6,991,320.40), representing unutilized input VAT attributable to zero-rated sales for the period covering July 1, 2000 to December 31, 2001.[12]

Only the CIR moved for reconsideration[13] of the said decision. The CTA Division denied the motion,[14] hence, the appeal by the CIR to the CTA En Banc.

The Proceedings before the CTA En Banc

The CIR questioned the partial grant of the refund claim in favor of AICHI. It claimed that the court did not acquire jurisdiction over the refund claim in view of AICHI's failure to observe the 30-day period to claim refund/tax credit as specified in Sec. 112 of the Tax Code, i.e., appeal to the CTA may be filed *within 30 days* from receipt of the decision denying the claim or *after expiration of 120 days* (denial by inaction). With the filing of the administrative claim on 26 September 2002, the CIR had until 20 January 2003 to act on the matter; and if it failed to do so, AICHI had the right to elevate the case before the CTA within 30 days from 20 January 2003, or on or before 20 February 2003. However, AICHI filed its Petition for Review on 30 September 2002, or before the 30-day period of appeal had commenced. According to the CIR, this period is jurisdictional, thus, AICHI's failure to observe it resulted in the CTA not acquiring jurisdiction over its appeal.[15]

The CTA En Banc was not persuaded. The court ruled that the law does not prohibit the simultaneous filing of the administrative and judicial claims for refund.[16] It further declared that what is controlling is that both claims for refund are filed within the two-year prescriptive period.[17] In sum, the CTA En

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[12] *Id.* at 371.

[13] *Id.* at 379-386.

[14] *Id.* at 400-402.

[15] *Id.* at 409-412.

[16] *Id.* at 39.

[17] *Id.* at 40.

Banc affirmed the assailed decision and resolution of the CTA Division, disposing as follows:

> **WHEREFORE,** the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the March 20, 2009 Decision and July 29, 2009 Resolution of the *CTA Former Second Division* in CTA Case No. 6540 entitled, *"Aichi Forging Company of Asia, Inc. vs. Commissioner of Internal Revenue"* are hereby **AFFIRMED *in toto*.**[18]

This time, both the CIR and AICHI separately filed motions for reconsideration of the CTA En Banc decision. In the assailed resolution of the CTA En Banc, the court ruled:

> **WHEREFORE,** premises considered, there having no new matters or issues advanced by the petitioner-CIR in its Motion which may compel this Court to reverse, modify or amend the March 20, 2009 Decision of the CTA *En Banc*, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit. On the other hand, respondent-AICHI's (sic) Motion for Reconsideration is hereby **DENIED** for being filed out of time.[19]

On 24 September 2010, or sixty days from receipt of the said resolution, AICHI, through a new counsel, filed the instant petition alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the CTA En Banc when it issued the assailed decision and resolution.

The Present Petition for Certiorari

To support its petition, AICHI raised the following grounds:

A. PETITIONER'S MOTION FOR RECONSIDERATION (of the Decision promulgated on 18 February 2010) WAS FILED ON TIME;

B. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE SAID MOTION WAS FILED OUT OF TIME, IN THE INTEREST OF SUBSTANTIAL JUSTICE, AND DUE TO GROSS NEGLIGENCE OF PETITIONER'S FORMER COUNSEL, THE

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[18] *Id*.

[19] *Id*. at 52-53.

HONORABLE COURT OF TAX APPEALS EN BANC SHOULD HAVE CONSIDERED PETITIONER'S MOTION FOR RECONSIDERATION;

C. PETITIONER IS ENTITLED TO THE CLAIMED REFUND AS EVIDENCED BY THE CERTIFICATION ISSUED BY THE BOARD OF INVESTMENTS.[20]

Citing Section 1, Rule 15 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals (Revised CTA Rules),[21] AICHI claims that it has fifteen (15) days from receipt of the questioned decision of the CTA En Banc within which to file a motion for reconsideration. Considering that it received the 18 February 2010 Decision of the CTA *En Banc* on 25 February 2010, and that it filed the Motion for Reconsideration on 12 March 2010, AICHI asserts that the filing of the said motion was made within the prescriptive period provided in the law.[22]

AICHI also ascribes gross negligence on the part of its former counsel when it repeatedly failed to avail of the remedies under the law after obtaining unfavorable decisions and/or resolutions of the CTA, to wit: (1) failure to file a motion for reconsideration or new trial from the decision of the CTA Division partially denying AICHI's claim for refund; and (2) failure to appeal to the Supreme Court after receiving the resolution of the CTA En Banc denying AICHI's motion for reconsideration of the decision of the CTA En Banc. Such gross negligence of the former counsel, AICHI claims, does not bind the latter and, thus, its motion for reconsideration of the decision of the CTA En Banc ought to have been considered by the latter.[23]

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[20] *Id.* at 18.

[21] The provision reads:

Section 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial within fifteen days from the date he received the notice of the decision, resolution or order of the Court in question.

[22] *Rollo,* pp. 19-20.

[23] *Id.* at 21-24.

Finally, AICHI argues that it is entitled to the refund of unutilized input VAT because its sales to Asian Transmission Corporation and Honda Philippines are qualified for zero-rating, the latter being a BOI-registered enterprise, as evidenced by a Certification issued by the BOI. Said certification was attached by AICHI in its motion for reconsideration from the CTA En Banc decision.[24]

Without giving it due course, we required the respondents to submit their comment to the said petition.[25]

The Arguments of the CIR

In its Comment,[26] the CIR anchored its opposition to the petition on the following arguments:

I. PETITIONER FAILED TO AVAIL OF THE PROPER REMEDY.

II. THE CTA EN BANC DID NOT ERR WHEN IT DENIED PETITIONER'S MOTION FOR RECONSIDERATION.

III. PETITIONER IS NOT ENTITLED TO ITS CLAIM FOR REFUND.[27]

The CIR maintains that under Republic Act No. 9282 (R.A. No. 9282)[28] and the Revised CTA Rules,[29] an aggrieved party may appeal a decision or ruling of the CTA En Banc by filing

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[24] *Id*. at 24-26.

[25] *Id.* at 488.

[26] *Id.* at 530 to 551.

[27] *Id.* at 534.

[28] *Id*. at 536. The relevant provision reads:

SEC. 19. Review by *Certiorari*. – A party adversely affected by a decision or ruling of the CTA *en banc* may file with the Supreme Court a verified petition for review on *certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

[29] *Id*. The pertinent provision reads:

a verified petition for review under Rule 45 of the Rules of Court. Conformably thereto, the petitioner should have filed a petition for review on certiorari under Rule 45 instead of a special civil action for certiorari under Rule 65. Being procedurally flawed, the instant petition must be dismissed outright.[30]

As to the timeliness of the motion for reconsideration, the CIR contends that the petitioner had mistakenly reckoned the counting of the 15-day period to file the motion for reconsideration from the receipt of the decision of the CTA En Banc. The CIR maintains that the reckoning point should be the petitioner's receipt of the decision of the CTA Division. Considering that no such motion for reconsideration within the 15-day period was filed by the petitioner before the CTA Division, the CIR concludes that the petitioner's right to question the decision of the CTA Division had already lapsed and, accordingly, the petitioner may no longer move for a reconsideration of a decision which it never questioned.[31]

Anent petitioner AICHI's entitlement to the claim for refund, the CIR contends that the BOI Certification, which was attached to the petitioner's Motion for Reconsideration, dated 12 March 2010, should not be considered at all as it was presented only during appeal (before the CTA En Banc). In any event, the

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Rule 16

APPEAL

SECTION 1. *Appeal to Supreme Court by petition for review on certiorari.* – A party adversely affected by a decision or ruling of the Court en banc may appeal therefrom by filing with the Supreme Court a verified petition for review on *certiorari* within fifteen days from receipt of a copy of the decision or resolution, as provided in Rule 45 of the Rules of Court. If such party has filed a motion for reconsideration or for new trial, the period herein fixed shall run from the party's receipt of a copy of the resolution denying the motion for reconsideration or for new trial.

[30] *Rollo,* p. 537.

[31] *Id.* at 540-542.

certification does not prove AICHI's claim for refund. In said certification, it is required by the terms and conditions that AICHI must comply with the production schedule of 3,900 metric tons or the peso equivalent of ₱257,400,000.00. However, this data is not verifiable from the petitioner's Quarterly VAT Returns or from the testimonies of its witness. The CIR, thus, submits that the noncompliance with the BOI terms and conditions further warrants the denial of AICHI's claim for refund.[32]

The Issues

Based on the opposing contentions of the parties, the issues for resolution are the following: *(1)* whether AICHI availed of the correct remedy; *(2)* whether AICHI can still question the CTA Division ruling; and *(3)* whether AICHI sufficiently proved its entitlement to the refund or tax credit.

The Court's Ruling

We deny the petition.

I.

The CTA had no jurisdiction over the judicial claim. AICHI's judicial claim was filed prematurely and, thus, without cause of action.

First, we invoke the age-old rule that when a case is on appeal, the Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case.[33] Guided by this principle, we shall discuss the timeliness of AICHI's judicial claim, although not raised by the parties in the present petition, in order to determine whether the CTA validly acquired jurisdiction over it. The matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent

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[32] *Id.* at 545-546.

[33] See *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR*, 757 Phil. 54, 69 (2015), citing *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR*, 727 Phil. 487, 499 (2014).

or objection or the acts or omissions of the parties or any one of them.[34] In addition, courts have the power to *motu proprio* dismiss an action over which it has no jurisdiction. The grounds for *motu proprio* dismissal by the court are provided in Rule 9, Section 1 of the Revised Rules of Court, to wit:

> SECTION 1. *Defenses and objections not pleaded* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has ***no jurisdiction over the subject matter***, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (emphasis supplied)

On the judicial claim for refund or tax credit of AICHI, the CTA did not validly acquire jurisdiction over such judicial claim because the appeal before the court was made prematurely. When the CTA acts without jurisdiction, its decision is void. Consequently, the answer to the second issue, i.e., whether AICHI can still question the CTA ruling, becomes irrelevant.

The present case stemmed from a claim for refund or tax credit of alleged unutilized input VAT attributable to zero-rated sales and unutilized input VAT on the purchase of capital goods for the third and fourth quarters of 2000 and the four taxable quarters of 2001. The refund or tax credit of input taxes corresponding to the six taxable quarters were combined into one **administrative claim** filed before the BIR on **26 September 2002**. On the other hand, the **judicial claim** was filed before the CTA, through a petition for review, on **30 September 2002**, or ***a mere four days*** after the administrative claim was filed. It is not disputed that the administrative claim was not acted upon by the BIR.

Convinced that the judicial claim of AICHI was properly made, the CTA Division took cognizance of the case and proceeded with trial on the merits. Among the issues presented

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[34] *Id*., citing *Nippon Express (Philippines) Corporation v. CIR*, 706 Phil. 442, 450-451 (2013).

by the parties was the timeliness of both the administrative and judicial claims of AICHI. In its decision, the CTA Division categorically found that both the dates of filing the administrative claim and judicial claim were within the two-year prescriptive period reckoned from the close of each of the taxable quarters from the third quarter of 2000 up to the last quarter of 2001, to wit:

Year	Quarter	Reckoning point of counting the 2-year period	Expiry date of prescriptive period	Date of filing of administrative claim	Date of filing of judicial claim
2000	3rd	September 30, 2000	September 30, 2002	September 26, 2002	September 30, 2002
	4th	December 31, 2000	December 31, 2002	September 26, 2002	September 30, 2002
2001	1st	March 31, 2001	March 31, 2003	September 26, 2002	September 30, 2002
	2nd	June 30, 2001	June 30, 2003	September 26, 2002	September 30, 2002
	3rd	September 30, 2001	September 30, 2003	September 26, 2002	September 30, 2002
	4th	December 31, 2001	December 31, 2003	September 26, 2002	September 30, 2002

The relevant provisions of the 1997 Tax Code[35] at the time AICHI filed its claim for refund or credit of unutilized input tax reads:

SEC. 112. *Refunds or Tax Credits of Input Tax*. –

(A) Zero-rated or Effectively Zero-rated Sales.– Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, ***within two (2) years after the close of the taxable quarter when the sales were made***, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,

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[35] Before the amendments introduced by R.A. No. 9337 and R.A. No. 9361. R.A. No. 9337 took force on 1 November 2005; R.A. No. 9361 on 28 November 2006.

except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x

(B) Capital Goods. – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes.

The application may be made only ***within two (2) years after the close of the taxable quarter when the importation or purchase was made***.

x x x x x x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made.-In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes ***within one hundred twenty (120) days from the date of submission of complete documents*** in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or **the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals**. (emphasis supplied)

The law contemplates two kinds of refundable amounts: (1) unutilized input tax paid on capital goods purchased, and (2) unutilized input tax attributable to zero-rated sales. The claim for tax refund or credit is initially filed before the CIR who is vested with the power and primary with jurisdiction to decide on refunds of taxes, fees or other charges, and penalties imposed in relation thereto.[36] In every case, the filing of the administrative claim should be done ***within two years***. However, the reckoning point of counting such two-year period varies according to the kind of input tax subject matter of the claim. For the input tax paid on capital goods, the counting of the two-year period starts from the close of the taxable quarter *when the purchase was*

[36] See Section 4, Tax Code.

made; whereas, for input tax attributable to zero-rated sale, from the close of the taxable quarter *when such zero-rated sale was made* (not when the purchase was made).

From the submission of the complete documents to support the claim, the CIR has a period of one hundred twenty (120) days to decide on the claim. If the CIR decides within the 120-day period, the taxpayer may initiate a judicial claim by filing within 30 days an appeal before the CTA. If there is no decision within the 120-day period, the CIR's inaction shall be deemed a denial of the application.[37] In the latter case, the taxpayer may institute the judicial claim, also by an appeal, within 30 days before the CTA.

Generally, the 120-day waiting period is both mandatory and jurisdictional.

In a long line of cases,[38] the Court had interpreted the 120-day period as both mandatory and jurisdictional such that the taxpayer is forced to await the expiration of the period before initiating an appeal before the CTA. This must be so because prior to the expiration of the period, the CIR still has the statutory authority to render a decision. If there is no decision and the period has not yet expired, there is no reason to complain of in the meantime. Otherwise stated, there is no cause of action yet as would justify a resort to the court.

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[37] Section 11, R.A. No. 1125, as amended; See also *CIR v. San Roque Power Corporation*, 703 Phil. 310, 355 (2013).

[38] Some of these cases are: *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. CIR,* G.R. No. 201326, 8 February 2017; *Deutsche v. CIR*, G.R. No. 197980, 1 December 2016; *Coral Bay Nickel Corporation v. CIR,* G.R. No. 190506, 13 June 2016; *Procter and Gamble Asia PTE Ltd. V. CIR,* G.R. No. 204277, 30 May 2016, 791 SCRA 392, 407; *Silicon Philippines, Inc. v. CIR*, 757 Phil. 54, 68 (2015); *Pilipinas Total Gas, Inc. v. CIR,* G.R. No. 207112, 8 December 2015, 776 SCRA 395, 428; *Mindanao II Geothermal Partnership v. CIR*, 749 Phil. 485, 491 (2014); *CIR v. San Roque Power Corporation* 703 Phil. 310 (2013); *Nippon Express (Philippines) Corporation v. CIR,* 706 Phil. 442, 450 (2013); *CIR v. Aichi Forging Company of Asia, Inc.*, 646 Phil. 710 (2010).

A premature invocation of the court's jurisdiction is fatally defective and is susceptible to dismissal for want of jurisdiction. Such is the very essence of the doctrine of exhaustion of administrative remedies under which the court cannot take cognizance of a case unless all available remedies in the administrative level are first utilized. Whenever granted by law a specific period of time to act, an administrative officer must be given the full benefit of such period. Administrative remedies are exhausted upon the full expiration of the period without any action.

The first test case regarding the mandatory and jurisdictional nature of the 120+30-day waiting periods[39] provided in Section 112 (D)[40] of the 1997 Tax Code is *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*, G.R. No. 184823, 6 October 2010.[41] In that landmark case, the Court rejected as without legal basis the assertion of the respondent taxpayer that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period. The Court explained that Section 112 (D) contemplated two scenarios: (1) a decision is made *before* the expiration of the 120-day period; and (2) no decision *after* such 120-day period. In either instance, the appeal with the CTA can only be made within 30 days *after* the decision or inaction. Emphatically, *Aichi* announced that the 120-day period is crucial in filing an appeal with the CTA.

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[39] The precursor of the 120-day period under Section 112 (D) of the 1997 Tax Code is Section 106 (d) of the old 1977 Tax Code which provided for a 60-day period for the Commissioner to decide on the claim. Such 60-day (now 120-day) period has been interpreted, most recently in *CIR v. San Roque Power Corporation*, 703 Phil. 310, 354 (2013), as both mandatory and jurisdictional in character.

[40] Now renumbered Section 112 (C), Tax Code, pursuant to R.A. No. 9337.

[41] 646 Phil. 710 (2010).

The exception: Judicial claims filed from 10 December 2003 up to 6 October 2010

Nonetheless, in the subsequent landmark decision of *CIR v. San Roque Power Corporation, Taganito Mining Corporation v. CIR,* and *Philex Mining Corporation v. CIR (San Roque),*[42] the Court recognized an instance when a prematurely filed appeal may be validly taken cognizance of by the CTA. *San Roque* relaxed the strict compliance with the 120-day mandatory and jurisdictional period, specifically for Taganito Mining Corporation, in view of **BIR Ruling No. DA-489-03**, dated **10 December 2003**, which expressly declared that the *"taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of petition for review."* Pertinently, the prematurely filed appeal of San Roque Power Corporation before the CTA was dismissed because it came *before* the issuance of BIR Ruling No. DA-489-03. On the other hand, Taganito Mining Corporation's appeal was allowed because it was taken *after* the issuance of said BIR Ruling.[43]

Subsequently, in *Taganito Mining Corporation v. CIR,*[44] the Court reconciled the doctrines in *San Roque* and the *2010 Aichi case* by enunciating that during the window period from 10 December 2003 (issuance of BIR Ruling No. DA-489-03) to 6 October 2010 (date of promulgation of *Aichi*), taxpayer-claimants need not observe the stringent 120-day period. We said —

> Reconciling the pronouncements in the Aichi and San Roque cases, the rule must therefore be that during the period December 10, 2003 (when BIR Ruling No. DA-489-03 was issued) to October 6, 2010

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[42] *Supra* note 37.

[43] Unlike the cases of San Roque and Taganito, the case of Philex was not a *prematurely* filed appeal but a *belatedly* filed appeal, that is, the appeal was filed long after the 120+30 day period. The appeal of Philex was dismissed for lack of jurisdiction, the 30-day period of appeal being jurisdictional in nature. *Taganito Mining Corporation v. CIR,* 703 Phil. 310 (2013).

[44] 736 Phil. 591, 600 (2014).

(when the Aichi case was promulgated), taxpayers-claimants need not observe the 120-day period before it could file a judicial claim for refund of excess input VAT before the CTA. ***Before*** and ***after*** the aforementioned period (i.e., December 10, 2003 to October 6, 2010), the observance of the 120-day period is ***mandatory*** and ***jurisdictional*** to the filing of such claim. (emphasis supplied)

Here, it is not disputed that AICHI had timely filed its *administrative* claim for refund or tax credit before the BIR. The records show that the claim for refund/tax credit of input taxes covering the six separate taxable periods from the 3rd Quarter of 2000 up to the 4th Quarter of 2001 was made on 26 September 2002. Both the CTA Division and CTA En Banc correctly ruled that it fell within the two-year statute of limitations. However, its judicial claim was filed a mere four days later on 30 September 2002, or ***before*** the window period when the taxpayers need not observe the 120-day mandatory and jurisdictional period. Consequently, the general rule applies.

AICHI is similarly situated as San Roque Power Corporation in *San Roque* – both filed their appeals to the CTA without waiting for the 120-day period to lapse ***and*** before the aforesaid window period. As in *San Roque,* AICHI failed to comply with the mandatory 120-day waiting period, thus, the CTA ought to have dismissed the appeal for lack of jurisdiction.

The judicial claim need not fall within the 2-year period.

Both the CTA Division and CTA En Banc were convinced that a simultaneous filing of the administrative and judicial claims is permissible so long as the two claims fall within the two-year prescriptive period.

We do not agree.

Aichi already settled the matter concerning the proper interpretation of the phrase *"within two (2) years x x x apply for the issuance of a tax credit certificate or refund"* found in Section 112 (D) of the 1997 Tax Code. *Aichi* clarified that the phrase refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. All that is required

under the law is that the appeal to the CTA is brought within 30 days from either decision or inaction.

Under the foregoing interpretation, there may be two possible scenarios when an appeal to the CTA is considered fatally defective even when initiated ***within*** the two-year prescriptive period: *first,* when there is no decision and the appeal is taken ***prior*** to the lapse of the 120-day mandatory period,[45] except only the appeal within the window period from 10 December 2003 to 6 October 2010;[46] *second,* the appeal is taken ***beyond*** 30 days from either decision or inaction "deemed a denial."[47] In contrast, an appeal ***outside*** the 2-year period is not legally infirm for as long as it is taken within 30 days from the decision or inaction on the administrative claim that must have been initiated within the 2-year prescriptive period. In other words, the appeal to the CTA is always initiated within 30 days from decision or inaction ***regardless*** whether the date of its filing is within or outside the 2-year period of limitation.

To repeat, except only to the extent allowed by the window period, there is no legal basis for the insistence that the *simultaneous* filing of both administrative and judicial claims (pursuant to Section 112 of the Tax Code) is permissible for as long as both fall within the 2-year prescriptive period.

Existing jurisprudence involving petitioner Aichi

There are two other cases involving AICHI wherein we resolved the same issue on the timeliness of the judicial claims before the CTA – the first is the landmark case of *Aichi (hereinafter 2010 Aichi)*; and the second is *Commissioner v. Aichi Forging Company of Asia, Inc. (2014 Aichi),*[48] promulgated in 2014.

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[45] Illustrated by *Nippon Express (Philippines) Corporation v. CIR,* 706 Phil. 442 (2013).

[46] Illustrated by *Taganito Mining Corporation v. CIR,* 703 Phil. 310 (2013).

[47] Illustrated by *Philex Mining Corporation v. CIR,* 703 Phil. 310 (2013).

[48] 746 Phil. 85 (2014).

Worth mentioning is the predominantly striking similarities between the two cases: *(1)* both involved applications for refund/tax credit of unutilized input VAT under Section 112 of the Tax Code; *(2)* the administrative claims were timely filed before the CIR; *(3)* the judicial claims before the CTA were premature;[49] and *(4)* the judicial claims were ***filed after 10 December 2003***, or the date of the issuance of BIR Ruling No. DA-489-03.[50] Yet, the Court arrived at divergent conclusions on the application of the 120-day period – in *2010 Aichi*, the Court applied the strict compliance with the mandatory 120-day waiting period; whereas, in *2014 Aichi,* the premature filing was allowed following the exception laid down in *San Roque (2013)*. Thus, the Court denied the judicial claim in *2010 Aichi* due to the CTA's lack of jurisdiction over it, but sustained such jurisdiction in *2014 Aichi*.

We clarify.

In *2010 Aichi,* the Court passed upon the timeliness of the judicial claim with the CTA *without* considering BIR Ruling No. DA-489-03. The reason is simple: none of the parties, especially Aichi, had raised the matter on the effect of the said BIR Ruling. It is reasonable to think that Aichi saw no need to present the issue since the CTA already gave due course to its petition and the Commissioner questioned, on motion for reconsideration, the simultaneous filing of both the administrative and judicial claims only after the CTA First Division partially ruled in favor of Aichi. The CTA First Division denied the motion holding that the law does not prohibit the simultaneous filing of the administrative and judicial claims for refund. The CTA En Banc subsequently sustained the CTA First Division, although we dismissed such reasoning in view of the clear wordings of Section 112.

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[49] In *2010 Aichi*, both the administrative and judicial claims were filed on the same day. In *2014 Aichi,* the judicial claim was filed a mere two days after the filing of the administrative claim.

[50] In *2010 Aichi*, the appeal with the CTA was filed on 30 September 2004; whereas the appeal in *2014 Aichi* was filed on 31 March 2005.

It was only in the 2013 case of *San Roque* that BIR Ruling No. DA-489-03 was raised for the first time and, thus, the Court was presented a clear opportunity to discuss its legal effect. The doctrine on the exception to the strict application of the 120-day period laid down in *San Roque* became the controlling law that was followed in numerous subsequent cases, one of which is *2014 Aichi.* Thus, even though the appeal with the CTA in *2010 Aichi* fell within the window period, the exception could not be applied as this was first recognized only in 2013 when *San Roque* was promulgated. On the other hand, it is different in *2014 Aichi* as it must yield to *San Roque.*

The present case, just like *2014 Aichi,* is very much similar to *2010 Aichi,* with the only notable distinction being the date of filing of the appeal with the CTA. As stated previously, the appeal in this case came before the window period. However, such distinction is not significant as our conclusions here and in *2010 Aichi* are the same, that is, the CTA did not acquire jurisdiction in view of the mandatory and jurisdictional nature of the 120-day waiting period.

Considering our holding that the CTA did not acquire jurisdiction over the appeal of AICHI, the decision partially granting the refund claim must therefore be set aside as a void judgment.

The rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void.[51] A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars anyone, and under which all acts performed and all claims flowing out are void.[52] We quote our pronouncement in *Canero v. University of the Philippines*:[53]

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[51] *Paulino v. Court of Appeals,* 735 Phil. 448, 459 (2014).

[52] *Id*. See also *Imperial v. Hon. Armes,* G.R. No. 178842, 30 January 2017.

[53] 481 Phil. 249, 267 (2004).

A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment.

Since the judgment of the CTA Division is void, it becomes futile for any of the parties to question it. It, therefore, does not matter whether AICHI had timely filed a motion for reconsideration to question either the decision of the CTA En Banc or the CTA Division.

II.

The petitioner adopted the wrong remedy in assailing the decision of the CTA *En Banc*.

We agree with the CIR that the filing of the present Petition for Certiorari under Rule 65 of the 1997 Rules of Court is procedurally flawed. What the petitioner should have done to question the decision of the CTA En Banc was to file before this Court a petition for review under Rule 45 of the same Rules of Court. This is in conformity with Section 11 of R.A. No. 9282, the pertinent text reproduced here:

SECTION 11. Section 18 of the same Act is hereby amended as follows:

SEC. 18. *Appeal to the Court of Tax Appeals En Banc*. – No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc.

SEC. 19. *Review by Certiorari*. – A party adversely affected by a decision or ruling of the CTA en banc may file with the Supreme Court a verified petition for review on certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

Likewise, Section 1, Rule 16 the Revised CTA Rules provides:

RULE 16

APPEAL

SECTION 1. *Appeal to Supreme Court by petition for review on certiorari*. – A party adversely affected by a decision or ruling of the Court en banc may appeal therefrom by filing with the Supreme Court a verified petition for review on certiorari within fifteen days from receipt of a copy of the decision or resolution, as provided in Rule 45 of the Rules of Court. If such party has filed a motion for reconsideration or for new trial, the period herein fixed shall run from the party's receipt of a copy of the resolution denying the motion for reconsideration or for new trial.

A petition for certiorari under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law.[54]

In this case, there is a plain, speedy and adequate remedy that is available – appeal by certiorari under Rule 45. Appeal is available because the 20 July 2010 Resolution of the CTA En Banc was a final disposition as it denied AICHI's full claim for refund or tax credit of creditable input taxes. The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. AICHI's resort to certiorari proceedings under Rule 65 is, therefore, erroneous and it deserves nothing less than an outright dismissal.

In several cases, the Court had allowed the liberal application of the Rules of Court. Thus, we treated as appeal by certiorari under Rule 45 what otherwise was denominated or styled as a petition for certiorari under Rule 65, provided the petition must

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[54] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC,* 716 Phil. 500, 512 (2013).

have been filed within the reglementary period of 15 days from receipt of the assailed decision or resolution. Outside of this circumstance, there should be a strong and justifiable reason for a departure from the established rule of procedure. As the Court had held, it is only for the most persuasive of reasons can such rules be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[55]

Here, the petition was filed on the 60th day following the receipt of the assailed resolution of the CTA En Banc, or outside of the 15-day period of appeal by certiorari under Rule 45 but within the 60-day period for filing a petition for certiorari under Rule 65. Unfortunately, petitioner AICHI had not demonstrated any justifiable reason for us to relax the rules and disregard the procedural infirmity of its adopted remedy. What the petitioner merely did was invoke substantial justice by ascribing gross negligence on the part of its previous counsel. It cites its previous counsel's failure to file a motion for reconsideration of the CTA Division's ruling partially denying its claim for refund, and to promptly file an appeal before this Court from the denial of its motion for reconsideration assailing the decision of the CTA En Banc.

We are not persuaded.

The well-settled rule is that negligence and mistakes of counsel bind the client. The exception is when the negligence of counsel is so gross as to constitute a violation of the due process rights of the client.[56] Even so, it must be convincingly shown that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests.[57] In *Bejarasco, Jr. v. People*,[58] this court reiterated:

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[55] *Galang v. Court of Appeals*, 276 Phil. 748, 755 (1991).

[56] *Ong Lay Hin v. Court of Appeals*, 752 Phil. 15, 23-25 (2015).

[57] *Ibid.*

[58] 656 Phil. 337, 340 (2011), cited in *Ong Lay Hin v. CA, supra* Note 56 at 25.

For the exception to apply . . . the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.

If indeed the petitioner was earnest in recovering the full amount of its refund claim, it could have avoided the negative consequences of the failure to move for dismissal from the CTA Division's partial denial of its claim by simply making a follow-up from its lawyer regarding the status of its case. Worse, it committed the same mistake again by staying passive even after denial of its motion for reconsideration from the decision of the CTA En Banc. Party-litigants share in the responsibility of prosecuting their complaints with assiduousness and should not be expected to simply sit back, relax, and await a favorable outcome.[59] Absent any other compelling reasons, we cannot apply the exception to the rule that the negligence of counsel binds the client so as to excuse the wrongful resort to a petition for certiorari instead of an appeal. Besides, AICHI's citation of the negligence of counsel was meant for the CTA to grant its motion for reconsideration, not for this Court to give due course to the present petition. Thus, there is no cogent justification for granting to the petitioner the preferential treatment of a liberal application of the rules.

It must be emphasized, however, that the outright dismissal of the petition for being the wrong remedy does not mean that the CTA decision and resolution stand. As discussed, the decision of the CTA Division is null and void; therefore, no right can be obtained from it or that all claims flowing out of it is void.

Epilogue

Petitioner AICHI came to this court expecting a reversal of the partial denial of its claim for refund/credit so that it could

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[59] *Spouses Zarate v. Maybank Philippines, Inc.,* 498 Phil. 825-837 (2005).

recover more in addition to what it had been allowed by the CTA. Regrettably, AICHI comes out empty-handed in our judgment. We could not rule on the jurisdiction of the CTA any other way. The law and jurisprudence speak loud and clear. Our solemn duty is to obey it.

All told, the CTA has no jurisdiction over AICHI's judicial claim considering that its Petition for Review was filed prematurely, or without cause of action for failure to exhaust the administrative remedies provided under Section 112 (D) of the Tax Code, as amended. In addition, AICHI availed of the wrong remedy. Likewise, we find no need to pass upon the issue on whether petitioner AICHI had substantiated its claim for refund or tax credit. Indisputably, we must deny AICHI's claim for refund.

WHEREFORE, for lack of jurisdiction, the 20 March 2009 Decision and 29 July 2009 Resolution of the Court of Tax Appeals Second Division in CTA Case No. 6540, and the 18 February 2010 Decision and 20 July 2010 Resolution of the Court of Tax Appeals En Banc in CTA-EB Case No. 519 are hereby **VACATED** and **SET ASIDE**.

Consequently, the petition before this Court is **DENIED.** No costs.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 197654. August 30, 2017]

MERCURY DRUG CORPORATION and ROLANDO J. DEL ROSARIO, *petitioners, vs.* **SPOUSES RICHARD Y. HUANG & CARMEN G. HUANG, and STEPHEN G. HUANG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT; PRIMARY CONSEQUENCE OF THIS PRINCIPLE IS THAT JUDGMENT MAY NO LONGER BE MODIFIED OR AMENDED BY COURTS EVEN IF THE PURPOSE IS TO CORRECT PERCEIVED ERRORS OF LAW OR FACT; RATIONALE.— It is a fundamental principle that a judgment that lapses into finality becomes immutable and unalterable. The primary consequence of this principle is that the judgment may no longer be modified or amended by any court in any manner even if the purpose of the modification or amendment is to correct perceived errors of law or fact. This principle known as the doctrine of immutability of judgment is a matter of sound public policy, which rests upon the practical consideration that every litigation must come to an end. The rationale behind the rule was further explained in *Social Security System v. Isip*, thus: The doctrine of immutability and inalterability of a final judgment has a two-fold purpose: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

2. ID.; ID.; ID.; ID.; EXCEPTIONS.— The doctrine of immutability of judgment, however, is not an iron-clad rule. It is subject to several exceptions, namely: (1) [T]he correction of clerical errors; (2) [T]he so-called *nunc pro tunc* entries which cause no prejudice

to any party; (3) [V]oid judgments; and (4) [W]henever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

3. ID.; ID.; ID.; ID.; ID.; CORRECTION OF CLERICAL ERRORS; ILLUSTRATED.— Clerical errors or ambiguities in the dispositive portion of a judgment may result from inadvertence. These errors can be rectified without violating the doctrine of immutability of judgment provided that the modification does not affect the substance of the controversy. Clerical errors are best exemplified by typographical errors or arithmetic miscalculations. They also include instances when words are interchanged. *Baguio v. Bandal* was illustrative. The dispositive portion of the decision ordered the defendants "to deliver the possession of Lot 1868 . . . to [p]laintiffs." Upon motion, the trial court subsequently amended Lot 1868 to Lot 1898. This Court sustained the modification since it was patently clear that the subject of the controversy was Lot 1898. The error addressed by the lower court was "merely clerical and typographical," which did not affect the rights of the parties.

4. ID.; ID.; ID.; ID.; ID.; *NUNC PRO TUNC* ENTRIES WHICH CAUSE NO PREJUDICE TO ANY PARTY; EXPLAINED.— The exercise of issuing *nunc pro tunc* orders or judgments is narrowly confined to cases where there is a need to correct mistakes or omissions arising from inadvertence so that the record reflects judicial action, which had previously been taken. Furthermore, *nunc pro tunc* judgments or orders can only be rendered if none of the parties will be prejudiced. Parties seeking the issuance of *nunc pro tunc* judgments or orders must allege and prove that the court took a particular action and that the action was omitted through inadvertence. On the other hand, courts must ensure that the matters sought to be entered are supported by facts or data. This may be accomplished by referring to the records of the case.

5. ID.; ID.; ID.; ID.; ID.; VOID JUDGMENTS; DISCUSSED.— The doctrine of immutability of judgment is premised upon the existence of a final and executory judgment. It is, therefore, inapplicable where the judgment never attains finality, as in the case of void judgments. Void judgments produce "no legal [or] binding effect." Hence, they are deemed non-existent. They may result from the "lack of jurisdiction over the subject matter"

or a lack of jurisdiction over the person of either of the parties. They may also arise if they were rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. x x x A void judgment never acquires the status of a final and executory judgment. Parties may, therefore, challenge them without running afoul of the doctrine of immutability of judgment. A direct attack may be brought either through a petition for annulment of judgment under Rule 47 of the Rules of Court or through a petition for certiorari under Rule 65 of the Rules of Court. A void judgment may also be challenged collaterally "by assailing its validity in another action where it is invoked."

6. **ID.; ID.; ID.; ID.; ID.; HAPPENING OF A SUPERVENING EVENT; CONDITIONS; EXPLAINED.—** The happening of a supervening event is likewise a ground to set aside or amend a final and executory judgment. This exception was explained in *Natalia Realty, Inc. v. Court of Appeals*, thus: One of the exceptions to the principle of immutability of final judgments is the existence of supervening events. Supervening events refer to facts which transpire *after* judgment has become final and executory or to new circumstances which developed *after* the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time. Parties must establish two (2) conditions in order to properly invoke the exception on supervening events. First, the fact constituting the supervening event must have transpired after the judgment has become final and executory. It should not have existed prior to the finality of the judgment. Second, it must be shown that the supervening event "affects or changes the substance of the judgment and renders its execution inequitable."

7. **ID.; ID.; ID.; ID.; ISSUANCE OF A WRIT OF EXECUTION IS MINISTERIAL UPON THE COURT IN CASE OF A FINAL AND EXECUTORY JUDGMENT; WRIT MUST CONFORM TO THE JUDGMENT SOUGHT TO BE ENFORCED; CASE AT BAR.—** Another effect of a final and executory judgment is that winning litigants are entitled to the satisfaction of the judgment through a writ of execution. A writ of execution must substantially conform to the judgment sought to be enforced. A writ of execution that exceeds the tenor of the judgment is patently void and should be struck down. Upon a finding of its invalidity, the case may be remanded

to the lower court for the issuance of the proper writ. In this case, the Writ of Execution issued by the Regional Trial Court neither varied nor departed from the terms of the judgment in any manner. It was faithful to what the trial court decreed.

APPEARANCES OF COUNSEL

Morales Rojas & Risos-Vidal for petitioners.
Law Firm of Diaz Del Rosario & Associates for respondents.

D E C I S I O N

LEONEN, *J.*:

A judgment that lapses into finality becomes immutable and unalterable. It can neither be modified nor disturbed by courts in any manner even if the purpose of the modification is to correct perceived errors of fact or law. Parties cannot circumvent this principle by assailing the execution of the judgment. What cannot be done directly cannot be done indirectly.

This is a Petition for Review on Certiorari[1] arising from the execution of a final and executory judgment for damages. The Petition particularly assails the January 20, 2011 Decision[2] and the July 6, 2011 Resolution[3] of the Court of Appeals in CA-GR. SP No. 106647, which sustained the denial of the Motion to Quash Writ of Execution, Motion for Inhibition, and Urgent Motion to Defer the Implementation of Writ of Execution filed by Mercury Drug Corporation and Rolando J. Del Rosario.[4]

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[1] *Rollo*, pp. 29-74.

[2] *Id*. at 12-24. The Decision was penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante of the Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 26-27. The Resolution was penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante of the Fourth Division, Court of Appeals, Manila.

[4] *Id*. at 23-24.

On April 29, 1997, Stephen Huang (Stephen) and his parents, Spouses Richard Y. Huang and Carmen G. Huang, filed a complaint for damages based on quasi-delict against Mercury Drug Corporation (Mercury Drug) and Rolando J. Del Rosario (Del Rosario).[5] Mercury Drug was the registered owner of a six (6)-wheeler truck driven by Del Rosario, which figured in an accident with Stephen's car on the night of December 20, 1996. As a result of the tragic incident, Stephen suffered serious spinal cord injuries. He is now a paraplegic.[6]

After trial, the Regional Trial Court rendered a Decision[7] dated September 29, 2004 finding Mercury Drug and Del Rosario jointly and severally liable for actual damages, compensatory damages, moral damages, exemplary damages, and attorney's fees and litigation expenses.[8] The dispositive portion of this Decision stated:

> WHEREFORE, judgment is rendered finding defendants Mercury Drug Corporation, Inc. and Rolando del Rosario, jointly and severally liable to pay plaintiffs Spouses Richard Y. Huang and Carmen G. Huang, and Stephen Huang the following amounts:
>
> 1. Two Million Nine Hundred Seventy[-]Three Thousand Pesos (₱2,973,000.00) actual damages;
> 2. As compensatory damages:
>   a. Twenty[-]Three Million Four Hundred Sixty[-]One Thousand, and Sixty-Two Pesos (₱23,461,062.00) for life care cost of Stephen;
>   b. Ten Million Pesos (₱10,000,000.00) as and for lost or impaired earning capacity of Stephen;

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[5] *Id*. at 13.

[6] *Id*. at 642, Comment.

[7] *Id*. at 122-163. The Decision, docketed as Civil Case No. 97-918, was penned by Judge Delia H. Panganiban of Branch 64, Regional Trial Court, Makati City.

[8] *Id*. at 162-163.

3. Four Million Pesos (₱4,000,000.00) as moral damages;

4. Two Million Pesos (₱2,000,000.00) as exemplary damages; and

5. One Million Pesos (₱1,000,000.00) as attorney[']s fees and litigation expense[s].

The defendants' counterclaim is DISMISSED.

SO ORDERED.[9]

The Court of Appeals affirmed the Regional Trial Court Decision but reduced the award of moral damages from ₱4,000,000.00 to ₱1,000,000.00. Mercury Drug and Del Rosario elevated the Court of Appeals Decision to this Court for review.[10]

On June 22, 2007, this Court in *Mercury Drug Corporation v. Spouses Huang*[11] affirmed the Decision of the Court of Appeals.[12] Mercury Drug and Del Rosario moved for reconsideration and/or new trial arguing that Stephen was not entitled to the entire monetary award because he had partially recovered from his injuries.[13] The Motion was denied with finality in the Resolution dated August 8, 2007.[14] Entry of judgment was made on October 3, 2007.[15]

On February 1, 2008, Stephen and his parents moved for the execution of the judgment[16] before the Regional Trial Court of Makati to which Mercury Drug and Del Rosario filed an opposition.[17]

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[9] *Id*. at 162-163.

[10] *Id*. at 14.

[11] 552 Phil. 496 (2007) [Per *C.J.* Puno, First Division].

[12] *Rollo*, p. 14.

[13] *Id*. at 245-280.

[14] *Id*. at 14.

[15] *Id*. at 696.

[16] *Id*. at 292-296-A.

[17] *Id*. at 647, Comment.

The Regional Trial Court granted the Motion for Execution in the Order[18] dated July 21, 2008. The corresponding Writ of Execution was then issued,[19] thus:

> You are commanded to demand from MERCURY DRUG CORPORATION and ROLANDO J. DEL ROSARIO at #7 Mercury Avenue, Libis, Quezon City and C. Valle Street, Dolores. Taytay, Rizal, respectively, the judgment obligors, the immediate payment in full of the sums of TWO MILLION NINE HUNDRED SEVENTY[-]THREE THOUSAND PESOS (₱2,973,000.00), Philippine Currency, as actual damages; TWENTY[-]THREE MILLION FOUR HUNDRED SIXTY[-]ONE THOUSAND AND SIXTY[-]TWO PESOS (₱23,461,062.00) for life care cost of Stephen; TEN MILLION PESOS (₱10,000,000.00) as and for lost or impaired earning capacity of Stephen; ONE MILLION PESOS (₱1,000,000.00) as moral damages; TWO MILLION PESOS (₱2,000,000.00) as exemplary damages; and ONE MILLION PESOS (₱1,000,000.00) as attorney's fees and litigation expense, together with your lawful fees for service of this execution, which SPOUSES RICHARD Y. HUANG & CARMEN G. HUANG and STEPHEN G. HUANG, the judgment obligees, recovered in this case against said judgment obligors, and to tender the same to said judgment obligees and return this writ, with the lawful fees, to this Court within thirty (30) days from the date of receipt hereof with your proceedings indorsed thereon.[20]

On August 26, 2008, Mercury Drug and Del Rosario moved to quash the Writ of Execution[21] as it allegedly contravened the tenor of the judgment. They also moved for the inhibition of Presiding Judge[22] Gina M. Bibat-Palamos.[23] Pending the resolution of these motions, the sheriff began to garnish Mercury Drug and Del Rosario's bank accounts.[24] Mercury Drug and

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[18] *Id*. at 297-300.

[19] *Id*. at 301-302.

[20] *Id*. at 301-302.

[21] *Id*. at 304-320.

[22] *Id*. at 321-328.

[23] *Id*. at 388-390.

[24] *Id*. at 40.

Del Rosario filed an urgent motion to defer the implementation of the Writ of Execution.[25] All three (3) motions were denied by the Regional Trial Court.[26] Mercury Drug and Del Rosario then moved for reconsideration but their motion was denied.[27]

As a result of the garnishment proceedings, Citibank N.A. issued in favor of Richard Y. Huang a Manager's Check in the amount of ₱40,434,062.00.[28] Afterwards, Stephen and his parents filed a Satisfaction of Judgment[29] before the Regional Trial Court.

On December 18, 2008,[30] Mercury Drug and Del Rosario filed a Petition for Certiorari[31] before the Court of Appeals. They argued that the Regional Trial Court committed grave abuse of discretion in allowing the execution of the judgment despite clerical errors in the computation of life care cost and loss of earning capacity.[32]

In its January 20, 2011 Decision,[33] the Court of Appeals denied the Petition for Certiorari holding that the Regional Trial Court did not commit grave abuse of discretion.[34] The Court of Appeals found that "the perceived error in the computation of the award and [its] correction" entailed a substantial amendment of the judgment sought to be enforced.[35] Under the doctrine on immutability of judgments, courts are precluded from altering or modifying a final and executory judgment.[36]

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[25] *Id.*

[26] *Id.* at 15.

[27] *Id.*

[28] *Id.* at 751.

[29] *Id.* at 749-750.

[30] *Id.* at 41.

[31] *Id.* at 407-446.

[32] *Id.* at 424.

[33] *Id.* at 12-24.

[34] *Id.* at 16-24.

[35] *Id.* at 19.

[36] *Id.*

Mercury Drug and Del Rosario moved for reconsideration but their Motion was denied in the Reso1ution[37] dated July 6, 2011.

On September 1, 2011, Mercury Drug and Del Rosario (petitioners) filed this Petition for Review on Certiorari[38] before this Court to which Stephen and his parents (respondents) filed a Comment.[39] Petitioners then filed a Reply[40] on September 25, 2013.[41]

In the Resolution[42] dated December 11, 2013, this Court gave due course to the Petition and required both parties to submit their respective memoranda. The parties filed their respective Memoranda on March 14, 2014.[43]

Petitioners assert that the dispositive portion of the September 29, 2004 Decision and the corresponding Writ of Execution varied the tenor of the judgment. They point out, in particular, that the amounts of life care cost and loss of earning capacity reflected in the dispositive portion and the writ of execution do not correspond to those stated in the body of the decision.[44]

According to petitioners, respondent Stephen is only entitled to a life care cost of ₱7,102,640.00 instead of ₱23,461,062.00 based on his average monthly expenses and his life expectancy.[45] Petitioners also point out that the award of ₱10,000,000.00 as loss of earning capacity is patently excessive.[46] Based on

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

[38] *Id*. at 29-74.

[39] *Id*. at 641-689.

[40] *Id*. at 790-810.

[41] *Id*. at 790.

[42] *Id*. at 811-812.

[43] *Id*. at 825-926.

[44] *Id*. at 43-51.

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

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

respondent Stephen's life expectancy, projected monthly salary, and the time within which he could have obtained gainful employment, the award of loss of earning capacity should only be ₱5,040,000.00.[47] Petitioners claim that there were clerical errors in the computation of life care cost and loss of earning capacity.[48] However, at the same time, they contend that the two (2) monetary awards were not "supported in the body of the decision [or in] the records of the case."[49]

Assuming that there were no clerical errors, petitioners assert that respondents cannot immediately collect the two (2) monetary awards in full.[50] The amounts of life care cost and loss of earning capacity should be paid in installments or "amortized over the probable lifetime of Stephen."[51] Petitioners, citing *Advincula v. Advincula*[52] and *Canonizado v. Benitez*,[53] argue that life care cost is similar to judicial support.[54] Hence, it should be paid monthly.[55] Loss of earning capacity should likewise be amortized since it is akin to a monthly income.[56]

On the other hand, respondents assert that petitioners are prohibited from questioning the propriety of the monetary awards under the doctrine of immutability of final judgments.[57] There are no clerical errors in the computation of the two (2) monetary awards.[58] Respondents contend that the reduction of these

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

[48] *Id*. at 43-51.

[49] *Id*. at 792.

[50] *Id*. at 58.

[51] *Id*. at 49.

[52] 119 Phil. 448 (1964) [Per *J*. Paredes, *En Banc*].

[53] 212 Phil. 564 (1984) [Per *J*. Gutierrez, Jr., First Division].

[54] *Rollo*, pp. 59-60.

[55] *Id*.

[56] *Id*. at 49.

[57] *Id*. at 656-662.

[58] *Id*. at 676-679.

amounts would amount to a substantial amendment of a final and executory judgment.[59]

Respondents add that petitioners are estopped from raising the issues in the present Petition because they have been considered and passed upon by this Court.[60] Lastly, respondents disagree that the two (2) monetary awards should be paid on installment basis.[61] The dispositive portion of the judgment sought to be enforced is silent regarding the manner of payment.[62] Hence, Rule 39, Section 9(a) of the Rules of Court[63] should govern.[64]

This case presents the following issues for this Court's resolution:

First, whether or not the case falls under any of the exceptions to the doctrine of immutability of judgments. Subsumed in this issue is whether or not a clerical error exists that would warrant the modification of the dispositive portion of the judgment;[65]

Second, whether or not the Writ of Execution conforms to the judgment sought to be enforced; and

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[59] *Id*.

[60] *Id*. at 665-676.

[61] *Id*. at 679-682.

[62] *Id*. at 682.

[63] RULES OF COURT, Rule 39, Sec. 9(a) provides:

Section 9. Execution of Judgments for Money, How Enforced. – (a) Immediate Payment on Demand. – The officer shall enforce an execution of a judgment for money be demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

[64] *Id*. at 680-681.

[65] *Id*. at 897-898.

Lastly, whether or not the monetary awards in dispute should be paid in installments or in lump sum.[66]

The Petition is denied.

I

A final and executory judgment produces certain effects. Winning litigants are entitled to the satisfaction of the judgment through a writ of execution. On the other hand, courts are barred from modifying the rights and obligations of the parties, which had been adjudicated upon. They have the ministerial duty to issue a writ of execution to enforce the judgment.

It is a fundamental principle that a judgment that lapses into finality becomes immutable and unalterable.[67] The primary consequence of this principle is that the judgment may no longer be modified or amended by any court in any manner even if the purpose of the modification or amendment is to correct perceived errors of law or fact.[68] This principle known as the doctrine of immutability of judgment is a matter of sound public policy,[69] which rests upon the practical consideration that every litigation must come to an end.[70]

The rationale behind the rule was further explained in *Social Security System v. Isip*,[71] thus:

> The doctrine of immutability and inalterability of a final judgment has a two-fold purpose: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies

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[66] *Id*. at 898.

[67] *National Housing Authority v. Court of Appeals*, 731 Phil. 400, 405-406 [Per *J*. Perlas-Bernabe, Second Division].

[68] *Id*.

[69] *Id*.

[70] *Id*. at 405.

[71] 549 Phil. 112 (2007) [Per *J*. Corona, *En Banc*].

cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[72]

The doctrine of immutability of judgment, however, is not an iron-clad rule.[73] It is subject to several exceptions, namely:

(1) [T]he correction of clerical errors;

(2) [T]he so-called *nunc pro tunc* entries which cause no prejudice to any party;

(3) [V]oid judgments; and

(4) [W]henever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[74]

I.A

Clerical errors or ambiguities in the dispositive portion of a judgment may result from inadvertence. These errors can be rectified without violating the doctrine of immutability of judgment provided that the modification does not affect the substance of the controversy.[75]

Clerical errors are best exemplified by typographical errors or arithmetic miscalculations.[76] They also include instances when words are interchanged.[77]

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[72] *Id*. at 116.

[73] *FGU Insurance Corp. v. Regional Trial Court of Makati City*, *Branch 66*, 659 Phil. 117, 123 (2011) [Per J. Mendoza, Second Division].

[74] *Id*.

[75] *Filipino Legion Corporation v. Court of Appeals*, 155 Phil. 616, 631 (1974) [Per J. Muñoz Palma, First Division].

[76] *Republic Surety and Insurance Co., Inc. v. Intermediate Appellate Court*, 236 Phil. 332, 338 (1987) [Per J. Feliciano, Third Division].

[77] *Go v. Echavez*, 765 Phil. 410, 423 (2015) [Per J. Brion, Second Division] citing *Rebuldela v. Intermediate Appellate Court*, 239 Phil. 487 (1987) [Per J. Paras, First Division] and *Municipality of Antipolo v. Zapanta*, 230 Phil. 429 (1986) [Per J. Melencio-Herrera, First Division).

Baguio v. Bandal[78] was illustrative. The dispositive portion of the decision ordered the defendants "to deliver the possession of Lot 1868 . . . to [p]laintiffs."[79] Upon motion, the trial court subsequently amended Lot 1868 to Lot 1898.[80] This Court sustained the modification since it was patently clear that the subject of the controversy was Lot 1898.[81] The error addressed by the lower court was "merely clerical and typographical,"[82] which did not affect the rights of the parties.

The same rule was applied in *Filipino Legion Corporation v. Court of Appeals*.[83] The dispositive portion of the decision was modified to reflect the proper description of the documents upon which Filipino Legion Corporation based its claim.[84] This Court held that the modification simply cured an ambiguity but did not operate to reduce the area adjudicated to the corporation:[85]

> It is this last-mentioned rule which respondent Court of Appeals applied when it ordered the amendment of the disputed portion of its judgment in CA-G.R. 9196-R, and We see no error in its action considering that all what respondent Court did was to cure an ambiguity and rectify a mistake it had inadvertently made when it referred to the tax declarations of real property marked as Annexes C, D, and E, as *Exhibits* C, D, and E instead of Exhibits F, G, and H, respectively. As indicated earlier, it is obvious that the appellate Court was misguided by the markings "Annex C", "Annex D", "Annex E", appearing respectively on the face of Exhibits F, G, and H, and these letterings C, D and E were the ones the Court mistakenly used when it described the exhibits in question in the dispositive portion of the decision.

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[78] 360 Phil. 865 (1998) [Per *J*. Purisima, Third Division].

[79] *Id*. at 867.

[80] *Id*. at 868.

[81] *Id*. at 869.

[82] *Id*. at 870

[83] 155 Phil. 616 (1974) [Per *J*. Muñoz Palma, First Division].

[84] *Id*. at 631-632.

[85] *Id*. at 632.

The correction of a clerical error is an exception to the general rule that no amendment or correction may be made by the court in its judgment once the latter had become final.[86] (Emphasis in the original)

Clerical errors also contemplate inadvertent omissions that create ambiguity.

In *Locsin v. Paredes and Hodges*,[87] the term "severally" was inserted in the dispositive portion of the judgment.[88] Although the modification changed the import of the judgment's dispositive portion, the allegations in the complaint and the conclusions of fact and law contained in the decision show that the obligation was solidary.[89] Hence, the dispositive portion of the judgment should have stated that "the debt be paid severally[.]"[90]

Similarly, in *Spouses Mahusay v. B.E. San Diego, Inc.*,[91] the lower court amended its decision to include payment of "all penalties and interest due on the unpaid amortizations" under the contracts to sell.[92] The modification, according to this Court, was not a substantial amendment of the judgment,[93] thus:

There was nothing substantial to vary, considering that the issues between the parties were deemed resolved and laid to rest, It is unmistakably clear that petitioners do not deny the execution of the Contracts to Sell and, in fact, admit their liability for the unpaid amortizations of the lots purchased. . . There was a compelling reason for the CA to clarify its original Decision to include the payment of all penalties and interest due on the unpaid amortizations, as provided in the contracts. Considering that the validity of the contracts was

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[86] *Id*. at 633.

[87] 87 Phil. 87 (1936) [Per *J*. Villa-Real, *En Banc*].

[88] *Id*. at 89-92.

[89] *Id*. at 91.

[90] *Id*.

[91] 666 Phil. 528 (2011) [Per *J*. Nachura, Second Division].

[92] *Id*. at 533-534.

[93] *Id*. at 536-538.

never put in question, and there is nothing on record to suggest that the same may be contrary to law, morals, public order, or public policy, there is nothing unlawful in the stipulation requiring the payment of interest/penalty at the rate agreed upon in the contract of the parties.[94] (Citation omitted)

In determining whether there are clerical errors or ambiguities in the dispositive portion of the judgment that should be rectified, courts should refer primarily to "the court's findings of facts and conclusions of law as expressed in the body of the decision."[95] The parties' pleadings may also be consulted if necessary.[96]

I.B

"*Nunc pro tunc*" is a Latin phrase that means "now for then."[97] A judgment *nunc pro tunc* is made to enter into the record an act previously done by the court, which had been omitted either through inadvertence or mistake.[98] It neither operates to correct judicial errors nor to "supply omitted action by the court."[99] Its sole purpose is to make a present record of a "judicial action which has been actually taken."[100]

The concept of *nunc pro tunc* judgments was sufficiently explained in *Lichauco v. Tan Pho*,[101] thus:

[A judgment nunc pro tunc] may be used to make the record speak the truth, but not to make it speak what it did not speak but ought

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[94] *Id*. at 537.

[95] *Filipino Legion Corporation v. Court of Appeals*, 155 Phil. 616, 633 (1974) [Per *J*. Muñoz Palma, First Division]; See *Baguio v. Bandal*, 360 Phil. 865 (1998) [Per *J*. Purisima, Third Division].

[96] *Id*.

[97] *Go v. Echavez*, 765 Phil. 410, 423 (2015) [Per *J*. Brion, Second Division].

[98] *Lichauco v. Tan Pho*, 51 Phil. 862, 879-881 (1923) [Per *J*. Romualdez, *En Banc*].

[99] *Id*. at 880-881.

[100] *Id*. at 879.

[101] 51 Phil. 862 (1923) [Per *J*. Romualdez, *En Banc*].

to have spoken. If the court has not rendered a judgment that it might or should have rendered, or if it has rendered an imperfect or improper judgment, it has no power to remedy these errors or omissions by ordering the entry *nunc pro tunc* of a proper judgment. Hence *a court in entering a judgment nunc pro tunc has no power to construe what the judgment means, but only to enter of record such judgment as had been formerly rendered, but which had not been entered of record as rendered*. In all cases the exercise of the power to enter judgments *nunc pro tunc* presupposes the actual rendition of a judgment, and a mere right to a judgment will not furnish the basis for such an entry.

. . . . . .

If the court has omitted to make an order, which it might or ought to have made, it cannot, at a subsequent term, be made *nunc pro tunc*. *According to some authorities, in all cases in which an entry nunc pro tunc is made, the record should show the facts which authorize the entry, 'but other courts hold that in entering an order nunc pro tunc the court is not confined to an examination of the judges minutes, or written evidence, but may proceed on any satisfactory evidence, including parol testimony.* In the absence of a statute or rule of court requiring it, the failure of the judge to sign the journal entries or the record does not affect the force of the order grante[d].

. . . . . .

The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been.[102] (Emphasis supplied, citations omitted)

The exercise of issuing *nunc pro tunc* orders or judgments is narrowly confined to cases where there is a need to correct mistakes or omissions arising from inadvertence so that the record reflects judicial action, which had previously been taken.

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[102] *Id*. at 879-881.

Furthermore, *nunc pro tunc* judgments or orders can only be rendered if none of the parties will be prejudiced.[103]

Parties seeking the issuance of *nunc pro tunc* judgments or orders must allege and prove that the court took a particular action and that the action was omitted through inadvertence.[104] On the other hand, courts must ensure that the matters sought to be entered are supported by facts or data.[105] This may be accomplished by referring to the records of the case. This requirement was emphasized in *Lichauco*, thus:

> [F]or the entry of a *nunc pro tunc* order, it is required that the record present some visible data of the order which it is sought to be supplied by said *nunc pro tunc* order, whether it is the data referring to the whole of the order or merely limited to such portion thereof, that the part lacking from the record constitutes a necessary part, an inevitable and ordinary consequence of the portion appearing in the record.[106]

Hence, courts cannot render a judgment of order *nunc pro tunc* in the absence of data regarding the judicial act sought to be recorded. In *Lichauco*, this Court invalidated the *nunc pro tunc* order issued by the trial court because there was "no data, partial or integral, in the record regarding the judicial act . . . in question."[107] There was no visible data appearing in the case records to establish that the trial court actually approved the lease contract in dispute.[108]

The same standard was applied in *Maramba v. Lozano*,[109] where a party sought the issuance of a *nunc pro tunc* order to

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[103] *Id*. at 881.

[104] *Briones-Vasquez v. Court of Appeals*, 491 Phil. 81, 93 (2005) [Per *J*. Azcuna, First Division].

[105] *Lichauco v. Tan Pho*, 51 Phil. 862, 884 (1923) [Per *J*. Romualdez, *En Banc*].

[106] *Id*. at 884.

[107] *Id*.

[108] *Id*.

[109] 126 Phil. 833 (1967) [Per *J*. Makalintal, *En Banc*].

strike out the name of a deceased defendant in the judgment's dispositive portion.[110] This Court rejected the prayer and underscored that *nunc pro tunc* orders can only be issued when there is evidence that the judicial act in question was previously made.[111]

I.C

The doctrine of immutability of judgment is premised upon the existence of a final and executory judgment. It is, therefore, inapplicable where the judgment never attains finality, as in the case of void judgments.

Void judgments produce "no legal [or] binding effect."[112] Hence, they are deemed non-existent.[113] They may result from the "lack of jurisdiction over the subject matter" or a lack of jurisdiction over the person of either of the parties.[114] They may also arise if they were rendered with grave abuse of discretion amounting to lack or excess of jurisdiction.[115]

In *Gomez v. Concepcion*,[116] this Court explained the nature and the effects of void judgments, thus:

> A void judgment is in legal effect no judgment. B[y] it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon, it [is] equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void.[117]

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[110] *Id*. at 837.

[111] *Id*. at 837-838.

[112] *Go v. Echavez*, 765 Phil. 410,424 (2015) [Per *J*. Brion, Second Division].

[113] *Id*.

[114] *Imperial v. Armes*, 178842, January 30, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/178842.pdf> 11 [Per *J*. Jardeleza, Third Division].

[115] *Id*. citing *Yu v. Judge Reyes-Carpio*, 667 Phil. 474 (2011) [Per *J*. Velasco, Jr., First Division].

[116] 47 Phil. 717 (1925) [Per *J*. Ostrand, Second Division].

[117] *Id*. at 722.

A void judgment never acquires the status of a final and executory judgment.[118] Parties may, therefore, challenge them without running afoul of the doctrine of immutability of judgment. A direct attack may be brought either through a petition for annulment of judgment under Rule 47 of the Rules of Court or through a petition for certiorari under Rule 65 of the Rules of Court.[119] A void judgment may also be challenged collaterally "by assailing its validity in another action where it is invoked."[120]

In *Gonzales v. Solid Cement Corporation*,[121] this Court held that a judgment or order that was issued in excess of jurisdiction has no legal effect and "cannot likewise be perpetuated by a simple reference to the principle of immutability of final judgment."[122]

I.D

The happening of a supervening event is likewise a ground to set aside or amend a final and executory judgment.

This exception was explained in *Natalia Realty, Inc. v. Court of Appeals*,[123] thus:

> One of the exceptions to the principle of immutability of final judgments is the existence of supervening events. Supervening events refer to facts which transpire *after* judgment has become final and executory or to new circumstances which developed *after* the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time.[124] (Citation omitted)

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[118] *Nazareno v. Court of Appeals*, 428 Phil. 32, 41-42 (2002) [Per J. De Leon, Jr., Second Division).

[119] *Imperial v. Armes*, 178842, January 30, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/178842.pdf> 12 [Per J. Jardeleza, Third Division].

[120] *Estoesta v. Court of Appeals*, 258-A Phil. 779, 790 (1989) [Per J. Paras, Second Division].

[121] 697 Phil. 619 (2012) [Per J. Brion, *En Banc*].

[122] *Id.* at 629-630.

[123] 440 Phil. 1 (2002) [Per J. Carpio, First Division].

[124] *Id.* at 23-24.

Parties must establish two (2) conditions in order to properly invoke the exception on supervening events. First, the fact constituting the supervening event must have transpired after the judgment has become final and executory. It should not have existed prior to the finality of the judgment.[125] Second, it must be shown that the supervening event "affects or changes the substance of the judgment and renders its execution inequitable."[126]

In *Roman Catholic Archbishop of Caceres v. Heirs of Manuel Abella*,[127] a civil case for quieting of title was considered as a supervening event that rendered a previous case for forcible entry unenforceable through execution.[128] This Court held that the judgment in the case for quieting of title is a "new circumstance which developed after the finality of the judgment in the forcible entry [case] . . . [which] conclusively resolved the issue of ownership over the subject land, and the concomitant right of possession[.]" The execution of the judgment in the forcible entry case would, therefore, be unjust and inequitable to the respondents "who had been conclusively declared the owners and rightful possessors of the disputed land."[129]

Bani Rural Bank. Inc. v. De Guzman[130] is another instance where the exception was applied. The development of strained relations between the employer and the employee was considered as a supervening event that rendered the execution of the judgment, ordering the reinstatement of the employee, impossible.[131]

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[125] *Id*.

[126] *NPC Drivers and Mechanics Association v. National Power Corporation*, 767 Phil. 210, 250 (2014) [Per *J*. Brion, Special Third Division].

[127] 512 Phil. 408 (2005) [Per *J*. Austria-Martinez, Second Division].

[128] *Id*. at 413-416.

[129] *Id*. at 416.

[130] 721 Phil. 84 (2013) [Per *J*. Brion, Second Division].

[131] *Id*. at 96-98.

On the other hand, the exception was found to be inapplicable in *Javier v. Court of Appeals*.[132] The parties in *Javier* sought to bar the enforcement of an alias writ of execution. They anchored their argument on a deed of sale that purportedly revoked a previous one.[133] In determining whether the case fell under the exception, this Court declared that:

> The supervening event which would justify the suspension or nullification of the execution of a final and executory judgment refers to facts and events transpiring after the judgment or order had become executory. These circumstances affect or change the substance of the judgment and render its execution inequitable.
>
> . . . . . .
>
> In the present cases, the execution or existence of the alleged deed of sale of 4 March 1975 cannot be considered a supervening event that will alter the finality and the executory nature of the decisions in question. The records show that Luz Javier filed the complaint for rescission of the Deed of Absolute Sale of 8 March 1972 on 5 August 1976. All throughout the proceedings from the lower court to the appellate courts in 1976 (specifically during the lifetime of Luz Javier, who died on 9 June 1980), to this Court in 1987, Ursula and the legal heirs remained silent about the existence of the alleged deed of sale of 4 March 1975.[134] (Citations omitted)

Aside from these well-known exceptions, several cases have also been excluded from the application of the doctrine of immutability of judgment in the interest of substantial justice. The exception sometimes applied when a party's liberty is involved or when there are special and compelling circumstances.[135] For instance, judgments of conviction that have attained finality were modified to correct an erroneous penalty previously imposed.[136]

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[132] 296 Phil. 580 (1993) [Per *J.* Bellosillo, First Division].

[133] *Id.* at 589-591.

[134] *Id.* at 591-592.

[135] *Bigler v. People*, 785 SCRA 479, 487-488 (2016) [Per *J.* Perlas-Bernabe, First Division].

[136] *Sumbilla v. Matrix Finance Corporation*, 762 Phil. 130, 137-141 (2015) [Per *J.* Villarama, Jr., Third Division].

Judgments may also be modified or amended to supply operational matters that are deemed necessary to carry out the decision into effect.[137]

I.E

In the present case, petitioners assert that the case falls under the first exception: that clerical errors attended the computation of the amounts awarded as life care cost and loss of earning capacity.[138] The resolution of the present petition would, therefore, require a comparison between the dispositive portion and the body of the judgment.

The dispositive portion of the September 29, 2004 Decision provided:

> WHEREFORE, judgment is rendered finding defendants Mercury Drug Corporation, Inc. and Rolando del Rosario, jointly and severally liable to pay plaintiffs Spouses Richard Y. Huang and Carmen G. Huang, and Stephen Huang the following amounts:
>
> 1. Two Million Nine Hundred Seventy[-]Three Thousand Pesos (₱2,973,000.00) actual damages;
> 2. As compensatory damages:
>   a. Twenty[-]Three Million Four Hundred Sixty[-]One Thousand, and Sixty-Two Pesos (₱23,461,062.00) for life care cost of Stephen;
>   b. Ten Million Pesos (₱10,000,000.00) as and for lost or impaired earning capacity of Stephen;
> 3. Four Million Pesos (₱4,000,000.00) as moral damages;
> 4. Two Million Pesos (₱2,000,000.00) as exemplary damages; and
> 5. One Million Pesos (₱1,000,000.00) as attorney[']s fees and litigation expense.

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[137] *Republic Surety and Insurance Co., Inc. v. Intermediate Appellate Court*, 236 Phil. 332 (1987) [Per *J.* Feliciano, Third Division].

[138] *Rollo*, pp. 43-49.

The defendants' counterclaim is DISMISSED.

SO ORDERED.[139]

On the other hand, the pertinent portion of this decision stated:

Drs. Renato Sibayan, Eduardo Jamora, Evelyn Dy and Teresita Sanchez testified regarding the massive injuries suffered by plaintiff Stephen and expenses that plaintiff will continue to incur. (TSN, July 5, 1999; TSN April 26, 1999, TSN, April 19, 1999; and TSN, March 26, 1999).

Although Stephen survived the accident, the doctors are unanimous in saying that Stephen needs continuous rehabilitation for the rest of his life. Dr. Sibayan's prognosis with regard to Stephen's future recovery is nil, or zero. The best thing that can be done for Stephen is for the latter to maintain some kind of rehabilitation program with the aim of preventing complications, particularly bed sores, infection of the bladder, inability to move. There are no dedicated and specific centers in the Philippines with spinal cord injury rehabilitation program. Notwithstanding the presentation by plaintiffs of the rehabilitation programs which the plaintiff Stephen may avail of at Kessler Institute for Rehabilitation, New Jersey, USA, together with the estimated expenses which may be incurred by plaintiffs, (Exhibits Y, Z-3), this Court deems it proper not to include the said amount because as far as the records are concerned, the enrollment of Stephen thereat remained a plan. The plaintiffs Spouses Richard and Carmen Huang merely contemplated the sending of their son, Stephen to Kessler Institute.

Accordingly, the defendants must not only pay for the actual expenses incurred by plaintiffs for the hospitalization and medical treatment of Stephen, they must also pay plaintiffs for the natural and probable expenses which the plaintiffs will in the future likely incur as a result of the injuries he suffered. In 1997[,] Stephen[']s average monthly expense was ₱21,500.00 and for 1998 it was for ₱16,280.00 more or less, (TSN, p. 11, January 11, 1999). It is expected that he will continue to incur these expenses for the rest of his life. The chance of Stephen regaining his normal ability to walk and perform the most basic body movements is remote. Thus, he shall be dependent financially and physically on the care, assistance, and support of

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[139] *Id*. at 162-163.

his family throughout his life. Based on the actuarial computation of the remaining years that Stephen is expected to live, the life care cost will amount to ₱23,461,062.00 more or less. Plaintiffs must be compensated (Exhibits ZZ, ZZ-4 to ZZ-6).

Also part of the damages sustained by plaintiffs is the loss or in the least, impairment of Stephen's earning capacity. The massive injury Stephen sustained disabled him from engaging in those pursuits and occupations for which, in the absence of said injury, he would have qualified. *To determine how much to be awarded for decreased earning capacity, the health of the injured party, and his mental and physical ability to maintain himself before the injury as compared with his condition in this respect afterwards have to be considered. The rule necessarily permits an inquiry into the capacity of plaintiff prior to the injury, including his physical condition, and his ability to labor or follow his usual vocation, his age, his state of health, and his probable life expectancy. The plaintiff's ability and disposition to labor or his business or professional habits may also be taken into consideration . . .*

At the time of [the] accident, Stephen is a bright young man of 17, fourth year high school, a member of his school's varsity basketball team. He passed the entrance examination of the University of the Philippines, De La Salle University, and the University of Asia and the Pacific. In the actuarial study presented by plaintiff's witness, Aida Josef, she projected that Stephen's life expectancy is only up to age 48.37 or more or less 20 years after the accident. Had Stephen not met the accident, he would have continued his studies, finished his course in time, embarked on a banking career, initially earned a monthly income of at least ₱15,000.[00], gotten married, raised children, and become a productive member of society. Based on her actuarial study, Ms. Josef opined that due to serious physical injuries which caused him to be paraplegic for life, Stephen lost the opportunity to do all [of] the above. Stephen stood to suffer loss of his earning capacity in the total amount of ₱41,982,764.00 from year 2003 to year 2004 (Exhibit[s] YY, ZZ and XX with submarkings). However, considering the speculation involved, this Court places the loss or impairment of Stephen's earning capacity to a conservative amount of Ten Million Pesos, for which he must be compensated.[140] (Emphasis supplied)

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[140] *Id*. at 157-159.

In this case, there are no clerical errors or ambiguities regarding the computation of life care cost and loss of earning capacity awarded to respondent Stephen. The amounts indicated in the dispositive portion of the judgment faithfully correspond to the findings of fact and conclusions of the trial court.

The trial court deemed it adequate and proper to award ₱23,461,062.00 as life care cost and ₱10,000,000.00 as loss of earning capacity based on the evidence presented during trial. In awarding life care cost, the trial court did not limit itself to respondent Stephen's actual expenses in 1997 and 1998 and his projected life expectancy.[141] The trial court also considered the testimonies of respondent Stephen's doctors regarding his future medical expenses.[142] On the award of loss of earning capacity, the trial court did not likewise limit itself to respondent Stephen's projected initial monthly salary and life expectancy. It considered other equally important factors such as respondent Stephen's capacity prior to the injury, physical conditions, disposition to labor, and his professional habits.[143]

These findings and conclusions were even affirmed by this Court in *Mercury Drug Corporation*,[144] thus:

> Petitioners are also liable for all damages which are the natural and probable consequences of the act or omission complained of. The doctors who attended to respondent Stephen are one in their prognosis that his chances of walking again and performing basic body functions are nil. For the rest of his life, he will need continuous rehabilitation and therapy to prevent further complications such as pneumonia, bladder and rectum infection, renal failure, sepsis and severe bed sores, osteoporosis and fractures, and other spinal cord injury-related conditions. He will be completely dependent on the care and support of his family. We thus affirm the award of ₱23,461,062.00 for the life care cost of respondent Stephen Huang, based on his average monthly expense and the actuarial computation of the remaining years

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[141] *Id*.

[142] *Id*.

[143] *Id*.

[144] 552 Phil. 496 (2007) [Per *J*. Puno, Second Division].

that he is expected to live; and the conservative amount of ₱10,000,000.00, as reduced by the trial court, for the loss or impairment of his earning capacity, considering his age, probable life expectancy, the state of his health, and his mental and physical condition before the accident. He was only seventeen years old, nearly six feet tall and weighed 175 pounds. He was in fourth year high school, and a member of the school varsity basketball team. He was also class president and editor-in-chief of the school annual. He had shown very good leadership qualities. He was looking forward to his college life, having just passed the entrance examinations of the University of the Philippines, De La Salle University, and the University of Asia and the Pacific. The University of Sto. Tomas even offered him a chance to obtain an athletic scholarship, but the accident prevented him from attending the basketball try-outs. Without doubt, he was an exceptional student. He excelled both in his academics and extracurricular undertakings. He is intelligent and motivated, a go-getter, as testified by Francisco Lopez, respondent Stephen Huang's godfather and a bank executive. Had the accident not happened, he had a rosy future ahead of him. He wanted to embark on a banking career, get married and raise children. Taking into account his outstanding abilities, he would have enjoyed a successful professional career in banking. But, as Mr. Lopez stated, it is highly unlikely for someone like respondent to ever secure a job in a bank. To his knowledge, no bank has ever hired a person suffering with the kind of disability as Stephen Huang's.[145] (Citations omitted)

There being no clerical errors or ambiguities in the dispositive portion or body of the judgment, the amounts awarded as life care cost and loss of earning capacity stand. There is no reason to disturb the trial court's findings and conclusions on the matter.

This Court notes that the amendments sought by petitioners affect the very substance of the controversy. While it appears on the surface of the Petition that they merely seek the clarification of the judgment, a careful review of petitioners' assertions and arguments reveal their true intention of appealing the merits of the case. This cannot be done without violating the doctrine on immutability of judgments. A correction pertaining to the substance of the controversy is not a clerical error.

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[145] *Id*. at 508-509.

Furthermore, petitioners have previously raised their arguments in different fora, particularly in their Petition for Review before the Court of Appeals[146] and in their Motion for Reconsideration and/or New Trial[147] before this Court. Their arguments have been reviewed and passed upon twice.

Nevertheless, even if we were to indulge petitioners, their arguments deserve scant consideration. Petitioners insist that the computation of life care cost should be limited to respondent Stephen's average monthly expenses in 1997 and 1998 and his projected life expectancy.[148] They also insist that the computation of loss of earning capacity should be limited to respondent Stephen's estimated initial salary and his projected life expectancy.[149]

To limit the computation of life care cost and loss of earning capacity strictly to these variables glosses over other equally important economic factors that the trial court has probably considered. Inflation, which is generally defined as the increase in the price of goods and services over time,[150] is a significant economic factor. Petitioners failed to consider that the cost of goods and services back then would not be the same as today. Petitioners also glossed over the possibility that respondent Stephen might eventually be promoted within the banking industry. This may lead to an increased basic salary and the grant of additional benefits on top of hefty bonuses that are usually given to top-notch or high-ranking bank officers. Furthermore, petitioners overlook the health complications that may arise from spinal cord injuries. While it may be true that respondent is able to function as a productive member of society

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[146] *Rollo*, p. 214.

[147] *Id.* at 262-271.

[148] *Id.* at 43-49.

[149] *Id.*

[150] Marc Labonte, Inflation: Causes, Costs, and Current Status, <https://pdfs.semanticscholar.org/48ac/7bf4dd4a6c9bce7c05722506274307bba096.pdf> (last visited August 15, 2017).

today, this cannot operate as a justification to reduce the monetary award granted to him. Reducing the monetary award granted to respondent Stephen penalizes his recovery.

II

Another effect of a final and executory judgment is that winning litigants are entitled to the satisfaction of the judgment through a writ of execution.

A writ of execution must substantially conform to the judgment sought to be enforced.[151] A writ of execution that exceeds the tenor of the judgment is patently void and should be struck down.[152] Upon a finding of its invalidity, the case may be remanded to the lower court for the issuance of the proper writ.[153]

In this case, the Writ of Execution[154] issued by the Regional Trial Court neither varied nor departed from the terms of the judgment in any manner. It was faithful to what the trial court decreed, thus:

> You are commanded to demand from MERCURY DRUG CORPORATION and ROLANDO J. DEL ROSARIO at #7 Mercury Avenue, Libis, Quezon City and C. Valle Street, Dolores, Taytay, Rizal, respectively, the judgment obligors, the immediate payment in full of the sums of TWO MILLION NINE HUNDRED SEVENTY[-]THREE THOUSAND PESOS (₱2,973,000.00), Philippine Currency, as actual damages; TWENTY[-]THREE MILLION FOUR HUNDRED SIXTY[-]ONE THOUSAND, AND SIXTY[-]TWO PESOS (₱23,461,062.00) for life care cost of Stephen; TEN MILLION PESOS (₱10,000,000.00) as and for lost or impaired earning capacity of Stephen; ONE MILLION PESOS (₱1,000,000.00) as moral damages;

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[151] *Villoria v. Piccio*, 95 Phil. 802, 805-806 (1954) [Per *J*. Reyes, A., *En Banc*]; *Windor Steel Mfg. Co., Inc. v. Court of Appeals*, 190 Phil. 223 (1981) [Per *J*. Melencio-Herrera, First Division].

[152] *Id*. at 805-806.

[153] *Windor Steel Mfg. Co., Inc. v. Court of Appeals*, 190 Phil. 223 (1981) [Per *J*. Melencio-Herrera, First Division]; *KKK Foundation, Inc. v. Calderon-Bargas*, 565 Phil. 720 (2007) [Per *J*. Quisumbing, Second Division].

[154] *Rollo*, pp. 301-302.

TWO MILLION PESOS (₱2,000,000.00) as exemplary damages; and ONE MILLION PESOS (₱1,000,000.00) as attorney's fees and litigation expense, together with your lawful fees for service of this execution, which SPOUSES RICHARD Y. HUANG & CARMEN G. HUANG and STEPHEN G. HUANG, the judgment obligees, recovered in this case against said judgment obligors, and to tender the same to said judgment obligees and return this writ, with the lawful fees, to this Court within thirty (30) days from the date of receipt hereof with your proceedings indorsed thereon.[155]

III

The case not falling within any of the exceptions to the doctrine of immutability of judgments, it becomes the court's ministerial duty to issue a writ of execution, which must "conform to that ordained or decreed in the dispositive part of the decision."[156] The manner of execution of a judgment cannot depend upon the choice or discretion of a party.[157]

In this case, the judgment did not indicate, in any manner, that the amounts of life care cost and loss of earning capacity should be paid in installments or amortized. There is nothing in the decision that would substantiate petitioners' assertion that life care cost and loss of earning capacity were awarded as judicial support.

The cases petitioners relied upon to support their arguments are inapplicable. *Advincula*[158] and *Canonizado*[159] are judgments for support arising from family relations. In the present case, the two (2) monetary awards were given as the "natural and probable expenses" that respondents would likely incur for

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[155] *Id.* at 301.

[156] *Philippine American Accident Insurance Co., Inc. v. Flores*, 186 Phil. 563 (1980) [Per *J.* Abad Santos, Second Division].

[157] See *Raymundo v. Galen Realty and Mining Corp.*, 719 Phil. 557, 565 (2013) [Per *J.* Reyes, First Division].

[158] 119 Phil. 448 (1964) (Per *J.* Paredes, *En Banc*].

[159] 212 Phil. 564 (1984) [Per *J.* Gutierrez, Jr., First Division].

rehabilitation and continued treatment.[160] Although the court stated that respondent Stephen would be "dependent financially and physically on the care, assistance, and *support* of his family throughout his life[,]"[161] this should not be construed to mean that the monetary awards were given as judicial support. They were awarded as damages arising from quasi-delict.

In the absence of any directive in the body or in the dispositive portion of the decision that the judgment award should be amortized or paid in periodic installments, the manner of its execution shall be subject to the Rules of Court. The manner of execution of judgments for money is specifically governed by Rule 39, Section 9 of the Rules of Court.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Decision dated January 20, 2011 and Resolution dated July 6, 2011 of the Court of Appeals in CA-G.R. SP No. 106647 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires*, and *Gesmundo, JJ*., concur.

THIRD DIVISION

[G.R. No. 199107. August 30, 2017]

ALFONSO SINGSON CORTAL, JUANITO SINGSON CORTAL, NENITA CODILLA, GENEROSO PEPITO LONGAKIT, PONCIANA BATOON, AND GREGORIA SABROSO, *petitioners, vs.* **INAKI A.**

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[160] *Rollo*, p. 157.

[161] *Id*. at 158.

LARRAZABAL ENTERPRISES, represented by INAKI P. LARRAZABAL, JR., THE HONORABLE REGIONAL DIRECTOR, REGIONAL OFFICE NO. VIII, TACLOBAN CITY and THE HONORABLE SECRETARY, DEPARTMENT OF AGRARIAN REFORM, QUEZON CITY in his capacity as Chairman of the Department of Agrarian Reform Adjudication Board (DARAB), *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RIGHT TO APPEAL IS A MERE STATUTORY PRIVILEGE WHICH MUST BE AVAILED IN KEEPING WITH THE MANNER SET BY LAW.—** Appeal is the remedy available to a litigant seeking to reverse or modify a judgment on the merits of a case. The right to appeal is not constitutional or natural, and is not part of due process but is a mere statutory privilege. Thus, it must be availed in keeping with the manner set by law and is lost by a litigant who does not comply with the rules. Nevertheless, appeal has been recognized as an important part of our judicial system and courts have been advised by the Supreme Court to cautiously proceed to avoid inordinately denying litigants this right.

2. **ID.; ID.; RULES OF PROCEDURE; AS TOOLS DESIGNED TO FACILITATE THE ADJUDICATION OF CASES, COURTS AND PARTY LITIGANTS ARE ENJOINED TO ABIDE STRICTLY THEREBY; RELAXATION OF THE RULES MUST BE IN THE INTEREST OF SUBSTANTIAL JUSTICE.—** Procedural rules "are tools designed to facilitate the adjudication of cases [so] [c]ourts and litigants alike are thus enjoined to abide strictly by the rules." They provide a system for forestalling arbitrariness, caprice, despotism, or whimsicality in dispute settlement. Thus, they are not to be ignored to suit the interests of a party. Their disregard cannot be justified by a sweeping reliance on a "policy of liberal construction." Still, this Court has stressed that every party litigant must be afforded the fullest opportunity to properly ventilate and argue his or her case, "free from the constraints of technicalities." Rule 1, Section 6 of the Rules of Court expressly

stipulates their liberal construction to the extent that justice is better served: Section 6. Construction. — These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Procedural rules may be relaxed for the most persuasive of reasons so as "to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed." This Court has noted that a strict application of the rules should not amount to straight-jacketing the administration of justice and that the principles of justice and equity must not be sacrificed for a stern application of the rules of procedure. x x x Nevertheless, alluding to the "interest of substantial justice" should not automatically compel the suspension of procedural rules. While they may have occasionally been suspended, it remains basic policy that the Rules of Court are to be faithfully observed. A bare invocation of substantial justice cannot override the standard strict implementation of procedural rules.

3. **ID.; ID.; ID.; VERIFICATION; LACK OF VERIFICATION IS A MERE FORMAL DEFECT THAT IS NOT FATAL.—** An affiant verifies a pleading to indicate that he or she has read it and that to his or her knowledge and belief, its allegations are true and correct and that it has been prepared in good faith and not out of mere speculation. Jurisprudence has considered the lack of verification as a mere formal, rather than a jurisdictional, defect that is not fatal. Thus, courts may order the correction of a pleading or act on an unverified pleading, if the circumstances would warrant the dispensing of the procedural requirement to serve the ends of justice.

4. **ID.; ID.; ID.; "NON-COMPLIANCE WITH THE REQUIREMENT ON OR SUBMISSION OF DEFECTIVE VERIFICATION" DISTINGUISHED FROM "NON-COMPLIANCE WITH THE REQUIREMENT ON OR SUBMISSION OF DEFECTIVE CERTIFICATION AGAINST FORUM SHOPPING".—** *Altres v. Empleo*, outlined the differences "between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping": 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement

on or submission of defective certification against forum shopping. 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby. 3) *Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification*, and when matters alleged in the petition have been made in good faith or are true and correct. 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons". 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, *the signature of only one of them in the certification against forum shopping substantially complies with the Rule.* 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

5. ID.; 2004 RULES ON NOTARIAL PRACTICE; COMPETENT EVIDENCE OF IDENTITY; NOT AN ABSOLUTE REQUIREMENT.— Equally not fatal to petitioners' appeal was their supposed failure to show competent evidence of identities in their petition's verification and certification of non-forum shopping. Rule IV, Section 2(b)(2) of the 2004 Rules on Notarial Practice stipulates that a notary public is not to perform a notarial act if the signatory to the document subject to notarization is not personally known to the notary or otherwise identified through a competent evidence of identity: x x x Competent evidence of identity enables the notary to "verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and

deed." x x x As is evident from Rule IV, Section 2(b)(2) of the 2004 Rules on Notarial Practice, the need for a competent evidence of identity is not an absolute requirement. It is imperative only when the signatory is not personally known to the notary. When the signatory is personally known to the notary, the presentation of competent evidence of identity is a superfluity.

6. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 43; GUIDELINES IN THE DETERMINATION OF THE NECESSITY OF THE PLEADINGS OR PART OF THE RECORDS AS INCLUSIONS IN THE PETITION; CASE AT BAR.— Rule 43, Section 6 of the 1997 Rules of Civil Procedure states that a verified petition for review must "be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, *together with certified true copies of such material portions of the record referred to therein and other supporting papers*." x x x To be sure, the determination of what is sufficiently pertinent to require inclusion in a pleading is not a whimsical exercise. *Air Philippines Corporation v. Zamora* laid down guideposts for determining the necessity of the pleadings or parts of the records. It also clarified that even if a pertinent document was missing, its subsequent submission was no less fatal: First, *not all pleadings and parts of case records are required to be attached* to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is *whether the document in question will support the material allegations in the petition, whether said document will make out a prima facie case of grave abuse of discretion as to convince the court to give due course to the petition*. Second, even if a docurnent is relevant and pertinent to the petition, it need not be appended if it is shown that the *contents thereof can also [be] found in another document already attached to the petition*. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached. Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that *petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits*. Here, petitioners' failure to

attach a copy of the complaint originally filed by Larrazabal Enterprises before the DARAB should not have been fatal to their Rule 43 petition. Its inclusion was not absolutely required, as it was certainly not "the award, judgment, final order or resolution appealed from." If, in the Court of Appeals' judgment, it was a material document, the more prudent course of action would have been to afford petitioners time to adduce it, not to make a justification out of it for dispossessing petitioners of relief.

7. ID.; ID.; BAR MATTER NO. 287; IN ALL PLEADINGS, MOTIONS AND PAPERS FILED IN COURTS, LAWYERS ARE REQUIRED TO INCLUDE THE NUMBER AND DATE OF THE OFFICIAL RECEIPT INDICATING PAYMENT OF THE ANNUAL MEMBERSHIP DUES TO THE INTEGRATED BAR OF THE PHILIPPINES; INDICATING PLACE OF ISSUE IS NOT REQUIRED.— Through Bar Matter No. 287, "this court required the inclusion of the 'number and date of [lawyers'] official receipt indicating payment of their annual membership dues to the Integrated Bar of the Philippines for the current year'; in lieu of this, a lawyer may indicate his or her lifetime membership number": x x x Indicating the place of issue of the official receipt is not even a requirement. While its inclusion may certainly have been desirable and would have allowed for a more consummate disclosure of information, its non-inclusion was certainly not fatal. As with the other procedural lapses considered by the Court of Appeals, its non-inclusion could have very easily been remedied by the Court of Appeals' prudent allowance of time and opportunity to petitioners and their counsel.

8. ID.; ID.; RULES OF PROCEDURE; RELAXATION OF THE RULES ON THE PERIOD OF FILING PLEADINGS AND APPEALS, WARRANTED IN CASE AT BAR.— This Court entertains no doubt that petitioners' Petition for Review, which the Court of Appeals discarded, falls within the exceptions to the customary strict application of procedural rules. This Court has previously overlooked more compelling procedural lapses, such as the period for filing pleadings and appeals. The Court of Appeals was harsh in denying petitioners the opportunity to exhaustively ventilate and argue their case. Rather than dwelling on procedural minutiae, the Court of Appeals should have been impelled by the greater interest of justice. It should have enabled

a better consideration of the intricate issues of the application of the Comprehensive Agrarian Reform Law, social justice, expropriation, and just compensation. The reversals of rulings at the level of the DARAB could have been taken as an indication that the matters at stake were far from being so plain that they should be ignored on mere technicalities. The better part of its discretion dictated a solicitous stance towards petitioners.

APPEARANCES OF COUNSEL

Juego Law Office for petitioners.
Florenz B. Hipe for respondent IAL Enterprises.

D E C I S I O N

LEONEN, *J.*:

Procedural rules must be faithfully followed and dutifully enforced. Still, their application should not amount to "plac[ing] the administration of justice in a straightjacket."[1] An inordinate fixation on technicalities cannot defeat the need for a full, just, and equitable litigation of claims.

This resolves a Petition for Review on Certiorari[2] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the assailed September 30, 2010[3] and September 7, 2011[4] Resolutions of the Court of Appeals in CA-G.R. SP No. 04659 be reversed and set aside, and that the Court of Appeals be directed to give

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[1] *Obut v. Court of Appeals*, 162 Phil. 731, 744 (1976) [Per *J.* Muñoz-Palma, First Division].

[2] *Rollo*, pp. 13-26.

[3] *Id*. at 27-29. The Resolution was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Edgardo L. Delos Santos and Eduardo B. Peralta, Jr. of the Twentieth Division, Court of Appeals, Cebu City.

[4] *Id*. at 30-31. The Resolution was penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Edgardo L. Delos Santos and Ramon Paul L. Hernando of the Special Former Twentieth Division, Court of Appeals, Cebu City.

due course to the dismissed appeal of Alfonso Singson Cortal, Juanito Singson Cortal, Nenita Codilla, Generoso Pepito Longakit, Ponciana Batoon, and Gregoria Sabroso (petitioners).

The assailed Court of Appeals September 30, 2010 Resolution dismissed petitioners' appeal under Rule 43 of the 1997 Rules of Civil Procedure on account of several technical defects. First was an inconsistency between the listing of petitioners' names in their prior Motion for Extension of Time and subsequent Petition for Review, in which the accompanying verification and certification of non-forum shopping were laden with this same inconsistency and other defects. Second was the non-inclusion of the original Complaint filed by the adverse party, now private respondent Inaki A. Larrazabal Enterprises, before the Regional Agrarian Reform Adjudicator of the Department of Agrarian Reform. And last was petitioners' counsel's failure to indicate the place of issue of the official receipt of his payment of annual membership dues to the Integrated Bar of the Philippines.[5]

The assailed Court of Appeals September 7, 2011 Resolution denied petitioners' Motion for Reconsideration.[6]

Private respondent Inaki A. Larrazabal Enterprises (Larrazabal Enterprises) owned three (3) parcels of land in Sitio Coob, Barangay Libertad, Ormoc City: Lot No. 5383-G, with an area of 7.6950 hectares and covered by Transfer Certificate of Title (TCT) No. 10530; Lot No. 5383-N, with an area of 5.7719 hectares and covered by TCT No. 10530; and Lot No. 5383-F, with an area of 8.7466 hectares and covered by TCT No. 16178.[7]

In 1988, these three (3) parcels were placed under the Compulsory Acquisition Scheme of Presidential Decree No. 27, as amended by Executive Order No. 228. Pursuant to the Scheme, Emancipation Patents and new transfer certificates of title were issued to farmer-beneficiaries, petitioners included.[8]

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

[6] *Id*. at 31.

[7] *Id*. at 61, DARAB Decision.

[8] *Id*. at 61-62, DARAB Decision.

In 1999, Larrazabal Enterprises filed its Action for Recovery of these parcels against the Department of Agrarian Reform and the petitioners before the Office of the Regional Adjudicator, Department of Agrarian Reform Adjudication Board (DARAB).[9] It assailed the cancellation of its transfer certificates of title and the subsequent issuance of new titles to petitioners. It alleged that no price had been fixed, much less paid, for the expropriation of its properties, in violation of the just compensation requirement under Presidential Decree No. 27, as amended. Thus, it prayed for the recovery of these lots and the cancellation of petitioners' transfer certificates of title.[10]

In their Answer, petitioners denied non-payment of just compensation. They presented certifications issued by the Land Bank of the Philippines (Landbank) that the amounts of ₱80,359.37 and ₱95,691.49 had been deposited as payments in the name of Larrazabal Enterprises.[11] They added that since they had paid, the cancellation of Larrazabal Enterprises' transfer certificates of title, the subdivision of the parcels, and the issuance of emancipation patents in their favor were all properly made.[12]

In his October 15, 1999 Decision,[13] Regional Adjudicator Felixberto M. Diloy (Regional Adjudicator Diloy) noted that there was nothing in the records to show that just compensation was fixed or paid for the parcels.[14] Hence, he ruled in favor of Larrazabal Enterprises and ordered that it be restored to ownership of the lots.[15]

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[9] *Id*. at 49, DARAB Decision.

[10] *Id*. at 49-50, DARAB Decision.

[11] *Id*. at 64-65, DARAB Decision.

[12] *Id*. at 50, DARAB Decision.

[13] *Id*. at 49-54, The Decision was penned by Regional Adjudicator Felixberto M. Diloy.

[14] *Id*. at 51-52, Office of the Regional Adjudicator Decision.

[15] *Id*. at 53-54, Office of the Regional Adjudicator Decision.

Petitioners appealed to the DARAB. In its September 16, 2008 Decision,[16] the DARAB reversed the Decision of Regional Adjudicator Diloy.[17] It ruled that Larrazabal Enterprises' action, which was filed in 1999, was already barred by prescription and laches, as the assailed Emancipation Patents were issued in 1988.[18] It likewise gave credence to the certificates issued by Landbank, which confirmed the payment of just compensation.[19]

Larrazabal Enterprises filed a Motion for Reconsideration. In its September 30, 2009 Resolution,[20] the DARAB reversed its own decision and granted Larrazabal Enterprises' Motion for Reconsideration.[21] It justified its ruling by saying that Larrazabal Enterprises had been denied due process when the parcels were taken from it without having been given just compensation.[22]

Petitioners then filed a Petition for Review before the Court of Appeals. In its assailed September 30, 2010 Resolution,[23] the Court of Appeals dismissed their Petition for the following formal errors:

a. the name of Raymundo Claros Codilla was indicated in the Motion for Extension of Time to File Petition for Review as one of the petitioners, but in the Petition for Review and in the Verification and Certification of Non-Forum Shopping, his name was no longer indicated[;]

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[16] *Id*. at 59-66. The Decision was penned by Assistant Secretary Augusto P. Quijano and concurred in by Assistant Secretary Edgar A. Igano, Assistant Secretary Delfin B. Samson, and Assistant Secretary Patricia Rualo-Bello of the DARAB. Secretary Nasser C. Pangandaman, Undersecretary Gerundio C. Madueño, and Undersecretary Renato F. Herrera did not sign the Decision.

[17] *Id*. at 66.

[18] *Id*. at 62.

[19] *Id*. at 65.

[20] *Id*. at 71-76.

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

[22] *Id*. at 73-75.

[23] *Id*. at 27-29.

b. the Verification and Certification of Non-Forum Shopping failed to show any competent evidence of identity of the petitioners, Alfonso Singson Cortal, Juanito Singson Cortal, Nenita Codilla, Cenon Baseles, Felimon Almacin Batoon, Rodrigo Panilag Cabonillas, Generoso Pepito Longakit, Exopiro Limgas Cabonillas, Jose Panilag Cabonillas, Avelino Panilag Cabonillas, Ricardo Estrera German and Victoria Rosales, at least one current identification document issued by an official agency bearing the photographs and signatures of petitioners, in violation of Sec. 2.(2) Rule IV of the Rules of Notarial Practice[;]

c. petitioners failed to attach the copy of the Complaint filed by respondent Inaki A. Larrazabal Enterprises before the Office of the Regional Adjudicator, Tacloban City, docketed as DARAB Case No. E.O. No. 288 (sic); and

d. counsel for the petitioners, Atty. Norjue I. Juego did not indicate the place of issue of his [Integrated Bar of the Philippines] number.[24]

Following the dismissal of their Petition for Review, petitioners filed a Motion for Reconsideration. In its assailed September 7, 2011 Resolution,[25] the Court of Appeals denied petitioners' Motion for Reconsideration.

Thus, this Petition was filed.

For resolution of this Court is the sole issue of whether or not the dismissal of petitioners' appeal was justified by the errors noted by the Court of Appeals.

It was not.

I

Appeal is the remedy available to a litigant seeking to reverse or modify a judgment on the merits of a case.[26] The right to

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

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

[26] *Mercado v. Court of Appeals*, 245 Phil. 49, 62 (1988) [Per J. Narvasa, First Division]; see also *Association of Integrated Security Force of Bislig*

appeal is not constitutional or natural, and is not part of due process[27] but is a mere statutory privilege.[28] Thus, it must be availed in keeping with the manner set by law and is lost by a litigant who does not comply with the rules.[29]

Nevertheless, appeal has been recognized as an important part of our judicial system and courts have been advised by the Supreme Court to cautiously proceed to avoid inordinately denying litigants this right.[30]

II

Procedural rules "are tools designed to facilitate the adjudication of cases [so] [c]ourts and litigants alike are thus enjoined to abide strictly by the rules."[31] They provide a system

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(AISFB) - ALU v. Court of Appeals, 505 Phil. 10, 18 (2005) [Per *J*. Chico-Nazario, Second Division] *citing Sawadjaan v. Court of Appeals*, 498 Phil. 552 (2005) [Per *J*. Chico Nazario, *En Banc*).

[27] *Tropical Homes, Inc. v. National Housing Authority*, 236 Phil. 580, 587 (1987) [Per *J*. Gutierrez, *En Banc*]; see also *Polintan v. People of the Philippines*, 604 Phil. 42, 47 (2009) [Per *J*. Carpio, First Division]; *Yu v. Samson-Tatad*, 657 Phil. 431, 436 (2011) [Per *J*. Brion, Third Division] *citing Philips Seafood (Philippines) Corporation v. Board of Investments*, 597 Phil. 649 (2009) [Per *J*. Tinga, Second Division]; *Balagtas Multi-Purpose Cooperative, Inc. v. Court of Appeals*, 536 Phil. 511, 522 (2006) [Per *J*. Azcuna, Second Division].

[28] *Spouses Plopenio v. Department of Agrarian Reform*, 690 Phil. 126, 131 (2012) [Per *J*. Sereno, Second Division]; *R Transport Corporation v. Philippine Hawk Transport Corporation*, 510 Phil. 130, 135-136 (2005) [Per *J*. Quisumbing, First Division].

[29] *Tropical Homes, Inc. v. National Housing Authority*, 236 Phil. 580, 587 (1987) [Per *J*. Gutierrez, *En Banc*]; see also *Bejarasco, Jr. v. People of the Philippines*, 656 Phil. 337, 341 (2011) [Per *J*. Bersamin, Third Division]; *Lepanto Consolidated Mining Corporation v. Icao*, 724 Phil. 646, 656 (2014) [Per *C.J.* Sereno, First Division].

[30] *National Waterworks and Sewerage Authority v. Municipality of Libmanan*, 186 Phil. 79, 84 (1980) [Per *J*. De Castro, First Division].

[31] *Garbo v. Court of Appeals*, 327 Phil. 780, 784 (1996) [Per *J*. Francisco, Third Division].

for forestalling arbitrariness, caprice, despotism, or whimsicality in dispute settlement. Thus, they are not to be ignored to suit the interests of a party.[32] Their disregard cannot be justified by a sweeping reliance on a "policy of liberal construction."[33]

Still, this Court has stressed that every party litigant must be afforded the fullest opportunity to properly ventilate and argue his or her case, "free from the constraints of technicalities."[34] Rule 1, Section 6 of the Rules of Court expressly stipulates their liberal construction to the extent that justice is better served:

> Section 6. Construction. — These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

Procedural rules may be relaxed for the most persuasive of reasons so as "to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed."[35] This Court has noted that a strict application of the rules should not amount to straight-jacketing the administration of justice[36] and that the principles of justice and equity must not be sacrificed for a

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[32] *Sebastian v. Morales*, 445 Phil. 597, 605 (2003) [Per *J*. Quisumbing, Second Division].

[33] *Land Bank of the Phiiippines v. Court of Appeals*, G.R. No. 221636, July 11, 2016<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/221636.pdf> [Per *J*. Jardeleza, Third Division]

[34] *A-One Feeds, Inc. v. Court of Appeals*, 188 Phil. 577, 580 (1980) [Per *J*. De Castro, First Division].

[35] *Asian Spirit Airlines v. Spouses Bautista*, 491 Phil. 476, 483 (2005) [Per *J*. Callejo, Sr., Second Division]; *Asia United Bank v. Goodland Company, Inc.*, 650 Phil. 174, 185 (2010) [Per *J*. Nachura, Second Division] *citing Sebastian v. Hon. Morales*, 445 Phil. 595, (2003) [Per *J*. Quisumbing, Second Division); *Sy v. Local Government of Quezon City*, 710 Phil. 549, 557 (2013) [Per *J*. Perlas-Bernabe, Second Division].

[36] *Obut v. Court of Appeals*, 162 Phil. 731, 744 (1976) [Per *J*. Muñoz-Palma, First Division].

stern application of the rules of procedure[37] In *Obut v. Court of Appeals*:[38]

> We cannot look with favor on a course of action which would place the administration of justice in a straightjacket for then the result would be a poor kind of justice if there would be justice at all. Verily, judicial orders, such as the one subject of this petition, are issued to be obeyed. nonetheless a non-compliance is to be dealt with as the circumstances attending the case may warrant. *What should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities.*[39] (Emphasis supplied)

Nevertheless, alluding to the "interest of substantial justice" should not automatically compel the suspension of procedural rules.[40] While they may have occasionally been suspended, it remains basic policy that the Rules of Court are to be faithfully observed. A bare invocation of substantial justice cannot override the standard strict implementation of procedural rules.[41] In *Spouses Bergonia v. Court of Appeals*:[42]

> The petitioners ought to be reminded that the *bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules*. Procedural rules are not to be belittled or dismissed simply because

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[37] *Paredes v. Verano*, 535 Phil. 274, 289 (2006) [Per *J*. Tinga, Third Division] citing RULES OF COURT, Rule I, Sec. 6, *Obut v. Court of Appeals*, 162 Phil. 731 (1976) (Per *J*. Muñoz-Palma, First Division], *Heirs of the Late F. Nuguid vda. De Habarer v. Court of Appeals*, 192 Phil. 61 (1981) [Per *J*. Teehankee, First Division], *Al-Amanah Islamic Investment Bank of the Philippines v. Celebrity Travel and Tours, Inc.*, 479 Phil. 1041 (2004) [Per *J*. Callejo, Sr., Second Division].

[38] 162 Phil. 731 (1976) [Per *J*. Muñoz-Palma, First Division].

[39] *Id*. at 744.

[40] *Lazaro v. Court of Appeals*, 386 Phil. 412, 417 (2000) [Per *J*. Panganiban, Third Division].

[41] *Id*.

[42] 680 Phil. 334 (2012) [Per *J*. Reyes, Second Division].

their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[43] (Emphasis supplied)

In *Barnes v. Padilla*,[44] this Court relaxed the 15-day period to perfect an appeal to serve substantial justice; and identified situations justifying a liberal application of procedural rules:

> [T]his Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.[45]

A petition for review filed out of time was entertained by this Court in *Yong Chan Kim v. People*[46] as it considered the strict application of the rules as unjustly depriving the accused of his liberty. It appeared that no party stood to suffer substantial injury if the accused were to be extended an opportunity to be heard.[47]

Telan v. Court of Appeals[48] gave due course to a belatedly filed petition. Finding that the petitioners were assisted by someone who misrepresented himself to be a lawyer, it held

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[43] *Spouses Bergonia v. Court of Appeals*, 680 Phil. 334, 343 (2012) (Per *J.* Reyes, Second Division] *citing Lazaro v. Court of Appeals*, 386 Phil. 412 (2000) [Per *J.* Panganiban, Third Division].

[44] 482 Phil. 903 (2004) [Per *J.* Austria-Martinez, Second Division].

[45] *Barnes v. Padilla*, 482 Phil. 903, 914-915 (2004) [Per *J.* Austria-Martinez, Second Division] *citing Sanchez v. Court of Appeals*, 452 Phil. 665 (2003) [Per *J.* Bellosillo, *En Banc*].

[46] 257 Phil. 283 (1989) [Per *J.* Padilla, Second Division].

[47] *Id*. at 292.

[48] 279 Phil. 587 (1991) [Per *J.* Sarmiento, Second Division].

that denying an opportunity for relief to petitioners, despite the misrepresentation, was tantamount to depriving them of their right to counsel.[49] It underscored that in criminal cases, the right to counsel is immutable as its denial could amount to a peremptory deprivation of a person's life, liberty, or property.[50] It stated that the right to counsel was just as important in civil cases:[51]

> There is no reason why the rule in criminal cases has to be different from that in civil cases. The preeminent right to due process of law applies not only to life and liberty but also to property. There can be no fair hearing unless a party, who is in danger of losing his house in which he and his family live and in which he has established a modest means of livelihood, is given the right to be heard by himself and counsel.[52]

III

Judgments and final orders of quasi-judicial agencies are appealed to the Court of Appeals through petitions for review under Rule 43 of the 1997 Rules of Civil Procedure. Rule 43 was adopted in order to provide uniform rules on appeals from quasi-judicial agencies.[53]

Rule 43 appeals shall be taken through the filing of a verified petition for review with the Court of Appeals,[54] within 15 days from notice of the appealed action.[55]

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

[50] *Id.* at 594.

[51] *Id.*

[52] *Id.* at 598.

[53] *Carpio v. Sulu Resources Development Corporation*, 435 Phil. 836, 844 (2002) [Per *J.* Panganiban, Third Division].

[54] RULES OF COURT, Rule 43, Sec. 5.

[55] RULES OF COURT, Rule 43, Sec. 4:

> Section 4. *Period of appeal*. – The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its

Rule 43, Section 6 specifies the required contents of Rule 43 petitions:

> Section 6. Contents of the Petition. — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

Rule 43, Section 7 stipulates that failure to comply with these requisites may be sufficient ground for dismissing the appeal:

> Section 7. Effect of Failure to Comply with Requirements. The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

IV

In its assailed September 30, 2010 Resolution, the Court of Appeals dismissed petitioners' appeal for purely formal defects and without discussing the merits of the case:[56]

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effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

[56] *Rollo*, p. 16.

After a cursory examination of the instant Petition for Review filed by petitioner under Rule 43 of the 1997 Rules in Civil Procedure, the same reveals the following defects:

a. the name of Raymundo Claros Codilla was indicated in the Motion for Extension of Time to File Petition for Review as one of the petitioners, but in the Petition for Review and in the Verification and Certification of Non Forum Shopping, his name was no longer indicated[;]

b. the Verification and Certification of Non-Forum Shopping failed to show any competent evidence of identity of the petitioners, Alfonso Singson Cortal, Juanito Singson Cortal, Nenita Codilla, Cenon Baseles, Felimon Almacin Batoon, Rodrigo Panilag Cabonillas, Generoso Pepito Longakit, Exopiro Limgas Cabonillas, Jose Panilag Cabonillas, Avelino Panilag Cabonillas. Ricardo Estrera German and Victoria Rosales, at least one current identification document issued by an official agency bearing the photographs and signatures of petitioners, in violation of Sec. 2.(2) Rule IV of the Rules of Notarial Practice[;]

c. petitioners failed to attach the copy of the Complaint filed by respondent Inaki A. Larrazabal Enterprises before the Office of the Regional Adjudicator, Tacloban City, docketed as DARAB Case No. E.O. No. 288 (sic); and

d. counsel for the petitioners, Atty. Norjue I. Juego did not indicate the place of issue of his [Integrated Bar of the Philippines] number.[57]

Contrary to the Court of Appeals' conclusion, this Court does not consider these defects to have been so fatal as to peremptorily deny petitioners the opportunity to fully ventilate their case on appeal.

IV.A

Rule 7, Sections 4 and 5 of the 1997 Rules of Civil Procedure articulate the basic rules concerning the verification of pleadings and their accompaniment by a certification of non-forum shopping:

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[57] *Id*. at 7-8.

Section 4. Verification. — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

Section 5. Certification Against Forum Shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

An affiant verifies a pleading to indicate that he or she has read it and that to his or her knowledge and belief, its allegations are true and correct and that it has been prepared in good faith

and not out of mere speculation.[58] Jurisprudence has considered the lack of verification as a mere formal, rather than a jurisdictional, defect that is not fatal. Thus, courts may order the correction of a pleading or act on an unverified pleading, if the circumstances would warrant the dispensing of the procedural requirement to serve the ends of justice.[59]

Altres v. Empleo,[60] outlined the differences "between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping":

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective, The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) *Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification*, and when matters

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[58] In the matter of the change of name of *Antonina B. Oshita v. Republic*, 125 Phil. 1098, 1100 (1967) [Per *J*. Zaldivar, *En Banc*]; see also *Pfizer, Inc. v. Galan*, 410 Phil. 483, 492 (200l) [Per *C.J.* Davide, Jr., First Division] *citing Robern Development Corporation v. Quintain*, 373 Phil. 773 (1999) [Per *J*. Panganiban, *En Banc*]; *Medada v. Heirs of Antonio Consing*, 681 Phil. 536, 545 (2012) [Per *J*. Reyes, Second Division] *citing Republic v. Coalbrine International Philippines, Inc.*, 631 Phil. 487 (2010) [Per *J*. Peralta, Third Division].

[59] *In the matter of the change of name of Antonina B. Oshita v. Republic*, 125 Phil. 1098, 1101 (1967) [Per *J*. Zaldivar, *En Banc*] see also *Pfizer, Inc. v. Galan*, 410 Phil. 483, 492 (2001) [Per *C.J.* Davide, Jr., First Division] *citing Robern Development Corporation v. Quintain*, 373 Phil. 773 (1999) [Per *J*. Panganihan, *En Banc*].

[60] 594 Phil. 246 (2008) [Per *J*. Carpio Morales, *En Banc*].

alleged in the petition have been made in good faith or are true and correct.

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, *the signature of only one of them in the certification against forum shopping substantially complies with the Rule.*

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[61] (Emphasis supplied, citations omitted)

Thus, in *Torres v. Specialized Packaging Development Corporation*,[62] this Court gave due course to a petition even if the verification and certification against forum shopping were not signed by all of the parties.[63] Though there were 25 petitioners in *Torres*, this Court held that the signatures of just two (2) of them in the verification were suitable, substantial compliance considering that they were "unquestionably real parties in interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the Petition."[64] On the lacking signatures in the certificate of non-forum shopping, this Court noted that the petitioners have shown that "there was reasonable

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[61] *Altres v. Empleo*, 594 Phil. 246, 261-262 (2008) [Per *J.* Carpio Morales, *En Banc*].

[62] 477 Phil. 540 (2004) [Per *J.* Panganiban, First Division].

[63] *Id.* at 543.

[64] *Id.* at 550.

cause for the failure of some of them to sign the certification against forum shopping, and that the outright dismissal of the Petition would defeat the administration of justice."[65]

In *Cavile v. Heirs of Clarita Cavile*,[66] this Court held that the signing by only one (1) of the 22 petitioners on the certificate of non-forum shopping[67] was substantial compliance as the petitioners had a common interest in the property involved, they being relatives and co-owners of that property.[68]

Cavile[69] was echoed in *Heirs of Agapito Olarte v. Office of the President*,[70] where the certification of non-forum shopping, signed by only two (2) of four (4) petitioners,[71] was condoned considering that the petitioners shared a common interest over the lot subject of that case.[72]

In the same vein, the inclusion of Raymundo Claros Codilla (Codilla) in the Motion for Extension of Time to File Petition for Review but not in the Petition for Review and in the verification and certificate of non-forum shopping[73] should not have been fatal to petitioners' appeal. The defective verification amounted to a mere formal defect that was neither jurisdictional nor fatal and for which a simple correction could have been ordered by the Court of Appeals.[74] Petitioners here, too, are acting out of a common interest. Even assuming that a strict

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[65] *Id*. at 55.

[66] 448 Phil. 302 (2003) [Per *J*. Puno, Third Division].

[67] *Id*. at 310.

[68] *Id*. at 311.

[69] 448 Phil. 302 (2003) [Per *J*. Puno, Third Division].

[70] 499 Phil. 562, 567-569 (2005) [Per *J*. Ynares-Santiago, First Division].

[71] *Heirs of Agapito Olarte v. Office of the President*, 499 Phil. 562, 564 (2005) [Per *J*. Ynares-Santiago, First Division].

[72] *Id*. at 568-569.

[73] *Rollo*, p. 7.

[74] *In the matter of the change of name of Antonina B. Oshita v. Republic*, 125 Phil. 1098, 1101 (1967) [Per *J*. Zaldivar, *En Banc*) See also *Pfizer, Inc.*

application of the rules must be maintained, the Court of Appeals could just as easily have merely dropped Codilla as a party instead of peremptorily and indiscriminately foreclosing any further chance at relief to those who had affixed their signatures.[75]

IV.B

Equally not fatal to petitioners' appeal was their supposed failure to show competent evidence of identities in their petition's verification and certification of non-forum shopping.

Rule IV, Section 2(b)(2) of the 2004 Rules on Notarial Practice[76] stipulates that a notary public is not to perform a notarial act if the signatory to the document subject to notarization is not personally known to the notary or otherwise identified through a competent evidence of identity:

> SECTION 2. Prohibitions. — . . .
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> . . . .
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> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —
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> . . . .
>
> (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.

Competent evidence of identity enables the notary to "verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed."[77] Rule II, Section 12 of the 2004 Rules on Notarial Practice elaborates on what is "competent evidence of identity":

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v. Galan, 410 Phil. 483, 492 (2001) [Per *C.J.* Davide, Jr., First Division] *citing Robern Development Corporation v. Quintain*, 373 Phil. 773 (1999) [Per *J.* Panganiban, *En Banc*].

[75] *Altres v. Empleo*, 594 Phil. 246, 260 (2008) [Per *J.* Carpio Morales, *En Banc*].

[76] Adm. Matter No. 02-8-13-SC (2004).

[77] *Dela Cruz-Sillano v. Pangan*, 592 Phil. 219, 227 (2008) [Per *J.* Carpio, First Division] *citing Bernardo v. Ramos*, 433 Phil. 8 (2002) [Per *J.* Bellosillo, Second Division].

Section 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*, such as but not limited to, passport, driver's license, Professional Regulations 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; 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.[78]

As is evident from Rule IV, Section 2(b)(2) of the 2004 Rules on Notarial Practice, the need for a competent evidence of identity is not an absolute requirement. It is imperative only when the signatory is not personally known to the notary.[79] When the signatory is personally known to the notary, the presentation of competent evidence of identity is a superfluity.

Heirs of Amada Zaulda v. Zaulda,[80] which concerned the Court of Appeals' prior determination that a senior citizen card is not among the competent evidence of identity recognized in

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[78] Adm. Matter No. 02-8-13-SC (2008).

[79] *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 786 (2015) [Per *J.* Peralta, Third Division].

[80] 729 Phil. 639 (2014) [Per *J.* Mendoza, Third Division].

the 2004 Rules on Notarial Practice, referred to the more basic consideration that a defect in a pleading's verification is merely formal, and not jurisdictional or otherwise fatal:

> Even assuming that a photocopy of competent evidence of identity was indeed required, non-attachment thereof would not render the petition fatally defective. It has been consistently held *that verification is merely a formal, not jurisdictional, requirement, affecting merely the form of the pleading such that non-compliance therewith does not render the pleading fatally defective*. It is simply intended to provide an assurance that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith. *The court may in fact order the correction of the pleading if verification is lacking or it may act on the pleading although it may not have been verified*, where it is made evident that strict compliance with the rules may be dispensed so that the ends of justice may be served.[81] (Emphasis supplied, citation omitted)

In *Coca-Cola Bottlers Philippines, Inc. v. Dela Cruz*,[82] the petitioner bewailed the notary public's failure to "indicate that the affiants were personally known to the notary public, [or to] identify the affiants through competent evidence of identity other than their community tax certificate."[83] The petitioner's objection, while correctly pointing out a deficiency, failed to convince this Court that a fatal defect existed:

> [T]he defect is a technical and minor one; the respondents did file the required verification and certification of non-forum shopping with all the respondents properly participating, marred only by a glitch in the evidence of their identity. In the interest of justice, this minor defect should not defeat their petition and is one that we can overlook in the interest of substantial justice[.][84]

In this case, the Court of Appeals' bare reference to petitioners' inadequate proof of identity does not justify the outright denial

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[81] *Id*. at 650.

[82] 622 Phil. 886 (2009) [Per *J*. Brion, Second Division].

[83] *Id*. at 898.

[84] *Id*. at 900.

of their appeal. The Court of Appeals failed to absolutely discount the possibility that petitioners may have been personally known to the notary public, especially considering that, by that advanced stage in litigating their claims, they must have already verified several pleadings, likely before the same notary public.

It is true that the notary public failed to categorically indicate that petitioners were personally known to him.[85] *Coca-Cola* demonstrates, however, that even if this were the case, the notary public's lapse is not fatal. While the circumstances were concededly less than ideal, *Coca-Cola* did not obsess on how only community tax certificates were indicated in the verification and certification of non forum shopping.[86]

This Court elects to be liberal here, as it was in *Coca-Cola.* Even conceding the lapses noted by the Court of Appeals, petitioners had not gotten themselves into an irremediable predicament. This Court repeats that, ultimately, a defective verification is merely a formal and not a fatal, jurisdictional defect, which could have very easily been ordered corrected.[87] As to the defective certification of non-forum shopping, the greater cause of justice should have impelled the Court of Appeals, as this Court implored in *Altres v. Empleo*,[88] to have at least enabled petitioners to rectify their lapse, rather than completely deny them a chance at exhaustive litigation by a mere stroke of its pen.

IV.C

Rule 43, Section 6 of the 1997 Rules of Civil Procedure states that a verified petition for review must "be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from,

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[85] *Rollo*, p. 46.

[86] *Coca-Cola Bottlers Philippines, Inc. v. Dela Cruz*, 622 Phil. 886, 898 (2009) [Per *J.* Brion, Second Division].

[87] *Heirs of Amada Zaulda v. Zaulda*, 729 Phil. 639, 650 (2014) [Per *J.* Mendoza, Third Division].

[88] 594 Phil. 246 (2008) [Per *J.* Carpio Morales, *En Banc*].

together with certified true copies of such material portions of the record referred to therein and other supporting papers."[89]

In *Quintano v. National Labor Relations Commission*,[90] this Court faulted the Court of Appeals for dismissing a Rule 65 petition on account of failure to include in the petition a copy of the Complaint initially brought before the Labor Arbiter. Referencing Rule 65's own requirement that the petition shall be "accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non forum shopping,"[91] this Court explained that appending a copy of an original complaint is not even required:

> The Rules do not specify the precise documents, pleadings or parts of the records that should be appended to the petition other than the judgment, final order, or resolution being assailed. The Rules only state that such documents, pleadings or records should be relevant or pertinent to the assailed resolution, judgment or orders; as such, the initial determination of which pleading, document or parts of the records are relevant to the assailed order, resolution, or judgment, falls upon the petitioner.[92]

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[89] RULES OF COURT, Rule 43, Sec. 6, Emphasis supplied.

[90] *Quintano v. National Labor Relations Commission*, 487 Phil. 412, 424 (2004) [Per *J.* Callejo, Sr., Second Division].

[91] RULES OF COURT, Rule 6, Secs. 1 and 2 state:

Section 1. *Petition for certiorari*. – . . .

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping all provided in the third paragraph of Section 3, Rule 46.

Section 2. *Petition for prohibition*. – . . .

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[92] *Quintano v. National Labor Relations Commission*, 487 Phil. 412, 424 (2004) [Per *J.* Callejo, Sr., Second Division].

Given this Rule's generic reference to "copies of all pleadings and documents relevant and pertinent thereto,"[93] this Court explained that:

> The [Court of Appeals] will ultimately determine if the supporting documents are sufficient to even make out a *prima facie* case. If the [Court of Appeals] was of the view that the petitioner should have submitted other pleadings, documents or portions of the records to enable it to determine whether the petition was sufficient in substance, it should have accorded the petitioner, in the interest of substantial justice, a chance to submit the same instead of dismissing the petition outright. Clearly, this is the better policy.[94]

Quintano was echoed in *Panaga v. Court of Appeals*.[95] There, a petition for certiorari was dismissed by the Court of Appeals for failure to include an affidavit of proof of service and after appending only the decisions of the Labor Arbiter and the National Labor Relations Commission.[96] This Court explained that the petition's annexes sufficed as the Labor Arbiter's decision already recounted the material allegations in the pleadings of the parties and would have been enough for the Court of Appeals to determine whether there was a *prima facie* case.[97]

Quintano was further echoed in *Valenzuela v. Caltex Philippines, Inc.*,[98] where this Court stated that "the failure to submit certain documents, assuming there was such a failure on respondent's part, does not automatically warrant outright dismissal of its petition."[99]

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[93] RULES OF COURT, Rule 65, Secs. 1 and 2.

[94] *Quintano v. National Labor Relations Commission*, 487 Phil. 412, 424 (2004) [Per *J.* Callejo, Sr., Second Division].

[95] 534 Phil. 809 (2006) [Per *J.* Carpio Morales, Third Division.].

[96] *Id*. at 812.

[97] *Id.* at 815-816.

[98] 653 Phil. 187 (2010) (Per *J.* Villarama, Jr., Third Division].

[99] *Valenzuela v. Caltex Philippines*, 653 Phil. 187, 197, (2010) [Per *J.* Villarama, Jr., Third Division].

Quintano equally holds true here, Though *Quintano* was concerned with a Rule 65 petition and this case with a Rule 43 petition, the crucial procedural rule here is substantially the same as that in which *Quintano* hinged. As with Rule 65's generic reference to "copies of all pleadings and documents relevant and pertinent thereto,"[100] Rule 43 also only references "material portions of the record referred to . . . and other supporting papers."[101]

To be sure, the determination of what is sufficiently pertinent to require inclusion in a pleading is not a whimsical exercise. *Air Philippines Corporation v. Zamora* laid down guideposts for determining the necessity of the pleadings or parts of the records. It also clarified that even if a pertinent document was missing, its subsequent submission was no less fatal:

> First, *not all pleadings and parts of case records are required to be attached* to the petition, Only those which are relevant and pertinent must accompany it. The test of relevancy is *whether the document in question will support the material allegations in the petition, whether said document will make out a prima facie case of grave abuse of discretion as to convince the court to give due course to the petition*.
>
> Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the *contents thereof can also [be] found in another document already attached to the petition*. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.
>
> Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that *petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits*.[102] (Citations omitted, emphasis supplied)

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[100] RULES OF COURT, Rule 65, Secs. 1 and 2.

[101] RULES OF COURT, Rule 43, Sec. 6.

[102] *Air Philippines Corporation v. Zamora*, 529 Phil. 718, 728 (2006) [Per *J.* Austria-Martinez, First Division].

Here, petitioners' failure to attach a copy of the complaint originally filed by Larrazabal Enterprises before the DARAB should not have been fatal to their Rule 43 petition. Its inclusion was not absolutely required, as it was certainly not "the award, judgment, final order or resolution appealed from."[103] If, in the Court of Appeals' judgment, it was a material document, the more prudent course of action would have been to afford petitioners time to adduce it, not to make a justification out of it for dispossessing petitioners of relief.

IV.D

Through Bar Matter No. 287, "this court required the inclusion of the number and date of [lawyers'] official receipt indicating payment of their annual membership dues to the Integrated Bar of the Philippines for the current year; in lieu of this, a lawyer may indicate his or her lifetime membership number":[104]

> Effective August 1, 1985, all lawyers shall indiqate in all pleadings, motions and papers signed and filed by them in any Court in the Philippines, *the number and date* of their official receipt indicating payment of their annual membership dues to the Integrated Bar of the Philippines for the current year; provided, however, that such official receipt number and date for any year may be availed of and indicated in all such pleadings, motions and papers filed by them in court up to the end of the month of February of the next succeeding year.[105]

Indicating the place of issue of the official receipt is not even a requirement. While its inclusion may certainly have been desirable and would have allowed for a more consummate disclosure of information, its non-inclusion was certainly not fatal. As with the other procedural lapses considered by the Court of Appeals, its non-inclusion could have very easily been

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[103] RULES OF COURT, Rule 43, Sec. 6.

[104] *Intestate Estate of Jose Uy v. Atty. Maghari*, 768 Phil. 10, 23-24 (2015) [Per *J.* Leonen, *En Banc*].

[105] OCA Circ. No. 10-85 (1985).

remedied by the Court of Appeals' prudent allowance of time and opportunity to petitioners and their counsel.

V

This Court entertains no doubt that petitioners' Petition for Review, which the Court of Appeals discarded, falls within the exceptions to the customary strict application of procedural rules. This Court has previously overlooked more compelling procedural lapse, such as the period for filing pleadings and appeals. The Court of Appeals was harsh in denying petitioners the opportunity to exhaustively ventilate and argue their case.

Rather than dwelling on procedural minutiae, the Court of Appeals should have been impelled by the greater interest of justice. It should have enabled a better consideration of the intricate issues of the application of the Comprehensive Agrarian Reform Law, social justice, expropriation, and just compensation. The reversals of rulings at the level of the DARAB could have been taken as an indication that the matters at stake were far from being so plain that they should be ignored on mere technicalities. The better part of its discretion dictated a solicitous stance towards petitioners.

The present Petition must be granted. The Court of Appeals must give due course to petitioners' appeal to enable a better appreciation of the myriad substantive issues which have otherwise not been pleaded and litigated before this Court by the parties.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The assailed September 30, 2010 and September 7, 2011 Resolutions of the Court of Appeals in CA-G.R. SP No. 04659 are **REVERSED** and **SET ASIDE**. The Court of Appeals is ordered to give due course to the petition subject of CA-G.R. SP No. 04659.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires*, and *Gesmundo, JJ.*, concur.

FIRST DIVISION

[G.R. No. 201665. August 30, 2017]

EDISON (BATAAN) COGENERATION CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. No. 201668. August 30, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **EDISON (BATAAN) COGENERATION CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; TAX ASSESSMENT; THE TAXPAYER HAS THE BURDEN OF PROOF TO IMPUGN THE VALIDITY AND CORRECTNESS OF THE DISPUTED DEFICIENCY TAX ASSESSMENT.— [C]onsidering that EBCC filed the Petition for Review before the CTA to question the deficiency tax assessment issued by the CIR, it was incumbent upon EBCC to prove that the deficiency tax assessment had no legal or factual basis or that it had already paid or remitted the deficiency tax assessment as it is the taxpayer that has the burden of proof to impugn the validity and correctness of the disputed deficiency tax assessment. In addition, it is a basic rule in evidence that the person who alleges payment has the burden of proving that payment has indeed been made. More so, in cases filed before the CTA, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.

2. ID.; REVENUE REGULATIONS NO. 02-98; TIME TO WITHHOLD TAX; THE OBLIGATION OF THE PAYOR TO DEDUCT OR WITHHOLD TAX ARISES AT THE TIME AN INCOME IS PAID OR PAYABLE, WHICHEVER COMES FIRST AND THE TERM "PAYABLE" REFERS TO THE DATE THE OBLIGATION BECOMES DUE, DEMANDABLE OR LEGALLY ENFORCEABLE; CASE AT BAR.— EBCC's liability for interest payment became due and demandable starting June 1, 2002. And considering that

under RR No. 02-98, the obligation of EBCC to deduct or withhold tax arises at the time an income is paid or payable, whichever comes first, and considering further that under the said RR, the term "payable" refers to the date the obligation becomes due, demandable or legally enforceable, we find no error on the part of the CTA *En Banc* in ruling that EBCC had no obligation to withhold any taxes on the interest payment for the year 2000 as the obligation to withhold only commenced on June 1, 2002, and thus cancelling the assessment for deficiency FWT on interest payments arising from EBCC's loan from Ogden.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES NOT RAISED BELOW CANNOT BE PLEADED FOR THE FIRST TIME ON APPEAL BECAUSE A PARTY IS NOT ALLOWED TO CHANGE HIS THEORY ON APPEAL.— Neither do we find any reason for the retroactive application of RR No. 12-01, which provides that the withholding of final tax commences "at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable in the payor's book, whichever comes first." To begin with, this issue was never raised before the CTA. Thus, we cannot rule on this matter now. It is a settled rule that issues not raised below cannot be pleaded for the first time on appeal because a party is not allowed to change his theory on appeal; to do so would be unfair to the other party and offensive to rules of fair play, justice and due process.

APPEARANCES OF COUNSEL

The Solicitor General for public parties.

Salvador & Associates for Edison (Bataan) Cogeneration Corporation.

D E C I S I O N

DEL CASTILLO, *J.*:

The findings and conclusions of the tax court are accorded great weight because of its expertise on the subject.[1]

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[1] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. Nos. 215534 & 215557, April 18, 2016, 790 SCRA 79, 105-106.

Before us are consolidated Petitions for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assailing the January 30, 2012 Decision[3] and the April 17, 2012 Resolution[4] of the Court of Tax Appeals (CTA) in CTA EB Case Nos. 766 and 769.

Factual Antecedents

On February 2, 2004, Edison (Bataan) Cogeneration Corporation [EBCC] received from the Commissioner of Internal Revenue (CIR) a Formal Letter of Demand and Final Assessment Notice dated January 23, 2004 assessing EBCC of deficiency income tax, Value Added Tax (VAT), withholding tax on compensation, Expanded Withholding Tax (EWT) and Final Withholding Tax (FWT) for taxable year 2000 in the total amount of ₱84,868,390.16, broken down as follows:

Deficiency Tax Amount

Income Tax	₱65,571,268.01
Value-Added Tax	168,866.15
Withholding Tax on Compensation	128,087.84
Expanded Withholding Tax	79,066.13
Final Withholding Tax	18,921,102.03
TOTAL	₱84,868,390.16[5]

On March 3, 2004, EBCC filed with the CIR a letter-protest dated March 2, 2004 and furnished the CIR with the required documents.[6]

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[2] *Rollo* of G.R. No. 201665, pp. 10-39 and *Rollo* of G.R. No. 201668, pp. 8-30.

[3] *Rollo* of G.R. No. 201665, pp. 42-60; penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

[4] *Id*. at 63-67.

[5] *Id*. at 44.

[6] *Id*. at 45.

Due to the inaction of the CIR, EBCC elevated the matter to the CTA *via* a Petition for Review, docketed as CTA Case No. 7104 and raffled to the Second Division of the CTA.

While the case was pending, EBCC availed itself of the Tax Amnesty Program under Republic Act (RA) No. 9480.[7] Thus, in a November 7, 2008 Resolution, the CTA Second Division deemed the Petition partially withdrawn and the case closed and terminated with regard to EBCC's deficiency income tax and VAT for the year 2000.[8]

On March 18, 2009, the CTA Second Division issued a Resolution setting aside the assessments against EBCC for deficiency income tax and VAT for the taxable year 2000 in view of its availment of the Tax Amnesty Program.[9]

Ruling of the Court of Tax Appeals Former Second Division

On November 30, 2010, the CTA Former Second Division rendered a Decision[10] partly granting the Petition. After reviewing the evidence on record, the CTA Former Second Division found EBCC to have paid the correct amount of EWT and withholding tax on compensation of its employees.[11] Thus, the CTA Former Second Division cancelled and set aside the assessments for the deficiency EWT and the deficiency withholding tax on compensation.[12] As to the deficiency FWT, the CTA Former Second Division found EBCC liable to pay FWT in a reduced amount of ₱2,232,146.91.[13] The CTA Former Second Division agreed with EBCC that it was not liable for

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[7] *Id.* at 47.

[8] *Id.* at 47-48.

[9] *Id.* at 48.

[10] *Id.* at 69-89; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justice Juanito C. Castañeda, Jr. Associate Justice Erlinda P. Uy, on leave.

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

[12] *Id.*

[13] *Id.* at 87.

the deficiency FWT assessment of ₱7,707,504.96 on interest payments on loan agreements with Ogden Power International Holdings, Inc. (Ogden) for taxable year 2000 since its liability for interest payment became due and demandable only on June 1, 2002.[14] Likewise cancelled and set aside were the deficiency tax assessments on loan interest payment of EBCC to Philippine National Bank and Security Bank Corporation in the amounts of ₱346,988.77 and ₱387,411.46, respectively, as these had already been remitted by EBCC.[15] Thus:

draw table

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTLY GRANTED. Accordingly, the assessments for deficiency withholding tax on compensation in the amount of ₱128,087.84 and expanded withholding tax in the amount of ₱79,066.13 for taxable year 2000 are hereby CANCELLED and SET ASIDE.
>
> As regards the deficiency final withholding tax assessment against petitioner for taxable year 2000, the same is hereby AFFIRMED, with modification. Accordingly, petitioner is hereby ORDERED TO PAY respondent Commissioner of Internal Revenue the amount of TWO MILLION TWO HUNDRED THIRTY TWO [THOUSAND] ONE HUNDRED FORTY SIX AND 91/100 (₱2,232,146.91), representing deficiency final withholding tax, computed, as follows:

FWT Due per Assessment		₱10,227,622.72
Less: Substantiated FWT on interest on syndicated loans	₱734,400.23	
FWT on interest on foreign loan from Ogden	7,707,504.96	8,441,905.19
Basic deficiency FWT		₱ 1,785,717.53
Add: 25% Surcharge		446,429.38
Total Deficiency FWT		₱ 2,232,146.91

[14] *Id.* at 81-83.

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

In addition, petitioner is ordered to pay:

1) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency final withholding tax of ₱1,785,717.53 computed from January 25, 2001 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended; and

2) delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency final withholding tax of ₱2,232,146.91, and on the deficiency interest which have accrued as afore-stated in paragraph 1 hereof, computed from January 23, 2004 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997 as amended.

SO ORDERED.[16]

The CIR filed a Motion for Reconsideration while EBCC filed a Motion for Partial Reconsideration and/or Clarification.[17]

On April 7, 2011, the CTA Former Second Division issued a Resolution[18] denying both Motions.[19]

Both parties appealed to the CTA *En Banc*.

Ruling of the Court of Tax Appeals En Banc

On January 30, 2012, the CTA *En Banc* denied both appeals. It sustained the findings of the CTA Former Second Division that the assessment over EBCC's FWT on interest payments arising from its loan from Ogden was without basis as EBCC had no obligation to withhold any taxes on the interest payment for the year 2000.[20] Under Revenue Regulation (RR) No. 02-98, the obligation to withhold only accrues when the loan is paid or becomes payable or when it becomes due, demandable or legally enforceable, whichever comes first.[21] In this case, the obligation to withhold the interest over the loan only

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[16] *Id*. at 87-88.

[17] *Id*. at 48.

[18] *Rollo* of CTA Case No. 7104, Volume 2, pp. 1011-1015.

[19] *Rollo* of G.R. No. 201665, p. 48.

[20] *Id*. at 53-55.

[21] *Id*. at 54.

commenced on June 1, 2002.[22] As to the alleged interest payments on the syndicated loans in dollars, the CTA *En Banc* noted that EBCC failed to present sufficient evidence to prove the remittance of its payment.[23] Thus, the CTA *En Banc* adopted the computation of the CTA Former Second Division.[24]

On April 17, 2012, the CTA *En Banc* denied the CIR's Motion for Reconsideration and EBCC's Motion for Partial Reconsideration.[25]

Issues

Hence, the instant consolidated Petitions under Rule 45 of the Rules of Court, with the following issues:

G.R. No. 201665

I.

Whether the CTA *En Banc* erred in not recognizing [the CIR's] judicial admission that she reduced her assessment for deficiency FWT for taxable year 2000 from [₱]10,227,622[.]72 to [₱]7,384,922.52.

II.

Whether [EBCC] is raising a question of fact before the Honorable Court.[26]

G.R. No. 201668

I.

Whether x x x EBCC is liable for deficiency final withholding tax for the year 2000.

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[22] *Id*. at 55.

[23] *Id*. at 55-59.

[24] *Id*.

[25] *Id*. at 63-67.

[26] *Id*. at 288-289.

II.

Whether x x x Revenue Regulation No. 12-01 should be applied in this case.[27]

G.R. No. 201665

EBCC's Arguments

EBCC insists that it was not liable for any deficiency taxes for the year 2000 since it had already remitted the amount of ₱2,842,630.20 as payment for its FWT for 2000, and that no proof of such payment was necessary considering the CIR's admission in her Memorandum[28] that the original assessment of ₱10,227,622.72 was reduced to ₱7,384,992.52.[29]

The CIR's Arguments

The CIR, however, denies that she made any judicial admission of payment and maintains that in the absence of evidence of payment, EBCC was liable to pay the deficiency assessment as the party who alleges payment bears the burden of proving the same.[30] Moreover, the CIR claims that the issue raised by EBCC is a question of fact, which is not allowed in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.[31]

G.R. No. 201668

The CIR's Arguments

As to the cancellation of the assessments against EBCC's FWT on its intercorporate loan from Ogden, the CIR argues that the assessment enjoys the presumption of validity and may only be disproved by evidence to the contrary.[32] The CIR

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[27] *Id*. at 374.

[28] *Id*. at 134-135 (See Exhibit 4-a, BIR Records, pp. 756-760).

[29] *Id*. at 289-302.

[30] *Id*. at 376-383.

[31] *Id*. at 374-376.

[32] *Id*. at 383-386.

contends that EBCC was liable to pay the interest from the date of the execution of the contract on January 5, 2000, not from the date of the first payment on June 1, 2002, as the loan agreement clearly indicated that the interest was to be paid separately from the principal.[33] In addition, the CIR calls for the retroactive application of RR No. 12-01,[34] which provides that the withholding of final tax commences "at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable in the payor's book, whichever comes first," on the ground that EBCC omitted a material fact and acted in bad faith when it refused to present documents on its interest payments to show the exact date of payment.[35] In fact, based on the loan agreement, the CIR claims that the payment for the first interest period was due on January 4, 2001, not June 1, 2002.[36]

EBCC's Arguments

EBCC, on the other hand, asserts that it was not required to withhold FWT at the end of taxable year 2000 as the interest payment became due and demandable only on June 1, 2002.[37] And even if the first payment were due on January 4, 2001, such fact would not give rise to any liability for FWT in the year 2000 under RR No. 02-98.[38] As to the retroactive application of RR No. 12-01, EBCC contends that this is the first time that such issue was brought up as it was not raised before the CTA.[39] In addition, to allow the retroactive application of the RR No. 12-01 would be a clear violation of EBCC's right to due process as the Formal Letter of Demand was issued pursuant to the

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[33] *Id.* at 386-402.

[34] Amended RR No. 02-98.

[35] *Rollo* of G.R. No. 201665, pp. 402-404.

[36] *Id.* at 398-402.

[37] *Rollo* of G.R. No. 201668, p. 292.

[38] *Id.* at 294.

[39] *Id.* at 295-299.

provisions of RR No. 02-98.[40] Lastly, EBCC also points out that the issues of whether EBCC withheld certain facts or whether it acted in bad faith are factual in nature, which are not allowed in a Petition under Rule 45 of the Rules of Court.[41]

Our Ruling

The Petitions lack merit.

G.R. No. 201665

The CIR made no judicial admission that EBCC remitted the amount of ₱2,842,630.20 as payment for its FWT for the year 2000.

Section 4 of Rule 129 of the Rules of Court states:

> SEC. 4. *Judicial Admissions*. – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

In this case, EBCC claims that the CTA *En Banc* erred in failing to consider the judicial admission made by the CIR in her Memorandum that EBCC remitted FWT in the amount of ₱2,842,630.20.

We do not agree.

A careful reading of the Memorandum reveals that the alleged remittance of the amount of ₱2,842,630.20 was based on a Memorandum Report prepared by the revenue officers recommending the denial of EBCC's protest, which was issued prior to EBCC's filing of its Petition for Review before the CTA. In fact, there was no mention of such remittance in the Joint Stipulations of Facts and Issues by the parties and in the Answer filed by the CIR. Thus, we find no error on the part of the CTA *En Banc* in not considering such statement as a judicial admission.

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[40] *Id*. at 299-300.

[41] *Id*. at 300-302.

Besides, the CTA Former Second Division, in its April 7, 2011 Resolution already explained how it computed EBCC's deficiency FWT, to wit:

> It must be emphasized that the assessment for deficiency FWT against [EBCC] in the amount of ₱10,227,622.72 is composed of FWT on Interest Payments on Syndicated Loan in Dollars in the amount of ₱2,520,117.76 and FWT on Interest on Loan Agreement with Ogden Power International Holdings, Inc. (Ogden) in the amount of ₱7,707,504.96. Since [EBCC] presented documentary evidence in support of its Petition for Review assailing respondent's assessments, the Court considered said documentary evidence in deciding the instant case. In other words, the Court did not consider outright the alleged withholding remittances of ₱2,842,630.20 as a deduction to [EBCC's] FWT liability, but first examined the supporting documents presented by [EBCC].
>
> At the risk of being repetitive, although we found that [EBCC] is not liable to pay FWT on interest payment on loan from Ogden in the amount of ₱7,707,504.96; however, as regards the deficiency assessment of FWT on Interest Payments on Syndicated Loan in Dollars, in the amount of ₱2,520,117.76, the Court found that petitioner failed to present proof of withholding and/or remittance of FWT on its interest payments to UCPB and Sung Hung Kai Bank. Likewise, BIR Forms No. 2306 (Certificates of Final Income Tax Withheld), pertaining to petitioner's alleged interest payments to First Metro Investment Corporation and United Overseas Bank/Westmont Bank, were not considered by the Court for reasons stated in our Decision dated November 30, 2010.
>
> Therefore, [EBCC's] contention that the amount of ₱2,842,630.20 should still be deducted from the deficiency assessment, as found by this Court in the amount of ₱1,785,717.53 is misplaced. As heretofore discussed, out of ₱2,520,117.76 deficiency FWT assessment on Interest Paid on Syndicated Loan in US Dollars, [EBCC] was able to substantiate FWT remittance in the total amount of ₱734,400.23 only. Thus, we found [EBCC] liable to pay basic deficiency FWT for the year 2000 in the amount of ₱1,785,717.53.[42]

Moreover, considering that EBCC filed the Petition for Review before the CTA to question the deficiency tax assessment issued

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[42] *Rollo* of CTA Case No. 7104, Volume 2, pp. 1013-1015.

by the CIR, it was incumbent upon EBCC to prove that the deficiency tax assessment had no legal or factual basis or that it had already paid or remitted the deficiency tax assessment as it is the taxpayer that has the burden of proof to impugn the validity and correctness of the disputed deficiency tax assessment.[43] In addition, it is a basic rule in evidence that the person who alleges payment has the burden of proving that payment has indeed been made.[44] More so, in cases filed before the CTA, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[45]

G.R. No. 201668

RR No. 02-98 provides that the term payable refers to the date the obligation becomes due, demandable or legally enforceable.

Section 2.57.4 of Revenue Regulations No. 2-98 provides:

SEC. 2.57.4. *Time of Withholding*. – The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first, the term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable.

In this case, the CIR insists that EBCC was liable to pay the interest from the date of the execution of the contract on January 5, 2000, not from the date of the first payment on June 1, 2002.

We are not convinced.

EBCC's loan agreement with Ogden stated that:

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[43] *Cagayan Robina Sugar Milling Co. v. Court of Appeals*, 396 Phil. 830, 839 (2000).

[44] *Gumabon v. Philippine National Bank,* G.R. No. 202514, July 25, 2016.

[45] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.,* 738 Phil. 335, 344 (2014).

3. Repayment and Interest

3.1 The BORROWER shall repay the Loan to the LENDER (or as it may in writing direct) in sixteen (16) consecutive semi-annual [installments] of US DOLLARS EIGHT HUNDRED and EIGHTY ONE THOUSAND and TWO HUNDRED and FIFTY (US$881,250.00) commencing on 1 June 2002 and thereafter on June 1 and December 1 of each year.

3.2 Interest shall accrue on the Loan from the date hereof until the date of repayment at a rate equal to the 90- day LIBOR rate plus 2.5%, subject to review every 90 days.

3.3 Notwithstanding the provisions of Clause 3.2 above, if the BORROWER fails to make payment of an amount due on a payment date, the BORROWER shall pay additional interest on such past due and unpaid amount from the due date until the date of payment at the rate of ½% per month.

3.4 The interest payable to the LENDER shall be exclusive of withholding tax and/or any other similar taxes which shall be to the account of the BORROWER. Every payment to the LENDER hereunder shall be net of any present or future tax assessment or other governmental charge imposed by any taxing authority of any jurisdiction.[46]

Clearly, EBCC's liability for interest payment became due and demandable starting June 1, 2002. And considering that under RR No. 02-98, the obligation of EBCC to deduct or withhold tax arises at the time an income is paid or payable, whichever comes first, and considering further that under the said RR, the term "payable" refers to the date the obligation becomes due, demandable or legally enforceable, we find no error on the part of the CTA *En Banc* in ruling that EBCC had no obligation to withhold any taxes on the interest payment for the year 2000 as the obligation to withhold only commenced on June 1, 2002, and thus cancelling the assessment for deficiency FWT on interest payments arising from EBCC's loan from Ogden.

Neither do we find any reason for the retroactive application of RR No. 12-01, which provides that the withholding of final

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[46] *Rollo* of G.R. No. 201665, pp. 82-83.

tax commences "at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable in the payor's book, whichever comes first." To begin with, this issue was never raised before the CTA. Thus, we cannot rule on this matter now. It is a settled rule that issues not raised below cannot be pleaded for the first time on appeal because a party is not allowed to change his theory on appeal; to do so would be unfair to the other party and offensive to rules of fair play, justice and due process.[47]

Moreover, as aptly pointed out by EBCC, whether it omitted to state a material fact or acted in bad faith in failing to present documents on its interest payments to show the exact date of payment is a factual issue, which is not allowed under Rule 45.

In any case, even if the first payment was due on January 4, 2001 as claimed by the CIR, EBCC would still not be liable, as the tax assessment pertained to taxable year 2000 and not 2001.

All told, we find no reason to reverse the January 30, 2012 Decision and the April 17, 2012 Resolution of the CTA in CTA EB Case Nos. 766 and 769.

We need not belabor that "findings and conclusions of the CTA are accorded the highest respect and will not be lightly set aside because by [its] very nature x x x, it is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject."[48]

WHEREFORE, the Petitions are hereby **DENIED**. The assailed January 30, 2012 Decision and the April 17, 2012 Resolution of the Court of Tax Appeals in CTA EB Case Nos. 766 and 769 are hereby **AFFIRMED**.

SO ORDERED.

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[47] *Balitaosan v. The Secretary of Education, Culture and Sports*, 457 Phil. 300, 304 (2003).

[48] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, *supra* note 1.

Peralta and *Tijam, JJ.,* concur.

Sereno, C.J., on leave.

Leonardo-de Castro, J., on official leave.

THIRD DIVISION

[G.R. No. 202364. August 30, 2017]

ARTURO C. CALUBAD, *petitioner, vs.* **RICARCEN DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS.— The Rules of Court further require that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by certiorari. It is not this Court's function to analyze or weigh all over again evidence that has already been considered in the lower courts. However, these rules admit exceptions. *Medina v. Mayor Asistio, Jr.* listed down 10 recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures . . .; (2) When the inference made is manifestly mistaken, absurd or impossible . . .; (3) Where there is a grave abuse of discretion . . .; (4) When the judgment is based on a misapprehension of facts . . .; (5) When the findings of fact are conflicting . . .; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee . . .; (7) The findings of the Court of Appeals are contrary to those of the trial court . . .; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based . . .; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are

not disputed by the respondents . . .; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

2. MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; BOARD OF DIRECTORS; MAY VALIDLY DELEGATE ITS FUNCTIONS AND POWERS TO ITS OFFICERS OR AGENTS.— As a corporation, Ricarcen exercises its powers and conducts its business through its board of directors, as provided for by Section 23 of the Corporation Code: x x x However, the board of directors may validly delegate its functions and powers to its officers or agents. The authority to bind the corporation is derived from law, its corporate by-laws, or directly from the board of directors, "either expressly or impliedly by habit, custom or acquiescence in the general course of business."

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; THE PRINCIPAL MUST DELEGATE THE NECESSARY AUTHORITY BEFORE ANYONE CAN ACT ON HIS OR HER BEHALF; ACTUAL AUTHORITY AND APPARENT AUTHORITY; EXPLAINED.— Article 1317 of the Civil Code similarly provides that the principal must delegate the necessary authority before anyone can act on his or her behalf. Nonetheless, law and jurisprudence recognize actual authority and apparent authority as the two (2) types of authorities conferred upon a corporate officer or agent in dealing with third persons. Actual authority can either be express or implied. Express actual authority refers to the power delegated to the agent by the corporation, while an agent's implied authority can be measured by his or her prior acts which have been ratified by the corporation or whose benefits have been accepted by the corporation. On the other hand, apparent authority is based on the principle of estoppel. x x x The doctrine of apparent authority provides that even if no actual authority has been conferred on an agent, his or her acts, as long as they are within his or her apparent scope of authority, bind the principal. However, the principal's liability is limited to third persons who are reasonably led to believe that the agent was authorized to act for the principal due to the principal's conduct. Apparent authority is determined by the acts of the principal and not by the acts of the agent. Thus, it is incumbent upon Calubad to prove how Ricarcen's acts led him to believe that Marilyn was duly authorized to represent it.

4. ID.; ID.; ID.; ID.; APPARENT AUTHORITY; A CASE OF.— Calubad could not be faulted for continuing to transact with Marilyn, even agreeing to give out additional loans, because Ricarcen clearly clothed her with apparent authority. Likewise, it reasonably appeared that Ricarcen's officers knew of the mortgage contracts entered into by Marilyn in Ricarcen's behalf as proven by the issued Banco De Oro checks as payments for the monthly interest and the principal loan. Ricarcen claimed that it never granted Marilyn authority to transact with Calubad or use the Quezon City property as collateral for the loans, but its actuations say otherwise. It appears as if Ricarcen and its officers gravely erred in putting too much trust in Marilyn. However, Calubad, as an innocent third party dealing in good faith with Marilyn, should not be made to suffer because of Ricarcen's negligence in conducting its own business affairs. This finds support in *Yao Ka Sin Trading*: Also, "if a private corporation intentionally or negligently clothes its officers or agents with apparent power to perform acts for it, the corporation will be estopped to deny that such apparent authority is real, as to innocent third persons dealing in good faith with such officers or agents."

5. CIVIL LAW; DAMAGES; MORAL DAMAGES; CONDITIONS FOR THE AWARD THEREOF; NOT ESTABLISHED IN CASE AT BAR.— Moral damages are not automatically awarded when there is a breach of contract. It must also be proven that the party who breached the contract acted fraudulently or in bad faith, in wanton disregard of the contracted obligation. In addition, the following conditions must be met before moral damages may be awarded: (1) *first*, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) *second*, there must be culpable act or omission factually established; (3) *third*, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) *fourth*, the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code. Petitioner failed to allege that Ricarcen acted fraudulently or wantonly when it breached the loan and mortgage contract. Neither is this Court convinced that fraud, bad faith, or wanton disregard of its obligation can be imputed to Ricarcen due to its bad business judgment and negligence in putting too much trust in Marilyn. It was not

sufficiently shown that Ricarcen was spurred by a dishonest purpose or was motivated by ill will or fraud when it assailed the contract entered into by Marilyn and Calubad.

6. ID.; ID.; EXEMPLARY DAMAGES; ABSENT EVIDENCE OF FRAUDULENT AND WANTON ACTS, AWARD IS NOT PROPER; ATTORNEY'S FEES AND COSTS OF SUIT CANNOT BE RECOVERED IN THE ABSENCE OF EXEMPLARY DAMAGES.— [E]xemplary damages cannot be awarded in the absence of evidence that Ricarcen acted fraudulently or wantonly. Finally, in the absence of exemplary damages, attorney's fees, and costs of suit also cannot be recovered.

APPEARANCES OF COUNSEL

Emmanuel M. Basa for petitioner.
Ponce Enrile Reyes & Manalastas for respondent.

D E C I S I O N

LEONEN, *J.*:

When a corporation intentionally or negligently clothes its agent with apparent authority to act in its behalf, it is estopped from denying its agent's apparent authority as to innocent third parties who dealt with this agent in good faith.[1]

This resolves the Petition for Review on Certiorari[2] filed by petitioner Arturo C. Calubad (Calubad), assailing the January 25, 2012 Decision[3] and June 20, 2012 Resolution[4] of the Court of Appeals in CA-G.R. CV No. 93185, which upheld the

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[1] *Yao Ka Sin Trading v. Court of Appeals*, 285 Phil. 345, 367 (1992) [Per *J*. Davide, Jr., Third Division].

[2] *Rollo*, pp. 9-54.

[3] *Id*. at 113-130. The Decision was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Celia C. Librea-Leagogo and Danton Q. Bueser of the Seventeenth Division, Court of Appeals, Manila.

[4] *Id*. at 132-133.

January 6, 2009 Decision[5] of Branch 218, Regional Trial Court, Quezon City in Civil Case No. Q-03-50584.

Respondent Ricarcen Development Corporation (Ricarcen) was a domestic corporation engaged in renting out real estate. It was the registered owner of a parcel of land located at 53 Linaw St., Sta. Mesa Heights, Quezon City.[6] This parcel of land was covered by Transfer Certificate of Title (TCT) No. RT-84937 (166018)[7] and was subdivided into two (2) lots.[8]

Ricarcen was a family corporation. Marilyn R. Soliman (Marilyn) was its president from 2001 to August 2003. The other members of the board of directors during that time were Marilyn's mother, Erlinda Villanueva (Erlinda), her brother, Josefelix R. Villanueva (Josefelix), her aunt, Maura Rico, and her sisters, Ma. Elizabeth V. Chamorro (Elizabeth), Ma. Theresa R. Villanueva, and Annabelle R. Villanueva.[9]

On October 15, 2001, Marilyn, acting on Ricarcen's behalf as its president, took out a ₱4,000,000.00 loan from Calubad. This loan was secured by a real estate mortgage over Ricarcen's Quezon City property covered by TCT No. RT-84937 (166018), as evidenced by a Deed of Real Estate Mortgage.[10]

The terms of the loan provided that Ricarcen would pay the ₱4,000,000.00 loan within a period of six (6) months with "a compounded interest at the rate of FIVE (5%) percent for the first month and THREE (3%) percent for [the] succeeding months and a penalty of ONE (1%) percent per month on the principal sum in case of delay in payment."[11] The terms of the loan also

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[5] *Id.* at 106-111. The Decision was penned by Judge Hilario L. Laqui.

[6] *Id.* at 114.

[7] *Id.* at 68-70.

[8] *Id.* at 114.

[9] *Id.*

[10] *Id.* at 74-77.

[11] *Id.* at 75.

provided that the first monthly interest payment of ₱200,000.00 would be deducted from the loan proceeds.[12]

On December 6, 2001, Ricarcen, through Marilyn, and Calubad amended and increased the loan to ₱5,000,000.00 in the Amendment of Deed of Mortgage (Additional Loan of ₱1,000,000.00),[13] with the same property used as security and under the same terms and conditions as those of the original Deed of Real Estate Mortgage.

On May 8, 2002, Ricarcen, again acting through Marilyn, took out an additional loan of ₱2,000,000.00 from Calubad, as evidenced by the executed Second Amendment of Deed of Mortgage (Additional Loan of ₱2,000,000.00).[14]

To prove her authority to execute the three (3) mortgage contracts in Ricarcen's behalf, Marilyn presented Calubad with a Board Resolution dated October 15, 2001.[15] This Resolution empowered her to borrow money and use the Quezon City property covered by TCT No. RT-84937 (166018) as collateral for the loans. Marilyn also presented two (2) Secretary's Certificates dated December 6, 2001[16] and May 8, 2002,[17] executed by Marilyn's sister and Ricarcen's corporate secretary, Elizabeth.

Sometime in 2003, after Ricarcen failed to pay its loan, Calubad initiated extrajudicial foreclosure proceedings on the real estate mortgage. The auction sale was set on March 19, 2003.[18]

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[12] *Id*.

[13] *Id*. at 78-80.

[14] *Id*. at 81-83.

[15] *Id*. at 98.

[16] *Id*. at 99.

[17] *Id*. at 100.

[18] *Id.* at 116.

Calubad was the highest bidder during the scheduled auction sale; thus, on March 27, 2003, he was issued a Certificate of Sale.[19]

On April 10, 2003, the Certificate of Sale was annotated on TCT No. RT-84937 (166018).[20]

Ricarcen claimed that it only learned of Marilyn's transactions with Calubad sometime in July 2003.[21]

Upon confirming that the Quezon City property had indeed been mortgaged, foreclosed, and sold to Calubad as a result of Marilyn's actions, Ricarcen's board of directors removed her as president and appointed Josefelix as its new president. Josefelix was also authorized to initiate the necessary court actions to protect Ricarcen's interests over the Quezon City property.[22]

On September 9, 2003, Ricarcen filed its Complaint for Annulment of Real Estate Mortgage and Extrajudicial Foreclosure of Mortgage and Sale with Damages against Marilyn, Calubad, and employees of the Registry of Deeds of Quezon City and of the Regional Trial Court of Quezon City.[23]

On October 9, 2003, the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Quezon City. Atty. Mercedes S. Gatmaytan, was discharged as party-defendant.[24]

In its Complaint, Ricarcen claimed that it never authorized its former president Marilyn to obtain loans from Calubad or use the Quezon City property as collateral for the loans.[25]

On the other hand, Calubad insisted that the incidents which led to the foreclosure and sale of the Quezon City property

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[19] *Id*. at 84.

[20] *Id*. at 117.

[21] *Id*.

[22] *Id*. at 117-118.

[23] *Id*. at 118.

[24] *Id*.

[25] *Id*. at 118-119.

were all above board and were not marked with irregularity. Furthermore, he asserted that he exercised the necessary diligence required under the circumstances by requiring Marilyn to submit the necessary documents to prove her authority from Ricarcen. Calubad likewise argued that even if Ricarcen did not authorize Marilyn, it was already estopped from denying her authority since the loan proceeds had been released and Ricarcen had benefited from them.[26]

For their part, spouses Marilyn and Napoleon Soliman denied any knowledge of or participation in the allegedly falsified documents and claimed that the falsification was perpetrated by their broker, Nena Ico, and Calubad's broker, a certain Malou, without their permission.[27]

On January 6, 2009, the Regional Trial Court[28] granted Ricarcen's complaint and annulled the mortgage contracts, extrajudicial foreclosure, and sale by public auction.

The Regional Trial Court held that Marilyn failed to present a special power of attorney as evidence of her authority from Ricarcen. The lack of a special power of attorney should have been enough for Calubad to be put on guard and to require further evidence of Marilyn's authority from Ricarcen.[29]

The Regional Trial Court also ruled that the Board Resolution and Secretary's Certificates, which were supposedly executed by Ricarcen's Board of Directors, had been unmasked to be merely fabricated. Furthermore, Atty. William S. Merginio, who purportedly notarized the Board Resolution and Secretary's Certificates, denied that he notarized those documents since they did not appear in his notarial register.[30]

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[26] *Id*. at 119.

[27] *Id*. at 102.

[28] *Id*. at 106-111.

[29] *Id*. at 108-109.

[30] *Id*. at 109.

The Regional Trial Court then dismissed the complaint against the Registry of Deeds employees for Ricarcen's failure to show any irregularity in the performance of their duties.[31] The dispositive portion of the Regional Trial Court Decision read:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Ricarcen Development Corporation and further:

1. Declaring as null and void the following:

- Deed of Real Estate Mortgage dated 15 October 2001;
- Amendment of Real Estate Mortgage dated 06 December 2001;
- Second Amendment of Deed of Mortgage dated 08 May 2002; and
- Extrajudicial Foreclosure of Mortgage and Sale by public auction in favor of Arturo Calubad[;]

2. Canceling TCT No. 261881 in the name of Arturo Calubad and reinstating TCT No. RT-84937 (166018), both by the Regist[ry] of Deeds of Quezon City; and

3. Ordering defendants spouses Solimans and Calubad to pay jointly and severally damages in the amount of Two Hundred Fifty Thousand Pesos (Php250,000.00) as attorney's fees and costs of litigation.

SO ORDERED.[32]

Only Calubad appealed the Regional Trial Court Decision to the Court of Appeals.

On January 25, 2012, the Court of Appeals dismissed Calubad's appeal and affirmed the Regional Trial Court Decision. The Court of Appeals emphasized that the rule on the presumption of validity of a notarized board resolution and of a secretary's certificate is not absolute and may be validly overcome by contrary evidence;[33] thus:

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[31] *Id*. at 110.

[32] *Id*. at 110-111.

[33] *Id*. at 123-124.

In order to defeat the presumption, it is incumbent upon RICARCEN to prove "with clear, convincing, strong and irrefutable proof" that the board resolution and secretary's certificates purportedly authorizing Marilyn Soliman to secure a loan and mortgage the subject property in behalf of the corporation are, in fact, invalid.

In the case at bench, RICARCEN was able to discharge this burden. The truth of the contents of the board resolution and secretary's certificates relied upon by Calubad had been overthrown by the records of this case which clearly show that such documents were not in fact executed by the board of directors of RICARCEN, and are, therefore, fabricated.[34]

The Court of Appeals also disregarded Calubad's argument that Ricarcen was guilty of laches, ruling that Ricarcen's board of directors only found out about the mortgage contracts in July 2003, when they received a copy of the notice of foreclosure of mortage. Upon verifying with the Registry of Deeds of Quezon City, Ricarcen took immediate action by removing Marilyn as president and instituting a case for annulment and cancellation of mortgage against Calubad and Marilyn.[35]

The Court of Appeals likewise set aside Calubad's argument that Ricarcen was estopped from denying the contracts. The Court of Appeals held that since Ricarcen did not know about the existence of the contracts of mortgage between Calubad and Marilyn, it could not have ratified them or knowingly accepted any benefits from the loan proceeds.[36]

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby ordered **DISMISSED**, and the appealed decision is **AFFIRMED *in toto***.

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[34] *Id*. at 124.

[35] *Id*. at 127-128.

[36] *Id*. at 128.

SO ORDERED.[37] (Emphasis in the original)

On August 10, 2012, Calubad filed his Petition[38] before this Court.

Petitioner claims that Ricarcen is barred by estoppel from denying Marilyn's authority to enter into a contract of loan and mortgage with Calubad for several reasons. He argues that Ricarcen clothed Marilyn in apparent authority to act in its behalf,[39] that it benefited from the loans proceeds,[40] and that it impliedly agreed to the mortgage loans by paying the monthly interest payments.[41]

Petitioner avers that Elizabeth executed four (4) separate document which gave Marilyn the authority to secure loans, use the Quezon City property as collateral, and execute all documents needed for those purposes.[42]

The four (4) documents which petitioner claimed to have proved Marilyn's authority to act in behalf of Ricarcen were:

a) Board Resolution dated October 15, 2001, which read:

RESOLVED, AS IT IS HEREBY RESOLVED, that the President MARILYN R. SOLIMAN, is the authorized signatory of the corporation to transact any and all documents necessary for the purpose of securing monetary loan using a parcel of land owned by the corporation located at No. 53 Linaw St., Quezon City covered by TCT No. RT 84937 (166018) of the Registry of Deeds of [Quezon City] with a total area of 840 square meters more or less, as collateral/security.

RESOLVED FURTHER, AS IT IS HEREBY RESOLVED, that she is authorized to sign all documents required for the monetary loan for and in behalf of the corporation.[43]

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[37] *Id*. at 129.

[38] *Id*. at 9-54.

[39] *Id*. at 30-37.

[40] *Id*. at 38-45.

[41] *Id*. at 45-51.

[42] *Id*. at 31-33.

[43] *Id*. at 98.

b) Secretary's Certificate dated October 15, 2001, which read:

BE IT RESOLVED, AS IT IS HEREBY RESOLVED, that the corporation will borrow from ARTURO CALUBAD, Filipino, of legal age, and residing at 89 East Maya Philam Homes Village, Quezon City.

FURTHERMORE, BE IT RESOLVED, that the corporation is authorizing MARILYN R. SOLIMAN, President, to sign for and in behalf of the corporation.[44]

c) Secretary's Certificate dated December 6, 2001, which read:

RESOLVED, as it is hereby resolved that the President, MARILYN R. SOLIMAN, is hereby authorized to secure ADDITIONAL LOAN OF [₱]1,000,000.00 from MR. ARTURO CALUBAD, using as collateral two (2) parcels of land with the improvements existing thereon, situated in Quezon City, Metro Manila, covered and embraced by Transfer Certificate of Title No. RT-84937 (166018) of the Registry of Deeds of Quezon City, Metro Manila, and in such amount that she deems it most proper and beneficial to the corporation.

RESOLVED FINALLY, that the President is hereby authorized to sign Amendment of Deed of Real Estate Mortgage, Acknowledgment Receipt and other pertinent documents and get and receive the loan either in cash or check/s with any bank lawfully doing business in the Philippines for and in behalf of the corporation.[45]

d) Secretary's Certificate dated May 8, 2002, which read:

BE IT RESOLVED, AS IT IS HEREBY RESOLVED, that the corporation will secure additional monetary loan of ₱2,000,000.00 from ARTURO CALUBAD, Filipino, of legal age, and residing at 89 East Maya Philam Homes Village, Quezon City, using a parcel of land owned by the corporation located at No. 53 Linaw St., Quezon City covered by TCT No. RT-84937 (166018) of the Registry of Deeds of [Quezon City] with a total area of 840 square meters more or less, as collateral/security.

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[44] *Id*. at 32.

[45] *Id*. at 99.

FURTHERMORE, BE IT RESOLVED, that the corporation is authorizing MARILYN R. SOLIMAN, President, to sign for and in behalf of the corporation.[46]

All these four (4) documents were signed by Elizabeth in her capacity as Ricarcen's corporate secretary.

Elizabeth later on denied signing any of these four (4) documents cited by petitioner, saying that she regularly signed blank documents and left them with her sister Marilyn. She opined that the Board Resolution and Secretary's Certificates, which purportedly gave Marilyn the authority to transact with petitioner in Ricarcen's behalf, might have been some of the blank documents she had earlier signed.[47]

However, petitioner asserts that the fact that Elizabeth entrusted signed, blank documents to Marilyn proved that Ricarcen authorized her to secure loans and use its properties as collateral for the loans.[48]

Petitioner also points out that Marilyn had possession of the owner's duplicate copy of TCT No. RT-84937 (166018), and thus, he had no reason but to believe that she was authorized by Ricarcen to deal and transact in its behalf.[49]

Additionally, the loan proceeds were issued through checks payable to Ricarcen, which were deposited in its bank account and were cleared. As further evidence of Ricarcen's receipt of the loan proceeds, petitioner presented several checks drawn and issued by Elizabeth or Erlinda, jointly with Marilyn, representing loan payments.[50]

Petitioner also presented several withdrawal slips signed by either Elizabeth or Erlinda, jointly with Marilyn, authorizing

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[46] *Id*. at 100.

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

[48] *Id*. at 36.

[49] *Id*. at 38.

[50] *Id*. at 39-40.

a certain Lilydale Ombina to repeatedly withdraw from Ricarcen's bank account.[51]

Petitioner likewise presented several checks drawn from Ricarcen's bank account, issued by Elizabeth or Erlinda, jointly with Marilyn, payable to third persons or to cash.[52] Petitioner maintains that the foregoing evidence is indubitable proof that the loan proceeds have been used by Ricarcen.[53]

Petitioner then claims that Ricarcen, in a check drawn and issued by Erlinda and Marilyn, paid the 3% monthly interest for the first loan of ₱4,000,000.00. This bolstered his belief that Ricarcen and its officers knew of and approved that loan, and induced him to grant Ricarcen, through Marilyn, additional loans.[54]

Petitioner asserts that the acts of Elizabeth and Erlinda are equivalent to clothing Marilyn with apparent authority to deal with him and use the Quezon City property as collateral:

> Their acts are also a manifestation of their acquiescence to Marilyn Soliman's availment of loans and execution of real estate mortgage with petitioner.
>
> Thus, even if Marilyn Soliman had acted without or in excess of her actual authority, if she acted within the scope of an apparent authority with which [Ricarcen] has clothed her by holding her out or permitting her to appear as having such authority, [Ricarcen] is bound thereby in favor of petitioner who in good faith relied on such apparent authority.[55]

On November 12, 2012, this Court required Ricarcen to comment on the Petition.[56]

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[51] *Id.* at 40-42.

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

[53] *Id.* at 44.

[54] *Id.* at 45-47.

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

[56] *Id.* at 135-136.

On February 4, 2013, Ricarcen filed its Comment,[57] where it claims that the Petition raised questions of fact, which are not proper in a petition for review on certiorari. It also avers that petitioner failed to raise any exceptional circumstances, and thus, should be dismissed outright.[58]

Ricarcen asserts that while the documents it purportedly issued enjoy the presumption of validity, this presumption is not absolute and it has shown convincing evidence as to the invalidity of the Board Resolution and of the Secretary's Certificates.[59]

Ricarcen points out that Marilyn clearly acted without authority when she entered into a loan and mortgage agreement with petitioner. Being void, the contracts of loan and mortgage can never be ratified.[60]

Ricarcen also denied that it was guilty of laches since it only learned about Marilyn's loan with Calubad in July 2003, when it received a notice of foreclosure. Upon learning of the extrajudicial foreclosure and sale by public auction, it immediately removed Marilyn as president and authorized Josefelix to file the necessary actions to protect Ricarcen's interests.[61]

Ricarcen likewise claims that it cannot be held guilty of estoppel *in pais* since it never induced nor led petitioner to believe that Marilyn was duly authorized to take out a loan and to mortgage the Quezon City property as collateral. Additionally, "it did not knowingly accept any benefit" from the loan proceeds.[62]

Ricarcen declares that petitioner either connived with Marilyn or, at the very least, failed to exercise reasonable diligence

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[57] *Id*. at 141-157.

[58] *Id*. at 141-142.

[59] *Id*. at 147-148.

[60] *Id*. at 148.

[61] *Id*. at 150-151.

[62] *Id*. at 151-152.

and prudence in ascertaining Marilyn's supposed agency from Ricarcen.[63]

On March 11, 2013, this Court noted Ricarcen's Comment and required Calubad to reply to the Comment.[64]

On May 9, 2013, Calubad filed his Reply,[65] where he denied that he raised purely questions of fact in his Petition since the issue raised was "the law and jurisprudence applicable to the facts of this case, or whether the conclusion drawn by the Court of Appeals from those facts is correct or not."[66]

Petitioner likewise claims that the findings of the Court of Appeals were contradicted by the evidence on record, and hence, were not conclusive or binding on the parties.[67]

On April 6, 2016, this Court noted Calubad's motion for early decision dated March 21, 2016.[68]

The only issue presented for this Court's resolution is whether or not Ricarcen Development Corporation is estopped from denying or disowning the authority of Marilyn R. Soliman, its former President, from entering into a contract of loan and mortgage with Arturo C. Calubad.

The petition is meritorious.

I

The Rules of Court categorically state that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion."[69] The Rules of Court further require that

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[63] *Id*. at 154-155.

[64] *Id*. at 159.

[65] *Id*. at 171-188.

[66] *Id*. at 171.

[67] *Id*. at 172-173.

[68] *Id*. at 193.

[69] RULES OF COURT, Rule 45, Sec. 6.

only questions of law should be raised in petitions filed under Rule 45[70] since factual questions are not the proper subject of an appeal by certiorari. It is not this Court's function to analyze or weigh all over again evidence that has already been considered in the lower courts.[71]

However, these rules admit exceptions. *Medina v. Mayor Asistio, Jr.*[72] listed down 10 recognized exceptions:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures . . .; (2) When the inference made is manifestly mistaken, absurd or impossible . . .; (3) Where there is a grave abuse of discretion . . .; (4) When the judgment is based on a misapprehension of facts . . .; (5) When the findings of fact are conflicting . . .; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee . . .; (7) The findings of the Court of Appeals are contrary to those of the trial court . . .; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based . . .; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents . . .; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record...[73]

Pascual v. Burgos[74] instructed that parties must demonstrate by convincing evidence that the case clearly falls under the exceptions to the rule:

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

> Section 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[71] *Quintos v. Nicolas*, 736 Phil. 438, 451 (2014) [Per *J*. Velasco, Third Division].

[72] 269 Phil. 225 (1990) (Per *J*. Bidin, Third Division].

[73] *Id*. at 232.

[74] G.R. No. 171722, January 11, 2016, 778 SCRA 189 [Per *J*. Leonen, Second Division].

Parties praying that this court review the factual findings of the Court of Appeals must demonstrate and prove that the case clearly falls under the exceptions to the rule. They have the burden of proving to this court that a review of the factual findings is necessary. Mere assertion and claim that the case falls under the exceptions do not suffice.[75]

Petitioner claims that his case falls under the exceptions to the general rule on a Rule 45 appeal since the findings of the lower courts are contradicted by the evidence on record.[76] After a careful study of the records, this Court is convinced that this case falls under the exceptions cited in *Medina*, particularly in that "the inference made is manifestly mistaken," making a Rule 45 appeal proper.

II

As a corporation, Ricarcen exercises its powers and conducts its business through its board of directors, as provided for by Section 23 of the Corporation Code:

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

However, the board of directors may validly delegate its functions and powers to its officers or agents. The authority to bind the corporation is derived from law, its corporate by-laws, or directly from the board of directors, "either expressly or impliedly by habit, custom or acquiescence in the general course of business."[77]

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[75] *Id*. at 207 *citing Borlongan v. Madrideo*, 380 Phil. 215, 223 (2000) [Per *J*. De Leon, Jr., Second Division].

[76] *Rollo*, pp. 172-173.

[77] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, 357 Phil. 850, 863 (1998) [Per *J*. Panganiban, First Division].

The general principles of agency govern the relationship between a corporation and its representatives.[78] Article 1317[79] of the Civil Code similarly provides that the principal must delegate the necessary authority before anyone can act on his or her behalf.

Nonetheless, law and jurisprudence recognize actual authority and apparent authority as the two (2) types of authorities conferred upon a corporate officer or agent in dealing with third persons.[80]

Actual authority can either be express or implied. Express actual authority refers to the power delegated to the agent by the corporation, while an agent's implied authority can be measured by his or her prior acts which have been ratified by the corporation or whose benefits have been accepted by the corporation.[81]

On the other hand, apparent authority is based on the principle of estoppel. The Civil Code provides:

Article 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

. . . . . .

Article 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

Agency may be oral, unless the law requires a specific form.

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[78] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, 778 SCRA 458, 500, G.R. Nos. 194964-65, January 11, 2016 [Per *J.* Leonen, Second Division].

[79] CIVIL CODE, Art. 1317 provides:

Article 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

[80] *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*, 639 Phil. 35, 45-46 (2010) [Per *J.* Brion, Third Division].

[81] *Id.* at 45-46.

Yao Ka Sin Trading v. Court of Appeals[82] instructed that an agent's apparent authority from the principal may also be ascertained through:

> (1) the general manner by which the corporation holds out an officer or agent as having power to act or, in other words, the apparent authority with which it clothes him to act in general, or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or without the scope of his ordinary powers.

The doctrine of apparent authority provides that even if no actual authority has been conferred on an agent, his or her acts, as long as they are within his or her apparent scope of authority, bind the principal. However, the principal's liability is limited to third persons who are reasonably led to believe that the agent was authorized to act for the principal due to the principal's conduct.[83]

Apparent authority is determined by the acts of the principal and not by the acts of the agent.[84] Thus, it is incumbent upon Calubad to prove how Ricarcen's acts led him to believe that Marilyn was duly authorized to represent it.

III

As the former president of Ricarcen, it was within Marilyn's scope of authority to act for and enter into contracts in Ricarcen's behalf. Her broad authority from Ricarcen can be seen with how the corporate secretary entrusted her with blank yet signed sheets of paper to be used at her discretion.[85] She also had possession of the owner's duplicate copy of the land title covering the property mortgaged to Calubad, further proving her authority from Ricarcen.[86]

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[82] 285 Phil. 345, 367 (1992) [Per *J.* Davide, Jr., Third Division].

[83] *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*, 639 Phil. 35, 47 (2010) [Per *J.* Brion, Third Division].

[84] *Id*.

[85] *Rollo*, p. 125.

[86] *Id.* at 38.

The records show that on October 15, 2001, Calubad drew and issued two (2) checks payable to Ricarcen representing the loan proceeds for the first mortgage. The first check was Equitable PCI Bank check number 0024416 for ₱2,920,000.00 and the second check was Equitable PCI Bank check number 0000461 for ₱600,000.00. Both checks were deposited in Ricarcen's bank account with Banco de Oro, Banawe Branch, and were honored by the drawee bank.[87]

On December 6, 2001, Marilyn negotiated for an additional ₱1,000,000.00 loan with Calubad, under the same terms and conditions.[88]

From December 15, 2001 to April 15, 2002, Ricarcen paid and issued several checks payable to Calubad, which he claimed were the monthly interest payments of the mortgage loans. The following checks were drawn by Erlinda and Marilyn for Ricarcen:

(a) Banco de Oro check number 0000067624 dated December 15, 2001 for ₱120,000.00;
(b) Banco de Oro check number 0000067622 dated January 15, 2002 for ₱120,000.00;
(c) Banco de Oro check number 000067626 dated February 15, 2002 for ₱120,000.00;
(d) Banco de Oro check number 0000067673 dated March 6, 2002 for ₱30,000.00;
(e) Banco de Oro check number 0000067625 dated March 15, 2002 for ₱120,000.00;
(f) Banco de Oro check number 0000067674 dated April 6, 2002 for ₱30,000.00; and
(g) Banco de Oro check number 0002422 dated April 15, 2002 for ₱120,000.00.[89]

Calubad deposited the January 15, 2002 check into his Metrobank, EDSA-Caloocan Branch account, while the rest of the checks were deposited in his bank account with Equitable

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[87] *Id*. at 39.

[88] *Id*. at 78-80.

[89] *Id*. at 174-175.

PCI Bank, A. De Jesus-EDSA Branch. All the checks from Ricarcen cleared.[90]

For the additional loan of ₱2,000,000.00 obtained on May 8, 2002, Ricarcen again issued several Banco de Oro checks dated June 15, 2002 to December 6, 2002 as payments for this loan and its monthly interest. These checks were made to Calubad's order and were drawn by either Erlinda or Elizabeth with Marilyn.[91]

However, Banco de Oro check number 0082424 dated June 15, 2002 for ₱120,000.00, Banco de Oro check number 0082425 dated July 15, 2002 for ₱120,000.00, and Banco de Oro check number 0082426 dated August 15, 2002 for ₱120,000 were all dishonored by the drawee bank for insufficiency of funds.[92]

Calubad states that he no longer deposited the following checks from Ricarcen upon Marilyn's request, since she claimed that Ricarcen's funds were by then insufficient to pay the issued checks:

(a) Banco de Oro check number 0082467 dated July 6, 2002 for ₱30,000.00;
(b) Banco de Oro check number 0082447 dated July 8, 2002 for ₱60,000.00;
(c) Banco de Oro check number 0082448 dated August 8, 2002 for ₱2,000,000.00;
(d) Banco de Oro check number 0082469 dated September 6, 2002 for ₱30,000.00;
(e) Banco de Oro check number 0082427 dated September 15, 2002 for ₱120,000.00;
(f) Banco de Oro check number 0082470 dated October 6, 2002 for ₱30,000.00;
(g) Banco de Oro check number 0082428 dated October 15, 2002 for ₱4,000,000.00;

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[90] *Id*. at 175.

[91] *Id*. at 175-177.

[92] *Id*. at 175-176.

(h) Banco de Oro check number 0082471 dated November 6, 2002 for ₱30,000.00; and
(i) Banco de Oro check number 0082472 dated December 6, 2002 for ₱1,000,000.00.[93]

Calubad could not be faulted for continuing to transact with Marilyn, even agreeing to give out additional loans, because Ricarcen clearly clothed her with apparent authority. Likewise, it reasonably appeared that Ricarcen's officers knew of the mortgage contracts entered into by Marilyn in Ricarcen's behalf as proven by the issued Banco De Oro checks as payments for the monthly interest and the principal loan.

Ricarcen claimed that it never granted Marilyn authority to transact with Calubad or use the Quezon City property as collateral for the loans, but its actuations say otherwise. It appears as if Ricarcen and its officers gravely erred in putting too much trust in Marilyn. However, Calubad, as an innocent third party dealing in good faith with Marilyn, should not be made to suffer because of Ricarcen's negligence in conducting its own business affairs. This finds support in *Yao Ka Sin Trading*:[94]

Also, "if a private corporation intentionally or negligently clothes its officers or agents with apparent power to perform acts for it, the corporation will be estopped to deny that such apparent authority is real, as to innocent third persons dealing in good faith with such officers or agents."[95]

IV

Nonetheless, petitioner's prayer for the award of damages must be denied for failing to provide factual or legal basis for the award.

Moral damages are not automatically awarded when there is a breach of contract. It must also be proven that the party who

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[93] *Id.* at 175-177.

[94] 285 Phil. 345 (1992) [Per *J.* Davide, Jr., Third Division].

[95] *Id.* at 367.

breached the contract acted fraudulently or in bad faith, in wanton disregard of the contracted obligation.[96] In addition, the following conditions must be met before moral damages may be awarded:

> (1) *first*, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) *second*, there must be culpable act or omission factually established; (3) *third*, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) *fourth*, the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.[97] (Emphasis supplied)

Petitioner failed to allege that Ricarcen acted fraudulently or wantonly when it breached the loan and mortgage contract. Neither is this Court convinced that fraud, bad faith, or wanton disregard of its obligation can be imputed to Ricarcen due to its bad business judgment and negligence in putting too much trust in Marilyn. It was not sufficiently shown that Ricarcn was spurred by a dishonest purpose or was motivated by ill will or fraud when it assailed the contract entered into by Marilyn and Calubad.

In the same manner, exemplary damages[98] cannot be awarded in the absence of evidence that Ricarcen acted fraudulently or wantonly. Finally, in the absence of exemplary damages, attorney's fees, and costs of suit also cannot be recovered.[99]

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[96] *Philippine Savings Bank v. Spouses Castillo*, 664 Phil. 774, 786 (2011) [Per *J*. Nachura, Second Division].

[97] *Francisco v. Ferrer, Jr.*, 405 Phil. 741, 749-750 (2001) [Per *J*. Pardo, First Division].

[98] CIVIL CODE, Art. 2232 provides:

Article 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

[99] 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:

WHEREFORE, the Petition is **GRANTED**. The assailed January 25, 2012 Decision and June 20, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 93185 are **REVERSED and SET ASIDE**. Ricarcen Development Corporation's Amended Complaint in Civil Case No. Q-03-50584 before Branch 218, Regional Trial Court, Quezon City is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires*, and *Gesmundo, JJ.*, concur.

THIRD DIVISION

[G.R. No. 203943. August 30, 2017]

MAGSAYSAY MARITIME CORPORATION/EDUARDO MANESE and PRINCESS CRUISE LINES, LTD., *petitioners, vs.* **CYNTHIA DE JESUS,** *respondent.*

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(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.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISE AGREEMENT; DEFINED; AS A RULE, A COMPROMISE AGREEMENT VALIDLY ENTERED INTO BY THE PARTIES MAKES A JUDGMENT ON THE MERITS WITH THE EFFECT OF *RES JUDICATA* UPON THEM; CASE AT BAR.— In the instant case, the parties entered into a compromise agreement when they executed a Conditional Satisfaction of Judgment Award. Article 2028 of the Civil Code defines a compromise agreement as "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." Parties freely enter into a compromise agreement, making it a judgment on the merits of the case with the effect of *res judicata* upon them. While the general rule is that a valid compromise agreement has the power to render a pending case moot and academic, being a contract, the parties may opt to modify the legal effects of their compromise agreement to prevent the pending case from becoming moot. In the Conditional Satisfaction of Judgment Award, respondent acknowledged receiving the sum of ₱3,370,514.40 from petitioners as conditional payment of the judgment award. Both parties agreed that the payment of the judgment award was without prejudice to the pending certiorari proceedings before the Court of Appeals and was only made to prevent the imminent execution being undertaken by respondent and the National Labor Relations Commission. Finally, in the event the judgment award of the labor tribunals is reversed by the Court of Appeals or by this Court, respondent agreed to return whatever she would have received back to petitioners and in the same vein, if the Court of Appeals or this Court affirms the decisions of the labor tribunals, petitioners shall pay respondent the balance of the judgment award without need of demand. Respondent, for herself and for her three (3) minor children with Bernardine, then signed a Receipt of Payment where she reiterated the undertakings she took in the Conditional Satisfaction of Judgment Award. However, in the Affidavit of Heirship, respondent was prohibited from seeking further redress against petitioners, making the compromise agreement ultimately prejudicial to respondent: x x x This prohibition on the part of respondent to pursue any of the available legal remedies should the Court of Appeals or this Court reverse the judgment award

of the labor tribunals or prosecute any other suit or action in another country puts the seafarer's beneficiaries at a grave disadvantage. Thus, *Career Philippines* is applicable and the Court of Appeals did not err in treating the conditional settlement as an amicable settlement, effectively rendering the Petition for *Certiorari* moot and academic.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; GENERALLY, THE SUPREME COURT ONLY EXAMINES QUESTIONS OF LAW; FACTUAL FINDINGS OF LABOR TRIBUNALS ARE GENERALLY BINDING UPON THE SUPREME COURT, ABSENT SHOWING A GRAVE ABUSE OF DISCRETION; CASE AT BAR.— *Madridejos v. NYK-Fil Ship Management, Inc.* 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 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." This Court sees no reason to depart from this rule. x x x Both labor tribunals found that Bernardine first experienced chest pains while he was still on board the cruise ship, i.e., during the term of his employment contract. It was likewise established that while Bernardine requested medical attention when he started to feel ill and upon his repatriation, his requests were repeatedly ignored. x x x The findings of the labor tribunals correspond with the unassailed fact that Bernardine died from a cardio-vascular disease merely two (2) months after his repatriation. x x x Being factual in nature, this Court sees no reason to disturb the findings of the labor tribunals as it has usually given deference to the findings of fact of administrative agencies which have acquired expertise in their specific jurisdiction. Their factual findings are generally binding upon this Court, absent a showing a grave abuse of discretion.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Rolando B. Go, Jr. for respondent.

D E C I S I O N

LEONEN, *J.*:

A conditional settlement of a judgment award may be treated as a compromise agreement and a judgment on the merits of the case if it turns out to be highly prejudicial to one of the parties.

This resolves the Petition for Review on Certiorari[1] filed by Magsaysay Maritime Corporation, Eduardo Manese,[2] and Princess Cruise Lines, Limited (petitioners) assailing the August 17, 2012 Decision[3] and October 19, 2012 Resolution[4] of the Court of Appeals in CA-G.R. SP No. 119393. The assailed Court of Appeals Decision upheld the November 24, 2010 Decision[5] and February 28, 2011 Resolution[6] of the National Labor Relations Commission in NLRC NCR LAC No. 08-000481-09 (NLRC NCR No. (M) 09-13352-08).

On February 28, 2006, Magsaysay Maritime Corporation (Magsaysay), the local manning agent of Princess Cruise Lines,

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[1] *Rollo*, pp. 24-62.

[2] *Id*. at 484. Eduardo Manese was Magsaysay Maritime Corporation's employee.

[3] *Id*. at 64-76. The Decision was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Rodil V. Zalameda of the First Division, Court of Appeals, Manila.

[4] *Id*. at 21-22. The Resolution was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Rodil V. Zalameda of the First Division, Court of Appeals, Manila.

[5] *Id*. at 122-135.

[6] *Id*. at 145-146.

Limited, hired Bernardine De Jesus (Bernardine) as an Accommodation Supervisor for the cruise ship Regal Princess. Based on the contract of employment[7] that he signed, Bernardine was to receive a basic monthly wage of US$388.00 for a period of 10 months.

On March 9, 2006, Bernardine boarded Regal Princess and he eventually disembarked 10 months later, or on January 16, 2007, after his contract of employment ended.[8]

Bernardine was soon diagnosed with Aortic Aneurysm and on March 15, 2007, he had a coronary angiography. On March 21, 2007, he underwent a Left Axillofemoral Bypass.[9] He died on March 26, 2007.[10]

On September 24, 2008, respondent Cynthia De Jesus (Cynthia), Bernardine's widow, filed a complaint[11] against Magsaysay for "payment of death benefits, medical expenses, sickness allowance, damages, and attorney's fees."[12] Cynthia and Magsaysay were unable to amicably settle the case; hence, they were directed to submit their respective position papers.[13]

On June 30, 2009, the Labor Arbiter granted Cynthia's complaint and directed Magsaysay to pay her claims for death benefits, additional benefits, burial expenses, and attorney's fees.[14]

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[7] *Id*. at 170.

[8] *Id*. at 65.

[9] *Id*.

[10] *Id*. at 210.

[11] *Id*. at 149-151.

[12] *Id*. at 151.

[13] *Id*. at 65.

[14] *Id*. at 136-143. The Decision docketed as NLRC NCR Case No. (M) NCR-09-13352-08 was penned by Labor Arbiter Madjayran H. Ajan.

The Labor Arbiter ruled that it was highly improbable that Bernardine developed a cardio-vascular disease which would lead to his death merely two (2) months after his repatriation.[15]

The Labor Arbiter held that Cynthia sufficiently established that her husband suffered chest pains while he was still aboard the Regal Princess. She claimed that he had reported his condition but he was not provided with medical attention. Furthermore, he had also asked for medical attention upon his repatriation, but his request was once again denied.[16] The dispositive portion of the Labor Arbiter Decision read:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered finding respondents liable to pay, jointly and severally, complainant's claims for death benefits under the POEA Standard Employment Contract, amounting to US$50,000.00 and additional benefits amounting to US$21,000.00 for complainant's three (3) minor children, in Philippine currency at the prevailing rate of exchange at the time of payment; US$1,000,00 representing burial expenses; and attorney's fees often percent (10%) of the total monetary award.
>
> All other claims are denied.
>
> SO ORDERED.[17]

On November 24, 2010, the National Labor Relations Commission[18] denied Magsaysay's appeal.

The National Labor Relations Commission upheld the Labor Arbiter's finding that Bernardine's cardio-vascular disease was work-related.[19]

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[15] *Id*. at 140.

[16] *Id*. at 141.

[17] *Id*. at 142-143.

[18] *Id*. at 122-135. The Decision docketed as NLRC NCR LAC No. 08-000481-09 (NLRC NCR No. (M) 09-13352-08) was penned by Commissioner Romeo L. Go and concurred in by Commissioner Perlita B. Velasco. Presiding Commissioner Gerardo C. Nograles took no part.

[19] *Id*. at 130.

The National Labor Relations Commission also noted that while the general rule in compensability of death is that a seafarer's death must have occurred during the term of the employment contract, an exception to this rule is when a seafarer contracted an illness while under the contract and this illness caused his death:[20]

> In such case, even if the seaman died after the term of the contract, his beneficiaries are entitled to death compensation and benefits. Thus, [w]here a seaman contracts an illness during the term of his employment and such illness causes the death of the seaman even after the term of his contract, the beneficiaries of the seaman are entitled, as a matter of right, to death compensation and benefits.[21]

As for Bernardine's failure to submit himself to a post-employment medical examination, the National Labor Relations Commission remarked that this Court had already ruled that it could be dispensed with. Furthermore, the National Labor Relations Commission pointed out that the failure to undergo a post-employment medical examination within three (3) days from repatriation leads to the forfeiture of medical benefits and sickness allowance, not death benefits.[22] The dispositive portion of the National Labor Relations Commission Decision read:

> **WHEREFORE**, the Decision of the labor arbiter a quo dated June 30, 2009 rendered in NLRC NCR Case No. (M) 09-13352-08 is hereby **AFFIRMED** in toto.
>
> SO ORDERED.[23] (Emphasis in the original)

On May 13, 2011, Magsaysay filed a Petition for Certiorari[24] before the Court of Appeals.

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[20] *Id*. at 131-132.

[21] *Id*. at 132.

[22] *Id*.

[23] *Id*. at 132-133.

[24] *Id*. at 80-121.

On June 30, 2011, Magsaysay paid Cynthia ₱3,370,514.40 as conditional satisfaction of the judgment award against it and without prejudice to its Petition for Certiorari pending before the Court of Appeals.[25]

On July 1, 2011, in light of the conditional settlement between the parties, the Labor Arbiter considered the case closed and terminated but without prejudice to Magsaysay's pending petition before the Court of Appeals.[26]

On August 17, 2012, the Court of Appeals[27] dismissed the petition for being moot and academic.[28] On October 19, 2012, the Court of Appeals[29] denied Magsaysay's motion for reconsideration.[30]

On December 19, 2012, petitioners filed their Petition for Review on Certiorari[31] where they continue to assert that the Court of Appeals erred in dismissing their Petition for Certiorari for being moot and academic. Petitioners emphasize that *Leonis Navigation v. Villamater*[32] stated that if the Court of Appeals grants a petition for certiorari, the assailed decision of the National Labor Relations Commission will become void *ab initio* and will never attain finality.[33]

Petitioners maintain that *Leonis* ruled that even if the employer voluntarily pays the judgment award, the seafarer's beneficiary is estopped from claiming that the controversy has ended with the Labor Arbiter's Order closing and terminating the case. This is because the beneficiary acknowledged that the payment

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[25] *Id.* at 400-408.

[26] *Id.* at 408-A.

[27] *Id.* at 64-76.

[28] *Id.* at 75.

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

[30] *Id.* at 427-450.

[31] *Id.* at 24-62.

[32] 628 Phil. 81 (2010) [Per *J.* Nachura, Third Division].

[33] *Rollo*, pp. 35 and 766.

received "was without prejudice to the final outcome of the petition for certiorari pending before the [Court of Appeals]."[34]

Furthermore, petitioners claim that Bernardine's death was not compensable under the Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC) because he died after his contract of employment was terminated.[35] Petitioners put forth that "[f]rom then on, petitioners' responsibilities and obligations to the deceased seafarer had ceased."[36]

Petitioners also highlight that Bernardine was not repatriated due to illness but because of the completion of his contract.[37] Additionally, Bernardine failed to submit himself to a post-employment medical examination within three (3) days from his repatriation, as required by the POEA-SEC. Thus, petitioners claim that there was no basis for the death benefits claimed by Cynthia. Petitioners point out that Bernardine did not complain of any illness during the de-briefing session conducted before his repatriation.[38]

Nonetheless, even if Bernardine complied with the rule on post-employment medical examination, petitioners contend that Aortic Aneurysm, which caused Bernardine's death, was not a compensable occupational disease under the POEA-SEC. They aver that it cannot be presumed that the cause of his death was work-related. They posit that respondent utterly failed to substantiate her claim that her husband's death was work related.[39]

On February 13, 2013, this Court required respondent Cynthia to comment on the Petition for Review.[40]

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[34] *Id*. at 36 and 766-767.

[35] *Id*. at 40-41 and 769-771.

[36] *Id*. at 41 and 771.

[37] *Id*. at 43 and 772-773.

[38] *Id*. 44-45 and 773-774.

[39] *Id*. at 47-54 and 777-784.

[40] *Id*. at 556-557.

On May 3, 2013, respondent filed her Comment[41] where she stresses that the ruling in *Career Philippines Ship Management Inc. v. Madjus*[42] is applicable to her case since both cases pertain to voluntary satisfaction of claims for death benefits.[43] Furthermore, just like in *Career Philippines*, by accepting the monetary award from petitioners, respondent will no longer have any available remedy against them, while petitioners are still free to pursue any of the remedies available to them.[44]

Respondent also argues that the issues raised before this Court are the same factual issues already threshed out before the Court of Appeals and the National Labor Relations Commission. Respondent contends that the findings of the administrative tribunals are supported by substantial evidence; hence, they should be accorded great weight and respect by this Court.[45]

Respondent denies that her husband failed to comply with the three (3)-day reporting requirement and claims that her husband even asked to be provided with medical attention upon his repatriation, but his request was denied:

> The petitioners merely told him to take a rest and after that, he will be re-deployed again. Seaman De Jesus could not have immediately filed a disability claim (as suggested by petitioners) because he was not yet examined by a doctor due to the refusal of petitioners to provide post-employment medical attention. He was also hoping that his condition would improve after taking a rest, as suggested by petitioners.
>
> However, his condition did not improve until he suffered aortic aneurism on March 14, 2007.[46] (Emphasis in the original)

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[41] *Id.* at 561-608.

[42] 650 Phil. 157 (2010) [Per *J.* Carpio Morales, Third Division].

[43] *Rollo*, pp. 572-581 and 714-720.

[44] *Id.* at 584-585 and 725-727.

[45] *Id.* at 585-588 and 727-730.

[46] *Id.* at 598-599 and 741.

On August 12, 2013, this Court required petitioners to reply to the Comment.[47]

On November 4, 2013, petitioners filed their Reply[48] where they deny respondent's allegation that they voluntarily offered to pay the full judgment award. They claim that they even opposed respondent's Motion for the Issuance of a Writ of Execution and were just forced to pay the judgment award since their petition before the Court of Appeals did not stay the judgment award.[49]

Petitioners reiterate that the Court of Appeals erred in dismissing the petition on the ground that the payment of the judgment award rendered the petition moot and academic because the payment made to respondent was without prejudice to the then pending petition before the Court of Appeals.[50]

Petitioners argue that the labor tribunals committed grave abuse of discretion in awarding death benefits to Cynthia and her three (3) minor children considering that Bernardine's death was not compensable under the POEA-SEC and that respondent failed to prove her claims of compensability with substantial evidence.[51]

The parties filed their respective memoranda on February 12, 2014[52] and March 24, 2014,[53] in compliance with this Court's December 2, 2013 Resolution.[54]

This Court resolves the following issues:

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[47] *Id.* at 610.

[48] *Id.* at 616-635.

[49] *Id.* at 616-617.

[50] *Id.* at 617-620.

[51] *Id.* at 620-623, 626-631.

[52] *Id.* at 706-749.

[53] *Id.* at 757-789.

[54] *Id.* at 704-705.

First, whether or not the payment of money judgment has rendered the Petition for *Certorari* before the Court of Appeals moot and academic; and

Second, whether or not the award of death benefits was issued with grave abuse of discretion.

The petition is devoid of merit.

I

Petitioner cite *Leonis Navigation v. Villamater*[55] to support their claim that their payment of the judgment award did not render the Petition for Certiorari before the Court of Appeals moot and academic. *Leonis* stated:

> Simply put, the execution of the final and executory decision or resolution of the NLRC shall proceed despite the pendency of a petition for *certiorari*, unless it is restrained by the proper court. In the present case, petitioners already paid Villamater's widow, Sonia, the amount of [₱]3,649,800.00, representing the total and permanent disability award plus attorney's fees, pursuant to the Writ of Execution issued by the Labor Arbiter. Thereafter, an Order was issued declaring the case as "closed and terminated." However, although there was no motion for reconsideration of this last Order, Sonia was, nonetheless, estopped from claiming that the controversy had already reached its end with the issuance of the Order closing and terminating the case. This is because the Acknowledgment Receipt she signed when she received petitioners' payment was without prejudice to the final outcome of the petition for *certiorari* pending before the CA.[56]

Respondent, in turn, cites *Career Philippines Ship Management Inc. v. Madjus*[57] to substantiate her claim that the Conditional Satisfaction of Judgment Award was akin to an amicable settlement, rendering the Petition for Certiorari before the Court of Appeals moot and academic. *Career Philippines* stated:

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[55] 628 Phil. 81 (2010) [Per *J*. Nachura, Third Division].

[56] *Id*. at 94.

[57] 650 Phil. 157 (2010) [Per *J*. Carpio Morales, Third Division].

As for the "Conditional Satisfaction of Judgment," the Court holds that it is valid, hence, the "conditional" settlement of the judgment award insofar as it operates as a final satisfaction thereof to render the case moot and academic.

. . . . . .

Finally, the Affidavit of Claimant attached to the "Conditional Satisfaction of Judgment" states:

. . . . . .

> 5. That I understand that the payment of the judgment award of US$66,000.00 or its peso equivalent of PhP2,932,974.00 **includes all my past, present and future expenses and claims, and all kinds of benefits due to me under the POEA employment contract and all collective bargaining agreements and all labor laws and regulations, civil law or any other law whatsoever and all damages, pains and sufferings in connection with my claim**.
>
> 6. That I have no further claims whatsoever in any theory of law against the Owners of MV "Tama Star" because of the payment made to me. That I certify and warrant **that I will not file any complaint or prosecute any suit of action in the Philippines, Panama, Japan or any country against the shipowners and/or released parties** herein after receiving the payment of US$66,000.00 or its peso equivalent of PhP2,932,974.00 (emphasis and underscoring supplied)

In effect, while petitioner had the luxury of having other remedies available to it such as its petition for *certiorari* pending before the appellate court, and an eventual appeal to this Court, respondent, on the other hand, could no longer pursue other claims, including for interests that may accrue during the pendency of the case.[58] (Emphasis in the original)

Philippine Transmarine Carriers, Inc. v. Legaspi[59] clarified that this Court ruled against the employer in *Career Philippines* not because the parties entered into a conditional settlement

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[58] *Id.* at 163-165.

[59] 710 Phil. 838 (2013) [Per *J.* Mendoza, Third Division).

but because the conditional satisfaction of judgment was "highly prejudicial to the employee."[60]

> The agreement stated that the payment of the monetary award was without prejudice to the right of the employer to file a petition for *certiorari* and appeal, while the employee agreed that she would no longer file any complaint or prosecute any suit of action against the employer after receiving the payment.[61]

Equitable considerations were the underlying basis for the ruling in *Career Philippines*[62] and this was accentuated in *Philippine Transmarine Carriers, Inc. v. Pelagio*,[63] which summarized the ruling in *Philippine Transmarine Carriers, Inc. v. Legaspi* as follows:

> Ultimately, in *Philippine Transmarine*, the Court ruled that since the agreement in that case was fair to the parties in that it provided available remedies to both parties, the *certiorari* petition was not rendered moot despite the employer's satisfaction of the judgment award, as the respondent had obliged himself to return the payment if the petition would be granted.[64]

In the instant case, the parties entered into a compromise agreement when they executed a Conditional Satisfaction of Judgment Award.[65]

Article 2028 of the Civil Code defines a compromise agreement as "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." Parties freely enter into a compromise

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[60] *Id*. at 847.

[61] *Id*. at 847-848.

[62] *Seacrest Maritime Management, Inc. v. Picar*, 155 Phil. 901, 907 (2015) [Per *J*. Mendoza, Second Division].

[63] 766 Phil. 504 (2015) [Per *J*. Perlas-Bernabe, First Division].

[64] *Id*. at 515.

[65] *Rollo*, pp. 400-404.

agreement, making it a judgment on the merits of the case with the effect of *res judicata* upon them.[66]

While the general rule is that a valid compromise agreement has the power to render a pending case moot and academic, being a contract, the parties may opt to modify the legal effects of their compromise agreement to prevent the pending case from becoming moot.[67]

In the Conditional Satisfaction of Judgment Award,[68] respondent acknowledged receiving the sum of ₱3,370,514.40 from petitioners as conditional payment of the judgment award. Both parties agreed that the payment of the judgment award was without prejudice to the pending certiorari proceedings before the Court of Appeals and was only made to prevent the imminent execution being undertaken by respondent and the National Labor Relations Commission. Finally, in the event the judgment award of the labor tribunals is reversed by the Court of Appeals or by this Court, respondent agreed to return whatever she would have received back to petitioners and in the same vein, if the Court of Appeals or this Court affirms the decisions of the labor tribunals, petitioners shall pay respondent the balance of the judgment award without need of demand.[69]

Respondent, for herself and for her three (3) minor children with Bernardine, then signed a Receipt of Payment[70] where she reiterated the undertakings she took in the Conditional Satisfaction of Judgment Award.

However, in the Affidavit of Heirship,[71] respondent was prohibited from seeking further redress against petitioners,

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[66] *Gadrinab v. Salamanca*, 736 Phil. 279, 290 (2014) [Per *J.* Leonen, Third Division].

[67] *Philippine Transmarine Carriers, Inc. v. Pelagio*, 766 Phil. 504, 512 (2015) [Per *J.* Perlas-Bernabe, First Division] (citing *Morla v. Belmonte*, 678 Phil. 102, 116-117 (2011) [Per *J.* Leonardo-De Castro, First Division]).

[68] *Rollo*, pp. 400-404.

[69] *Id.* at 401-402.

[70] *Id.* at 405.

[71] *Id.* at 407-408.

making the compromise agreement ultimately prejudicial to respondent:

> **I, CYNTHIA P. DE JESUS**, with residence at 157 Isarog St., La Lorna, Quezon City, Philippines, after being duly sworn, depose and say:
>
> . . . . . .
>
> [7.] That I understand that the payment of the judgment award of **US$79,200.00** or its peso equivalent plus of **Php3,370,514.40** *includes all my past, present and future expenses and claims*, and all kinds of benefits due to me under the POEA employment contract and all collective bargaining agreements and all labor laws and regulations, civil law or any other law whatsoever and all damages, pains and sufferings in connection with my claim;
>
> [8.] *That I have no further claims whatsoever in any theory of law against the Owners of "**REGAL PRINCESS**" because of the payment made to me.* That I certify and warrant that *I will not file any complaint or prosecute any suit or action in the Philippines, United States of America, Liberia, Kuwait, Panama, United Kingdom or any other country against the shipowners and/or the released parties* herein after receiving the payment of **US$79,200.00** or its peso equivalent of **Php3,370,514.40**[.][72] (Emphasis supplied)

This prohibition on the part of respondent to pursue any of the available legal remedies should the Court of Appeals or this Court reverse the judgment award of the labor tribunals or prosecute any other suit or action in another country puts the seafarer's beneficiaries at a grave disadvantage. Thus, *Career Philippines* is applicable and the Court of Appeals did not err in treating the conditional settlement as an amicable settlement, effectively rendering the Petition for Certiorari moot and academic.

II

Despite our previous disquisition, this Court will still take up the second issue brought before it for resolution.

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[72] *Id*. at 408.

Madridejos v. NYK-Fil Ship Management, Inc.[73] 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 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, we usually "conclusive on this Court."[74]

This Court sees no reason to depart from this rule.

Section 20(A) of the POEA-SEC requires that for a seafarer to be entitled to death benefits, he must have suffered a work-related death during the term of his contract. This provision reads:

> SECTION 20. COMPENSATION AND BENEFITS. —
>
> A. COMPENSATION AND BENEFITS FOR DEATH
>
> 1. In case of work-related death of the seafarer, during the term of his contract the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.
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> . . . . . .

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[73] 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, Second Division].

[74] *Id.* citing *Career Philippine Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9-10 (2012) [Per *J.* Brion, Second Division].

4. The other liabilities of the employer when the seafarer dies as a result of work-related injury or illness during the term of employment are as follows:

a The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.

b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advise for disposition of seafarer's remains.

c. The employer shall pay the beneficiaries of the seafarer the Philippines [sic] currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment.

However, Section 32-A of the POEA-SEC acknowledges the possibility of "compensation for the death of the seafarer occurring after the employment contract on account of a work-related illness"[75] as long as the following conditions are met:

(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.[76]

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[75] See *Power Shipping Enterprises, Inc. v. Salazar*, 716 Phil. 693, 705 (2013) [Per Sereno, *C.J.*, First Division].

[76] POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (2000), Sec. 32-A.

Furthermore, a cardio-vascular disease may be considered occupational under Section 32-A (11) if any of the established conditions are met:

> 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 train 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.
>
> 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.[77]

In fulfilling these requisites, respondent must present no less than substantial evidence. Substantial evidence is defined as "such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[78]

Both labor tribunals found that Bernardine first experienced chest pains while he was still onboard the cruise ship, i.e., during the term of his employment contract. It was likewise established that while Bernardine requested medical attention when he started

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[77] POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (2000), Sec. 32-A (11).

[78] *Philippine Airlines, Inc. v. National Labor Relations Commission*, 342 Phil. 352, 365 (1997) [Per *J*. Davide, Jr., Third Division].

to feel ill and upon his repatriation, his requests were repeatedly ignored. The Labor Arbiter held:

> Complaint has clearly established that her husband's condition was suffered while he was on board the vessel and during the term of his employment contract with the respondent. Strict roles of evidence are not applicable in claims for compensation and disability benefits. Against the self-serving denials of the respondents, complainant has shown that her husband, prior to his death, suffered chest pains while on board and reported his condition but he was not allowed to seek medical attention. When he was repatriated, he asked the respondents anew for medical check up but his request was again denied. Having substantially established that the causative circumstances leading to her husband's death had transpired during his employment. We find that complainant is entitled to the death compensation and other benefits under the POEA Standard Contract. Probability and not the ultimate degree of certainty is the test of proof in compensation proceedings[.][79]

While the National Labor Relations Commission opined:

> Evidently, the disease which led to the death of Bernardine de Jesus is work -related, and in this regard, We believe that complainant-appellee presented sufficient evidence to show the nature of the maritime employment of her late husband, as well as the disease he suffered from and its causal relationship to his maritime employment.[80]

The findings of the labor tribunals correspond with the unassailed fact that Bernardine died from a cardio-vascular disease merely two (2) month after his repatriation. This Court concurs with the Labor Arbiter's observation that it was improbable for Bernardine to have developed and died from a cardio-vascular disease within the two (2) short months following his repatriation:

> Seaman de Jesus died just over two (2) months from his repatriation. It is quite improbable for him to develop cardio-vascular disease which caused his death during that short span of time. Medical studies cited on record recognize the fact that it is medically impossible to

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[79] *Rollo*, pp. 141-142.

[80] *Id*. at 131.

acquire cardiovascular illnesses merely days or weeks prior to one's death ...

It is therefore evident that the illness which caused Seaman de Jesus' death occurred during the term of his employment contract, though it may not have fully manifested at once. The fact that the seaman's work exposed him to different climates and unpredictable weather also helped trigger the onset of his disease. There is therefore a reasonable connection between the conditions of employment and work actually performed by the deceased seafarer and his illness.[81]

Being factual in nature, this Court sees no reason to disturb the findings of the labor tribunals as it has usually given deference to the findings of fact of administrative agencies which have acquired expertise in their specific jurisdiction. Their factual findings are generally binding upon this Court, absent a showing a grave abuse of discretion.[82]

WHEREFORE, this Court resolves to deny the Petition. The assailed Court of Appeals Decision dated August 17, 2012 and Resolution dated October 19, 2012 in CA-G.R. SP No. 119393 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires*, and *Gesmundo, JJ.*, concur.

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

[82] *Maya Farms Employees Organization v. National Labor Relations Commission*, 309 Phil. 465, 470 (1994) [Per *J.* Kapunan, First Division].

SECOND DIVISION

[G.R. No. 221991. August 30, 2017]

JOSELITO PERALTA *y* ZARENO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1866, AS AMENDED; ILLEGAL POSSESSION OF FIREARMS; THE *CORPUS DELICTI* IS THE ACCUSED'S LACK OF LICENSE OR PERMIT TO POSSESS OR CARRY THE FIREARM; *CORPUS DELICTI,* HOW ESTABLISHED.—** The *corpus delicti* in the crime of illegal possession of firearms is the accused's lack of license or permit to possess or carry the firearm, as possession itself is not prohibited by law. To establish the *corpus delicti*, the prosecution has the burden of proving that: (*a*) the firearm exists; and (*b*) the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.

2. **ID.; ID.; ID.; FAILURE TO PRESENT THE RESULTS OF THE PARAFFIN TEST IS INCONSEQUENTIAL SINCE IT IS NOT INDICATIVE OF THE ACCUSED'S GUILT OR INNOCENCE OF THE CRIME CHARGED.—** That the prosecution failed to present the results of the paraffin test made on Peralta is inconsequential since it is not indicative of his guilt or innocence of the crime charged. In *People v. Gaborne*, the Court discussed the probative value of paraffin tests x x x.

3. **POLITICAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; SEARCH AND SEIZURE MUST BE CARRIED OUT THROUGH OR ON THE STRENGTH OF A JUDICIAL WARRANT; EXCEPTION.—** Section 2, Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision.** To protect the

people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.** In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. One of the recognized exceptions to the need for a warrant before a search may be effected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed.**

4. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST; WHEN LAWFULLY EFFECTED.— A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule — be complied with x x x. The aforementioned provision identifies three (3) instances when warrantless arrests may be lawfully effected. These are: (*a*) an arrest of a suspect *in flagrante delicto*; (*b*) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (c) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.

5. ID.; ID.; ID.; ID.; WARRANTLESS ARRESTS MADE PURSUANT TO SECTIONS 5 (a) AND 5 (b) OF RULE 113 OF THE REVISED RULES OF CRIMINAL PROCEDURE ESSENTIALLY REQUIRE THE OFFICER'S KNOWLEDGE OF THE FACTS OF THE COMMISSION OF AN OFFENSE.— In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (*a*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*b*) such overt act is done in the presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for

its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it. **In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential.** Under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure, the officer himself witnesses the crime; while in Section 5 (b) of the same, he knows for a fact that a crime has just been committed.

6. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1866, AS AMENDED; ILLEGAL POSSESSION OF FIREARMS; THE OFFENSE IS *MALUM PROHIBITUM* PUNISHED BY SPECIAL LAW AND THE CARRYING OF FIREARMS WITHOUT THE REQUISITE AUTHORIZATION IS ENOUGH BASIS FOR THE CONDUCT OF A VALID *IN FLAGRANTE DELICTO* WARRANTLESS ARREST.— [T]he offense of illegal possession of firearms is *malum prohibitum* punished by special law and, in order that one may be found guilty of a violation of the decree, it is sufficient that the accused had **no authority or license to possess a firearm,** and that he intended to possess the same, even if such possession was made in good faith and without criminal intent. In *People v. PO2 Abriol*, the court ruled that the carrying of firearms and ammunition without the requisite authorization — a clear violation of PD 1866, as amended — is enough basis for the conduct of a valid *in flagrante delicto* warrantless arrest. Given these, Peralta can no longer question the validity of his arrest and the admissibility of the items seized from him on account of the search incidental to such arrest.

7. ID.; INDETERMINATE SENTENCE LAW; IF THE SPECIAL PENAL LAW ADOPTS THE NOMENCLATURE OF THE PENALTIES UNDER THE REVISED PENAL CODE, THE ASCERTAINMENT OF THE INDETERMINATE SENTENCE WILL BE BASED ON THE RULES APPLIED FOR THOSE CRIMES PUNISHABLE UNDER THE REVISED PENAL CODE.— As may be gleaned from Section 1 of PD 1866, as amended, the prescribed penalties for the crime Peralta committed is "*prision mayor* in its minimum period," or imprisonment for a period of six (6) years and one (1) day up to eight (8) years, and a fine of

₱30,000.00. Notably, while such crime is punishable by a special penal law, the penalty provided therein is taken from the technical nomenclature in the Revised Penal Code (RPC). x x x [I]f the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules applied for those crimes punishable under the RPC. Applying the foregoing to the instant case, the Court deems it proper to adjust the indeterminate period of imprisonment imposed on Peralta to four (4) years, nine (9) months, and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months, and one (1) day of *prision mayor*, as maximum. Finally, the imposition of fine in the amount of ₱30,000.00 stands.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Joselito Peralta *y* Zareno (Peralta) assailing the Decision[2] dated May 29, 2015 and the Resolution[3] dated December 8, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35193, which affirmed the Decision[4] dated July 31, 2012 of the Regional Trial Court of Dagupan City, Branch 44 (RTC) in Crim. Case No. 2008-0659-D finding him guilty beyond reasonable doubt of illegal possession of firearms and ammunition

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[1] *Rollo,* pp. 12-29.

[2] *Id*. at 33-50. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang concurring.

[3] *Id*. at 52.

[4] *Id*. at 69-72. Penned by Judge Genoveva Coching-Maramba.

under Section 1 of Presidential Decree No. (PD) 1866,[5] as amended by Republic Act No. (RA) 8294.[6]

The Facts

The instant case arose from an Information[7] dated November 20, 2008 charging Peralta of illegal possession of firearms and ammunition, defined and penalized under PD 1866, as amended, the accusatory portion of which reads:

> That on or about the 18th day of November, 2008, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOSELITO PERALTA y Zareno, did then and there, willfully, unlawfully and criminally, have in his possession, custody, and control one (1) cal. 45 with Serial No. 4517488 with magazine with five (5) live ammunitions, without authority to possess the same.
>
> Contrary to PD 1866, as amended by RA 8294.[8]

The prosecution alleged that at around 11 o'clock in the evening of November 18, 2008, a team consisting of Police Officer 3 Christian A. Carvajal (PO3 Carvajal), one Police Officer Lavarias, Police Officer 2 Bernard Arzadon (PO2 Arzadon), and Police Officer 3 Lucas Salonga (PO3 Salonga) responded to a telephone call received by their desk officer-on-duty that

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[5] Entitled "CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES," approved on June 29, 1983.

[6] Entitled "AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED 'CODIFYING THE LAWS ON ILLEGAL/ UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES,'" approved on June 6, 1997.

[7] Records, pp. 1-2.

[8] *Id*. at 1.

there was a man firing a gun at the back of the PLDT Building in Pantal District, Dagupan City.[9] Upon arrival thereat, the police officers saw two (2) men walking, later identified as Peralta and his companion, Larry Calimlim (Calimlim), holding a gun and a knife respectively.[10] Upon seeing the police officers, the men became uneasy, which prompted the police officers to swoop in. Upon apprehension, they recovered a caliber .45 pistol with Serial Number 4517488 containing a magazine with five (5) live ammunitions from Peralta and a knife from Calimlim.[11] The men were then brought to the Region I Medical Center in Dagupan City, and later, to the community precinct for paraffin and gun powder residue test. Meanwhile, the pistol and the magazine with live ammunitions were endorsed to the duty investigator.[12]

In his defense, Peralta denied the accusation against him and presented a different narration of facts. According to him, he was riding a motorcycle with Calimlim when they were flagged down by the police officers. While admitting that the latter recovered a knife from Calimlim, Peralta vigorously denied having a firearm with him, much less illegally discharging the same.[13] He pointed out that it was impossible for him to carry a gun at the time and place of arrest since they were near the barangay hall and the respective residences of Police Officer Salonga and mediaman Orly Navarro.[14] Further, Peralta averred that upon arrival at the police station, he was forced to admit possession of the gun allegedly recovered from him, and that they were subjected to a paraffin test but were not furnished with copies of the results thereof.[15] Finally, Peralta claimed

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[9] *Rollo*, p. 35.

[10] *Id*.

[11] *Id*. at 69.

[12] *Id*. at 35-36. See also *id*. at 69-70.

[13] *Id*. at 36-37.

[14] *Id*. at 70.

[15] *Id*. at 37 and 70.

that he and Calimlim were merely framed up, after his brother who operated a "*hataw*" machine went bankrupt and stopped giving "*payola*" to the police officials.[16]

The RTC Ruling

In a Decision[17] dated July 31, 2012, the RTC found Peralta guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for a period of six (6) years and one (1) day of *prision mayor*, as minimum, to eight (8) years of *prision mayor*, as maximum, and to pay a fine of ₱30,000.00.[18]

The RTC found that the prosecution had established the existence of the elements of the crime charged, considering that PO3 Carvajal positively identified him walking at the Pantal District, Dagupan City carrying a firearm and that he had no license to carry the same, as per the Certification[19] issued by the Firearms and Explosives Office in Camp Crame, Quezon City.[20]

Aggrieved, Peralta appealed[21] to the CA.

The CA Ruling

In a Decision[22] dated May 29, 2015, the CA affirmed Peralta's conviction *in toto*.[23] It concurred with the RTC's finding that the prosecution had established all the elements of the crime

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[16] *Id*.

[17] *Id*. at 69-72.

[18] *Id*. at 72.

[19] Records, p. 127. Signed by Police Chief Inspector Rodrigo Benedicto H. Sarmiento, Jr.

[20] See *id*. at 71.

[21] See Brief for the Accused-Apellant dated July 30, 2014. *Rollo*, pp. 54-68.

[22] *Id*. at 33-50.

[23] See *id*. at 49.

charged, namely, the existence of firearm and ammunitions, and the lack of the corresponding license/s by the person possessing or owning the same. In this relation, the CA held that the police officers conducted a valid warrantless arrest on Peralta under the plain view doctrine, considering that the latter was walking at the Pantal District carrying a firearm in full view of the arresting policemen, who arrived at the scene in response to a call they received at the police station.[24]

Further, for lack of substantiation, it did not lend any credence to Peralta's claim that he was only set up by the police officers as revenge for his brother's failure to give "*payola*" to the police officials in connection with his operation of the "*hataw*" machine.[25] Finally, the CA ruled that the results of the paraffin test were immaterial to Peralta's conviction of the crime charged since what is being punished by the law is the possession of a firearm and ammunitions without any license or permit to carry the same.[26]

Undaunted, Peralta moved for reconsideration,[27] which was, however, denied in a Resolution[28] dated December 8, 2015; hence, this petition.

The Issue Before the Court

The sole issue for the Court's Resolution is whether or not the CA correctly upheld Peralta's conviction for Illegal Possession of Firearm and Ammunition.

The Court's Ruling

The petition is without merit.

At the outset, the Court reiterates that Peralta was charged with illegal possession of firearms and ammunition for carrying

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[24] See *id*. at 40-43.

[25] *Id*. at 42.

[26] *Id*. at 45.

[27] Dated June 30, 2015. *Id*. at 86-93.

[28] *Id*. at 52.

a .45 caliber pistol with a magazine containing five (5) live ammunitions, a crime defined and penalized under Section 1 of PD 1866, as amended by RA 8294, pertinent portions of which read:

> Section 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition*. – The penalty of x xx shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any x x x firearm, x x x part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition x x x.
>
> The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (₱30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: *Provided, however*, That no other crime was committed by the person arrested.
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> x x x x x x x x x

The *corpus delicti* in the crime of illegal possession of firearms is the accused's lack of license or permit to possess or carry the firearm, as possession itself is not prohibited by law. To establish the *corpus delicti,* the prosecution has the burden of proving that: (*a*) the firearm exists; and (*b*) the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.[29]

In this case, the prosecution had proven beyond reasonable doubt the existence of the aforesaid elements, considering that: (*a*) the police officers positively identified Peralta as the one holding a .45 caliber pistol with Serial Number 4517488 with magazine and live ammunitions, which was seized from him and later on, marked, identified, offered, and properly admitted

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[29] *Sayco v. People*, 571 Phil. 73, 82-83 (2008); citations omitted.

as evidence at the trial; and (*b*) the Certification[30] dated August 10, 2011 issued by the Firearms and Explosives Office of the Philippine National Police declared that Peralta "is not a licensed/ registered firearm holder of any kind and calibre, specifically Caliber .45 Pistol, make (unknown) with Serial Number 4517488 per verification from the records of this office as of this date."[31]

That the prosecution failed to present the results of the paraffin test made on Peralta is inconsequential since it is not indicative of his guilt or innocence of the crime charged. In *People v. Gaborne*,[32] the Court discussed the probative value of paraffin tests, to wit:

> Paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test was extremely unreliable for use. It can only establish the presence or absence of nitrates or nitrites on the hand; however, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun, since nitrates are also admittedly found in substances other than gunpowder.[33]

Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[34]

In an attempt to absolve himself from criminal liability, Peralta questioned the legality of the warrantless arrest and subsequent

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[30] Records, p. 127.

[31] *Id*.

[32] See G.R. No. 210710, July 27, 2016.

[33] See *id*., citing *People v. Cajumocan*, 474 Phil. 349, 357 (2004).

[34] See *People v. Matibag*, 757 Phil. 286, 293 (2015), citing *Almojuela v. People*, 734 Phil. 636, 651 (2014).

search made on him. According to him, there was no reason for the police officers to arrest him without a warrant and consequently, conduct a search incidental thereto. As such, the firearm and ammunitions purportedly recovered from him are rendered inadmissible in evidence against him.[35]

Such contention is untenable.

Section 2, Article III[36] of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision**. To protect the people from unreasonable searches and seizures, Section 3 (2), Article III[37] of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding**. In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.[38]

One of the recognized exceptions to the need for a warrant before a search may be effected is a search incidental to a lawful

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[35] See *rollo*, p. 21.

[36] Section 2, Article III of the 1987 constitution states:

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

[37] Section 3 (2), Article III of the 1987 Constitution states:

> Sec. 3. x x x.
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[38] See *Sindac v. People*, G.R. No. 220732, September 6, 2016, citing *People v. Manago*, G.R. No. 212340, August 17, 2016.

arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed**.[39]

A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule – be complied with:

> Section 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

The aforementioned provision identifies three (3) instances when warrantless arrests may be lawfully effected. These are: (*a*) an arrest of a suspect *in flagrante delicto;* (*b*) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.[40]

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[39] See *id*.

[40] See *id*., citing *Comerciante v. People*, 764 Phil. 627, 634-635 (2015).

In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (*a*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*b*) such overt act is done in the presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it.[41]

In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential. Under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure, the officer himself witnesses the crime; while in Section 5 (b) of the same, he knows for a fact that a crime has just been committed.[42]

In this case, records show that upon the police officers' arrival at Pantal District, Dagupan City, they saw Peralta carrying a pistol, in plain view of everyone. This prompted the police officers to confront Peralta regarding the pistol, and when the latter was unable to produce a license for such pistol and/or a permit to carry the same, the former proceeded to arrest him and seize the pistol from him. Clearly, the police officer conducted a valid *in flagrante delicto* warrantless arrest on Peralta, thus, making the consequent search incidental thereto valid as well. At this point, it is well to emphasize that the offense of illegal possession of firearms is *malum prohibitum* punished by special law and, in order that one may be found guilty of a violation of the decree, it is sufficient that the accused had **no authority or license to possess a firearm**, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.[43] In *People v. PO2*

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[41] See *id*.

[42] See *id*.

[43] See *Fajardo v. People*, 654 Phil. 184, 203 (2011), citing *People v. De Gracia*, G.R. Nos. 102009-10, July 6, 1994, 233 SCRA 716, 726-727.

Abriol,[44] the court ruled that the carrying of firearms and ammunition without the requisite authorization – a clear violation of PD 1866, as amended – is enough basis for the conduct of a valid *in flagrante delicto* warrantless arrest.[45] Given these, Peralta can no longer question the validity of his arrest and the admissibility of the items seized from him on account of the search incidental to such arrest.

As to the proper penalty to be imposed on Peralta, the courts *a quo* erred in sentencing him to suffer the penalty of imprisonment for a period of six (6) years and one (1) day of *prision mayor*, as minimum, to eight (8) years of *prision mayor*, as maximum. As may be gleaned from Section 1 of PD 1866, as amended, the prescribed penalties for the crime Peralta committed is "*prision mayor* in its minimum period," or imprisonment for a period of six (6) years and one (1) day up to eight (8) years, and a fine of ₱30,000.00. Notably, while such crime is punishable by a special penal law, the penalty provided therein is taken from the technical nomenclature in the Revised Penal Code (RPC). In *Quimvel v. People*,[46] the Court succinctly discussed the proper treatment of prescribed penalties found in special penal laws *vis-à-vis* Act No. 4103,[47] otherwise known as the Indeterminate Sentence Law, *viz.*:

> Meanwhile, Sec. 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed. Be that as it may, the Court had clarified in the landmark ruling of *People v. Simon* that the situation is different where although the offense is defined in a special law, the penalty therefor is taken from the technical nomenclature in the RPC. Under

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[44] 419 Phil. 609 (2001).

[45] See *id*. at 635-636; citation omitted.

[46] See G.R. No. 214497, April 18, 2017.

[47] Entitled "AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES," approved on December 5, 1993.

such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.[48]

Otherwise stated, if the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules applied for those crimes punishable under the RPC.[49]

Applying the foregoing to the instant case, the Court deems it proper to adjust the indeterminate period of imprisonment imposed on Peralta to four (4) years, nine (9) months, and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months, and one (1) day of *prision mayor*, as maximum.[50] Finally, the imposition of fine in the amount of ₱30,000.00 stands.

WHEREFORE, the petition is **DENIED**. The Decision dated May 29, 2015 and the Resolution dated December 8, 2015 of the Court of Appeals in CA-G.R. CR No. 35193, which upheld the Decision dated July 31, 2012 of the Regional Trial Court of Dagupan City, Branch 44 in Crim. Case No. 2008-0659-D finding petitioner Joselito Peralta *y* Zareno (petitioner) **GUILTY** beyond reasonable doubt of Illegal Possession of Firearms and Ammunition, defined and penalized under Section 1, paragraph 2 of PD 1866, as amended by RA 8294, are hereby **AFFIRMED** with **MODIFICATION**, sentencing petitioner to suffer the penalty of imprisonment for an indeterminate period of four (4) years, nine (9) months, and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months, and one (1) day of *prision mayor*, as maximum, and to pay a fine in the amount of ₱30,000.00.

SO ORDERED.

Carpio, Acting C.J. (Chairperson),[*] *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[48] See *Quimvel v. People*, *supra* note 46; citation omitted.

[49] See *Mabunot v. People*, G.R. No. 204659, September 19, 2016, citing *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, 580-581.

[50] See Articles 64 and 76 of the Revised Penal Code.

[*] Acting Chief Justice per Special Order No. 2475 dated August 29, 2017.

SECOND DIVISION

[G.R. No. 222430. August 30, 2017]

TRANSGLOBAL MARITIME AGENCY, INC., GOODWOOD SHIPMANAGEMENT PTE., LTD. and/or MICHAEL ESTANIEL, *petitioners, vs.* **VICENTE D. CHUA, JR.,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ARE ACCORDED GREAT RESPECT AND FINALITY EXCEPT WHEN IT IS SHOWN THAT THEY COMMITTED GRAVE ABUSE OF DISCRETION.—** Courts generally accord great respect and finality to factual findings of administrative agencies, like labor tribunals, in the exercise of their quasi-judicial function. However, this doctrine espousing comity to administrative findings of facts are not infallible and cannot preclude the courts from reviewing and, when proper, disregarding these findings of facts when shown that the administrative body committed grave abuse of discretion. In labor cases elevated to it via petition for *certiorari* under Rule 65, the CA can grant this prerogative writ when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case. To make this finding, the CA necessarily has to view the evidence if only to determine if the NLRC ruling had basis in evidence.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE EMPLOYER BEARS THE BURDEN OF PROVING THAT THE DISMISSAL OF THE EMPLOYEE IS FOR A JUST OR AN AUTHORIZED CAUSE.—** In termination cases, the employer bears the burden of proving that the dismissal of the employee is for a just or an authorized cause. Failure to dispose of the burden would imply that the dismissal is not lawful. It

is incumbent upon petitioners to present substantial evidence to bolster their claim that Chua's acts constitute insubordination as would warrant his dismissal.

3. ID.; ID.; ID.; JUST CAUSES; INSUBORDINATION AND WILLFUL DISOBEDIENCE; REQUISITES.— [I]nsubordination or willful disobedience, as a just cause for the dismissal of an employee, necessitates the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

4. ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; DISCIPLINARY PROCEDURES; AN ERRING SEAFARER MUST BE HANDED A WRITTEN NOTICE OF THE CHARGE AGAINST HIM AND MUST BE GIVEN THE OPPORTUNITY TO EXPLAIN HIMSELF, UNLESS THERE IS EXISTING DANGER TO THE CREW OR THE VESSEL SO THAT THE REQUIRED NOTICE MAY BE DISPENSED WITH.— To amount to a valid dismissal, an erring seafarer must be handed a written notice of the charge against him and must be given the opportunity to explain himself — unless, of course, there is a clear and existing danger against the safety of the crew or the vessel in which case notice may be dispensed with. Section 17 of the 2010 POEA-SEC provides the disciplinary procedures against an erring seaman x x x. In this case, no hearing was conducted respecting Chua's alleged insubordination. The pieces of evidence presented were also silent about whether Chua was given the opportunity to explain or defend himself. There was also no showing of imminent danger to the crew or the vessel, so that the required notice may be dispensed with.

5. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; LEGAL INTEREST; WHERE THE CASE HAS NOT ATTAINED FINALITY BEFORE JULY 1, 2013, THE CORRECT IMPOSABLE INTEREST FOR THE TOTAL AWARDS IS SIX PERCENT FROM THE FINALITY OF THE JUDGMENT UNTIL THEIR FULL SATISFACTION; CASE AT BAR.— As to the correct rate

> of imposable interest, x x x the case of *Nacar v. Gallery Frames* x x x is instructive x x x. [T]he actual base for the computation of legal interest of the total monetary awards shall be on the amount finally adjudged. Moreover, the Court emphasized that the six percent (6%) legal interest shall be applied prospectively, thus, the twelve percent (12%) legal interest shall continue to be applied on judgments that have become final and executory prior to July 1, 2013. The CA erred in imposing twelve percent (12%) interest on the total monetary awards computed from the date of illegal dismissal, or on February 2, 2012, until the finality of judgment. Since the instant case has not attained finality before July 1, 2013, the correct imposable interest for the total awards is six percent (6%) from the finality of this judgment until their full satisfaction based on the prevailing jurisprudence.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Myrna N. Cueva-Mercader for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is the petition for review on *certiorari* filed by herein petitioners Transglobal Maritime Agency, Inc. (*Transglobal*), Goodwood Shipmanagement Pte., Ltd. (*Goodwood*), and Michael Estaniel, assailing the Decision[1] and Resolution,[2] dated July 20, 2015 and January 12, 2016, respectively, of the Court of Appeals (*CA*) in CA-G.R. SP No. 133683.

The facts follow.

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[1] Penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla, concurring; *rollo* pp. 35-48.

[2] *Id.* at 50-51.

Transglobal and Goodwood hired respondent Vicente D. Chua, Jr. (*Chua*) as Able Seaman and boarded M.T. WAWASAN RUBY on October 12, 2011. As stated in the appointment letter[3] dated September 29, 2011, Chua joined the vessel on a 9-month duty with the first three (3) months as probation period at the owner's option to continue his service for further period of six (6) months subject to satisfactory performance. On January 14, 2012, he was re-hired as Able Seaman under the following terms and conditions:

1.1 Duration Contract	**6 MONTHS**	
1.2 Position	**ABLE SEAMAN**	
1.3 Basic monthly salary	**USD 603.00**	
1.4 Hours of work	**44 HOURS/ WEEK**	
1.5 Overtime	**US$ 3.95/HOUR**	**GOT USD 375.00/MO,**
1.6 Vacation Leave with Pay	**USD 221.00/MO.**	**SHIP MAINTENANCE BONUS (SMB): USD 77.00/MO.**
1.7 Point of Hire	**Manila, PHILS.**	**SERVICE INCENTIVE BONUS: USD 7.50/MO.**[4]

While at the port of Mailiao, Taiwan on January 26, 2012, Chua and his four (4) companions left the vessel for shore leave from 7:00 p.m. to 10:00 p.m. When they returned at around 11:40 p.m., the ship captain was infuriated. On January 30, 2012, the ship captain called Chua and the others, and were served with a written reprimand regarding the incident. The written reprimand reads:

This is to state that the above **seafarer has been found to be in breach of the shipboard discipline standards** as outlined in the ship administration guidelines.

x x x The seafarer returned to vessel only near to pilot boarding time after midnight. On being questioned for returning late AB (Chua) started misbehaving and arguing with Chief Officer in Master's presence.

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[3] *Rollo,* p. 92.

[4] Records p. 37.

AB Chua has been **found an average performer on board**. This is his first contract with company and he has just finished three months on board. This sort of indiscipline cannot be tolerated on board.

On this 30th day of January '12 at 0800 hrs the above seafarer Mr. Vicente Jr. Chua is hereby **reprimanded in writing** that if his **behavior does not comply with the shipboard discipline standards he may be dismissed from the vessel**.[5]

However, they refused to sign and acknowledge receipt of the reprimand and, subsequently, the vessel's logbook entry on the matter. Thereafter, Chua and the others disembarked and returned to the Philippines on February 3, 2012.[6]

On March 20, 2012, Chua filed a complaint for illegal dismissal, non-payment of salaries, withholding of documents, moral and exemplary damages and attorney's fees against petitioners. Chua alleged that he and his companions returned later than their shore leave because of a problem with their contracted vehicle. They immediately went to the ship's office to return their passports and documents. However, the ship captain was furious and asked to explain their tardiness. Chua also alleged that they declined to sign the written reprimand for it contained falsehoods. They were repatriated on February 2, 2012 without authorized and justifiable reason and without notice of termination.[7]

The petitioners, on the other hand, maintained that Chua was dismissed for a just cause. His refusal to sign the written reprimand is a clear act of insubordination and disrespect towards superior officers. A General Report regarding the incident was entered in the vessel log, which Chua and the others also refused to sign. Petitioners alleged that they agreed to be dismissed in the presence of the vessel's master, Chief Officer and Chief Engineer.

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[5] *Id*. at 60. (Emphasis ours)

[6] *Rollo,* pp. 97-98.

[7] *Id.* at 98.

In a Decision[8] dated May 31, 2013, the Labor Arbiter (*LA*) ruled that Chua was discharged for just cause, but was not served with the required notice of termination as he agreed to be dismissed. The LA observed that Chua's failure to return to the ship on time for whatever reason constitutes the offense of failure to observe regulations on the expiration of shore liberty under Section 33. C, No. 9 (h) of the 2010 Philippine Overseas Employment Administration- Standard Employment Contract (*POEA-SEC*) which provides the penalty of reprimand for first offense. However, his refusal to sign his receipt of the written reprimand and the vessel's logbook despite being instructed by the vessel master or superior officers constitutes insubordination, an offense which carries the penalty of dismissal and payment of the cost of repatriation and replacement. While Chua and the others allegedly returned at 11:45 p.m. and not at 12 midnight as specified in the reprimand letter, the fact remains that he returned after the expiration of his shore leave. Since petitioners did not deny or respond to Chua's other money claims, the LA granted the same for it is petitioners' burden to prove their payment of salaries and benefits. The dispositive portion of the decision reads:

WHEREFORE, premises considered, [petitioners] TRANSGLOBAL MARITIME AGENCY INC., GOODWOOD SHIPMANAGEMENT PTE., LTD., MICHAEL ESTANIEL are hereby ordered to pay, jointly and severally, [respondent] VICENTE D. CHUA, JR. the following monetary awards:

1.	Total unpaid wages up to February 2, 2012 Plus unpaid vacation leave	-	US$1,429.10
2.	Unpaid/ un-remitted allotment for December 14, 2011 to January 13, 2012	-	603.00
3.	Total unpaid wages and benefits from January 14 to February 1, 2012	-	773.96
	TOTAL		US$2,806.06
4.	10% Attorney's Fees	-	280.61
	GRAND TOTAL		US$3,086.67

or its peso equivalent at the time of payment.

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[8] Penned by Labor Arbiter Alberto B. Dolosa; *rollo*, pp. 96-102.

The complaint for illegal dismissal, damages, withholding of documents and other money claims are hereby DISMISSED for lack of merit.

SO ORDERED.[9]

In a Decision[10] dated September 30, 2013, the National Labor Relations Commission (*NLRC*) in NLRC-LAC No. (M) 07-000704-13, affirmed the findings of the LA that Chua was legally dismissed, but awarded nominal damages for being dismissed without due process. The NLRC held that Chua's unreasonable refusal to receive the written reprimand was substantiated by the vessel's logbook. The entries made in the logbook by the person in the performance of a duty required by law are *prima facie* evidence of facts stated therein. It considered Chua's "arguing and misbehaving" after he returned from shore leave as insubordination which is punishable by dismissal under the POEA-SEC. The decretal portion of the decision reads:

WHEREFORE, premises considered, the Decision dated May 31, 2013 is AFFIRMED with modification that [petitioners] Transglobal Maritime Agency, Inc., Goodwood Shipmanagement Pte. Ltd., and Michael Estaniel, are ordered to solidarily pay [respondent] Vicente D. Chua, Jr. the additional amount of [₱]50,000.00 as nominal damages, aside from the monetary awards stated in the appealed Decision.

SO ORDERED.[11]

In a Decision dated July 20, 2015, the CA granted the petition for *certiorari* filed by Chua, and reversed and set aside the decision of the NLRC. The CA found that the NLRC overlooked pieces of evidence decisive of the controversy. It held that while the order to sign the receipt of written reprimand may be lawful or reasonable, the same, however, does not pertain to Chua's duty which he had been engaged to discharge. It ruled that Chua's

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[9] *Id.* at 101-102.

[10] Penned by Presiding Commissioner Joseph Gerard E. Mabilog, with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves E. Vivar-De Castro, concurring, *id.* at 103-111.

[11] *Id.* at 110.

dismissal was disproportionate to the act complained of, that is his refusal to sign receipt of a written reprimand. Thus:

> WHEREFORE, premises considered, the Petition is hereby GRANTED. The *Decision* dated 30 September 2013 and *Resolution* dated 25 November 2013 of the National Labor Relations Commission (NLRC) are REVERSED and SET ASIDE. A NEW ONE is entered finding private respondent illegally dismissed by petitioners and ordering petitioners to pay private respondent the following:
>
> 1) The payment of his wages and other benefits corresponding to the unexpired portion of his employment contract in U.S. Dollars or its peso equivalent at the time of payment, reckoned from the time of private respondent's termination on February 2, 2012;
> 2) Unpaid or unremitted allotment or wages plus unpaid vacation leave during his employment, in U.S. Dollars or its peso equivalent at the time of payment;
> 3) The amount of [₱]50,000.00 as moral damages;
> 4) The amount of [₱]30,000.00 as exemplary damages;
> 5) Ten percent (10%) of the total judgment award as and for attorney's fees;
> 6) Legal interest of 12% *per annum* of the total monetary awards computed from date of illegal dismissal or on 2 February 2012 until finality of judgment and 6% *per annum* from finality of judgment until their full satisfaction; and
> 7) Costs of the suit.
>
> The Labor Arbiter is ORDERED to compute the total monetary benefits awarded and due to private respondent in accordance with this decision.
>
> Also, the Motion for Reconsideration of the Resolution dated 31 March 2015 with Motion to Admit Copy of Previously Filed Memorandum which was received by this Court on 27 April 2015 is DENIED.
>
> SO ORDERED.[12]

Upon denial of its Motion for Reconsideration, the petitioners elevated the case before this Court raising the following issues:

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[12] *Id.* at 47-48.

I. THE FACTUAL FINDINGS OF THE NLRC AND THE LABOR ARBITER ARE BINDING ON THE HONORABLE COURT OF APPEALS ABSENT ANY OF THE JURISPRUDENTIAL EXCEPTIONS. CONSEQUENTLY, THE CONCLUSION THAT THE DISMISSAL OF RESPONDENT WAS FOR A JUST CAUSE MUST BE UPHELD AND NO LONGER DISTURBED.

II. THE POEA STANDARD EMPLOYMENT CONTRACT (POEA-SEC) GOVERNS THE EMPLOYMENT RELATIONSHIP BETWEEN PETITIONERS AND RESPONDENT. RESPONDENT WAS VALIDLY DISMISSED UNDER SECTION 33-C, NO. 5-A OR THE OFFENSE OF INSUBORDINATION. SIMILARLY, THE ACT OF INSUBORDINATION IS A JUST CAUSE FOR DISMISSAL UNDER THE LABOR CODE OF THE PHILIPPINES.

III. ASSUMING *ARGUENDO* THAT PETITIONER FAILED TO OBSERVE PROCEDURAL DUE PROCESS IN THE TERMINATION OF RESPONDENT'S EMPLOYMENT, SUCH FAILURE DOES NOT MAKE THE DISMISSAL ILLEGAL, BUT ONLY MAKES THEM LIABLE FOR NOMINAL DAMAGES.[13]

This Court finds the instant petition partly meritorious.

Petitioners allege that the petition for *certiorari* will issue only to correct errors of jurisdiction and not mere errors of judgment. The factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded respect and, at times, finality. The issue of whether the dismissal was valid is clearly a question of fact. In this case, there was substantial evidence, such as ship logbook entry, statements of witnesses, and POEA contract, to support the finding that Chua was legally dismissed.

Courts generally accord great respect and finality to factual findings of administrative agencies, like labor tribunals, in the exercise of their quasi-judicial function. However, this doctrine

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

espousing comity to administrative findings of facts are not infallible and cannot preclude the courts from reviewing and, when proper, disregarding these findings of facts when shown that the administrative body committed grave abuse of discretion.[14]

In labor cases elevated to it via petition for *certiorari* under Rule 65, the CA can grant this prerogative writ when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.[15] To make this finding, the CA necessarily has to view the evidence if only to determine if the NLRC ruling had basis in evidence.[16]

After a thorough examination of the records, this Court finds that the ruling of the NLRC is not sufficiently supported by evidence. Although the LA and the NLRC concluded that Chua was legally dismissed, they considered different acts he committed which constituted as insubordination. For the LA, it was Chua's unjustified refusal to sign the written reprimand, while the NLRC considered Chua's arguing and misbehavior after returning late from shore leave. Thus, this Court rules that it is within the CA's power to review the factual findings of the labor tribunals. Accordingly, this Court does not find erroneous the course that the CA took in resolving that Chua was illegally dismissed.

We, in turn, have the same authority to sift through the factual findings of both the CA and the labor tribunals in the event of their conflict.[17] This Court, therefore, is not precluded from reviewing the factual issues when there are conflicting findings by the Labor Arbiter, the NLRC and the Court of Appeals.[18]

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[14] *Diamond Taxi v. Llamas, Jr.*, 729 Phil. 364, 376 (2014).

[15] *Univac Development, Inc. v. Soriano*, 711 Phil. 516, 525 (2013).

[16] *Diamond Taxi v. Llamas, Jr.*, *supra* note 14.

[17] *Pepsi-Cola Products Philippines, Inc. v. Molon*, 704 Phil. 120, 133 (2013).

[18] *Plastimer Industrial Corporation, et al. v. Gopo, et al.*, 658 Phil. 627, 633 (2011).

In termination cases, the employer bears the burden of proving that the dismissal of the employee is for a just or an authorized cause. Failure to dispose of the burden would imply that the dismissal is not lawful.[19] It is incumbent upon petitioners to present substantial evidence to bolster their claim that Chua's acts constitute insubordination as would warrant his dismissal.

Petitioners maintain that, as found by the LA and the NLRC, Chua's unwarranted refusal to acknowledge receipt of the reprimand letter and to sign the ship logbook mentioning their arrival after the expiration of shore leave, and his arguing and misbehaving, constitute insubordination. To support their contention, petitioners presented the written reprimand, the General Reporting in the ship's logbook, and the Statement of Witnesses.

We reiterate that the LA found that Chua was guilty of insubordination based on his unjust refusal to obey an order from his superior officers to sign the receipt of written reprimand and the ship logbook entry. It was never established in the LA ruling that Chua was found arguing and misbehaving upon his late return from shore leave. Subsequently, the CA declared that Chua's refusal to sign the said documents does not constitute insubordination or willful disobedience since it does not pertain to his duty to which he had been engaged to discharge.

The vessel's logbook is the official repository of the day-to-day transactions and occurrences on board the vessel.[20] It is where the captain records the decisions he has adopted, a summary of the performance of the vessel, and other daily events.[21] In the case at bar, the General Reporting[22] on the refusal of Chua and his companions to sign the receipt of written reprimand reads:

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[19] *Noblado v. Alfonso,* G.R. No. 189229, November 23, 2015.

[20] *Maersk-Filipinas Crewing, Inc. v. Avestruz,* 754 Phil. 307, 320-321 (2015).

[21] *Sadagnot v. Reinier Pacific International Shipping, Inc.,* 556 Phil. 252, 258 (2007).

[22] Records p. 61; General Reporting (Emphasis supplied).

Date and hour of the occurrence	Place of the occurrence or situation by latitude and longitude at sea	Date of Entry	Nature of event or incident	State fine imposed if any
30.01.2012 1600LT	AT SEA 31° 53'N 126° 04' E	**30.01.2012**	THIS IS TO PLACE ON RECORD THAT THE BELOW SEAFARERS HAVE BEEN FOUND TO BE IN BREACH OF THE SHIPBOARD DISCIPLINE STANDARDS AS OUTLINED IN THE SHIP ADMINISTRATION GUIDELINES. THE SEAFARER'S (*sic*) WILFULLY DISOBEYED MASTER AND C/OFF INSTRUCTIONS AND DID NOT RETURN TO VESSEL FROM SHORE LEAVE AS INSTRUCTED BYCHIEF OFFICER. VESSEL WAS DISCHARGING ALONGSIDE AT MAILIAO AND SHORE LEAVE EXPIRY WAS SET TO 2200 HRS LT ON 26TH JANUARY 2012. THE SEAFARERS RETURNE[D] TO VESSEL ONLY NEAR TO PILOT BOARDING TIME AFTER MIDNIGHT.THE BELOW SEAFARERS WERE **REPRIMANDED IN WRITING TODAY AT 0800 HRS LT BUT REFUSED TO SIGN WRITTEN REPRIMAND.THE BELOW SEAFARERS ARE HEREBY WARNED THAT IF THEY DO NOT SIGN THE LOG ENTRY, THEY WILL BE IMMEDIATELY DISMISSED FROM VESSEL ALL FOUR REFUSED TO SIGN & AGREE TO BE DISMISSED.**	

A perusal of the January 30, 2012 General Reporting on the ship's logbook reveals that Chua was penalized with a written reprimand for his arrival after the expiration of shore leave. It

was also indicated that he refused to sign the receipt of the written reprimand, and that he was warned of immediate dismissal if he refused to sign the logbook entry. From the foregoing, it can be logically concluded that Chua's dismissal was contemplated only after his refusal to sign the logbook entry.

The Statements of the Witnesses, on the other hand, partly reads:

> This is to place on record that the below mention[ed] four seafarers have been **found to be in breach of the shipboard discipline standards** as outlined in the ship administration guidelines. The seafarers willfully disobeyed Master and Ch. Off instructions and did not return to vessel from shore leave as instructed by Chief officer. Vessel was discharging alongside at Mailiao and shore leave expiry was set to 2200 Hrs LT on 26th January 2012. The Chief officer instructed the crew to return before shore leave expiry time of 2200 Hrs. LT. The instructions were given in [the] presence of duty officer 3rd Officer Ajay S. Yadav. The seafarer returned to vessel only near the Pilot boarding time after midnight.
>
> On returning from shore leave, Chief Cook Zandro Fernandes & AB Vicente Jr. Chua started arguing and misbehaving with Chief Officer in [the] CCR in presence of duty officer 3/Off Ajay S. Yadav. x x x
>
> The below seafarers were **reprimanded in writing on 31st January 2012** at 0800 hrs LT and they refused to sign the 'Written Reprimand[.]' **The below seafarers were warned for their conduct and asked to sign Log entry but they refused and stated that they agree to be dismissed in [the] presence of Master, C/Off & C/E.**
>
> x x x x x x x x x[23]

The above Statement of Witnesses, like the other evidence presented by petitioners, merely stated that Chua "has been found to be in breach of the shipboard discipline standards." Any supporting evidence regarding the allegation of "arguing and misbehaving" of Chua that night was never specified in the statement, as well as in the logbook. That the undated statement of witnesses was executed after Chua's dismissal due

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[23] Records, p. 62. (Emphasis supplied).

to refusal to sign the logbook entry was evident from the fact that the said detail was included therein. It was executed to confirm the fact that Chua and his companions refused to receive the written reprimand and agreed to be dismissed. As such, it could not have been used to corroborate the charge against Chua when the written reprimand was served on January 30, 2012.

As far as proving Chua's alleged arguing and misbehaving upon his return from shore leave is concerned, this Court finds that the logbook entry is self-serving and uncorroborated. The petitioners should have presented the logbook entry of the January 26, 2012 incident to substantiate any allegations of Chua's misbehavior when he and the others returned from their shore leave. It is apparent that what was established was that Chua was warned of immediate dismissal if he refused to sign the ship logbook entry, and that his refusal to sign the written reprimand and the logbook entry prompted his dismissal.

The petitioners cited the case of *Singa Ship Management Phils., Inc. v. NLRC*[24] wherein a seafarer who returned late from shore leave was dismissed for a valid cause. While the petitioners admit that the instant case is not in all fours with the *Singa* case, they nonetheless invoke the same to demonstrate that it is not always required that the employer must establish that the act was prejudicial to the business.

We are not persuaded. It was held in the 1997 *Singa* case that the seafarer's shouting and cursing at the Master was an act of gross disrespect and insubordination against his superior. Thus:

> x x x The master was acting in the performance of his duty when he particularly demanded from the private respondent an explanation for his group's tardiness. x x x [I]nstead of giving an explanation, the private respondent shouted at the master and cursed him. This was an act of gross disrespect and insubordination against his superior and the highest official of the vessel. x x x[25]

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[24] 342 Phil. 161 (1997).

[25] *Singa Ship Management Phils., Inc. v. NLRC, supra,* at 171.

However, as discussed earlier, Chua's arguing and misbehaving when he returned after his shore leave was not sufficiently established. Nevertheless, this Court, in a recent case, expounded that insubordination or willful disobedience, as a just cause for the dismissal of an employee, necessitates the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.[26]

Moreover, a willful or intentional disobedience of such rule, order or instruction justifies dismissal only where such rule, order or instruction is (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) connected with the duties which the employee has been engaged to discharge.[27]

By virtue of the POEA-SEC, Chua is indeed bound to obey the lawful commands of the captain of the ship, but only as long as these pertain to his duties.[28] The CA correctly opined that there is no relevance to the order to sign the documents in Chua's performance of his duty as a seaman. We find that the pieces of evidence presented are insufficient to establish that Chua's refusal was characterized by a wrongful and perverse mental attitude rendering his act inconsistent with proper subordination. Chua had explained that he refused to sign the written reprimand for he maintained that the same contained falsehoods. Based on the statement of witnesses, it was someone

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[26] *Maersk-Filipinas Crewing, Inc. v. Avestruz, supra* note 20, at 319, citing *Grandteq Industrial Steel Products, Inc. v. Estrella*, 661 Phil. 735, 744 (2011).

[27] *Nissan Motors Phils., Inc. v. Angelo,* 673 Phil. 150, 160 (2011).

[28] *Stolt-Nielsen Marine Services (Phils.), Inc. v. National Labor Relations Commission,* 328 Phil. 161, 167 (1996).

else who started arguing and misbehaving before the Master when asked for a reason for not signing the written reprimand.[29]

It was held in *Gold City Integrated Port Services, Inc. (INPORT) v. National Labor Relations Commission*:[30]

> We believe that not every case of insubordination or willful disobedience by an employee of a lawful work-connected order of the employer or its representative is reasonably penalized with dismissal. For one thing, Article 282 (a) refers to "*serious* misconduct or willful disobedience". **There must be reasonable proportionality between, on the one hand, the willful disobedience by the employee and, on the other hand, the penalty imposed therefor**.[31]

Assuming *arguendo* that the commands of the ship captain to sign the receipt of the written reprimand and to sign the ship's logbook are lawful commands supposed to be obeyed by the complement of a ship, Chua's refusal to do the same does not warrant the supreme penalty of dismissal. This Court finds that dismissal is too harsh a penalty to be imposed due to Chua's supposed disobedience. As discussed, petitioners failed to establish that Chua's disobedience was characterized by a wrongful and perverse mental attitude given that he believed the written reprimand and logbook contained falsities for he maintained that he had an explanation for his late arrival.

To amount to a valid dismissal, an erring seafarer must be handed a written notice of the charge against him and must be given the opportunity to explain himself — unless, of course, there is a clear and existing danger against the safety of the crew or the vessel in which case notice may be dispensed with.[32]

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[29] Records p. 62.

"When Ch. Cook Zandro Fernandes was asked reason for not signing the reprimand, he started shouting and misbehaving with Master and stated that it is a small matter and no need for reprimand."

[30] 267 Phil. 863 (1990).

[31] *Gold City Integrated Port Services, Inc. (INPORT) v. NLRC, supra,* at 870. (Emphasis ours).

[32] *INC Shipmanagement, Inc. v. Camporedondo,* G.R. No. 199931, September 7, 2015.

Section 17 of the 2010 POEA-SEC provides the disciplinary procedures against an erring seaman, thus:

> SECTION 17. DISCIPLINARY PROCEDURES. —
>
> The Master shall comply with the following disciplinary procedures against an erring seafarer:
>
> A. The Master shall furnish the seafarer with a **written notice** containing the following:
>
> 1. **Grounds for the charges** as listed in Section 33 of this Contract or analogous act constituting the same.
> 2. **Date, time and place for a formal investigation** of the charges against the seafarer concerned.
>
> B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. These procedures must be duly documented and entered into the ship's logbook.
>
> C. If after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a **written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine agent**.
>
> D. Dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if there is a clear and existing danger to the safety of the crew or the vessel. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof.[33]

In this case, no hearing was conducted respecting Chua's alleged insubordination. The pieces of evidence presented were also silent about whether Chua was given the opportunity to explain or defend himself. There was also no showing of imminent danger to the crew or the vessel, so that the required notice may be dispensed with.

As to the correct rate of imposable interest, petitioners argue that the interest of total monetary awards is pegged at six percent

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[33] Emphases supplied.

(6%) interest *per annum* pursuant to the ruling in the case of *Nacar v. Gallery Frames*.[34]

The case of *Nacar* is instructive anent the legal interest imposable, to wit:

To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

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

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

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.,* a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.,* from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum.* No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date

[34] 716 Phil. 267 (2013).

the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[35]

From the foregoing, the actual base for the computation of legal interest of the total monetary awards shall be on the amount finally adjudged. Moreover, the Court emphasized that the six percent (6%) legal interest shall be applied prospectively, thus, the twelve percent (12%) legal interest shall continue to be applied on judgments that have become final and executory prior to July 1, 2013.[36] The CA erred in imposing twelve percent (12%) interest on the total monetary awards computed from the date of illegal dismissal, or on February 2, 2012, until the finality of judgment. Since the instant case has not attained finality before July 1, 2013, the correct imposable interest for the total awards is six percent (6%) from the finality of this judgment until their full satisfaction based on the prevailing jurisprudence.

WHEREFORE, the petition for review on *certiorari* is **DENIED.** The Decision and Resolution, dated July 20, 2015 and January 12, 2016, respectively, of the Court of Appeals are hereby **AFFIRMED with MODIFICATION,** in that petitioners are ordered to pay Vicente D. Chua, Jr., jointly and

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[35] *Nacar v. Gallery Frames, supra,* at 281-283. (Emphasis in the original, citation omitted)

[36] *Id.* at 283.

severally, the awards specified in CA-G.R. SP No. 133683, to pay the legal interest of six percent (6%) *per annum* from the finality of judgment until full satisfaction of the award.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 222561. August 30, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONATHAN TICA *y* EPANTO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; WHEN INVOKED, THE BURDEN OF EVIDENCE SHIFTS TO THE ACCUSED TO PROVE IT BY CREDIBLE, CLEAR AND CONVINCING EVIDENCE.—** Considering that self-defense is an affirmative allegation and totally exonerates the accused from any criminal liability, it is well settled that when it is invoked, the burden of evidence shifts to the accused to prove it by credible, clear and convincing evidence. The accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.

2. **ID.; ID.; ID.; ID.; ELEMENTS.—** The essential elements of self-defense are the following: (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel such aggression, and (3) lack of sufficient

provocation on the part of the person defending himself. To invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.

3. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; A CONDITION *SINE QUA NON* FOR UPHOLDING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE.— While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded. Unlawful aggression is a *conditio sine qua non* for upholding the justifying circumstance of self-defense; if there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.

4. ID.; ID.; ID.; ID.; ID.; WHEN AN UNLAWFUL AGGRESSION THAT HAS BEGUN NO LONGER EXISTS, THE ONE WHO RESORTS TO SELF-DEFENSE HAS NO RIGHT TO KILL OR EVEN WOUND THE FORMER AGGRESSOR; SELF-DEFENSE AND RETALIATION, DISTINGUISHED.— What actually transpired in the present case is not an act of self-defense but an act of retaliation on the part of Tica. These two concepts are not the same. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him, while in self-defense the aggression still existed when the aggressor was injured by the accused. "When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even wound the former aggressor. To be sure, when the present victim no longer persisted in his purpose or action to the extent that the object of his attack was no longer in peril, there was no more unlawful aggression that would warrant legal self-defense on the part of the offender." Undoubtedly, Tica went beyond the call of self-preservation when he proceeded to inflict excessive, atrocious and fatal injuries to Intia, even when the allegedly unlawful aggression had already ceased the night before.

5. ID.; ID.; ID.; ID.; THE MEANS EMPLOYED BY THE PERSON INVOKING SELF-DEFENSE MUST BE COMMENSURATE TO THE NATURE AND THE EXTENT OF THE ATTACK SOUGHT TO BE AVERTED AND

MUST BE RATIONALLY NECESSARY TO PREVENT OR REPEL AN UNLAWFUL AGGRESSION.— The means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense. It must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression. In this case, Intia was unarmed when he allegedly attacked Tica. Considering that Tica is taller, had a bigger body built, and younger than Intia, he could have simply engaged him in a fistfight. Instead, using his own knife, Tica chose to fatally stab Intia about six times, which caused the victim's eventual death. We have held in the past that the nature and number of wounds are constantly and unremittingly considered important *indicia* which disprove a plea of self-defense.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the August 24, 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-H.C. No. 01130-MIN, which affirmed with modifications the September 14, 2012 Decision[2] of the Regional Trial Court *(RTC)*, Branch 17, Cagayan de Oro City.

The Facts

Accused-appellant Jonathan Tica *y* Epanto *(Tica)* was indicted for Murder defined and penalized under Article 248 of the

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[1] Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Pablito A. Perez, concurring; *rollo*, pp. 3-11; CA *rollo*, pp. 60-68.

[2] Penned by Presiding Judge Florencia D. Sealana-Abbu; records, pp. 254-261; CA *rollo*, pp. 31-38.

Revised Penal Code *(RPC)*. The accusatory portion of the Information dated July 29, 2008 alleged:

> That on July 27, 2008, at about 4:30 o'clock in the afternoon, at Zone 4, Sarat, Baybay, Agusan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a knife, which he was then conveniently provided of, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one Eduardo Intia y Dalagan, hitting the 4th intercostal space, left anterior axillary, thereby inflicting a fatal wound on the victim which was the direct and immediate cause of his death.[3]

In his arraignment, Tica pleaded "Not Guilty" to the offense charged in the Information.[4] He admitted killing Eduardo Intia *(Intia)*, but put up the justifying circumstance of self-defense; hence, reverse trial ensued while he was under detention.

The prosecution presented Eliza Sabanal *(Sabanal)* and Emelita Bagajo *(Bagajo),* while Tica, Pablo Daig *(Daig)*, and Edgardo Florig *(Florig)* testified for the defense.

Version of the Prosecution:

On July 27, 2008, around 4:30 p.m., Sabanal and Bagajo, together with Marina Opeso and Nora Panisan, were talking near the seashore. They saw Intia sitting while facing the seashore. Later, they noticed Tica passed by, holding a knife and proceeding towards Intia. When he went near him, the latter tried to stand up and run away, but he fell down to the sea face up. He was immediately stabbed about six times while Tica was on top of him. Many people approached and watched the incident. After that, Tica went home, while Intia was brought to the hospital, where he was declared dead on arrival. Subsequently, Tica was arrested by the *barangay tanods* and was brought to Puerto police station.

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[3] Records, p. 3.

[4] *Id*. at 22.

Version of the Defense:

Around 8:30 p.m. on July 26, 2008, Intia dropped by the house of Tica and looked at the shells that the latter got from the sea. Tica agreed to sell them to Intia's friend so that he could have money to buy food for his children. However, Intia did not return to give the proceeds of the seashells. When they met later, Tica confronted him. He got mad and boxed Intia. When Tica went back to his house, Intia followed him. With a hammer and a stone, Intia shouted Tica's name, told him to come down the house, and challenged him to a fight. Tica went downstairs, but her mother pacified them. As a result, he went back inside while Intia left.

The day after, Tica was at the seashore washing his slippers when he saw Intia running towards him to attack. Upon seeing that Intia brought with him a long-necked bottle with broken edges, Tica tried to evade by swimming towards the sea. Intia chased him and was able to catch the back collar of his t-shirt. They submerged themselves in the seawater while grappling with each other. Intia pulled Tica's hair and pushed him down to drown him. On his part, Tica held Intia's feet until he reached the latter's left waistline and held his knife, which he used to stab him on his left breast. As a result, Intia released Tica, who, upon standing up, again stabbed him. Thereafter, Tica went home, changed his clothes, and went to the police station together with Florig, who is his godfather, a neighbor, and the Chief of barangay police. Florig went to the seashore after somebody told him that there was a commotion in the area. When he went to Tica's house, the latter approached and told him that he was going to surrender and requested to be accompanied at the Puerto police station.

On September 14, 2012, the RTC convicted Tica of the crime charged. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, the Court finds accused JONATHAN TICA Y EPANTO guilty of the crime of MURDER punished under Art. 248 of the Revised Penal Code and is hereby meted the penalty of Reclusion Perpetua and to indemnify the heirs of the victim in the amount of Fifty Thousand Pesos. No subsidiary imprisonment.

SO ORDERED.[5]

In concluding that the requisites of self-defense were not met to justify the killing of Intia, the RTC ratiocinated:

> The Court finds the testimony of the accused to be incredible taking into account the circumstances attendant thereto. If indeed the victim had a knife tucked in his waistline, he could have made use of it instead of the broken bottle just to ensure the death of the accused if ever. He could have stabbed the accused instead of drowning him first.
>
> The accused demonstrated in Court during his testimony on direct examination as to their relative height and position at the time he was allegedly pushed down by the victim in order to be drowned. He admitted to be taller by three (3) inches than the victim as he stands 5 ft. and 4 inches. x x x. The Court cannot imagined (sic) why it was the victim who was pushing him down to the bottom of the sea when the accused is taller than him. He even admitted that he is bigger in built and younger than the victim. x x x. There were also inconsistencies noted by the Court particularly on how he was able to get the knife allegedly from the waistline of the victim and the fact that he was not able to fight back when the victim was allegedly in the act of drowning him. x x x
>
> Granting *arguendo* that the aggression emanated from the victim, yet there was no reasonable necessity to stab the victim several times. The Medical Certificate showed that the victim sustained a [stab wound] at the "4th intercostal space, left anterior Axilliary", which means that the injury was at the left side of the breast. The location of the fatal wound indicated that the victim was lying faced (sic) up. This will buttressed *(sic)* the testimony of the eyewitnesses that the accused was on top of the victim.
>
> The prior incident of July 26, 2008 at 8:30 PM triggered the incident of July 27, 2008. Admitted by the accused was that he got angry when the victim failed to account to him the proceeds of the seashells that the accused needed much. He even admitted to have punched the victim out of anger. x x x. This circumstance led the accused to premeditate and clung (sic) to his desire to avenge.[6]

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[5] *Id*. at 261; CA *rollo*, p. 38.

[6] *Id*. at 259-260; *id*. at 36-37. (Citations omitted)

On the appeal, the CA ruled that Tica failed to discharge the burden of proving his plea of self-defense by credible, clear, and convincing evidence. It agreed with the RTC that his testimony is too incredible since it was not only uncorroborated by separate competent evidence but also extremely doubtful in itself. Moreover, the number and seriousness of the stab wounds of Intia indicated Tica's determined effort to kill him. Lastly, no evidence of improper motives on the part of Sabanal and Bagajo was found for them to falsely testify against the accused. While the judgment of conviction was sustained, the award of damages was modified. The *fallo* of the August 24, 2015 Decision reads:

> **WHEREFORE**, the appeal is **DENIED**. The Decision dated September 14, 2012 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 17 in Criminal Case No. 2008-472 convicting accused-appellant Jonathan Tica y Epanto of Murder is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant is ordered to indemnify the heirs of the late Eduardo Intia the sum of PhP 75,000.00 as civil indemnity, PhP 50,000.00 as moral damages, PhP 30,000.00 as exemplary damages, and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.
>
> SO ORDERED.[7]

Now before Us, both the People and the accused-appellant manifested that they would dispense with the filing of a Supplemental Brief so as to avoid repetition of the issues and arguments already discussed in their respective briefs filed before the CA.[8]

The Court resolves to dismiss the appeal for failure to sufficiently show reversible error in the judgment of conviction to warrant the exercise of Our appellate jurisdiction.

Considering that self-defense is an affirmative allegation and totally exonerates the accused from any criminal liability, it is

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[7] *Rollo*, p. 10; CA *rollo*, p. 67. (Emphasis on the original)

[8] *Rollo,* pp. 19-21, 28-29.

well settled that when it is invoked, the burden of evidence shifts to the accused to prove it by credible, clear and convincing evidence.[9] The accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.[10] Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.[11]

The essential elements of self-defense are the following: (1) unlawful aggression[12] on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel such aggression, and (3) lack of sufficient provocation on the part of the person defending himself.[13] To invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.[14]

While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense

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[9] *People v. Bugarin,* G.R. No. 224900, March 15, 2017; *Dela Cruz v. People, et al.,* 747 Phil. 376, 385 (2014); *Belbis, Jr., et al. v. People,* 698 Phil. 706, 719 (2012); and *People v. Duavis,* 678 Phil. 166, 174 (2011).

[10] *People v. Bugarin, supra*; *Dela Cruz v. People, et al., supra*; *Belbis, Jr., et al. v. People, supra*; and *People v. Duavis, supra,* at 175.

[11] *People v. Bugarin, supra* note 9, and *Belbis, Jr., et al. v. People, supra* note 9.

[12] "Unlawful aggression x x x presupposes actual, sudden, unexpected or imminent danger – not merely threatening and intimidating action. There is aggression, only when the one attacked faces real and immediate threat to his life. The peril sought to be avoided must be imminent and actual, not merely speculative." (*Dela Cruz v. People, et al.,* 747 Phil. 376, 385 [2014]).

[13] *People v. Bugarin, supra* note 9; *Dela Cruz v. People, et al.,supra* note 9, at 384; *Belbis, Jr., et al. v. People, supra* note 9, at 719-720, and *People v. Duavis, supra* note 9.

[14] *Dela Cruz v. People, et al., supra* note 9, at 384 and *Belbis, Jr., et al. v. People, supra* note 9, at 720.

may be successfully pleaded.[15] Unlawful aggression is a *conditio sine qua non* for upholding the justifying circumstance of self-defense; if there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.[16]

What actually transpired in the present case is not an act of self-defense but an act of retaliation on the part of Tica. These two concepts are not the same. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him, while in self-defense the aggression still existed when the aggressor was injured by the accused.[17] "When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even wound the former aggressor. To be sure, when the present victim no longer persisted in his purpose or action to the extent that the object of his attack was no longer in peril, there was no more unlawful aggression that would warrant legal self-defense on the part of the offender."[18] Undoubtedly, Tica went beyond the call of self-preservation when he proceeded to inflict excessive, atrocious and fatal injuries to Intia, even when the allegedly unlawful aggression had already ceased the night before.

Even assuming that the unlawful aggression emanated from Intia, the means employed by Tica was not reasonably commensurate to the nature and extent of the alleged attack that he sought to prevent. The means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense.[19] It must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression.[20] In this case, Intia was unarmed

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[15] *People v. Bugarin, supra* note 9, and *People v. Duavis, supra* note 9.

[16] *Dela Cruz v. People, et al., supra* note 9, at 393.

[17] *Belbis, Jr., et al. v. People, supra* note 9, at 721.

[18] *Dela Cruz v. People, et al., supra* note 9, at 386.

[19] *Id.* at 391.

[20] *Belbis, Jr., et al. v. People, supra* note 9, at 722.

when he allegedly attacked Tica.[21] Considering that Tica is taller, had a bigger body built, and younger than Intia,[22] he could have simply engaged him in a fistfight. Instead, using his own knife,[23] Tica chose to fatally stab Intia about six times, which caused the victim's eventual death. We have held in the past that the nature and number of wounds are constantly and unremittingly considered important *indicia* which disprove a plea of self-defense.[24]

The prescribed penalty for Murder under Article 248 of the RPC is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance in the commission of the offense (except for evident premeditation which was used to qualify the killing), the proper penalty to be imposed is *reclusion perpetua,* together with the accessory penalty provided by law.

Moreover, consistent with *People v. Jugueta*,[25] Tica is ordered to pay the heirs of Eduardo Intia ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. An interest at the rate of six percent (6%) *per annum*

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[21] Tica admitted that the long-necked bottle with broken edges was not used by Intia in stabbing him (TSN, October 12, 2009, p. 17). Likewise, Daig attested that it was thrown away when Intia and Tica were grappling with each other (TSN, August 4, 2009, p. 25).

[22] TSN, September 15, 2009, p. 19; TSN, October 12, 2009, pp. 8, 22-23; TSN, August 2, 2011, pp. 5, 8, 19.

[23] While Tica claimed that the knife he used to kill belonged to Intia (TSN, October 12, 2009, pp. 4-5; TSN, May 25, 2010, p. 14), his own witness, Daig, testified that Tica brought with him a knife that was tucked at his side (TSN, August 4, 2009, pp. 27-28). Sabanal and Bagajo also declared that the knife was owned by Tica (TSN, May 2, 2011, p. 11; TSN, June 7, 2011, pp. 8-9; TSN, August 2, 2011, pp. 3-4).

[24] *Dela Cruz v. People, et al., supra* note 9, at 393.

[25] G.R. No. 202124, April 5, 2016, 788 SCRA 331. See *People v. Raytos,* G.R. No. 225623, June 7, 2017; *People v. Tuardon,* G.R. No. 225644, March 1, 2017; *People v. Vergara,* G.R. No. 197365, February 15, 2017;*Ramos v. People,* G.R. Nos. 218466 & 221425, January 23, 2017; and *People v. Dayaday,* G.R. No. 213224, January 16, 2017.

shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[26]

WHEREFORE, premises considered, the August 24, 2015 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01130-MIN, finding accused-appellant Jonathan Tica *y* Epanto guilty beyond reasonable doubt of the crime of Murder, is hereby **AFFIRMED with MODIFICATIONS**. He is sentenced to suffer the penalty of *reclusion perpetua*, with all the accessory penalties provided by law, and **ORDERED** to **PAY** the heirs of Eduardo Intia ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All of the monetary awards shall incur an interest rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 223731. August 30, 2017]

ROBELITO MALINIS TALAROC, *petitioner, vs.* **ARPAPHIL SHIPPING CORPORATION, EPIDAURUS S.A., and/or NATIVIDAD PAPPAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS*; CERTIORARI;* TO BE GRANTED, THE

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[26] See Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, effective July 1, 2013, in *Nacar v. Gallery Frames*, *et al.,* 716 Phil. 267 (2013).

PETITIONER MUST SATISFACTORILY SHOW THAT THE COURT OR QUASI-JUDICIAL AUTHORITY GRAVELY ABUSED THE DISCRETION CONFERRED UPON IT; GRAVE ABUSE OF DISCRETION, DEFINED.— To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; PERMANENT AND TOTAL DISABILITY BENEFITS; GUIDELINES TO BE OBSERVED WHEN A SEAFARER CLAIMS PERMANENT AND TOTAL DISABILITY BENEFITS.— [T]he following guidelines are observed when a seafarer claims permanent and total disability benefits: **1.** The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; **2.** If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; **3.** If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and **4.** If the company-designated physician still fails to give his

assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

3. ID.; ID.; ID.; WORK-RELATED ILLNESS; DEFINED.— As a rule, a seafarer shall be entitled to compensation if he suffers from a work-related injury or illness during the term of his contract. Under the 2010 POEA-SEC, a **"*work-related illness*"** is defined as "*any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied*." Corollarily, Section 20 (A) (4) thereof further provides that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related."

4. ID.; ID.; ID.; THIRD-DOCTOR REFERRAL PROVISION; THE NEED FOR THE SEAFARER TO COMPLY THEREWITH IS NEGATED WHEN THERE IS NO CONCLUSIVE AND DEFINITE ASSESSMENT FROM THE COMPANY-DESIGNATED PHYSICIAN.— In this case, there was no showing that petitioner duly received a conclusive and definitive assessment for his lumbar spondylosis. The May 14, 2013 medical report was a confidential document, which was not shown to have been received by him. In fact, respondents did not respond to his initial query regarding the true state of his condition and whether or not he would be able to return to his pre-injury capacity and resume work despite his back pain. Thus, although petitioner did consult an independent physician regarding his illness, the lack of a conclusive and definite assessment from respondents left him nothing to properly contest and perforce, negates the need for him to comply with the third-doctor referral provision under Section 20 (A) (3) of the 2010 POEA-SEC. As case law states, without a valid final and definite assessment from the company-designated physician, the law already steps in to consider petitioner's disability as total and permanent.

APPEARANCES OF COUNSEL

Bermejo Laurino-Bermejo and Luna Law Office for petitioner.
Retoriano & Olalia-Retoriano 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 October 9, 2015 and the Resolution[3] dated March 21, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138842, which reversed and set aside the Decision[4] dated September 17, 2014 and the Resolution[5] dated November 28, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. OFW-M-07-000582-14, and instead, reinstated the Decision[6] dated May 30, 2014 of the Labor Arbiter (LA) in NLRC NCR OFW Case (M)-08-12057-13 dismissing the complaint for total and permanent disability benefits but ordered respondents to solidarily pay petitioner Robelito Malinis Talaroc (petitioner) his unpaid sickness allowance, with modification deleting the award of attorney's fees.

The Facts

Petitioner was employed by respondent Arpaphil Shipping Corporation (ASC) for its foreign principal Epidaurus S.A. as Third Officer on board the vessel MV *Exelixis* under a six (6)-month contract[7] that was signed on February 18, 2013, with a basic monthly salary of US$1,113.00 exclusive of overtime and other benefits.[8] After undergoing the required pre-

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[1] *Rollo*, pp. 33-57.

[2] *Id*. at 8-22A. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Samuel H. Gaerlan and Agnes Reyes Carpio concurring.

[3] *Id*. at 24-26.

[4] *Id*. at 422-436. Penned by Commissioner Angelo Ang Palaña with Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena concurring.

[5] *Id*. at 505-509.

[6] *Id*. at 331-355. Penned by LA Benedict G. Kato.

[7] See Contract of Employment; *id*. at 100.

[8] See *id*. at 9 and 100.

employment medical examination (PEME) where he was declared fit for sea duty[9] by the company designated physician, petitioner boarded the vessel on March 8, 2013.[10]

On March 16, 2013, the Ship Master informed respondent Epidaurus S.A. that petitioner could not perform his duties due to fever and back pain.[11] Petitioner claimed that while he was collecting the mooring rope, he felt a sudden click in his lower back accompanied with pain.[12] He was examined by a port doctor in Algeria and injected with pain reliever for his back. He was also treated for sore throat that caused his fever and given medication for his hypertension.[13] Thereafter, petitioner also complained of stomach pain and dizziness, for which the Ship Master recommended that he be confined in a hospital for further treatment and opined that he was not fit to work.[14] In a Medical Report[15] dated March 24, 2013, petitioner was found to be suffering from *lumbago* with stomach pains, in addition to his hypertension, and recommended that he be repatriated for further medical treatment.

Upon arrival in Manila, or on March 26, 2013, petitioner was referred to the company-designated physician of ASC, Dr. Esther G. Go (Dr. Go), and was diagnosed to have hypertension, "[t]o [c]onsider Gastrointestinal Bleeding [p]robably [s]econdary to Gastric Ulcers," and lumbar muscle strain.[16] After undergoing a series of laboratory tests and examinations, petitioner was found to be suffering from gastric ulcer, duodenitis, and

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[9] See Medical Examination Records; *id*. at 143.

[10] See Seafarer's Identification and Record Book; *id*. at 188. See also *id*. at 9-10.

[11] See copy of Master's report; *id*. at 189.

[12] See *id*. at 10 and 85.

[13] See copy of Master's report dated March 17, 2013; *id*. at 198.

[14] See copy of Master's report dated March 24, 2013; *id*. at 199.

[15] *Id*. at 200. Signed by a certain Dr. M. Noui.

[16] See Marine Medical Services 1st report dated March 27, 2013; *id*. at 202-203.

hypertension.[17] His lumbosacral x-ray showed an "L3-L4 and L4-L5 Generalized Disc Bulge," while his MRI of the lumbar spine showed an "L5-S1, Left Paracentral Disc Protrusion."[18] He was advised by Dr. Go to undergo rehabilitation and continue his medications.[19]

On April 29, 2013, petitioner was again admitted to the hospital due to "left facial asymmetry, loss of balance and left leg weakness" and referred to a neurologist who found him to have "Right Brainstem Infarct."[20] He underwent physical therapy on an in-patient basis until his discharge on May 2, 2013, after which he was directed to continue his prescribed medications, as well as rehabilitation as an out-patient.[21]

Thereafter, in a confidential medical report[22] dated May 14, 2013 (May 14, 2013 medical report), the company designated physician assessed petitioner's condition as follows:

This is with regards to your query regarding the case of 3rd Officer Robelito M. Talaroc who was initially seen here at Metropolitan Medical Center on March 27, 2013 and was diagnosed to have Gastric Ulcer; Duodenitis; Hypertension; L-3 – L-4 and L4 – L-5 Generalized Disc Bulge; L5 – S1, Left Paracentral Disc Protrusion.

Gastric Ulcer and Duodenitis are part of the spectrum of acid-related diseases listed under Section 32-a Item # 22 of the amended POEA Contract.

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[17] See Marine Medical Services 3rd report dated April 16, 2013; *id*. at 206-207.

[18] See *id*.

[19] See *id*. at 206. See also Marine Medical Services report dated April 23, 2013; *id*. at 208.

[20] See Marine Medical Services 6th report dated May 2, 2013; *id*. at 210-211.

[21] See *id*. at 211.

[22] See Marine Medical Services Private and Confidential report; *id*. at 214-215.

The etiology/cause of Hypertension is not work-related. It is multifactorial in origin which includes genetic predisposition, poor lifestyle, high salt intake, smoking, Diabetes Mellitus, age and increased sympathetic activity. This is already pre-existing.

Disc bulge and disc protrusion can be precipitated/aggravated by heavy work or lifting/pushing or pulling heavy objects. This is degenerative in nature.

Patient also had acute onset of headache and diplopia with left leg weakness on the last week of April 2013.

He was then noted with acute brainstem infarction on CT Scan. This occurred while he is currently undergoing treatment here in the Philippines for his Gastric Ulcer, Hypertension and back pain.

Risk factors for Lacunar Infarct are age, smoking, alcohol intake, Hypertension and Hypercholesterolemia. All of which are not work-related. This is not work-related.

The specialists opine that patient's prognosis for returning to sea duties is guarded and fitness to work is unlikely due to risk of another cerebrovascular event.

His estimated length of further treatment is approximately 3 more months before he reached his maximum medical improvement.

He will also undergo repeat Gastroscopy once neurologically and cardiac stable for treatment monitoring of his gastric ulcer.

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If patient is entitled to a disability, his suggested disability grading is Grade 10 – slight brain functional disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the patient.[23] (Emphases supplied)

Accordingly, petitioner was directed to appear in a series of follow-up check-ups by Dr. Go on May 16 and 20, 2013, June 3 and 20, 2013, July 11, 2013, and August 1 and 22, 2013.[24] In

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[23] *Id*.

[24] See Marine Medical Service reports; *id*. at 211-219.

all of the follow-up sessions, petitioner persistently complained of left leg weakness, low back pain and occasional dizziness, to which Dr. Go merely advised him to continue his medications and rehabilitation program. In a medical report[25] dated August 22, 2013 (August 22, 2013 medical report), petitioner was cleared by the specialist, Dr. Chen Pen Lim, of his gastric ulcer and gastro-intestinal disorder.

Unconvinced of the true state of his condition, petitioner consulted an independent physician, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who, in a Medical Report[26] dated September 20, 2013, found him unfit to return to work as a seafarer after evaluating his previous MRI and upon physical examination, pointing out that in view of his persistent back pain, he has lost his pre-injury capacity that rendered him permanently disabled.[27]

In the interim, or on August 28, 2013, petitioner filed a complaint[28] for underpayment of sick leave pay, non-payment of salaries/wages, reimbursement of transportation expenses, payment of sickness allowance, moral and exemplary damages, and attorney's fees against ASC, its Owner/Manager/President Natividad A. Pappas, and Epidaurus S.A. (respondents), before the NLRC, docketed as NLRC NCR OFW Case (M)-08-12057-13. The complaint was subsequently amended[29] on October 2, 2013 to include a claim for total and permanent disability benefits in view of Dr. Magtira's independent medical report finding petitioner unfit to resume his usual work as a seafarer.[30]

In support of his claim, petitioner averred that from the time he was repatriated for his back injury, he was no longer capable

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[25] *Id*. at 220.

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

[27] See *id*. at 102-103.

[28] *Id*. at 137-138.

[29] See Amended Complaint; *id*. at 140-141

[30] See *id*. at 140.

of resuming work as a seafarer that lasted for more than 240 days despite medical treatment and therapy. By reason thereof, he had lost his capacity to obtain further sea employment and an opportunity to earn an income, thus entitling him to payment of total disability compensation in the full amount of US$90,000.00 pursuant to the P.N.O "TCC" Collective Agreement for Crews on Flag of Convenience Ships[31] (CBA) that was enforced during his last employment contract. Petitioner also sought for the payment of moral and exemplary damages in view of respondents' unjustified refusal to settle the matter and their evident bad faith in dealing with him, as well as attorney's fees pursuant to Article 2208, paragraphs (2) and (8) of the Civil Code. [32]

For their part,[33] respondents maintained that petitioner was not entitled to permanent and total disability benefits under the CBA since the latter's illness did not arise from an accident.[34] They contended that petitioner's diagnosed illnesses, namely, Gastric Ulcer and Duodenitis, were already resolved as shown in the August 22, 2013 medical report, while his other illnesses, namely, hypertension, generalized disc bulge and left paracentral disc protrusion, and lacunar infarct, were all declared by Dr. Go to be not work-related, hence, not compensable.[35] Finally, they argued that petitioner's action was premature as the 240-day extended medical treatment has not yet expired at the time he filed his complaint and that he failed to comply with the provisions of the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (POEA-SEC) in case of conflict in medical findings by the parties' respective doctors.[36] They further denied petitioner's other

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[31] *Id*. at 151-186.

[32] See Complainant's Position Paper dated November 28, 2013; *id*. at 83-97.

[33] See Position Paper dated November 20, 2013; *id*. at 104-134.

[34] See *id*. at 112-114.

[35] See *id*. at 115-124.

[36] See *id*. at 124-129.

monetary claims asserting that his sickness allowance had already been paid, while his claim for reimbursement of transportation expenses was unsupported by receipts. Petitioner was also not entitled to moral and exemplary damages having been treated fairly and in good faith, as well as to attorney's fees for lack of basis.[37]

The LA Ruling

In a Decision[38] dated May 30, 2014, the LA dismissed the complaint for lack of cause of action, holding that the claim for disability benefits was filed before the lapse of the allowable 240-day extended medical treatment period. The LA pointed out that Dr. Go's assessment on May 14, 2013 giving petitioner a Grade 10 disability rating was only interim and that the latter's resort to an independent physician was premature as the former has yet to issue his final assessment within the agreed extended 240-day extended treatment period.[39] Nevertheless, the LA found merit in petitioner's claim for sickness allowance, noting that he was paid for a period of 93 days only and not 120 days as provided under the POEA-SEC.[40] The other claims for unpaid salaries, medical expenses and damages were denied for lack of basis, while an award of ten (10%) percent attorney's fees was found reasonable under the circumstances as petitioner was compelled to litigate to protect his interest in accordance with Article 2208 (7) of the Civil Code, as well as Article 111 of the Labor Code and Section 8, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code.[41]

Aggrieved, petitioner filed an appeal[42] to the NLRC.

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[37] See *id*. at 129-133.

[38] *Id*. at 331-355.

[39] See *id*. at 347-353.

[40] See *id*. at 353.

[41] See *id*. at 353-354.

[42] *Id*. at 356-381.

The NLRC Ruling

In a Decision[43] dated September 17, 2014, the NLRC set aside the LA decision,[44] ruling that the 240-day extended medical treatment was not an automatic application in case of disability claim. It pointed out that there must be a need for further medical treatment before the 120-day period may be extended which Dr. Go failed to show. It observed that the May 14, 2013 medical report, which showed that the estimated length of petitioner's treatment was approximately three (3) months, was self-serving and devoid of any probative value as there was no mention of the particular treatment or rehabilitation needed. It added that while there was no question as to his medications, there was, however, no proof showing that petitioner, in fact, underwent rehabilitation, or if there was, that it went beyond the 120-day period. On the contrary, it held that the company's specialists' opinion that the "*prognosis for returning to sea duties is guarded and fitness to work is unlikely due to risk of another cerebrovascular event*" was an indication that there was no need to extend the 120-day period since the unlikeliness of working was due to the fact that (*a*) petitioner was permanently disabled, and (*b*) that an extended treatment was unnecessary considering that it would no longer restore petitioner to his pre-injury condition. It ruled that Dr. Go's assessment of a Grade 10 disability was not interim or conditional absent any similar import suggesting the same, and that there was no need to await a final assessment given that it referred to petitioner's slight brain functional disturbance, and not his lumbar spondylosis, that incapacitated him to resume work for more than 120-days.[45]

Further, the NLRC found that petitioner's incapacity is work-related, stating that it is of no moment that his work as a Third Officer or even his working conditions on board respondents' vessel was not the sole or direct cause of his lumbar spondylosis,

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[43] *Id*. at 422-436.

[44] See *id*. at 435.

[45] See *id*. at 430-433.

as it suffices that his work, at the very least, aggravated his illness.[46]

Accordingly, the NLRC ordered respondents to jointly and severally pay petitioner total and permanent disability benefits in the amount of US$60,000.00 pursuant to the provisions of the POEA-SEC and not the CBA, as the disability did not arise from an accident, as well as ten percent (10%) attorney's fees.[47]

Respondents filed a motion for reconsideration,[48] while petitioner moved to reconsider[49] the amount of his disability benefits asserting that he was entitled to US$90,000.00 pursuant to the overriding provisions of the existing CBA.[50]

In a Resolution[51] dated November 28, 2014, the NLRC denied both motions prompting respondents to file a petition for *certiorari*[52] before the CA, docketed as CA-G.R. SP No. 138842.

The CA Ruling

In a Decision[53] dated October 9, 2015, the CA gave due course to the petition finding the NLRC to have gravely abused its discretion,[54] and reinstated the LA's Decision dated May 30, 2014 with modification deleting the award of attorney's fees.[55] It ruled that since petitioner was advised to continue with his rehabilitation program in the medical report[56] dated August 1,

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[46] See *id*. at 434.

[47] See *id*. at 433-435.

[48] Dated September 24, 2014. *Id*. at 474-490.

[49] See Motion for (Partial) Reconsideration (Re: Decision Promulgated on 17 September 2014) dated September 30, 2014; *id*. at 467-472.

[50] See *id*. at 470.

[51] *Id*. at 505-509.

[52] Dated January 7, 2015. *Id*. at 510-559.

[53] *Id*. at 8-22A.

[54] See *id*. at 18.

[55] See *id*. at 22.

[56] See Marine Medical Services 13th report; *id*. at 219.

2013 and to undergo laboratory examinations and gastroscopy on his next check-up scheduled on August 22, 2013, the company-designated physician, Dr. Go, had until November 22, 2013 (240th day) to determine with finality the former's fitness to work or disability. There being no final assessment yet, the complaint for total and permanent disability benefits was premature. The CA added that assuming the company designated physician's assessment in the May 14, 2013 medical report was final, petitioner committed a breach of his contractual obligation when he failed to resort to the opinion of a third doctor as mandated in Section 20 (B) (3) of the 2010 POEA-SEC. Consequently, the CA deleted the award of attorney's fees holding that there was no unlawful withholding of benefits.[57]

Dissatisfied, petitioner filed a motion for reconsideration,[58] which was, however, denied in a Resolution[59] dated March 21, 2016; hence, this petition.

The Issue Before the Court

The essential issue is whether or not the CA erred in holding that the NLRC gravely abused its discretion when it ruled that petitioner was entitled to total and permanent disability benefits.

The Court's Ruling

The petition is meritorious.

I.

To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of

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[57] See *id*. at 21-22.

[58] See Private Respondent's Motion for Reconsideration (Re Decision Promulgated on 09 October 2015); *id*. at 610-622.

[59] *Id*. at 24-26.

passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[60]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[61]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting respondent's *certiorari* petition since the NLRC did not gravely abuse its discretion in awarding petitioner total and permanent disability benefits.

The Labor Code and the Amended Rules on Employees Compensation (AREC) provide that the seafarer is declared to be on ***temporary total disability*** during the 120-day period within which the seafarer is unable to work.[62] However, a temporary total disability lasting continuously for more than 120 days days, **except** as otherwise provided in the Rules, is considered as a ***total and permanent disability***.[63]

The exception referred to above pertains to a situation when the sickness "***still requires medical attendance beyond the 120 days but not to exceed 240 days***," in which case the temporary total disability period is extended up to a maximum of 240 days.[64] Note, however, that for the company-designated physician

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[60] *Bahia Shipping Services, Inc. v. Hipe, Jr.*, 746 Phil. 955, 965-966 (2014).

[61] *Id*. at 966.

[62] See Article 198 (c) (1) of the Labor Code, and Section 2 (b), Rule VII of the AREC.

[63] See Article 198 (c) (1) of the Labor Code, and Section 2(b), Rule VII of the AREC.

[64] See *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 911-912 (2008).

to avail of the extended 240-day period, he must first perform some significant act to justify an extension (*e.g.*, that the illness still requires medical attendance beyond the initial 120 days but not to exceed 240 days); otherwise, the seafarer's disability shall be conclusively presumed to be permanent and total.[65]

In sum, the following guidelines are observed when a seafarer claims permanent and total disability benefits:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[66]

In this case, the Court finds that the NLRC did not gravely abuse its discretion in ruling that there was no sufficient justification for the extension of petitioner's treatment from the initial 120-day period to 240 days.

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[65] See *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 361-362.

[66] *Id.* at 362-363.

Records disclose that respondents issued a confidential medical report on May 14, 2013, which was within 120 days from the time petitioner was repatriated on March 26, 2013. In this report, the company-designated physician, Dr. Go, pointed out that petitioner suffered from numerous illnesses, namely: (*a*) Gastric Ulcer; (*b*) Duodenitis; (*c*) Hypertension; (*d*) L3 – L4 and L4 – L5 Generalized Disc Bulge; (*e*) L5 – S1 Left Paracentral Disc Protrusion; and (*f*) acute brainstem infarction, and suggested that "[i]f [petitioner] is entitled to a disability, his suggested disability grading is Grade 10 – slight brain functional disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the patient."[67]

While the May 14, 2013 medical report states that "[petitioner's] estimated length of further treatment [for his temporary total disability] is approximately 3 more months before he reached his maximum medical improvement,"[68] the NLRC correctly pointed out that aside from simply alleging "maximum medical improvement," the same report failed to indicate what kind of further treatment the seafarer would be subjected to. At most, it mentions that petitioner would be made to undergo gastroscopy (for his ulcer), which is not only unrelated to his temporary total disability for "slight brain functional disturbance" but was likewise recommended for monitoring purposes only. Moreover, while petitioner's medical progress reports mention that he was "advised to continue his rehabilitation and medication," they nonetheless failed to indicate what kind of rehabilitation he has to undergo. In fact, there is no proof that petitioner actually underwent any rehabilitation or further treatment.[69] On the contrary, respondents themselves concede that petitioner was not treated as he unilaterally abandoned his medical treatment.[70] Notably, however, respondents' claim of medical abandonment was not substantiated by any evidence.

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[67] See *rollo*, pp. 214-215.

[68] *Id*. at 214.

[69] See *id*. at 430-431.

[70] See *id*. at 650.

Thus, for all these reasons, the Court agrees with the NLRC that respondents failed to sufficiently show that further medical treatment would address petitioner's alleged temporary total disability, which therefore, discounts the proffered justification to extend the 120-day period to 240 days. As such, petitioner had rightfully commenced his complaint for disability compensation. In *C.F. Sharp Crew Management, Inc. v. Taok*,[71] the Court held that "**a seafarer may pursue an action for total and permanent disability benefits** if x x x the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and **there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days** x x x,"[72] as in this case.

Additionally, it deserves mentioning that aside from the lack of substantiation on the further treatment petitioner supposedly needed, the May 14, 2013 medical report was, in itself, riddled with material inconsistencies. For one, while the report states that petitioner is suffering from "slight brain functional disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the patient," the same report contradictorily states that "[t]he specialists opine that patient's prognosis for returning to sea duties is guarded and fitness to work is [already] unlikely due to risk of another cerebrovascular event."[73] The specialists' finding insinuates that petitioner's disability was not only temporary and total, but rather, permanent and total. The Court observes that this latter statement, in fact, finds more bearing in the records as petitioner's medical reports show that he still complained of lower back pain during prolonged sitting, residual left leg weakness and instability in balancing, as well as

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[71] 691 Phil. 521 (2012).

[72] *Id*. at 538.

[73] See *rollo*, pp. 214-215.

dizziness.[74] On this score, the case of *Fil-Star Maritime Corporation v. Rosete*[75] illumines that:

> A total disability does not require that the employee be completely disabled, or totally paralyzed. **What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it**. On the other hand, a total disability is considered permanent if it lasts continuously for more than 120 days. **What is crucial is whether the employee who suffers from disability could still perform his work notwithstanding the disability he incurred.**[76]

It should also be pointed out that the Grade 10 disability rating was given for petitioner's slight brain functional disturbance, which risk factors, however, were inconsistently stated to be not work-related. As the NLRC aptly mused, "[w]hy would the company doctor even base his disability assessment on an incapacity which is not even work-related? His assessment should have focused on the incapacity brought about by [petitioner's] Lumbar Spondylosis (disc bulge and disc protrusion) which is the illness which [the latter] averred in his Position Paper and Memorandum of Appeal and by reason of which he now seeks compensation."[77]

II.

In similar vein, the Court finds that the NLRC correctly ruled that petitioner's illnesses were work-related.

As a rule, a seafarer shall be entitled to compensation if he suffers from a work-related injury or illness during the term of his contract. Under the 2010 POEA-SEC, a "***work-related illness***" is defined as "*any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied*." Corollarily, Section 20 (A) (4) thereof

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[74] See *id*. at 216-219.

[75] 677 Phil. 262 (2011).

[76] *Id*. at 274.

[77] *Rollo*, pp. 432-433.

further provides that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related."

Records reveal that petitioner's back pain – generalized disc bulge and disc protrusion, non-listed illnesses – occurred only while he was on board the vessel. While said illness was claimed to be degenerative in nature, the company doctor herself acknowledged that it may be aggravated or precipitated by heavy work or lifting/pushing or pulling of heavy objects, a manual task basically demanded from a seafarer. Since there was no proof to show that these activities were not performed by petitioner while he was on board or were not part of his duties while the ship was at berth as advanced by respondents,[78] it can be safely concluded that the arduous nature of his job may have caused or at least aggravated his condition more so since he was declared fit to work prior to his deployment, hence, work-related.[79] Jurisprudence provides that "[p]robability, 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,"[80] as in this case.

III.

Finally, respondents contend that petitioner failed to observe the third-doctor-referral provision under the 2010 POEA-SEC, which thus similarly negates his claim for disability benefits.

Section 20 (A) (3) of the 2010 POEA-SEC reads:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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[78] See *id*. at 122, 190-197, and 638.

[79] See *NYK-Fil Ship Management, Inc. v. Talavera*, 591 Phil. 786, 801 (2008).

[80] *Casomo v. Career Philippines Shipmanagement, Inc*., 692 Phil. 326, 350; citation omitted.

x x x	x x x	x x x
3. x x x	x x x	x x x
x x x	x x x	x x x

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

In *Philippine Hammonia Ship Agency, Inc. v. Dumadag*,[81] the Court held that the seafarer's non-compliance with the said conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician.[82]

However, it should be pointed out that "[a] seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods." In *Kestrel Shipping Co., Inc. v. Munar*:[83]

> In addition, that it was by operation of law that brought forth the conclusive presumption that Munar is totally and permanently disabled, there is no legal compulsion for him to observe the procedure prescribed under Section 20-B(3) of the POEA-SEC. ***A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods.*** **Alternatively put,** ***absent a certification from the company-designated physician, the seafarer has nothing to contest and the law steps in to conclusively characterize his disability as total and permanent***.[84] (Emphasis supplied).

In this case, there was no showing that petitioner duly received a conclusive and definitive assessment for his lumbar spondylosis. The May 14, 2013 medical report was a confidential document,

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[81] 712 Phil. 507 (2013).

[82] See *id*. at 521.

[83] 702 Phil. 717 (2013).

[84] *Id*. at 737-738.

which was not shown to have been received by him. In fact, respondents did not respond to his initial query regarding the true state of his condition and whether or not he would be able to return to his pre-injury capacity and resume work despite his back pain.[85] Thus, although petitioner did consult an independent physician regarding his illness, the lack of a conclusive and definite assessment from respondents left him nothing to properly contest and perforce, negates the need for him to comply with the third-doctor referral provision under Section 20 (A) (3) of the 2010 POEA-SEC. As case law states, without a valid final and definite assessment from the company-designated physician, the law already steps in to consider petitioner's disability as total and permanent.

All told, the Court finds that the CA committed reversible error in granting respondents' *certiorari* petition since the NLRC did not gravely abuse its discretion in awarding total and permanent disability benefits in favor of petitioner.

WHEREFORE, the petition is **GRANTED**. The Decision dated October 9, 2015 and the Resolution dated March 21, 2016 of the Court of Appeals in CA-G.R. SP No. 138842 are hereby **REVERSED** and **SET ASIDE**. The Decision dated September 17, 2014 and the Resolution dated November 28, 2014 of the National Labor Relations Commission in NLRC LAC No. OFW-M-07-000582-14 are **REINSTATED**.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[85] See *rollo*, p. 86.

[*] Acting Chief Justice per Special Order No. 2475 dated August 29, 2017.

SECOND DIVISION

[G.R. No. 224204. August 30, 2017]

PHILIPPINE VETERANS BANK, *petitioner, vs.* **SPOUSES RAMON AND ANNABELLE SABADO,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTIES; AN INDISPENSABLE PARTY IS ONE WHO HAS AN INTEREST IN THE SUBJECT MATTER OF THE CONTROVERSY WHICH IS INSEPARABLE FROM THE INTEREST OF THE OTHER PARTIES, AND THAT A FINAL ADJUDICATION CANNOT BE MADE WITHOUT AFFECTING SUCH INTEREST; CASE AT BAR.— Section 7, Rule 3 of the Rules of Court mandates that all indispensable parties should be joined in a suit x x x. Case law defines an indispensable party as "one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties' that his legal presence as a party to the proceeding is an absolute necessity. In his absence, there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable." "Thus, the absence of an indispensable party renders all subsequent actions of the court null and void, for want of authority to act, not only as to the absent parties but even as to those present." x x x [A]n indispensable party is one who has an interest in the subject matter of the controversy which is ***inseparable*** from the interest of the other parties, and that a final adjudication cannot be made without affecting such interest. Here, the only issue in the instant unlawful detainer suit is who between the litigating parties has the better right to possess *de facto* the subject property. Thus, HTPMI's interest in the subject property, as one holding legal title thereto, is completely separable from petitioner's rights under the Contract to Sell, which include the cancellation or rescission of such contract and resultantly, the recovery of actual possession of

the subject property by virtue of this case. Hence, the courts can certainly proceed to determine who between petitioner and respondents have a better right to the possession of the subject property and complete relief can be had even without HTPMI's participation.

APPEARANCES OF COUNSEL

Ma. Corazon L. Leynes-Xavier for petitioner.
Michael A. Perocho for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Philippine Veterans Bank (petitioner) assailing the Decision[2] dated October 29, 2015 and the Resolution[3] dated April 20, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 135922, which reversed and set-aside the Decision[4] dated November 28, 2013 and the Order[5] dated April 28, 2014 of the Regional Trial Court of Antipolo City, Branch 98 (RTC) in SCA Case No. 13-1290 and ordered that Haus Talk Project Managers, Inc. (HTPMI) be impleaded as an indispensable party to the unlawful detainer case against respondents spouses Ramon and Annabelle Sabado (respondents).

The Facts

On May 3, 2007, HTPMI and respondents entered into a Contract to Sell[6] whereby HTPMI agreed to sell a real property

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[1] *Rollo,* pp. 9-24.

[2] *Id.* at 28-36. Penned by Associate Justice Danton Q. Bueser with Associate Justices Samuel H. Gaerlan and Socorro B. Inting, concurring.

[3] *Id*. at 38-41.

[4] *Id.* at 101-105. Penned by Presiding Judge Ma. Consejo Gengos-Ignalaga.

[5] *Id*. at 106.

[6] *Id*. at 58-61.

located at Lot 26, Block 1, Eastview Homes, Barangay Balimbing, Antipolo City (subject property) to respondents. In consideration therefor, respondents paid HTPMI the total amount of ₱869,400.00, consisting of a ₱174,400.00 downpayment and the balance of ₱695,000.00 payable in 120 equal monthly instalments. The parties further agreed that respondents' failure to pay any amount within the stipulated period of time shall mean the forfeiture of the downpayment and any other payments made in connection thereto, as well as the cancellation and rescission of the Contract to Sell in accordance with law.[7] Shortly thereafter, or on August 16, 2007, HTPMI executed a Deed of Assignment[8] in favor of petitioner assigning, among others, its rights and interests as seller in the aforesaid Contract to Sell with respondents, including the right to collect payments and execute any act or deed necessary to enforce compliance therewith.[9]

On October 14, 2009, petitioner, through a Notice of Cancellation by Notarial Act,[10] cancelled or rescinded respondents' Contract to Sell due to the latter's failure to pay their outstanding obligations thereunder. Consequently, petitioner demanded that respondents vacate the subject property, but to no avail. Thus, petitioner was constrained to file the Complaint[11] dated August 20, 2010 for ejectment or unlawful detainer against respondents before the Municipal Trial Court in Cities of Antipolo City, Branch 1 (MTCC), docketed as SCA Case No. 093-10.[12]

In their defense,[13] respondents argued that petitioner is not the real party in interest to institute such complaint, since ownership over the subject property remained with HTPMI.

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[7] See *id*. at 29 and 58.

[8] *Id*. at 45A-48.

[9] See *id*. at 29, 45A-47, and 80-81.

[10] *Id*. at 62.

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

[12] See *id*. at 9-30 and 81-82.

[13] See Answer dated September 27, 2009; *id*. at 66-68.

They expounded that under the Deed of Assignment, only the rights and interests pertaining to the receivables under the Contract to Sell were assigned/transferred to petitioner and not the ownership or the right to the possession of the subject property.[14]

The MTCC Ruling

In a Decision[15] dated April 3, 2013, the MTCC ruled in favor of petitioner and, accordingly, ordered respondents to vacate the subject property, and pay petitioner the amounts of ₱661,919.47 as rent arrears from July 31, 2008 up to July 31, 2010, ₱10,000.00 as attorney's fees, including costs of suit.[16]

The MTCC held that by virtue of the Deed of Assignment, petitioner was subrogated to the rights of HTPMI under the Contract to Sell and, hence, is a real party in interest entitled to institute the instant suit against respondents for the purpose of enforcing the provisions of the Contract to Sell. Further, the MTCC found petitioner's claim for compensation in the form of rental just and equitable, pointing out that the same is necessary to prevent respondents from unjustly enriching themselves at petitioner's expense. Finally, the MTCC awarded petitioner attorney's fees and costs of suit since it was compelled to litigate the instant complaint.[17]

Aggrieved, respondents appealed[18] to the RTC.

The RTC Ruling

In a Decision[19] dated November 28, 2013, the RTC affirmed the MTCC's ruling *in toto*.[20] It ruled that by virtue of the Deed

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[14] See *id*. at 30 and 67.

[15] *Id*. at 80-86. Penned by Acting Presiding Judge Alberto L. Vizcocho.

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

[17] See *id*. at 83-85.

[18] See Notice of Appeal dated May 16, 2013; *id*. at 87-88.

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

[20] *Id*. at 105.

of Assignment executed by HTPMI in petitioner's favor, the latter acquired not only the right to collect the balance of the purchase price of the subject property, but also all the rights of the assignor, including the right to sue in its own name as the legal assignee.[21]

Respondents moved for reconsideration,[22] which was, however, denied in an Order[23] dated April 28, 2014. Undaunted, they elevated the case to the CA.[24]

The CA Ruling

In a Decision[25] dated October 29, 2015, the CA reversed and set aside the RTC's ruling, and accordingly: (*a*) remanded the case to the MTCC for HTPMI to be impleaded therein; and (*b*) directed the MTCC to proceed with the trial of the case with dispatch.[26] Initially, it upheld petitioner's right as real party in interest to file the instant suit as HTPMI's assignee. However, since legal title to the subject property was retained by HTPMI pursuant to the provisions of the Deed of Assignment, the latter is not only a real party in interest, but also an indispensible party which should have been impleaded as a plaintiff thereon and without which no final determination can be had in the present case.[27]

Dissatisfied, petitioners moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated April 20, 2016; hence, this petition.

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[21] See *id*. at 103-104.

[22] See motion for reconsideration dated January 16, 2014; *id*. at 107-110.

[23] *Id*. at 106.

[24] See petition dated July 7, 2014; *id*. at 111-121.

[25] *Id*. at 28-36.

[26] See *id*. at 36.

[27] See *id*. at 31-35.

[28] See motion for reconsideration dated November 20, 2015; *id*. at 143-150.

[29] *Id*. at 38-41.

The Issue Before the Court

The primordial issue is whether or not the CA correctly ruled that HTPMI is an indispensable party to petitioner's ejectment suit against respondents and, thus, must be impleaded therein.

The Court's Ruling

The petition is meritorious.

Section 7, Rule 3 of the Rules of Court mandates that all indispensable parties should be joined in a suit, *viz.*:

> SEC. 7. *Compulsory joinder of indispensable parties*. – Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

Case law defines an indispensable party as "one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties' that his legal presence as a party to the proceeding is an absolute necessity. In his absence, there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable."[30] "Thus, the absence of an indispensable party renders all subsequent actions of the court null and void, for want of authority to act, not only as to the absent parties but even as to those present."[31] In *Regner v. Logarta*,[32] the Court laid down the parameters in determining whether or not one is an indispensable party, *viz.*:

> An indispensable party is **a party who has x x x an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the**

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[30] *Land Bank of the Philippines v. Cacayuran*, 759 Phil. 145, 152 (2015), citing *Gabatin v. Land Bank of the Philippines*, 486 Phil. 366, 379-380 (2004).

[31] *Id.*, citing *Domingo v. Scheer*, 466 Phil. 235, 265 (2004).

[32] 362 Phil. 862 (2007).

controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.

A person is not an indispensable party, however, **if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them**. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation.[33] (Emphases and underscoring supplied)

Guided by the foregoing parameters and as will be explained hereunder, the CA erred in holding that HTPMI is an indispensable party to the ejectment suit filed by petitioner against respondents.

Under the Deed of Assignment, HTPMI assigned its rights – save for the right of ownership – to petitioner under the Contract to Sell:

2. RIGHTS UNDER THE CONTRACTS TO SELL. By this assignment, the **ASSIGNEE hereby acquires all rights of the ASSIGNOR under the Contracts to Sell and under the law, including the right to endorse any and all terms and conditions of the Contracts to Sell and the right to collect the amounts due thereunder from the purchaser of the Property. The ASSIGNOR for this purpose hereby names, constitutes and appoints the ASSIGNEE [as its] attorney-in-fact to execute any act and deed necessary in the exercise of all these rights.** Notwithstanding the assignment of the Contracts to Sell and the Receivables thereunder to the ASSIGNEE, the legal title to the Property and obligations of

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[33] *Id*. at 875-876, citing *Arcelona v. CA*, 345 Phil. 250, 269-270 (1997).

the ASSIGNOR under the Contracts to Sell, including the obligation to complete the development of the property and the warranties of a builder under the law, shall remain the ASSIGNOR's. x x x.[34] (Emphasis and underscoring supplied)

Verily, HTPMI's assignment of rights to petitioner must be deemed to include the rights to collect payments from respondents, and in the event of the latter's default, to cancel or rescind the Contract to Sell, and resultantly, recover actual possession over the subject property, as follows:

TERMS AND CONDITIONS

b) the [respondents] herein agree to perform and undertake the [HTPMI] Payment Plan with the following terms:

i) Downpayment x x x of ONE HUNDRED SEVENTY FOUR THOUSAND FOUR HUNDRED PESOS ONLY (₱174,400.00) to be paid within twelve (12) months after payments [sic] of the reservation. **Failure to pay two (2) consecutive monthly installments will mean cancellation of this contract and forfeiture of all payments**. Discount terms shall be based on [HTPMI] Agreed Payment Plan.

x x x x x x x x x

iii) **Failure to pay any amount within the stimulated [sic] period of time shall mean forfeiture of the down payment and any other payments made and the Contract to Sell shall be cancelled and rescinded in accordance with law**.[35] (Emphases and underscoring supplied)

In view of the foregoing, the Court agrees with the findings of the courts *a quo* that petitioner had the right to institute the instant suit against respondents.

However, the Court cannot subscribe to the CA's conclusion that since HTPMI retained ownership over the subject property pursuant to the Deed of Assignment, it is an indispensable party to the case. As adverted to earlier, an indispensable party is one who has an interest in the subject matter of the controversy which is ***inseparable*** from the interest of the other parties, and

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[34] *Rollo*, p. 45A.

[35] *Id.* at 58.

that a final adjudication cannot be made without affecting such interest. Here, the only issue in the instant unlawful detainer suit is who between the litigating parties has the better right to possess *de facto* the subject property.[36] Thus, HTPMI's interest in the subject property, as one holding legal title thereto, is completely separable from petitioner's rights under the Contract to Sell, which include the cancellation or rescission of such contract and resultantly, the recovery of actual possession of the subject property by virtue of this case. Hence, the courts can certainly proceed to determine who between petitioner and respondents have a better right to the possession of the subject property and complete relief can be had even without HTPMI's participation.

In sum, both the MTCC and the RTC are correct in ruling on the merits of the instant unlawful detainer case even without the participation of HTPMI.

WHEREFORE, the petition is hereby **GRANTED**. The Decision dated October 29, 2015 and the Resolution dated April 20, 2016 of the Court of Appeals in CA-G.R. SP No. 135922 are hereby **REVERSED** and **SET-ASIDE**. The Decision dated November 28, 2013 and the Order dated April 28, 2014 of the Regional Trial Court of Antipolo City, Branch 98 in SCA Case No. 13-1290, affirming *in toto* the Decision dated April 3, 2013 of the Municipal Trial Court in Cities of Antipolo City, Branch 1 in SCA Case No. 093-10, are **REINSTATED**.

SO ORDERED.

Carpio, Acting C.J. (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[36] "Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. The only issue to be resolved in an unlawful detainer case is the physical or material possession of the property involved, **independent of any claim of ownership by any of the parties**." (*Piedad v. Spouses Gurieza*, G.R. No. 207525, June 18, 2014, 736 Phil. 709, 715 [2014]; emphases and underscoring supplied)

THIRD DIVISION

[G.R. No. 230696. August 30, 2017]

WILLIAM R. WENCESLAO, VIVENCIO B. RODRIGO, JR., NOEL N. DAMIASAN, VIRGILIO B. CRISTOBAL, JEMYLITO M. APIAG, JOVENAL P. ATAG, ARNULFO S. DASCO, CARLITO E. INFANTE, ALFREDO T. VISAYA, JAMES M. REAL, RENATO A. GUINGUE, ZACARIAS G. TALABOC, JR., GEORGE N. TAGUIAM, RANDY D. ABRENCILLO, MELECIO B. QUINIMON, CESAR B. JARANILLA, RIZALDE R. BARILE, HERICO A. BUENAVENTE, JERSON A. TATOY, MICHAEL L. CASIANO, FELIX M. DINIAY, PEDRO DELA CRUZ, JR., JHOSEL BOY G. ABAYON, AUGUSTO L. OCENAR, MARIO M. FUNELAS, and AVELINO T. QUIÑONES, *petitioners, vs.* **MAKATI DEVELOPMENT CORPORATION, DANTE ABANDO and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE TREATED AS AN APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT IN THE SPIRIT OF LIBERALITY OF THE APPLICATION OF THE RULES; CASE AT BAR.— While the pleading filed by the petitioners is denominated as "Petition for Review on Certiorari" pursuant to Rule 45 of the Rules of Court, its contents, however, particularly the ground raised and supporting arguments, assert grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the CA, an averment apposite in a petition for certiorari under Rule 65 of the Rules of Court. x x x In this case, what the petitioners seek to be annulled are the resolutions of the CA dismissing their petition for certiorari and the motion for reconsideration from such dismissal being, without a doubt, a final order for the complete disposition of such petition. Consequently, the petitioner's right and available

legal recourse to assail such resolutions is an appeal by certiorari under Rule 45 instead of a special civil action for certiorari under Rule 65. x x x [I]n the spirit of liberality of the application of the rules, we can treat the present petition as an appeal by certiorari under Rule 45 despite allegations of grave abuse of discretion being ascribed to the CA in issuing the assailed resolutions. The intention of the petitioners to file an appeal by certiorari instead of a special civil action for certiorari is, in any event, clearly manifested by the two motions for extension of time to file a petition for review on certiorari under Rule 45 of the Rules of Court.

2. **ID.; ID.; ID.; ID.; CONTENTS AND FILING OF PETITION; FAILURE TO ATTACH TO THE PETITION THE CERTIFIED TRUE COPIES OF THE ASSAILED DECISION WARRANTS THE DISMISSAL OF THE PETITION, BUT IF SUCH COPIES ARE LATER SUBMITTED, THE COURT MAY, IN THE EXERCISE OF SOUND DISCRETION, REINSTATE THE CASE AND DECIDE THE SAME ON THE MERITS.—** [W]e rule that the CA was justified in initially dismissing the petition based on the petitioners' failure to attach to the petition the ***certified true copies*** of the assailed decision and resolution of the NLRC, as well as other portions of the records of the case. x x x Absent such required documents, the CA correctly opined that it would have no basis to determine whether the NLRC gravely abused its discretion in finding the petitioners as project employees and that their termination was not illegal. x x x On motion for reconsideration, however, the petitioners rectified their error by attaching the certified true copies of the NLRC decision and resolution, as well as legible copies of the Appeal Memorandum and Motion for Reconsideration (from the NLRC decision). x x x The court before whom the petition is filed has, at first instance, the opportunity to determine which of these portions of the case records are material to the resolution of the issue, that is, whether the public respondent committed grave abuse of discretion. Should the court find that the copies of the essential pleadings or portions of the case records are lacking, it may dismiss the petition. But if such copies of the pleadings and case records are later submitted, the court may, in the exercise of sound discretion, reinstate the case and decide the same on the merits.

3. ID.; ID.; ID.; ID.; FAILURE TO STATE THE MATERIAL DATES IN A PETITION FOR *CERTIORARI* IS SUFFICIENT GROUND TO DISMISS IT.— Even with copies of portions of the case records attached, the petitioners still failed to address the lacking statement of the material dates despite clear notice of such violation together with the other grounds for the dismissal of the petition set forth in the first assailed CA resolution. Indeed, the failure to state the material dates in a petition for certiorari is sufficient ground to dismiss it under Section 3, Rule 46 in relation to Rule 65 of the Rules of Court. Section 3 of Rule 46 provides three material dates that must be stated in a petition for certiorari brought under Rule 65: the date when notice of the judgment or final order or resolution was received; the date when a motion for new trial or for reconsideration was filed; and the date when notice of the denial thereof was received. In this case, the petition filed with the CA failed to state the first and second dates. Thus, the CA rightfully dismissed the petition.

4. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; FACTUAL MATTERS CANNOT BE INQUIRED THEREIN.— [T]he determination on whether the petitioners were project employees and whether they were illegally dismissed would necessarily require us to inquire into the factual matters which the Court cannot do in a petition for review on certiorari under Rule 45 of the Rules of Court. Moreover, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.

APPEARANCES OF COUNSEL

Legal Advocates for Worker's Interest for petitioners.
Nograles Law Offices for respondents.

D E C I S I O N

MARTIRES, *J.*:

For failure to attach the certified true copies of the assailed National Labor Relations Commission *(NLRC)* Decisions and

Resolutions as well as the other portions of the case records, the Court of Appeals *(CA)* dismissed the Petition for Certiorari in CA-G.R. SP No. 147009 entitled *William R. Wenceslao v. Makati Development Corporation* in the Resolutions dated 26 January 2016[1] and 23 August 2017.[2] Hence, the petitioners brought before the Court this Petition for Review on Certiorari assailing the CA resolutions.

THE FACTS[3]

The case stemmed from a Complaint for Illegal Dismissal and Monetary Claims filed by the petitioners against private respondent Makati Development Corporation *(MDC)* before the Labor Arbiter.[4] Records show that the petitioners were former construction workers of MDC.[5] In their complaint, the petitioners claimed that they were regular employees of MDC and were illegally dismissed for refusing to apply and be transferred to another contractor, Asiapro Multi-Purpose Cooperative.[6] In due course, the Labor Arbiter dismissed the complaint for lack of merit. In affirming the status of the petitioners as project employees, the Labor Arbiter relied on the evidence of MDC showing that the petitioners had worked in several of its other projects before being engaged in the West Tower @ One Serendra Project and the North Triangle Building Project.[7] The Labor Arbiter ruled that repeated re-employment does not make a project employee a regular employee.[8] The dispositive portion of the Decision of the Labor Arbiter reads:

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[1] *Rollo*, Vol. I, pp. 26-31; penned by Associate Justice Carmelita Salandanan-Manahan, and concurred in by Associate Justices Japar B. Dimaampao and Franchito N. Diamante.

[2] *Id*. at 32-37.

[3] The material facts are taken from the NLRC Decision, dated 31 May 2016.

[4] *Rollo,* Vol. I, p. 58.

[5] *Id*.

[6] *Id*. at 61-62.

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

[8] *Id*. at 65.

WHEREFORE, premises considered, the complaint for illegal dismissal is DISMISSED for lack of merit. Respondent Makati Development Corporation, however, is directed to pay the aggregate sum of **ONE HUNDRED EIGHTEEN THOUSAND THREE HUNDRED FOURTEEN & 78/100 PESOS (₱118,314.78)** representing complainants' prorated 13th month pay for 2015, as follows:

WILLIAM R. WENCESLAO	-	Php 5,725.72
JEMYLITO M. APIAG	-	5,484.52
JOVENAL P. ATAG	-	5,484.52
ARNULFO S. DASCO	-	5,690.23
CARLITO E. INFANTE	-	5,563.84
RENATO A. GUINUE	-	5,725.72
ZACARIAS G. TALABOC, JR.	-	5,484.52
GEORGE N. TAGUIAM	-	5,484.52
RANDY D. ABRENCILLO	-	5,484.52
MELECIO B. QUINIMON	-	5,243.33
CESAR B. JARANILLA	-	5,484.52
RIZALDE R. BARILE	-	5,484.52
HERICO A. BUENAVENTE	-	5,484.52
JERSON A. TATOY	-	5,484.52
MICHAEL L. CASIANO	-	5,830.58
FELIX M. DINIAY	-	7,340.66
PEDRO C. DELA CRUZ, JR.	-	5,484.52
JHOSEL BOY G. ABAYON	-	5,484.52
AUGUSTO L. OCENAR	-	5,690.23
MARIO M. FUNELAS	-	5,484.52
AVELINO T. QUINONES	-	5,690.23

All other claims, including those of complainants Virgilio B. Cristobal, Noel N. Damiasan, James M. Real, Vivencio B. Rodrigo and Alfredo T. Visaya, are hereby denied for lack of merit. The computation hereto attached is made an integral part hereof.[9]

On appeal, the National Labor Relations Commission *(NLRC)* Fourth Division affirmed[10] *in toto* the decision[11] of the Labor Arbiter. The dispositive portion of the NLRC Decision dated 31 May 2016, states:

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[9] *Id*. at 133-134.

[10] *Id*. at 100-115.

[11] *Id*. at 116-134.

WHEREFORE, considering the foregoing, the appeal filed by the 21 complainants is **DENIED** for lack of merit.

Accordingly, the decision rendered by Labor Arbiter Raymund M. Celino on 29th February 2016 is hereby **AFFIRMED** in toto.[12]

The petitioners sought reconsideration of the said decision but it was denied by the NLRC in its Resolution,[13] dated 26 July 2016.

Undaunted, the petitioners filed before the CA a Petition for Certiorari alleging grave abuse of discretion amounting to lack or excess of jurisdiction of the NLRC for issuing the order affirming the decision of the Labor Arbiter.

The CA Ruling

The CA dismissed the petition on two grounds:

(1) the petition is non-compliant with Section 3, Rule 46 of the Rules of Court; and

(2) the petition, on its face, lacks merit for failing to illustrate public respondent's grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed 31 May 2016 Decision and 26 July 2016 Resolution.[14]

The CA cited the following defects in the petition:

1. the public respondent's assailed 31 May 2016 Decision and 26 July 2016 Resolution are mere photocopies of purported certified true copies thereof;

2. the allegation as to material dates is incomplete;

3. the Labor Arbiter's Decision, the Petitioner's Appeal Memorandum and Motion for Reconsideration which are all referred to in the petition are not attached thereto; and

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[12] *Id*. at 114.

[13] *Id*. at 92-99.

[14] *Id*. at 37.

4. other relevant pleadings and/or documents necessary to aid the Court in ascertaining the facts of the case upon which the assailed 31 May 2016 Decision is based are not attached to the petition.[15]

The dispositive portion of the CA Resolution dated 23 August 2016, reads:

WHEREFORE, premises considered, the instant Petition for *Certiorari* is hereby **DISMISSED**.[16]

The petitioners moved for reconsideration[17] but to no avail.[18] On 24 February 2017, they received the assailed resolution denying their motion for reconsideration.[19] After two motions for extension to file a petition for review on certiorari,[20] the petitioners filed the instant petition on 10 April 2017.

Even before this Court could take action on the petition, private respondents MDC and Dante Abando *(Abando)* filed on 18 May 2017, a "Motion for Leave (To File Comment to Petition for Review)"[21] and on 8 June 2017, another Motion for Leave (To Admit Manifestation).[22]

We address first the procedural matters.

We grant the two motions for extension filed by the petitioners after finding these to be in order.

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[15] *Id*. at 33.

[16] *Id*. at 37.

[17] *Rollo*, Vol. II, pp. 878-885; The Motion for Reconsideration with Motion to Admit Attachment was filed on 15 September 2016.

[18] *Rollo*, Vol. I, pp. 26-31; The CA denied the motion for reconsideration through the assailed Resolution, dated 26 January 2017.

[19] *Id*. at 15.

[20] The first motion for extension of 15 days was filed on 10 March 2017, or on the last day of the 15-day reglementary period for filing a petition for review on *certiorari*. The second motion for extension of 15 days was filed on 24 March 2017.

[21] *Rollo,* Vol. II, pp. 886-935.

[22] *Id*. at 941-953.

Likewise, given that MDC and Abando had already attached their "Comment" in the "Motion for Leave (To File Comment to Petition for Review)," we resolve to consider this petition as submitted for decision. In resolving this case, the Manifestation, dated 8 June 2017, filed by the MDC and Abando is duly considered.

The Petitioners' Arguments

The petitioners allege before the Court that the CA committed grave abuse of discretion for denying their petition on mere technicality, *viz*:

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE PETITIONER'S PETITION AND SUBSEQUENTLY, ITS MOTION FOR RECONSIDERATION DUE TO NON-SUBMISSION OF MATERIAL DOCUMENTS NEEDED TO ASCERTAIN THE FACTS OF THE CASE.[23]

To buttress their claim, the petitioners cited *Air Philippines Corporation v. Zamora*[24] in determining the necessity of attaching pleadings and portions of the records to the petition, to wit:

> First, not all pleadings and parts of the case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.
>
> Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also [be] found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.

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[23] *Rollo*, Vol. I, p. 18.

[24] 529 Phil. 718 (2006).

Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interests of justice that the case be decided on the merits.[25]

The petitioners contend that the Appeal Memorandum and the Motion for Reconsideration (from the NLRC decision) attached to the petition already sufficed to enable the CA to resolve the petition even without the pleadings and other records.[26]

In addition, the petitioners also invoke the liberal application of the rules, arguing that the CA should have required them first to submit the lacking documents in the petition instead of dismissing it outright based on a technicality.[27]

The Private Respondents' Arguments

In their comment, the MDC and Abando argue that the petitioners do not deserve the liberality of the CA absent a showing that there has been a substantial or subsequent compliance with the procedural requirements or that it will serve the higher interests of justice if the petition be given due course or be decided on the merits.[28] They insist that *Air Philippines* is not apropos because the petitioners had totally omitted to append the relevant and material portions of the case records.[29] They also point out that the petitioners are mistaken in their notion that the attachments may be dispensed with when the material allegations and arguments are already set forth in the petition for certiorari and other attachments such as their Appeal Memorandum and Motion for Reconsideration.[30]

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[25] *Rollo,* Vol. I, p. 19.

[26] *Id.* at 20.

[27] *Id.*

[28] *Rollo*, Vol. II, p. 897.

[29] *Id.* at 896.

[30] *Id.* at 897.

On the substantive aspect, the private respondents contend that the petition does not demonstrate the NLRC's grave abuse of discretion,[31] nor does it show that the NLRC's factual findings are not supported by substantial evidence. Significantly, such factual findings coincided with the Labor Arbiter's own findings.[32] The private respondents invoke the basic postulate that the labor tribunals' rulings, factual findings and the conclusions from these findings are generally accorded respect by the courts because of the tribunals' expertise in their fields, and are accorded not only respect but finality if supported by substantial evidence.[33] Thus, the CA, the private respondents argue, did not err in upholding the unanimous findings of the labor tribunals.

The Issue

The threshold issue is whether the CA was justified in dismissing the petition for certiorari due to the failure of the petitioners to attach the pertinent records of the case.

OUR RULING

First, the matter concerning the nature of the petition.

While the pleading filed by the petitioners is denominated as "Petition for Review on Certiorari" pursuant to Rule 45 of the Rules of Court, its contents, however, particularly the ground raised and supporting arguments, assert grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the CA, an averment apposite in a petition for certiorari under Rule 65 of the Rules of Court. The seeming inconsistency of the petition's style and substance must be resolved as its proper characterization, on whether it is pursued under Rule 45 or Rule 65 of the Rules of Court, would objectively determine its outright dismissal for being the wrong remedy.

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[31] *Id*. at 902.

[32] *Id*. at 910.

[33] *Id*. at 904.

Accordingly, if the petition is to be treated as a petition for certiorari under Rule 65, then it should appropriately be dismissed because there is a plain, adequate, and speedy remedy available under the circumstances. It is settled that a special civil action for certiorari under Rule 65 is an original or independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction; and it will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[34] In this case, what the petitioners seek to be annulled are the resolutions of the CA dismissing their petition for certiorari and the motion for reconsideration from such dismissal being, without a doubt, a final order for the complete disposition of such petition. Consequently, the petitioner's right and available legal recourse to assail such resolutions is an appeal by certiorari under Rule 45 instead of a special civil action for certiorari under Rule 65.

The Court in *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*,[35] announced:

> The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its ***lack of jurisdiction*** over the subject matter, or the ***exercise of power in excess thereof***, or ***grave abuse of discretion*** in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is that there should be no appeal.[36] (emphasis supplied)

Consistent with *Malayang Manggagawa,* and in the spirit of liberality of the application of the rules, we can treat the present petition as an appeal by certiorari under Rule 45 despite allegations of grave abuse of discretion being ascribed to the CA in issuing the assailed resolutions. The intention of the petitioners to file an appeal by certiorari instead of a special

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[34] See *Vda. de Mendez v. CA*, 687 Phil. 185, 193 (2012).

[35] 716 Phil. 500 (2013).

[36] *Id.* at 512-513, citing *Bugarin v. Palisoc*, 513 Phil. 59, 66 (2005).

civil action for certiorari is, in any event, clearly manifested by the two motions for extension of time to file a petition for review on certiorari under Rule 45 of the Rules of Court.

Proceeding to the merits, we find that the CA did not err, much less commit grave abuse of discretion amounting to lack of or excess of jurisdiction, in dismissing the petition for certiorari due to procedural lapses and lack of substantive merit of the said petition. The CA pointed to the petitioners' failure to state the material dates and to attach the certified true copies of the assailed decision and resolution of the NLRC as well as the other pertinent documents referred to in the petition, such as the labor arbiter's decision, the petitioner's Appeal Memorandum and Motion for Reconsideration.[37] The CA also determined that the petition, on its face, did not establish the whimsical exercise of discretion which the NLRC supposedly had committed.[38]

While the CA invoked several grounds in dismissing the petition, the petitioners raised before this Court only the issue on the necessity of attaching to the petition relevant portions of the case records.

We quote here the pertinent provisions of the Rules of Court that, in part, became the basis for the dismissal of the petition:

RULE 46

Original Cases

Section 3. *Contents and filing of petition*; *effect of noncompliance with requirements*. — x x x

In actions filed under Rule 65, the petition shall further indicate the **material dates** showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed, and when notice of the denial thereof was received.

x x x x x x x x x

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[37] *Rollo,* Vol. I, p. 33; CA Resolution, dated 23 August 2016.

[38] *Id.* at 34-36.

The **failure of the petitioner to comply** with any of the requirements shall be sufficient **ground for the dismissal** of the petition.

RULE 65

***Certiorari*, Prohibition and Mandamus**

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 of non-forum shopping as provided in the third paragraph of **Section 3, Rule 46**. (emphasis supplied)

Based on the foregoing rules, we rule that the CA was justified in initially dismissing the petition based on the petitioners' failure to attach to the petition the ***certified true copies*** of the assailed decision and resolution of the NLRC, as well as other portions of the records of the case. As noted by the CA, only photocopies, not the certified true copies, of the NLRC decision and resolution complained of were attached; neither were the pleadings and other papers filed before the labor arbiter and the NLRC appended. Absent such required documents, the CA correctly opined that it would have no basis to determine whether the NLRC gravely abused its discretion in finding the petitioners as project employees and that their termination was not illegal. On the necessity of attaching legible duplicate original or certified true copy of the judgment, order, resolution or ruling subject of the petition, we explained in *Pinakamasarap Corporation v. NLRC*[39] that:

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[39] 534 Phil. 222 (2006).

There is a sound reason behind this policy and it is to ensure that the copy of the judgment or order sought to be reviewed is a faithful reproduction of the original so that the reviewing court would have a definitive basis in its determination of whether the court, body or tribunal which rendered the assailed judgment or order committed grave abuse of discretion.[40]

On motion for reconsideration, however, the petitioners rectified their error by attaching the certified true copies of the NLRC decision and resolution, as well as legible copies of the Appeal Memorandum and Motion for Reconsideration (from the NLRC decision). Yet, the CA still denied their motion.

The petitioners bewail such denial of their motion for reconsideration arguing that the Appeal Memorandum and Motion for Reconsideration (from the NLRC decision) are sufficient to enable the CA to resolve their petition even without the pleadings and other portions of the records. Citing *Air Philippines*, the petitioners assert that the other portions of the case records need not be appended alluding to the so-called guideposts in determining the necessity of attaching pleadings and portions of the records to the petition.

The petitioners are correct that not all pleadings or papers need to be appended. As in *Air Philippines,* only such portions of the case records as may be relevant in resolving the issues before the court are necessary to accompany the petition. The court before whom the petition is filed has, at first instance, the opportunity to determine which of these portions of the case records are material to the resolution of the issue, that is, whether the public respondent committed grave abuse of discretion. Should the court find that the copies of the essential pleadings or portions of the case records are lacking, it may dismiss the petition.[41] But if such copies of the pleadings and

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[40] *Id*. at 230, citing *Durban Apartments Corporation v. Catacutan*, 514 Phil. 187, 194 (2005); *Quintano v. NLRC,* 487 Phil. 412, 423 (2004).

[41] *Air Philippines Corporation v. Zamora, supra* note 21, citing *De los Santos, v. CA,* 522 Phil. 313, 322 (2006); *Lanzaderas v. Amethyst Security and General Services, Inc.,* 452 Phil. 621, 632 (2003); *Sea Power Shipping Enterprises, Inc. v. CA,* 412 Phil. 603, 611 (2001).

case records are later submitted, the court may, in the exercise of sound discretion, reinstate the case and decide the same on the merits.

In this case, however, the petitioners, after their petition was dismissed, submitted the certified true copies of the NLRC decision and resolution as well as their Appeal Memorandum and Motion for Reconsideration. After due consideration of the petition with the attached documents, and consistent with *Air Philippines,* the CA could have reinstated and decided the case on the merits; but the CA brushed it off, and after a careful review of the records, we find that its refusal to proceed was justified.

Even with copies of portions of the case records attached, the petitioners still failed to address the lacking statement of the material dates despite clear notice of such violation together with the other grounds for the dismissal of the petition set forth in the first assailed CA resolution. Indeed, the failure to state the material dates in a petition for certiorari is sufficient ground to dismiss it under Section 3, Rule 46 in relation to Rule 65 of the Rules of Court.

Section 3 of Rule 46 provides three material dates that must be stated in a petition for certiorari brought under Rule 65: the date when notice of the judgment or final order or resolution was received; the date when a motion for new trial or for reconsideration was filed; and the date when notice of the denial thereof was received.[42] In this case, the petition filed with the CA failed to state the first and second dates.[43] Thus, the CA rightfully dismissed the petition. Our pronouncement in *Santos v. Court of Appeals*[44] is apt:

The requirement of setting forth the three (3) dates in a petition for certiorari under Rule 65 is for the purpose of determining its

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[42] *Santos v. CA,* 413 Phil. 41, 53 (2001).

[43] See Petition for *Certiorari* under heading "Nature and Timeliness of the Petition," *rollo,* Vol. I, p. 38.

[44] *Supra* note 39.

timeliness. Such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or Resolution sought to be assailed. Therefore, that the petition for certiorari was filed forty-one (41) days from receipt of the denial of the motion for reconsideration is hardly relevant. **The Court of Appeals was not in any position to determine when this period commenced to run and whether the motion for reconsideration itself was filed on time since the material dates were not stated**.[45] x x x (emphasis in the original)

When they filed their motion for reconsideration of the dismissal of their CA petition, the petitioners could have easily supplied the missing dates, i.e., when they received the NLRC decision and when they filed their motion for reconsideration thereof. However, they failed to do so. As it is, the CA still could not determine the timeliness of the motion for reconsideration from the NLRC decision. Thus, the CA fittingly affirmed the dismissal of the petition for certiorari in the second assailed resolution for noncompliance with the rule on stating the material dates in a petition.

The petitioners cannot justifiably insist that the CA should have required them first to submit the lacking documents in the petition before giving due course to their petition and resolving the case on the merits because the failure to comply with any of the requirements under Section 3 of Rule 46, such as the statement of the material dates, is sufficient ground to dismiss the petition. They cannot likewise demand preferential treatment by the CA based on the liberal application of the rules. Twice were they given the chance to comply with the requirement pertaining to the material dates; and twice were they remiss in complying with the rules. As observed by the CA, the petitioners had "haphazardly filed their petition in grave disregard of the rules of procedure" and are, therefore, "not entitled to the liberality thereof considering that the petition is only partially rectified."[46]

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

[46] See Resolution, dated 26 January 2017, *rollo,* Vol. I, p. 30.

Moreover, we find that the CA had actually considered the merits of the petition together with the attachments. Even in the first assailed resolution, wherein it was noted that the petition did not append the certified true copies of the NLRC decision and resolution as well as the other pertinent records of the case, the CA had made a preliminary determination regarding the status of employment of the petitioners and the validity of their termination from service. From the first assailed resolution, the CA had affirmed the factual findings of the NLRC that the petitioners were project employees and were not illegally terminated. We quote the CA:

> In the first place, the issue of whether or not petitioners are project or non-project employees, in contemplation of Section 2.1 of DOLE Order No. 19, Series of 1993, is not discussed in the petition. Petitioners readily conclude that they are "regular employees" without debunking public respondent's finding that they were hired on a per-project basis in view of MDC's compliance with the indicators of project employment under Section 2.2 of DOLE Order No. 19, Series of 1993.
>
> Second, petitioner's entitlement to separation pay primarily hinges on their employment status. As earlier discussed, petitioners merely offered a self-serving conclusion that they are "regular employees" based on the factual allegation contained in the petition. Petitioners' allegation has no weight or persuasive effect upon this Court absent any evidence to support the same.
>
> To be circumspect, it is worth pointing out that a project employee may nevertheless receive separation pay. Under Section 3.2 of DOLE Order No. 19, Series of 1993, project employee's entitlement to separation pay is qualified by certain conditions, to wit:
>
> > 3.2. Project employees not entitled to separation. – The project employees contemplated by paragraph 2.1. hereof are not by law entitled to separation pay if their services are terminated as a result of the completion of the project or any phase thereof in which they are employed. Likewise, project employees whose services are terminated because they have no more work to do or their services are no longer needed in the particular phase of the project are not by law entitled to separation pay.
> >
> > 3.3. Project employees entitled to separation pay. –

a) Project employees whose aggregate period of continuous employment in a construction company is at least one year shall be considered regular employees, in the absence of a "day certain" agreed upon by the parties for the termination of their relationship. Project employees who have become regular shall be entitled to separation pay.

x x x x x x x x x

b) If the project or the phase of the project the employee is working on has not yet been completed and his services are terminated without just cause or unauthorized cause and there is no showing that his services are unsatisfactory, the project employee is entitled to reinstatement with backwages to his former position or substantially equivalent position. If the reinstatement is no longer possible, the employee is entitled to his salaries for the unexpired portion of the agreement."

In the case at bench, the petitioners did not present any evidence, by way of contract of employment or other relevant proof which would establish the facts pertaining to their tenure. ***Without basis to rule on the same, this Court can only rely on the findings of public respondent adjudging them to be not entitled to separation pay.***

It bears stressing that the factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.[47] (emphasis supplied)

The petitioners' argument that the CA should have proceeded in the resolution of the case must fail.

As noted, the dismissal by the CA of the petition for certiorari was not purely on a technicality but also on a ruling on the substantive merits of the case. However, we will not dwell on the disquisition of the CA as to the nature of the employment of the petitioners and their subsequent termination for two reasons: first, the only issue raised before this Court concerns the failure to attach the material documents in the petition for

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[47] *Rollo,* Vol. I, pp. 34-36.

certiorari; second, the determination on whether the petitioners were project employees and whether they were illegally dismissed would necessarily require us to inquire into the factual matters which the Court cannot do in a petition for review on certiorari under Rule 45 of the Rules of Court. Moreover, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[48]

In fine, we find no compelling reason to set aside the dismissal by the CA of this petition for certiorari.

WHEREFORE, finding no reversible error, the Petition for Review on Certiorari dated 10 April 2017, is **DENIED.** The 23 August 2016 and 26 January 2017 Resolutions of the Court of Appeals in CA-G.R. SP No. 147009 are hereby **AFFIRMED.**

SO ORDERED.

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

Gesmundo, J., on leave.

SECOND DIVISION

[A.C. No. 9832. September 4, 2017]

LOLITA R. MARTIN, *complainant, vs.* **ATTY. JESUS M. DELA CRUZ,** *respondent.*

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[48] *Fuji Television Network, Inc. v. Espiritu,* 749 Phil. 388, 414 (2014), citing *San Miguel Corporation v. Secretary of Labor*, 159-A Phil. 346 (1975); *Scott v. Inciong,* 160-A Phil. 1107 (1975); *Bordeos v. NLRC*, 330 Phil. 1003 (1996).

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULES 18.03 AND 18.04, CANON 18 THEREOF; A LAWYER OWES FIDELITY TO HIS/HER CLIENT'S CAUSE AND MUST ALWAYS BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED UPON HIM/HER, AND HIS/HER NEGLECT OF A LEGAL MATTER ENTRUSTED TO HIM/HER AMOUNTS TO INEXCUSABLE NEGLIGENCE FOR WHICH HE/SHE MUST BE ADMINISTRATIVELY LIABLE.—** A judicious review of the records shows that complainant secured respondent's legal services for several cases and paid ₱60,000.00 as acceptance fee. However, respondent failed to perform legal services on any of these cases, and upon demand, refused to return the acceptance fee paid by complainant. He also failed to respond to complainant's letters and calls inquiring on the status of said cases. These acts indubitably constitute violations of Rules 18.03 and 18.04, Canon 18 of the CPR x x x. Under these provisions, a lawyer is duty-bound to competently and diligently serve his client once the former takes up the latter's cause. The lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Hence, his neglect of a legal matter entrusted to him amounts to inexcusable negligence for which he must be administratively liable, as in this case. The Court finds no credence to respondent's defense that he prepared pleadings for complainant given that he failed to provide any proof to substantiate his claim.

2. **ID.; ID.; ID.; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW IMPOSED FOR NEGLECT OF THE CLIENTS' CAUSES, IN VIOLATION OF RULES 18.03 AND 18.04, CANON 18 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** Anent the penalty, in similar cases wherein lawyers were found to have neglected their clients' causes, the Court imposed upon them the penalty of suspension from the practice of law for a period of six (6) months. Consistent with these cases, respondent is hereby suspended from the practice of law for a period of six (6) months.

3. **ID.; ID.; RETURN OF ACCEPTANCE FEES SHALL BE ALLOWED WHEN A LAWYER COMPLETELY FAILS TO RENDER LEGAL SERVICE TO HIS/HER CLIENT.—** As regards restitution, the Court has, in several cases, allowed

the return of acceptance fees when a lawyer completely fails to render legal service. As applied to this case, the order for respondent to return the ₱60,000.00 is, therefore, proper. Indeed, an acceptance fee is generally non-refundable, but such rule presupposes that the lawyer has rendered legal service to his client. In the absence of such service, the lawyer has no basis for retaining complainant's payment, as in this case.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from a letter-complaint[1] dated February 10, 2013 filed by complainant Lolita R. Martin (complainant) against respondent Atty. Jesus M. Dela Cruz (respondent) for the latter's failure to return the acceptance fee in the amount of ₱60,000.00 he received from complainant, despite several demands.

The Facts

Complainant alleged that sometime in 2012, she engaged respondent's legal services in relation to several pending cases she filed before the following agencies: (*a*) the Professional Regulation Commission; (*b*) the Office of the City Prosecutor of Quezon City (OCP-QC); and (*c*) the Housing and Land Use Regulatory Board.[2] After giving photocopies of the cases' files, complainant paid respondent ₱60,000.00 as acceptance fee, evidenced by the Official Receipt[3] dated August 23, 2012.[4]

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[1] *Rollo*, p. 1. The letter was addressed to Ombudsman Conchita Carpio Morales. In a letter dated February 26, 2013, the Office of the Ombudsman indorsed complainant's letter to the Court for appropriate action (*id*. at 7). On July 1, 2013, complainant also sent a handwritten letter-complaint to the Office of the President regarding the same matter (*id*. at 14). On even date, the Presidential Action Center of the Office of the President indorsed complainant's letter to the Office of the Bar Confidant (*id*. at 13).

[2] *Id*. at 39.

[3] *Id*. at 53.

[4] Complainant also alleged that she paid ₱2,500.00 as research fee but failed to present any proof of payment (*id*. at 99 and 101.)

From December 21, 2012 to February 6, 2013, complainant repeatedly went to respondent's office to inquire on the status of the cases, but respondent was not there.[5] Thus, complainant wrote several letters[6] to him requesting the return of the money she paid as acceptance fee due to respondent's failure to take any action on her cases. He even failed to appear in the hearing for preliminary investigation before the OCP-QC on January 16, 2013, causing it to be reset on February 20, 2013.[7] Respondent also refused to answer any of her calls.[8]

After several months, respondent finally contacted complainant, and told her not to worry as he would still handle the other cases, particularly the *Estafa* case pending before the OCP-QC. However, respondent still failed to attend the scheduled preliminary investigation. Aggrieved, complainant went to respondent's office, but the latter only answered "[*k*]*asi alam ko alas dose ng hapon ang* hearing."[9] Angered by his response, complainant reiterated her demand for the return of the acceptance fee, but the latter refused.[10] Thus, she wrote letter-complaints for respondent's disbarment to the Office of the Ombudsman, as well as to the Presidential Action Center of the Office of the President, which were indorsed to the Court.[11]

On June 17, 2013, the Court issued a Resolution[12] requiring respondent to comment on the letter-complaint, but he failed to comply.[13]

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[5] See *id*. at 1.

[6] See various letters dated January 21, 2013, December 21, 2012, and December 18, 2012; *id*. at 2-4.

[7] See *id*. at 42.

[8] See *id*. at 1.

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

[10] *Id*. at 43.

[11] *Id.* at. 44.

[12] *Id*. at 10.

[13] *Id*. at 99.

On January 13, 2014, the Court dispensed with respondent's comment and, instead, referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.[14]

On June 2, 2014, the IBP conducted a mandatory conference, but only complainant appeared. On even date, it issued an Order[15] directing the parties to file their position papers within ten (10) days, to which only complainant complied. [16]

The IBP's Report and Recommendation

In the Report and Recommendation[17] dated August 18, 2014, the Investigating Commissioner (IC) recommended that respondent be suspended from the practice of law for a period of one (1) year and ordered to return to complainant the amount of ₱60,000.00 he received as acceptance fee with twelve percent (12%) interest per annum.[18]

The IC held that respondent violated Rule 1.01, Canon 1, Rule 16.01, Canon 16, and Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility (CPR) due to his failure to: (*a*) render any legal service despite his engagement and receipt of ₱60,000.00 as acceptance fee; (*b*) appear in two (2) preliminary investigation hearings before the OCP-QC; and (*c*) return the money complainant paid him despite written and verbal demands.[19] The IC also found respondent liable for willful disobedience to the Court's lawful orders for his failure to file his comment to the letter-complaint, as well as to the IBP's processes when he failed to file a mandatory conference brief,

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[14] See Minute Resolution; *id*. at 32.

[15] *Id*. at 37, including dorsal portion.

[16] *Id*. at 100.

[17] *Id*. at 99-103. Penned by Commissioner Jose Villanueva Cabrera.

[18] *Id*. at 103.

[19] See *id*. at 101-102.

to appear during the mandatory conference hearing, and to file his position paper.[20]

In a Resolution[21] dated February 20, 2015, the IBP Board of Governors adopted and approved the IC's Report and Recommendation.

On October 29, 2015, respondent filed his motion for reconsideration,[22] explaining that he was not aware of the administrative case against him, as he was out of the country for most of the period from 2013 to 2015,[23] and that the notices of the IBP proceedings were sent to the IBP-QC, rather than to his office address in Scout Borromeo, QC, and that the staff in the former office did not apprise him about the notices.[24]

Respondent averred that, during their first meeting, he and complainant only discussed six (6) administrative cases, which did not include the pending criminal investigation case before the OCP-QC.[25] Nevertheless, respondent admitted that complainant had asked him to attend an on-going investigation in the prosecutor's office, for which he requested for the case documents, which were, however, not given to him.[26] He insisted that complainant informed him that the hearing was at two o'clock in the afternoon, which was the reason why he instructed

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[20] *Id*. at 102.

[21] See Notice of Resolution in Resolution No. XXI-2015-155 issued by National Secretary Nasser A. Marohomsalic; *id*. at 98, including dorsal portion.

[22] *Id*. at 115-122.

[23] *Id*. at 116.

[24] See *id*. at 116-117.

[25] *Id*. at 117. The cases they discussed where: (*i*) four (4) cases before the Housing and Land Use Regulatory Board filed by complainant against the officers or members of the landowners/tenants association where she was residing; (*ii*) one (1) case against the chief of the Public Attorneys' Office in QC; and (*iii*) one (1) case before the Professional Regulation Commission against the doctor who provided medical assistance to complainant's son.

[26] See *id*.

complainant to give him the documents before noon on that date so he can go over them during lunch break.[27]

While he opined that the acceptance fee is not refundable since he already prepared pleadings for complainant, he also manifested that he will nonetheless comply with the order to return the money to complainant but requested that he be allowed to pay in installments within three (3) months.[28]

The IBP denied his motion in a Resolution[29] dated September 23, 2016.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating the CPR.

The Court's Ruling

The Court agrees with the IBP's findings insofar as it found respondent administratively liable for violating Rules 18.03 and 18.04, Canon 18 of the CPR.

A judicious review of the records shows that complainant secured respondent's legal services for several cases and paid ₱60,000.00 as acceptance fee. However, respondent failed to perform legal services on any of these cases, and upon demand, refused to return the acceptance fee paid by complainant. He also failed to respond to complainant's letters and calls inquiring on the status of said cases. These acts indubitably constitute violations of Rules 18.03 and 18.04, Canon 18 of the CPR, which respectively read:

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[27] See *id*. at 117-118.

[28] See *id*. at 116 and 121. Respondent promised to return to complainant an initial payment of ₱20,000.00 within three (3) days from filing of the motion, and to return the remaining balance within three (3) months, plus interest.

[29] See Notice of Resolution in Resolution No. XXII-2016-507 issued by Secretary for the Meeting Juan Orendain P. Buted; *id*. at 219-220.

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.

Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Under these provisions, a lawyer is duty-bound to competently and diligently serve his client once the former takes up the latter's cause. The lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Hence, his neglect of a legal matter entrusted to him amounts to inexcusable negligence for which he must be administratively liable,[30] as in this case. The Court finds no credence to respondent's defense that he prepared pleadings for complainant given that he failed to provide any proof to substantiate his claim.

The Court, however, does not find respondent liable for violating Rule 16.01, Canon 16 of the CPR, which mandates lawyers to "account for all money or property collected or received for or from the client." Consistent with this duty, respondent accounted for his receipt of ₱60,000.00 as acceptance fee from complainant when he issued the Official Receipt dated August 23, 2012.[31] He also cannot be held liable for failure to account complainant's alleged payment of ₱2,500.00 as research fee for lack of proof that such amount was paid to respondent.

Anent the penalty, in similar cases wherein lawyers were found to have neglected their clients' causes, the Court imposed upon them the penalty of suspension from the practice of law for a period of six (6) months.[32] Consistent with these cases,

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[30] *Spouses Lopez v. Limos*, A.C. No. 7618, February 2, 2016, 782 SCRA 609, 616.

[31] *Rollo,* p. 53.

[32] See *Caranza Vda. de Saldivar v. Canabes, Jr.*, 713 Phil. 531 (2013); *Spouses Aranda v. Elayda*, 653 Phil. 1 (2010); and *Heirs of Ballesteros, Sr. v. Apiag*, 508 Phil. 113 (2005).

respondent is hereby suspended from the practice of law for a period of six (6) months.

As regards restitution, the Court has, in several cases, allowed the return of acceptance fees when a lawyer completely fails to render legal service.[33] As applied to this case, the order for respondent to return the ₱60,000.00 is, therefore, proper. Indeed, an acceptance fee is generally non-refundable,[34] but such rule presupposes that the lawyer has rendered legal service to his client.[35] In the absence of such service, the lawyer has no basis for retaining complainant's payment, as in this case.

WHEREFORE, respondent Atty. Jesus M. Dela Cruz (respondent) is found **GUILTY** of violating Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for a period of six (6) months effective from the finality of this Resolution, and is **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely.

The suspension in the practice of law shall take effect immediately upon receipt by respondent. Respondent is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered in respondent's personal record as

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[33] See *Villanueva v. Gonzales*, 568 Phil. 379 (2008) and *Small v. Banares*, 545 Phil. 226 (2007).

[34] An acceptance fee refers to the charge imposed by the lawyer for merely accepting the case. This is because once a lawyer agrees to represent a client, he is precluded from handling cases of the opposing party based on the prohibition on conflict of interest. This opportunity cost is indemnified by the payment of acceptance fee. Since the acceptance fee only seeks to compensate the lawyer for the lost opportunity, it is not measured by the nature and extent of the legal services rendered (see *Yu v. Dela Cruz,* A.C. No. 10912, January 19, 2016, 781 SCRA 188, 199-200).

[35] See *Santos-Tan v. Robiso*, 601 Phil. 547, 557 (2009).

a member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.

Carpio (*Acting Chief Justice*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[A.M. No. P-16-3521. September 4, 2017]
(Formerly OCA I.P.I. No. 15-4493-P)

HON. MARIA CRISTINA C. BOTIGAN-SANTOS, Presiding Judge of the Municipal Trial Court, San Ildefonso, Bulacan, *complainant, vs.* **LETICIA C. GENER, Clerk of Court of the Municipal Trial Court, San Ildefonso, Bulacan,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; DUTIES THEREOF; THE CLERK OF COURT SHALL SAFELY KEEP ALL RECORDS, PAPERS, FILES, EXHIBITS, AND PUBLIC PROPERTY COMMITTED TO HER CHARGE AND SHALL BE LIABLE FOR ANY LOSS, SHORTAGE, DESTRUCTION OR IMPAIRMENT OF SAID FUNDS AND PROPERTIES.— We cannot overemphasize that those charged or connected with the task of dispensing justice carry a heavy

burden of responsibility. The clerk of court is the administrative officer of court and has, *inter alia*, control and supervision over all court records. The Rules of Court charge her with the duty of faithfully keeping the records, papers, files and exhibits in cases pending before her court. As custodian of the records of the court, it is her duty to ensure that the records are complete and intact. She plays a key role in the complement of the court and cannot be permitted to slacken off in his job under one pretext or another. In the instant case, after considering the records and the investigations conducted on the matter, it is undisputed. that respondent failed to meet the requirement expected of her as a Clerk of Court. Section 7 of Rule 136 of the Rules of Court is explicit that the Clerk shall ***safely keep*** all records, papers, files, ***exhibits***, and public property committed to her charge. The Office of the Clerk of Court performs a very delicate function, having control and management of all court records, exhibits, documents, properties and supplies. Being the custodian thereof, the clerk of court is liable for any loss, shortage, destruction or impairment of said funds and properties.

2. ID.; ID.; ID.; ID.; IT IS INCUMBENT UPON A CLERK OF COURT TO ENSURE AN ORDERLY AND EFFICIENT RECORD MANAGEMENT IN THE COURT, AND HER FAILURE TO TAKE PRECAUTIONARY MEASURES TO PREVENT LOSS OF COURT EXHIBITS CONSTITUTES NEGLIGENCE IN HER RESPONSIBILITY AS CUSTODIAN OF RECORDS/EXHIBITS.— As clerk of court, respondent's duties include conducting periodic inventory of dockets, records and exhibits and ensuring that the said records and exhibits of each case are accounted for. If she has been regularly conducting inventory of these, she could not have missed the subject firearms which has been sitting in the cabinet for more than 15 years. Also, the fact that she was unaware that the firearms were exhibits of cases which has been terminated for a very long time will tell that she has been remiss in the performance of her duties. Suffice it to say, it is incumbent upon her as the Clerk of Court to ensure an orderly and efficient record management in the court. Clearly, due to respondent's failure to take precautionary measures to prevent loss of court exhibits, respondent was negligent in her responsibility as custodian of records/exhibits.

3. ID.; ID.; ID.; ID.; 2002 REVISED MANUAL FOR CLERKS OF COURT; BEING THE OFFICER IN CHARGE OF THE COURT'S EXHIBITS, A CLERK OF COURT IS MANDATED TO OBSERVE THE PRESCRIBED PROCEDURE IN THE DISPOSAL AND/OR DESTRUCTION OF COURT EXHIBITS WHEN THEY ARE NO LONGER NEEDED.— [U]nder the 2002 Revised Manual for Clerks of Court, the Clerk of Court, being the officer in charge of the court's exhibits is mandated to observe the prescribed procedure in the disposal and/or destruction of court exhibits when they are no longer needed, to wit: x x x B. DISPOSITION OF EXHIBITS IN THE CUSTODY OF COURTS WHICH ARE NO LONGER NEEDED AS EVIDENCE x x x 2. ***Firearms, Ammunitions and Explosives. Courts are directed to turn over to the nearest Constabulary Command all firearms in their custody after the cases involving such shall have been terminated.*** x x x. Following the foregoing procedure, the subject firearms which are court exhibits should have been turned over to the Firearms and Explosives Unit of the Philippine National Police pursuant to the directive in the Manual for Clerks of Court. Moreso, considering that the criminal cases related thereto had long been terminated. The fact that the court retained custody of the said firearms for more than fifteen (15) years after the dismissal of the cases in 1998 is clearly in violation of the above-cited procedures. Had respondent prudently complied with said directive, the loss of the firearms could have been avoided.

4. ID.; ID.; ID.; ID.; A SIMPLE ACT OF NEGLECT RESULTING TO LOSS OF FUNDS, DOCUMENTS, PROPERTIES OR EXHIBITS IN *CUSTODIA LEGIS* RUINS THE CONFIDENCE LODGED BY THE PARTIES TO A SUIT OR THE CITIZENRY IN OUR JUDICIAL PROCESS, AND THOSE RESPONSIBLE FOR SUCH ACT OR OMISSION CANNOT ESCAPE THE DISCIPLINARY POWER OF THE COURT.— A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets, records and exhibits. The image of the Judiciary is the shadow of its officers and employees. A simple misfeasance or nonfeasance may have disastrous repercussions on that image. Thus, a simple act of neglect resulting to loss

of funds, documents, properties or exhibits in *custodia legis* ruins the confidence lodged by the parties to a suit or the citizenry in our judicial process. Those responsible for such act or omission cannot escape the disciplinary power of this Court.

5. ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY IS CLASSIFIED AS A LESS GRAVE OFFENSE; PROPER IMPOSABLE PENALTY.— Section 52(B)(1) of the Revised Uniform Rules on Administrative Cases in the Civil Service classifies simple neglect of duty as a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense.

D E C I S I O N

PERALTA, *J.*:

Before us is a Letter[1] dated August 28, 2014 sent by Judge Maria Cristina C. Botigan-Santos (*Judge Botigan-Santos*), Presiding Judge of the Municipal Trial Court (*MTC*), San Ildefonso, Bulacan which reported a robbery incident that took place in her court on August 7, 2014.

At the time the robbery incident occurred, Judge Botigan-Santos was on Immersion Program[2] (July 7 to 11, 2014 and July 28 to August 15, 2014), having been appointed as Judge of the MTC, San Ildefonso, Bulacan on June 16, 2014.[3] Judge Botigan-Santos took her oath on June 30, 2014.[4]

On October 21, 2014, the Office of the Court Administrator (*OCA*) referred the matter to then Hon. Ma. Theresa V. Mendoza-Arcega (*Judge Mendoza-Arcega*), Executive Judge, Regional Trial Court (*RTC*), Branch 17, Malolos City, Bulacan, for investigation and report.[5]

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[1] *Rollo*, p. 7.

[2] *Id*. at 33.

[3] *Id*. at 30.

[4] *Id*. at 31.

[5] *Id.* at 11.

In her Report[6] dated December 11, 2014, Executive Judge Mendoza-Arcega stated that, upon investigation, it appeared that apart from the stolen monies of the court employees, the trial court also lost certain exhibits, particularly: two (2) .38 caliber firearms which served as exhibits in Criminal Case No. 7310 (*People vs. Jerry Ambrocio*) and Criminal Case No. 7007 (*People vs. Hipolito Bermudez*). These exhibits were lost while in *custodia legis*. It was also found out that said criminal cases to which the exhibits were presented had long been dismissed or terminated. The records reveal that the MTC of San Ildefonso, Bulacan kept possession of the subject exhibits despite the fact that said criminal cases had been terminated for over sixteen (16) years. Judge Mendoza-Arcega likewise stated that while all the concerned employees of the MTC of San Ildefonso, Bulacan have extended their full cooperation in the investigation, the police authorities failed to identify the malefactor of the reported robbery.

Thus, in the Resolution[7] dated October 7, 2015, the Court, upon the recommendation of the OCA, considered the instant matter as a formal administrative complaint against Clerk of Court Leticia C. Gener (respondent). The Court, thereafter, required her to comment on the allegation against her.

In her Comment[8] dated November 25, 2015, respondent clerk of court offered her apologies for the robbery incident that transpired on August 7, 2014. She then alleged that she was appointed in the MTC of San Ildefonso, Bulacan on March 1, 1998 as Clerk II, then was promoted as Court Interpreter. In April 2005, she was promoted as Clerk of Court, however, she lamented that she was not formally apprised of the physical custody of the exhibits on Criminal Case Nos. 7310 and 7007, and of their termination in 1998.

Respondent asserted that as clerk of court, she regularly conducts inventory of the properties under her custody but due

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[6] *Id.* at 26-29.

[7] *Id.* at 34-37.

[8] *Id.* at 38-40.

to lack of formal turnover of the exhibits on Criminal Case Nos. 7310 and 7007, she was unaware that the missing exhibits were the subject of the terminated cases. Furthermore, she alleged that she thought a formal proceeding was necessary in order to dispose of/turn-over the subject firearms to the custody of PNP-FEU which she claimed could not be done prior to the date of the robbery because of the appointment of a new presiding judge.[9]

Respondent prayed for the indulgence of the Court for her failure to comply with the established procedures/guidelines in the disposal of exhibits. She claimed that the robbery incident was unforeseeable and abrupt and that in her many years of service, she has performed her duties diligently to the best of her knowledge and abilities.[10]

On February 24, 2016, the Court referred the instant case to the OCA for evaluation, report and recommendation.[11]

In its Memorandum to the Court dated June 7, 2016, the OCA has found the complaint meritorious. The OCA did not give credence to respondent's claim that she was not apprised of the physical custody of the two missing 38-caliber firearms which served as exhibits. The OCA opined that respondent's assertion that she regularly conducted inventory of the properties under her custody was inconsistent with her claim that she was clueless as to the connection of the missing exhibits to the terminated criminal cases.

The OCA added that respondent should have been liable for gross neglect of duty for the loss of the exhibits as this could have caused miscarriage of justice. However, considering that the criminal cases related to the exhibits were already long terminated and that the missing exhibits will not affect any pending case before the trial court, the OCA opted instead to recommend that respondent be held liable for simple neglect of duty only.

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[9] *Id.*

[10] *Id.*

[11] *Rollo,* pp. 41-42.

The OCA further recommended that respondent be imposed of a fine of ₱3,000.00 instead in order not to hamper the performance of the duties of her office.

We are in accord with the findings and observations of the OCA, except as to the recommended penalty.

We cannot overemphasize that those charged or connected with the task of dispensing justice carry a heavy burden of responsibility. The clerk of court is the administrative officer of a court and has, *inter alia*, control and supervision over all court records. The Rules of Court charge her with the duty of faithfully keeping the records, papers, files and exhibits in cases pending before her court. As custodian of the records of the court, it is her duty to ensure that the records are complete and intact. She plays a key role in the complement of the court and cannot be permitted to slacken off in his job under one pretext or another.[12]

In the instant case, after considering the records and the investigations conducted on the matter, it is undisputed that respondent failed to meet the requirement expected of her as a Clerk of Court. Section 7[13] of Rule 136 of the Rules of Court is explicit that the clerk shall ***safely keep*** all records, papers, files, ***exhibits*****,** and public property committed to her charge. The Office of the Clerk of Court performs a very delicate function, having control and management of all court records, exhibits, documents, properties and supplies. Being the custodian thereof, the clerk of court is liable for any loss, shortage, destruction or impairment of said funds and properties.[14]

As clerk of court, respondent's duties include conducting periodic inventory of dockets, records and exhibits, and ensuring

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[12] *Rivera v. Buena,* 569 Phil. 551, 557 (2008).

[13] Section 7. *Safekeeping of property*. — The clerk shall safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office.

[14] *Office of the Court Administrator v. Judge Ramirez,* 489 Phil. 262, 270 (2005).

that the said records and exhibits of each case are accounted for. If she has been regularly conducting inventory of these, she could not have missed the subject firearms which has been sitting in the cabinet for more than 15 years. Also, the fact that she was unaware that the firearms were exhibits of cases which has been terminated for a very long time will tell that she has been remiss in the performance of her duties. Suffice it to say, it is incumbent upon her as the Clerk of Court to ensure an orderly and efficient record management in the court. Clearly, due to respondent's failure to take precautionary measures to prevent loss of court exhibits, respondent was negligent in her responsibility as custodian of records/exhibits.

Moreover, under the 2002 Revised Manual for Clerks of Court, the Clerk of Court, being the officer in charge of the court's exhibits is mandated to observe the prescribed procedure in the disposal and/or destruction of court exhibits when they are no longer needed, to wit:

CHAPTER XII

Disposal and/or Destruction of Court Records, Papers and Exhibits

A. PROCEDURE

To establish a uniform procedure in the disposal or destruction of records, papers and exhibits pertaining to court cases terminated for at least fifteen (15) years, it is hereby provided that all Courts, except the Supreme Court, are enjoined to strictly comply with the following rules:

x x x x x x x x x

B. DISPOSITION OF EXHIBITS IN THE CUSTODY OF COURTS WHICH ARE NO LONGER NEEDED AS EVIDENCE

x x x x x x x x x

2. ***Firearms, Ammunitions and Explosives***

Courts are directed to turn over to the nearest Constabulary Command all firearms in their custody after the cases involving such shall have been terminated.

In Metro Manila, the firearms may be turned over to the Firearms and Explosives Unit at Camp Crame, Quezon City, while in the provinces, the firearms may be turned over to the respective PC Provincial Commands.[15] (emphasis ours)

Following the foregoing procedure, the subject firearms which are court exhibits should have been turned over to the Firearms and Explosives Unit of the Philippine National Police pursuant to the directive in the Manual for Clerks of Court. Moreso, considering that the criminal cases related thereto had long been terminated. The fact that the court retained custody of the said firearms for more than fifteen (15) years after the dismissal of the cases in 1998 is clearly in violation of the above-cited procedures. Had respondent prudently complied with said directive, the loss of the firearms could have been avoided.

A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets, records and exhibits. The image of the Judiciary is the shadow of its officers and employees. A simple misfeasance or nonfeasance may have disastrous repercussions on that image. Thus, a simple act of neglect resulting to loss of funds, documents, properties or exhibits in *custodia legis* ruins the confidence lodged by the parties to a suit or the citizenry in our judicial process. Those responsible for such act or omission cannot escape the disciplinary power of this Court.[16]

PENALTY

Section 52(B)(1) of the Revised Uniform Rules on Administrative Cases in the Civil Service[17] classifies simple

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[15] Emphasis ours.

[16] *Office of the Court Administrator v. Judge Ramirez, supra*, at 271.

[17] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated 31 August 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

neglect of duty as a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense. Section 54 thereof states that the medium period of the penalty shall be imposed when there are no mitigating and aggravating circumstances.

However, respondent's length of service in the Judiciary cannot be appreciated as a mitigating circumstance. Having served the Judiciary for a long time, and almost 10 years as clerk of court, respondent should have been more efficient in managing the court records/exhibits. The fact that respondent admitted to be unaware of the connection of the subject exhibits to the terminated cases which, thus, resulted to her failure to turn over the same despite the lapse of more than 15 years, shows that she miserably failed to perform her duties as Clerk of Court. We, thus, find that the appropriate penalty of three-month suspension is reasonable. However, as recommended by the OCA that suspension from work could hamper the performance of her work as the same would be left unattended by reason of her absence, instead of suspension, We, thus, impose a fine equivalent to her three months salary, so that she can still continue to perform her duties in her office.

WHEREFORE, premises considered, the Court finds respondent Leticia C. Gener, Clerk of Court, Municipal Trial Court, San Ildefonso, Bulacan, **GUILTY** of simple neglect of duty. Accordingly, the Court imposes upon her a **FINE** equivalent to her three months' salary. She is, likewise, **STERNLY WARNED** that the commission of the same offense or a similar act in the future will be dealt with more severely.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 224886. September 4, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGER RACAL @ RAMBO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT SHOULD NOT BE DISTURBED ON APPEAL, UNLESS THERE ARE FACTS OF WEIGHT AND SUBSTANCE THAT WERE OVERLOOKED OR MISINTERPRETED AND THAT WOULD MATERIALLY AFFECT THE DISPOSITION OF THE CASE.— [I]t bears to reiterate that in the review of a case, the Court is guided by the long-standing principle that factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect. These factual findings should not be disturbed on appeal, unless there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case. In the present case, after a careful reading of the records and pleadings, this Court finds no cogent reason to deviate from the RTC's factual findings. There is no indication that the trial court, overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. Moreover, the factual findings of the RTC are affirmed by the CA. Hence, the Court defers to the trial court in this respect, especially considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties.

2. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS; ESTABLISHED.— Murder is defined and punished by Article 248 of the RPC, as amended by Republic Act No. 7659 x x x. To successfully prosecute the crime of murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide. In the present case, the prosecution was able to clearly establish that

(1) Francisco was stabbed and killed; (2) appellant stabbed and killed him; (3) Francisco's killing was attended by the qualifying circumstance of treachery as testified to by prosecution eyewitnesses; and, (4) the killing of Francisco was neither parricide nor infanticide.

3. **ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; DEFINED; ELEMENTS; PRESENT.—** Paragraph 16, Article 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. These elements are extant in the facts of this case and as testified to by the prosecution witnesses.

4. **ID.; ID.; ID.; ID.; EVEN A FRONTAL ATTACK COULD BE TREACHEROUS WHEN UNEXPECTED AND ON AN UNARMED VICTIM WHO WOULD BE IN NO POSITION TO REPEL THE ATTACK OR AVOID IT.—** To emphasize, the victim, Francisco, was caught off guard when appellant attacked him. As testified to by a prosecution witness, Francisco was then holding a plastic container containing bread and was eating. The stealth, swiftness and methodical manner by which the attack was carried out gave the victim no chance at all to evade when appellant thrust the knife to his torso. Thus, there is no denying that appellant's sudden and unexpected onslaught upon the victim, and the fact that the former did not sustain any injury, evidences treachery. Also, the fact that appellant was facing Francisco when he stabbed the latter is of no consequence. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it, as in this case. Undoubtedly, the RTC and the CA correctly held that the crime committed was murder under Article 248 of the RPC by reason of the qualifying circumstance of treachery.

5. ID.; ID.; EXEMPTING CIRUMSTANCES; INSANITY; AN INQUIRY INTO THE MENTAL STATE OF AN ACCUSED SHOULD RELATE TO THE PERIOD IMMEDIATELY BEFORE OR AT THE VERY MOMENT THE FELONY IS COMMITTED; CLAIM OF INSANITY NOT PROVED.— [T]he defense failed to overcome the presumption of sanity. The testimonies of Dr. Preciliana Lee Gilboy (*Dr. Gilboy*) and Dr. Andres Suan Gerong (*Dr. Gerong*), as the defense's qualified expert witnesses, failed to support appellant's claim of insanity. As correctly observed by the CA, the separate psychiatric evaluations of appellant were taken in June 2009 and July 2010, which are three and four years after the crime was committed on April 19, 2006. In *People v. So*, which is a case of recent vintage, this Court ruled that an inquiry into the mental state of an accused should relate to the period immediately before or at the very moment the felony is committed. Hence, the results of the psychiatric tests done on appellant and testified to by the defense witnesses, may not be relied upon to prove appellant's mental condition at the time of his commission of the crime.

6. ID.; ID.; ID.; ID.; "DIMINISHED CAPACITY" IS NOT THE SAME AS "COMPLETE DEPRIVATION OF INTELLIGENCE OR DISCERNMENT"; MERE ABNORMALITY OF MENTAL FACULTIES DOES NOT EXCLUDE IMPUTABILITY.— [D]uring cross-examination, Dr. Gilboy testified that for a number of years up to the time that appellant killed Francisco, he had custody of and served as the guardian of his sister's children. He took care of their welfare and safety, and he was the one who sends them to and brings them home from school. Certainly, these acts are not manifestations of an insane mind. On his part, Dr. Gerong testified, on direct examination, that he found appellant to have "diminish[ed] capacity to discern what was wrong or right at the time of the commission of the crime." "Diminished capacity" is not the same as "complete deprivation of intelligence or discernment." Mere abnormality of mental faculties does not exclude imputability. Thus, on the basis of these examinations, it is clearly evident that the defense failed to prove that appellant acted without the least discernment or that he was suffering from a complete absence of intelligence or the power to discern at the time of the commission of the crime.

7. ID.; ID.; ID.; ID.; ACCUSED'S ACT OF TREACHERY, HIS IMMEDIATE FLIGHT AFTER COMMISSION OF THE CRIME, AND EVASION OF ARREST IS NOT THE PRODUCT OF A COMPLETELY ABERRANT MIND.— [A]ppellant's act of treachery, that is by employing means and methods to ensure the killing of Francisco without risk to himself arising from the defense which the victim might make, as well as his subsequent reaction of immediately fleeing after his commission of the crime and, thereafter, evading arrest, is not the product of a completely aberrant mind. In other words, evidence points to the fact that appellant was not suffering from insanity immediately before, simultaneous to, and even right after the commission of the crime.

8. ID.; ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; REQUISITES IN ORDER TO BE CONSIDERED AGAINST THE ACCUSED; NOT ESTABLISHED.— As to the alleged aggravating circumstance of evident premeditation, this Court has ruled that for it to be considered as an aggravating circumstance, the prosecution must prove (a) the time when the offender determined to commit the crime, (b) an act manifestly indicating that the culprit has clung to his determination, and (c) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will. In the instant case, no proof has been adduced to establish that appellant had previously planned the killing of Francisco. There is no evidence when and how he planned and prepared for the same, nor was there a showing that sufficient time had lapsed between his determination and execution. x x x. Thus, the RTC and the CA are correct in not considering the aggravating circumstance of evident premeditation.

9. ID.; ID.; MITIGATING CIRCUMSTANCES; SUFFICIENT PROVOCATION; DEFINED AS ANY UNJUST OR IMPROPER CONDUCT OR ACT OF THE VICTIM ADEQUATE ENOUGH TO EXCITE A PERSON TO COMMIT A WRONG, WHICH IS ACCORDINGLY PROPORTIONATE IN GRAVITY; REQUISITES TO BE APPRECIATED AGAINST THE ACCUSED; NOT PRESENT.— With respect to the alleged mitigating circumstance of sufficient provocation on the part of Francisco,

the rule is that, as a mitigating circumstance, sufficient provocation is any unjust or improper conduct or act of the victim adequate enough to excite a person to commit a wrong, which is accordingly proportionate in gravity. In the present case, appellant asserts that several days before he stabbed the victim, the latter teased appellant to be "gay" and taunted him that the girl whom appellant courted rejected him. However, the Court finds no cogent reason to depart from the ruling of the RTC on this matter, to wit: For sufficient provocation under Article 13, paragraph 4 of the Revised Penal Code of the Philippines to apply, three requisites must be present: a) provocation must be sufficient; b) it must be immediate to the commission of the crime; and c) it must originate from the offended party. "Sufficient" according to jurisprudence means adequate to excite a person to commit the crime and must accordingly be proportionate to its gravity. x x x. Certainly, calling a person gay as in this case is not the sufficient provocation contemplated by law that would lessen the liability of the accused. "Immediate" on the other hand means that there is no interval of time between the provocation and the commission of the crime. x x x. Per admission of the defense witnesses, the taunting done by the victim occurred days before the stabbing incident hence the immediacy required by law was absent. The lapse of time would have given the accused [chance] to contemplate and to recover his serenity enough to refrain from pushing through with his evil plan.

10. ID.; ID.; ID.; VOLUNTARY PLEA OF GUILT; A PLEA OF GUILTY MADE AFTER ARRAIGNMENT AND AFTER TRIAL HAD BEGUN DOES NOT ENTITLE THE ACCUSED TO HAVE SUCH PLEA CONSIDERED AS A MITIGATING CIRCUMSTANCE.— Anent the supposed voluntary plea of guilt on appellant's part, it is settled that a plea of guilty made after arraignment and after trial had begun does not entitle the accused to have such plea considered as a mitigating circumstance. Again, the Court quotes with approval the RTC's disquisition, thus: The second mitigating circumstance of voluntary plea of guilt, claimed by the accused could likewise not be considered. The voluntary plea of guilt entered by the accused is not spontaneous because it was made after his arraignment and only to support his claim of the exempting circumstance of insanity. The voluntary plea of guilt required

by law is one that is made by the accused in cognizance of the grievous wrong he has committed and must be done as an act of repentance and respect for the law. It is mitigating because it indicated a moral disposition in the accused favorable to his reform. It may be recalled that accused in the case at bar did not change his plea from "not guilty" to "guilty". In a last ditch effort to elude liability, however, accused claimed the defense of insanity admitting the act of [stabbing].

11. ID.; ID.; ID.; ILLNESS; APPRECIATED IN FAVOR OF THE ACCUSED WHERE HE HAS DIMINISHED CAPACITY TO DISCERN WHAT WAS WRONG OR RIGHT AT THE TIME OF THE COMMISSION OF THE CRIME.— The Court, however, agrees with the CA in appreciating the mitigating circumstance of illness as would diminish the exercise of willpower of appellant without, however, depriving him of the consciousness of his acts, pursuant to Article 13, paragraphs 9 and 10 of the RPC, as he was found by his examining doctors to have "diminish[ed] capacity to discern what was wrong or right at the time of the commission of the crime."

12. ID.; ID.; MURDER; PENALTY OF *RECLUSION PERPETUA*, IMPOSED.— [A]ppellant was correctly meted the penalty of *reclusion perpetua*, conformably with Article 63, paragraph 3 of the RPC.

13. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— With respect to appellant's civil liability, the prevailing rule is that when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, as in this case, the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages, regardless of the number of qualifying aggravating circumstances present. In conformity with the foregoing rule, the awards granted by the lower courts must, therefore, be modified. x x x As regards the trial court's award of actual damages in the amount of ₱30,000.00, the same must, likewise, be modified. The settled rule is that when actual damages proven by receipts during the trial amount to less than the sum allowed by the Court as temperate damages, the award of temperate damages is justified in lieu of actual damages which is of a

lesser amount. Conversely, if the amount of actual damages proven exceeds, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted. x x x In the present case, Francisco's heirs were able to prove, and were awarded, actual damages in the amount of ₱30,000.00. Since, prevailing jurisprudence now fixes the amount of ₱50,000.00 as temperate damages in murder cases, the Court finds it proper to award temperate damages to Francisco's heirs, in lieu of actual damages. The imposition of six percent (6%) interest *per annum* on all damages awarded from the time of finality of this decision until fully paid, as well as the payment of costs, is likewise sustained.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Eduardo G. Gaanan for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

Before the Court is an ordinary appeal filed by accused-appellant, Roger Racal @ Rambo (*Racal*), assailing the Decision[1] of the Court of Appeals (*CA*), dated February 27, 2015, in CA-G.R. CR-H.C. No. 01450, which affirmed, with modification, the Decision[2] of the Regional Trial Court (*RTC*) of Cebu City, Branch 18, in Criminal Case No. CBU-77654, finding herein appellant guilty of the crime of murder and imposing upon him the penalty of *reclusion perpetua*.

The antecedents are as follows:

In an Information filed by the Cebu City Prosecutor's Office on August 15, 2006, Racal was charged with the crime of murder

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[1] Penned by Associate Justice Marilyn B. Lagura-Yap, with the concurrence of Associate Justices Gabriel T. Ingles and Jhosep Y. Lopez; *rollo*, pp. 5-21.

[2] Penned by Judge Gilbert P. Moises; CA *rollo*, pp. 22-31.

as defined and penalized under Article 248 of the Revised Penal Code (*RPC*), as amended. The accusatory portion of the Information reads, thus:

> That on or about the 19th day of April 2006, at about 4:20 A.M., more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a knife, with deliberate intent, with treachery and evident premeditation, and with intent to kill, did then and there, suddenly and unexpectedly, attack, assault, and use personal violence upon the person of one Jose "Joe" Francisco by stabbing the latter, at his body, thereby inflicting a fatal wound and as a consequence of which he died.
>
> CONTRARY TO LAW.[3]

Upon arraignment, Racal entered a plea of not guilty.[4] Subsequently, trial on the merits ensued.

The evidence for the prosecution established that around 4 o'clock in the morning of April 19, 2006, "*trisikad*" drivers were lining up to pick passengers along Lopez St. at Sitio Alseca in Cebu City. Among the "*trisikad*" drivers was Jose Francisco (*Francisco*). Also present at that place during that time was Racal, who was then standing near Francisco. While the "*trisikad*" drivers were waiting for passengers, Racal spoke in a loud voice, telling the group of drivers not to trust Francisco because he is a traitor. Francisco, who was then holding a plastic container in one hand and a bread in another, and was eating, retorted and asked Racal why the latter called him a traitor. Without warning, Racal approached Francisco and stabbed him several times with a knife, hitting him in the chest and other parts of his body. Francisco, then, fell to the pavement. Immediately thereafter, Racal stepped backwards and upon reaching a dark portion of the street, he hailed a "*trisikad*" and sped away. Thereafter, one of the "*trisikad*" drivers called the *barangay tanod*, but by the time they arrived, Francisco was already dead.

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[3] Records, p. 1.

[4] *Id*. at 29-30.

Racal, on his part, did not deny having stabbed Francisco. However, he raised the defense of insanity. He presented expert witnesses who contended that he has a predisposition to snap into an episode where he loses his reason and thereby acts compulsively, involuntarily and outside his conscious control. Under this state, the defense argued that Racal could not distinguish right from wrong and, thus, was not capable of forming a mental intent at the time that he stabbed Francisco.

After trial, the RTC rendered judgment convicting Racal as charged. The dispositive portion of the RTC Decision, dated September 14, 2011, reads as follows:

> WHEREFORE, on the following considerations, the court renders judgment finding accused ROGER RACAL @ RAMBO guilty beyond reasonable doubt of Murder and sentences him to the penalty of *reclusion perpetua* with all its accessory penalties. He is likewise directed to pay the heirs of the late Jose "Joe" Francisco the amount of Thirty Thousand Pesos (₱30,000.00) as actual damages, Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, and Fifty Thousand Pesos (₱50,000.00) as moral damages.
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> SO ORDERED.[5]

The RTC ruled that the evidence for the defense is insufficient to convince the court that Racal was indeed deprived of his mind and reason at the time when he committed the crime as to exempt him from criminal liability because his depression and psychotic features are not the kind of insanity contemplated by law. The trial court found the circumstance of treachery to be present, but ruled out the presence of the aggravating circumstance of evident premeditation.

Racal filed a Motion for Reconsideration[6] contending that the trial court failed to appreciate the mitigating circumstances of sufficient provocation on the part of the offended party and voluntary confession of guilt on the part of Racal. However,

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[5] *Id*. at 235.

[6] *Id*. at 238-240.

the RTC denied the Motion for Reconsideration in its Order[7] dated December 15, 2011.

Aggrieved by the ruling of the RTC, Racal appealed to the CA. In his Appellant's Brief, Racal reiterated his defense of insanity contending that, at the time he stabbed the victim, he snapped into a fatal episode of temporary loss of rational judgment and that such a predisposition to "snap" was testified upon by his expert witnesses.

In its assailed Decision, the CA affirmed the conviction of Racal but modified the judgment of the RTC by imposing interest on the damages awarded. The CA disposed, thus:

> **WHEREFORE**, the September 14, 2011 Judgment in Criminal Case No. CBU-77654, convicting accused-appellant Roger Racal @ Rambo of Murder and sentencing him with *reclusion perpetua* and its accessory penalties is **AFFIRMED with MODIFICATION**. Accused-appellant is also **ORDERED** to pay the heirs of Jose "Joe" Francisco, interest on damages awarded, the amount of 6% from the date of finality of the judgment until fully paid, and to pay costs.
>
> **SO ORDERED.**[8]

The CA held that the prosecution proved all the elements of the crime necessary to convict Racal for the murder of Francisco. The CA gave credence to the testimonies of the prosecution witnesses. It also affirmed the presence of the qualifying circumstance of treachery and affirmed the trial court in ruling out the presence of the aggravating circumstance of evident premeditation. As to Racal's defense of insanity, the CA held that he failed to rebut the presumption the he was sane at the time of his commission of the crime. The CA, nonetheless, appreciated the mitigating circumstance which is analogous to an illness of the offender that would diminish the exercise of his will-power.

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[7] *Id*. at 246-247.

[8] CA *rollo*, p. 145.

Racal filed a Motion for Reconsideration,[9] questioning the penalty imposed upon him, but the CA denied it in its Resolution[10] of October 22, 2015.

Thus, on November 23, 2015, Racal, through counsel, filed a Notice of Appeal[11] manifesting his intention to appeal the CA Decision to this Court.

In its Resolution[12] dated March 16, 2016, the CA gave due course to Racal's Notice of Appeal and directed its Archives Section to transmit the records of the case to this Court.

Hence, this appeal was instituted.

In a Resolution[13] dated July 20, 2016, this Court, among others, notified the parties that they may file their respective supplemental briefs, if they so desire.

In its Manifestation and Motion,[14] filed on September 23, 2016, the Office of the Solicitor General (*OSG*) manifested that it will no longer file a supplemental brief because it had already adequately addressed in its brief filed before the CA all the issues and arguments raised by accused-appellant in his brief.

On the other hand, Racal filed a Supplemental Brief[15] dated October 21, 2016, reiterating his defense of insanity by contending that at the time of the commission of the crime, expert evidence demonstrates that he had, within him, predisposing factors that cause insanity. He also argues that the lower courts failed to appreciate the mitigating circumstances of sufficient provocation on the part of the victim and voluntary confession of guilt on his part.

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[9] *Id*. at 146-151.

[10] *Id*. at 177-178.

[11] *Id*. at 179-180.

[12] *Id*. at 193.

[13] *Rollo*, p. 26.

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

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

The basic issue for the Court's resolution in the present appeal is whether or not the CA correctly upheld the conviction of herein appellant, Racal, for murder.

The Court rules in the affirmative.

At the outset, it bears to reiterate that in the review of a case, the Court is guided by the long-standing principle that factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect.[16] These factual findings should not be disturbed on appeal, unless there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case.[17]

In the present case, after a careful reading of the records and pleadings, this Court finds no cogent reason to deviate from the RTC's factual findings. There is no indication that the trial court, overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. Moreover, the factual findings of the RTC are affirmed by the CA. Hence, the Court defers to the trial court in this respect, especially considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties.

In any case, the Court will proceed to resolve the present appeal on points of law.

The Information in the instant case charged appellant with the crime of murder, for stabbing the victim, Francisco, which offense was alleged to have been attended by treachery and evident premeditation.

Murder is defined and punished by Article 248 of the RPC, as amended by Republic Act No. 7659, to wit:

> 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:

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[16] *People v. Matibag*, 757 Phil. 286, 292 (2015).

[17] *Id*. at 293.

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;

x x x x x x x x x

2. With evident premeditation;

x x x x x x x x x

To successfully prosecute the crime of murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[18]

In the present case, the prosecution was able to clearly establish that (1) Francisco was stabbed and killed; (2) appellant stabbed and killed him; (3) Francisco's killing was attended by the qualifying circumstance of treachery as testified to by prosecution eyewitnesses; and, (4) the killing of Francisco was neither parricide nor infanticide.

Paragraph 16, Article 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[19] In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the

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[18] *Ramos v. People*, G.R. No. 218466 and G.R. No. 221425, January 23, 2017.

[19] *People v. Las Piñas, et al.*, 739 Phil. 502, 524 (2014).

particular means, methods, or forms of attack employed by him.[20] These elements are extant in the facts of this case and as testified to by the prosecution witnesses. To emphasize, the victim, Francisco, was caught off guard when appellant attacked him. As testified to by a prosecution witness, Francisco was then holding a plastic container containing bread and was eating. The stealth, swiftness and methodical manner by which the attack was carried out gave the victim no chance at all to evade when appellant thrust the knife to his torso. Thus, there is no denying that appellant's sudden and unexpected onslaught upon the victim, and the fact that the former did not sustain any injury, evidences treachery. Also, the fact that appellant was facing Francisco when he stabbed the latter is of no consequence. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it,[21] as in this case. Undoubtedly, the RTC and the CA correctly held that the crime committed was murder under Article 248 of the RPC by reason of the qualifying circumstance of treachery.

Appellant, nonetheless, insists on his defense of insanity. In this regard, the Court's pronouncement in the case of *People v. Estrada*[22] is instructive, to wit:

> The basic principle in our criminal law is that a person is criminally liable for a felony committed by him. Under the classical theory on which our penal code is mainly based, the basis of criminal liability is human free will. Man is essentially a moral creature with an absolutely free will to choose between good and evil. When he commits a felonious or criminal act (*delito doloso*), the act is presumed to have been done voluntarily, *i.e.*, with freedom, intelligence and intent. Man, therefore, should be adjudged or held accountable for wrongful acts so long as free will appears unimpaired.
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> In the absence of evidence to the contrary, the law presumes that every person is of sound mind and that all acts are voluntary. The

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[20] *Id.* at 524-525.

[21] *People v. PFC Malejana*, 515 Phil. 584, 599 (2006).

[22] 389 Phil. 216 (2000).

moral and legal presumption under our law is that freedom and intelligence constitute the normal condition of a person. This presumption, however, may be overthrown by other factors; and one of these is insanity which exempts the actor from criminal liability.

The Revised Penal Code in Article 12 (1) provides:

> ART. 12. *Circumstances which exempt from criminal liability*. The following are exempt from criminal liability:
>
> 1. An imbecile or an insane person, unless the latter has acted during a lucid interval.
>
> When the imbecile or an insane person has committed an act which the law defines as a felony (*delito*), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.

An insane person is exempt from criminal liability unless he has acted during a lucid interval. If the court therefore finds the accused insane when the alleged crime was committed, he shall be acquitted but the court shall order his confinement in a hospital or asylum for treatment until he may be released without danger. An acquittal of the accused does not result in his outright release, but rather in a verdict which is followed by commitment of the accused to a mental institution.

In the eyes of the law, insanity exists when there is a complete deprivation of intelligence in committing the act. Mere abnormality of the mental faculties will not exclude imputability. The accused must be "so insane as to be incapable of entertaining a criminal intent." He must be deprived of reason and act without the least discernment because there is a complete absence of the power to discern or a total deprivation of freedom of the will.

Since the presumption is always in favor of sanity, he who invokes insanity as an exempting circumstance must prove it by clear and positive evidence. And the evidence on this point must refer to the time preceding the act under prosecution or to the very moment of its execution.

To ascertain a persons mental condition at the time of the act, it is permissible to receive evidence of the condition of his mind within a reasonable period both before and after that time. Direct testimony

is not required. Neither are specific acts of derangement essential to establish insanity as a defense. Circumstantial evidence, if clear and convincing, suffices; for the unfathomable mind can only be known by overt acts. A person's thoughts, motives, and emotions may be evaluated only by outward acts to determine whether these conform to the practice of people of sound mind.[23]

In the present case, the defense failed to overcome the presumption of sanity. The testimonies of Dr. Preciliana Lee Gilboy (*Dr. Gilboy*) and Dr. Andres Suan Gerong (*Dr. Gerong*), as the defense's qualified expert witnesses, failed to support appellant's claim of insanity. As correctly observed by the CA, the separate psychiatric evaluations of appellant were taken in June 2009 and July 2010, which are three and four years after the crime was committed on April 19, 2006. In *People v. So*,[24] which is a case of recent vintage, this Court ruled that an inquiry into the mental state of an accused should relate to the period immediately before or at the very moment the felony is committed.[25] Hence, the results of the psychiatric tests done on appellant and testified to by the defense witnesses, may not be relied upon to prove appellant's mental condition at the time of his commission of the crime.

In any case, during cross-examination, Dr. Gilboy testified that for a number of years up to the time that appellant killed Francisco, he had custody of and served as the guardian of his sister's children.[26] He took care of their welfare and safety, and he was the one who sends them to and brings them home from school. Certainly, these acts are not manifestations of an insane mind. On his part, Dr. Gerong testified, on direct examination, that he found appellant to have "diminish[ed] capacity to discern what was wrong or right at the time of the commission of the crime."[27] "Diminished capacity" is not the

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[23] *People v. Estrada, supra,* at 231-233. (Citations omitted)

[24] 317 Phil. 826 (1995).

[25] *People v. So, supra,* at 846.

[26] TSN, May 25, 2010, pp. 9-12.

[27] TSN, July 27, 2010, pp. 9-10.

same as "complete deprivation of intelligence or discernment." Mere abnormality of mental faculties does not exclude imputability.[28] Thus, on the basis of these examinations, it is clearly evident that the defense failed to prove that appellant acted without the least discernment or that he was suffering from a complete absence of intelligence or the power to discern at the time of the commission of the crime.

Furthermore, appellant's act of treachery, that is by employing means and methods to ensure the killing of Francisco without risk to himself arising from the defense which the victim might make, as well as his subsequent reaction of immediately fleeing after his commission of the crime and, thereafter, evading arrest, is not the product of a completely aberrant mind. In other words, evidence points to the fact that appellant was not suffering from insanity immediately before, simultaneous to, and even right after the commission of the crime.

In his Supplemental Brief, appellant cites the "*Durham Rule*" which was used in criminal courts in the United States of America. This rule postulated that an accused is not criminally responsible if his unlawful act was the result of a mental disease or defect at the time of the incident.[29] However, in subsequent rulings, US Federal Courts and State Courts, even by the court which originally adopted it, rejected and abandoned this rule for being too broad and for lacking a clear legal standard for criminal responsibility.[30] As earlier discussed, in the Philippines, the courts have established a clearer and more stringent criterion for insanity to be exempting as it is required that there must be a complete deprivation of intelligence in committing the act, *i.e.*, the accused is deprived of reason; he acted without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of the will.[31]

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[28] *People v. So, supra* note 24, at 843.

[29] 22 C.J.S., §58, pp. 198-199; 21 Am. Jur., 2d, §59, p. 164.

[30] *Id.*

[31] *People v. Madarang*, 387 Phil. 846, 859 (2000).

Thus, appellant's reliance on the *Durham Rule* is misplaced and, thus, may not be given credit.

Having been shown beyond doubt that the prosecution was able to prove with certainty all the elements of the crime charged, the Court will now proceed to determine the correctness of the penalty and the civil liabilities imposed upon appellant.

As to the penalty, the crime of murder qualified by treachery is penalized under Article 248 of the RPC, as amended by Republic Act No. 7659, with *reclusion perpetua* to death.

As to the alleged aggravating circumstance of evident premeditation, this Court has ruled that for it to be considered as an aggravating circumstance, the prosecution must prove (a) the time when the offender determined to commit the crime, (b) an act manifestly indicating that the culprit has clung to his determination, and (c) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.[32] In the instant case, no proof has been adduced to establish that appellant had previously planned the killing of Francisco. There is no evidence when and how he planned and prepared for the same, nor was there a showing that sufficient time had lapsed between his determination and execution. In this respect, the Court quotes with approval the disquisition of the CA, to wit:

> The circumstances that transpired immediately before and after the stabbing negate evident premeditation. The time when accused-appellant conceived the crime cannot be determined. Even assuming that there was an altercation that arose between the accused-appellant and the victim due to the remarks made by the former to the latter, this is not the overt act indicative of his criminal intent. Simply put, the prosecution failed to establish that there was a sufficient lapse of time for accused-appellant to reflect on his decision to kill the victim and the actual execution thereof.[33]

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[32] *People v. Serenas, et al.*, 636 Phil. 495, 511 (2010).

[33] CA *rollo*, p. 141.

Thus, the RTC and the CA are correct in not considering the aggravating circumstance of evident premeditation.

The Court likewise agrees with the RTC and the CA in not appreciating the mitigating circumstances of sufficient provocation on the part of the offended party and voluntary plea of guilt on the part of appellant.

With respect to the alleged mitigating circumstance of sufficient provocation on the part of Francisco, the rule is that, as a mitigating circumstance, sufficient provocation is any unjust or improper conduct or act of the victim adequate enough to excite a person to commit a wrong, which is accordingly proportionate in gravity.[34] In the present case, appellant asserts that several days before he stabbed the victim, the latter teased appellant to be "gay" and taunted him that the girl whom appellant courted rejected him. However, the Court finds no cogent reason to depart from the ruling of the RTC on this matter, to wit:

> For sufficient provocation under Article 13, paragraph 4 of the Revised Penal Code of the Philippines to apply, three requisites must be present:
>
> a) provocation must be sufficient;
> b) it must be immediate to the commission of the crime; and
> c) it must originate from the offended party.
>
> "Sufficient" according to jurisprudence means adequate to excite a person to commit the crime and must accordingly be proportionate to its gravity. In *Bautista v. Court of Appeals* [G.R. No. L-46025, September 2, 1992], the mitigating circumstance did not apply since it is not enough that the provocating act be unreasonable or annoying. Certainly, calling a person gay as in this case is not the sufficient provocation contemplated by law that would lessen the liability of the accused.
>
> "Immediate" on the other hand means that there is no interval of time between the provocation and the commission of the crime. Hence, in one case [*People v. Co*, 67 O.G. 7451] the Supreme Court ruled that provocation occurring more than one hour before the stabbing incident is not immediate and in *People v. Benito* [62 SCRA 351] 24

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[34] *Gotis v. People*, 559 Phil. 843, 850 (2007).

hours before the commission of the crime. Per admission of the defense witnesses, the taunting done by the victim occurred days before the stabbing incident hence the immediacy required by law was absent. The lapse of time would have given the accused [chance] to contemplate and to recover his serenity enough to refrain from pushing through with his evil plan.[35]

Anent the supposed voluntary plea of guilt on appellant's part, it is settled that a plea of guilty made after arraignment and after trial had begun does not entitle the accused to have such plea considered as a mitigating circumstance.[36] Again, the Court quotes with approval the RTC's disquisition, thus:

> The second mitigating circumstance of voluntary plea of guilt, claimed by the accused could likewise not be considered. The voluntary plea of guilt entered by the accused is not spontaneous because it was made after his arraignment and only to support his claim of the exempting circumstance of insanity. The voluntary plea of guilt required by law is one that is made by the accused in cognizance of the grievous wrong he has committed and must be done as an act of repentance and respect for the law. It is mitigating because it indicated a moral disposition in the accused favorable to his reform. It may be recalled that accused in the case at bar did not change his plea from "not guilty" to "guilty". In a last ditch effort to elude liability, however, accused claimed the defense of insanity admitting the act of [stabbing].[37]

The Court, however, agrees with the CA in appreciating the mitigating circumstance of illness as would diminish the exercise of willpower of appellant without, however, depriving him of the consciousness of his acts, pursuant to Article 13, paragraphs 9 and 10 of the RPC, as he was found by his examining doctors to have "diminish[ed] capacity to discern what was wrong or right at the time of the commission of the crime."[38]

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[35] Records, pp. 246-247.

[36] *People v. Ibañez*, 455 Phil. 133, 165 (2003).

[37] Records, p. 247.

[38] *Supra* note 27.

Thus, on the basis of the foregoing, appellant was correctly meted the penalty of *reclusion perpetua*, conformably with Article 63, paragraph 3 of the RPC.

With respect to appellant's civil liability, the prevailing rule is that when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, as in this case, the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages, regardless of the number of qualifying aggravating circumstances present.[39] In conformity with the foregoing rule, the awards granted by the lower courts must, therefore, be modified. Thus, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00. Appellant should also pay the victim's heirs exemplary damages in the amount of ₱75,000.00. The award of ₱75,000.00, as civil indemnity, is sustained.

As regards the trial court's award of actual damages in the amount of ₱30,000.00, the same must, likewise, be modified. The settled rule is that when actual damages proven by receipts during the trial amount to less than the sum allowed by the Court as temperate damages,[40] the award of temperate damages is justified in lieu of actual damages which is of a lesser amount.[41] Conversely, if the amount of actual damages proven exceeds, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.[42] The rationale for this rule is that it would be anomalous and unfair for the victim's heirs, who tried and succeeded in presenting receipts and other evidence to prove

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[39] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 373.

[40] Previous jurisprudence pegs the amount of ₱25,000.00 as temperate damages in murder cases. This amount was increased to ₱50,000.00 in the prevailing case of *People v. Jugueta*.

[41] *People v. Villanueva*, 456 Phil. 14, 29 (2003); *Quidet v. People*, 632 Phil. 1, 19 (2010); *People v. Villar*, 757 Phil. 675, 682 (2015).

[42] *Id.*

actual damages, to receive an amount which is less than that given as temperate damages to those who are not able to present any evidence at all.[43] In the present case, Francisco's heirs were able to prove, and were awarded, actual damages in the amount of ₱30,000.00. Since, prevailing jurisprudence now fixes the amount of ₱50,000.00 as temperate damages in murder cases, the Court finds it proper to award temperate damages to Francisco's heirs, in lieu of actual damages.

The imposition of six percent (6%) interest *per annum* on all damages awarded from the time of finality of this decision until fully paid, as well as the payment of costs, is likewise sustained.

WHEREFORE, the Court **AFFIRMS** the Decision of the Court of Appeals, dated February 27, 2015, in CA-G.R. CR-HC No. 01450, finding accused-appellant Roger Racal @ Rambo **GUILTY** beyond reasonable doubt of the crime of Murder, with the following **MODIFICATIONS:**

(1) The award of moral damages is **INCREASED** to Seventy-Five Thousand Pesos (₱75,000.00);

(2) Accused-appellant is **DIRECTED TO PAY** the heirs of the victim Jose "Joe" Francisco exemplary damages in the amount of Seventy-Five Thousand Pesos (₱75,000.00); and

(3) The award of actual damages is **DELETED** and, in lieu thereof, **temperate damages in the amount of Fifty Thousand Pesos (₱50,000.00) is awarded to the heirs of the victim.**

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[43] *Id.*

SECOND DIVISION

[G.R. No. 225402. September 4, 2017]

ENCARNACION CONSTRUCTION & INDUSTRIAL CORPORATION, *petitioner, vs.* **PHOENIX READY MIX CONCRETE DEVELOPMENT & CONSTRUCTION, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; CONTRACT OF ADHESION; NOT INVALID *PER SE* AS THEY ARE BINDING AS ORDINARY CONTRACTS, BUT THE COURT OCCASIONALLY STRUCK DOWN CONTRACTS OF ADHESION AS VOID WHEN THE WEAKER PARTY HAS BEEN IMPOSED UPON IN DEALING WITH THE DOMINANT BARGAINING PARTY AND REDUCED TO THE ALTERNATIVE OF TAKING IT OR LEAVING IT, COMPLETELY DEPRIVED OF THE OPPORTUNITY TO BARGAIN ON EQUAL FOOTING.— A contract of adhesion is one wherein one party imposes a ready-made form of contract on the other. It is a contract whereby almost all of its provisions are drafted by one party, with the participation of the other party being limited to affixing his or her signature or "adhesion" to the contract. However, contracts of adhesion are not invalid *per se* as they are binding as ordinary contracts. While the Court has occasionally struck down contracts of adhesion as void, it did so when the weaker party has been imposed upon in dealing with the dominant bargaining party and reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing. Thus, the validity or enforceability of the impugned contracts will have to be determined by the peculiar circumstances obtained in each case and the situation of the parties concerned.

2. ID.; ID.; ID.; ID.; THE NATURAL PRESUMPTION IS THAT ONE DOES NOT SIGN A DOCUMENT WITHOUT FIRST INFORMING HIMSELF OF ITS CONTENTS AND CONSEQUENCES.— In this case, there is no proof that ECIC

was disadvantaged or utterly inexperienced in dealing with Phoenix. There were likewise no allegations and proof that its representative (and owner/proprietor) Ramon Encarnacion (Encarnacion) was uneducated, or under duress or force when he signed the Agreement on its behalf. In fact, Encarnacion is presumably an astute businessman who signed the Agreement with full knowledge of its import. Case law states that the natural presumption is that one does not sign a document without first informing himself of its contents and consequences. This presumption has not been debunked. Moreover, it deserves highlighting that apart from the January 27 and March 25, 2009 Contract Proposals and Agreements, ECIC and Phoenix had entered into three (3) similar Agreements under the same terms and conditions for the supply of ready-mix concrete. Thus, the Court is hard-pressed to believe that Encarnacion had no sufficient opportunity to read and go over the stipulations of the Agreement and reject or modify the terms had he chosen to do so.

3. ID.; ID.; ID.; THE ABSENCE OF THE SIGNATURE OF THE PARTY ON THE SECOND PAGE OF THE AGREEMENT WILL NOT RENDER THE TERMS OF THE AGREEMENT INOPERATIVE WHERE THE FIRST PAGE OF THE AGREEMENT - ON WHICH THE SIGNATURE OF THE SAID PARTY APPEARS, CATEGORICALLY PROVIDES THAT THE TERMS AND CONDITIONS STIPULATED ON THE AGREEMENT'S REVERSE SIDE FORM PART OF THEIR CONTRACT AND ARE EQUALLY BINDING ON THEM.— [T]he Court finds that the terms and conditions of the parties' Agreement are plain, clear, and unambiguous and thus could not have caused any confusion. x x x. [T]he Court clarifies that the absence of the signature of Encarnacion on the second page of the Agreement did not render these terms inoperative. This is because the first page of the Agreement — on which the signature of Encarnacion appears — categorically provides that the terms and conditions stipulated on the Agreement's reverse side form part of their contract and are equally binding on them x x x. Thus, by having its representative affix his signature on the first page of the Agreement and thereby accepting Phoenix's proposed contract, ECIC likewise signified its conformity to the entirety of the stipulated terms and conditions, including the stipulations on the Agreement's reverse side. Verily, ECIC positively and

voluntarily bound itself to these terms and conditions and cannot now claim otherwise.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL QUESTIONS ARE NOT THE PROPER SUBJECT OF AN APPEAL BY *CERTIORARI*, AS IT IS NOT THE COURT'S FUNCTION TO ONCE AGAIN ANALYZE AND CALIBRATE EVIDENCE THAT HAS ALREADY BEEN CONSIDERED IN THE LOWER COURTS; EXCEPTIONS NOT PRESENT.— The other issues raised by ECIC on this matter are essentially factual in nature, and thus, not proper for a petition for review on *certiorari*. Rule 45 of the Rules of Court, which governs this kind of petition, requires that only questions of law should be raised. Factual questions are not the proper subject of an appeal by *certiorari* as it is not the Court's function to once again analyze and calibrate evidence that has already been considered in the lower courts. While there are recognized exceptions to this rule that warrant review of factual findings, ECIC, as the party seeking review, however, failed to demonstrate that a factual review is justified under the circumstances prevailing in this case.

APPEARANCES OF COUNSEL

Ruel E. Asubar for petitioner.
Corpuz Ejercito Macasaet Rivera & Corpuz Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated July 22, 2015 and the Resolution[3] dated

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[1] *Rollo*, pp. 8-42.

[2] *Id*. at 49-57. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando concurring.

[3] *Id*. at 47.

June 29, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 102671, which affirmed the Decision[4] dated December 4, 2013 of the Regional Trial Court of Imus, Cavite, Branch 20 (RTC) in Civil Case No. 3547-10 granting the complaint for sum of money filed by respondent Phoenix Ready Mix Concrete Development and Construction, Inc. (Phoenix) against petitioner Encarnacion Construction & Industrial Corporation (ECIC), and dismissing the latter's counterclaim for damages.

The Facts

On January 27 and March 25, 2009, Phoenix entered into two (2) separate Contract Proposals and Agreements (Agreement)[5] with ECIC for the delivery of various quantities of ready-mix concrete.[6] The Agreement was made in connection with the construction of the Valenzuela National High School (VNHS) Marulas Building.[7] ECIC received the ready-mix concrete delivery in due course. However, despite written demands from Phoenix, ECIC refused to pay. Hence, Phoenix filed before the RTC the Complaint[8] for Sum of Money against ECIC for the payment of ₱982,240.35, plus interest and attorney's fees.[9]

In its Answer with Counterclaim,[10] ECIC claimed that it opted to suspend payment since Phoenix delivered substandard ready-

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[4] *Id*. at 76-82. Penned by Judge Fernando L. Felicen.

[5] See copies of the January 27, 2009 Agreement (records, pp. 29-30) and March 25, 2009 Agreement (*rollo*, p. 133).

[6] Portions of the RTC and CA Decisions, as well as of the records, use the term "cement" instead of "concrete." However, Phoenix's witness Engr. Vince Nicholas Villaseñor (Engr. Villaseñor) clarified that these two terms are different; "concrete" refers to the mixture of cement, gravel, sand, and other mixtures (see records, p. 361). For purposes of this decision and in view of Engr. Villaseñor, the term "concrete" shall be used.

[7] *Rollo*, p. 49.

[8] Dated January 25, 2010. Records, pp. 2-6.

[9] *Rollo*, p. 49.

[10] Dated June 16, 2010. Records, pp. 12-18.

mix concrete, such that the City Engineer's Office of Valenzuela (City Engineer's Office) required the demolition and reconstruction of the VNHS building's 3rd floor.[11] It contended that since the samples taken from the 3rd floor slab failed to reach the comprehensive strength of 6,015 psi in 100 days,[12] the City Engineer's Office ordered the dismantling of the VNHS building's 3rd floor, and thus, incurred additional expenses amounting to ₱3,858,587.84 for the dismantling and reconstruction.[13]

The RTC Ruling

In a Decision[14] dated December 4, 2013, the RTC ordered ECIC to pay Phoenix the amount of ₱865,410.00, with twelve percent (12%) interest per annum, reckoned from November 5, 2009, the date ECIC received the demand, as well as ₱50,000.00 as attorney's fees, and the costs of suit.[15]

Primarily, the RTC found that Phoenix fully complied with its obligation under their Agreement to deliver the ready-mix concrete, with the agreed strength of 3000 and 3500 psi G-3/4 7D PCD,[16] which ECIC used to complete the 3rd floor slab of the VNHS building.[17] Moreover, it pointed out that the alleged sub-standard quality of the delivered ready-mix concrete did not excuse ECIC from refusing payment, noting that under Paragraph 15 of the Agreement, any claim it has on the quality and strength of the transit mixed concrete should have been made at the time of delivery. Since ECIC raised the alleged defects in the delivered concrete only on June 16, 2009, or 48

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[11] See *id*. at 17.

[12] *Id*. at 13.

[13] *Id*. at. 18.

[14] *Rollo*, pp. 76-82.

[15] *Id*. at 81-82.

[16] See Delivery Receipts; records, pp. 37-55.

[17] *Id*. at 79.

days after the last delivery date on April 29, 2009,[18] it considered ECIC to have waived its right to question the quality of the delivered concrete under the principle of *estoppel in pais.*[19] It added that under Paragraph 15 of the Agreement, ECIC does not have the right to suspend or refuse payment once delivery has been made; thus, ECIC's refusal to pay despite demand constitutes breach of their Agreement, entitling Phoenix to attorney's fees, but at the reduced amount of ₱50,000.00.[20] Lastly, it reduced the rate of the stipulated interest from 18% to 12% per annum, counted from November 5, 2009.[21]

Meanwhile, the RTC denied ECIC's counterclaim for failure to pay the necessary docket fees.[22]

Aggrieved, ECIC appealed[23] to the CA, arguing that it paid the necessary docket fees for its counterclaim well within a reasonable time from its filing or on June 18, 2010[24] and that it did not waive its right to question the strength of the delivered concrete which, based on various tests, was substandard.[25]

The CA Ruling

In a Decision[26] dated July 22, 2015, the CA affirmed the RTC ruling holding ECIC liable for the payment of the delivered ready-mix concrete.

At the outset, the CA agreed with ECIC that the docket fees for its counterclaim was paid well within a reasonable time

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[18] See Statement and Sales Invoice; records, p. 36.

[19] *Rollo*, p. 80.

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

[21] *Id*. at 81.

[22] *Id*. at 80.

[23] See Notice of Appeal dated January 22, 2014 (*id*. at 83-84) and Appellant's Brief dated September 29, 2014; *id*. at. 90-126.

[24] *Id*. at. 98.

[25] *Id*. at 100-101.

[26] *Id*. at 49-57.

from the prescriptive date; thus, the RTC should not have automatically dismissed its counterclaim.[27] Nonetheless, it ruled that ECIC is bound by their Agreement to pay for the delivered ready-mix concrete. Moreover, it observed that before ECIC signed and bound itself to the Agreement, it should have questioned the condition set under Paragraph 15, *i.e.*, that complaints about the quality of the concrete should be made upon delivery.[28] Further, there is no showing that ECIC was at a disadvantage when it contracted with Phoenix so as to render the Agreement void on the ground that it is a contract of adhesion. Thus, the CA concluded that ECIC's failure to make any claim on the strength and quality of the ready-mix concrete upon delivery, pursuant to Paragraph 15 of the Agreement, constitutes a waiver thereof on its part.[29]

Dissatisfied, ECIC moved[30] for reconsideration, which the CA denied in a Resolution[31] dated June 29, 2016; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in denying ECIC's counterclaim for damages.

The Court's Ruling

The petition lacks merit.

In the present petition, ECIC maintains that it is entitled to its counterclaim because the Agreement it signed with Phoenix, particularly Paragraph 15 thereof, is void for being a contract of adhesion; and, the ready-mix concrete Phoenix delivered for the 3rd floor slab of the VNHS building was substandard,

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[27] *Id*. at 54.

[28] *Id*. at 56.

[29] *Id*.

[30] See Motion for Reconsideration dated August 17, 2015; *id*. at 58-64.

[31] *Id*. at 47.

causing it to incur additional expenses to reconstruct the building's 3rd floor.

A contract of adhesion is one wherein one party imposes a ready-made form of contract on the other. It is a contract whereby almost all of its provisions are drafted by one party, with the participation of the other party being limited to affixing his or her signature or "adhesion" to the contract.[32] However, contracts of adhesion are not invalid *per se* as they are binding as ordinary contracts.[33] While the Court has occasionally struck down contracts of adhesion as void, it did so when the weaker party has been imposed upon in dealing with the dominant bargaining party and reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing.[34] Thus, the validity or enforceability of the impugned contracts will have to be determined by the peculiar circumstances obtained in each case and the situation of the parties concerned.[35]

In this case, there is no proof that ECIC was disadvantaged or utterly inexperienced in dealing with Phoenix. There were likewise no allegations and proof that its representative (and owner/proprietor) Ramon Encarnacion (Encarnacion) was uneducated, or under duress or force when he signed the Agreement on its behalf. In fact, Encarnacion is presumably an astute businessman who signed the Agreement with full knowledge of its import. Case law states that the natural presumption is that one does not sign a document without first informing himself of its contents and consequences.[36] This presumption has not been debunked.

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[32] *Equitable PCI Bank v. Ng Sheung Ngor*, 565 Phil. 520, 536-537 (2007).

[33] See *Cabanting v. BPI Family Savings Bank, Inc.*, G.R. No. 201927, February 17, 2016; *Equitable PCI Bank v. Ng Sheung Ngor*, *id*. at 537; and *Spouses Poltan v. BPI Family Savings Bank, Inc.*, 546 Phil. 257, 269 (2007).

[34] See *Cabanting v. BPI*, *id*.; and *Spouses Poltan v. BPI Family Savings Bank, Inc.*, *id*. at 269.

[35] See *Cabanting v. BPI*, *id*.

[36] See *Cabanting v. BPI*, *id*.; and *Spouses Poltan v. BPI Family Savings Bank, Inc.*, *supra* note 33 at 270, citing *Lee v. CA,* 426 Phil. 290, 316 (2002).

Moreover, it deserves highlighting that apart from the January 27 and March 25, 2009 Contract Proposals and Agreements, ECIC and Phoenix had entered into three (3) similar Agreements under the same terms and conditions[37] for the supply of ready-mix concrete. Thus, the Court is hard-pressed to believe that Encarnacion had no sufficient opportunity to read and go over the stipulations of the Agreement and reject or modify the terms had he chosen to do so.

Further, the Court finds that the terms and conditions of the parties' Agreement are plain, clear, and unambiguous and thus could not have caused any confusion. Paragraph 15 of the Agreement provides that:

> x x x Any claim on the quality, strength, or quantity of the transit mixed concrete delivered must be made at the time of delivery. Failure to make the claim constitutes a waiver on the part of the SECOND PARTY for such claim and the FIRST PARTY is released from any liability for any subsequent claims on the quality, strength or [sic] the ready mixed concrete.[38]

Based on these terms, it is apparent that any claim that ECIC may have had as regards the quality or strength of the delivered ready-mix concrete should have been made at the time of delivery. However, it failed to make a claim on the quality of the delivered concrete at the stipulated time, and thus, said claim is deemed to have been waived.

In this relation, the Court clarifies that the absence of the signature of Encarnacion on the second page of the Agreement did not render these terms inoperative. This is because the first page of the Agreement – on which the signature of Encarnacion appears – categorically provides that the terms and conditions stipulated on the Agreement's reverse side form part of their contract and are equally binding on them, *viz.:*

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[37] Dated November 6, 2008, February 18, 2009, and February 27, 2009. *Rollo,* pp. 130-133.

[38] *Id.* at 130, reverse side.

No terms and conditions shall be valid and binding except those stipulated herein and/or the reverse side thereof. No modifications, amendments, assignments or transfer of this contract or any of the stipulation herein contained shall be valid and binding unless agreed by writing between the PARTIES herein.

x x x x x x x x x[39] (Emphasis and underscoring supplied)

Thus, by having its representative affix his signature on the first page of the Agreement and thereby accepting Phoenix's proposed contract, ECIC likewise signified its conformity to the entirety of the stipulated terms and conditions, including the stipulations on the Agreement's reverse side. Verily, ECIC positively and voluntarily bound itself to these terms and conditions and cannot now claim otherwise.

Finally, it should be noted that ECIC failed to raise the alleged defect in the delivered concrete well within a reasonable time from its discovery of the hairline cracks, as it notified Phoenix thereof only 48 days after the last delivery date on April 29, 2009, and days after it was already notified thereof by the City Engineer's Office.[40] The lack of justifiable explanation for this delay all the more bolsters the conclusion that ECIC indeed waived its right to make its claim.

The other issues raised by ECIC on this matter are essentially factual in nature, and thus, not proper for a petition for review on *certiorari.* Rule 45 of the Rules of Court, which governs this kind of petition, requires that only questions of law should be raised.[41] Factual questions are not the proper subject of an

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[39] See copy of the Agreement; *id*. at 130. See also copy of the other Agreements signed by the parties; *id*. at 131-133.

[40] See the City Engineer's Office's letters dated May 20, 2009 and May 29, 2009 informing ECIC of the appearance of the hairline cracks on the VNHS building's 3rd floor (*id*. at 151-152). ECIC informed Phoenix of the City Engineer's Office's letters regarding the appearance of the hairline cracks only on June 11, 2009 (*id*. at 11 and 206).

[41] See *Spouses Miano v. Manila Electric Company (MERALCO)*, G.R. No. 205035, November 16, 2016. See also *Abad v. Spouses Guimba*, 503 Phil. 321, 328 (2005).

appeal by *certiorari* as it is not the Court's function to once again analyze and calibrate evidence that has already been considered in the lower courts.[42] While there are recognized exceptions to this rule that warrant review of factual findings, ECIC, as the party seeking review, however, failed to demonstrate that a factual review is justified under the circumstances prevailing in this case.[43]

In any event, the evidence on record do not support ECIC's claim that the hairline cracks that appeared on the 3rd floor slab of the VNHS building resulted from the substandard quality of the delivered ready-mix concrete. While it was shown that the City Engineer's Office inspected the site and approved the structural design before the delivered concrete for the 3rd floor slab was poured, and that the results of the test conducted by the Philippine Geoanalytics Testing Center[44] from the samples taken showed that the hardened concrete failed to reach the required comprehensive strength days after the pouring, ECIC, however, failed to account for the period that intervened from the time the delivered concrete was poured to the time the hairline

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[42] See *Miano v. Manila Electric Company (MERALCO)*, *id.*

[43] See *Prudential Bank (now Bank of the Philippine Islands) v. Rapanot*, G.R. No. 191636, January 16, 2017; and *Spouses Miano v. Manila Electric Company (MERALCO)*, *id*.

Some of the recognized exceptions to the factual-bar-rule are: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of facts are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the findings of facts of the Court of Appeals are premised on the supposed absence of evidence and are contradicted by the evidence on record.

[44] See Test Report on Drilled Concrete Core; *rollo,* p. 157.

cracks were observed. As the claiming party, it was incumbent upon ECIC to prove that the hairline cracks were truly caused by the inferior quality of the delivered concrete. Besides, Phoenix offered a more plausible explanation, *i.e.*, that ECIC failed to observe the proper procedure for applying and curing the delivered concrete during the intervening period. This resulted in what Phoenix's witness described as "plastic (cement) shrinkage caused by the rapid evaporation of the water component and other factors."[45]

All told, ECIC failed to convincingly prove its counterclaim against Phoenix and thus, the same was correctly denied by the CA.

WHEREFORE, the petition is **DENIED**. The Decision dated July 22, 2015 and the Resolution dated June 29, 2016 of the Court of Appeals in CA-G.R. CV No. 102671 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, Acting C.J. (*Chairperson*), *Peralta, Caguioa* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 227425. September 4, 2017]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BRAHIM LIDASAN, NHOKIE MOHAMAD, ROCKY MOCALAM, TENG USMAN, ALI MATOC, MUSLIMEN WAHAB, JIMMY ALUNAN, ROWENA AMAL RAJID**, *accused,*

OMAR KAMIR, ALEX DALIANO, and BAYAN ABBAS ADIL *alias* "JORDAN," *accused-appellants.*

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[45] *Id.* at 53.

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS; PROVED.—** Article 267 of the RPC, as amended, defines and penalizes the crime of Kidnapping and Serious Illegal Detention x x x. The elements of the crime are as follows: (*a*) the offender is a private individual; (*b*) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (*c*) the act of detention or kidnapping must be illegal; and (*d*) in the commission of the offense any of the following circumstances is present: *i*) the kidnapping or detention lasts for more than three days; *ii*) it is committed by simulating public authority; *iii*) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or *iv*) the person kidnapped or detained is a minor, female, or a public officer. Notably, the duration of detention is immaterial if the victim is a minor, or if the purpose of the kidnapping is to extort ransom. Otherwise stated, the prosecution must establish the deprivation of liberty of the victim under any of the above-mentioned circumstances coupled with indubitable proof of intent of the accused to effect the same. There must be a purposeful or knowing action by the accused to forcibly restrain the victim coupled with intent. In this case, the prosecution had proven beyond reasonable doubt the existence of the aforesaid elements as it is undisputed that accused-appellants, among others, illegally detained the victim Ragos against her will for the purpose of extorting ransom from her family.

2. **REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; INHERENTLY WEAK DEFENSES THAT CANNOT BE ACCORDED GREATER EVIDENTIARY WEIGHT THAN THE POSITIVE DECLARATION BY CREDIBLE WITNESSES.—** [T]he collective testimonies of prosecution witnesses, such as victim Ragos and state witness Bauting, positively identified the perpetrators to the kidnapping — including accused-appellants Adil, Daliano, and Kamir — as well as narrated in detail the events that transpired from Ragos's abduction up to her rescue. These easily trump accused-appellants' denial and alibi which are inherently weak defenses that cannot be accorded greater evidentiary weight than the positive declaration by credible witnesses.

3. ID.; ID.; CREDIBILITY OF WITNESSES; THE COURT DEFERS TO THE FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY CONSIDERING THAT IT WAS IN THE BEST POSITION TO ASSESS AND DETERMINE THE CREDIBILITY OF THE WITNESSES PRESENTED BY BOTH PARTIES.— [T]he Court finds no reason to deviate from the factual findings of the courts *a quo* as there is no indication that the trial court, whose findings the CA affirmed, overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. As such, the Court defers to the factual findings of the trial court, especially considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties.

4. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; PROPER IMPOSABLE PENALTY.— As to the proper penalties to be imposed on accused-appellants, Article 267 of the RPC originally prescribes the death penalty for the commission of said crime for the purpose of extorting ransom. Hence, the RTC meted such penalty on the principals , and the penalty one (1) degree lower — *i.e., reclusion perpetua* — on the accomplices pursuant to Article 52 of the RPC. However, and as the CA correctly pointed out in its September 24, 2008 Decision, the passage of RA 9346 effectively lowered the imposable penalty to the principals, *e.g.*, accused-appellants, to *reclusion perpetua,* without eligibility for parole. Resultantly, the imposable penalty to the accomplices must likewise be lowered to *reclusion temporal*, thereby entitling them to the benefit of the Indeterminate Sentence Law. Thus, the accomplices must be sentenced to suffer the penalty of imprisonment for an indeterminate period of ten (10) years of *prision mayor,* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal,* as maximum. [I]t is worthy to note that none of the accomplices made any appeal to the Court. This notwithstanding, the Court deems it proper to adjust their sentence as it is favorable and beneficial to them, in accordance with Section 11, Rule 122 of the Revised Rules on Criminal Procedure.

5. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANTS.— [T]he Court deems it proper to impose civil liability *ex delicto* against accused-appellants in the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral

damages, and ₱100,000.00 as exemplary damages, with legal interest of six percent (6%) per annum from finality of judgment until fully paid, in accordance with prevailing jurisprudence. To clarify, however, only accused-appellants Adil, Daliano, and Kamir, or those who pursued the present appeal, are held jointly and solidarity liable for such amounts, since such imposition is clearly not favorable to their co-accused who no longer appealed their conviction before the Court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated September 24, 2008 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01937, which affirmed the Decision[3] dated August 15, 2005 of the Regional Trial Court of Las Piñas City, Branch 275 (RTC) in Crim. Case No. 98-1379, and accordingly, upheld the conviction of, *inter alia*, accused-appellants Omar Kamir (Kamir), Alex Daliano, and Bayan Abbas Adil alias "Jordan" (Adil; collectively, accused-appellants) for Kidnapping for Ransom as defined and penalized under Article 267 of the Revised Penal Code (RPC), as amended.

The Facts

The instant case stemmed from an Information[4] filed before the RTC charging accused-appellants, along with co-accused

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[1] See Notice of Appeal dated October 17, 2008; *rollo*, pp. 18-19.

[2] *CA rollo*, pp. 251-274. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia concurring.

[3] *Id*. at 22-31. Penned by Judge Bonifacio Sanz Maceda.

[4] Not attached to the *rollo*.

Brahim Lidasan (Lidasan), Nhokie Mohamad (Mohamad), Rocky Mocalam (Mocalam), Teng Usman (Usman), Ali Matoc (Matoc), Muslimen Wahab (Wahab), Jimmy Alunan (Alunan), Rowena Amal Rajid (Rajid), Sofia Hassan (Hassan), Saimona Camsa (Camsa), Sumulong Lawan (Lawan), Tadioden Bauting (Bauting), Roy Bansuan (Bansuan), and Alvin Diang (Diang) of the crime of Kidnapping for Ransom, the accusatory portion of which reads:

> That on or about October 30, 1998 at around 10:00 o'clock in the evening and sometime subsequent thereto, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, above-named accused conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously with the use of force and intimidation kidnap MICHELLE RAGOS for the purpose of extorting 30 million ransom, and where she was brought to two (2) safe-houses both situated at Las Piñas City, where she was detained and deprived of her liberty until she was finally rescued by the operatives of the Presidential Anti-Organized Crime Task Force on November 7, 1998 after the payment of ₱4.83 million.[5]

Of the named-accused: (*a*) Diang was tried separately for having been arrested only on July 20, 2004; (*b*) Bansuan remained at large; (*c*) Bauting was discharged as a state witness; and (*d*) the rest pleaded not guilty to the charge.[6]

The prosecution alleged that at around ten (10) o'clock in the evening of October 30, 1998, private complainant Michelle Ragos (Ragos) was in her family's office/residential compound at No. 5063 Modesto St., Mapulang Lupa, Valenzuela City which was being guarded by security guards Bauting and Daliano, when suddenly, Bansuan and two (2) companions entered her bedroom and declared "*kidnapping ito*." Adil served as lookout, while the other men tied Ragos's hands, sealed her mouth with packaging tape, ransacked all the cabinets and drawers, and took with them cash and personal items amounting to ₱200,000.00. Ragos was first brought to Novaliches, Quezon

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[5] See *rollo*, p. 4. See also *CA rollo*, pp. 22 and 252.

[6] See *CA rollo*, pp. 252-253.

City and, eventually, to a bungalow house located at No. 3 St. Joseph Street, St. Joseph Subdivision, Pulang Lupa, Las Piñas City where she spent the night. Thereat, around six (6) persons took turns guarding her, four (4) of whom she later identified as Adil, Kamir, Camsa, and Rajid. Between ten (10) and eleven (11) o'clock in the evening of the following day, October 31, 1998, she was transferred to a house located in Samantha Village, Las Piñas City, and kept in a room on the second floor alternately guarded by around ten (10) to 20 persons, some of whom were identified to be Matoc, Kamir, Camsa, Rajid, Wahab, Hassan, Usman, Lawan, Mocalam, Mohamad, and Lidasan. The kidnappers initially demanded ransom money in the amount of ₱30 million, but they eventually settled to a reduced amount of ₱4.83 million. As security guards Daliano and Bauting no longer reported for work following the kidnapping, the Presidential Anti-Organized Crime Task Force (PAOCTF) formed a team headed by P/Supt. Vicente Arnado (P/Supt. Arnado) who monitored the activities of the kidnappers until the agreed pay-off date.[7]

At one (1) o'clock in the early morning of November 7, 1998, the PAOCTF team proceeded to Kitanlad Street, Quezon City to witness the pay-off. P/Supt. Arnado saw Alunan and Adil arrive on board a motorcycle and take the bag containing the ransom money from someone inside a "Nissan Blue Bird" car. Immediately thereafter, the PAOCTF team chased the kidnappers, resulting in a shoot-out and the eventual arrest of the kidnappers, except for Bansuan who remained at large, while the rest were brought to Camp Crame for investigation. On the same day, PAOCTF operatives swooped in the kidnappers' safe-house, resulting in Ragos's rescue, as well as the arrest of other suspects.[8]

In their defense, all the accused denied the charges against them. They likewise offered separate, albeit similar narrations that they were based in Mindanao and just went to Metro Manila

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[7] See *rollo*, pp. 4-5. See also *CA Rollo*, pp. 253-255.

[8] See *rollo*, pp. 6-7. See also *CA Rollo*, pp. 255-256 and 259.

to attend to certain matters when they were arrested by the authorities and were made to answer for the aforesaid crime.[9]

The RTC Ruling

In a Decision[10] dated August 15, 2005, the RTC ruled as follows: (*a*) Alunan and accused-appellants were found guilty beyond reasonable doubt of the crime charged as principals, and were sentenced to suffer the capital punishment of death; (*b*) Lidasan, Mohamad, Mocalam, Usman, Matoc, Wahab, and Rajid were found guilty of the crime charged as accomplices, and were sentenced to suffer the penalty of *reclusion perpetua*; and (*c*) Camsa, Hassan, and Lawan were acquitted on the ground of reasonable doubt.[11]

The RTC found that the elements of the crime of Kidnapping for Ransom were established in this case as it was undisputed that Ragos was deprived of her liberty and that ransom money was demanded by and delivered to the perpetrators in exchange for her freedom. In this regard, the RTC tagged Alunan and accused-appellants as principals, considering that: (*a*) the actual taking of Ragos was done by Bansuan and two unidentified men, with Adil acting as look-out; (*b*) Daliano knew about the criminal plot way in advance, and aside from no longer reporting for work after the incident, he was seen going to the kidnappers' safe-house in Las Piñas; (*c*) during Ragos's first day of captivity, Adil and Kamir were among those who questioned Ragos as to whom to contact for ransom; and (*d*) Alunan and Adil were the ones who collected the ₱4.83 million ransom money in Quezon City.[12]

As to Lidasan, Mohamad, Mocalam, Usman, Matoc, Wahab, and Rajid, the RTC found them guilty as accomplices to the crime as they were positively identified by Ragos as those who

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[9] See *rollo*, pp. 7-10. See also *CA rollo*, pp. 256-258.

[10] *CA Rollo*, pp. 22-31.

[11] *Id.* at 31.

[12] See *id.* at 24-25.

guarded her during her captivity until she was rescued by PAOCTF operatives.[13]

Finally, Camsa, Hassan, and Lawan were acquitted on the ground of reasonable doubt due to the insufficiency of evidence presented by the prosecution to establish their participation to the criminal design of the other accused.[14]

Aggrieved, Wahab, Rajid, Mohamad, Lidasan, Usman, Matoc, Mocalam, Alunan, and accused-appellants appealed[15] to the CA.[16] Later on, Rajid withdrew her appeal,[17] thus, making her conviction final.

The CA Proceedings

In a Decision[18] dated September 24, 2008 (September 24, 2008 Decision), the CA affirmed the respective convictions of Adil, Alunan, Daliano, and Kamir as principals, and Wahab and Matoc as accomplices, with modification lowering the sentence of the principals to *reclusion perpetua* and that of the accomplices to *reclusion temporal*.[19]

In upholding the convictions, the CA gave more credence to the testimonies of victim Ragos and state witness Bauting – which positively identified the perpetrators to the crime and narrated in detail the events constituting the same – over the self-serving and unsubstantiated defense of denial and alibi by the accused. However, in light of the passage of Republic Act

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[13] See *id*. at 25-31.

[14] See *id*. at 28-31.

[15] See Notice of Appeal dated September 7, 2005; *id*. at 35.

[16] Records show that only Alunan, Wahab, Matoc, Adil, Daliano, and Kamir filed their respective briefs. See *id*. at 259-263.

[17] See Motion to Withdraw Appeal (of Rowena Amal Rajid) dated May 19, 2006; *id*. at 43.

[18] *Id*. at 251-274.

[19] See *id*. at 273-274.

No. (RA) 9346,[20] the death penalty originally meted to the principals was lowered to *reclusion perpetua*. In this light, the penalty meted to the accomplices was likewise downgraded to *reclusion temporal*.[21]

After the CA's promulgation of the September 24, 2008 Decision, it received an Urgent Motion for Reconsideration and Notice to File Appeal with Leave of Court[22] dated November 26, 2008 filed by Usman, Mocalam, Mohamad, and Lidasan. In said Motion, Usman, Mocalam, Mohamad, and Lidasan explained that at the trial court level, they, along with Alunan, Wahab, and Matoc, were represented by one Atty. Rogelio Linzag (Atty. Linzag). As such, they were of the understanding that Atty. Linzag will also represent them before the CA, especially after his secretary assured them of the same. However, Atty. Linzag inexplicably omitted their names in the appeal documents, and effectively represented only Alunan, Wahab, and Matoc. In this light, Usman, Mocalam, Mohamad, and Lidasan prayed that they be allowed to appeal the RTC's judgment of conviction against them.[23] As such motion was unopposed by either the Public Attorney's Office[24] and the Office of the Solicitor General,[25] the CA granted such motion in a Resolution[26] dated November 20, 2009 on the ground that Atty. Linzag's omission of their names can be deemed as gross negligence of counsel which cannot bind the client.[27]

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[20] Entitled "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES," approved on June 24, 2006.

[21] See CA *rollo*, pp. 267-273.

[22] *Id.* at 285-288.

[23] See *id.*

[24] See Comment dated March 31, 2009; *id.* at 310-313.

[25] See Comment dated April 3, 2009; *id.* at 315-321.

[26] *Id.* at 325-329.

[27] See *id.* at 326-328.

In a Decision[28] dated March 5, 2014, the CA affirmed Usman, Mocalam, Mohamad, and Lidasan's convictions as accomplices. Similar to its findings in the September 24, 2008 Decision, the CA held that Usman, Mocalam, Mohamad, and Lidasan's bare denials and alibis cannot prevail over Ragos's positive identification of them as among those who guarded her during her captivity.[29]

Hence, the instant appeal by accused-appellants. As it appears that Alunan, Matoc, Wahab, Usman, Mocalam, Mohamad, and Lidasan no longer appealed, their respective convictions became final as well.[30]

The Issue Before the Court

The issue for the Court's resolution is whether or not the convictions of accused-appellants for Kidnapping for Ransom should be upheld.

The Court's Ruling

The appeal is without merit.

Article 267 of the RPC, as amended, defines and penalizes the crime of Kidnapping and Serious Illegal Detention, the entirety of which reads:

> Article 267. *Kidnapping and serious illegal detention*. – Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:
>
> 1. If the kidnapping or detention shall have lasted more than three days.
>
> 2. If it shall have been committed simulating public authority.

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[28] *Rollo*, pp. 2-17. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Stephen C. Cruz and Eduardo B. Peralta, Jr. concurring.

[29] See *id*. at 12-17.

[30] See Partial Entry of Judgment dated October 21, 2008 and March 28, 2014; *CA rollo*, pp. 403 and 395, respectively.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female, or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

The elements of the crime are as follows: (*a*) the offender is a private individual; (*b*) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (*c*) the act of detention or kidnapping must be illegal; and (*d*) in the commission of the offense any of the following circumstances is present: *i*) the kidnapping or detention lasts for more than three days; *ii*) it is committed by simulating public authority; *iii*) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or *iv*) the person kidnapped or detained is a minor, female, or a public officer. Notably, the duration of detention is immaterial if the victim is a minor, or if the purpose of the kidnapping is to extort ransom.[31]

Otherwise stated, the prosecution must establish the deprivation of liberty of the victim under any of the above-mentioned circumstances coupled with indubitable proof of intent of the accused to effect the same. There must be a purposeful or knowing action by the accused to forcibly restrain the victim coupled with intent.[32]

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[31] *People v. Niegas*, 722 Phil. 301, 309-310 (2013), citing *People v. Pagalasan*, 452 Phil. 341, 361-362 (2003).

[32] See *id*. at 310-311.

In this case, the prosecution had proven beyond reasonable doubt the existence of the aforesaid elements as it is undisputed that accused-appellants, among others, illegally detained the victim Ragos against her will for the purpose of extorting ransom from her family. Moreover, the collective testimonies of prosecution witnesses, such as victim Ragos and state witness Bauting, positively identified the perpetrators to the kidnapping – including accused-appellants Adil, Daliano, and Kamir – as well as narrated in detail the events that transpired from Ragos's abduction up to her rescue. These easily trump accused-appellants' denial and alibi which are inherently weak defenses that cannot be accorded greater evidentiary weight than the positive declaration by credible witnesses.[33] Perforce, the Court finds no reason to deviate from the factual findings of the courts *a quo* as there is no indication that the trial court, whose findings the CA affirmed, overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. As such, the Court defers to the factual findings of the trial court, especially considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties.[34]

As to the proper penalties to be imposed on accused-appellants, Article 267 of the RPC originally prescribes the death penalty for the commission of said crime made for the purpose of extorting ransom. Hence, the RTC meted such penalty on the principals, and the penalty one (1) degree lower – *i.e.*, *reclusion perpetua* – on the accomplices pursuant to Article 52[35] of the RPC. However, and as the CA correctly pointed out in its September 24, 2008 Decision, the passage of RA 9346 effectively lowered the imposable penalty to the principals, *e.g.*, accused-

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[33] See *Imbo v. People*, 758 Phil. 430, 437 (2015).

[34] See *People v. Matibag*, 757 Phil. 286, 293 (2015).

[35] Article 52 of the RPC reads:

> Article 52. *Penalty to be imposed upon accomplices in a consummated crime.*– The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the accomplices in the commission of a consummated felony.

appellants, to *reclusion perpetua*,[36] without eligibility for parole.[37] Resultantly, the imposable penalty to the accomplices must likewise be lowered to *reclusion temporal*, thereby entitling them to the benefit of the Indeterminate Sentence Law.[38] Thus, the accomplices must be sentenced to suffer the penalty of imprisonment for an indeterminate period of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

At this point, it is worthy to note that none of the accomplices made any appeal to the Court. This notwithstanding, the Court deems it proper to adjust their sentence as it is favorable and beneficial to them,[39] in accordance with Section 11, Rule 122

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[36] See Section 2 (a) of RA 9346, which reads:

> Section 2. In lieu of the death penalty, the following shall be imposed:
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> (a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code;
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> x x x x x x x x x

[37] Item II (2) of A.M. No. 15-08-02-SC, entitled "GUIDELINES FOR THE PROPER USE OF THE PHRASE 'WITHOUT ELIGIBILITY FOR PAROLE' IN INDIVISIBLE PENALTIES" dated August 4, 2015, provides:

> II.
>
> In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "*without eligibility for parole*" :
>
> x x x x x x x x x
>
> (2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "*without eligibility for parole*" shall be *used* to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

[38] Act No. 4103, entitled "AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF DETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES" (December 5, 1933).

[39] See *People v. Valdez*, 703 Phil. 519, 528-530 (2013). See also *People v. Arondain*, 418 Phil. 354, 373 (2001).

of the Revised Rules on Criminal Procedure, the pertinent part of which reads:

> Section 11. *Effect of appeal by any of several accused.* –
>
> (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.
>
> x x x x x x x x x

Finally, the Court deems it proper to impose civil liability *ex delicto* against accused-appellants in the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, with legal interest of six percent (6%) per annum from finality of judgment until fully paid, in accordance with prevailing jurisprudence.[40] To clarify, however, only accused-appellants Adil, Daliano, and Kamir, or those who pursued the present appeal, are held jointly and solidarily liable for such amounts, since such imposition is clearly not favorable to their co-accused who no longer appealed their conviction before the Court.[41]

WHEREFORE, the appeal is **DENIED**. The Decisions dated September 24, 2008 and March 5, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 01937, which upheld the Decision dated August 15, 2005 of the Regional Trial Court of Las Piñas City, Branch 275 in Crim. Case No. 98-1379, are hereby **AFFIRMED** with **MODIFICATION** as follows:

(a) Accused Jimmy Alunan and accused-appellants Omar Kamir, Alex Daliano, and Bayan Abbas Adil are found **GUILTY** beyond reasonable doubt as principals of the crime of Kidnapping for Ransom defined and penalized under Article 267 of the Revised Penal Code, as amended. They are sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole;

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[40] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 365-388. See also *People v. Gambao*, 718 Phil. 507, 531 (2013).

[41] See Section 11, Rule 122 of the Revised Rules on Criminal Procedure. See also *People v. Arondain*, *supra* note 39, at 373-374.

(b) Accused Brahim Lidasan, Nhokie Mohamad, Rocky Mocalam, Teng Usman, Ali Matoc, Muslimen Wahab, and Rowena Amal Rajid are found **GUILTY** beyond reasonable doubt as accomplices of the crime of Kidnapping for Ransom defined and penalized under Article 267 of the Revised Penal Code, as amended. They are sentenced to suffer the penalty of imprisonment for an indeterminate period of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum;

(c) Accused-appellants Omar Kamir, Alex Daliano, and Bayan Abbas Adil are ordered to solidarily pay the victim Michelle Ragos civil liability *ex delicto* in the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, all with legal interest at the rate of six percent (6%) per annum from finality of judgment until fully paid.

SO ORDERED.

Carpio, Acting C.J. (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

EN BANC

[A.C. No. 11478. September 5, 2017]

SPOUSES ANDRE CHAMBON AND MARIA FATIMA CHAMBON, *complainants, vs.* **ATTY. CHRISTOPHER S. RUIZ**, *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; 2004 RULES ON NOTARIAL PRACTICE; NOTARIZATION BY A

NOTARY PUBLIC CONVERTS A PRIVATE DOCUMENT INTO A PUBLIC DOCUMENT, MAKING THE SAME ADMISSIBLE IN EVIDENCE WITHOUT FURTHER PROOF OF AUTHENTICITY; THUS, A NOTARIAL DOCUMENT IS, BY LAW, ENTITLED TO FULL FAITH AND CREDIT UPON ITS FACE.— By law, a notary public is empowered to perform the following acts: acknowledgments, oaths and affirmations, jurats, signature witnessing, copy certifications, among others. The duties of a notary public is dictated by public policy and impressed with public interest. It is not a meaningless ministerial act of acknowledging documents executed by parties who are willing to pay the fees for notarization. For notarization by a notary public converts a private document into a public document, making the same admissible in evidence without further proof of authenticity; thus, a notarial document is, by law, entitled to full faith and credit upon its face.

2. ID.; ID.; ID.; A NOTARY PUBLIC WHO AFFIXES HIS SIGNATURE AND SEAL ON THE NOTARIAL CERTIFICATE THAT IS INCOMPLETE VIOLATES THE 2004 RULES ON NOTARIAL PRACTICE.— We find that the respondent failed to live up with the duties of a notary public as dictated by the 2004 Rules on Notarial Practice. The subject Notice of Loss/Affidavit of Loss, allegedly executed by Remoreras, was undisputedly notarized by the respondent and entered in his Notarial Register. However, a careful examination of said Notice reveals that violation of the 2004 Rules was committed. For one, the *jurat* was incomplete in that the competent proof of identity of the executor, Remoreras, was left in blank. Also, reference to the Notarial Register indicates that the entries pertaining to said Notice were also left in blank. The title/description of instrument, name and addresses of parties, competent evidence of identity, date and time of notarization, and type of notarial act were not filled up. We emphasize that Section 5 of Rule IV of the 2004 Rules provides: Sec. 5. False or Incomplete Certificate. – A notary public shall not: x x x. (b) **affix an official signature or seal on a notarial certificate that is incomplete.** Relevantly, Section 8 defines a notarial certificate as part of, or attachment to, a notarized instrument or document that is completed by the notary public, bears the notary's signature and seal, and states the facts attested to by the notary public in a particular notarization as provided for

by these Rules. In this case, the respondent, affixed his signature and seal on the notarial certificate without verifying the identity of the executor. Such was inferred from the fact that the competent proof of such executor's identity was left in blank. Hence, his act of signing the notarial certificate, notwithstanding the fact that it was incomplete, is a clear violation of the said Rules. No allegation as well that Remoreras is personally known to the respondent to dispense with the presentation of a competent evidence of identity.

3. **ID.; ID.; ID.; A NOTARY PUBLIC IS PERSONALLY ACCOUNTABLE FOR ALL ENTRIES IN HIS NOTARIAL REGISTER, AND HE CANNOT RELIEVE HIMSELF OF THIS RESPONSIBILITY BY PASSING THE BUCK TO HIS SECRETARY.—** [I]t is undisputed that the respondent's Notarial Register did not bear the details pertaining to said Notice of Loss/Affidavit of Loss. To exculpate himself from liability, he attributed negligence and omission on the part of his secretary who prepared the same. [W]e reiterate that a notary public is personally accountable for all entries in his notarial register. He cannot relieve himself of this responsibility by passing the buck to his secretary. The act of recording such entries in the Notarial Register is part and parcel of the duties of a notary public. Keeping in mind the nature of a notary public's responsibility, the respondent should not have shifted such responsibility to his office secretary and allowed her to make such pertinent entries.

4. **ID.; ID.; ID.; PENALTY OF REVOCATION OF NOTARIAL COMMISSION AND SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF ONE YEAR IMPOSED FOR FAILURE OF THE NOTARY PUBLIC TO MAKE PROPER ENTRIES IN THE NOTARIAL REGISTER; PENALTY OF PERPETUAL DISQUALIFICATION FROM BEING A NOTARY PUBLIC IMPOSED WHERE THE NOTARY PUBLIC NOT ONLY NOTARIZED AN INCOMPLETE NOTARIAL DOCUMENT, BUT ALSO DELEGATED TO HIS SECRETARY HIS DUTY OF ENTERING DETAILS IN HIS NOTARIAL REGISTER.—** We stress that a notary public carries with him a duty imbued with public interest. At all times, a notary public must be wary of the duties pertaining to his office. Thus, those who are not qualified to live up with the

> mandate of such office must, in absolute terms, be stripped off such authority. As to penalty, We deem it proper to modify the same in accordance with jurisprudence. For failure to make proper entries in the notarial register, We imposed the penalty of revocation of the notarial commission and suspension from the practice of law for different durations. x x x. [T]he imposition of the penalty of revocation of notarial commission and suspension from the practice of law for a period of one year is considered as just and proper. Also, We deem it proper to impose the penalty of perpetual disqualification from being a notary public. It is beyond question that respondent was doubly negligent in the performance of his duties as a notary public. Not only did he notarize an incomplete notarial document, but he also admittedly delegated to his secretary his duty of entering details in his Notarial Register. To recall, such admission was apparent from respondent's act of shifting the blame to his secretary when attention was called out as to the non-accomplishment of pertinent entries in his Notarial Register. To Our mind, such acts constitute dishonesty to this Court, warranting perpetual disqualification from being a notary public.

APPEARANCES OF COUNSEL

Ubano Sianghio & Lozada Law Offices for complainants.
Luzviminda B. Besario for respondent.

D E C I S I O N

TIJAM, *J.*:

This administrative case arose from a verified Complaint[1] for gross violation of Section 2 (b), paragraph 2 of Rule IV and Section 2, paragraphs (a), (d), and (e) of Rule VI of the 2004 Rules on Notarial Practice filed by complainant Spouses Andre and Maria Fatima Chambon (Spouses Chambon) against Atty. Christopher S. Ruiz (respondent) before the Integrated Bar of the Philippines (IBP).

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[1] *Rollo*, pp. 2-20.

The Facts

Spouses Chambon alleged that they were creditors of a certain Suzette Camasura Auman, also known as Mrs. Suzette Camasura Remoreras (Remoreras). To secure her obligation, Remoreras executed a real estate mortgage[2] (REM) over a parcel of land with improvements covered by Transfer Certificate of Title (TCT) No. 29490,[3] which was registered in her maiden name. Said REM was annotated in the Registry of Deeds of Mandaue City in 2006. TCT No. 29490 was handed over to Spouses Chambon.[4]

As Remoreras failed to pay her loan obligation, Spouses Chambon were prompted to institute an extra-judicial foreclosure proceedings on the subject property before the Ex-Officio Sheriff of Mandaue City. The public auction was set on April 27, 2010.[5]

In February 2010, counsel for Spouses Chambon learned that the Regional Trial Court (RTC) of Mandaue City, Branch 56, issued an Order[6] dated March 24, 2008, which directed the issuance of a new Owner's Duplicate Copy of TCT No. 29490. Apparently, a Petition for Issuance of a new Owner's Duplicate Copy of TCT No. 29490, which was grounded on an alleged Notice of Loss/Affidavit of Loss of the subject title, was filed by Remoreras.

Before the scheduled public auction, Remoreras filed a complaint to enjoin the holding of the same on the basis of an alleged execution and delivery of a Release of Mortgage document on the subject property purportedly executed by Spouses Chambon.[7]

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

[3] *Id*. at 23.

[4] *Id*. at 3.

[5] *Id*. at 4.

[6] Penned by Presiding Judge Teresita A. Galanida; *id*. at 38-41.

[7] *Id*. at 5.

Spouses Chambon discovered that the Notice of Loss/Affidavit of Loss[8] and the Release of Mortgage[9] were notarized by the respondent in Cebu City and that certain defects were found in said notarized documents and in the Notarial Register. In the *jurat* of said Notice, there was no competent evidence of identity of the executor. Also, in said Release, Spouses Chambon denied having executed the same.[10]

These incidents prompted Spouses Chambon to file a complaint for for gross violation of Section 2 (b), paragraph 2 of Rule IV and Section 2, paragraphs (a), (d), and (e) of Rule VI of the 2004 Rules on Notarial Practice before the IBP.

In his Answer, the respondent denied the existence and notarization of the Release of Mortgage. As to the Notice of Loss/Affidavit of Loss, he admitted its existence and its entry in the Notarial Register. However, he imputed negligence on the part of his secretary as regards certain lapses in his Notarial Register.[11]

After investigation, the Investigating Commissioner of the IBP-Committee on Bar Discipline (CBD) rendered a Report and Recommendation[12] dated June 19, 2013, to wit:

> Viewed from the foregoing, we recommend that the Respondent's present commission as notary public, if any, be revoked and that he be barred from being commissioned as a notary public for a period of four (4) years.
>
> RESPECTFULLY SUBMITTED.[13]

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[8] *Id.* at 35.

[9] *Id.* at 36.

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

[11] *Id*. at 87.

[12] Issued by Commissioner Pablo S. Castillo; *id*. at 284-290.

[13] *Id*. at 290.

In a Resolution[14] dated October 11, 2014, the Board of Governors of the IBP adopted the findings of the IBP-CBD, but modified the penalty, *viz*:

> *RESOLVED TO ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED* ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and for violation of Rule IV, Section 2 (b), Rule VI, Section (a), par. 4, 5, and 6 and Rule VI, Section (2), par. (e) of the 2004 Rules of [sic] Notarial Practice, Atty. Christopher S. Ruiz's notarial commission if presently commissioned is* ***immediately REVOKED****. Further, he is* ***DISQUALIFIED from reappointment as notary public for three (3) years and SUSPENDED from the practice of law for three (3) years.***[15] (Emphasis supplied)

The Issue

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

Our Ruling

By law, a notary public is empowered to perform the following acts: acknowledgments, oaths and affirmations, jurats, signature witnessing, copy certifications, among others.[16] The duties of a notary public is dictated by public policy and impressed with public interest. It is not a meaningless ministerial act of acknowledging documents executed by parties who are willing to pay the fees for notarization.[17] For notarization by a notary public converts a private document into a public document, making the same admissible in evidence without further proof of authenticity; thus, a notarial document is, by law, entitled to full faith and credit upon its face.[18]

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

[15] *Id*. at 282.

[16] Section 1, Rule IV of the 2004 Rules on Notarial Practice.

[17] *Isenhardt v. Atty. Real*, 682 Phil. 19, 26 (2012), citing *Lanuzo v. Atty. Bongon*, 587 Phil. 658, 661-662 (2008).

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

In this case, We find that the respondent failed to live up with the duties of a notary public as dictated by the 2004 Rules on Notarial Practice.

The subject Notice of Loss/Affidavit of Loss, allegedly executed by Remoreras, was undisputedly notarized by the respondent and entered in his Notarial Register. However, a careful examination of said Notice reveals that violation of the 2004 Rules was committed.

For one, the *jurat* was incomplete in that the competent proof of identity of the executor, Remoreras, was left in blank. Also, reference to the Notarial Register indicates that the entries pertaining to said Notice were also left in blank. The title/ description of instrument, name and addresses of parties, competent evidence of identity, date and time of notarization, and type of notarial act were not filled up.

We emphasize that Section 5 of Rule IV of the 2004 Rules provides:

> Sec. 5. False or Incomplete Certificate. – A notary public shall not:
>
> (a) execute a certificate containing information known or believed by the notary to be false.
>
> (b) **affix an official signature or seal on a notarial certificate that is incomplete.**

Relevantly, Section 8 defines a notarial certificate as part of, or attachment to, a notarized instrument or document that is completed by the notary public, bears the notary's signature and seal, and states the facts attested to by the notary public in a particular notarization as provided for by these Rules.

In this case, the respondent affixed his signature and seal on the notarial certificate without verifying the identity of the executor. Such was inferred from the fact that the competent proof of such executor's identity was left in blank. Hence, his act of signing the notarial certificate, notwithstanding the fact that it was incomplete, is a clear violation of the said Rules. No allegation as well that Remoreras is personally known to

the respondent to dispense with the presentation of a competent evidence of identity.[19]

Moreover, entries in the respondent's Notarial Register, which refer to said Notice of Loss/Affidavit of Loss were also not properly accomplished.

RULE VI – NOTARIAL REGISTER

SEC. 1. Form of Notarial Register. – (a) A notary public shall keep, maintain, protect and provide for lawful inspection as provided in these Rules, a chronological official notarial register of notarial acts consisting of a permanently bound book with numbered page.

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.

(b) A notary public shall record in the notarial register the reasons and circumstances for not completing a notarial act.

Here, it is undisputed that the respondent's Notarial Register did not bear the details pertaining to said Notice of Loss/Affidavit of Loss. To exculpate himself from liability, he attributed

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

negligence and omission on the part of his secretary who prepared the same.

On this note, We reiterate that a notary public is personally accountable for all entries in his notarial register. He cannot relieve himself of this responsibility by passing the buck to his secretary.[20] The act of recording such entries in the Notarial Register is part and parcel of the duties of a notary public. Keeping in mind the nature of a notary public's responsibility, the respondent should not have shifted such responsibility to his office secretary and allowed her to make such pertinent entries.

As to the second subject document, *i.e.,* Release of Mortgage, the respondent denied having notarized the same. He averred that reference to the book number, document number, and page number of the such alleged Release points to a Special Power of Attorney (SPA) in his Notarial Register. The respondent admitted that while an SPA is indicated therein, it was actually a Deed of Absolute Sale, which he actually notarized. Such inadvertence was also blamed to his office secretary.

Said Release of Mortgage bears similarities as to the signature and seal of the respondent as provided in the Notice of Loss/ Affidavit of Loss. Nevertheless, his admission that inadvertence on the part of his secretary was committed with regard to the entries in his Notarial Register also constitutes a violation under the Rules as aforementioned.

We stress that a notary public carries with him a duty imbued with public interest. At all times, a notary public must be wary of the duties pertaining to his office. Thus, those who are not qualified to live up with the mandate of such office must, in absolute terms, be stripped off such authority.

As to penalty, We deem it proper to modify the same in accordance with jurisprudence. For failure to make proper entries in the notarial register, We imposed the penalty of revocation

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[20] *Lingan v. Attys. Calubaquib and Baliga*, 524 Phil. 60, 69 (2006).

of the notarial commission and suspension from the practice of law for different durations. In the cases of *Agadan, et al. v. Atty. Kilaan*[21] and *Father Aquino v. Atty. Pascua*,[22] the duration for the suspension is for three months, while in the case of *Bernardo v. Atty. Ramos*,[23] the duration is for six months. On the other hand, for affixing signature and seal on an incomplete notarial certificate, the penalty of revocation of notarial commission, prohibition from being a notary public for two years, and suspension from the practice of law for one year was viewed as wise in the case of *Gaddi v. Atty. Velasco, Jr.*,[24] while in the case of *Flordeliza E. Coquia v. Atty. Emmanuel E. Laforteza*,[25] the penalty of revocation of notarial commission and disqualification from being a notary public for one year was considered proper. Lastly, in the case of *Bartolome v. Basilio*,[26] wherein the notary public was found to have failed to make proper entries in his notarial register and affixed his signature in an incomplete notarial certificate, the penalty imposed was revocation of the notarial commission, suspension from the practice of law for one year, and prohibition from being a notary public for two years.

Guided by the foregoing precedents, the imposition of the penalty of revocation of notarial commission and suspension from the practice of law for a period of one year is considered as just and proper. Also, We deem it proper to impose the penalty of perpetual disqualification from being a notary public. It is beyond question that respondent was doubly negligent in the performance of his duties as a notary public. Not only did he notarize an incomplete notarial document, but he also admittedly delegated to his secretary his duty of entering details

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[21] 720 Phil. 625 (2013).

[22] 564 Phil. 1 (2007).

[23] 433 Phil. 8 (2002).

[24] 742 Phil. 810 (2014).

[25] A.C. No. 9364, February 8, 2017.

[26] A.C. No. 10783, October 14, 2015, 772 SCRA 213.

in his Notarial Register. To recall, such admission was apparent from respondent's act of shifting the blame to his secretary when attention was called out as to the non-accomplishment of pertinent entries in his Notarial Register. To Our mind, such acts constitute dishonesty to this Court, warranting perpetual disqualification from being a notary public.

WHEREFORE, the instant complaint is **GRANTED**. Respondent Atty. Christopher S. Ruiz is found **GUILTY** of violating the 2004 Rules on Notarial Practice. Accordingly, We hereby **REVOKE** his notarial commission and **PERPETUALLY DISQUALIFY** him from being a notary public. Atty. Ruiz is also **SUSPENDED** from the practice of law for a period of one (1) year, effective immediately. He is **STERNLY WARNED** that repetition of the same will be dealt with more severely.

Let copies of this Decision be furnish all courts, the Office of the Bar Confidant, and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is directed to append a copy of this Decision to respondent's record as member of the Bar.

SO ORDERED.

Carpio (*Acting Chief Justice*), *Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

Sereno, C.J., on official leave.

EN BANC

[A.M. No. 16-05-142-RTC. September 5, 2017]

Re: Report on the Preliminary Results of the Spot Audit in the Regional Trial Court, Branch 170, Malabon City.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT; APPLICATIONS FOR SEARCH WARRANT, PROPER VENUE FOR THE FILING THEREOF; THE INCLUSION OF A STATEMENT OF COMPELLING REASONS IN A SEARCH WARRANT APPLICATION THAT IS FILED IN A COURT WHICH DOES NOT HAVE TERRITORIAL JURISDICTION OVER THE PLACE OF COMMISSION OF THE ALLEGED CRIME IS A MANDATORY REQUIREMENT, AND THE ABSENCE OF SUCH STATEMENT RENDERS THE APPLICATION DEFECTIVE. —** Section 2, Rule 126 of the Rules of Court provides for the proper venue where applications for search warrant should be filed: SEC. 2. Court where applications for search warrant shall be filed. – An application for search warrant shall be filed with the following: (a) Any court within whose jurisdiction a crime was committed. (b) **For compelling reasons stated in the application**, *any court within the judicial region* where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced. x x x. It is settled that the inclusion of a statement of compelling reasons in a search warrant application that is filed in a court which does not have territorial jurisdiction over the place of commission of the alleged crime is a mandatory requirement, and the absence of such statement renders the application *defective*.

2. **ID.; ID.; ID.; REQUISITES FOR THE ISSUANCE THEREOF; THE ABSENCE OF A STATEMENT OF COMPELLING REASONS IS NOT A GROUND FOR THE OUTRIGHT DENIAL OF A SEARCH WARRANT APPLICATION, AS THE STATEMENT OF COMPELLING REASONS IS ONLY A MANDATORY REQUIREMENT IN SO FAR AS THE PROPER VENUE FOR THE FILING OF A SEARCH**

WARRANT APPLICATION IS CONCERNED, BUT IT IS NOT AN ADDITIONAL REQUISITE FOR THE ISSUANCE OF A SEARCH WARRANT.— The absence of a statement of compelling reasons, however, is **not** a ground for the *outright* denial of a search warrant application, since it is not one of the requisites for the issuance of a search warrant. Section 4 of Rule 126 is clear on this point: SEC. 4. Requisites for issuing search warrant. – A search warrant shall not issue **except upon probable cause** in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and **particularly describing the place to be searched and the things to be seized** which may be anywhere in the Philippines. In other words, the statement of compelling reasons is only a mandatory requirement in so far as the *proper venue* for the filing of a search warrant application is concerned. It cannot be viewed as an additional requisite for the issuance of a search warrant.

3. ID.; ID.; ID.; ID.; ID.; THE ISSUE ON THE ABSENCE OF A STATEMENT OF COMPELLING REASONS IN AN APPLICATION FOR A SEARCH WARRANT DOES NOT INVOLVE A QUESTION OF JURISDICTION OVER THE SUBJECT MATTER, AS THE POWER TO ISSUE SEARCH WARRANTS IS INHERENT IN ALL COURTS; THE TRIAL COURT MAY ONLY TAKE COGNIZANCE OF SUCH ISSUE IF IT IS RAISED IN A TIMELY MOTION TO QUASH THE SEARCH WARRANT; OTHERWISE, THE OBJECTION SHALL BE DEEMED WAIVED.— It is also important to stress that an application for a search warrant merely constitutes a **criminal process** and is not in itself a criminal action. The rule, therefore, that venue is jurisdictional in criminal cases does not apply thereto. Simply stated, **venue is only procedural, and not jurisdictional, in applications for the issuance of a search warrant.** In *Pilipinas Shell Petroleum Corporation v. Romars International Gases Corporation*, the Court ruled that the issue on the absence of a statement of compelling reasons in an application for a search warrant does not involve a question of jurisdiction over the subject matter, as the power to issue search warrants is *inherent* in all courts. Thus, **the trial court may only take cognizance of such issue *if* it is raised in a timely motion to quash the**

search warrant. Otherwise, the objection shall be deemed *waived*, pursuant to the Omnibus Motion Rule. Consequently, the Court in *Pilipinas Shell* upheld the validity of the questioned search warrants *despite the lack of a statement of compelling reasons in their respective applications*, as the objection was not properly raised in a motion to quash.

4. ID.; ID.; ID.; ID.; ID.; THE DETERMINATION OF THE EXISTENCE OF COMPELLING REASONS IS A MATTER SQUARELY ADDRESSED TO THE SOUND DISCRETION OF THE COURT WHERE SUCH APPLICATION IS FILED, SUBJECT TO REVIEW BY AN APPELLATE COURT IN CASE OF GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION; THE PROPRIETY OF THE ISSUANCE OF THE SEARCH WARRANTS SHOULD BE RAISED IN A MOTION TO QUASH OR IN A *CERTIORARI* PETITION, IF THERE ARE ALLEGATIONS OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE ISSUING JUDGE, NOT IN AN ADMINISTRATIVE PROCEEDING.— [T]he determination of the existence of compelling reasons under Section 2(b) of Rule 126 is a matter squarely addressed to the *sound discretion of the court* where such application is filed, subject to **review by an appellate court** in case of grave abuse of discretion amounting to excess or lack of jurisdiction. Clearly, this *administrative proceeding* is **not** the proper forum to review the search warrants issued by Judge Docena and Judge Magsino in order to determine whether the compelling reasons cited in their respective applications are indeed meritorious. Given these circumstances, we cannot agree with the OCA's findings that Judge Docena and Judge Magsino violated Section 2 of Rule 126 by simply issuing search warrants involving crimes committed outside the territorial jurisdiction of the RTC of Malabon City where: a) there is no compelling reason to take cognizance of the applications; and b) the compelling reasons alleged in the applications *appear* to be unmeritorious. It is obvious that Judge Docena and Judge Magsino simply exercised the trial court's **ancillary jurisdiction over a special criminal process** when they took cognizance of the applications and issued said search warrants. x x x [T]he propriety of the issuance of these warrants is a matter that should have been raised in a motion to quash

or in a *certiorari* petition, if there are allegations of grave abuse of discretion on the part of the issuing judge.

5. JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE CHARGES; TO HOLD A JUDGE ADMINISTRATIVELY LIABLE FOR GROSS MISCONDUCT, IGNORANCE OF THE LAW OR INCOMPETENCE OF OFFICIAL ACTS IN THE EXERCISE OF JUDICIAL FUNCTIONS AND DUTIES, IT MUST BE SHOWN THAT HIS ACTS WERE COMMITTED WITH FRAUD, DISHONESTY, CORRUPTION, MALICE OR ILL-WILL, BAD FAITH, OR DELIBERATE INTENT TO DO AN INJUSTICE; ABSENT SUCH PROOF, THE JUDGE IS PRESUMED TO HAVE ACTED IN GOOD FAITH IN EXERCISING HIS JUDICIAL FUNCTIONS.— To hold a judge administratively liable for *gross misconduct, ignorance of the law* or *incompetence of official acts* in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice. Absent such proof, **the judge is presumed to have acted in good faith in exercising his judicial functions.** In this case, the OCA found Judge Docena's issuance of the subject search warrants to have been motivated by bad faith, as evidenced by the x x x attendant circumstances: x x x. We are not convinced. **These circumstances alone are clearly insufficient to overturn the presumption that Judge Docena acted in good faith in issuing the subject search warrants.** For one thing, it is unfair to hold the low rate of success of search warrant operations against Judge Docena, given that the courts have absolutely no participation in the implementation of the search warrants that they issue. For another, it is a grave error to consider the CA's nullification of four search warrants issued by Judge Docena as an indication that all warrants issued by him suffer from the same infirmity. After all, not every mistake or error of judgment of a judge in the performance of his official duties makes him liable therefor.

6. ID.; ID.; ID.; SERIOUS MISMANAGEMENT OF SEARCH WARRANT APPLICATIONS CONSTITUTES GROSS NEGLECT OF DUTY.— x x x [W]e find sufficient evidence to hold Judge Docena administratively liable for **gross neglect of duty** for the serious mismanagement of search warrant applications in Branch 170. x x x. The records show that Judge

Docena has failed to properly monitor the submission of returns as required under Section 12(b) and (c) of Rule 126 x x x. Judge Docena likewise committed several lapses in ascertaining whether Section 12(a) of Rule 126 was complied with by the applicants in: a) SW 15-503-MN, where mere photocopies of the inventory of the seized items were submitted; b) in SW 16-286-MN, where the inventories are not under oath and the signatures of the witnesses are unidentifiable because their printed names are not indicated in the inventory; and c) in SW 16-273-MN, where only one witness signed the inventory sheet.

7. ID.; ID.; CODE OF JUDICIAL CONDUCT; RULES 3.08 AND 3.09 THEREOF; NOT COMPLIED WITH; A JUDGE PRESIDING OVER A BRANCH OF A COURT IS, IN LEGAL CONTEMPLATION, THE HEAD THEREOF HAVING EFFECTIVE CONTROL AND AUTHORITY TO DISCIPLINE ALL EMPLOYEES WITHIN THE BRANCH; THUS, HE/SHE SHARES ACCOUNTABILITY FOR THE ADMINISTRATIVE LAPSES OF HIS/HER STAFF THAT CONTRIBUTED TO THE CLEARLY DISORGANIZED AND INEFFICIENT DISPATCH OF BUSINESS IN HIS/HER SALA. — We also find that Judge Docena failed to comply with his administrative responsibilities under Rules 3.08 and 3.09 of the Code of Judicial Conduct which provide: RULE 3.08 – A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and **facilitate the performance of the administrative functions of other judges and court personnel**. RULE 3.09 – A judge should **organize and supervise the court personnel to ensure the prompt and efficient dispatch of business**, and require at all times the observance of high standards of public service and fidelity as it appears that the concerned court personnel in Branch 170, namely Atty. Jesus S. Hernandez (Atty. Hernandez), the Branch Clerk of Court, Ms. Zenaida Z. Salonga, the Clerk-in-Charge, together with Ms. Olivia M. Labagnao, Ms. Rosario M. San Pedro, Ms. Debhem N. Fajardo, and Ms. Gigi M. Mendoza, all court stenographers, too, are all guilty of **simple neglect of duty** for failure to diligently perform their respective administrative duties. x x x . It is settled that "[a] judge presiding over a branch of a court is, in legal contemplation, the head thereof having effective control and authority to discipline all employees within the

branch." Consequently, Judge Docena **shares accountability** for the administrative lapses of his staff that contributed to the clearly *disorganized* and *inefficient* dispatch of business in Branch 170.

8. ID.; ID.; ADMINISTRATIVE CHARGES; THE USE OF AN IMPROVISED SYSTEM OF COUNTING THE APPLICANTS INSTEAD OF THE SEARCH WARRANT APPLICATIONS IN THE SPECIAL RAFFLE IS UNACCEPTABLE, AS THE EXECUTIVE JUDGE, MUCH LESS THE CLERK OF COURT, HAS ABSOLUTELY NO DISCRETION TO DEVIATE FROM THE PRESCRIBED RATIO FOR THE RAFFLING OF CASES WITHOUT PRIOR APPROVAL FROM THE COURT; RESPONDENTS FOUND LIABLE FOR SIMPLE MISCONDUCT FOR IMPOSING THEIR OWN INTERNAL POLICIES AND PRACTICES IN LIEU OF THE EXISTING RULES IN THE RAFFLE OF SEARCH WARRANT APPLICATIONS. — [W]e hold Judge Magsino and Atty. Dizon administratively liable for **simple misconduct**, in their capacities as the Executive Judge and the Clerk of Court of the RTC of Malabon, respectively, for imposing their own *internal policies and practices* in lieu of the existing rules in the raffle of applications involving ordinary cases covered by Chapter V of the Guidelines on the Selection and Designation of Executive Judges and Defining their Powers, Prerogatives and Duties (Guidelines). To be specific, Judge Magsino and Atty. Dizon failed to observe the pertinent portion of Section 6 of the Guidelines which requires the search warrant applications assigned to a branch during the special raffle to be deducted from the number of cases allotted to on the next scheduled regular raffle. This, however, was **not** implemented in the RTC of Malabon City. Judge Magsino and Atty. Dizon also failed to observe the *proper ratio* of the raffling of cases prescribed under par. 1, Chapter V of Administrative Order No. 6 dated June 30, 1975, x x x. Their use of an *improvised system of counting* the applicants (instead of the applications) in the special raffle is simply unacceptable, as the Executive Judge, much less the Clerk of Court, has absolutely no discretion to deviate from the prescribed ratio for the raffling of cases without prior approval from this Court.

9. ID.; ID.; ID.; GROSS AND SIMPLE NEGLECT OF DUTY, DISTINGUISHED; THE TERM "GROSS NEGLECT OF DUTY" DOES NOT NECESSARILY INCLUDE WILLFUL NEGLECT OR INTENTIONAL WRONGDOING; IT CAN ALSO ARISE FROM SITUATIONS WHERE SUCH NEGLECT WHICH, FROM THE GRAVITY OF THE CASE OR THE FREQUENCY OF INSTANCES, BECOMES SO SERIOUS IN ITS CHARACTER THAT IT ENDS UP ENDANGERING OR THREATENING THE PUBLIC WELFARE.— x x x **[G]ross neglect of duty** or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, in so far as other persons may be affected. xxx In cases involving public officials, [there is gross negligence] when a breach of duty is *flagrant and palpable*." It is important to stress, however, that the term "gross neglect of duty" does **not** necessarily include willful neglect or intentional wrongdoing. It can also arise from situations where "such neglect which, from *the gravity of the case or the frequency of instances*, becomes so serious in its character" that it ends up endangering or threatening the public welfare. In contrast, **simple neglect of duty** means the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference.

10. ID.; ID.; ID.; GROSS NEGLECT OF DUTY IS CLASSIFIED AS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL FROM THE SERVICE, EVEN FOR THE FIRST OFFENSE, WHILE SIMPLE NEGLECT OF DUTY IS A LESS GRAVE OFFENSE, PUNISHABLE BY SUSPENSION FROM THE SERVICE; PENALTY OF SUSPENSION FROM THE SERVICE, INSTEAD OF DISMISSAL, IMPOSED FOR GROSS NEGLECT OF DUTY, CONSIDERING THIS IS THE RESPONDENT-JUDGE'S FIRST OFFENSE, HIS LENGTH OF SERVICE, HIS CANDID ADMISSION OF HIS LAPSES AND HIS COMMITMENT TO UNDERTAKE STRINGENT STEPS TO ADDRESS THE MATTER. — Under Section 46(A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), gross neglect of duty is classified as a *grave offense* punishable by dismissal from the service (even for the first offense), while

simple neglect of duty is a *less grave offense*, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. In this case, we find the gravity of Judge Docena's neglect in the performance of his duties to be so serious in character that the Court may unquestionably impose against him the penalty of dismissal from the service. Nevertheless, we take into consideration his *length of service of thirty (30) years* in various sectors of the government, with eight (8) years spent rendering service in the Judiciary as a Technical Assistant in the Supreme Court from 1985 to 1987 and as an RTC Judge from 2010 up to present, his *candid admission of his lapses and his commitment to undertake stringent steps to address the matters brought to his attention by the OCA* as mitigating factors that serve to temper the penalty to be imposed upon him. We also note that this is Judge Docena's first time to be administratively sanctioned by this Court. Thus, instead of imposing the penalty of dismissal, we deem it proper to impose against Judge Docena the penalty of suspension for two (2) years without pay.

11. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; PENALTY OF SUSPENSION FROM THE OFFICE FOR A PERIOD OF ONE (1) MONTH IMPOSED FOR SIMPLE NEGLECT OF DUTY.— As for Atty. Hernandez, we agree with the OCA's conclusion that he undoubtedly failed to meet the standards required of him as an effective and competent clerk of court. The OCA recommended that Atty. Hernandez be suspended without pay for six (6) months. We, however, modify this recommendation and reduce the penalty to suspension without pay for one (1) month and (1) day, considering the fact that this is his first offense, and the errors he committed are purely administrative in nature and are not gross or patent.

12. ID.; ID.; ID.; CLERK-IN-CHARGE AND COURT STENOGRAPHERS; ADMONISHED TO BE MORE CIRCUMSPECT IN THE PERFORMANCE OF THEIR RESPECTIVE DUTIES.— We likewise agree with the OCA's finding that Ms. Salonga (the Clerk-in-Charge) and Ms. Labagnao, Ms. Fardo, Ms. San Pedro, and Ms. Mendoza (the court stenographers) also failed to diligently perform their respective duties. Since this, too, is their first offense, we adopt the OCA's recommendation and impose the penalty of

admonition that they be more circumspect in the performance of their respective duties.

13. JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE CHARGES; ABSENT THE ELEMENTS OF CORRUPTION, WILLFUL INTENT TO VIOLATE THE LAW OR TO DISREGARD ESTABLISHED RULES, THE RESPONDENTS MAY ONLY BE HELD ADMINISTRATIVELY LIABLE FOR SIMPLE MISCONDUCT; IMPOSITION OF FINE IN PLACE OF SUSPENSION IS ALLOWED FOR SIMPLE MISCONDUCT IF THE SAME IS COMMITTED WITHOUT ABUSING THE POWERS OF ONE'S POSITION OR OFFICE.— x x x "**[M]isconduct** is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple." In this case, there is no substantial evidence to show that Judge Magsino and Atty. Dizon's actions involved the elements of corruption, willful intent to violate the law or to disregard established rules to qualify their misconduct as grave. Absent such malicious intent or bad faith on their part, they may only be held administratively liable for simple misconduct. Although the penalty for simple misconduct is suspension without pay of one (1) month and one (1) day to six (6) months, the RRACCS allows the payment of a fine in place of suspension *if* the offense is committed *without abusing the powers of one's position or office*. Considering that this is also the first offense for both Judge Magsino and Atty. Dizon, we find the imposition of a fine of ₱20,000.00 to be proper and commensurate for their transgressions.

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

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT; CHAPTER V OF THE GUIDELINES IN THE SELECTION AND DESIGNATION OF EXECUTIVE JUDGES AND DEFINING THEIR POWERS, PREROGATIVES AND DUTIES ON THE ISSUANCE OF

SEARCH WARRANTS; VIOLATED IN CASE AT BAR; AN EXECUTIVE JUDGE HAS NO DISCRETION TO DEVIATE FROM THE PRESCRIBED RATIO FOR RAFFLING WITHOUT PRIOR APPROVAL OF THE COURT AND THE USE OF AN IMPROVISED SYSTEM IS UNACCEPTABLE.— Based on the records, it is clear that the Malabon RTC was not observing the guidelines in the raffle of search warrant applications, among others, Section 6, Chapter V of the Guidelines and Administrative Order No. 6, as reiterated in OCA Circular No. 58-2015, also in relation to pertinent provisions in the raffle cases under Chapter V of the Guidelines. While the conduct of more than one (1) special raffle of search warrant applications in a day is sanctioned by the Rules, Judge Magsino and Atty. Dizon, Clerk of Court, Malabon RTC, however, failed to observe the pertinent portion of Section 6, Chapter V of the Guidelines, which requires that the cases/ search warrant applications assigned to a branch during the special raffle be deducted from the number of cases allotted to it on the next scheduled regular raffle. Instead, no off-setting was made. Worse, Atty. Dizon even claims that they simply adopted the policy of the previous Executive Judges of counting any number of applications as one (1), as long as these were filed by a single applicant. Judge Magsino and Atty. Dizon also failed to observe the ratio for the raffling of cases prescribed under paragraph 1, Chapter V of Administrative Order No. 6. According to Judge Magsino, he rejected the suggestion to apply the 1:2 ratio since it would remove the unpredictability of the raffling process because applications would have to be assigned to a branch to equalize the number, and any such attempt to equalize would require human intervention, which, in turn, would be more prejudicial. But the Executive Judge has no discretion to deviate from the prescribed ratio for raffling without prior approval of the Court. On the other hand, Atty. Dizon maintains that they observed the prescribed 1:2 ratio, only that the counting is made per applicant, regardless of the number of search warrant applications applied for. The Court finds this improvised system simply unacceptable.

2. ID.; ID.; ID.; SECTION 2, RULE 126 OF THE RULES OF COURT; APPLICATION FOR SEARCH WARRANT, WHERE FILED; VIOLATED WHERE A JUDGE TOOK COGNIZANCE OF APPLICATIONS FOR SEARCH

WARRANT THAT INVOLVED OFFENSES COMMITTED OUTSIDE THE TERRITORIAL JURISDICTION OF HIS COURT, WITHOUT ANY COMPELLING REASON.— It has been adequately shown that Judge Magsino and Judge Docena violated Section 2, Rule 126 of the Rules of Court when they took cognizance of applications for search warrant that involved offenses committed outside the territorial jurisdiction of the Malabon RTC, Judge Docena issued (1) 130 search warrants involving crimes committed outside the territorial jurisdiction of the Malabon RTC, without any compelling reason for him to take cognizance of the applications and (2) search warrants involving crimes committed outside the territorial jurisdiction of the Malabon RTC, with compelling reasons, but such that a reasonably prudent man would not right away accept without propounding further questions to dispel any doubt on their soundness or relevance. An exhaustive and probing inquiry is necessary in order to enable the court to verify the genuine existence of a compelling reason, by examining the affiant, through searching questions. It is only through this process that the court can be assured that there is an actual reason to believe that the applicant's operations might be compromised if the application was filed with the court having primary jurisdiction over the same. This step will ultimately guide the court on whether or not it should take cognizance of said application.

3. JUDICIAL ETHICS; JUDGES; A JUDGE SHOULD EXERCISE PRUDENCE AND CAUTION IN GRANTING APPLICATIONS FOR A SEARCH WARRANT AND IN ASCERTAINING THE ACTUAL PRESENCE OF A GOOD OR COMPELLING REASON TO WARRANT THE ISSUANCE OF A SEARCH WARRANT BY A COURT OUTSIDE THE TERRITORIAL JURISDICTION WHERE THE CRIME WAS COMMITTED.— [I]t is settled that the determination of compelling reasons is addressed to the sound discretion of the court. The general rule is that an application for a search warrant should be filed in the court within whose territorial jurisdiction the crime was committed. It is only when there is a good or compelling reason that said application can be filed in any court within the judicial region of the place where the crime was committed, if known, or before any court within the judicial region where the warrant shall be enforced.

Indeed, the issuance of a search warrant by a court outside the territorial jurisdiction where the crime was committed is the exception rather than the general rule. A judge, therefore, should exercise prudence and caution in granting applications for a search warrant and in ascertaining the actual presence of a good or compelling reason to warrant the application of the exception. In the present case, however, the court did not even bother to exercise its sound judicial discretion as it would readily and regularly accept bare allegations of possible leakage of information as valid compelling reasons, notwithstanding that the respondents named in the applications are all John/Jane Does. The Court cannot simply sustain Judge Magsino's position that the court may rely on the unsubstantiated allegation that the respondents may have informants inside the court. Otherwise, this would render the requirements provided under the Rules futile. And besides, while said allegation of possible insiders may also be conveniently claimed with respect to any other court, interestingly, the applicants for search warrants would always seem to choose the Malabon RTC over the others. This, to the Court, is, in itself, highly dubious and gives an impression of irregularity.

4. ID.; ID.; ADMINISTRATIVE CHARGES; BLATANT VIOLATION OF THE RULES IN THE ISSUANCE OF SEARCH WARRANTS CONTRADICTS ANY CLAIM OF GOOD FAITH.— Well-settled is the rule that, unless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases. In the case at bar, however, the x x x attendant circumstances would reveal that Judge Docena's blatant violation of the Rules in the issuance of the subject search warrants clearly contradicts any claim of good faith.

5. ID.; ID.; A JUDGE HAS A DUTY TO SUMMON THE APPLICANTS TO WHOM THE WARRANTS WERE ISSUED AND REQUIRE THEM TO EXPLAIN WHY NO RETURN WAS MADE WITHIN THE PRESCRIBED PERIOD; NON-COMPLIANCE THEREOF IS VIOLATIVE OF SECTION 12(b), RULE 126 OF THE RULES OF

COURT AND SERIOUSLY CASTS DOUBT ON A JUDGE'S MOTIVE.— True, the court has no participation in the implementation of search warrants. However, a reasonably prudent man would be alerted by the high rate of unsuccessful returns and failure to file returns before his court. This should have prompted Judge Docena to be stricter and more careful in the application of the rules on the issuance of search warrants, which primarily exist to protect the rights of the respondents in *ex parte* proceedings. Moreover, a judge's duty to summon the applicants to whom the warrants were issued and require them to explain why no return was made within the prescribed period is one of the most important safeguards against possible abuses in the implementation of warrants. His failure to comply with these requirements clearly violates Section 12(b), Rule 126 of the Rules of Court and seriously casts doubt on his motive since several applicants had repeatedly secured warrants from his court without ever bothering to file a return. Judge Docena's practice of issuing search warrants to the same applicant who would not file the required returns for previous warrants is highly suspicious.

6. **ID.; ID.; ALLOWING THE SUBMISSION OF INVENTORY SHEETS WITHOUT THE REQUIRED VERIFICATION UNDER OATH DESPITE THE HIGH RATE OF UNSUCCESSFUL IMPLEMENTATION OF WARRANTS, IS VIOLATIVE OF SECTION 12(a), RULE 126 OF THE RULES OF COURT.—** [J]udge Docena would allow the submission of inventory sheets without the required verification under oath despite the high rate of unsuccessful implementation of warrants, in utter violation of Section 12(a), Rule 126. By doing this, the court allowed the submission of inventory sheets which could have possibly been tampered. Thus, Judge Docena rendered the devised safeguards ineffectual, to the prejudice of the citizens, whose rights might have been transgressed.

7. **ID.; ID.; A JUDGE CANNOT TAKE REFUGE BEHIND THE INEFFICIENCY OR MISMANAGEMENT OF HIS VERY OWN COURT PERSONNEL, FOR HE IS RESPONSIBLE, NOT ONLY FOR THE DISPENSATION OF JUSTICE, BUT ALSO FOR MANAGING HIS COURT EFFICIENTLY TO ENSURE THE PROMPT DELIVERY OF COURT SERVICES.—** Surely, he cannot simply put the blame on his staff or on the court's workload. A judge cannot

take refuge behind the inefficiency or mismanagement of his very own court personnel. Certainly, a judge is responsible, not only for the dispensation of justice, but also for managing his court efficiently to ensure the prompt delivery of court services. In the discharge of the functions of his office, a judge must always strive to act in a manner that puts him and his conduct above reproach and beyond any dubiety.

8. ID.; ID.; GROSS IGNORANCE OF THE LAW; A JUDGE IS PRESUMED TO HAVE ACTED WITH REGULARITY AND GOOD FAITH IN THE PERFORMANCE OF JUDICIAL FUNCTIONS; BUT A BLATANT DISREGARD OF THE CLEAR AND UNMISTAKABLE PROVISIONS OF A STATUTE, AS WELL AS RULES OF COURT ENJOINING THEIR STRICT COMPLIANCE, UPENDS THIS PRESUMPTION AND SUBJECTS THE MAGISTRATE TO CORRESPONDING ADMINISTRATIVE SANCTIONS.— Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with Judge Docena. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Rules of Court enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.

9. ID.; ID.; GROSS NEGLECT OF DUTY; DEFINED; GROSS NEGLECT OF DUTY DOES NOT ONLY INCLUDE WILLFUL NEGLECT OR INTENTIONAL WRONGDOING, BUT IT CAN ALSO ARISE FROM SITUATIONS WHERE SUCH NEGLECT WHICH, FROM THE GRAVITY OF THE CASE OR THE FREQUENCY OF INSTANCES, BECOMES SO SERIOUS IN ITS

CHARACTER THAT IT ENDS UP ENDANGERING OR THREATENING THE PUBLIC WELFARE.— [G]ross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, in so far as other persons may be affected. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable. It is important to stress, however, that the term gross neglect of duty does not only include willful neglect or intentional wrongdoing. It can also arise from situations where such neglect which, from the gravity of the case or the frequency of instances, as in Judge Docena's case, becomes so serious in its character that it ends up endangering or threatening the public welfare.

10. ID.; ID.; GROSS IGNORANCE OF THE LAW; WHEN THE INEFFICIENCY SPRINGS FROM A FAILURE TO RECOGNIZE SUCH A BASIC AND ELEMENTAL RULE, A LAW OR A PRINCIPLE IN THE DISCHARGE OF HIS FUNCTIONS, A JUDGE IS EITHER TOO INCOMPETENT AND UNDESERVING OF THE POSITION AND THE PRESTIGIOUS TITLE HE HOLDS OR HE IS TOO VICIOUS THAT THE OVERSIGHT OR OMISSION WAS DELIBERATELY DONE IN BAD FAITH AND IN GRAVE ABUSE OF JUDICIAL AUTHORITY; IN BOTH CASES, THE JUDGE'S DISMISSAL WILL BE IN ORDER. — For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural

rules; they must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.

11. ID.; ID.; CODE OF JUDICIAL CONDUCT; A JUDGE SHOULD ENSURE THAT HIS OR HER CONDUCT, BOTH IN AND OUT OF COURT, MAINTAINS AND ENHANCES THE CONFIDENCE OF THE PUBLIC, THE LEGAL PROFESSION AND LITIGANTS IN THE IMPARTIALITY OF THE JUDGE AND OF THE JUDICIARY.— Indubitably, Judge Docena, motivated by bad faith, issued search warrants outside of his court's territorial jurisdiction, in violation of Section 2, Rule 126 of the Rules of Court. He likewise violated the Code of Judicial Conduct ordering [a judge] to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary. The blatant breach of duty in this case is all over the records. Judge Docena simply used as convenient excuses oversight, inadvertence, honest mistake, lack of sufficient time to scrutinize the inventory sheets, adoption of policies implemented by previous judges, heavy caseload, and that he would always remind his staff to comply with the rules. By constantly disregarding the rules on the issuance of search warrants, Judge Docena has rendered the court rules futile. He acted with conscious indifference to the possible undesirable consequences to the parties involved.

12. ID.; ID.; A JUDGE MUST STRICTLY COMPLY WITH THE REQUIREMENTS OF THE CONSTITUTION AND THE STATUTORY PROVISIONS IN THE ISSUANCE OF A SEARCH WARRANT.— It has been said that of all the rights of a citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves the exemption of his private affairs, books and papers from inspection and scrutiny of others. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without

transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government. Thus, in issuing a search warrant, the judge must strictly comply with the requirements of the Constitution and the statutory provisions.

13. **ID.; ID.; CODE OF JUDICIAL CONDUCT; MISCONDUCT; TO WARRANT DISMISSAL FROM SERVICE, THE MISCONDUCT MUST BE GRAVE, SERIOUS, IMPORTANT, WEIGHTY, MOMENTOUS, AND NOT TRIFLING, AND MUST IMPLY WRONGFUL INTENTION AND NOT A MERE ERROR OF JUDGMENT AND HAS A DIRECT RELATION TO AND BE CONNECTED WITH THE PERFORMANCE OF THE PUBLIC OFFICER'S OFFICIAL DUTIES AMOUNTING EITHER TO MALADMINISTRATION OR WILLFUL, INTENTIONAL NEGLECT, OR FAILURE TO DISCHARGE THE DUTIES OF THE OFFICE.—** Judge Docena also violated Section 7, Canon 6 of the Code of Judicial Conduct which provides that judges shall not engage in conduct incompatible with the diligent discharge of judicial duties. Indeed, Judge Docena's acts likewise constituted gross misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.

14. **ID.; ID.; ID.; A JUDGE MUST NOT ONLY BE IMPARTIAL BUT MUST ALSO APPEAR TO BE IMPARTIAL AS AN ADDED ASSURANCE TO THE PARTIES THAT HIS DECISION WILL BE JUST.—** To hold a judge administratively liable for gross misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, it must be shown that his acts were

committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice. The Court has repeatedly and consistently held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated they can go to a judge who shall give them justice. They must trust the judge, otherwise, they will not go to him at all. They must believe in his sense of fairness, otherwise, they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect. In this case, the OCA aptly found Judge Docena's issuance of the subject search warrants to have been motivated by bad faith.

15. **ID.; ID.; CODE OF JUDICIAL CONDUCT; RULES 3.08 AND 3.09 THEREOF; NOT COMPLIED WITH; A JUDGE PRESIDING OVER A BRANCH OF A COURT IS, IN LEGAL CONTEMPLATION, THE HEAD THEREOF HAVING EFFECTIVE CONTROL AND AUTHORITY TO DISCIPLINE ALL EMPLOYEES WITHIN THE BRANCH; THUS HE SHARES ACCOUNTABILITY FOR THE ADMINISTRATIVE LAPSES OF HIS STAFF THAT CONTRIBUTED TO THE CLEARLY DISORGANIZED AND INEFFICIENT DISPATCH OF BUSINESS IN HIS SALA.—** Judge Docena also failed to comply with his administrative responsibilities under Rules 3.08 and 3.09 or the Code of Judicial Conduct which provide: RULE 3.08 — A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and **facilitate the performance of the administrative functions of other judges and court personnel**. RULE 3.09 – A judge should **organize and supervise the court personnel to ensure the prompt and efficient dispatch of business**, and require at all times the observance of high standards of public service and fidelity. As it appears that the concerned court personnel in Branch 170, namely Atty. Hernandez, the Branch Clerk of Court, Zenaida Z. Salonga, the Clerk-in-Charge, together with Olivia M. Labagnao, Rosario M. San Pedro, Debhem N. Fajardo, and Gigi M. Mendoza, all court stenographers, too, are all guilty of simple neglect of duty for failure to diligently perform their respective administrative duties. x x x. It is settled that a judge

presiding over a branch of a court is, in legal contemplation, the head thereof having effective control and authority to discipline all employees within the branch. Consequently, Judge Docena likewise shares accountability for the administrative lapses of his staff that contributed to the clearly disorganized and inefficient dispatch of business in Branch 170.

16. ID.; ID.; THE ACT OF THE EXECUTIVE JUDGE AND THE CLERK OF COURT OF IMPOSING THEIR OWN INTERNAL POLICIES AND PRACTICES IN LIEU OF THE EXISTING RULES IN THE RAFFLE OF SEARCH WARRANT APPLICATIONS CONSTITUTES SIMPLE MISCONDUCT. — [T]he Court holds Judge Magsino and Atty. Dizon administratively liable for simple misconduct, in their capacities as the Executive Judge and the Clerk of Court of the RTC of Malabon, respectively, for imposing their own internal policies and practices in lieu of the existing rules in the raffle of applications involving ordinary cases covered by Chapter V of the Guidelines. To be specific, Judge Magsino and Atty. Dizon failed to observe the pertinent portion of Section 6 of the Guidelines which requires the search warrant applications assigned to a branch during the special raffle to be deducted from the number of cases allotted to on the next scheduled regular raffle. This, however, was not implemented in the RTC of Malabon City. Judge Magsino and Atty. Dizon also failed to observe the proper ratio of the raffling of cases prescribed under Par. 1, Chapter V of Administrative Order No. 6 dated June 30, 1975 x x x. Their use of an improvised system of counting the applicants (instead of the application) in the special raffle is simply unacceptable, as the Executive Judge, much less the Clerk of Court, has absolutely no discretion to deviate from the prescribed ratio for the raffling of cases without prior approval from this Court.

17. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; GROSS NEGLECT OF DUTY IS CLASSIFIED AS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL FROM THE SERVICE, EVEN FOR THE FIRST OFFENSE, WHILE SIMPLE NEGLECT OF DUTY IS A LESS GRAVE OFFENSE, PUNISHABLE BY SUSPENSION.— Under Section 46(A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (*RRACCS*), gross neglect of duty is classified as a grave offense punishable

by dismissal from the service (even for the first offense), while simple neglect of duty is a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. Atty. Hernandez undoubtedly failed to meet the standards required of him as an effective and competent clerk of court. As for Salonga (the Clerk-in-Charge) and Labagnao, Fardo, San Pedro, and Mendoza (the court stenographers), they, likewise, failed to diligently perform their respective duties. Since this is their first offense, the Court rules that the penalty to be imposed upon them be that of admonition so that they be more circumspect in the perfomance of their respective duties. The RRACCS classifies simply misconduct as a less grave offense, punishable by suspension without pay of one (1) month and one (1) day to six (6) months for the first offense. In this case, there is no substantial evidence to show that Judge Magsino and Atty. Dizon's actions involved the elements of corruption, willful intent to violate the law, or to disregard established rules to qualify their misconduct as grave.

18. LEGAL ETHICS; JUDGES; ADMINISTRATIVE CHARGES; GROSS NEGLECT OF DUTY AND GROSS MISCONDUCT ARE GRAVE OFFENSES THAT MERIT THE MOST SEVERE PENALTY OF DISMISSAL FROM SERVICE, WHILE GROSS IGNORANCE OF THE LAW, WHICH IS ALSO CLASSIFIED AS A SERIOUS CHARGE, IS PUNISHABLE BY A FINE, AND SUSPENSION FROM OFFICE OR DISMISSAL FROM THE SERVICE; PENALTY OF DISMISSAL FROM THE SERVICE PROPER WHERE THE ACTS OF THE RESPONDENT-JUDGE RAISED A SERIOUS QUESTION ON HIS COMPETENCE AND INTEGRITY IN THE PERFORMANCE OF HIS FUNCTIONS AS A MAGISTRATE.— [T]he Court finds that the gravity of Judge Docena's acts and omissions in the performance of his duties is so serious in character such that the Court may unquestionably impose against him the penalty of dismissal from the service. Gross neglect of duty and gross misconduct are grave offenses that merit the most severe penalty of dismissal from service. Gross ignorance of the law, which is also classified as a serious charge, is punishable by a fine of more than ₱20,000.00 but not exceeding ₱40,000.00, and suspension from office for more

than three (3) but not exceeding six (6) months, without salary and other benefits, or dismissal from the service. Judge Docena's acts raised a serious question on his competence and integrity in the performance of his functions as a magistrate. Thus, the Court adopts the recommendation of the OCA that the supreme penalty of dismissal is the proper penalty to be imposed.

19. ID.; ID.; ID.; ID.; LENGTH OF SERVICE IS NOT A MAGIC WORD THAT, ONCE INVOKED, WILL AUTOMATICALLY BE CONSIDERED AS A MITIGATING CIRCUMSTANCE IN FAVOR OF THE PARTY INVOKING IT, AS THE SAME CAN BE APPRECIATED EITHER AS A MITIGATING OR AGGRAVATING CIRCUMSTANCE, DEPENDING ON THE FACTUAL MILIEU OF THE CASE; THE STANDARD OF INTEGRITY APPLIED TO JUDGES SHOULD BE HIGHER THAN THAT OF THE AVERAGE PERSON FOR IT IS THEIR INTEGRITY THAT GIVES THEM THE PRIVILEGE AND RIGHT TO JUDGE.— [T]he Court, in a number of administrative cases, had the occasion to rule that a judge may still be validly dismissed from service for gross ignorance of the law and brazen disregard of the rules even without the detestable allegation and proof of corruption. Judge Docena's thirty (30) years in government service, with eight (8) years as a Technical Assistant at the Supreme Court, and his stint as an RTC Judge since 2010 cannot even be reasonably appreciated as a mitigating factor for the Court to reduce the imposable penalty upon him. On the contrary, said length of service should be considered against him since the same should have enabled him to become more knowledgeable in the application of the Rules and more discerning in the execution of his duties as a magistrate. Instead, it appears that all those years have only rendered him to become completely ignorant of the existing Rules of Court, specifically on the issuance and implementation of search warrants, and allowed him to repeatedly abuse the trust reposed on him by taking advantage of his position. It is settled that length of service is an alternative circumstance. It is not a magic word that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can be appreciated either as a mitigating or aggravating circumstance, depending on the factual *milieu* of the case. Judge Docena's actions did not only put his competency and moral

character in serious doubt, but likewise placed the image of the Judiciary in serious jeopardy. In order to succeed in the Court's relentless crusade to purge the Judiciary of morally rotten members, officials, and personnel, a rigid set of rules of conduct must necessarily be imposed on judges. The standard of integrity applied to them should be higher than that of the average person for it is their integrity that gives them the privilege and right to judge.

D E C I S I O N

DEL CASTILLO, *J.*:

This administrative matter refers to the report on the preliminary results of the spot audit conducted by the Office of the Court Administrator (OCA) in the Regional Trial Court, Branch 170, Malabon City.

The Factual Antecedents

On April 26, 2016, the OCA sent a team to conduct a spot audit of search warrant applications raffled to Branch 170, due to persistent reports pertaining to the alleged irregular issuance of search warrants by Presiding Judge Zaldy B. Docena (Judge Docena).

The Report on the Preliminary Results of the Spot Audit

On May 26, 2016, the OCA submitted to the Court its Report[1] dated May 23, 2016 on the preliminary results of the spot audit. In the Report, the OCA made the following observations:

First, a total of 938 applications for search warrants were filed before the RTC of Malabon City from January 2015 up to April 13, 2016. These applications were distributed among the following judges: Judge Docena, Branch 170, with 761 applications; then Executive Judge Celso Raymundo L. Magsino,

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

Jr. (Judge Magsino), Branch 74, with 175 applications; and Judge Jimmy Edmund G. Batara (Judge Batara), Branch 172, with two applications.[2]

Second, the RTC of Malabon City exceeded the number of search warrants issued by the RTC of Manila (with 56 branches) and the RTC of Quezon City (with 48 branches), notwithstanding the fact that the latter courts are allowed to issue search warrants which are enforceable nationwide.[3]

The data provided by the Statistical Reports Division of the Court Management Office show the number of search warrants issued by selected RTCs in the National Capital Judicial Region from January 2015 up to March 2016:[4]

ISSUING COURT	NUMBER OF SEARCH WARRANTS ISSUED
RTC of Malabon City	763
RTC of Manila	675
RTC of Makati City	75
RTC of Quezon City	68
RTC of Pasig City	9

Third, out of the 761 applications assigned to Branch 170, Judge Docena issued 113 search warrants which are enforceable outside the territorial jurisdiction of the RTC of Malabon City, *viz.*:[5]

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[2] *Id*. at 1-2.

[3] *Id*. at 5.

[4] *Id*.

[5] *Id*. at 2-3.

PLACE WHERE SEARCH WARRANTS WERE ENFORCED	JUDICIAL REGION	SEARCH WARRANTS ISSUED
Manila	National Capital Judicial Region	46
Makati City	National Capital Judicial Region	19
Pasig City	National Capital Judicial Region	14
Quezon City	National Capital Judicial Region	8
Taguig City	National Capital Judicial Region	7
Mandaluyong City	National Capital Judicial Region	6
Pasay City	National Capital Judicial Region	4
Caloocan City	National Capital Judicial Region	3
Valenzuela City	National Capital Judicial Region	2
Parañaque City	National Capital Judicial Region	2
Muntinlupa City	National Capital Judicial Region	1
Laguna	4th Judicial Region	1
TOTAL		**113**

The OCA found this to be in violation of Section 2(a) of Rule 126 of the Rules of Court which provides that an application for a search warrant shall be filed with "[a]ny court within whose territorial jurisdiction a crime was committed."[6]

Fourth, Judge Docena issued 418 search warrants which are also enforceable outside the territorial jurisdiction of the RTC of Malabon City, but this time the applicants specifically invoked Section 2(b) of Rule 126 which allows, for compelling reasons, the filing of the application with any court within the judicial region where the crime was committed or where the warrant shall be enforced.[7]

The OCA, however, pointed out that said search warrant applications merely cited the bare allegations of possible leakage of information and/or that the person subject of the application is influential in the area, or has friends working in the local government offices and the courts.[8]

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[6] *Id*. at 2.

[7] *Id*. at 3.

[8] *Id*.

Fifth, Branch 170 has admitted returns on search warrants where the seizing officer did not proceed with the operation because of new developments and/or information that the subject has already moved out, when the proper procedure is for the applicant to file a motion to set aside the search warrant.[9]

There are also several cases where the returns have yet to be submitted to the court despite the lapse of the 10-day period within which to do so. The OCA considered this to be a failure on the part of Branch 170 "to ascertain if the return has been made, and if none, [to] summon the person to whom the warrant was issued and require him to explain why no return was made."[10]

And *sixth,* the OCA noted that Branch 170:

a) x x x issues search warrants even [though] the application is not accompanied with pertinent papers to establish that the applicant [had] conducted a surveillance prior to the filing of said application x x x;

b) x x x issues search warrants even when the authority of the head of the agency to file the application is a mere photocopy;

c) [admits] mere photocopies of the inventory of the seized items and inventories that are not under oath; and,

d) x x x always grants custody of the seized items to the applicant and/or his agency for forensic examination or due to lack of space in the court premises.[11]

Upon the OCA's recommendation, the Court issued a Resolution[12] dated May 31, 2016 placing Judge Docena under immediate preventive suspension for a period of six months. Thus:

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[9] *Id.* at 4.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 10.

x x x The Court resolved, upon the recommendation of the Office of the Court Administrator (OCA), to:

(a) **PREVENTIVELY SUSPEND**, effective immediately, Judge Zaldy B. Docena, Regional Trial Court (RTC), Branch 170, Malabon City, for six (6) months pending the completion of a more comprehensive and detailed investigation on the issuance of search warrants;

(b) **RELIEVE** Judge Celso Raymundo L. Magsino, Jr., Branch 74, same court, from his duties as Executive Judge of RTC, Malabon City, and **INCLUDE** him **IN THE INVESTIGATION** in view of the apparent irregularity in the raffle of applications for search warrants;

(c) **DESIGNATE** Judge Jimmy Edmund G. Batara, Branch 72, same court, and Judge Emmanuel D. Laurea, Branch 169, same court, as Executive Judge and Vice-Executive Judge, respectively, of RTC, Malabon City; and

(d) **DIRECT** the OCA to **IMMEDIATELY SEAL/SECURE** all records/folders pertaining to applications for search warrant received by Judge Docena.

Let this resolution be personally and immediately served on the parties concerned. x x x[13]

In compliance with the May 31, 2016 Resolution of the Court, the OCA's Audit Team conducted an investigation on the raffle of applications for and issuance of search warrants in the RTC of Malabon City. The investigation was thereafter concluded on June 17, 2016.

The Result of the Investigation

In a Memorandum[14] dated August 4, 2016, the Audit Team submitted the result of the investigation to Court Administrator Jose Midas P. Marquez.

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[13] *Id*.

[14] Folder of Annexes "1", pp. 1-26.

On the Distribution/Raffle of Search Warrant Applications

The Audit Team noted that only two out of the five branches[15] in the RTC of Malabon City, specifically, Branches 74 and 170, took cognizance of search warrant applications, as Branches 72 (Drugs Court), 73 (Family Court), and 169 (Family Court and Agrarian Court) which exclusively handle drugs and family court cases, respectively, are not included in the raffle of said applications.[16]

The distribution of applications for search warrants in the RTC of Malabon City from January 2015 up to May 10, 2016 is as follows:[17]

BRANCH/JUDGE	APPLICATIONS RECEIVED
Branch 170 (Judge Docena)	795
Branch 74 (Judge Magsino)	185
- Involving ordinary criminal cases (received by raffle)	(152)
- Involving special criminal cases (received in his capacity as Executive Judge)	(33)
Branch 72 (Judge Batara)	
- Involving special criminal cases (received in his capacity as the Vice Executive Judge)	4
TOTAL	**984**

According to Atty. Esmeralda G. Dizon (Atty. Dizon), Clerk of Court VI, Office of the Clerk of Court (OCC), this distribution system is in accordance with their *internal policies* on the raffle of cases.[18] The pertinent portions of said internal policies are quoted as follows:

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[15] Three newly-appointed judges for Branches 289 to 291 have yet to assume office. *Id*. at 2.

[16] *Id*. at 2.

[17] *Id*.

[18] *Id*. at 2.

INTERNAL OFFICE MEMO

TO: CLERK IN CHARGE OF RAFFLE (Millet/Pam, Mark, Paul)
RE: SW/TRO/TPO
DATE: MAY 2014

Per executive session with the Executive Judge, the following are the **innovations** with respect to raffling:

x x x x x x x x x

3. Raffle of TRO/TPO/SW shall be special and shall require notices/ Returns/complete documentation and presence of witness/applicant in case of SW;

4. Due to its confidentiality, only the Clerk of Court and the Clerk In Charge shall receive any application for SW. Raffle of this nature shall be held at the chambers/office of the EJ/Vice EJ and only the ordinary courts (170 and 74) are eligible for raffle unless the nature subject of application falls exclusively under the powers of EJ or in his absence, the Vice EJ;

5. Ratio of cases between the EJ and Branch 170 shall be in accordance with the Guidelines on the Selection and Designation of EJs (A.M. 03-8-02-SC) which is 2:3;

6. **SW shall be raffled on 1:2 daily basis and counted per applicant**. Since Br. 74 is also the EJ, then, SW shall be raffled exclusively to the remaining ordinary court when the EJ is on official leave, official business, official meeting.

x x x x x x x x x

(Sgd.)
ATTY. ESMERALDA G. DIZON
Clerk of Court VI[19]

After a thorough examination of the records of the OCC, the Audit Team concluded that the RTC of Malabon City failed to observe the existing rules in the distribution of search warrant applications involving ordinary criminal cases as provided in Chapter V of the Guidelines on the Selection and Designation of Executive Judges.[20]

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[19] *Id*. at 2-3. Emphasis supplied.

[20] *Id*. at 4.

The Audit Team cited three instances where the raffle of search warrant applications was clearly inequitable:

a) in January 2016, Branch 170 received all 16 search warrant applications filed in the RTC of Malabon City;[21]

b) in February 2016, 44 search warrant applications were assigned to Branch 170, while only five ordinary criminal cases were given to Branch 74;[22] and,

c) in March 2016, 87 search warrant applications went to Branch 170, while only three ordinary criminal cases were raffled to Branch 74.[23]

In addition, the Audit Team also made the following observations:

First, the application docketed as SW16-183 was raffled to Branch 170, when it should have been directly assigned to the Executive Judge as it involved violations of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, and Presidential Decree No. 1866, as amended, or the law on the illegal possession of firearms.[24]

Second, it could not be ascertained whether a special raffle for applications for search warrant was actually conducted in the RTC of Malabon City because the OCC did not prepare the minutes of the raffle.[25]

Third, there are discrepancies between the date of receipt of some search warrant applications appearing in the OCC's logbook and the date stamped on the face of said applications as received by Branch 170.[26]

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[21] *Id*. at 5; see also Table 1. Distribution of Applications for Search Warrant (RTC, Malabon C.) – January 2016, *id*. at 30.

[22] *Id*.; see also Table 2. Distribution of Applications for Search Warrant (RTC, Malabon C.) – February 2016, *id*. at 31.

[23] *Id*.; see also Table 3. Distribution of Applications for Search Warrant (RTC, Malabon C.) – March 2016, *id*. at 32.

[24] *Id*.

[25] *Id*. at 6.

[26] *Id*.

For instance, SW15-120-MN appears to have been received by the OCC on May 6, 2015 at 9:00 a.m. and thereafter raffled to Branch 170 on the same day, based on the date stamped on the face of the application.[27] However, the case was recorded in the OCC's logbook only on May 7, 2015.[28] The corresponding search warrant was also issued on May 7, 2015.[29]

The same observation is true for the following applications: SW15-427 to SW15-432 – logged as filed with the OCC on September 9, 2015,[30] but the applications were all stamped received on September 8, 2015 at 10:30 a.m.;[31] and SW15-592 to SW15-596 – logged as filed with the OCC on November 27, 2015,[32] but the applications were stamped received on November 26, 2015, at 1:00 p.m.[33]

And *fourth,* there are cases where the caption of search warrant applications already indicates that it is being filed with Branch 170, and typewritten at the bottom of the applications is the name of Judge Docena to whom the application would be subscribed and sworn to.[34]

On the Issuance of Search Warrants by Branch 170

The Audit Team noted that Judge Docena granted all 790 search warrant applications raffled to Branch 170 from January 2015 up to May 10, 2016, and 192[35] of which are John/Jane

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[27] *Id*.; see also Annex "I", *id*. at 41.

[28] *Id*.; see also Annex "J", *id*. at 44.

[29] *Id*.; see also Annex "L-1", *id*. at 46.

[30] *Id*.; see also Annexes "M" to "M-6", *id*. at 47.

[31] *Id*.; see also Annexes "N" to "S-1", *id*. at 54-59.

[32] *Id*.; see also Annexes "T" to "T-5", *id*. at 60.

[33] *Id*.; see also Annexes "U" to "Y-1", *id*. at 61-71.

[34] *Id*. at 7; see also Annexes "AA" to "AA-2" and "AB" to "AB-2", *id*. at 74-75.

[35] See Table 5. Search warrants against John/Jane Does issued by Branch 170, *id*. at 193-206.

Doe search warrants. Out of the 790 search warrants issued, 442 or 55.95% thereof have yielded negative results, remained unserved, or were otherwise never returned to the court.[36]

The Audit Team also found that Judge Docena granted 758 search warrant applications even though the places of commission of the crimes involved therein were outside the territorial jurisdiction of the RTC of Malabon City. Out of 758 applications,[37] 130 had completely *failed* to cite compelling reasons to warrant their filing in the RTC of Malabon City.[38] Thus:

PLACES WHERE SEARCH WARRANTS ENFORCEABLE	**NO COMPELLING REASON**	**WITH COMPELLING REASON**	**TOTAL**
Laguna	1	-	1
Caloocan City	7	8	15
Las Piñas City	-	6	6
Makati City	18	170	188
Mandaluyong City	6	13	19
Manila	54	116	170
Muntinlupa City	1	15	16
Parañaque City	2	65	67
Pasay City	6	75	81
Pasig City	15	68	83
Quezon City	11	50	61
Taguig City	7	33	40
Valenzuela City	2	9	11
TOTAL	**130**	**628**[39]	**758**

The Audit Team likewise observed that there are instances where the compelling reasons cited by the applicant appear to

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[36] *Id*. at 10.

[37] See Table 3. Search warrants involving offenses committed outside the territorial jurisdiction of RTC, Branch 170, Malabon City, *id*. at 83-93.

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

[39] See Table 4. Search warrants involving offenses committed outside the territorial jurisdiction of RTC, Branch 170, Malabon City – COMPELLING REASON WAS STATED IN THE APPLICATION, *id*. at 94-192.

be without merit, and Judge Docena failed to ask the required probing and exhaustive inquiry on the veracity of the compelling reason invoked.[40]

In addition to its preliminary findings, the Audit Team pointed out the following irregularities pertaining to Judge Docena's issuance of search warrants:

a) There are search warrants that were issued ahead of the date of filing of the application.[41]

b) Judge Docena is the signatory of the *jurat* of all the applications for search warrants before Branch 170. In some cases, the signature appearing thereon is not his customary signature.[42]

c) There are some applications that are not under oath although the affidavits were signed by Judge Docena.[43]

d) Page 3 of the application in SW15-588 is missing, but Judge Docena signed on another page containing the sketch of the place to be searched.[44]

e) Judge Docena signed the *jurat* of some affidavits of witnesses, despite the lack of signature of the affiant.[45]

f) Some affidavits of witnesses are replicated, where only the dates and the addresses relating to the supposed surveillance are changed.[46]

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[40] *Id*. at 12.

[41] *Id*. at 18; see also Annexes "DU" to "DW-2", "DX" to "DZ-1", "EA" to "EC-2", "ED" to "EF-2", "EG" to "EI-2", "EJ" to "EL-2", and "EM" to "EO-1", *id*. at 534-563.

[42] *Id*. at 16; see also Annexes "BO" to "BP-1", *id*. at 446-447.

[43] *Id*.; see also Annexes "BQ" to "BR-1" and "BS" to "BT-1", *id*. at 449-453.

[44] *Id*.; see also Annexes "BU" to "BU-1", *id*. at 455-456.

[45] *Id*.; see also Annexes "BV" to "BW-1" and "BX" to "BY-1", *id*. at 458-463.

[46] *Id*.

g) Judge Docena has admitted as proof of surveillance the attachment of a map and pictures of the door of the unit to be searched, as well as the screen of a computer.[47]

The Audit Team also noted several lapses in the management of case records in Branch 170:

a) Case records have no minutes of the proceedings.[48]

b) There were two sets of stenographic notes found in 16 search warrant applications.[49]

c) In most applications, there are no searching questions and answers in writing and under oath, in violation of Section 5, Rule 126 of the Rules of Court.[50]

d) The search warrant case folders of Branch 170 are not paginated.[51]

e) In cases where an applicant filed several search warrant applications, some of the documents attached are not original copies.[52]

f) Case folders are not properly stitched, and some folders have loose pages. Other folders, too, are merely attached using fasteners.[53]

g) Stenographic notes are not attached to the records.[54]

h) Transcripts of stenographic notes are similarly not attached to the records.[55]

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[47] *Id.* at 17.

[48] *Id.*

[49] *Id.*; see also Table 10. Cases with two (2) sets of stenographic notes, *id.* at 232-236.

[50] *Id.*

[51] *Id.* at 20.

[52] *Id.* at 21.

[53] *Id.*

[54] *Id.*

[55] *Id.*

i) Branch 170 does not maintain a logbook where entries shall be made within 24 hours after the issuance of the search warrant.[56]

Issuance of Search Warrants by Branch 74

The Audit Team noted that Judge Magsino also granted a considerable number of search warrant applications from January 2015 up to May 10, 2016, where the offenses involved were committed outside the territorial jurisdiction of the RTC of Malabon City.[57] Thus:[58]

PLACES WHERE SEARCH WARRANTS ENFORCEABLE	NO COMPELLING REASON	WITH COMPELLING REASON	TOTAL
Rizal	1	-	1
Caloocan City	1	1	2
Makati City	-	35	35
Mandaluyong City	13	2	15
Manila	1	18	19
Marikina City	-	2	2
Muntinlupa City	-	2	2
Parañaque City	7	10	17
Pasay City	-	16	16
Pasig City	4	10	14
Quezon City	3	3	6
Taguig City	3	7	10
TOTAL	**33**	**106**	**139**

Nevertheless, the Audit Team found no patent irregularities in Judge Magsino's issuance of search warrants assigned to Branch 74,[59] considering that:

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[56] *Id.*

[57] *Id.* at 22.

[58] *Id.* at 9.

[59] *Id.* at 22.

1. There is no instance where the date of receipt by the OCC and the date of raffle of the search warrant application to Branch 74, as stamped on the face of the application, are ahead of the date recorded in the logbook of the OCC.[60]

2. There is also no instance where the date of the search warrant issued is ahead of the date of filing of the application in court.[61]

3. The minutes of the proceedings are attached to the case records, but the contents are not complete.[62]

4. Aside from the issuance of search warrants, Judge Magsino also issues an order stating, among others, that the court conducted a hearing and examined the applicant and his witness/informant.[63]

5. The stenographic notes are all attached to the records, although some have yet to be transcribed.[64]

6. Branch 74 observes the guidelines on the custody of computer data under Sections 15 and 16, Chapter IV of Republic Act No. 10175, or the Cybercrime Prevention Act.[65]

For these reasons, the Audit Team no longer discussed the details of the rest of the acts and omissions of Branch 74.

In its 1st Indorsement[66] dated September 27, 2016, the OCA directed Judge Docena and Judge Magsino, as well as the concerned court personnel, to submit their comments on the final report of the Audit Team.

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[60] *Id*.

[61] *Id*.

[62] *Id*.

[63] *Id*.

[64] *Id*.

[65] *Id*.

[66] *Rollo*, Vol. I, pp. 96-122.

Judge Docena's Comment

In his Comment[67] dated October 28, 2016, Judge Docena submits that he granted the search warrant applications before him "in the good faith belief that there was probable cause for their issuance and in compliance with law and procedure."[68]

Judge Docena clarifies that he had no control over which search warrant applications will be filed in the RTC of Malabon City, much less those that will be raffled to Branch 170.[69] Neither does he or the court personnel under him have any hand in the implementation of the search warrants issued by him or the outcome or results thereof.[70]

Judge Docena likewise contends that there is nothing irregular in his issuance of 192 John/Jane Doe search warrants, considering that the crimes involved therein are mostly violations of the Cybercrime Prevention Act and the E-Commerce Act, where there is indeed difficulty in obtaining the identities of the alleged perpetrators.[71]

As for his issuance of search warrants involving crimes committed outside the territorial jurisdiction of the RTC of Malabon City, Judge Docena denies having violated Section 2(a) of Rule 126 of the Rules of Court and Section 12, Chapter V of A.M. No. 03-8-02, given that the issuance of search warrants is inherent in all courts and venue in search warrant applications is merely procedural and not jurisdictional.[72]

Judge Docena further argues that he "cannot consider the issues of absence of compelling reasons in the [search warrant] application[s], and improper venue *motu proprio* to deny [said] applications outright," as "these have to be raised by the

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[67] *Id*. at 38-72.

[68] *Id*. at 42.

[69] *Id*. at 42.

[70] *Id*.

[71] *Id*. at 56.

[72] *Id*. at 43.

respondent/accused in a motion to quash."[73] And as for those respondents in the search warrants who did not question the venue of the pertinent search warrant applications, they should be deemed to have waived said defense and considered to have acquiesced to the venue of said applications.[74]

In addition, Judge Docena maintains that "he granted the search warrant applications in the good faith belief that there is merit to the compelling reasons provided by the applicants." He insists that "this determination should be respected unless it is shown that [he] is guilty of grave abuse of discretion amounting to excess or lack of jurisdiction."[75]

Judge Docena also explains that "the rule requiring judges to conduct a probing and exhaustive inquiry is applicable only to the determination of probable cause" and not to the compelling reasons cited by an applicant in a search warrant application,[76] as the existence of compelling reasons does not relate to the existence of probable cause which is the basis for the issuance of the search warrant.[77]

While Judge Docena admits that there are search warrants that appear to have been issued ahead of the date of filing of their respective applications, he argues that the incorrect dates on said warrants are typographical errors which are attributable to honest mistake and inadvertence.[78] He claims that Branch 170 uses previous documents as templates in order to save time and effort,[79] and he surmises that the dates in the orders pertaining to some search warrant applications were unfortunately not properly edited to reflect the correct date.[80]

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[73] *Id*. at 47.

[74] *Id*. at 49.

[75] *Id*. at 50.

[76] *Id*. at 51.

[77] *Id*. at 53.

[78] *Id*. at 63.

[79] *Id*. at 57.

[80] *Id*. at 63.

Finally, Judge Docena begs the Court for understanding and leniency for his failure to properly monitor the submission of returns of the search warrants he issued and to summon those applicants who have yet to file their respective returns, given the extraordinarily high number of search warrants raffled to Branch 170.[81]

Recommendations of the OCA

In a Memorandum[82] dated February 20, 2017, the OCA made the following recommendations:

IN VIEW OF ALL THE FOREGOING, it is respectfully recommended for the consideration of the Honorable Court that:

1. **Hon. CELSO R. L. MAGSINO, JR.**, Presiding Judge, RTC, Branch 74, Malabon City, and then Executive Judge, RTC, Malabon City, be found **GUILTY** of (a) violation of Supreme Court rules and circulars concerning the raffle of search warrant applications, and Section 2, Rule 126 of the Rules of Court and Section 12, Chapter V of the *Guidelines in the Selection and Designation of Executive Judges and Defining their Powers, Prerogatives and Duties* on the issuance of search warrants, and Section 12(b), Rule 126, Rules of Court on, among others, the filing of the returns; and (b) inefficiency in the performance of his duties as Presiding Judge of Branch 74, same court, and **FINED** in the amount of ₱20,000.00;

2. **Atty. ESMERALDA G. DIZON**, Clerk of Court, Office of the Clerk of Court, RTC, Malabon City, be found **GUILTY** of simple neglect of duty and **SUSPENDED** from the service for six (6) months, effective immediately;

3. **Hon. ZALDY B. DOCENA**, Presiding Judge, RTC, Branch 170, Malabon City, be found **GUILTY** of gross ignorance of the law, gross negligence, and gross misconduct and **DISMISSED FROM THE SERVICE** with forfeiture of retirement benefits, except accrued leave credits, and disqualification from re-employment in any government institution;

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[81] *Id*. at 64-69. See also Judge Docena's Supplemental Comment dated November 10, 2016, *id*. at 904-907.

[82] *Id*. at 526-603.

4. **Atty. JESUS S. HERNANDEZ**, Branch Clerk of Court, RTC, Branch 170, Malabon City, be found **GUILTY** of simple neglect of duty and **SUSPENDED** from the service for six (6) months, effective immediately;

5. **MS. OLIVIA M. LABAGNAO, MS. DEBHEM E. FARDO, MS. ROSARIO [M. SAN PEDRO], and MS. GIGI M. MENDOZA**, Court Stenographers, and **MS. ZENAIDA Z. SALONGA**, Clerk-in-Charge, all of RTC, Branch 170, Malabon City, be found **GUILTY** of simple neglect of duty and **ADMONISHED** to be more diligent and circumspect in the performance of their duties; and

6. **Atty. EVELYN M. LOZANO-AGUILAR**, Branch Clerk of Court, **MA. ALICIA C. MALUBAY**, Court Interpreter, and **DALISAY C. CASUGA, MYRA D. SANTOS, SHERREE ANN R. RUZGAL, MA. THERESA P. REYES**, Court Stenographers, all of RTC, Branch 74, Malabon City, be **REMINDED** to henceforth strictly comply with existing court issuances on search warrants without necessarily giving up their endeavor to preserve the confidentiality of the information in the records.

Considering the herein recommendation of the OCA that Judge Docena be dismissed from the service, and considering further that the preventive suspension of Judge Docena will in the meantime expire on 1 March 2017, it is likewise hereby recommended that the **PREVENTIVE SUSPENSION** of Judge Docena expiring on 1 March 2017 **BE INDEFINITELY EXTENDED** until such time the Court has resolved this administrative matter.

In a Resolution[83] dated February 28, 2017, the Court extended the preventive suspension of Judge Docena for another three (3) months reckoned from March 1, 2017. Finally, on June 20, 2017, the Court resolved to extend Judge Docena's suspension until such time that this administrative matter would have been resolved.[84]

The Court's Ruling

Section 2, Rule 126 of the Rules of Court provides for the proper venue where applications for search warrant should be filed:

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[83] *Id.* at 604-605.

[84] *Id.*, unpaginated.

SEC. 2. Court where applications for search warrant shall be filed. – An application for search warrant shall be filed with the following:

(a) Any court within whose jurisdiction a crime was committed.

(b) For compelling reasons stated in the application, *any court within the judicial region* where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.[85]

It is settled that the inclusion of a statement of compelling reasons in a search warrant application that is filed in a court which does not have territorial jurisdiction over the place of commission of the alleged crime is a mandatory requirement, and the absence of such statement renders the application *defective*.[86]

The absence of a statement of compelling reasons, however, is **not** a ground for the *outright* denial of a search warrant application, since it is not one of the requisites for the issuance of a search warrant. Section 4 of Rule 126 is clear on this point:

SEC. 4. Requisites for issuing search warrant. – A search warrant shall not issue **except upon probable cause** in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and **particularly describing the place to be searched and the things to be seized** which may be anywhere in the Philippines.[87]

In other words, the statement of compelling reasons is only a mandatory requirement in so far as the *proper venue* for the filing of a search warrant application is concerned. It cannot

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[85] Emphasis supplied.

[86] *Pilipinas Shell Petroleum Corporation v. Romars International Gases Corporation*, 753 Phil. 707, 715 (2015).

[87] Emphasis supplied.

be viewed as an additional requisite for the issuance of a search warrant.

It is also important to stress that an application for a search warrant merely constitutes a **criminal process** and is not in itself a criminal action.[88] The rule, therefore, that venue is jurisdictional in criminal cases does not apply thereto.[89] Simply stated, **venue is only procedural, and not jurisdictional, in applications for the issuance of a search warrant**.

In *Pilipinas Shell Petroleum Corporation v. Romars International Gases Corporation,*[90] the Court ruled that the issue on the absence of a statement of compelling reasons in an application for a search warrant does not involve a question of jurisdiction over the subject matter, as the power to issue search warrants is *inherent* in all courts.[91] Thus, **the trial court may only take cognizance of such issue *if* it is raised in a timely motion to quash the search warrant**. Otherwise, the objection shall be deemed *waived*, pursuant to the Omnibus Motion Rule.[92]

Consequently, the Court in *Pilipinas Shell* upheld the validity of the questioned search warrants *despite the lack of a statement of compelling reasons in their respective applications*,[93] as the objection was not properly raised in a motion to quash.[94]

Note, too, that the determination of the existence of compelling reasons under Section 2(b) of Rule 126 is a matter squarely addressed to the *sound discretion of the court* where such application is filed, subject to **review by an appellate court**

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[88] *Pilipinas Shell Petroleum Corporation v. Romars International Gases Corporation*, *supra* note 84 at 717, citing *Malaloan v. Court of Appeals*, 302 Phil. 273, 285 (1994).

[89] *Id*. at 718.

[90] *Id*.

[91] *Id*. at 718.

[92] *Id*. at 715-716.

[93] *Id*. at 718.

[94] *Id*. at 716.

in case of grave abuse of discretion amounting to excess or lack of jurisdiction.[95]

Clearly, this *administrative proceeding* is **not** the proper forum to review the search warrants issued by Judge Docena and Judge Magsino in order to determine whether the compelling reasons cited in their respective applications are indeed meritorious.

Given these circumstances, we cannot agree with the OCA's findings that Judge Docena and Judge Magsino violated Section 2 of Rule 126 by simply issuing search warrants involving crimes committed outside the territorial jurisdiction of the RTC of Malabon City where: a) there is no compelling reason to take cognizance of the applications; and b) the compelling reasons alleged in the applications *appear* to be unmeritorious.[96]

It is obvious that Judge Docena and Judge Magsino simply exercised the trial court's **ancillary jurisdiction over a special criminal process**[97] when they took cognizance of the applications and issued said search warrants. And as previously discussed, the propriety of the issuance of these warrants is a matter that should have been raised in a motion to quash or in a *certiorari* petition, if there are allegations of grave abuse of discretion on the part of the issuing judge.

The Administrative Liabilities

To hold a judge administratively liable for *gross misconduct*, *ignorance of the law* or *incompetence of official acts* in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice.[98] Absent such proof, **the judge is presumed to have acted in good faith in exercising his judicial functions**.[99]

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[95] *People v. Chiu*, 468 Phil. 183, 198 (2004).

[96] *Rollo*, Vol. I, pp. 570 and 599.

[97] *Malaloan v. Court of Appeals*, 302 Phil. 273, 285-286 (1994).

[98] *Andrada v. Hon. Judge Banzon*, 592 Phil. 229, 233-234 (2008).

[99] *Lacadin v. Judge Mangino*, 453 Phil. 414, 422 (2003).

In this case, the OCA found Judge Docena's issuance of the subject search warrants to have been motivated by bad faith,[100] as evidenced by the following attendant circumstances:

First, the high incidence of search warrant operations that yielded negative results, remained unserved, or otherwise were never returned to the court;[101]

Second, Judge Docena appears to have thrown leading questions during the examination of the applicant and the witness in SW16-257 and SW14-134;[102]

Third, four search warrants issued by Judge Docena, *i.e.* Search Warrant Nos. 13-160-MN, 13-161-MN, MN-13-162, and MN-13-163, have been nullified by the Court of Appeals (CA) in CA-G.R. SP No. 132860 for insufficiency of the compelling reasons alleged in the search warrant applications;[103]

And *fourth,* there were search warrants that appear to have been issued ahead of the dates of filing of their respective applications; search warrants that were released to the witness instead of the applicant; and search warrants which were issued on the date of filing of the application, but appear to have been received by the applicant a day in advance.[104]

We are not convinced. **These circumstances alone are clearly insufficient to overturn the presumption that Judge Docena acted in good faith in issuing the subject search warrants**.

For one thing, it is unfair to hold the low rate of success of search warrant operations against Judge Docena, given that the courts have absolutely no participation in the implementation of the search warrants that they issue.

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[100] *Rollo*, Vol. I, p. 571.

[101] *Id*.

[102] *Id*. at 573.

[103] *Id*. at 573-574.

[104] *Id*. at 574.

For another, it is a grave error to consider the CA's nullification of four search warrants issued by Judge Docena as an indication that all warrants issued by him suffer from the same infirmity. After all, not every mistake or error of judgment of a judge in the performance of his official duties makes him liable therefor.[105]

Nevertheless, we find sufficient evidence to hold Judge Docena administratively liable for **gross neglect of duty** for the serious mismanagement of search warrant applications in Branch 170.

Section 12, Rule 126 of the Rules of Court provides:

SEC. 12. Delivery of property and inventory thereof to court; return and proceedings thereon. –

a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

b) Ten (10) days after issuance of the search warrant, **the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made.** If the return has been made, the judge shall ascertain whether Section 11 of this Rule has been complied with and shall require that the property seized be delivered to him. **The judge shall see to it that subsection (a) hereof has been complied with.**

c) The return on the search warrant shall be filed and kept by the custodian of the log book on search warrants who shall enter therein the date of the return, the result, and other actions of the judge.[106]

The records show that Judge Docena has failed to properly monitor the submission of returns as required under Section 12(b) and (c) of Rule 126, considering that:

1. the returns on 172 search warrants[107] have yet to be submitted, and Judge Docena failed to summon each

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[105] *Lacadin v. Judge Mangino*, *supra* note 99, citing *Atty. Relova v. Judge Rosales*, 441 Phil. 104, 115 (2002).

[106] Emphasis supplied.

[107] See Table 11. Search warrants which returns have yet to be submitted, Folder of Annexes "1", pp. 247-250.

of the 39 applicants thereof to court to explain why no return was made.[108]

2. 350 returns[109] were filed by applicants well beyond the 10-day period to do so, with the delay ranging from 11 days up to six months and five days (in SW 15-477).[110]

3. 43 returns[111] were not immediately acted upon, with the delay ranging from one month and 22 days up to five months and 12 days (in SW 15-435).[112]

4. 29 returns[113] have yet to be acted upon.

Judge Docena likewise committed several lapses in ascertaining whether Section 12(a) of Rule 126 was complied with by the applicants in: a) SW 15-503-MN, where mere photocopies of the inventory of the seized items were submitted;[114] b) in SW 16-286-MN, where the inventories are not under oath and the signatures of the witnesses are unidentifiable because their printed names are not indicated in the inventory;[115] and c) in SW 16-273-MN, where only one witness signed the inventory sheet.[116]

We also find that Judge Docena failed to comply with his administrative responsibilities under Rules 3.08 and 3.09 of the Code of Judicial Conduct which provide:

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[108] *Rollo,* Vol. I, p. 512.

[109] See Table 12. Cases which returns were filed beyond the 10-day period, Folder of Annexes "1", pp. 251-298.

[110] *Id*. at 251.

[111] See Table 13. Sample list of cases which returns were not immediately acted upon, *id*. at 297-301.

[112] *Id*. at 297.

[113] See Table 14. Returns to be acted upon, *id.* at 302-305.

[114] See Annex "EW", *id*. at 576.

[115] See Annexes "EX" to "EX-2", *id*. at 577.

[116] See Annexes "EZ" to "EZ-1", *id*. at 579.

RULE 3.08 – A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and **facilitate the performance of the administrative functions of other judges and court personnel**.

RULE 3.09 – A judge should **organize and supervise the court personnel to ensure the prompt and efficient dispatch of business**, and require at all times the observance of high standards of public service and fidelity.[117]

as it appears that the concerned court personnel in Branch 170, namely Atty. Jesus S. Hernandez (Atty. Hernandez), the Branch Clerk of Court, Ms. Zenaida Z. Salonga, the Clerk-in-Charge, together with Ms. Olivia M. Labagnao, Ms. Rosario M. San Pedro, Ms. Debhem N. Fajardo, and Ms. Gigi M. Mendoza, all court stenographers, too, are all guilty of **simple neglect of duty** for failure to diligently perform their respective administrative duties.

Atty. Hernandez, as the administrative officer in Branch 170, fell short of the diligence and care required of him in the following instances:

a. Case records have no minutes of the proceedings.[118]

b. Some search warrants are incorrectly dated, thus making it appear that they were issued ahead of the date of filing of their respective applications.[119]

c. Some search warrants were handed over to the witnesses instead of the applicants.[120]

d. There is no date and time of receipt of the case folder by Branch 170 on the face of the search warrant applications.[121]

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[117] Emphasis supplied.

[118] *Rollo,* Vol. I, p. 532.

[119] *Id*.

[120] *Id*. at 533.

[121] *Id.*

e. The search warrant case folders in Branch 170 are not paginated.[122]

f. In several applications, some documents attached thereto are not original copies.[123]

g. Case folders are not property stitched, and some folders have loose pages. Other folders, too, are merely attached using fasteners.[124]

The court stenographers were likewise remiss in the performance of their duties under Section 17, Rule 136 of the Rules of Court, given that they failed to produce a total of 34 stenographic notes or seven sets of consolidated notes, and to properly label their stenographic notes.[125] It also appears that they only prepared transcripts of stenographic notes upon request of the applicants.[126]

As for the Clerk-in-Charge, she clearly violated Section 12(c) of Rule 126,[127] when she unjustifiably failed to maintain the required log book for search warrant applications in Branch 170.

It is settled that "[a] judge presiding over a branch of a court is, in legal contemplation, the head thereof having effective control and authority to discipline all employees within the branch."[128] Consequently, Judge Docena **shares accountability** for the administrative lapses of his staff that contributed to the clearly *disorganized* and *inefficient* dispatch of business in Branch 170.

Finally, we hold Judge Magsino and Atty. Dizon administratively liable for **simple misconduct**, in their capacities

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[122] *Id*.

[123] *Id*.

[124] *Id*.

[125] *Id*. at 595.

[126] *Id*. at 545.

[127] *Id*. at 595.

[128] *Amane v. Atty. Mendoza-Arce*, 376 Phil. 575, 600 (1999).

as the Executive Judge and the Clerk of Court of the RTC of Malabon, respectively, for imposing their own *internal policies and practices*[129] in lieu of the existing rules in the raffle of applications involving ordinary cases covered by Chapter V of the Guidelines on the Selection and Designation of Executive Judges and Defining their Powers, Prerogatives and Duties (Guidelines).

To be specific, Judge Magsino and Atty. Dizon failed to observe the pertinent portion of Section 6 of the Guidelines which requires the search warrant applications assigned to a branch during the special raffle to be deducted from the number of cases allotted to on the next scheduled regular raffle. This, however, was **not** implemented in the RTC of Malabon City.[130]

Judge Magsino and Atty. Dizon also failed to observe the *proper ratio* of the raffling of cases prescribed under par. 1, Chapter V of Administrative Order No. 6 dated June 30, 1975,[131] which states:

> *V. CASELOAD AND HONORARIUM*
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> 1. The caseload of the Executive Judge shall be as follows:
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> x x x x x x x x x
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> c. In case of multiple branches (salas) of more than five (5), the distribution of cases shall be in the proportion of **one (1) case for the Executive Judge and two (2) for each of the other judges**.[132]

Their use of an *improvised system of counting* the applicants (instead of the applications)[133] in the special raffle is simply unacceptable, as the Executive Judge, much less the Clerk of Court, has absolutely no discretion to deviate from the prescribed

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[129] See Annexes "A" and "B", Folder of Annexes "1", pp. 28-29.

[130] *Rollo*, Vol. I, pp. 551-552.

[131] *Id.* at 552-553.

[132] Emphasis supplied.

[133] See Annex "A", Folder of Annexes "1", p. 28.

ratio for the raffling of cases without prior approval from this Court.

This resulted in an inequitable distribution of search warrant applications between Branches 170 and 74 at a ratio of almost 6:1, or a six out of seven chance that an application will be raffled to Branch 170, thereby removing the unpredictability of the raffling process, so much so that some applicants already indicate that their applications are being filed with Branch 170.[134]

The Penalties

On the one hand, **gross neglect of duty** or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, in so far as other persons may be affected. x x x In cases involving public officials, [there is gross negligence] when a breach of duty is *flagrant and palpable*."[135]

It is important to stress, however, that the term "gross neglect of duty" does **not** necessarily include willful neglect or intentional wrongdoing. It can also arise from situations where "such neglect which, from *the gravity of the case or the frequency of instances*, becomes so serious in its character" that it ends up endangering or threatening the public welfare.[136]

In contrast, **simple neglect of duty** means the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference.[137]

Under Section 46(A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), gross

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[134] *Rollo,* Vol. I, p. 556.

[135] *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37-38 (2013).

[136] *Clemente v. Bautista*, 710 Phil. 10, 16-17 (2013). See also *Clerk of Court Rodrigo-Ebron v. Adolfo*, 550 Phil. 449, 455 (2007).

[137] *Office of the Ombudsman v. De Leon, supra* note 135 at 38.

neglect of duty is classified as a *grave offense* punishable by dismissal from the service (even for the first offense), while simple neglect of duty is a *less grave offense*, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense.

In this case, we find the gravity of Judge Docena's neglect in the performance of his duties to be so serious in character that the Court may unquestionably impose against him the penalty of dismissal from the service.

Nevertheless, we take into consideration his *length of service of thirty (30) years* in various sectors of the government, with eight (8) years spent rendering service in the Judiciary as a Technical Assistant in the Supreme Court from 1985 to 1987 and as an RTC Judge from 2010 up to present,[138] his *candid admission of his lapses* and his *commitment to undertake stringent steps to address the matters brought to his attention by the OCA*[139] as mitigating factors that serve to temper the penalty to be imposed upon him.[140] We also note that this is Judge Docena's first time to be administratively sanctioned by this Court. Thus, instead of imposing the penalty of dismissal, we deem it proper to impose against Judge Docena the penalty of suspension for two (2) years without pay.

As for Atty. Hernandez, we agree with the OCA's conclusion that he undoubtedly failed to meet the standards required of him as an effective and competent clerk of court.[141] The OCA recommended that Atty. Hernandez be suspended without pay for six (6) months.[142] We, however, modify this recommendation

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[138] Per Judge Docena's Service Record from the Records Division of the OAS.

[139] *Rollo,* Vol. I, p. 966.

[140] See *Office of the Court Administrator v. Atty. Gaspar*, 659 Phil. 437, 443 (2011), where the Court considered Atty. Gaspar's candid admission of her lapses and her apologies as mitigating factors that served to temper the penalty imposed against her.

[141] *Rollo*, Vol. I, p. 595.

[142] *Id*. at 596.

and reduce the penalty to suspension without pay for one (1) month and (1) day, considering the fact that this is his first offense,[143] and the errors he committed are purely administrative in nature and are not gross or patent.

We likewise agree with the OCA's finding that Ms. Salonga (the Clerk-in-Charge) and Ms. Labagnao, Ms. Fardo, Ms. San Pedro, and Ms. Mendoza (the court stenographers) also failed to diligently perform their respective duties.[144] Since this, too, is their first offense, we adopt the OCA's recommendation[145] and impose the penalty of admonition that they be more circumspect in the performance of their respective duties.

On the other hand, "[**m**]**isconduct** is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple."[146]

In this case, there is no substantial evidence to show that Judge Magsino and Atty. Dizon's actions involved the elements of corruption, willful intent to violate the law or to disregard established rules to qualify their misconduct as grave. Absent such malicious intent or bad faith on their part, they may only be held administratively liable for simple misconduct.

Although the penalty for simple misconduct is suspension without pay of one (1) month and one (1) day to six (6) months,[147] the RRACCS allows the payment of a fine in place of suspension *if* the offense is committed *without abusing the powers of one's*

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[143] See *Tudtud v. Atty. Caayon*, 494 Phil. 9, 15 (2005).

[144] *Rollo*, Vol. I, p. 595.

[145] *Id*.

[146] See *Santos v. Rasalan,* 544 Phil. 35, 43 (2007).

[147] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Section 46(D).

position or office.[148] Considering that this is also the first offense for both Judge Magsino and Atty. Dizon, we find the imposition of a fine of ₱20,000.00 to be proper and commensurate for their transgressions.

Four of the Justices voted for the dismissal of Judge Docena from the service.

WHEREFORE, the Court:

1. FINDS Hon. Celso R. L. Magsino, Jr., Presiding Judge, Regional Trial Court, Branch 74, Malabon City, and then Executive Judge, Regional Trial Court, Malabon City, **GUILTY** of simple misconduct, and hereby orders him to pay a **FINE** in the amount of Twenty Thousand Pesos (₱20,000.00), with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely;

2. FINDS Atty. Esmeralda G. Dizon, Clerk of Court, Office of the Clerk of Court, Regional Trial Court, Malabon City, **GUILTY** of simple misconduct, and hereby orders her to pay a **FINE** in the amount of Twenty Thousand Pesos (₱20,000.00), with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely;

3. FINDS Hon. Zaldy B. Docena, Presiding Judge, Regional Trial Court, Branch 170, Malabon City, **GUILTY** of gross neglect of duty, and hereby **SUSPENDS** him from office for a period of two (2) years without pay, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely;

4. FINDS Atty. Jesus S. Hernandez, Branch Clerk of Court, Regional Trial Court, Branch 170, Malabon City, **GUILTY** of simple neglect of duty, and hereby **SUSPENDS** him from office for a period of one (1) month without pay, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely;

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[148] *Id*. at Section 47(1)(c).

5. FINDS Ms. Zenaida Z. Salonga, Clerk-in-Charge, and Ms. Olivia M. Labagnao, Ms. Debhem E. Fardo, Ms. Rosario M. San Pedro, and Ms. Gigi M. Mendoza, Court Stenographers, Regional Trial Court, Branch 170, Malabon City, **GUILTY** of simple neglect of duty, and are **ADMONISHED** to be more diligent and circumspect in the performance of their duties.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Perlas-Bernabe, Jardeleza, Caguioa, Martires, Tijam, and *Reyes, Jr., JJ.,* concur.

Carpio (Acting C.J.), Bersamin, and *Leonen, JJ.,* join the dissent of *J. Peralta.*

Peralta, J., see dissenting opinion.

Gesmundo, J., no part, related to one of the parties.

Sereno, C.J., on official leave.

DISSENTING OPINION

PERALTA, *J.*:

With due respect to the majority opinion, I respectfully submit this dissenting on the penalties imposed on Docena. This case is pursuant to the spot audit conducted by the Office of the Court Administrator (*OCA*) on the distribution and/or raffle of applications for and issuance of search warrants in the Regional Trial Court (*RTC*), Branch 170, Malabon City.

The procedural and factual antecedents of the present case are as follows:

On April 26, 2016, the OCA sent a team to conduct a spot audit of search warrant applications raffled to Branch 170 of the Malabon RTC brought about by persistent reports on the alleged irregular issuance of search warrants by Presiding Judge Zaldy B. Docena. The team, likewise, examined the Office of the Clerk of Court (*OCC*) since a significant number of applications were being raffled to Branch 170 despite the existence of four (4) other branches at that time.

On May 26, 2016, the OCA submitted to the Court its initial Report[1] dated May 23, 2016 on the preliminary results of the spot audit. Upon the OCA's recommendation, the Court *En Banc* issued a Resolution[2] dated May 31, 2016, thus:

> The Court Resolved, upon the recommendation of the Office of the Court Administrator (OCA), to
>
> **(a) PREVENTIVELY SUSPEND,** effective immediately, Judge Zaldy B. Docena, Regional Trial Court (RTC), Branch 170, Malabon City, for six (6) months pending the completion of a more comprehensive and detailed investigation on the issuance of search warrants;
>
> **(b) RELIEVE** Judge Celso Raymundo L. Magsino, Jr., Branch 74, same court, from his duties as Executive Judge of RTC, Malabon City, and **INCLUDE** him **IN THE INVESTIGATION** in view of the apparent irregularity in the raffle of applications for search warrants;
>
> **(c) DESIGNATE** Judge Jimmy Edmund G. Batara, Branch 72, same court, and Judge Emmanuel D. Laurea, Branch 169, same court, as Executive Judge and Vice-Executive Judge, respectively, of RTC, Malabon City; and
>
> **(d) DIRECT** the OCA to **IMMEDIATELY SEAL/SECURE** all records/folders pertaining to applications for search warrant received by Judge Docena.
>
> Let this resolution be personally and immediately served on the parties concerned.

On August 4, 2016, the Audit Team rendered its final report. It found out that there was an unusual volume and inequitable distribution of the applications for search warrants in the Malabon RTC by the OCC and the Office of the Executive Judge. A total of 984 applications for search warrants were filed before the RTC of Malabon City from January 2015 up to May 10, 2016. These applications were distributed among the following judges: 795 for Judge Docena, Branch 170; 185 for Judge Celso

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[1] Evaluation and recommendation submitted by Court Administrator Jose Midas P. Marquez dated May 23, 2016; *rollo,* Vol. I, pp. 1-7.

[2] *Rollo,* Vol. I, p. 10.

Raymundo L. Magsino, Jr., Branch 74; and four (4) applications for Jimmy Edmund G. Batara, Branch 72.

According to Atty. Esmeralda G. Dizon, Clerk of Court VI, OCC, Malabon RTC, only two (2) out of the five (5) branches, specifically, Branches 74 (Special Commercial Court) and 170 (Environmental Court), took cognizance of search warrant applications, since Branches 72 (Drugs Court), 73 (Family Court), and 169 (Family Court and Agrarian Court) are excluded from the raffle of said applications because they exclusively handle drugs and family court cases.

After an exhaustive examination of the records of the OCC, Branch 74, and Branch 170, the Audit Team made the following findings:

1. There was non-observation of existing rules in the distribution of the applications involving ordinary criminal cases provided in Chapter V[3] of the Guidelines[4] on the Selection and Designation of Executive Judges (*the Guidelines*).

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[3] x x x x x x x x x

SEC. 6. *Special raffle and action on urgent matters*.– As a rule, there shall be no special raffle of any case except in petitions for the writ of *habeas corpus*, applications for bail in cases where the complaint or information has not yet been filed with the court, applications for the issuance of a temporary restraining order (TRO), cases involving foreign tourists, cases with motions for special raffle accompanied by a motion for reduction of bail, and applications for the issuance of search warrants subject to the provisions of Section 11 of this Chapter.

The special raffle shall be conducted upon written application of a party. A certification granting or denying the application and citing the reason/s therefor shall be issued accordingly. Such certification shall be attached to the record of the case or *expediente* immediately after the initial pleading and shall form part of the record of the case. For expediency, the Executive Judge shall be allowed to write his action on the application if there are no other reasons aside from those mentioned in the application.

If the application is granted, the special raffle shall be held in the session hall of the Executive Judge in the presence of the members of the Raffle Committee scheduled to sit on the date of raffle, or, if not available, the members of the Raffle Committee of the next regular raffle. The phrase "special raffle" shall be written on the upper left-hand corner of the complaint

In January 2016, Branch 170 received all the sixteen (16) search warrant applications filed in the Malabon RTC. In February 2016, forty-four (44) search warrant applications were assigned to Branch 170, while only five (5) ordinary criminal cases were given to Branch 74. And in March 2016, eighty-seven (87) applications went to Branch 170, while only three (3) were given to Branch 74.

2. An application involving violation of two (2) offenses (Comprehensive Dangerous Drugs Act of 2002 and

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or information in the same manner provided for in Section 4 (e) and (f) of this Chapter. A certification to the effect that a special raffle was duly held and that the case was assigned to the branch drawn in the process shall be issued and signed by all the members of the Raffle Committee.

The date and time of the raffle shall be written on the front cover of the record of the case or *expediente* and on the first page of the initial pleading and signed by the members of the Raffle Committee.

In the preparation of the list of cases to be included in the next regular raffle, the Clerk of Court shall include the cases specially raffled prior to the scheduled regular raffle, indicating therein the branch to which these cases have been assigned. Except as stated above, all other procedures outlined above shall be observed.

If the application for special raffle is denied, the case shall be included in the list of cases for the next regular raffle.

x x x x x x x x x

SEC. 10. *Issuance of search warrants in ordinary criminal cases*.– All applications for search warrants, if filed with the Executive Judge, shall be assigned by raffle to a judge within his area of administrative supervision, under whose direction the search warrant shall be issued for the search and seizure of personal property. After the application shall have been raffled and transmitted to a branch, the Judge assigned to conduct the examination of the complainant and witnesses shall immediately act on the same, bearing in mind that time and confidentiality of information are important considerations in the issuance of search warrants.

Raffling shall be strictly enforced, except only in cases where an application for search warrant is filed directly with any judge in whose jurisdiction the place to be searched is located, after office hours or during Saturdays, Sundays and legal holidays, in which case the applicant shall be required to certify under oath the urgency of the issuance thereof after office hours, or during Saturdays, Sundays or legal holidays.

[4] A.M. No. 03-8-02-SC, February 15, 2004.

Comprehensive Firearms and Ammunition Regulation Act), which are both covered by Section 11, Chapter V of the Guidelines, was assigned to Branch 170.

3. A Notice of Special Raffle would be prepared even in cases covered by Section 11,[5] Chapter V of the Guidelines.

4. Lack of minutes of the special raffle for applications for search warrant to prove that a raffle was indeed conducted.

5. There were discrepancies between the date the application was received by the OCC, as reflected in its logbook, and the date stamped on the application, as received by Branch 170.

For instance, SW15-120-MN appears to have been received by the OCC on May 6, 2015 at 9:00 a.m. and, thereafter, raffled to Branch 170 on the same day, based on the date stamped on the face of the application. However, the case was registered

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[5] SEC. 11. *Issuance of search warrants in special criminal cases filed with multiple-branch courts*.– All applications for search warrants in criminal cases relating to crimes against public order as defined by the provisions of Chapters I to VII, Title Three, Book Two of the Revised Penal Code, as amended, illegal possession of firearms and ammunitions, violations of the Comprehensive Dangerous Drugs Act of 2002 and such similar laws as may subsequently be enacted and deemed by the Supreme Court as included herein shall no longer be raffled and shall immediately be taken cognizance of and acted upon by the Executive Judges of multiple-branch RTCs, MeTCs and MTCCs under whose jurisdiction the place to be searched is located. For expediency, the Executive Judge may assign on rotation basis the Vice-Executive Judges to take cognizance of and act on such applications.

The provisions of this Section shall apply only to cases falling within the respective jurisdictions of the aforementioned courts.

Whenever the Executive Judge is on official leave of absence or is not physically present in the station, the Vice-Executive Judge shall take cognizance of and personally act on the applications for search warrants. Whenever the Executive Judge and the Vice-Executive Judge/s are on official leave of absence or are not physically present in the station, the application may be taken cognizance of and acted upon by the judge who is the most senior in tenure among the permanent judges in the station. If there are two or more judges of equal seniority in tenure, the application may be acted upon by the judge who is the most senior in the judiciary. If there are two or more judges of equal seniority in the judiciary, the application may be acted upon by the judge who is the most senior in age in the station.

as filed in the OCC's logbook only on May 7, 2015. The corresponding search warrant was also issued on May 7, 2015.

The same observation is true for the following applications: SW15-427 to SW15-432 – logged as filed with the OCC on September 9, 2015, but the applications were all stamped received on September 8, 2015 at 10:30 a.m., and SW15-592 to SW15-596 – logged as filed with the OCC on November 27, 2015, but the applications were stamped received on November 26, 2015, at 1:00 p.m.

6. One application even has no docket number, date of receipt by the OCC, date of raffle, and date received by the court branch to which it was raffled.

7. In some cases, the heading of the application would already indicate that it was being filed with Branch 170 and Judge Docena's name would already be typewritten at the bottom of said application, even before the actual raffle was made.

8. The search warrants issued by the Malabon RTC even exceeded the number of search warrants issued by the RTCs of Manila (with 56 branches) and of Quezon City (with 48 branches), notwithstanding the fact that the latter courts are allowed to issue search warrants which are enforceable nationwide.

The following data provided by the Statistical Reports Division of the Court Management Office would show the number of search warrants issued by selected RTCs in the National Capital Judicial Region from January 2015 up to March 2016:

ISSUING COURT	NUMBER OF SEARCH WARRANTS ISSUED
Malabon City (5 branches)	763
Manila (56 branches)	675
Makati City (30 branches)	75
Quezon City (48 branches)	68
Pasig City (21 branches)	9

9. Sudden decrease in the applications filed with the Malabon RTC during the dates when the OCA requested for statistical data on search warrants and the week when it became clear that the object of the spot audit was to investigate on search warrant applications

After consolidating all the search warrant applications which Branches 170 and 74 acted upon, the Audit Team discovered that out of the 980 applications filed and acted upon by said branches from January 2015 to May 10, 2016, only 45 or 4.6% actually involves offenses committed within its territorial jurisdiction. The rest, or 95.4% of the applications, involves offenses committed outside Malabon.

The Audit Team noted that Branches 170 and 74 granted the following number of applications for search warrant despite the fact that the commission of the crimes was in a place outside the territorial jurisdiction of the Malabon RTC:

a. With no compelling reason in the application: Branch 170-130; Branch 74-33
b. With compelling reason/s: Branch 170- 628; Branch 74-106

There was likewise a high incidence of negative results, unserved warrants, and no returns, translating to 56% (Branch 170) and 42% (Branch 74) of the issued search warrants enforceable outside Malabon, thus:[6]

PLACE WHERE SEARCH WARRANTS ENFORCEABLE	**BRANCH 170**			**BRANCH 74**		
	NO COMPELLING REASON	WITH COMPELLING REASON	**TOTAL**	NO COMPELLING REASON	WITH COMPELLING REASON	**TOTAL**
Laguna	1	-	**1**	**-**	**-**	**-**
Rizal	-	-	**-**	1	**-**	**1**
Caloocan City	7	8	**15**	1	1	**2**
Las Piñas City	-	6	**6**	-	-	**-**
Makati City	18	170	**188**	-	35	**35**

[6] *Rollo,* Vol. I, pp. 534-535.

Mandaluyong City	6	13	**19**	13	2	**15**
Manila City	54	116	**170**	1	18	**19**
Marikina City	-	-	-	-	2	**2**
Muntinlupa City	1	15	**16**	-	2	**2**
Parañaque City	2	65	**67**	7	10	**17**
Pasay City	6	75	**81**	-	16	**16**
Pasig City	15	68	**83**	4	10	**14**
Quezon City	11	50	**61**	3	3	**6**
Taguig City	7	33	**40**	3	7	**10**
Valenzuela City	2	9	**11**	-	-	-
TOTAL	**130**	**628**	**758** (out of 795 applications)	**33**	**106**	**139**
RESULTS other than positive (negative, unserved, no returns				**426** (out of 758 or 56%)		**58** (out of 139 or 42%)

The Audit Team likewise observed that where the compelling reasons cited by the applicant appeared to be without merit, Judge Docena failed to conduct the required probing and exhaustive inquiry on the veracity of the supposed compelling reason invoked.

In all, the team found that Judge Docena granted 790 search warrant applications from January 2015 up to May 10, 2016, and 192 of which are John/Jane Doe search warrants. Out of the 790 search warrants issued, about 55.95% or 442 have yielded negative results, remained unserved, or were otherwise never returned to the court.

The OCA found this to be in violation of Section 2(a) of Rule 126 of the Rules of Court. Branch 170 also admitted returns on search warrants where the seizing officer did not proceed with the operation because of new developments and/or information that the subject had already moved out, when the proper procedure would have been for the applicant to file

a motion to set aside the search warrant. Likewise, the application docketed as SW16-183 was raffled to Branch 170, when it should have been directly assigned to the Executive Judge as it involved violations of Presidential Decree No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, and PD No. 1866, as amended, or the law on the illegal possession of firearms.

The Audit Team noted that Judge Magsino also granted a considerable number of search warrant applications from January 2015 up to May 10, 2016, where the offenses involved were committed outside the territorial jurisdiction of the RTC of Malabon City, thus:[7]

PLACES WHERE SEARCH WARRANTS ENFORCEABLE	NO COMPELLING REASON	WITH COMPELLING REASON	TOTAL
Rizal	1	-	1
Caloocan City	1	1	2
Makati City	-	35	35
Mandaluyong City	13	2	15
Manila	1	18	19
Marikina City	-	2	2
Muntinlupa City	-	2	2
Parañaque City	7	10	17
Pasay City	-	16	16
Pasig City	4	10	14
Quezon City	3	3	6
Taguig City	3	7	10
TOTAL	**33**	**106**	**139**

Nevertheless, the Audit Team found no patent irregularities in Judge Magsino's issuance of search warrants assigned to Branch 74.[8]

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[7] *Id.* at 9.

[8] *Id*. at 22.

In its 1st Indorsement[9] dated September 27, 2016, the OCA directed Judge Docena and Judge Magsino, as well as the concerned personnel, to submit their respective Comments on the Audit Team's final report.

For his defense, Judge Docena submitted that he granted the search warrant applications before him in good faith, believing that there was probable cause for their issuance and it was in compliance with the law and procedure. He clarified that he had no control over which search warrant applications will be filed in the RTC of Malabon City, much less those that will be raffled to Branch 170. Also, he or the court personnel under him did not have any hand in the implementation of the search warrants which he issued or in its outcome or results. He likewise contended that there was nothing irregular in his issuance of the 192 John/Jane Doe search warrants, considering that the crimes involved therein are mostly violations of the Cybercrime Prevention Act and the e-Commerce Act, where there is difficulty in obtaining the identities of the alleged perpetrators.

As for his issuance of search warrants involving crimes committed outside the territorial jurisdiction of the RTC of Malabon City, Judge Docena denied having violated Section 2(a) of Rule 126 of the Rules of Court and Section 12, Chapter V of the Guidelines, given that the issuance of search warrants is inherent in all courts, and venue in search warrant applications is merely procedural and not jurisdictional. He further argued that he could not consider the issues of improper venue and the absence of compelling reasons in the search warrant applications as grounds to outrightly deny said applications, since these should have been duly raised by the respondent/accused in a motion to quash. In addition, Judge Docena maintained that he granted the search warrant applications in good faith, believing that the compelling reasons provided by the applicants were meritorious. He insisted that his determination should be respected unless it is shown that he was guilty of grave abuse of discretion amounting to excess or lack of

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[9] *Id*. at 96-122.

jurisdiction. The rule requiring judges to conduct a probing and exhaustive inquiry is applicable only to the determination of probable cause and not to the compelling reasons cited by an applicant in a search warrant application, as the existence of compelling reasons does not relate to the existence of probable cause which is the basis for the issuance of the search warrant.

As to the search warrants that appear to have been issued ahead of the date of filing of their respective applications, Judge Docena claimed that the incorrect dates on said warrants were mere typographical errors that are attributable to honest mistake and inadvertence.

After a careful review and evaluation of the case, the OCA, in a Memorandum[10] dated February 20, 2017, made the following recommendations:

IN VIEW OF ALL THE FOREGOING, it is respectfully recommended for the consideration of the Honorable Court that:

1. **Hon. CELSO R. L. MAGSINO, JR.,** Presiding Judge, RTC, Branch 74, Malabon City, and then Executive Judge, RTC, Malabon City, be found **GUILTY** of (a) violation of Supreme Court rules and circulars concerning the raffle of search warrant applications, and Section w, Rule 126 of the Rules of Court and Section 12, Chapter V of the *Guidelines in the Selection and Designation of Executive Judges and Defining their Powers, Prerogatives and Duties* on the issuance of search warrants, and Section 12(b), Rules 126, Rules of Court on, among others, the filing of the returns; and (b) inefficiency in the performance of his duties as Presiding Judge of Branch 74, same court, and FINED in the amount of ₱20,000.00;

2. Atty. ESMERALDA G. DIZON, Clerk of Court, Office of the Clerk of Court, RTC, Malabon City, be found **GUILTY** of simple neglect of duty and **SUSPENDED** from the service for six (6) months, effective immediately;

3. Hon. ZALDY B. DOCENA, Presiding Judge, RTC, Branch 170, Malabon City, be found **GUILTY** of gross ignorance of the law, gross negligence, and gross misconduct and **DISMISSED FROM THE SERVICE** with forfeiture of retirement benefits, except accrued

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[10] *Id*. at 526-603.

leave credits, and disqualification from re-employment in any government institution;

4. Atty. JESUS S. HERNANDEZ, Branch Clerk of Court, RTC, Branch 170, Malabon City, be found **GUILTY** of simple neglect of duty and **SUSPENDED** from the service for six (6) months, effective immediately;

5. MS. OLIVIA M. LABAGNAO, MS. DEBHEM E. FARDO, MS. ROSARIO [M. SAN PEDRO], AND MS. GIGI M. MENDOZA, Court Stenographers, and **MS. ZENAIDA Z. SALONGA**, Clerk-in-Charge, all of RTC, Branch 170, Malabon City, be found **GUILTY** of simple neglect of duty and **ADMONISHED** to be more diligent and circumspect in the performance of their duties; and

6. Atty. EVELYN M. LOZANO-AGUILAR, Branch Clerk of Court, **MA. ALICIA C. MALUBAY**, Court Interpreter, and **DALISAY C. CASUGA, MYRA D. SANTOS, SHERREE ANN R. RUZGAL, MA. THERESA P. REYES**, Court Stenographers, all of RTC, Branch 74, Malabon City be **REMINDED** to henceforth strictly comply with existing court issuances on search warrants without necessarily giving up their endeavor to preserve the confidentiality of the information in the records.

Considering the herein recommendation of the OCA that Judge Docena be dismissed from the service, and considering further that the preventive suspension of Judge Docena will in the meantime expire on 1 March 2017, it is likewise hereby recommended that the **PREVENTIVE SUSPENSION** of Judge Docena expiring on 1 March 2017 **BE INDEFINITELY EXTENDED** until such time the Court has resolved this administrative matter.

In a Resolution[11] dated February 28, 2017, the Court extended the preventive suspension of Judge Docena for another three (3) months reckoned from March 1, 2017. On June 20, 2017, the Court resolved to extend Judge Docena's suspension until such time that this administrative matter is resolved.

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendations of the OCA.

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[11] *Id*. at 604-605.

Indeed, there are irregularities in the issuance of search warrants in Branch 170, RTC, Malabon City.

Office of the Executive Judge and the Office of the Clerk of Court

Based on the records, it is clear that the Malabon RTC was not observing the guidelines in the raffle of search warrant applications, among others, Section 6, Chapter V of the Guidelines and Administrative Order No. 6,[12] as reiterated in OCA Circular No. 58-2015,[13] also in relation to pertinent provisions in the raffle cases under Chapter V of the Guidelines.

While the conduct of more than one (1) special raffle of search warrant applications in a day is sanctioned by the Rules, Judge Magsino and Atty. Dizon, Clerk of Court, Malabon RTC, however, failed to observe the pertinent portion of Section 6, Chapter V of the Guidelines, which requires that the cases/ search warrant applications assigned to a branch during the special raffle be deducted from the number of cases allotted to it on the next scheduled regular raffle. Instead, no off-setting was made. Worse, Atty. Dizon even claims that they simply adopted the policy of the previous Executive Judges of counting any number of applications as one (1), as long as these were filed by a single applicant.

Judge Magsino and Atty. Dizon also failed to observe the ratio for the raffling of cases prescribed under paragraph 1, Chapter V of Administrative Order No. 6.[14] According to Judge

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[12] June 30, 1975.

[13] March 23, 2015.

[14] V. CASELOAD AND HONORARIUM

1. The caseload of the Executive Judge shall be as follows:

a. In case of multiple branches (salas) of not more than two (2), the distribution of cases shall be in the proportion of three (3) cases for the Executive Judge and four (4) for the other judges.

b. In case of multiple branches (salas) of not less than three or more than five (5), the distribution of cases shall be in the proportion of two (2) cases for the Executive Judge and three (3) for each of the other judges.

Magsino, he rejected the suggestion to apply the 1:2 ratio since it would remove the unpredictability of the raffling process because applications would have to be assigned to a branch to equalize the number, and any such attempt to equalize would require human intervention, which, in turn, would be more prejudicial. But the Executive Judge has no discretion to deviate from the prescribed ratio for raffling without prior approval of the Court. On the other hand, Atty. Dizon maintains that they observed the prescribed 1:2 ratio, only that the counting is made per applicant, regardless of the number of search warrant applications applied for. The Court finds this improvised system simply unacceptable.

The OCA likewise pointed out the following observations further indicating a violation of the Guidelines:

1. Lack of documentation of the special raffles for search warrant applications;
2. The heading of some applications would already indicate that it was being filed with Branch 170 and Judge Docena's name would already be typewritten at the bottom of the *jurat*, even before the actual raffle was made;
3. Discrepancies between the dates stamped on the face of some applications that were received by Branch 170 and those entered in the OCC logbook; and
4. The face of the application against one Xiao Long acted upon by Branch 170 did not bear any docket number, date of receipt by the OCC, date of raffle, and date received by Branch 170.

Judge Docena

Section 2, Rule 126 of the Rules of Court provides for the proper venue where applications for search warrant should be filed:

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c. In case of multiple branches (sala) of more than five (5), the distribution of cases shall be in the proportion of one (1) case for the Executive Judge and two (2) for each of the other Judges.

x x x x x x x x x

SEC. 2. *Court where applications for search warrant shall be filed*. – An application for search warrant shall be filed with the following:

(a) Any court within whose jurisdiction a crime was committed.

(b) **For compelling reasons stated in the application**, *any court within the judicial region* where the crime was committed if the place of commission of the crime is known, or nay court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.[15]

Judge Docena and Judge Magsino maintain that they may take cognizance of applications for search warrants enforceable outside the territorial jurisdiction of their courts pursuant to the rulings in *Malaloan v. CA*,[16] where the Court ruled that a search warrant is a special criminal process, which is inherent in all court, and in *Pilipinas Shell Petroleum Corporation v. Romars International Gases Corporation*,[17] where it was held that the rule that venue is jurisdictional does not apply to search warrant applications.

What both judges are missing, however, is the fact that in *Malaloan v. CA*, while the Court indeed ruled that a court may take cognizance of an application for search warrant in connection with an offense committed outside its territorial jurisdiction, it clearly stated that the executive judge (of the court within whose territorial jurisdiction the crime was committed), or the lawful substitute in the area, shall have primary jurisdiction. The rest of the courts may take cognizance of the same only when compelling reasons of urgency, subject, time, and place, are extant. Hence:

x x x x x x x x x

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[15] Emphasis supplied.

[16] G.R. No. 104879, May 6, 1994, 232 SCRA 249.

[17] 753 Phil. 707, 716 (2015).

It is, therefore, incorrect to say that only the *court* which has jurisdiction over the criminal case can issue the search warrant, as would be the consequence of petitioners' position that only the *branch* of the court with jurisdiction over the *place to be searched* can issue a warrant to search the same. It may be conceded, as a matter of policy, that where a criminal case is pending, the court wherein it was filed, or the assigned branch thereof, has *primary* jurisdiction to issue the search warrant; and **where no such criminal case has yet been filed, that the executive judges or their lawful substitutes in the areas and for the offenses contemplated in Circular No. 19 shall have *primary* jurisdiction.**

This should not, however, mean that a court whose territorial jurisdiction does not embrace the place to be searched cannot issue a search warrant therefor, where the obtention of that search warrant is **necessitated and justified by compelling considerations of urgency, subject, time and place.** Conversely, neither should a search warrant duly issued by a court which has jurisdiction over a pending criminal case, or one issued by an executive judge or his lawful substitute under the situations provided for by Circular No. 19, be denied enforcement or nullified just because it was implemented outside the court's territorial jurisdiction.

x x x x x x x x x[18]

Also, *Malaloan* was promulgated in 1994, when the 1985 Rules on Criminal Procedure still governed. At that time, Section 2 of Rule 126 of the 2000 Rules on Criminal Procedure, specifically providing for the Courts where applications for search warrant shall be filed, was yet to be inserted in the Rules. Therefore, whatever was held in *Malaloan* has already been modified by the promulgation of the 2000 Revised Rules on Criminal Procedure.

Further, when granting or denying a search warrant, *Pilipinas Shell* should be treated as an exception rather than the general rule. In that case, the Court merely resolved the issue of whether or not the court of origin was correct when it reconsidered its

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[18] Emphasis ours.

Order of denial of the Motion to Quash the search warrant on the ground that the application should have been filed with the RTC of Iriga City. Holding that the issue is not one involving jurisdiction, the Court ruled that the court of origin should not have taken cognizance of the same since the respondent raised the issue for the first time in his Motion for Reconsideration, violating the Omnibus Motion rule.

Note that, while the court in *Pilipinas Shell* upheld the validity of the questioned search warrants despite the lack of a statement of compelling reasons in the application since the objection pertaining thereto was never duly raised in a motion to quash, such remedy of filing a motion to quash cannot be availed of in this case because here, a criminal case was yet to be filed, or the search warrants yielded negative results, remained unserved or were never returned to the court.

It has been adequately shown that Judge Magsino and Judge Docena violated Section 2, Rule 126 of the Rules of Court when they took cognizance of applications for search warrant that involved offenses committed outside the territorial jurisdiction of the Malabon RTC. Judge Docena issued (1) 130 search warrants involving crimes committed outside the territorial jurisdiction of the Malabon RTC, without any compelling reason for him to take cognizance of the applications and (2) search warrants involving crimes committed outside the territorial jurisdiction of the Malabon RTC, with compelling reasons, but such that a reasonably prudent man would not right away accept without propounding further questions to dispel any doubt on their soundness or relevance.

An exhaustive and probing inquiry is necessary in order to enable the court to verify the genuine existence of a compelling reason, by examining the affiant, through searching questions. It is only through this process that the court can be assured that there is an actual reason to believe that the applicant's operations might be compromised if the application was filed with the court having primary jurisdiction over the same. This step will ultimately guide the court on whether or not it should take cognizance of said application.

Moreover, it is settled that the determination of compelling reasons is addressed to the sound discretion of the court. The general rule is that an application for a search warrant should be filed in the court within whose territorial jurisdiction the crime was committed. It is only when there is a good or compelling reason that said application can be filed in any court within the judicial region of the place where the crime was committed, if known, or before any court within the judicial region where the warrant shall be enforced. **Indeed, the issuance of a search warrant by a court outside the territorial jurisdiction where the crime was committed is the exception rather than the general rule. A judge, therefore, should exercise prudence and caution in granting applications for a search warrant and in ascertaining the actual presence of a good or compelling reason to warrant the application of the exception**. In the present case, however, the court did not even bother to exercise its sound judicial discretion as it would readily and regularly accept bare allegations of possible leakage of information as valid compelling reasons, notwithstanding that the respondents named in the applications are all John/Jane Does. The Court cannot simply sustain Judge Magsino's position that the court may rely on the unsubstantiated allegation that the respondents may have informants inside the court. Otherwise, this would render the requirements provided under the Rules futile. And besides, while said allegation of possible insiders may also be conveniently claimed with respect to any other court, interestingly, the applicants for search warrants would always seem to choose the Malabon RTC over the others. This, to the Court, is, in itself, highly dubious and gives an impression of irregularity.

Well-settled is the rule that, unless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases.[19]

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[19] *Andrada v. Judge Banzon*, 592 Phil. 229 (2008).

In the case at bar, however, the following attendant circumstances would reveal that Judge Docena's blatant violation of the Rules in the issuance of the subject search warrants clearly contradicts any claim of good faith:

1. The high incidence of operations that yielded negative results, unserved warrants, and those that were never returned to the court, which constituted around 55.95% or 442 out of the 790 search warrants that were issued.

Judge Docena argues that his branch, as the issuing court, has no participation in the implementation of the search warrants, thus, it has nothing to do with the high number of negative results and unserved warrants. Also, his failure to summon the applicants in the 155 search warrants and submit the respective returns should simply be considered as a failure to monitor the submission of returns in 39 warrants, since the orders he was supposed to issue would involve only 39 applicants for the 172 search warrants he issued. With regard to his failure to monitor the ten (10)-day period within which to submit the returns, the same was due to the extraordinarily high number of search warrant applications he received and the cases pending in his court. Also, he would always try to remind his staff to monitor the submission of the returns, but the latter would sometimes fail to do so due to the load of his court's search warrants and other regular matters that they would need to attend to.

True, the court has no participation in the implementation of search warrants. However, a reasonably prudent man would be alerted by the high rate of unsuccessful returns and failure to file returns before his court. This should have prompted Judge Docena to be stricter and more careful in the application of the rules on the issuance of search warrants, which primarily exist to protect the rights of the respondents in *ex parte* proceedings. Moreover, a judge's duty to summon the applicants to whom the warrants were issued and require them to explain why no return was made within the prescribed period is one of the most important safeguards against possible abuses in the implementation of warrants. His failure to comply with these

requirements clearly violates Section 12(b),[20] Rule 126 of the Rules of Court and seriously casts doubt on his motive since several applicants had repeatedly secured warrants from his court without ever bothering to file a return.

Judge Docena's practice of issuing search warrants to the same applicant who would not file the required returns for previous warrants is highly suspicious. To illustrate, he issued the following: twenty-two (22) search warrants in three (3) successive appearances of an applicant at a four (4)-month interval; nineteen (19) search warrants in three (3) successive appearances of an applicant at a two (2)- to three (3)-month interval; thirteen (13) search warrants in three (3) successive appearances of an applicant at a one (1)- to three (3)-month interval; and seven (7) search warrants in two (2) successive appearances of an applicant.

Also, Judge Docena would allow the submission of inventory sheets without the required verification under oath despite the high rate of unsuccessful implementation of warrants, in utter violation of Section 12(a),[21] Rule 126. By doing this, the court allowed the submission of inventory sheets which could have possibly been tampered. Thus, Judge Docena rendered the devised safeguards ineffectual, to the prejudice of the citizens, whose rights might have been transgressed.

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[20] **Section 12.** *Delivery of property and inventory thereof to court*; *return and proceedings thereon*. — x x x

(b) Ten (10) days after issuance of the search warrant, the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made. If the return has been made, the judge shall ascertain whether Section 11 of this Rule has been complained with and shall require that the property seized be delivered to him. The judge shall see to it that subsection (a) hereof has been complied with.

[21] **Section 12.** *Delivery of property and inventory thereof to court*; *return and proceedings thereon*. — (a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

x x x x x x x x x

Surely, he cannot simply put the blame on his staff or on the court's workload. A judge cannot take refuge behind the inefficiency or mismanagement of his very own court personnel. Certainly, a judge is responsible, not only for the dispensation of justice, but also for managing his court efficiently to ensure the prompt delivery of court services. In the discharge of the functions of his office, a judge must always strive to act in a manner that puts him and his conduct above reproach and beyond any dubiety.[22]

More importantly, the number of search warrants, *i.e.*, 790, that he issued within the short span of January 2015 to May 10, 2016 is ridiculously excessive. On the average, assuming that during that period there were twenty (20) working days per month and there were no holidays, it would then mean that Judge Docena was issuing at least two (2) search warrants per day, further assuming that he was never absent even just for a single day.

2. In SW16-257 and SW14-134, Judge Docena threw leading questions during the examination of the applicant and its witnesses, thus:

SW16-257

Q: There are some specific persons without names they are just John and Jane Does. There is no question about the two applications against Stanley Co xxx Navotas City, but with respect to the rests in Pasay and in Manila you have to cite a compelling reason why you filed the applications here instead of applying in Pasay City or in Manila?

Applicant: Your honor we (are) applying to this Honorable Court instead in Pasay or in Manila because according to our informant our subjects and their clients are "marami po bumibisita mga allegedly na mga PNP personnel na hindi naka uniform at nagpupunta naman po doon na walang ginagawa."

Q: So if they have that what may happen?

A: It will jeopardize the operation, Your Honor.

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[22] *Bayaca v. Judge Ramos*, 597 Phil. 86, 98 (2009).

Q: It will jeopardize your operation **because for sure there might be some leakage or premature disclosure?**

A: Yes, your Honor.[23]

SW14-134

Q: NBI SRA. Romeo G. Astrero, we noticed that the subjects of your applications are all from Makati City, why xxx did you file your application here in Malabon City?

A: Your Honor, for compelling reasons that they are known in Makati… Other than that, the primordial reason is that the operation might be burned out because the subject persons are influential personalities in Makati City and have widespread connections. They could be easily tipped off by some unscrupulous court employees.

Q: You mean the subjects of this applications… the five (5) subject-persons are well connected in Makati City and influential is what you are trying to say?

A: Yes your Honor, that is why we opted to file here in Malabon City so that our efforts would not be put into waste.

Q: **And to prevent any leakage?**

A: Yes, your Honor.[24]

3. The issue on the validity of Judge Docena's issuance of search warrants that were enforceable outside his court's territorial jurisdiction had already been passed upon by the CA on May 29, 2015 in a decision which eventually became final and executory, to wit:

In the same manner, the requirement of territorial jurisdiction in the issuance of search warrant can also be excused upon showing of "compelling reasons" as stated in paragraph (b) of Section 2, Rule 126 of the Rules of Criminal Procedure. However, this circumstance is absent in the instant case. It bears stressing that the "compelling reasons" for filing an application for a search warrant

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[23] *Rollo*, Vol. I, p. 573.

[24] *Id.*

outside the territorial jurisdiction, where the same is to be enforced, is determined based on factors of urgency, subject, time and place. **Here, there is no sufficient allegation of "compelling reasons" stated in respondents' application for search warrants which justify the procurement of the same outside the territorial jurisdiction of respondent judge, i.e., from the RTC of Malabon instead of RTC of Makati or Quezon City.**

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WHEREFORE, the instant petition for certiorari and prohibition is hereby **GRANTED**, and Search Warrant No. 13-160-MN, Search Warrant No. MN-13-161-MN, Search Warrant No. MN-13-162, and Search Warrant No. MN-13-163 are declared **NULL** and **VOID**. Accordingly, any transaction carried out pursuant to, or in connection thereto are **SET ASIDE** and likewise declared **VOID** without any **FORCE** and **EFFECT**. The articles seized by virtue thereof are declared inadmissible in evidence and the same should be returned to petitioners. The Writ of Preliminary Injunction issued in this case is hereby **MADE PERMANENT**.

SO ORDERED. [25]

Hence, he could not feign ignorance of the rules and utilize his own interpretation of the same.

4. Several search warrants were issued ahead of the dates when the same were filed and some were released to the witness despite the fact that the search warrant was clearly addressed to a peace officer. Worse, there were search warrants issued on the date that the same were filed but the applicant had received copies of the same a day before the date of said warrants.

Judge Docena explains that his branch would document templates and that his staff would merely enter the new information. He avers that the typographical errors resulted from honest mistake and inadvertence on his part and that of his staff. His Branch Clerk of Court, Atty. Jesus S. Hernandez, further explained that, in all probability, the encoder had used the search warrant documents in SW15-383 and SW15-384 issued

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[25] *De Janeiro Global Solutions BPO, Inc., et al. v. Judge Docena, et al.,* CA-G.R. SP No. 132860, May 29, 2015.

on August 20, 2015, which likewise involved a violation of the Cybercrime Law, and the dates indicated in SW15-388 to SW15-389 had not been corrected to August 24, 2015, the date when its corresponding applications were filed. Atty. Hernandez, however, was not able to identify the supposed specific template that was used for SW15-401 on September 1, 2015, with the filing made the day after or on September 2, 2015.

While Judge Docena claims that he has no personal knowledge of any witness being allowed to receive a copy of the warrant, Atty. Hernandez stated that when in the company of the applicant, a witness to the application should not be allowed to receive the search warrant for and in behalf of the team. As to the applicant's receipt of copies of the warrant a day before the date of its issuance, Judge Docena explains that the applicant actually received the copies on September 17, 2015; he merely wrote September 16, 2015 because he thought that it was still the 16th.

The Court might have accepted said lame excuses if it occurred only once and under ordinary circumstances. However, the fact is that the applicant in SW15-449 to SW15-453 was the same applicant who was given nineteen (19) search warrants in three (3) successive appearances at two (2)- to three (3)-month interval, without first submitting the returns for the previous warrants that had been issued in its favor.

Judge Docena likewise miserably failed to satisfactorily explain the following findings:

1. The case records had no minutes of the proceedings that should have reflected the attendance of the applicants and their witnesses. This serves as the primary proof that a hearing was conducted and would dispel any suspicion that the application was not set for hearing or that the applicants did not present any witnesses;

2. The absence of stenographic notes and/or transcript of stenographic notes in fifty (50) search warrant applications;

3. There were two (2) sets of stenographic notes in some applications;

4. Despite page 3 of the application in SW15-588 was missing, Judge Docena still signed it, which he did on the page containing the sketch of the place to be searched;

5. There were some applications which were not under oath, but Judge Docena still signed the affidavits. He also signed the *jurat* of some of the witnesses' affidavits despite the absence of the affiants' signatures;

6. Some affidavits of various witnesses were repeatedly replicated by simply changing the dates and addresses for the conduct of the supposed surveillance. All contained the verbatim allegation that "the group always reminds me, from time to time, not to disclose to anyone about their operation in the Philippines, otherwise, something bad will happen to me. They also boast that they are well connected with authorities in the area."

7. In some cases, the required authority to file the search warrant application, which is issued by the respective heads of the agencies, were mere photocopies. The court's act of accepting mere photocopies could lead to unauthorized filing of applications;

8. In most applications, there were no searching questions and answers under oath and in writing, in violation of Section 5, Rule 126 of the Rules of Court. Instead, Judge Docena would sign the *jurat* at the bottom of the application and the affidavits of the witnesses. Some of said affidavits, however, were subscribed and sworn to before another officer authorized by law;

9. Most of the returns were filed beyond the ten (10)-day period;

10. There were returns which were belatedly acted upon. Most of these were presented to the audit team only upon demand. There were also several returns which are yet to be acted upon;

11. In some cases, the court honored mere photocopies of the inventory of the seized items, inventories that were not under oath, those with signatures of unidentified witnesses because

no printed names were indicated, and/or inventories with only one (1) witness appearing in the inventory sheet;

12. The court accepts the justification presented for warrants which were not implemented even without the supporting documents. For instance, when a search warrant was not served simply upon information that the area had already been vacated;

13. Judge Docena does not also observe Section 12(a), Rule 126 of the Rules of Court,[26] and Sections 15[27] and 16,[28] Chapter IV of Republic Act 10175 or the Cybercrime Prevention Act; and

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[26] **Section 12.** *Delivery of property and inventory thereof to court*; *return and proceedings thereon*. — (a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

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[27] **Section 15.** *Search, Seizure and Examination of Computer Data.* — Where a search and seizure warrant is properly issued, the law enforcement authorities shall likewise have the following powers and duties.

Within the time period specified in the warrant, to conduct interception, as defined in this Act, and:

(a) To secure a computer system or a computer data storage medium;

(b) To make and retain a copy of those computer data secured;

(c) To maintain the integrity of the relevant stored computer data;

(d) To conduct forensic analysis or examination of the computer data storage medium; and

(e) To render inaccessible or remove those computer data in the accessed computer or computer and communications network.

Pursuant thereof, the law enforcement authorities may order any person who has knowledge about the functioning of the computer system and the measures to protect and preserve the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the search, seizure and examination.

Law enforcement authorities may request for an extension of time to complete the examination of the computer data storage medium and to make a return thereon but in no case for a period longer than thirty (30) days from date of approval by the court.

[28] **Section 16.** *Custody of Computer Data.* — All computer data, including content and traffic data, examined under a proper warrant shall, within forty-

14. There were some pending incidents which were already due for resolution, considering that the respective periods within which to submit the comment had already lapsed.

In most of the above-cited instances, Judge Docena would attribute the lapses to his alleged work overload. But the flimsiness in his excuse only shows how lackadaisically the search warrant proceedings are being done in his court, without regard to the essential right of every person against unreasonable searches and seizure.

Further, when SW15-615 and SW15-621 were ordered withdrawn without stating any reason for the same, Judge Docena argued that there was nothing irregular about it because it was issued in good faith for the prompt dispatch of the pending matter before the court. But it must be stressed that the withdrawn applications were duly stamped as received by the OCC. As such, even if the applications were not returned to the applicants, the receiving copies (duplicate copies) left with the applicants likewise bear the OCC stamp, and therefore, could possibly be used for extortion. Hence, there is a need to take particular attention to the reasons why the application is being withdrawn and to briefly discuss said reasons in the order.

There were also applications for search warrant filed before the OCC which were not under oath. It was only during the examination of the applicants and their witnesses that the defect was cured by Judge Docena himself by signing the *jurat*. Judge Docena maintains that he is authorized to administer oath under

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eight (48) hours after the expiration of the period fixed therein, be deposited with the court in a sealed package, and shall be accompanied by an affidavit of the law enforcement authority executing it stating the dates and times covered by the examination, and the law enforcement authority who may access the deposit, among other relevant data. The law enforcement authority shall also certify that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the package deposited with the court. The package so deposited shall not be opened, or the recordings replayed, or used in evidence, or then contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

the law. The issue here, however, is not his authority to administer oaths, but the propriety of regularly accepting applications for search warrants which are not even sworn under oath, as required under the rules.

Corollarily, the Court finds Judge Docena guilty of gross ignorance of the law, gross neglect of duty, and gross misconduct.

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with Judge Docena. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Rules of Court enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.[29]

On the other hand, gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, in so far as other persons may be affected. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[30] It is important to stress, however, that the term gross neglect of duty does not only include willful neglect or intentional wrongdoing. It can also arise from situations where such neglect which, from the gravity of the case or the frequency

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[29] *DOJ v. Judge Mislang*, A.M. No. RTJ-14-2369, July 26, 2016.

[30] *Office of the Ombudsman v. De Leon,* 705 Phil. 26, 37-38 (2013).

of instances, as in Judge Docena's case, becomes so serious in its character that it ends up endangering or threatening the public welfare.[31]

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.[32]

Indubitably, Judge Docena, motivated by bad faith, issued search warrants outside of his court's territorial jurisdiction, in violation of Section 2, Rule 126 of the Rules of Court. He likewise violated the Code of Judicial Conduct ordering judges to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal

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[31] *Clemente v. Bautista,* 710 Phil. 10, 16-17 (2013). See also *Clerk of Court Rodrigo-Ebron v. Adolfo,* 550 Phil. 449, 455 (2007).

[32] *DOJ v. Judge Mislang*, *supra* note 29.

profession and litigants in the impartiality of the judge and of the judiciary.[33]

The blatant breach of duty in this case is all over the records. Judge Docena simply used as convenient excuses oversight, inadvertence, honest mistake, lack of sufficient time to scrutinize the inventory sheets, adoption of policies implemented by previous judges, heavy caseload, and that he would always remind his staff to comply with the rules. By constantly disregarding the rules on the issuance of search warrants, Judge Docena has rendered the court rules futile. He acted with conscious indifference to the possible undesirable consequences to the parties involved.

It has been said that of all the rights of a citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves the exemption of his private affairs, books and papers from inspection and scrutiny of others. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government. Thus, in issuing a search warrant, the judge must strictly comply with the requirements of the Constitution and the statutory provisions.[34]

Judge Docena also violated Section 7, Canon 6 of the Code of Judicial Conduct which provides that judges shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Indeed, Judge Docena's acts likewise constituted gross misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important,

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[33] Section 2, Canon 3 of the Code of Judicial Conduct.

[34] *People v. Mamaril*, 465 Phil. 654, 669 (2004).

weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.[35]

To hold a judge administratively liable for gross misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice.[36] The Court has repeatedly and consistently held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated they can go to a judge who shall give them justice. They must trust the judge, otherwise, they will not go to him at all. They must believe in his sense of fairness, otherwise, they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect.[37]

In this case, the OCA aptly found Judge Docena's issuance of the subject search warrants to have been motivated by bad faith, as evidenced by the aforediscussed circumstances.

Lastly, Judge Docena also failed to comply with his administrative responsibilities under Rules 3.08 and 3.09 or the Code of Judicial Conduct which provide:

RULE 3.08 – A judge should diligently discharge administrative responsibilities, maintain professional competence in court

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[35] *Office of the Ombudsman v. De Zosa*, 751 Phil. 293, 300 (2015).

[36] *Andrada v. Hon. Judge Banzon*, *supra* note 19, at 233-234.

[37] *Lai v. People*, G.R. No. 175999, July 1, 2015.

management, and **facilitate the performance of the administrative functions of other judges and court personnel.**

RULE 3.09 – A judge should **organize and supervise the court personnel to ensure the prompt and efficient dispatch of business**, and require at all times the observance of high standards of public service and fidelity.[38]

Court Personnel of Branch 170

As it appears that the concerned court personnel in Branch 170, namely Atty. Hernandez, the Branch Clerk of Court, Zenaida Z. Salonga, the Clerk-in-Charge, together with Olivia M. Labagnao, Rosario M. San Pedro, Debhem N. Fajardo, and Gigi M. Mendoza, all court stenographers, too, are all guilty of simple neglect of duty for failure to diligently perform their respective administrative duties.

Atty. Hernandez, as the administrative officer in Branch 170, fell short of the diligence and care required of him in the following instances:

a. Case records have no minutes of the proceedings.

b. Some search warrants are incorrectly dated, thus making it appear that they were issued ahead of the date of filing of their respective applications.

c. Some search warrants were handed over to the witnesses instead of the applicants.

d. There is no date and time of receipt of the case folder by Branch 170 on the face of the search warrant applications.

e. The search warrant case folders in Branch 170 are not paginated.

f. In several applications, some documents attached thereto are not original copies.

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[38] Emphasis ours.

g. Case folders are not property stitched, and some folders have loose pages. Other folders, too, are merely attached using fasteners.

The court stenographers were likewise remiss in the performance of their duties under Section 17, Rule 136 of the Rules of Court, given that they failed to produce a total of 34 stenographic notes, or seven sets of consolidated notes, and to properly label their stenographic notes. It also appears that they only prepared transcripts of stenographic notes upon request of the applicants.

As for the Clerk-in-Charge, she clearly violated Section 12(c) of Rule 126, when she unjustifiably failed to maintain the required logbook for search warrant applications in Branch 170.

It is settled that a judge presiding over a branch of a court is, in legal contemplation, the head thereof having effective control and authority to discipline all employees within the branch.[39] Consequently, Judge Docena likewise shares accountability for the administrative lapses of his staff that contributed to the clearly disorganized and inefficient dispatch of business in Branch 170.

Finally, the Court holds Judge Magsino and Atty. Dizon administratively liable for simple misconduct, in their capacities as the Executive Judge and the Clerk of Court of the RTC of Malabon, respectively, for imposing their own internal policies and practices in lieu of the existing rules in the raffle of applications involving ordinary cases covered by Chapter V of the Guidelines.

To be specific, Judge Magsino and Atty. Dizon failed to observe the pertinent portion of Section 6 of the Guidelines which requires the search warrant applications assigned to a branch during the special raffle to be deducted from the number of cases allotted to on the next scheduled regular raffle. This, however, was not implemented in the RTC of Malabon City.[40]

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[39] *Attorney v. Atty. Mendoza-Arce,* 376 Phil. 575, 600 (1999).

[40] *Rollo,* Vol. I, pp. 551-552.

Judge Magsino and Atty. Dizon also failed to observe the proper ratio of the raffling of cases prescribed under par. 1, Chapter V of Administrative Order No. 6 dated June 30, 1975,[41] which states:

V. CASELOAD AND HONORARIUM

1. THE CASELOAD OF THE EXECUTIVE Judge shall be as follows:

x x x x x x x x x

c. In case of multiple branches (*salas*) of more than five (5), the distribution of cases shall be in the proportion of **one (1) case for the Executive Judge and two (2) for each of the other judges.**[42]

Their use of an improvised system of counting the applicants (instead of the application)[43] in the special raffle is simply unacceptable, as the Executive Judge, much less the Clerk of Court, has absolutely no discretion to deviate from the prescribed ratio for the raffling of cases without prior approval from this Court.

This resulted in an inequitable distribution of search warrant applications between Branches 170 and 74 at a ratio of almost 6:1, or a six out of seven chance that an application will be raffled to Branch 170, thereby removing the unpredictability of the raffling process, so much so that some applicants already indicate that their applications are being filed with Branch 170.

Penalties

Under Section 46(A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (*RRACCS*), gross neglect of duty is classified as a grave offense punishable by dismissal from the service (even for the first offense), while

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[41] *Id.* at 552-553.

[42] Emphasis supplied.

[43] See Annex "A", Folder of Annexes "1", p. 28.

simple neglect of duty is a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. Atty. Hernandez undoubtedly failed to meet the standards required of him as an effective and competent clerk of court.

As for Salonga (the Clerk-in-Charge) and Labagnao, Fardo, San Pedro, and Mendoza (the court stenographers), they, likewise, failed to diligently perform their respective duties.[44] Since this is their first offense, the Court rules that the penalty to be imposed upon them be that of admonition so that they be more circumspect in the performance of their respective duties.

The RRACCS classifies simple misconduct as a less grave offense, punishable by suspension without pay of one (1) month and one (1) day to six (6) months for the first offense.[45] In this case, there is no substantial evidence to show that Judge Magsino and Atty. Dizon's actions involved the elements of corruption, willful intent to violate the law, or to disregard established rules to qualify their misconduct as grave.

Finally, the Court finds that the gravity of Judge Docena's acts and omissions in the performance of his duties is so serious in character such that the Court may unquestionably impose against him the penalty of dismissal from the service. Gross neglect of duty and gross misconduct are grave offenses that merit the most severe penalty of dismissal from service.[46] Gross

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[44] *Rollo,* Vol. I, p. 595.

[45] Rule 10, Section 46(D).

[46] Revised Rules on Administrative Cases in the Civil Service (2011), Rule 10, Sec. 46. Classification of Offenses – Administrative Offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service:

a. Serious Dishonesty;
b. Gross Neglect of Duty;
c. Grave Misconduct;
d. Being Notoriously Undesirable;
e. Conviction of a crime involving moral turpitude;

ignorance of the law, which is also classified as a serious charge, is punishable by a fine of more than ₱20,000.00 but not exceeding ₱40,000.00, and suspension from office for more than three (3) but not exceeding six (6) months, without salary and other benefits, or dismissal from the service. Judge Docena's acts raised a serious question on his competence and integrity in the performance of his functions as a magistrate. Thus, the Court adopts the recommendation of the OCA that the supreme penalty of dismissal is the proper penalty to be imposed.[47] Lastly, the Court, in a number of administrative cases, had the occasion to rule that a judge may still be validly dismissed from service for gross ignorance of the law and brazen disregard of the rules even without the detestable allegation and proof of corruption.[48] Judge Docena's thirty (30) years in government service, with eight (8) years as a Technical Assistant at the Supreme Court, and his stint as an RTC Judge since 2010 cannot even be reasonably appreciated as a mitigating factor for the Court to reduce the imposable penalty upon him. On the contrary, said length of service should be considered against him since the same should have enabled him to become more knowledgeable in the application of the Rules and more discerning in the execution of his duties as a magistrate. Instead, it appears that all those years have only rendered him to become completely ignorant of the existing Rules of Court, specifically on the issuance and implementation of search warrants, and allowed

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f. Falsification of official document;
g. Physical or mental incapacity or disability due to immoral or vicious habits;

[47] *DOJ v. Judge Mislang*, A.M. No. RTJ-14-2369, July 26, 2016; citing *Peralta v. Judge Omelio*, A.M. No. RTJ-11-2259, October 22, 2013.

[48] See *Marcos v. Cabrera-Fuller*, A.M. No. RTJ-16-2472, January 24, 2017; *OCA v. Yu*, A.M. Nos. MTJ-12-1813, 12-1-09-MeTC, MTJ-13-1836, MTJ-12-1815, MTJ-13-1821, and OCA IPI Nos. 11-2398-MTJ, 11-2399-MTJ, 11-2378-MTJ, 12-2456-MTJ, November 22, 2016; *DOJ v. Judge Mislang*, A.M. No. RTJ-14-2369, July 26, 2016; *OCA v. Tormis,* A.M. No. MTJ-12-1817, March 12, 2013, 693 SCRA 117; *OCA v. Castañeda*, A.M. RTJ-12-2316, October 9, 2012, 682 SCRA 321; *Senarlo v. Paderanga*, A.M. No. RTJ-06-2025, April 5, 2010, 617 SCRA 247.

him to repeatedly abuse the trust reposed on him by taking advantage of his position. It is settled that length of service is an alternative circumstance. It is not a magic word that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can be appreciated either as a mitigating or aggravating circumstance, depending on the factual *milieu* of the case.[49] Judge Docena's actions did not only put his competency and moral character in serious doubt, but likewise placed the image of the Judiciary in serious jeopardy. In order to succeed in the Court's relentless crusade to purge the Judiciary of morally rotten members, officials, and personnel, a rigid set of rules of conduct must necessarily be imposed on judges. The standard of integrity applied to them should be higher than that of the average person for it is their integrity that gives them the privilege and right to judge.[50]

WHEREFORE, the Court finds:

1. Judge Celso R. L. Magsino, Jr., Presiding Judge, Regional Trial Court, Branch 74, Malabon City, and then Executive Judge Regional Trial Court, Malabon City, **GUILTY** of violation of Supreme Court rules and circulars, particularly on raffle of search warrant applications, issuance of search warrants, and filing of returns, and hereby **FINES** him in the amount of ₱20,000.00, with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely;

2. Atty. Esmeralda G. Dizon, Clerk of Court, Office of the Clerk of Court, Regional Trial Court, Malabon City, **GUILTY** of simple misconduct, and hereby **FINES** her in the amount of ₱20,000.00, with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely;

3. Judge Zaldy B. Docena, Presiding Judge, Regional Trial Court, Branch 170, Malabon City, **GUILTY** of gross ignorance of the law, gross negligence, and gross misconduct and hereby

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[49] *Civil Service Commission v. Cortez*, 474 Phil. 670, 686 (2004).

[50] *DOJ v. Judge Mislang*, A.M. No. RTJ-14-2369, July 26, 2016.

DISMISSES him from the service with **FORFEITURE** of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations;

4. Atty. Jesus S. Hernandez, Branch Clerk of Court, Regional Trial Court, Branch 170, Malabon City, **GUILTY** of simple neglect of duty, and hereby **SUSPENDS** him from office for a period of one (1) month without pay, with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely;

5. Zenaida Z. Salonga, Clerk-in-Charge, and Olivia M. Labagnao, Debhem E. Fardo, Rosario M. San Pedro, and Gigi M. Mendoza, Court Stenographers, Regional Trial Court, Branch 170, Malabon City, **GUILTY** of simple neglect of duty, and are **ADMONISHED** to be more diligent and circumspect in the performance of their duties.

SECOND DIVISION

[A.M. No. P-16-3511. September 6, 2017]
(Formerly OCA IPI No. 14-4346-P)

ROLANDO SOLIVA, *complainant, vs.* **REYNALDO TALEON, Sheriff IV, Regional Trial Court, Branch 10, Dipolog City, Zamboanga del Norte**, *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; THE SHERIFF'S DUTY IN THE IMPLEMENTATION OF WRIT IS PURELY MINISTERIAL, AND NON-COMPLIANCE THEREOF

WITH THE PROCEDURE LAID DOWN IN THE RULES OF COURT IN EXECUTING A WRIT CONSTITUTES SIMPLE MISCONDUCT, WHICH WARRANTS THE PENALTY OF SUSPENSION FROM THE SERVICE.— In a Report dated March 16, 2016, the Office of the Court Administrator (OCA) recommended that the administrative complaint against Sheriff Taleon be re-docketed as a regular administrative matter, and that he be found guilty of simple misconduct and suspended for three (3) months without pay, effective upon receipt of the Court's resolution. x x x. The Court hereby adopts and affirms the findings and recommendations in the x x x OCA Report. The sheriffs duty in the implementation of a writ is purely ministerial. Pursuant to Section 10(c) of Rule 39 of the Rules of Court, in enforcing the writ of execution in ejection cases, the sheriff shall give notice thereof and demand the defendant to vacate the property in three (3) days. Moreover, in the execution of a judgment for money, the sheriff must make a demand first on the judgment obligor, before resorting to garnishment and/or levy. As found by the OCA, while Sheriff Taleon argued that he first made a demand on the defendants, such claim is not supported by a Sheriffs Return. Thus, the finding of simple misconduct and the imposition of the penalty of suspension for three (3) months is warranted under the circumstances.

D E C I S I O N

CAGUIOA, *J.*:

For resolution is the letter-complaint[1] dated September 16, 2014 filed by Rolando Soliva against respondent Reynaldo Taleon, Sheriff IV, Regional Trial Court, Branch 10, Dipolog City, Zamboanga del Norte, for dishonesty, grave misconduct, and grave abuse of authority.[2]

Soliva was one of the defendants in Civil Case No. P-663, entitled "*Ageas, et al. vs. Soliva*," for forcible entry and damages,

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[1] *Rollo*, pp. 2-6.

[2] *Id*. at 238.

before the Municipal Circuit Trial Court (MCTC), Piñan-La Libertad, Zamboanga del Norte.[3] The MCTC ruled in favor of the plaintiffs.[4]

Aggrieved, Soliva filed a petition for annulment of judgment and damages with prayer for preliminary injunction, docketed as Civil Case No. 6888, before Branch 6, Regional Trial Court, Dipolog City, Zamboanga del Norte.[5] Soliva's urgent motion for issuance of temporary restraining order and/or writ of preliminary injunction was set for a hearing.[6]

Soliva alleged that, while the said urgent motion was pending, Sheriff Taleon issued notices of garnishment to several banks in Dipolog City.[7] Soliva argued that Sheriff Taleon should have first made a demand on the judgment obligors before resorting to garnishment and/or levy.[8]

Soliva also submitted a supplemental complaint[9] dated October 20, 2014, alleging that Sheriff Taleon filed an *ex-parte* request/manifestation to put Soliva's properties under levy on execution.[10] Moreover, Sheriff Taleon had not submitted a report or return relative to Civil Case No. P-663.[11] Furthermore, he caused the publication of a Notice of Sale on Levy on Execution.[12] Soliva also alleged that the MCTC Order dated October 1, 2014 in Civil Case No. P-663 directed Sheriff Taleon to follow the

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[3] *Id*. at 2, 238.

[4] *Id*.

[5] *Id*.

[6] *Id*. at 238.

[7] *Id*.

[8] *Id*. at 239.

[9] *Id*. at 52-57.

[10] *Id*. at 239.

[11] *Id*.

[12] *Id*.

procedure under Sections 9[13] and 10,[14] Rule 39 of the Rules of Court by first making a demand on the defendants to vacate

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[13] SEC. 9. *Execution of judgments for money, how enforced.* — (a) *Immediate payment on demand.* — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. x x x

x x x x x x x x x

(b) *Satisfaction by levy.* — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

x x x x x x x x x

(c) *Garnishment of debts and credits.* — The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. x x x

[14] SEC. 10. *Execution of judgments for specific act.* — xxx

x x x x x x x x x

(c) *Delivery or restitution of real property.* — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to

the subject land and to pay the damages awarded to the plaintiffs.[15] However, instead of complying with the court's directive, Sheriff Taleon proceeded with the levy.

On the other hand, Sheriff Taleon submitted his Comment[16] dated November 27, 2014 to Soliva's letter-complaint, alleging that Soliva did not want to pay the damages awarded to the plaintiffs.[17] Moreover, Sheriff Taleon alleged that he had given the occupants of the subject land sufficient time to vacate the premises.[18] In his Reply[19] dated December 29, 2014, Soliva denied Sheriff Taleon's allegations in his Comment.[20]

Meanwhile, Sheriff Taleon submitted his Comment[21] dated February 20, 2015 to Soliva's supplemental complaint, reiterating his allegations in his previous Comment and emphasizing that no temporary restraining order or injunctive writ was issued to bar the execution of the MCTC Decision in Civil Case No. P-663.[22] Moreover, Sheriff Taleon claimed that he demanded payment from Soliva, but the latter failed to tender his payment, hence, he proceeded with the garnishment.[23] Since the money from the garnishment was insufficient for the payment of the award of damages, and Soliva still refused to pay, he resorted to levy on execution.[24]

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retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

[15] See *rollo*, pp. 54, 240.

[16] *Id*. at 112-120. Denominated as "Answer."

[17] See *id*. at 115, 240.

[18] *Id*. at 116, 241.

[19] *Id*. at 80-86.

[20] See *id*. at 242.

[21] *Id*. at 156-163. Denominated as "Comment to the Supplemental Complaint."

[22] *Id*. at 156, 242.

[23] *Id*. at 157-158, 242.

[24] *Id*. at 158, 242.

In his Reply[25] dated April 8, 2015 to the said Comment, Soliva reiterated the allegations in his complaint and supplemental complaint.[26]

In a Report[27] dated March 16, 2016, the Office of the Court Administrator (OCA) recommended that the administrative complaint against Sheriff Taleon be re-docketed as a regular administrative matter, and that he be found guilty of simple misconduct and suspended for three (3) months without pay, effective upon receipt of the Court's resolution.[28] The OCA ratiocinated as follows:

> This Office has observed certain irregularities in respondent Sheriff's implementation of the writ of execution. His garnishment of complainant's account without any demand for payment so as to expedite execution contravenes the established rules as laid down in Rule 39, Rules of Court. Although it is conceded that the primary duty of a sheriff is to execute writs placed in his hands with reasonable celerity and promptness, speed should never compromise the rudiments of justice and fair play. In *Mendoza vs. Doroni*[29] the Court held that a sheriff must comply with the Rules of Court in executing a writ. Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action.
>
> Respondent Sheriff's assertion that demand for payment from complainant (the judgment obligor) may be dispensed with since it is very apparent that he has no intention of paying is untenable. It is not for respondent Sheriff to decide whether or not an important step in the execution of judgment is expendable. It bears stressing that every step in the Rules forms part of procedural due process that is guaranteed by no less than the Constitution. Hence, a demand should not be just a mere lip service but must be performed to afford the judgment obligor due process.

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[25] *Id*. at 185-191. Denominated as "Reply to Respondent's Comment to the Supplemental Complaint."

[26] *Id*. at 242-243.

[27] *Id*. at 238-246.

[28] *Id*. at 246.

[29] 516 Phil. 398, 408 (2006), citing *Tan v. Dael*, 390 Phil. 841, 845 (2000).

Respondent Sheriff's misconduct is revealed in the Order issued by Presiding Judge Vittorio Dante D. Dalman, Branch 1, MCTC, Piñan, Zamboanga del Norte, on 1 October 2014, *viz*:

> The officer executing the judgment must follow the procedure outlined under paragraph [(c)], Sec. 10 of Rule 39 of the Rules of Court by making a demand to the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days and restore possession thereof to the judgment obligee, otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as maybe reasonably necessary to retake possession, and place the judgment obligee in possession of such property. x x x
>
> As admitted by the executing sheriff in his ex-parte request and/or manifestation that the first process he made was to garnish the bank accounts of the defendants, this is not the correct procedure since the Rule mandates under both Section 9 and Section 10 of Rule 39 that the officer shall enforce execution of the judgment by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees (Sec. 9, Rule 39, 1997 Rule[s] on Civil Procedure).
>
> Hence, the officer cannot proceed to garnish the debts or credits belonging to the judgment obligor without first making a demand from him for the payment of damages awarded to the judgment obligee.
>
> On the matter of levy, it can be availed of only if the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee.
>
> In this case, as claimed by the defendants and even admitted by the executing sheriff that the first process he made was to garnish bank accounts, no such demand for payment was made from the defendants for the satisfaction of the judgment.
>
> Hence, the executing sheriff is hereby directed to follow the procedure outlined under Sec. 10, Rule 39 of the Rules of Court for the execution of the judgment for specific acts and Sec. 9 of the same Rule for the satisfaction of the damages

awarded in the judgment by first making a demand to the defendants to vacate from the land subject matter of this case and to pay the damages awarded to the plaintiffs.

Unless the demand to vacate and pay the damages was made and upon showing or proof that the defendants refused to comply and pay the damages it is not yet proper to proceed to the garnishment and to levy real or personal properties belonging to the defendants.

IN VIEW thereof, the executing sheriff is hereby directed in executing the judgment to comply with the procedure as provided in par. [(c)], Sec. 10, Rule 39 of the Rules of Court with respect to the specific acts required of the defendants and paragraph (a), Sec. 9, Rule 39 of the Rules of Court for the satisfaction of the damages awarded to the plaintiffs.

In the event that the defendants failed or refused to comply and pay the damages, then the executing sheriff can proceed to levy the properties belonging to the defendants or to proceed with the garnishment as authorized under par. b and c, Sec. 9, of Rule 39 of the Rules of Court.

In the meantime and unless the demand to the defendants has been done, the levy of the properties belonging to the defendants and the garnishment must be held in abeyance.

This was further shown in the 14 January 2015 Order of Presiding Judge Dalman, *viz*:

x x x x x x x x x

The record of this case revealed that this court in an order dated October 1, 2014 directed the sheriff to follow the procedure contained under Sections 9 and 10 of Rule 39 particularly on the requirement of prior demand to pay personally on the defendants and to desist in the meantime from proceeding with the levy unless the demand to the defendants was effected and the latter refused and/or failed to pay.

In the instant case, the executing sheriff appeared to have proceeded with the levy without showing that the defendants failed and/or refused to pay the judgment obligation upon demand.

> What is more lamentable is that the executing sheriff caused the publication of the Notice of Sale on Levy on Execution dated September 12, 2014 announcing the schedule of the execution sale on October 10, 2014.
>
> The levy of the properties and the subsequent execution sale were undertaken in violation of the order of this court dated October 1, 2014 enjoining the sheriff from proceeding with the levy unless the defendant refused to pay the judgment obligation upon demand.
>
> In the present case, there is no showing that the defendant Rolando Soliva refused and/or failed to pay the amount indicated in the judgment when a demand was made on him.
>
> In fact in his return of the writ of the execution dated October 23, 2014 the executing sheriff declared that upon verbal demand on the defendants to pay the sum of money as pronounced in the decision of the Court, the defendants are already hinting of paying the money.
>
> Hence, if that is the case then there is no basis for proceeding with the levy and the subsequent sale on execution of the properties mentioned above.

Finally, respondent Sheriff's subsequent contention that he made a demand on the judgment obligor cannot be given credence as it is not supported by a Sheriff's Return as required by the Rules. His defense is self-serving and has no weight in light of the positive assertions of complainant. Had respondent Sheriff filed the requisite return and documented the actions he undertook relative to the execution of the writ, he would have been spared from the predicament he is facing right now.

The penalty for simple misconduct is suspension for one (1) month and one (1) day to six (6) months. While respondent Sheriff's misconduct of disregarding the procedure for execution was aggravated by his failure to file a Sheriff's Return, he can be credited with the mitigating circumstance of this being his first offense so that the penalty of suspension for three (3) months is proper.[30]

The Court hereby adopts and affirms the findings and recommendations in the above OCA Report.

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[30] *Rollo*, pp. 243-246.

The sheriff's duty in the implementation of a writ is purely ministerial.[31] Pursuant to Section 10(c) of Rule 39 of the Rules of Court, in enforcing the writ of execution in ejection cases, the sheriff shall give notice thereof and demand the defendant to vacate the property in three (3) days. Moreover, in the execution of a judgment for money, the sheriff must make a demand first on the judgment obligor, before resorting to garnishment and/or levy. As found by the OCA, while Sheriff Taleon argued that he first made a demand on the defendants, such claim is not supported by a Sheriff's Return.[32] Thus, the finding of simple misconduct and the imposition of the penalty of suspension for three (3) months is warranted under the circumstances.

WHEREFORE, the Court finds respondent Reynaldo Taleon, Sheriff IV, **GUILTY** of simple misconduct and imposes upon him the penalty of **SUSPENSION** for three (3) months without pay, effective upon receipt of the Court's Decision.

SO ORDERED.

Carpio, Acting C.J. (*Chairperson*), *Peralta, Perlas-Bernabe,* and *Reyes, Jr., JJ.,* concur.

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[31] *Mendoza v. Doroni*, *supra* note 29, citing *Zarate v. Untalan*, 494 Phil. 208, 217 (2005).

[32] *Rollo*, p. 246.

THIRD DIVISION

[G.R. No. 168065. September 6, 2017]

TRINIDAD DIAZ-ENRIQUEZ represented by her Attorney-in-fact, JOSE MARCEL E. PANLILIO, substituted by MONTESOL DEVELOPMENT CORPORATION, *petitioner, vs.* **DIRECTOR OF LANDS, COURT OF APPEALS, GERONIMO SACLOLO, JOSEFINO SACLOLO and RODRIGO SACLOLO,** *respondents.*

[G.R. No. 168070. September 6, 2017]

GERONIMO SACLOLO, JOSEFINO SACLOLO and RODRIGO SACLOLO, *petitioners, vs.* **COURT OF APPEALS, TRINIDAD DIAZ-ENRIQUEZ and DIRECTOR OF LANDS,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT; THE APPELLATE COURT MAY STILL DETERMINE WHETHER THE SUBJECT LANDS ARE INDEED ALIENABLE AND DISPOSABLE LANDS OF THE PUBLIC DOMAIN, NOTWITHSTANDING THE DIRECTOR OF LANDS' FAILURE TO APPEAL FROM THE DECISION OF THE REGIONAL TRIAL COURT.— In *Laragan v. Court of Appeals*, petitioners therein averred that the appellate court could not declare the parcel of land in question as public land, because the decision of the Court of First Instance of Isabela ordering the registration of said parcel of land in their favor, had already become final and executory for failure of the Director of Lands to appeal therefrom. The Court found such argument untenable, *viz*: x x x. **Neither did such failure of the Director of Lands to appeal foreclose the appellate court from declaring the land in question to be public land, since the oppositors and the herein petitioners are both seeking the registration of their title pursuant to the provisions of Section 48 (b) of the Public Land Law where the presumption always is that the land pertains to the state, and the occupants and possessors claim an interest in the same, by virtue of their**

imperfect title or continuous, open, exclusive and notorious possession and occupation under a *bona fide* claim of ownership for the required number of years. x x x. In addition, an applicant is not necessarily entitled to have the land registered under the Torrens system simply because no one appears to oppose his title and to oppose the registration of his land. He must show, **even though there is no opposition** to the satisfaction of the court, that he is the absolute owner, in fee simple. Consequently, the appellate court may still determine whether the subject lands are indeed alienable and disposable lands of the public domain, notwithstanding the Director of Lands' failure to appeal from the RTC decision.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY MATTERS ASSIGNED AS ERRORS IN THE APPEAL MAY BE RESOLVED; EXCEPTIONS.— As a general rule, only matters assigned as errors in the appeal may be resolved. x x x. The exceptions to this rule have been enumerated in *Catholic Bishop of Balanga v. Court of Appeals*: [T]he appellate court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned. It is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. Inasmuch as the Court of Appeals may consider grounds other than those touched upon in the decision of the trial court and uphold the same on the basis of such other grounds, the Court of Appeals may, with no less authority, reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal. We have applied this rule, as a matter of exception, in the following instances: (1) Grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; (4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) Matters not assigned as errors on appeal but closely related to an error assigned; and (6) Matters not assigned as errors on appeal but upon which

the determination of a question properly assigned, is dependent. In this case, there is no doubt that the application for registration of title hinges upon the determination of whether the subject lands are alienable and disposable. Further, this is consistent with the appellate court's authority to review the totality of the controversy brought on appeal.

3. **CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT (COMMONWEALTH ACT (CA) NO. 141), AS AMENDED BY REPUBLIC ACT NO. 1942; APPLICATION FOR LAND REGISTRATION; REQUIREMENTS FOR THE GRANT THEREOF.—** The application of the Saclolos was filed on December 27, 1974. Accordingly, the law governing the application was Commonwealth Act (*C.A.*) No. 141, as amended by R.A. No. 1942, particularly Section 48 (b) x x x. As can be gleaned therefrom, the necessary requirements for the grant of an application for land registration are the following: 1. The applicant must, by himself or through his predecessors-in-interest, have been in possession and occupation of the subject land; 2. The possession and occupation must be open, continuous, exclusive, and notorious; 3. The possession and occupation must be under a *bona fide* claim of ownership for at least thirty years immediately preceding the filing of the application; and 4. The subject land must be an agricultural land of the public domain.

4. **ID.; ID.; ID.; ID.; A MERE INVOCATION OF "PRIVATE RIGHTS" DOES NOT AUTOMATICALLY ENTITLE AN APPLICANT TO HAVE THE PROPERTY REGISTERED IN HIS NAME; PERSONS CLAIMING THE PROTECTION OF PRIVATE RIGHTS IN ORDER TO EXCLUDE THEIR LANDS FROM MILITARY RESERVATIONS MUST SHOW BY CLEAR AND CONVINCING EVIDENCE THAT THE PIECES OF PROPERTY IN QUESTION HAVE BEEN ACQUIRED BY A LEGAL METHOD OF ACQUIRING PUBLIC LANDS.—** [T]he Director of Lands insists that the subject lands are within the Calumpang Point Naval Reservation. This was bolstered by the testimony of Eleutorio R. Paz, Chief of the Survey Division of the Bureau of Lands-Region 4. Thus, it was incumbent upon the Saclolos and Enriquez to prove that the subject lands do not form part of the Calumpang Point Naval Reservation because "when a property is officially declared a military reservation, it becomes inalienable and outside the

commerce of man." Indeed, Proclamation No. 307 recognizes private rights over parcels of land included in the reservation. Further, Proclamation No. 1582-A provides that the occupied portions which remained after segregating the 8,089,990 square meters shall be released to *bona fide* occupants. Thus, a mere invocation of "private rights" does not automatically entitle an applicant to have the property registered in his name. "Persons claiming the protection of private rights in order to exclude their lands from military reservations must show by clear and convincing evidence that the pieces of property in question have been acquired by a legal method of acquiring public lands." In this case, however, none of the documents presented by the Saclolos and Enriquez prove that the subject lands are alienable and disposable.

5. ID.; ID.; ID.; ID.; LANDS OF THE PUBLIC DOMAIN, UNLESS DECLARED OTHERWISE BY VIRTUE OF A STATUTE OR LAW, ARE INALIENABLE AND CAN NEVER BE ACQUIRED BY PRESCRIPTION, AS NO AMOUNT OF TIME OF POSSESSION OR OCCUPATION CAN RIPEN INTO OWNERSHIP OVER LANDS OF THE PUBLIC DOMAIN.— In *Heirs of Mario Malabanan v. Republic of the Philippines*, the Court emphasized that lands of the public domain, unless declared otherwise by virtue of a statute or law, are inalienable and can never be acquired by prescription. No amount of time of possession or occupation can ripen into ownership over lands of the public domain. All lands of the public domain presumably belong to the State and are inalienable. Lands that are not clearly under private ownership are also presumed to belong to the State and, therefore, may not be alienated or disposed. A positive act declaring land as alienable and disposable is required. In keeping with the presumption of State ownership, the Court has time and again emphasized that there must be a positive act of the government, such as an official proclamation, declassifying inalienable public land into disposable land for agricultural or other purposes. In fact, Section 8 of CA No. 141 limits alienable or disposable lands only to those lands which have been officially delimited and classified.

6. ID.; ID.; ID.; ID.; TO PROVE THAT THE LAND SUBJECT OF AN APPLICATION FOR REGISTRATION IS ALIENABLE, THE APPLICANT MUST ESTABLISH THE EXISTENCE OF A POSITIVE ACT OF THE

GOVERNMENT SUCH AS A PRESIDENTIAL PROCLAMATION OR AN EXECUTIVE ORDER, AN ADMINISTRATIVE ACTION, INVESTIGATION REPORTS OF BUREAU OF LANDS INVESTIGATORS, A LEGISLATIVE ACT OR A STATUTE, OR A CERTIFICATION FROM THE GOVERNMENT THAT THE LAND CLAIMED TO HAVE BEEN POSSESSED FOR THE REQUIRED NUMBER OF YEARS IS ALIENABLE AND DISPOSABLE.— The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable. There must still be a positive act declaring land of the public domain as alienable and disposable. To prove that the land subject of an application for registration is alienable, the applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. The applicant may also secure a certification from the government that the land claimed to have been possessed for the required number of years is alienable and disposable. In the case at bar, no such proclamation, executive order, administrative action, report, statute, or certification was presented to the Court. The records are bereft of evidence showing that the subject lands were proclaimed by the government to be alienable and disposable. Time and again, it has been held that matters of land classification or reclassification cannot be assumed. They call for proof.

APPEARANCES OF COUNSEL

Casanova Law Office and *Madrid Danao & Associates* for Trinidad Diaz-Enriquez.

J.P. Dominguez for Geronimo Saclolo, *et al.*

Office of the Solicitor General for public respondents.

D E C I S I O N

MARTIRES, *J.*:

These consolidated petitions for review on certiorari[1] seek to reverse and set aside the 26 May 2004 Decision[2] and 13 May 2005 Resolution[3] of the Court of Appeals *(CA)* in CA – G.R. CV No. 53838, which nullified the 6 July 1995 Decision[4] and the 30 January 1996 Order[5] of the Regional Trial Court, Branch 15, Naic, Cavite *(RTC),* in LRC Case No. TM-95, a case for application of registration of title.

THE FACTS

On 27 December 1974, Geronimo, Josefino, and Rodrigo, all surnamed Saclolo *(the Saclolos)* filed before the then Court of First Instance, now Regional Trial Court, Naic, Cavite, a joint application for registration of title over three (3) parcels of land *(subject lands)*, with a total area of 3,752,142 square meters (375.2 hectares) and located at Sitio Sinalam, Bario Sapang, Ternate, Cavite.[6] The Saclolos averred that they had acquired title to the subject lands through purchase and that together with their predecessors-in-interest, they had been in actual and exclusive possession, occupation, and cultivation of the subject lands since time immemorial.[7]

The government, thru the Director of Lands, Abdon Riego de Dios, and Angelina Samson filed oppositions to the

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[1] The petitioner in G.R. No. 168065 invokes both Rule 45 and Rule 65 of the Rules of Court.

[2] *Rollo* (G.R. No. 168065), pp. 22-33; penned by Associate Justice Eliezer R. De Los Santos, and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Associate Justice Rosalinda Asuncion-Vicente.

[3] *Id*. at 48.

[4] *Id*. at 49-54; penned by Judge Enrique M. Almario.

[5] *Id*. at 55-56; penned by Assisting Judge Emerito M. Agcaoili.

[6] *Rollo* (G.R. No. 168070), pp. 44-45.

[7] *Id*. at 45.

application.[8] The Director of Lands argued that the subject lands are not alienable and disposable because: they are located within the Calumpang Point Naval Reservation, segregated from the public domain by Proclamation No. 307, dated November 20, 1967; that by virtue of Republic Act *(R.A.)* No. 6236, the right to judicial confirmation of imperfect title under Section 48 of the Public Land Law, with respect to lands having an area of more than 144 hectares, has expired; that the Saclolos had not acquired title over the subject lands through any recognized mode of acquisition of title; that the Saclolos and their predecessors-in-interest had not been in open, continuous, exclusive, and notorious possession and occupation of the subject lands for at least 30 years immediately preceding the filing of the application; and that PSU 68, 69, and 70, the plans which cover the subject lands, have not been verified by the Bureau of Lands as required by Presidential Decree *(P.D.)* No. 239.[9]

On 27 December 1993, Trinidad Diaz-Enriquez *(Enriquez)* filed a motion for intervention alleging that the Saclolos had sold to her all their interests and rights over the subject lands on 19 September 1976. The RTC allowed Enriquez's claim to be litigated.[10]

The RTC Ruling

In its Decision, dated 6 July 1995, the RTC ruled that the subject lands are alienable and disposable lands of the public domain because Proclamation No. 307 itself stressed that the segregation of the Calumpang Point Naval Reservation was subject to private rights. It opined that the pieces of evidence presented by the Saclolos proved that their rights over the subject lands, being private in nature and character, were excluded from the reservation for military purposes. The *fallo* reads:

Wherefore, finding the evidence of applicants sufficient, their titles to the parcels of land applied for are hereby confirmed. The Land

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[8] *Rollo* (G.R. No. 168065), p. 49.

[9] *Rollo* (G.R. No. 168070), pp. 52-53.

[10] *Rollo* (G.R. No. 168065), p. 49.

Registration Authority is hereby Ordered to issue the corresponding decrees of registration and certificates of title in the names of the applicants subject to the intervenor's rights upon finality of judgment.[11]

In its Order, dated 30 January 1996, the RTC modified its earlier decision by ordering the issuance of the decree of registration to Enriquez.[12]

The CA Ruling

In its assailed decision, dated 26 May 2004, the CA declared that the subject lands are all within the Calumpang Point Naval Resevation, as testified to by Eleuterio R. Paz, Chief of the Survey Division of the Bureau of Lands–Region 4; thus, the said lands could not be privately titled. It held that even if Proclamation No. 307 qualifies the reservation as being subject to private rights, the Saclolos have not established by adequate proof their open, continuous, exclusive, and notorious possession over the subject lands.

The appellate court observed that the *informacion possessoria,* upon which the Saclolos heavily rely to support their claim, did not at all indicate the area covered by the claim. It added that the tax declarations, technical descriptions, sketch plans, tax receipts, deeds of sale, and surveyor's certificates did not show the nature of the Saclolos' possession.

The CA stated that the trial court disregarded the fact that judicial confirmation of imperfect title under Section 48 of the Public Land Act with respect to lands having an area of more than 144 hectares had lapsed pursuant to R.A. No. 6236, approved on 19 June 1971. It further noted that the trial court's jurisdiction to entertain the application was not established since the plans had not been verified by the Bureau of Lands as required by P.D. No. 239 and the alleged verifications in the plans were not authentic. The appellate court concluded that the subject lands could not be registered because they lie within a naval

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

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

reservation and most of them are forest and foreshore lands. It disposed the case thus:

> WHEREFORE, premises considered, the January 30, 1996 order of the trial court is REVERSED and SET ASIDE, and a new judgment is entered DISMISSING the applications for registration of title to the subject three (3) lots in LRC Case No. TM-95 for lack of jurisdiction and failure to prove acquisitive prescription.[13]

Aggrieved, the Saclolos and Enriquez moved for reconsideration, but the same was denied by the CA in its Resolution, dated 13 May 2005.

Hence, these consolidated petitions.

THE ISSUES

In G.R. No. 168070, the Saclolos raised the following issues:

I. WHETHER OR NOT THE RESPONDENT COURT OF APPEALS HAS DECIDED THE CASE (CA- G.R. CV NO. 53838 (LRC CASE NO. TM – 95 OF RTC, BRANCH XV, NAIC, CAVITE) IN A WAY NOT PROBABLY IN ACCORDANCE WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

II. WHETHER OR NOT THE RESPONDENT COURT OF APPEALS IN MAKING ITS FINDING, WENT BEYOND THE ISSUES RAISED ON APPEAL AND THE SAME IS CONTRARY TO THE ADMISSIONS OF BOTH APPELLANTS AND APPELLEES.

III. WHETHER OR NOT THE RESPONDENT COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN RELEVANT FACTS NOT DISPUTED BY THE PARTIES AND WHICH, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION.

IV. WHETHER OR NOT THE RESPONDENT COURT OF APPEALS HAS COMMITTED A GRAVE ABUSE OF DISCRETION WHEN IT DECLARED THAT THE TRIAL COURT HAD NO JURISDICTION TO TRY THE CASE

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[13] *Id*. at 33.

AND WHETHER OR NOT IN RENDERING THE QUESTIONED DECISION DATED MAY 26, 2004, AND IN ISSUING THE QUESTIONED RESOLUTION, DATED MAY 13, 2005 THE RESPONDENT COURT OF APPEALS COMMITTED A MISAPPREHENSION OF FACTS.

V. WHETHER OR NOT THE RESPONDENT COURT OF APPEALS ALSO COMMITTED A GRAVE ABUSE OF DISCRETION WHEN IT DID NOT RESOLVE THE ISSUES RAISED BY PETITIONERS AS APPLICANTS-APPELLANTS IN CA- G.R. CV NO. 53838 OF THE RESPONDENT COURT.[14]

On the other hand, in G.R. No. 168065, Enriquez submits the following assignment of errors:

I. The HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT VIOLATED AND CONTRAVENED SECTION 3, RULE 41 OF THE REVISED RULES ON CIVIL PROCEDURE.

II. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT INTERVENOR HAS NO REGISTRABLE TITLE.

III. THE HONORABLE COURT OF APPEALS CAPRICIOUSLY, ARBITRARILY AND WHIMSICALLY FOUND THAT THE REGIONAL TRIAL COURT HAD NO JURISDICTION TO TRY THE CASE.[15]

In sum, the issues are: 1) Whether the appellate court may declare that the lands sought to be registered are not alienable and disposable notwithstanding the failure of the Director of Lands to appeal from the decision of the trial court decreeing the issuance of certificates of title; 2) Whether the appellate court may resolve issues which are not raised as errors on appeal; and 3) Whether the applicants for registration of title have sufficiently proved that the subject lands are alienable and disposable.

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[14] *Rollo* (G.R. No. 168070), pp. 23-24.

[15] *Rollo* (G.R. No. 168065), p. 11.

In G.R. No. 168070, the Saclolos argue that the Director of Lands did not appeal from the RTC decision, thus, the facts pertaining to the registration of titles are already final and settled; and that Proclamation No. 307 even strengthens their rights over the subject lands for the same proclamation expressly recognizes the rights of private parties.

In G.R. No. 168065, Enriquez, citing *Carrion v. CA*,[16] avers that the appellate court committed a reversible error when it modified the decision of the trial court and granted to the Director of Lands, who did not appeal from such decision, affirmative reliefs other than those granted to them by the trial court's judgment; that Proclamation No. 1582-A excluded the private occupants from the coverage of the Calumpang Point Naval Reservation; that based on uncontroverted evidence, it has been established that the Saclolos' predecessors-in-interest have declared the subject lands for taxation purposes as early as 1945; and that the Director of Lands should have raised the plans' lack of verification during the trial of the case.

In his Comment,[17] the Director of Lands, citing *Baquiran v. CA*, counters that issues, though not specifically raised in the pleadings in the appellate court, may, in the interest of justice, be properly considered by the said court in deciding a case, if there are questions raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; that Delfin Buhain, the alleged caretaker of the Saclolos and the husband of the Saclolos' alleged predecessor-in-interest Pasencia Ruffy, testified that since he came to know of the land and up to the time it was sold to the Saclolos, his parents-in-law, his wife, and brother-in-law Roman Bernardo Ruffy had possessed the same in the concept of a true and legal owner, though he could not remember when the Saclolos bought it from his wife and brother-in-law; that the deed of sale between the Ruffys and Geronimo Saclolo covers only 170 hectares, 156 of which

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[16] 329 Phil. 698, 704 (1996); *Rollo*, pp. 13-14.

[17] *Rollo* (G.R. No. 168065), p. 91.

are mountainous areas and only 14 hectares are planted to rice and corn; that the *informacion possessoria* on which the Ruffys rely to prove that they had inherited the land from their parents does not even mention the area subject thereof; that no effort was ever taken by the Saclolos to reconcile the glaringly disproportionate areas allegedly occupied by them and their predecessors-in-interest, and the area being applied for, *i.e.*, 325.1 hectares; that Marte Saclolo, son of Geronimo Saclolo and the alleged administrator of the whole property, could only account for about 150 hectares devoted to rice, bamboo, mangoes, bananas and other fruit-bearing trees while admitting that the rest of the area applied for are forest, foreshore, and mountain lands; and that the subject lands form part of the Calumpang Point Naval Reservation, thus cannot be privately titled.

THE COURT'S RULING

The petitions are without merit.

The subject lands may still be declared public lands notwithstanding the Director of Lands' failure to appeal from the RTC decision.

In *Laragan v. Court of Appeals*,[18] petitioners therein averred that the appellate court could not declare the parcel of land in question as public land, because the decision of the Court of First Instance of Isabela ordering the registration of said parcel of land in their favor, had already become final and executory for failure of the Director of Lands to appeal therefrom. The Court found such argument untenable, *viz*:

> x x x While it may be true that the Director of Lands did not appeal from the decision of the trial court, his failure to so appeal did not make the decision of the trial court final and executory, in view of the appeal interposed by the other oppositors, Teodoro Leaño, Tomas Leaño, Francisco Leaño, and Consolacion Leaño, who also seek the confirmation of their imperfect title over the land in question.

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[18] 237 Phil. 172-184 (1987).

Neither did such failure of the Director of Lands to appeal foreclose the appellate court from declaring the land in question to be public land, since the oppositors and the herein petitioners are both seeking the registration of their title pursuant to the provisions of Section 48 (b) of the Public Land Law where the presumption always is that the land pertains to the state, and the occupants and possessors claim an interest in the same, by virtue of their imperfect title or continuous, open, exclusive and notorious possession and occupation under a *bona fide* claim of ownership for the required number of years. Thus, in their application for registration, the petitioners alleged that they "hereby apply to have the land hereinafter described brought under the operation of the Land Registration Act, and to have the title thereto registered and confirmed." The petitioners are deemed to thereby admit that, until such confirmation, the land remains public.[19] (emphasis supplied and citations omitted)

In addition, an applicant is not necessarily entitled to have the land registered under the Torrens system simply because no one appears to oppose his title and to oppose the registration of his land. He must show, **even though there is no opposition** to the satisfaction of the court, that he is the absolute owner, in fee simple.[20]

Consequently, the appellate court may still determine whether the subject lands are indeed alienable and disposable lands of the public domain, notwithstanding the Director of Lands' failure to appeal from the RTC decision.

The appellate court may reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal.

As a general rule, only matters assigned as errors in the appeal may be resolved. Section 8, Rule 51 of the Rules of Court provides:

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[19] *Id*. at 181.

[20] *Republic v. Bacas*, 721 Phil. 808, 837 (2013).

SECTION 8. *Questions that May Be Decided.* — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

The exceptions to this rule have been enumerated in *Catholic Bishop of Balanga v. Court of Appeals*:[21]

[T]he appellate court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned. It is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. Inasmuch as the Court of Appeals may consider grounds other than those touched upon in the decision of the trial court and uphold the same on the basis of such other grounds, the Court of Appeals may, with no less authority, reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal. We have applied this rule, as a matter of exception, in the following instances:

(1) Grounds not assigned as errors but affecting jurisdiction over the subject matter;
(2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;
(3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice;
(4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;
(5) Matters not assigned as errors on appeal but closely related to an error assigned; and
(6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[22] (citations omitted)

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[21] 332 Phil. 206-226 (1996).

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

In this case, there is no doubt that the application for registration of title hinges upon the determination of whether the subject lands are alienable and disposable. Further, this is consistent with the appellate court's authority to review the totality of the controversy brought on appeal.[23]

Applicants failed to prove that the subject lots are alienable and disposable.

The application of the Saclolos was filed on December 27, 1974. Accordingly, the law governing the application was Commonwealth Act *(C.A.)* No. 141, as amended by R.A. No. 1942, particularly Section 48 (b) which provides that:

> Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of **agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title** except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

As can be gleaned therefrom, the necessary requirements for the grant of an application for land registration are the following:

1. The applicant must, by himself or through his predecessors-in-interest, have been in possession and occupation of the subject land;
2. The possession and occupation must be open, continuous, exclusive, and notorious;
3. The possession and occupation must be under a *bona fide* claim of ownership for at least thirty years immediately preceding the filing of the application; and

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[23] *Heirs of Loyola v. Court of Appeals,* G.R. No. 188658, 11 January 2017.

4. The subject land must be an agricultural land of the public domain.[24]

Among these requirements, the question of whether the subject lands were declared alienable and disposable is of primordial importance because it is determinative if the land can in fact be subject to acquisitive prescription and, thus, registrable under the Torrens system. Without first determining the nature and character of the land, all the other requirements such as the length and nature of possession and occupation over such land do not come into play. The required length of possession does not operate when the land is part of the public domain.[25]

In *Republic v. Heirs of Fabio*,[26] the Court similarly tackled the issue of whether certain parcels of land located within the Calumpang Point Naval Reservation are alienable and disposable, to wit:

The three proclamations cited reserving the Calumpang Point Naval Reservation for the exclusive use of the military are the following: (1) U.S. War Department Order No. 56 issued on 25 March 1904, (2) Proclamation No. 307 issued on 20 November 1967, and (3) Proclamation No. 1582-A issued on 6 September 1976. Such proclamations state:

U.S. War Department General Order No. 56

U.S. War Department General Order No. 56
Washington, March 25, 1904.

For the knowledge and governance of all interested parties, the following is hereby announced:

The President of the United States, by the Order dated March 14, 1904, which provides that the reservations made by Executive Order of April 11, 1902 (General Order No. 38, Army Headquarters, Office of the Adjutant General, April 17, 1902), at the entrance of Manila Bay, Luzon, Philippine Islands, are arranged in such a way that will

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[24] *Republic v. Bacas, supra* note 20 at 830-831.

[25] *Id*. at 833.

[26] 595 Phil. 664, 678-683 (2008).

include only these lands as later described, whose lands were reserved by the Order of March 14, 1904 for military purposes, by virtue of Article 12 of the Act of Congress approved on July 1, 1902, entitled "Act providing for the Temporary Administration of Civil Affairs of the Government of the Philippine Islands and for Other Purposes" (32 Stat. L., 691); namely:

1. In the northern side of the entrance to Manila Bay, in the province of Bataan, Luzon (Mariveles Reservation), all public lands within the limits that are described as follows:

"Starting from the mouth of the Mariveles River in the eastern border and from here straight North to a distance of 5,280 feet; from this point straight to the East to intercept a line, in a straight direction to the South from a stone monument marked U.S. (Station 4); from there straight from the North until the aforementioned Station 4; from here straight to the East to a distance of 6,600 feet until a stone monument marked U.S. (Station 5); from here straight South to a distance of 6,600 feet until a stone monument marked U.S. (Station 6); from here straight to the East to a distance of 8,910 feet until a stone monument marked U.S. (Station 7); from here straight to the South to a distance of 7,730 feet until a stone monument marked U.S. (Station 8), situated at the northwest corner of the second creek to the east of Lasisi Point, 30 feet North of the high-tide mark; from there in the same direction until the high-tide mark; from here towards the East following the shoreline up to the starting point."

2. In the southern side of the Manila Bay entrance, in the province of Cavite, Luzon (Calumpang Point Reservation), all public lands within the limits that are described as follows:

"Starting from a stone monument marked U.S. (Station 1) situated in the cliff on the Eastern side of Asubig Point, 20 feet above the high-tide mark and about 50 feet from the edge of the cliff and continuing from there to the South 28º 10' West, a distance of up to 22,000 feet until a stone monument marked U.S. (Station 2); from here to North 54º 10' West at a distance of 5,146 feet until a stone monument marked U.S. (Station 3); from here towards South 85º 35' 30 "West, at a distance of 2,455 feet until a stone monument marked U.S. (Station 4), situated on the beach near the Northeast corner of Limbones Bay, about 50 feet from the high-tide mark and following in the same direction until the high-tide mark; from here towards North and East

following the shoreline until North 28º 10' East from the starting point and from there encompassing more or less 5,200 acres. The markers are exact."

3. The islands of Corregidor, Pulo Caballo, La Monja, El Fraile, and Carabao, and all other islands and detached rocks lying between Mariveles Reservation on the north side of the entrance to Manila Bay and Calumpang Point Reservation on the south side of said entrance.

4. The jurisdiction of the military authorities in the case of reservations in the northern and southern beaches of the entrance to Manila Bay and all the islands referred to in paragraph 3, are extended from the high-tide marker towards the sea until a distance of 1,000 yards.

By Order of the Secretary of War:
GEORGE L. GILLESPIE,
General Commander, Chief of Internal General Staff,
Official copy.
W.P. HALL, Internal Adjutant General. (Emphasis supplied)

Proclamation No. 307

. . . do hereby withdraw from sale or settlement and reserve for military purposes under the administration of the Chief of Staff, Armed Forces of the Philippines, subject to private rights, if any there be, a certain parcel of land of the public domain situated in the municipality of Ternate, province of Cavite, Island of Luzon, more particularly described as follows:

Proposed Naval Reservation

Calumpang Point

A parcel of land (the proposed Calumpang Point Naval Reservation), situated in the municipality of Ternate, province of Cavite. Bounded on the NW., N. and E., by Manila Bay; on the SE. and S., by municipality of Ternate; and on the W., by Manila Bay. Beginning at a point marked "1" on the attached Sketch Plan traced from Coastal Hydrography of Limbones Island.

thence N. 54 deg. 30' E., 750.00 m. to point 2;
thence N. 89 deg. 15' E., 1780.00 m. to point 3;
thence N. 15 deg. 10' E., 6860.00 m. to point 4;

thence N. 12 deg. 40' W., 930.00 m. to point 5;
thence S. 77 deg. 20' W., 2336.00 m. to point 6;
thence S. 49 deg. 30' W., 4450.00 m. to point 7;
thence S. 12 deg. 40' E., 2875.00 m. to point 8;
thence S. 30 deg. 30' E., 2075.00 m. to the point of beginning; containing an approximate area of twenty eight million nine hundred seventy three thousand one hundred twelve (28,973,112) square meters. CHIEDS
NOTE: All data are approximate and subject to change based on future surveys."

Proclamation No. 1582-A

WHEREAS, **Proclamation No. 307 dated November 20, 1967 and U.S. War Department Order No. 56 dated March 25, 1904 reserved for military purposes, and withdrew from sale or settlement, a parcel of land of the public domain situated in the Municipality of Ternate, Province of Cavite,** more particularly described as follows: . . .

WHEREAS, the Philippine Navy and the Philippine Marines now need that portion of this area reserved under Proclamation No. 307, particularly, Caylabne Cove, Caynipa Cove, Calumpang Cove and Sinalam Cove, for their use as official station, not only to guard and protect the mouth of Manila Bay and the shorelines of the Province[s] of Cavite, Batangas and Bataan, but also to maintain peace and order in the Corregidor area, which is now one of the leading tourist attractions in the country; . . .

. . . containing an approximate area of EIGHT MILLION EIGHTY NINE THOUSAND NINE HUNDRED NINETY (8,089,990) SQUARE METERS, more or less.

The portion that remains after the segregation which are occupied shall be released to *bona fide* occupants pursuant to existing laws/ policies regarding the disposition of lands of the public domain and the unoccupied portions shall be considered as alienable or disposable lands.

The proclamations established that as early as 1904 a certain parcel of land was placed under the exclusive use of the government for military purposes by the then colonial American government. In 1904, the U.S. War Department segregated the area, including the Lot, for military purposes through General Order No. 56. Subsequently, after the Philippines regained its independence in 1946, the American

government transferred all control and sovereignty to the Philippine government, including all the lands appropriated for a public purpose. Twenty years later, two other presidential proclamations followed, both issued by former President Ferdinand E. Marcos, restating that the same property is a naval reservation for the use of the Republic.[27] (emphases in the original)

From the foregoing proclamations, four (4) things are clear: *first*, a parcel of land containing 28,973,112 square meters, located in Ternate, Cavite, was withdrawn from sale or settlement and reserved for military purposes; *second*, by virtue of Proclamation No. 1582-A, the area reserved for military purposes was limited to 8,089,990 square meters instead of the original 28,973,112 square meters; *third*, the occupied portions, after segregating the 8,089,990 square meters, would be released to *bona fide* occupants; and *fourth*, the unoccupied portions were declared alienable and disposable lands.

To reiterate, the Director of Lands insists that the subject lands are within the Calumpang Point Naval Reservation. This was bolstered by the testimony of Eleutorio R. Paz, Chief of the Survey Division of the Bureau of Lands–Region 4.[28] Thus, it was incumbent upon the Saclolos and Enriquez to prove that the subject lands do not form part of the Calumpang Point Naval Reservation because "when a property is officially declared a military reservation, it becomes inalienable and outside the commerce of man."[29]

Indeed, Proclamation No. 307 recognizes private rights over parcels of land included in the reservation. Further, Proclamation No. 1582-A provides that the occupied portions which remained after segregating the 8,089,990 square meters shall be released to *bona fide* occupants. Thus, a mere invocation of "private rights" does not automatically entitle an applicant to have the property registered in his name. "Persons claiming the protection

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[27] *Id*. at 683.

[28] TSN, 7 January 1976; pp. 34-44.

[29] *Republic v. Bacas*, *supra* note 20 at 831.

of private rights in order to exclude their lands from military reservations must show by clear and convincing evidence that the pieces of property in question have been acquired by a legal method of acquiring public lands."[30]

In this case, however, none of the documents presented by the Saclolos and Enriquez prove that the subject lands are alienable and disposable.

First, the Investigator's Report even contradicted the claim that the subject lands are alienable and disposable as it noted that these lands are "within the extensive Calumpang Point Reservation however, the applicants assert their private rights to the subject area."[31]

Further, the *informacion possessoria* upon which the Saclolos heavily rely to support their claim neither states that the subject lands were declared alienable and disposable nor indicates the area covered thereby. It merely describes it as "capacity of three cavans seed in palay." What can only be determined from such certificate of possession is that a certain Bernabe Fabio had possessory title over a parcel of land registered in 1895 but was subsequently lost and that the children of Fabio eventually sold such parcel of land to the Spouses Ruffy.[32] This, however, does not prove that the subject lands were already legally acquired by the Saclolos and their predecessors-in-interest at a time when such parcels of land were declared alienable and disposable by the government. Moreover, it is worthy to note that P.D. No. 892 discontinued the system of registration under the Spanish Mortgage Law by categorically declaring all lands recorded under the latter system, not yet covered by Torrens title, unregistered lands. P.D. No. 892 divests the Spanish titles of any legal force and effect in establishing ownership over real property.[33]

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[30] *Republic v. Estonilo*, 512 Phil. 644, 654 (2005).

[31] Records, p. 95.

[32] *Id*. at 196.

[33] *Evangelista v. Santiago*, 497 Phil. 269, 292 (2005).

Finally, in the Deed of Sale between the heirs of the Spouses Ruffy and Geronimo Saclolo, the parcel of land was described as containing 170 hectares (1,700,000 square meters).[34] However, in the Saclolos' application for registration of title, the total area of the subject lands is stated as 375.2 hectares. Further, Marte Saclolo, son of Geronimo, could only account for 150 hectares devoted to rice, bamboo, mangoes, bananas and other fruit- bearing trees.[35] Thus, the alienability and disposability of the subject lands and even the exact area covered thereof lack factual bases.

In *Heirs of Mario Malabanan v. Republic of the Philippines*,[36] the Court emphasized that lands of the public domain, unless declared otherwise by virtue of a statute or law, are inalienable and can never be acquired by prescription. No amount of time of possession or occupation can ripen into ownership over lands of the public domain. All lands of the public domain presumably belong to the State and are inalienable. Lands that are not clearly under private ownership are also presumed to belong to the State and, therefore, may not be alienated or disposed.

A positive act declaring land as alienable and disposable is required. In keeping with the presumption of State ownership, the Court has time and again emphasized that there must be a positive act of the government, such as an official proclamation,[37] declassifying inalienable public land into disposable land for agricultural or other purposes.[38] In fact, Section 8 of CA No. 141 limits alienable or disposable lands only to those lands which have been officially delimited and classified.[39]

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[34] Records, p. 190.

[35] *Rollo* (G.R. No. 168065), p. 28.

[36] 717 Phil. 141, 168-169 (2013).

[37] *Republic v. Court of Appeals,* 278 Phil. 1, 13 (1991).

[38] *Heirs of the Late Spouses Pedro S. Palanca and Soterranea Rafols Vda. De Palanca v. Republic,* 531 Phil. 602, 617 (2006).

[39] *Chavez v. Public Estates Authority,* 433 Phil. 506, 541 (2002).

The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable.[40] To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable.[41] There must still be a positive act declaring land of the public domain as alienable and disposable. To prove that the land subject of an application for registration is alienable, the applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.[42] The applicant may also secure a certification from the government that the land claimed to have been possessed for the required number of years is alienable and disposable.[43]

In the case at bar, no such proclamation, executive order, administrative action, report, statute, or certification was presented to the Court. The records are bereft of evidence showing that the subject lands were proclaimed by the government to be alienable and disposable. Time and again, it has been held that matters of land classification or reclassification cannot be assumed. They call for proof.[44]

On a final note, it is worth emphasizing that as early as 1904, a certain parcel of land has already been reserved for military purposes. It behooves the Court how the Saclolos remained oblivious to such fact despite a considerable lapse of time. Certainly, there would have been several people who knew of such reservation considering that the same is not confidential

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[40] *Republic v. Lao,* 453 Phil. 189, 195 (2003).

[41] *Id*. at 198.

[42] *Republic of the Philippines v. Muñoz,* 562 Phil. 103, 116 (2007).

[43] *Id*. at 37 at 619.

[44] *Republic v. Naguiat,* 515 Phil. 560, 566 (2006).

information. The Saclolos and even Enriquez failed to exercise such diligence as prudent men ordinarily would. As such, they only have themselves to blame for their predicament. They should have taken full advantage of the opportunity to present during trial all pieces of evidence to prove that the subject lands are alienable and disposable especially in the light of the fact that the government vehemently opposes the registration. Thus, in view of the glaring lack of evidence as regards the alienability and disposability of the subject lands, the Court is constrained to deny their registration of title.

WHEREFORE, the 26 May 2004 Decision and 13 May 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 53838 are **AFFIRMED *in toto***.

SO ORDERED.

Carpio,[*] *Bersamin (Acting Chairperson), Leonen,* and *Gesmundo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 185938. September 6, 2017]

ALICIA M.L. COSETENG and DILIMAN PREPARATORY SCHOOL, *petitioners, vs.* **LETICIA P. PEREZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS MADE BY QUASI-JUDICIAL AND ADMINISTRATIVE TRIBUNALS, IF SUPPORTED BY

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[*] Additional member per raffle dated 16 January 2017.

SUBSTANTIAL EVIDENCE, ARE ACCORDED GREAT RESPECT AND EVEN FINALITY BY THE COURTS, EXCEPT WHEN THERE IS A SHOWING THAT A PALPABLE AND DEMONSTRABLE MISTAKE THAT NEEDS RECTIFICATION HAS BEEN COMMITTED OR WHEN THE FACTUAL FINDINGS WERE ARRIVED AT ARBITRARILY OR IN DISREGARD OF THE EVIDENCE ON RECORD.— [T]he Court reiterates that only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45. Also, factual findings of the labor tribunals when affirmed by the CA are generally accorded not only respect, but even finality, and are binding on this Court. This rule notwithstanding, it admits of exceptions such as when, as in this case, there is misapprehension of facts, thus: While it is true that factual findings made by quasi-judicial and administrative tribunals, if supported by substantial evidence, are accorded great respect and even finality by the courts, this general rule admits of exceptions. When there is a showing that a palpable and demonstrable mistake that needs rectification has been committed or when the factual findings were arrived at arbitrarily or in disregard of the evidence on record, these findings may be examined by the courts.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; FLOATING STATUS, DEFINED; AN EMPLOYEE IS PLACED UNDER FLOATING STATUS WHEN HE/SHE IS TEMPORARILY LAID-OFF OR OFF-DETAIL BY REASON OF A *BONA FIDE* SUSPENSION OF THE OPERATION OF A BUSINESS OR UNDERTAKING WHICH SHALL NOT EXCEED SIX MONTHS, AND HE/SHE DOES NOT RECEIVE ANY SALARY OR FINANCIAL BENEFIT PROVIDED BY LAW.— The Court also clarifies that while the term "floating status" was used extensively in the pleadings, as well as in the decisions of the labor tribunals and the CA, the petitioners aptly argued that Perez was not placed under floating status in its legal sense. Under case law, with reference to Article 286 of the Labor Code, floating status refers to a temporary lay-off or off-detail of an employee by reason of a bonafide suspension of the operation of a business or undertaking which shall not exceed six months. When the suspension exceeds

six months, the employment is deemed terminated. What is more, an employee who is placed under floating status does not receive any salary or financial benefit provided by law. In Perez's case, her lack of a regular teaching load and advisory class did not place her under floating status; there is no suspension of business operations and she would continue to work at the School. Her salary would remain the same, as well as her benefits.

3. ID.; ID.; ID.; ID.; THERE IS CONSTRUCTIVE DISMISSAL WHEN THERE IS CESSATION OF WORK, BECAUSE CONTINUED EMPLOYMENT IS RENDERED IMPOSSIBLE, UNREASONABLE OR UNLIKELY, AS AN OFFER INVOLVING A DEMOTION IN RANK OR A DIMINUTION IN PAY AND OTHER BENEFITS, AND IT EXISTS WHEN THERE IS CLEAR ACT OF DISCRIMINATION, INSENSIBILITY OR DISDAIN BY AN EMPLOYER WHICH BECOMES UNBEARABLE FOR THE EMPLOYEE TO CONTINUE HIS EMPLOYMENT.— *In Gan v. Galderma Philippines, Inc.*, the Court held that "resignation, being voluntary, contradicts a claim of illegal dismissal. Thus, when an employee tenders resignation, he or she has the burden of proving that the resignation was not voluntary but was actually a case of constructive dismissal; that it is a product of coercion or intimidation." As opposed to the pronouncements of the NLRC and the CA, the circumstances narrated by Perez do not constitute a case of constructive dismissal. There is constructive dismissal "when there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits." "It exists when there is clear act of discrimination, insensibility or disdain by an employer which becomes unbearable for the employee to continue his employment." The School was able to satisfactorily explain that Perez was merely reassigned and not demoted, since at the time she was supposed to return from her suspension on June 11, 1995, the school year had already started a week before June 5, 1995. The School was duty-bound to fill up all classes with the proper number of teachers even before classes began. As an academic institution, it is only but logical that the School's paramount consideration would be its students, whose learning should not be disrupted or impeded merely because of concerns regarding the teaching assignments of the School's employees.

This fact was undisputed by Perez, who was concerned only of her regular teaching load and advisory class.

4. ID.; ID.; ID.; ID.; THE RIGHT OF EMPLOYEES TO SECURITY OF TENURE DOES NOT GIVE THEM VESTED RIGHTS TO THEIR POSITIONS TO THE EXTENT OF DEPRIVING MANAGEMENT OF ITS PREROGATIVE TO CHANGE THEIR ASSIGNMENTS OR TO TRANSFER THEM.— "This Court has always upheld the employer's prerogative to regulate all aspects of employment relating to the employees' work assignment, the working methods and the place and manner of work." "Indeed, the right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them." Notably, the School manifested that had Perez not resigned from work, she would have been included in its line-up of teachers with regular load at the next semester. It is also significant that her salary and benefits would remain the same despite her reassignment. As it is, Perez opted to resign.

5. ID.; ID.; ID.; ID.; NOT EVERY INCONVENIENCE, DISRUPTION, DIFFICULTY, OR DISADVANTAGE THAT AN EMPLOYEE MUST ENDURE RESULTS IN A FINDING OF CONSTRUCTIVE DISMISSAL.— On the alleged inconvenience due to the longer hours of work required of a substitute teacher, the School has sufficiently rebutted the same. The School explained that a teacher handling regular load stays in the school premises for shorter hours since his/her responsibilities are not limited to actual teaching; he/she needs time to perform other tasks as adjunct of actual instruction, such as preparation of syllabus, planning for the conduct of each class, conducting tests, checking of test papers, and evaluation of students. Simply put, shorter working hours in the classroom or school is not equivalent to shorter hours worked. On the other hand, the role of a substitute requires that he/she be available at all school hours to fill in for any unexpected absences. He/she is not expected to prepare a lesson plan, create test questionnaires, or compute grades at home. Thus, a substitute teacher's longer working hours in the school premises as well the assignment of other non-teaching duties is only but a necessary consequence of holding such position. Again, it cannot be said that a teacher with regular load indeed enjoys shorter

hours of work as he/she has other tasks to do outside the school premises in connection with his/her classroom duties. While Perez has enjoyed her position of having a regular teaching load and advisory class for years, and may have to adjust to her temporary assignment, it is a recognized rule that "not every inconvenience, disruption, difficulty, or disadvantage that an employee must endure results in a finding of constructive dismissal." Having failed to prove that her transfer was a result of discrimination, bad faith or disdain by the petitioners, Perez's claim of constructive dismissal must necessarily fail.

6. ID.; ID.; ID.; SEPARATION PAY; AN EMPLOYEE WHO VOLUNTARILY RESIGNS FROM EMPLOYMENT IS NOT ENTITLED TO SEPARATION PAY, EXCEPT WHEN IT IS STIPULATED IN THE EMPLOYMENT CONTRACT OR COLLECTIVE BARGAINING AGREEMENT, OR IT IS SANCTIONED BY ESTABLISHED EMPLOYER PRACTICE OR POLICY; TO BE CONSIDERED AS A REGULAR COMPANY PRACTICE, THE EMPLOYEE MUST PROVE BY SUBSTANTIAL EVIDENCE THAT THE GIVING OF THE BENEFIT IS DONE OVER A LONG PERIOD OF TIME, AND THAT IT HAS BEEN MADE CONSISTENTLY AND DELIBERATELY.— As a general rule, an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or CBA, or it is sanctioned by established employer practice or policy. To be considered as a regular company practice, the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately. In an effort to show that the School has a policy of granting separation pay to its employees who resigned, Perez submitted an Affidavit executed by Limochin, a co-teacher who received separation pay from the School despite having resigned from work. A scrutiny of Limochin's affidavit reveals that the School's grant of separation benefits or financial assistance to her was an isolated act, not borne out by any established employer practice or policy. In fact, Limochin stated that she was made to choose either to voluntarily resign from work with payment of separation benefits or to face administrative proceedings, which may lead to termination, in view of her habitual absenteeism. Rather than face an

investigation, Limochin chose the first option. Still, there is nothing in her affidavit that would disclose that the School granted her monetary benefits by virtue of an established practice or policy.

7. ID.; ID.; ID.; ID.; A COMPROMISE AGREEMENT, WHICH ALLOWS AN EMPLOYEE FACING AN IMMINENT DISMISSAL TO OPT FOR HONORABLE SEVERANCE FROM EMPLOYMENT, MAY BE VALIDLY ENTERED INTO BETWEEN AN EMPLOYER AND EMPLOYEE.— [L]imochin's situation was different from Perez's; aside from resigning three years after Perez did, the School gave Limochin a choice only because she faced the possibility of an eventual termination of employment, whereas Perez did not. In *Chiang Kai Shek College v. Torres*, the Court acknowledged that, a compromise agreement, which allows an employee facing an imminent dismissal to opt for honorable severance from employment, may be validly entered into between an employer and employee.

8. ID.; ID.; ID.; ID.; TO BE ENTITLED TO RECEIVE SEPARATION PAY, THE EMPLOYEE MUST NOT BE DISMISSED BY REASON OF SERIOUS MISCONDUCT OR CAUSES REFLECTIVE OF HIS LACK OF MORAL CHARACTER. OTHERWISE, IT WILL HAVE THE EFFECT OF REWARDING RATHER THAN PUNISHING THE ERRING EMPLOYEE FOR HIS OFFENSE.— [I]t is well to emphasize that not every employee who stands to lose his job for valid cause is entitled to receive separation pay or financial assistance from his/her employer. The Court distinguishes between an employee who deserves the same and one who does not; to merit the application of social justice and equity, such employee must not be dismissed by reason of serious misconduct or causes reflective of his lack of moral character. Otherwise, it will have the effect of rewarding rather than punishing the erring employee for his offense.

9. ID.; ID.; ID.; ID.; AN EMPLOYEE WHO VOLUNTARILY RESIGNED FROM WORK IS NOT ENTITLED TO SEPARATION PAY OR FINANCIAL ASSISTANCE, AND A ONE-TIME ACT OF GIVING SEPARATION BENEFITS OR FINANCIAL ASSISTANCE TO AN EMPLOYEE COULD HARDLY BE CONSIDERED AS A PRACTICE

DONE CONSISTENTLY AND DELIBERATELY OVER A LONG PERIOD OF TIME.— [T]he Court disagrees with the view of the labor tribunals and the CA relative to the award of separation benefits to Perez. They clearly overlooked the lack of substantial evidence proving that the School grants separation pay to all its employees who resigned; its one-time act of giving separation benefits or financial assistance to an employee could hardly be considered as a practice done consistently and deliberately over a long period of time. Having voluntarily resigned from work, Perez is not entitled to separation pay or financial assistance. To reiterate, there is no evidence that payment of separation pay is stipulated in her employment contract or is sanctioned by an established practice or policy of the School.

10. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; MORAL DAMAGES; NOT AUTOMATICALLY GRANTED, FOR THERE MUST STILL BE PROOF OF THE EXISTENCE OF THE FACTUAL BASIS OF THE DAMAGE AND ITS CAUSAL RELATION TO THE DEFENDANTS' ACTS.— Anent the petitioners' prayer for moral damages on account of the complaint filed by Perez, the Court denies the same for the reason that moral damages are not automatically granted; "there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendants' acts."

11. ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES; CANNOT BE GRANTED WHERE THE PARTIES ARE NOT ENTITLED TO MORAL DAMAGES.— With respect to exemplary damages, Article 2229 of the Civil Code states that, "[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, *in addition* to the moral, temperate, liquidated or compensatory damages." Since the Court has adjudged the petitioners as not entitled to moral damages, their plea for award of exemplary damages cannot be granted pursuant to the aforestated provision.

12. ID.; ID.; ID.; ID.; ATTORNEY'S FEES; AWARD OF ATTORNEY'S FEES DEMANDS FACTUAL, LEGAL, AND EQUITABLE JUSTIFICATION, WITHOUT WHICH THE AWARD IS A CONCLUSION WITHOUT A PREMISE, ITS BASIS BEING IMPROPERLY LEFT TO SPECULATION AND CONJECTURE.— On the subject of attorney's fees,

the Court holds that while the petitioners were compelled to engage the services of a counsel and incurred litigation expenses to defend their interests, it appears that Perez was not impelled by malice and bad faith in filing her complaint. She truly, albeit erroneously, believed that she can avail of separation benefits even if she resigned from her work. Article 2208 of the Civil Code states that attorney's fees may be recovered "when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest." However, in *Delos Santos v. Papa*, the Court decreed: Award of attorney[']s fees is the exception rather than the general rule, and counsel's fees are not to be awarded every time a party wins a suit. The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.

APPEARANCES OF COUNSEL

Cvclaw Center for petitioners.
Apolinario N. Lomabao, Jr. for respondent.

D E C I S I O N

REYES, JR., *J.*:

In the present petition for review on *certiorari,* Diliman Preparatory School (the School) and its former President, Alicia M.L. Coseteng (Coseteng)[1] (petitioners, for brevity), challenge the Decision[2] dated July 29, 2008 and Resolution[3] dated December 17, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 72706, which held that Leticia P. Perez (Perez) was constructively dismissed from employment.

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[1] Deceased, *rollo*, p. 67.

[2] *Id*. at 83-105, penned by Associate Justice Amelita G. Tolentino, concurred in by Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr.

[3] *Id*. at 108-109.

The Antecedent Facts

In 1972,[4] Perez was hired by the School as a teacher for elementary students. For several years, she was a regular teacher handling Grade III Level students with a class advisory of the same level.[5] In 1994, she was assigned to teach Grade V Level students with working hours from 7:30 a.m. to 12:30 noon.[6]

Sometime in August 1994, several students reported that Perez collected payment from them for subscription to S*aranggola* magazine, an educational publication endorsed by the School. However, they did not receive their copies of the magazine, while students from other sections had already received theirs. Based on the School's standard procedure, the teachers would collect the subscription payment from their students, after which the collection should be remitted to the School's head librarian.[7]

Thereafter, the School created a committee to conduct an investigation. Perez admitted she failed to remit the subscription payment supposedly due to her busy schedule, but agreed to return the payment of the students instead.[8] Months later, or in February 1995, the School found out that only five of the 20 students were able to receive a refund of their subscription payments. Upon the School's orders, Perez returned the remaining amount on a piecemeal basis to the rest of the students.[9]

Based on the findings of the School's investigating committee, a case for misappropriation amounting to *estafa* could allegedly be built against Perez. However, in view of her extensive service to the school, as well as to give her the benefit of the doubt, the investigating committee reduced its findings to negligence and recommended that Perez be suspended without pay for ten

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[4] In Perez's Position Paper, the year 1971 was indicated, *id*. at 280.

[5] *Id*. at 189.

[6] *Id*. at 281, 325.

[7] *Id*. at 190.

[8] *Id*. at 192-193.

[9] *Id*. at 194-195.

working days.[10] Accordingly, Perez was suspended from work from April 10 to 25, 1995.[11]

Meanwhile, Perez was embroiled in another incident at the School. A co-teacher suspected that cheating occurred on January 26, 1995, during the Math quarterly examinations of Grade V students proctored by Perez. The teacher noticed that a particular student, who got low grades in the preceding quarter, received a high grade in the quarterly examinations. Upon the teacher's inquiry, the student admitted she cheated by copying the answers of another student with the consent and instruction of Perez.[12]

When the teacher reported the matter to the School, a second committee was tasked to investigate and conduct hearings relative to the controversy.[13] Even so, Perez wrote letters[14] to Coseteng and to the assistant principal, admitting her involvement in the incident. After due deliberation, the investigating committee adjudged Perez's behavior as highly irregular for a teacher and found her liable for negligence in the performance of her duties. Based on the investigating committee's recommendation,[15] Perez was suspended from work effective May 26, 1995 to June 11, 1995 with one week commutation. She was then directed to report to work on June 13, 1995 for her assignment.[16] Perez correspondingly served out her suspension.

On June 14, 1995, without reporting back to work, Perez tendered her resignation to Coseteng *via* facsimile. Her handwriten letter[17] reads:

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[10] *Id*. at 195-196.

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

[12] *Id*. at 236-237.

[13] *Id*. at 239.

[14] *Id*. at 270-271.

[15] *Id*. at 272.

[16] *Id*. at 273.

[17] *Id*. at 274.

June 14, 1995

Prof. Alicia M.L. Coseteng
Principal
Diliman Preparatory School
Commonwealth Avenue, Q.C.

Madam:

Warm Greetings!

This is to inform you that I am resigning from my present post as a permanent teacher in your prestigious institution starting today June 14, 1995.

I have to assist and accompany my veteran father who is going to the States to enjoy his benefits as a U[.]S[.]-World War Veteran.

Hoping for more success of Diliman Prep. School in the years to come.

Thank you very much.

Sincerely yours,

(Signed)
Leticia P. Perez

Upon her resignation, Perez received all amounts due her under the Private Education Retirement Annuity, a program wherein teachers and employers contribute to a fund for the availment of the teachers on their retirement.[18]

Thereafter, nothing more was heard from Perez, until she filed a Complaint[19] for payment of separation benefits with the Labor Arbiter (LA) on June 15, 1998. In her Position Paper,[20] Perez argued that she was constructively dismissed from employment[21] and prayed that she be granted separation pay in

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[18] *Id*. at 202.

[19] *Id*. at 278.

[20] *Id*. at 280-284.

[21] *Id*. at 282.

light of her twenty-three (23) years of service to the School.[22] Perez also submitted an Affidavit[23] executed by one Teresita Limochin (Limochin), who attested that she received separation pay from the School following her voluntary resignation.

On January 7, 1999, Perez filed an Amended Complaint[24] to include claims for constructive dismissal and damages against the School. She stated in her Supplemental Position Paper[25] that she opted to resign from work because she was being demoted to a floating status. From her previous working hours of 7:30 a.m. to 12:30 p.m., she would be required to stay in school from 7:30 a.m. to 5:30 p.m. as a "floating teacher." Additionally, she would have to perform non-teaching tasks as may be assigned by the School.[26] She averred that she really had no intention of going to the United States and, in fact, had never left the Philippines, but only gave that excuse in her resignation letter so as not to antagonize the petitioners.[27]

For their part, the petitioners argued that Perez's cause of action has already prescribed under Article 291[28] of the Labor Code, considering that three years had lapsed from the time of her resignation.[29] They denied that Perez was constructively dismissed from employment as her resignation was a free and voluntary act on her part.[30] They likewise refuted that Perez was demoted because her reassignment was due to a legitimate

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[22] *Id*. at 283.

[23] *Id*. at 285.

[24] *Id*. at 324.

[25] *Id*. at 325-334.

[26] *Id*. at 326.

[27] *Id.* at 329.

[28] Article 291. *Money claims.* – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

[29] *Rollo*, p. 339.

[30] *Id*. at 342.

concern — the school year would have begun by the time Perez has served out her suspension; she wouldn't be able to handle any class immediately at the beginning of a school year. But she would have to fill in for other teachers as may be necessary. Further, her salary and benefits would remain the same.[31] Moreover, the petitioners contend that they did not grant separation pay to Limochin but merely gave her financial assistance.[32]

The petitioners prayed for the dismissal of Perez's complaint and by way of counterclaim, prayed for the issuance of an order mandating Perez to pay them moral damages, exemplary damages, and attorney's fees.[33]

The Decision of the Labor Arbiter

On April 24, 2000, the LA rendered a Decision[34] granting Perez's claim for separation pay due to its conclusion that the petitioners have, as a practice, given separation pay to its employees who resigned.[35] However, the LA decreed that Perez resigned voluntarily from work and was not constructively dismissed.[36] The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered ordering respondents to pay complainant separation pay and attorney's fees in the amount of [₱]168,000[.00] and [₱]16,800.00[,] respectively.
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> The complaint for constructive dismissal, damages and respondents' counterclaims are hereby dismissed for lack of merit.
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> SO ORDERED.[37]

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[31] *Id*. at 346.

[32] *Id*. at 352.

[33] *Id*. at 364.

[34] *Id*. at 401-412, penned by Labor Arbiter Pablo C. Espiritu.

[35] *Id*. at 410.

[36] *Id*. at 409.

[37] *Id*. at 412.

Feeling aggrieved, the petitioners made a partial appeal on the LA Decision with the National Labor Relations Commission (NLRC).

The Decision of the NLRC

On May 10, 2002, the NLRC promulgated its Decision[38] modifying the LA ruling. While the NLRC affirmed the grant of separation pay to Perez, it deemed Perez as constructively dismissed from employment because she was placed on floating status.[39] The NLRC also ruled that it was erroneous to hold Coseteng liable for Perez's money claims as the former was neither a proper party to the case nor did she act with malice or bad faith.[40] The NLRC modified the LA judgment as follows:

> WHEREFORE, the decision dated 24 April 2000 is MODIFIED. The complaint against Alicia Coseteng is dismissed and the award of attorney's fees is deleted.
>
> All other findings are AFFIRMED.
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> SO ORDERED.[41]

The NLRC also denied the petitioners' motion for partial reconsideration in its Resolution[42] dated June 21, 2002, leading the petitioners to file a petition for *certiorari* before the CA.

The Decision of the CA

In its Decision[43] dated July 29, 2008, the CA dismissed the petition. It held that Perez's cause of action had not prescribed since "an employee has four years within which to institute an

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[38] *Id*. at 177-182, penned by Presiding Commissioner Lourdes C. Javier, concurred in by Commissioners Ireneo B. Bernardo and Tito F. Genilo.

[39] *Id*. at 180.

[40] *Id*. at 181.

[41] *Ibid*.

[42] *Id*. at 185-186.

[43] *Id*. at 83-105.

action for illegal dismissal."[44] As with the NLRC, the CA ruled that Perez was constructively dismissed from employment, necessitating an award for separation pay. The CA considered Perez's reassignment as a demotion amounting to additional penalty for her infractions.[45] Further, the CA reinstated the LA's award of attorney's fees to Perez. The *fallo* of the CA decision states:

> WHEREFORE, premises considered, the petition under consideration is DISMISSED. The decision of the public respondent Commission dated May 10, 2002 and its resolution dated June 21, 2002 are hereby REVERSED AND SET ASIDE. The temporary restraining order and/or writ of preliminary injunction prayed for by the petitioners, being a mere adjunct in this petition, is perforce DENIED. No pronouncement as to costs.
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> SO ORDERED.[46]

The petitioners' motion for reconsideration was likewise denied by the CA in its Resolution[47] dated December 17, 2008.

Hence, this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure.

The Issues

The petitioners maintain that, first, Perez's cause of action has already prescribed. Second, Perez failed to discharge her burden of proving that her resignation was involuntary. Third, Perez was neither demoted nor was she placed on floating status. Fourth, there is no basis for the CA's inference that the School has a practice or policy of granting separation pay to resigned employees, nor can Perez claim separation pay under the principle of social justice in view of her dishonest acts unbecoming of a teacher.[48] Finally, the petitioners prayed for the award of moral

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[44] *Id*. at 95.

[45] *Id*. at 98.

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

[47] *Id*. at 108-109.

[48] *Id*. at 25-27.

damages, exemplary damages, and attorney's fees inasmuch as Perez resorted to coercive judicial processes not for purposes of advancing a meritorious claim but merely to extort money from them.[49]

The Ruling of the Court

At the outset, the Court reiterates that only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45.[50] Also, factual findings of the labor tribunals when affirmed by the CA are generally accorded not only respect, but even finality, and are binding on this Court.[51] This rule notwithstanding, it admits of exceptions such as when, as in this case, there is misapprehension of facts, thus:

> While it is true that factual findings made by quasi-judicial and administrative tribunals, if supported by substantial evidence, are accorded great respect and even finality by the courts, this general rule admits of exceptions. When there is a showing that a palpable and demonstrable mistake that needs rectification has been committed or when the factual findings were arrived at arbitrarily or in disregard of the evidence on record, these findings may be examined by the courts.[52]

The Court also clarifies that while the term "floating status" was used extensively in the pleadings, as well as in the decisions of the labor tribunals and the CA, the petitioners aptly argued that Perez was not placed under floating status in its legal sense. Under case law,[53] with reference to Article

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[49] *Id.* at 66-68.

[50] *One Shipping Corp., et al. v. Peñafiel,* 751 Phil. 204, 209 (2015).

[51] *Nahas v. Olarte*, 734 Phil. 569, 580 (2014).

[52] *Culili v. Eastern Telecommunications Philippines, Inc.,* 657 Phil. 342, 361 (2011).

[53] *Nippon Housing Phil., Inc., et al. v. Leynes*, 670 Phil. 495 (2011); *Nationwide Security and Allied Services, Inc., v. Valderama*, 659 Phil. 362 (2011); *Pido v. National Labor Relations Commission*, 545 Phil. 507 (2007); *Valdez vs. National Labor Relations Commission*, 349 Phil. 760, 765-766 (1998).

286[54] of the Labor Code, floating status refers to a temporary lay-off or off-detail of an employee by reason of a bonafide suspension of the operation of a business or undertaking which shall not exceed six months. When the suspension exceeds six months, the employment is deemed terminated. What is more, an employee who is placed under floating status does not receive any salary or financial benefit provided by law.[55] In Perez's case, her lack of a regular teaching load and advisory class did not place her under floating status; there is no suspension of business operations and she would continue to work at the School. Her salary would remain the same, as well as her benefits.[56]

Perez was not constructively dismissed from employment

The CA affirmed the NLRC ruling that Perez was constructively dismissed from employment for the following reasons:

1. When Perez reported back for work after serving her second penalty of suspension, she was not given an assignment. She was stripped of her regular teaching load and advisory class; and

2. She was required a longer working period with the same salary rate prior to her demotion in position.[57]

But, it appears that contrary to the supposition of the CA, Perez never reported back to work after serving out her

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[54] Article 286. *When employment not deemed terminated.*– The bona-fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[55] *Exocet Security and Allied Services Corporation v. Serrano*, 744 Phil. 403, 413 (2014).

[56] *Id.* at 346.

[57] *Id.* at 97-98.

suspension. She admitted that without seeking advice first, she tendered her resignation since she could not accept the loss of her regular teaching load.[58]

In Gan v. Galderma Philippines, Inc.,[59] the Court held that "resignation, being voluntary, contradicts a claim of illegal dismissal. Thus, when an employee tenders resignation, he or she has the burden of proving that the resignation was not voluntary but was actually a case of constructive dismissal; that it is a product of coercion or intimidation."

As opposed to the pronouncements of the NLRC and the CA, the circumstances narrated by Perez do not constitute a case of constructive dismissal. There is constructive dismissal "when there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits."[60] "It exists when there is clear act of discrimination, insensibility or disdain by an employer which becomes unbearable for the employee to continue his employment."[61]

The School was able to satisfactorily explain that Perez was merely reassigned and not demoted, since at the time she was supposed to return from her suspension on June 11, 1995, the school year had already started a week before June 5, 1995.[62] The School was duty-bound to fill up all classes with the proper number of teachers even before classes began.[63] As an academic institution, it is only but logical that the School's paramount consideration would be its students, whose learning should not be disrupted or impeded merely because of concerns regarding the teaching assignments of the School's employees. This fact

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[58] *Id*. at 329.

[59] *Gan v. Galderma Philippines, Inc.*, 701 Phil. 612, 640 (2013).

[60] *Divine Word College v. Mina*, G.R. No. 195155, April 13, 2016.

[61] *Barroga v. Data Center College and Bactad,* 667 Phil. 808, 818 (2011).

[62] *Rollo*, p. 48.

[63] *Id*. at 49.

was undisputed by Perez, who was concerned only of her regular teaching load and advisory class.

"This Court has always upheld the employer's prerogative to regulate all aspects of employment relating to the employees' work assignment, the working methods and the place and manner of work."[64] "Indeed, the right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them."[65] Notably, the School manifested that had Perez not resigned from work, she would have been included in its line-up of teachers with regular load at the next semester.[66] It is also significant that her salary and benefits would remain the same despite her reassignment. As it is, Perez opted to resign.

On the alleged inconvenience due to the longer hours of work required of a substitute teacher, the School has sufficiently rebutted the same. The School explained that a teacher handling regular load stays in the school premises for shorter hours since his/her responsibilities are not limited to actual teaching; he/she needs time to perform other tasks as adjunct of actual instruction, such as preparation of syllabus, planning for the conduct of each class, conducting tests, checking of test papers, and evaluation of students.[67] Simply put, shorter working hours in the classroom or school is not equivalent to shorter hours worked.[68]

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[64] *Peckson v. Robinsons Supermarket Corporation, et al.*, 713 Phil. 471, 480 (2013).

[65] *Nippon Housing Phil., Inc., et al. v. Leynes*, 670 Phil. 495, 507 (2011).

[66] *Rollo,* p. 59.

[67] *Id*. at 348.

[68] Omnibus Rules to Implement the Labor Code, Book III, Rule I

SECTION 3. Hours worked. – The following shall be considered as compensable hours worked:

(a) All time during which an employee is required to be on duty or to be at the employer's premises or to be at a prescribed work place; and

(b) All time during which an employee is suffered or permitted to work.

On the other hand, the role of a substitute requires that he/she be available at all school hours to fill in for any unexpected absences.[69] He/she is not expected to prepare a lesson plan, create test questionnaires, or compute grades at home. Thus, a substitute teacher's longer working hours in the school premises as well the assignment of other non-teaching duties is only but a necessary consequence of holding such position.[70] Again, it cannot be said that a teacher with regular load indeed enjoys shorter hours of work as he/she has other tasks to do outside the school premises in connection with his/her classroom duties.

While Perez has enjoyed her position of having a regular teaching load and advisory class for years, and may have to adjust to her temporary assignment, it is a recognized rule that "not every inconvenience, disruption, difficulty, or disadvantage that an employee must endure results in a finding of constructive dismissal."[71] Having failed to prove that her transfer was a result of discrimination, bad faith or disdain by the petitioners, Perez's claim of constructive dismissal must necessarily fail.

No separation pay may be granted to Perez

As a general rule, an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or CBA, or it is sanctioned by established employer practice or policy.[72] To be considered as a regular company practice, the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately.[73]

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[69] *Rollo,* p. 348.

[70] *Id*. at 347.

[71] *Manalo v. Ateneo de Naga University*, 772 Phil. 366, 382 (2015).

[72] *Villaruel v. Yeo Han Guan*, 665 Phil. 212, 220 (2011).

[73] *Vergara v. Coca-Cola Bottlers Philippines, Inc.*, 707 Phil. 255, 262 (2013).

In an effort to show that the School has a policy of granting separation pay to its employees who resigned, Perez submitted an Affidavit[74] executed by Limochin, a co-teacher who received separation pay from the School despite having resigned from work.

A scrutiny of Limochin's affidavit reveals that the School's grant of separation benefits or financial assistance to her was an isolated act, not borne out by any established employer practice or policy. In fact, Limochin stated that she was made to choose either to voluntarily resign from work with payment of separation benefits or to face administrative proceedings, which may lead to termination, in view of her habitual absenteeism. Rather than face an investigation, Limochin chose the first option. Still, there is nothing in her affidavit that would disclose that the School granted her monetary benefits by virtue of an established practice or policy.

Besides, Limochin's situation was different from Perez's; aside from resigning three years after Perez did, the School gave Limochin a choice only because she faced the possibility of an eventual termination of employment, whereas Perez did not. In *Chiang Kai Shek College v. Torres,*[75] the Court acknowledged that, a compromise agreement, which allows an employee facing an imminent dismissal to opt for honorable severance from employment, may be validly entered into between an employer and employee.

On this note, it is well to emphasize that not every employee who stands to lose his job for valid cause is entitled to receive separation pay or financial assistance from his/her employer. The Court distinguishes between an employee who deserves the same and one who does not; to merit the application of social justice and equity, such employee must not be dismissed by reason of serious misconduct or causes reflective of his lack

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[74] *Rollo,* p. 285.

[75] 731 Phil. 177 (2014).

of moral character. Otherwise, it will have the effect of rewarding rather than punishing the erring employee for his offense.[76]

All in all, the Court disagrees with the view of the labor tribunals and the CA relative to the award of separation benefits to Perez. They clearly overlooked the lack of substantial evidence proving that the School grants separation pay to all its employees who resigned; its one-time act of giving separation benefits or financial assistance to an employee could hardly be considered as a practice done consistently and deliberately over a long period of time. Having voluntarily resigned from work, Perez is not entitled to separation pay or financial assistance. To reiterate, there is no evidence that payment of separation pay is stipulated in her employment contract or is sanctioned by an established practice or policy of the School.

Petitioners are not entitled to damages and attorney's fees

Anent the petitioners' prayer for moral damages on account of the complaint filed by Perez, the Court denies the same for the reason that moral damages are not automatically granted; "there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendants' acts."[77]

With respect to exemplary damages, Article 2229 of the Civil Code states that, "[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, *in addition* to the moral, temperate, liquidated or compensatory damages." Since the Court has adjudged the petitioners as not entitled to moral damages, their plea for award of exemplary damages cannot be granted pursuant to the aforestated provision.

On the subject of attorney's fees, the Court holds that while the petitioners were compelled to engage the services of a counsel and incurred litigation expenses to defend their interests, it appears that Perez was not impelled by malice and bad faith in

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[76] *PLDT vs. NLRC and Abucay*, 247 Phil. 641, 649 (1988); *China Banking Corporation v. NLRC and Cruz*, 329 Phil. 608, 612 (1996).

[77] *Crystal, et al. v. BPI*, 593 Phil. 344, 355 (2008).

filing her complaint. She truly, albeit erroneously, believed that she can avail of separation benefits even if she resigned from her work. Article 2208[78]of the Civil Code states that attorney's fees may be recovered "when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest." However, in *Delos Santos v. Papa,*[79] the Court decreed:

> Award of attorney[']s fees is the exception rather than the general rule, and counsel's fees are not to be awarded every time a party wins a suit. The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.[80]

In view of the Court's findings that Perez was not constructively dismissed from employment and therefore, not entitled to separation pay, the issue raised by the petitioners with regard to prescription need not be belabored.

WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision dated July 29, 2008 and Resolution dated December 17, 2008 of the Court of Appeals in CA-G.R. SP No. 72706 are hereby **REVERSED** and **SET ASIDE**. The complaint filed by respondent Leticia P. Perez for constructive dismissal, separation pay and damages is **DISMISSED**.

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

(1) When exemplary damages are awarded;

(2) When the defendant 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;

[79] 605 Phil. 460 (2009).

[80] *Id*. at 463.

However, petitioners Alicia M.L. Coseteng and Diliman Preparatory School's prayer for the award of moral damages, exemplary and attorney's fees must be **DENIED** for lack of merit.

SO ORDERED.

Peralta,[*] *Bersamin,*[**] *Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 197718. September 6, 2017]

PRIMITIVO MACALANDA, JR., *petitioner, vs.* **ATTY. ROQUE A. ACOSTA***, respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE QUESTION OF WHETHER THERE IS A TENANCY RELATIONSHIP BETWEEN THE PETITIONER AND RESPONDENT IS BASICALLY A QUESTION OF FACT, AND THE FINDINGS OF THE COURT OF APPEALS AND THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) AS TO THE FACT THAT PETITIONER IS NOT A *BONA FIDE* TENANT OF RESPONDENT IS ENTITLED TO RESPECT AND NONDISTURBANCE; EXCEPTIONS NOT PRESENT.— [A] Rule 45 petition is limited to questions of law and the factual findings of the lower courts or quasi-judicial agencies are conclusive on this Court. The question of whether there is a tenancy relationship between the Petitioner and

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[*] Designated Acting Chairperson per Special Order No. 2487 dated September 19, 2017.

[**] Designated additional member per Raffle dated June 28, 2010 *vice* Justice Antonio T. Carpio.

Respondent is basically a question of fact, and the findings of the CA and the DARAB as to the fact that Petitioner is not a *bona fide* tenant of Respondent is entitled to respect and nondisturbance. While there are recognized exceptions to this rule, none, however, is obtaining in the present case.

2. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; TENANCY RELATIONSHIP; ELEMENTS; THE PRESENCE OF ALL THE ELEMENTS MUST BE PROVED BY SUBSTANTIAL EVIDENCE; THE ABSENCE OF ONE WILL NOT MAKE AN ALLEGED TENANT A *DE JURE* TENANT. — In the case of *Vicente Adriano, v. Alice Tanco, Geraldine Tanco, Ronald Tanco, and Patrick Tanco*, the Court held that: Tenancy relationship is a juridical tie which arises between a landowner and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landowner, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land. For tenancy relationship to exist, therefore, the following elements must be shown to concur, to wit: (1) the parties are the landowner and the tenant; (2) the subject matter is agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and, (6) the harvest is shared between landowner and tenant or agricultural lessee. The presence of all these elements must be proved by substantial evidence, thus, the absence of one will not make an alleged tenant a *de jure* tenant. Unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure or to be covered by the Land Reform Program of the Government under existing tenancy laws. Crucial for the creation of tenancy relations would be the existence of two of the essential elements, namely, consent and sharing and/or payment of lease rentals. The existence of a tenancy relationship cannot be presumed and allegations that one is a tenant do not automatically gives rise to security of tenure.

3. ID.; ID.; ID.; THE PARTY ALLEGING THE EXISTENCE OF THE TENANCY RELATIONSHIP, CARRIES THE BURDEN OF PROVING HIS ALLEGATION THAT TENANCY EXISTS; ELEMENT OF CONSENT TO THE CREATION OF TENANCY RELATIONSHIP IS NOT SUFFICIENTLY ESTABLISHED IN CASE AT BAR. — Being the party alleging the existence of the tenancy relationship,

the Petitioner carries the burden of proving his allegation that tenancy exists. The Petitioner however miserably failed to prove the existence of such tenancy relationship. x x x. We hold that the essential element of consent is not sufficiently established because its alleged proof, that is the Deed of Agreement, does not categorically constitute Petitioner as *de jure* tenant of the subject land. In fact, in the signature portion of the Deed of Agreement, it referred to Petitioner as a "tenant/caretaker" of the subject land. Thus, the Deed of Agreement is ambiguous as to whether Petitioner is a tenant or a caretaker. Other documents must be presented to evince the consent of Respondent as to the creation of the tenancy relationship. Sadly, aside from the said deed, Petitioner failed to present any independent and concrete evidence to prove consent.

4. ID.; ID.; ID.; OCCUPANCY AND CULTIVATION OF AN AGRICULTURAL LAND, NO MATTER HOW LONG, WILL NOT *IPSO FACTO* MAKE ONE A *DE JURE* TENANT; INDEPENDENT AND CONCRETE EVIDENCE IS NECESSARY TO PROVE PERSONAL CULTIVATION, SHARING OF HARVEST, OR CONSENT OF THE LANDOWNER, AS THE PRESENCE OF A TENANCY RELATIONSHIP CANNOT BE PRESUMED. — [T]he essential element of sharing of harvest was also not sufficiently established. Petitioner failed to show any evidence that there is sharing of harvest between him and the Respondent. In his Petition for Review before the CA, Petitioner alleged that he has continuously cultivated and occupied the subject lot for a period of 17 years. On this note, common sense dictates that Petitioner, if he is indeed a *de jure* tenant, should fully know his arrangement with the Respondent as to the sharing of harvest. Petitioner however, failed to persuasively show their arrangement. Evidence such as receipt which prove the sharing of the harvest between Petitioner and Respondent were not presented in evidence. In the case of *Antonio Pagarigan, v. Angelita Yague and Shirley Asuncion*, We have consistently held that occupancy and cultivation of an agricultural land, no matter how long, will not *ipso facto* make one a *de jure* tenant. **Independent** and **concrete** evidence is necessary to prove personal cultivation, sharing of harvest, or consent of the landowner. We emphasize that the presence of a tenancy relationship cannot be presumed; the elements for its existence are explicit in law and cannot be done away with by mere conjectures. Leasehold relationship is not brought about by the mere congruence of facts but, being a legal relationship, the mutual will of the parties to that relationship should be primordial.

5. ID.; ID.; ID.; ID.; THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB), BY REASON OF ITS MANDATE AND FUNCTIONS HAS ACQUIRED EXPERTISE IN SPECIFIC MATTERS WITHIN ITS JURISDICTION, AND THE FINDINGS THEREOF DESERVE FULL RESPECT, AND OUGHT NOT TO BE ALTERED, MODIFIED OR REVERSED, WITHOUT JUSTIFIABLE REASON, ESPECIALLY WHEN THE COURT OF APPEALS AFFIRMED SUCH FINDINGS OF FACTS.— [B]oth the DARAB and the CA found that Petitioner failed to establish the existence of a tenancy relationship. Well-settled is the rule that factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive and binding upon this Court. The DARAB, by reason of its mandate and functions have acquired expertise in specific matters within their jurisdiction, and their findings deserve full respect. Without justifiable reason, their factual findings ought not to be altered, modified or reversed, especially, such as in this case, the CA affirmed such findings of facts.

APPEARANCES OF COUNSEL

Dominique C. Evangelista for petitioner.
Leopoldo C. Tulagan, Sr. for respondent.
Bohol Bohol II & Jimenez Law Offices co-counsel for respondent.

D E C I S I O N

TIJAM, *J.*:

Assailed in this Petition for Review on Certiorari under Rule 45 of the Rules of Court are the Decision[1] dated May 3,

[1] Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justice Isaias P. Dicdican and Associate Justice Angelita A. Gacutan, *Rollo*, pp. 25-35.

2011 and Resolution[2] dated July 7, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 114847. The assailed Decision affirmed the Decision[3] dated February 15, 2010 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 16406 which declared that Primitivo Macalanda, Jr. (Petitioner) is not a *bona fide* tenant of the land owned by Atty. Roque A. Acosta (Respondent) and which directed Petitioner and all persons claiming right under him to vacate the land.

The pertinent facts of the case as summarized by the CA are as follows:

> Respondent Atty. Roque Acosta filed a complaint for ejectment, collection of deliberately unpaid rentals and share of land produce plus damages against petitioner Primitivo Macalanda, Jr. before the Provincial Adjudicator of the Department of Agrarian Reform Adjudication Board, Region 1, Lingayen, Pangasinan, alleging that: petitioner is respondent's caretaker of the latter's land; respondent had filed civil cases against petitioner before the Municipal Trial Courts of Urbiztondo, Pangasinan, to secure the proceeds of the sale of the produce of land but the said court dismissed the cases as the controversy properly belonged to the agrarian courts, prompting him to file the instant complaint; petitioner wantonly violated the proprietary rights of respondent by ignoring the latter's demands for accounting of the proceeds of sale of the land's harvest for several years; and petitioner, like his father before him, is simply a caretaker of his land, whose compensation is on a sharing basis; petitioner has become [sic] arrogant and high-handed, considering himself as virtual owner by illegally withholding the amounts due respondent [sic]. Respondent prayed for a judgment ordering petitioner, not being a tenant under agrarian laws, to vacate the land and to account and pay for the produce of the land illegally withheld from and due to respondent, and to pay attorney's fees and damages. In his position paper, respondent added that petitioner, without the former's knowledge, put up a furniture and fixture shop.
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> In his Answer, petitioner, moving for the dismissal of the complaint on jurisdictional grounds, alleged that: he is a tenant of the land as established by the findings of the facts by the Municipal Circuit Trial

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[2] *Id*. at 53-56.

[3] *Id*. at 84-91.

Court of Urbiztondo, Pangasinan; he had been religiously paying all his obligations to respondent; respondent earlier filed a letter-complaint with the Municipal Agrarian Reform Office (MARO) of Urbiztondo, Pangasinan on the issue of fixing the leasehold rentals over the subject landholding, an issue which is substantially the same with the issue in the instant complaint; the instant complaint is violative of the rules on forum shopping. In his position paper, petitioner reiterated that he is a tenant of the subject land with respondent recognizing him as such, as evidenced by a deed of agreement and several letters by [sic] respondent to him.[4]

The Provincial Adjudicator dismissed the complaint for prematurity and ordered the MARO to fast track its findings, report and recommendation on respondent's letter-complaint.

Upon appeal to the DARAB, the latter reversed the Provincial Adjudicator and declared that:

WHEREFORE, premises considered, the appeal is GRANTED. The decision dated 08 October 2008 and order[sic] dated 18 December 2008 are REVERSED AND SET ASIDE. A new decision is rendered, thus:

1. DECLARING Primitivo Macalandia[sic] not a bona fide tenant of the subject land; and

2. DIRECTING Primitivo Macalandia[sic], his successors and all persons claiming right under him to vacate the subject land and return peaceful possession and occupation thereof to Atty. Roque A. Acosta.

SO ORDERED.[5]

Petitioner appealed the DARAB's decision to the CA. The CA in its Decision dated May 3, 2011 affirmed the DARAB, to wit:

WHEREFORE, the petition is DISMISSED. The Decision dated 15 February 2010 and the Resolution dated 19 June 2010, both of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB CASE No. 16406, are AFFIRMED.

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[4] *Rollo*, pp. 26-27.

[5] *Rollo,* pp. 90-91.

SO ORDERED.[6]

Petitioner files the instant Petition insisting that he is a tenant of Respondent. Petitioner alleged that his occupation and cultivation of the subject land is with the consent of Respondent. Thus, the issue to be resolved in the instant case is whether or not there is a tenancy relationship between Petitioner and Respondent.

The petition is unmeritorious.

At the outset, a Rule 45 petition is limited to questions of law and the factual findings of the lower courts or quasi-judicial agencies are conclusive on this Court.[7] The question of whether there is a tenancy relationship between the Petitioner and Respondent is basically a question of fact, and the findings of the CA and the DARAB as to the fact that Petitioner is not a *bona fide* tenant of Respondent is entitled to respect and nondisturbance.[8] While there are recognized exceptions[9] to this rule, none, however, is obtaining in the present case.

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

[7] *Heirs of Lorenzo Buensuceso, et al., v. Perez, et al.,* 705 Phil. 460, 468 (2013).

[8] *Estate of Pastor M. Samson, v. Spouses Susano,* 664 Phil. 590, 611 (2011).

[9] In *Prudential Bank (now Bank of the Philippine Islands) vs. Ronald Rapanot, et al., G.R. No. 191636, January 16, 2017*, We held that as a general rule, only questions of law may be raised in petitions filed under Rule 45. However, there are recognized exceptions to this general rule, namely: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed

In the case of *Vicente Adriano, v. Alice Tanco, Geraldine Tanco, Ronald Tanco, and Patrick Tanco,*[10] the Court held that*:*

> Tenancy relationship is a juridical tie which arises between a landowner and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landowner, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land.[11]

For tenancy relationship to exist, therefore, the following elements must be shown to concur, to wit: (1) the parties are the landowner and the tenant; (2) the subject matter is agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and, (6) the harvest is shared between landowner and tenant or agricultural lessee. The presence of all these elements must be proved by substantial evidence, thus, the absence of one will not make an alleged tenant a *de jure* tenant. Unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure or to be covered by the Land Reform Program of the Government under existing tenancy laws.[12] Crucial for the creation of tenancy relations would be the existence of two of the essential elements, namely, consent and sharing and/or payment of lease rentals.[13] The existence of a tenancy relationship cannot be presumed and allegations that one is a tenant do not automatically gives rise to security of tenure.[14]

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by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[10] 637 Phil. 218 (2010).

[11] *Id*. at 227.

[12] *Caluzor v. Llanilo, et al.,* 762 Phil. 353, 366 (2015).

[13] *Soliman, et al., v. Pampanga Sugar Development Company, (PASUDECO) Inc., et al.*, 607 Phil. 209, 222 (2009).

[14] *Supra* note 11, *id*. at 221.

Being the party alleging the existence of the tenancy relationship, the Petitioner carries the burden of proving his allegation that tenancy exists.[15] The Petitioner however miserably failed to prove the existence of such tenancy relationship.

Petitioner claims that he is a *bona fide* tenant of Respondent. To prove the existence of the tenancy relationship, Petitioner presented the Deed of Agreement[16] executed by Respondent in favor of Eddie Macalanda, wherein it stated that the subject land was "tenanted by Goyo Macalanda." The said document was even signed by Respondent as owner and by Petitioner as tenant of the land to signify the latter's consent to the creation of an easement in favor of Eddie Macalanda. Petitioner claims that the same is an evidence of acknowledgment by Respondent as to the existence of a tenancy relationship.

We hold that the essential element of consent is not sufficiently established because its alleged proof, that is the Deed of Agreement, does not categorically constitute Petitioner as *de jure* tenant of the subject land. In fact, in the signature portion of the Deed of Agreement, it referred to Petitioner as a "tenant/caretaker" of the subject land. Thus, the Deed of Agreement is ambiguous as to whether Petitioner is a tenant or a caretaker. Other documents must be presented to evince the consent of Respondent as to the creation of the tenancy relationship. Sadly, aside from the said deed, Petitioner failed to present any independent and concrete evidence to prove consent.

Further, the essential element of sharing of harvest was also not sufficiently established. Petitioner failed to show any evidence that there is sharing of harvest between him and the Respondent. In his Petition for Review before the CA, Petitioner alleged that he has continuously cultivated and occupied the subject lot for a period of 17 years.[17] On this note, common sense dictates

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[15] *Supra* note 10, *id*. at 366.

[16] *Rollo*, p. 206.

[17] *Id*. at 70.

that Petitioner, if he is indeed a *de jure* tenant, should fully know his arrangement with the Respondent as to the sharing of harvest. Petitioner however, failed to persuasively show their arrangement. Evidence such as receipts which prove the sharing of the harvest between Petitioner and Respondent were not presented in evidence.

In the case of *Antonio Pagarigan, v. Angelita Yague and Shirley Asuncion,*[18]

> We have consistently held that occupancy and cultivation of an agricultural land, no matter how long, will not *ipso facto* make one a *de jure* tenant. **Independent** and **concrete** evidence is necessary to prove personal cultivation, sharing of harvest, or consent of the landowner. We emphasize that the presence of a tenancy relationship cannot be presumed; the elements for its existence are explicit in law and cannot be done away with by mere conjectures. Leasehold relationship is not brought about by the mere congruence of facts but, being a legal relationship, the mutual will of the parties to that relationship should be primordial.[19] (Emphasis supplied)

In the present case, both the DARAB and the CA found that Petitioner failed to establish the existence of a tenancy relationship. Well-settled is the rule that factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive and binding upon this Court. The DARAB, by reason of its mandate and functions have acquired expertise in specific matters within their jurisdiction, and their findings deserve full respect. Without justifiable reason, their factual findings ought not to be altered, modified or reversed,[20] especially, such as in this case, the CA affirmed such findings of facts.

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[18] 758 Phil. 375 (2015).

[19] *Id*. at 380.

[20] *Cabral v. Adolfo, et al.*, G.R. No. 198160, August 31, 2016.

WHEREFORE, the foregoing considered, the instant Petition for Review on Certiorari is **DENIED**. The Decision dated May 3, 2011 and Resolution dated July 7, 2011 of the Court of Appeals in CA-G.R. SP No. 114847 are **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro, del Castillo, and *Jardeleza, JJ.,* concur.

Sereno, C.J. (*Chairperson*), on official leave.

THIRD DIVISION

[G.R. No. 197745. September 6, 2017]

ATTY. MELITA S. RECTO-SAMBAJON, *petitioner, vs.* **PUBLIC ATTORNEY'S OFFICE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE DISCIPLINING AUTHORITIES HAVE THE RIGHT TO APPEAL THE DECISIONS OF THE CIVIL SERVICE COMMISSION WHICH HAVE MODIFIED THE PENALTY ORIGINALLY METED AGAINST ERRING GOVERNMENT PERSONNEL; IF IT WERE OTHERWISE, THE GOVERNMENT WOULD BE DEPRIVED OF ITS RIGHT TO WEED OUT UNDESERVING PUBLIC SERVANTS.— In *Light Rail Transit Authority v. Salavaña*, the Court ruled that decisions modifying the penalty imposed on erring government employees may be appealed by the disciplining authority, to wit: x x x. **Thus, we now hold that the parties adversely affected by a decision in an administrative case who may appeal shall include the disciplining authority whose decision dismissing the employee was either overturned or modified by the Civil Service Commission.** Thus, under the present legal milieu,

disciplining authorities have the right to appeal CSC decisions which have modified the penalty originally meted against erring government personnel. If it were otherwise, the government would be deprived of its right to weed out undeserving public servants. Consequently, the PAO had legal standing to appeal the decision reinstating Atty. Recto-Sambajon to her former post, whom it previously found unfit to continue as a public attorney.

2. ID.; ID.; ID.; FINDINGS OF FACT MADE BY QUASI-JUDICIAL AND ADMINISTRATIVE BODIES ARE GENERALLY BINDING UPON THE COURT, EXCEPT WHEN IT IS IN DISREGARD OF THE EVIDENCE ON RECORD.— The PAO pointed out that it only questioned the CSC's conclusions and findings and did not challenge the jurisdiction of the CSC to entertain Atty. Recto-Sambajon's appeal. To reiterate, decisions of the CSC, either exonerating the government employee concerned or modifying the penalty imposed, may be appealed to the CA. In addition, while the Court agrees that, as a rule, findings of fact made by quasi-judicial and administrative bodies are generally binding upon the Court, it admits exceptions such as when it is in disregard of the evidence on record.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; MISCONDUCT, DEFINED; IN ORDER THAT AN ACTION BE DEEMED A "MISCONDUCT" IT MUST HAVE A DIRECT RELATION TO AND BE CONNECTED WITH THE PERFORMANCE OF THE EMPLOYEE'S OFFICIAL DUTIES AMOUNTING EITHER TO MALADMINISTRATION OR WILFUL, INTENTIONAL NEGLECT OR FAILURE TO DISCHARGE THE DUTIES OF THE OFFICE.— "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behaviour or gross negligence by a public officer." It is qualified as grave when it is attended with corruption or wilful intent to violate the law or to disregard established rules—otherwise the misconduct is only simple. In addition, in order that an action be deemed a "misconduct" it must have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or wilful, intentional neglect or failure to discharge the duties of the office.

4. ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; NEED NOT BE RELATED TO OR CONNECTED WITH THE PUBLIC OFFICER'S OFFICIAL FUNCTION AS IT SUFFICES THAT THE ACT IN QUESTION TARNISHES THE IMAGE AND INTEGRITY OF HIS/HER PUBLIC OFFICE; UTTERING THREATENING REMARKS AGAINST COLLEAGUES CONSTITUTES CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— The Court agrees with the CA's observation that Atty. Recto-Sambajon's threats should not be treated lightly as it may have serious repercussions considering that it involved infliction of bodily harm or death. However, the remarks in question are not tantamount to grave misconduct because it lacks the element of direct relation to the performance of official duties. As can be gleaned from the records, Atty. Recto-Sambajon issued the threats because of the rumours spread against her, such as her allegedly crying after her supposed reassignment. Thus, it can be readily seen that the threats Atty. Recto-Sambajon uttered had no direct relation to or connection with the performance of her official duties amounting either to maladministration or wilful, intentional neglect or failure to discharge the duties of the office. Instead, Atty. Recto-Sambajon's actions constitute Conduct Prejudicial to the Best Interest of the Interest Service, a grave offense under the RRACCS. Unlike Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service need not be related to or connected with the public officer's official function as it suffices that the act in question tarnishes the image and integrity of his/her public office. Thus, it is broader as it encompasses all transgressions which may put a particular public office in a bad light. Surely, Atty. Recto-Sambajon uttering threatening remarks against her colleagues, more so in the presence of Chief Acosta, stained the image and integrity of the PAO as a public institution.

5. ID.; ID.; ID.; ADMINISTRATIVE OFFENSE OF BEING; NOTORIOUSLY UNDESIRABLE; TWO-FOLD TEST: WHETHER IT IS COMMON KNOWLEDGE OR GENERALLY KNOWN AS UNIVERSALLY BELIEVED TO BE TRUE OR MANIFEST TO THE WORLD THAT THE EMPLOYEE COMMITTED THE ACTS IMPUTED AGAINST HIM; AND WHETHER HE HAD

CONTRACTED THE HABIT FOR ANY OF THE ENUMERATED MISDEMEANORS; PETITIONER FOUND NOTORIOUSLY UNDESIRABLE.— In the administrative offense of Being Notoriously Undesirable, a two-fold test is employed, to wit: (1) whether it is common knowledge or generally known as universally believed to be true or manifest to the world that the employee committed the acts imputed against him; and (2) whether he had contracted the habit for any of the enumerated misdemeanors. Applying these, the Court finds Atty. Recto-Sambajon guilty of Being Notoriously Undesirable. In this case, the threatening remarks made by Atty. Recto-Sambajon were generally known considering that she made those remarks in the presence of several colleagues. In fact, she admited to have uttered such but justified it as an emotional outburst. Further, Atty. Recto-Sambajon manifested a predilection to be violent with her colleagues. We note that Atty. Recto-Sambajon had threatened her colleagues on several consecutive days and even had the audacity to utter menacing remarks in the presence of Chief Acosta. Her threats cannot simply be treated as an emotional outburst considering that she made them on several occasions. More importantly, the hostile remarks were of a grave nature considering that she had threatened, not merely to inflict physical pain, but to cause death. Thus, there is substantial evidence to hold her Notoriously Undesirable. Atty. Recto-Sambajon's hostile and menacing attitude towards her colleagues has no place in public service.

6. ID.; ID.; ID.; BEING NOTORIOUSLY UNDESIRABLE AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE ARE CLASSIFIED AS GRAVE OFFENSES; PROPER IMPOSABLE PENALTY.— Under Rule 10, Section 46(A) of the RRACCS, Being Notoriously Undesirable is a grave offense punishable by dismissal from service. On the other hand, Rule 10 Section 46(B) thereof classifies Conduct Prejudicial to the Best Interest of the Service as a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense. In the case at bar, Atty. Recto-Sambajon is guilty of two grave offenses with different penalties. Applying Rule 10, Section 50 of the RRACCS, the appropriate penalty to be imposed on Atty. Recto-Sambajon is dismissal from service.

APPEARANCES OF COUNSEL

Fba Ferrer Bareng Abasta & Associates for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

MARTIRES, *J.*:

This Petition for Review on Certiorari seeks to reverse and set aside the 25 May 2011 Decision[1] and the 13 July 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 117768, reversing the 17 May 2010[3] and 11 January 2011[4] Resolutions of the Civil Service Commission *(CSC)*, and finding Atty. Melita S. Recto-Sambajon *(Atty. Recto-Sambajon)* guilty of Grave Misconduct and of Being Notoriously Undesirable.

THE FACTS

On 17 June 2009, Chief Public Attorney Persida V. Rueda-Acosta *(Chief Acosta)* summoned petitioner Atty. Recto-Sambajon due to the latter's reaction to her reassignment from the Public Attorney's Office *(PAO)* Legal Research Service – Central Office to the PAO Valenzuela City office. Initially, Atty. Recto-Sambajon denied reports that she had cried over her supposed reassignment. She, however, was overcome by emotion and uttered in anger, "*Yung mga naghahatid [ng] maling impormasyon kay Chief ay paduduguin ko ang mata*." Her outburst was witnessed by Marilyn Boongaling *(Boongaling)*,

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[1] *Rollo*, pp. 74-99; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca de Guia-Salvador and Normandie B. Pizarro.

[2] *Id*. at 71-72.

[3] *Id*. at 274-285; Penned by Commissioner Mary Ann Z. Fernandez-Mendoza and concurred in by Chairman Francisco T. Duque III and Commissioner Cesar D. Buenaflor.

[4] *Id*. at 400-407.

Ma. Ruby F. Florendo, Alma E. Dumago-Latos and Tricia Larrissa Leofando, PAO personnel present at that time.[5]

On 18 June 2009, Atty. Recto-Sambajon, together with Atty. Froilan Cabarios, Officer-in-Charge of the Field Operation and Statistics Office, went to the office of Atty. Amelia C. Garchitorena *(Atty. Garchitorena)*, head of the Special and Appealed Cases *(SACS)* and asked Atty. Garchitorena whether Herminia Polo, a SACS staff, told Chief Acosta that she had cried after learning of her reassignment. Atty. Garchitorena responded that she told Chief Acosta that Atty. Recto-Sambajon cried when the latter learned that she would be reassigned, and that during their conversation, Atty. Recto-Sambajon threatened "[w]hoever will feed any wrong information to the Chief, I will shoot them conjoined through the eyes."[6]

On 22 June 2009, after the flag ceremony, Atty. Recto-Sambajon asked Nelson Acevedo *(Acevedo)*, an administrative staff, where Boongaling was. When Acevedo told her that Boongaling was at the conference room, she responded, *"[s]abihin mo sa kanya, pag may nangyari sa anak ko babarilin ko siya*." While Acevedo was trying to pacify Atty. Recto-Sambajon, Boongaling emerged from the conference room and called Acevedo. After seeing Boongaling, Atty. Recto-Sambajon reiterated her threats and told the former she would shoot her should anything happen to her child as she was pregnant at the time. For fear that Atty. Recto-Sambajon would carry out her threats, Boongaling reported the incident to Chief Acosta on the same day.[7]

In a Memorandum,[8] dated 25 June 2009, Deputy Chief Public Attorney Silvestre A. Mosing *(Atty. Mosing)* ordered Atty. Recto-Sambajon to explain why she should not be administratively

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[5] *Id*. at 23-24.

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

[7] *Id*. at 25.

[8] *Id*. at 416.

charged with Grave Misconduct. In her Memorandum,[9] dated 31 July 2009, Atty. Recto-Sambajon explained that: she had uttered the threatening words to defend herself from the false rumors spreading against her; and that she was in an unstable physical condition due to her pregnancy having a history of miscarriage, which was known to her colleagues.

On 17 August 2009, Atty. Recto-Sambajon was formally charged for Grave Misconduct and for being Notoriously Undesirable. In the PAO's 8 December 2009 Decision,[10] Atty. Mosing found her guilty of the offenses charged and accordingly dismissed her from the service. Chief Acosta approved the decision. Atty. Mosing opined that there was substantial evidence to find Atty. Recto-Sambajon guilty of Grave Misconduct and for being Notoriously Undesirable, noting that Atty. Recto-Sambajon's remarks were tantamount to Grave Threats punishable under Article 282 of the Revised Penal Code. He highlighted the grounds to support the findings that Atty. Recto-Sambajon was Notoriously Undesirable: her threatening remarks; her allegations of immaterial and irrelevant events in her memorandum; her act of filing a petition for injunction against her reassignment; and her resort to a media interview to assail her reassignment.

Aggrieved, Atty. Recto-Sambajon appealed before the CSC.

The CSC Ruling

In its 17 May 2010 Resolution,[11] the CSC partially granted Atty. Recto-Sambajon's appeal. It concurred that she failed to observe the standards expected of a public servant by intimidating or threatening her colleagues. The CSC, however, disagreed that Atty. Recto-Sambajon's hostile remarks amounted to Grave Misconduct because it was not shown that she was tainted with a depraved and corrupt mind and that she intended to violate

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[9] *Id.* at 431-441.

[10] *Id.* at 474-505.

[11] *Id.* at 274-285.

the law or to exhibit a flagrant disregard of established rule. It pointed out that she was only emotional considering that she was subjected to malicious rumours which put her integrity into question and which could possibly affect the welfare of the child she was carrying. In addition, the CSC found that Atty. Recto-Sambajon was not Notoriously Undesirable considering her satisfactory performance rating, and that she had no previous record of any malfeasance, misfeasance and nonfeasance. It thus concluded that Atty. Recto-Sambajon was guilty only of Simple Misconduct. The dispositive portion reads:

> **WHEREFORE**, the appeal of Melita S. Recto, Public Attorney IV, Public Attorney's Office (PAO) – Valenzuela District Office, National Capital Region, is hereby **PARTLY GRANTED**. Accordingly, the Decision dated December 8, 2009 issued by Secretary Agnes VST Devanadera, Department of Justice (DOJ) on December 16, 2009, finding her guilty of the administrative offenses of Grave Misconduct and Being Notoriously Undesirable and meting upon her the penalty of dismissal from the service including all its accessory penalties, is hereby **MODIFIED** to the extent that she is found guilty of Simple Misconduct only and meted the penalty of suspension from the service for six (6) months.[12]

The PAO moved for reconsideration but it was denied by the CSC in its 24 January 2011 Resolution. Undeterred, the PAO appealed before the CA.

THE CA RULING

In its assailed 25 May 2011 Decision, the CA reversed and set aside the CSC resolution ruling that the PAO had the authority to appeal the CSC resolutions pursuant to *Geronga v. Varela (Varela)*.[13] Further, it disagreed with the CSC that Atty. Recto-Sambajon was guilty only of Simple Misconduct because the grave threats she uttered displayed a violent, dangerous, if not murderous, tendency towards her colleagues. The CA explained that the nature of Atty. Recto-Sambajon's threats shows that it

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[12] *Id*. at 285.

[13] 570 Phil. 39 (2008).

was not merely an error in judgment but motivated by a wrongful intent. It emphasized that her remarks amounted to grave threats. On the other hand, the appellate court expounded that her repeated threats evince a vicious cycle of violence and uncontrolled temper which could result in dire consequences if not promptly curtailed. Thus, the CA agreed that Atty. Recto-Sambajon was also guilty of Being Notoriously Undesirable, thus, it ruled:

> **ACCORDINGLY**, the petition is **GRANTED**. CSC Resolution NO. 10-0919 dated May 17, 2010 and CSC Resolution no 1100070 dated January 11, 2011 are SET ASIDE, and, in lieu thereof, PAO **RESOLUTION** dated December 8, 2009, as confirmed by the Secretary of the Department of Justice, finding Atty. Melita S. Recto-Sambajon guilty of Grave Misconduct and Being Notoriously Undesirable, and imposing on her the penalty of **DISMISSAL** from the service, with all its accessory penalties, is **REINSTATED**.
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> The prayer for injunctive relief is considered moot and academic.[14]

Atty. Recto-Sambajon moved for reconsideration but was denied by the CA in its assailed 13 July 2011 Resolution.

Hence, this appeal raising the following:

ISSUES

I.

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN TAKING COGNIZANCE OF THE PETITION IN CA-G.R. SP NO. 117768, THE SAME NOT BEING AVAILABLE AS A REMEDY OF THE PUBLIC ATTORNEY'S OFFICE (PAO) IN ASSAILING CIVIL SERVICE COMMISSION RESOLUTION NO. 100919 DATED 17 MAY 2010 AND CIVIL SERVICE COMMISSION RESOLUTION NO. 1100070 DATED 11 JANUARY 2011;

II.

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN SETTING

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[14] *Rollo*, pp. 98-99.

ASIDE THE ASSAILED RESOLUTIONS OF THE CIVIL SERVICE COMMISSION (CSC) AND IN DISREGARDING ITS FINDINGS OF FACT; AND

III.

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN HOLDING THAT HEREIN PETITIONER IS GUILTY OF GRAVE MISCONDUCT AND OF BEING NOTORIOUSLY UNDESIRABLE.[15]

THE COURT'S RULING

The petition has no merit.

Disciplining authority may appeal the decision which reduced the original penalty imposed.

Atty. Recto-Sambajon argues that the CSC resolution which reduced her offense from grave misconduct to simple misconduct cannot be appealed by the PAO. She explains that the pronouncements in *Varela* are inapplicable because she was not exonerated of the charges as her offense and the corresponding penalty were merely downgraded.

A cursory reading of the ruling in *Varela* reveals that it had definitively addressed the issue whether a CSC decision exonerating an erring government employee may be appealed by the disciplining authority. It, however, did not answer whether a decision downgrading the offense and the corresponding penalty may be appealed.

Nevertheless, under the present rules and jurisprudence, the question whether such decision may be appealed had been settled. In *Light Rail Transit Authority v. Salavaña*,[16] the Court ruled that decisions modifying the penalty imposed on erring

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[15] *Id.* at 37-38.

[16] 736 Phil. 123 (2014).

government employees may be appealed by the disciplining authority, to wit:

> The employer has the right "to select honest and trustworthy employees." When the government office disciplines an employee based on causes and procedures allowed by law, it exercises its discretion. This discretion is inherent in the constitutional principle 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." This is a principle that can be invoked by the public as well as the government office employing the public officer.
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> Honesty and integrity are important traits required of those in public service. **If all decisions by quasi-judicial bodies modifying the penalty of dismissal were allowed to become final and unappealable, it would, in effect, show tolerance to conduct unbecoming of a public servant.** The quality of civil service would erode, and the citizens would end up suffering for it. (emphasis supplied)

During the pendency of this decision, or on November 18, 2011, the Revised Rules on Administrative Cases in the Civil Service or RRACCS was promulgated. The Civil Service Commission modified the definition of a "party adversely affected" for purposes of appeal.

> Section 4. *Definition of Terms.* —
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> k. PARTY ADVERSELY AFFECTED refers to the respondent against whom a decision in an administrative case has been rendered or to the disciplining authority in an appeal from a decision reversing or modifying the original decision.

Procedural laws have retroactive application. In *Zulueta v. Asia Brewery*:

> As a general rule, laws have no retroactive effect. But there are certain recognized exceptions, such as when they are remedial or procedural in nature. This Court explained this exception in the following language:
>
> It is true that under the Civil Code of the Philippines, "(l)aws shall have no retroactive effect, unless the contrary is provided.

> But there are settled exceptions to this general rule, such as when the statute is CURATIVE or REMEDIAL in nature or when it CREATES NEW RIGHTS."
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> x x x x x x x x x

On the other hand, remedial or procedural laws, i.e., those statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of such rights, ordinarily do not come within the legal meaning of a retrospective law, nor within the general rule against the retrospective operation of statutes.

Thus, **procedural laws may operate retroactively as to pending proceedings even without express provision to that effect. Accordingly, rules of procedure can apply to cases pending at the time of their enactment**. In fact, statutes regulating the procedure of the courts will be applied on actions undetermined at the time of their effectivity. Procedural laws are retrospective in that sense and to that extent. (emphasis in the original)

Remedial rights are those rights granted by remedial or procedural laws. These are rights that only operate to further the rules of procedure or to confirm vested rights. As such, the retroactive application of remedial rights will not adversely affect the vested rights of any person. Considering that the right to appeal is a right remedial in nature, we find that Section 4, paragraph (k), Rule I of the RRACCS applies in this case. Petitioner, therefore, had the right to appeal the decision of the Civil Service Commission that modified its original decision of dismissal.

Recent decisions implied the retroactive application of this rule. While the right of government parties to appeal was not an issue, this court gave due course to the appeals filed by government agencies before the promulgation of the Revised Rules on Administrative Cases in the Civil Service.

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Thus, we now hold that the parties adversely affected by a decision in an administrative case who may appeal shall include the disciplining authority whose decision dismissing the employee was either overturned or modified by the Civil Service Commission.[17] (emphasis supplied)

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[17] *Id.* at 148-151.

Thus, under the present legal milieu, disciplining authorities have the right to appeal CSC decisions which have modified the penalty originally meted against erring government personnel. If it were otherwise, the government would be deprived of its right to weed out undeserving public servants. Consequently, the PAO had legal standing to appeal the decision reinstating Atty. Recto-Sambajon to her former post, whom it previously found unfit to continue as a public attorney.

Atty. Recto-Sambajon also assails that the PAO cannot challenge the decision of the CSC after the latter had submitted to its jurisdiction. In addition, she claims that the CA should have respected the findings of the CSC because of its expertise in the matter.

The PAO pointed out that it only questioned the CSC's conclusions and findings[18] and did not challenge the jurisdiction of the CSC to entertain Atty. Recto-Sambajon's appeal. To reiterate, decisions of the CSC, either exonerating the government employee concerned or modifying the penalty imposed, may be appealed to the CA. In addition, while the Court agrees that, as a rule, findings of fact made by quasi-judicial and administrative bodies are generally binding upon the Court, it admits exceptions such as when it is in disregard of the evidence on record.[19]

Having settled the procedural issues, we now address the question whether Atty. Recto-Sambajon was guilty of Grave Misconduct and for Being Notoriously Undesirable.

Grave misconduct vis-á-vis Conduct Prejudicial to the Service

Under the Revised Rules on Administrative Cases *(RRACCS)*,[20] both Grave Misconduct and Being Notoriously Undesirable are

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[18] *Rollo*, p. 164.

[19] *Japson v. CSC,* 663 Phil. 665, 675 (2011).

[20] Rule 10, Section 46(A).

categorized as grave offenses, punishable by dismissal. The CA and the CSC agree that Atty. Recto-Sambajon uttered threatening remarks against her colleagues, but differ as to its appreciation. On the one hand, the CSC found that it was only tantamount to Simple Misconduct because it was not shown that she had intentionally intended to violate the law or to flagrantly disregard established rules. On the other hand, the CA considered Atty. Recto-Sambajon's threats as Grave Misconduct because it manifested a violent and dangerous tendency towards her colleagues whenever she was angered or offended.

"Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behaviour or gross negligence by a public officer."[21] It is qualified as grave when it is attended with corruption or wilful intent to violate the law or to disregard established rules—otherwise the misconduct is only simple.[22] In addition, in order that an action be deemed a "misconduct" it must have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or wilful, intentional neglect or failure to discharge the duties of the office.[23]

The Court agrees with the CA's observation that Atty. Recto-Sambajon's threats should not be treated lightly as it may have serious repercussions considering that it involved infliction of bodily harm or death. However, the remarks in question are not tantamount to grave misconduct because it lacks the element of direct relation to the performance of official duties. As can be gleaned from the records, Atty. Recto-Sambajon issued the threats because of the rumours spread against her, such as her allegedly crying after her supposed reassignment. Thus, it can be readily seen that the threats Atty. Recto-Sambajon uttered had no direct relation to or connection with the performance

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[21] *Chavez v. Garcia*, G.R. No. 195054, 4 April 2016.

[22] *Id*.

[23] *Government Service Insurance System v. Mayordomo*, 665 Phil. 131, 149 (2011), citing *Manuel v. Calimag,* 367 Phil. 162, 166 (1999).

of her official duties amounting either to maladministration or wilful, intentional neglect or failure to discharge the duties of the office.

Instead, Atty. Recto-Sambajon's actions constitute Conduct Prejudicial to the Best Interest of the Interest Service, a grave offense under the RRACCS.[24] Unlike Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service need not be related to or connected with the public officer's official function as it suffices that the act in question tarnishes the image and integrity of his/her public office.[25] Thus, it is broader as it encompasses all transgressions which may put a particular public office in a bad light. Surely, Atty. Recto-Sambajon uttering threatening remarks against her colleagues, more so in the presence of Chief Acosta, stained the image and integrity of the PAO as a public institution.

Atty. Recto-Sambajon's repeated threats made her notoriously undesirable.

The PAO also found Atty. Recto-Sambajon guilty of being Notoriously Undesirable. The CSC disagreed, however, explaining that her satisfactory performance rating runs contrary to the findings that she was notoriously undesirable. On the other hand, the CA ratiocinated that Atty. Recto-Sambajon was notoriously undesirable taking into account her repeated violent behavior.

In the administrative offense of Being Notoriously Undesirable, a two-fold test is employed, to wit: (1) whether it is common knowledge or generally known as universally believed to be true or manifest to the world that the employee committed the acts imputed against him; and (2) whether he had contracted the habit for any of the enumerated

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[24] Rule 10, Section 46(B).

[25] *Government Service Insurance System v. Mayordomo*, *supra* note 23 at 150.

misdemeanors.[26] Applying these, the Court finds Atty. Recto-Sambajon guilty of Being Notoriously Undesirable.

In this case, the threatening remarks made by Atty. Recto-Sambajon were generally known considering that she made those remarks in the presence of several colleagues. In fact, she admited to have uttered such but justified it as an emotional outburst. Further, Atty. Recto-Sambajon manifested a predilection to be violent with her colleagues.

We note that Atty. Recto-Sambajon had threatened her colleagues on several consecutive days and even had the audacity to utter menacing remarks in the presence of Chief Acosta. Her threats cannot simply be treated as an emotional outburst considering that she made them on several occasions. More importantly, the hostile remarks were of a grave nature considering that she had threatened, not merely to inflict physical pain, but to cause death. Thus, there is substantial evidence to hold her Notoriously Undesirable. Atty. Recto-Sambajon's hostile and menacing attitude towards her colleagues has no place in public service.

Penalty of the graver offense imposed

Under Rule 10, Section 46(A) of the RRACCS, Being Notoriously Undesirable is a grave offense punishable by dismissal from service. On the other hand, Rule 10 Section 46(B) thereof classifies Conduct Prejudicial to the Best Interest of the Service as a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense. In the case at bar, Atty. Recto-Sambajon is guilty of two grave offenses with different penalties. Applying Rule 10, Section 50[27] of the RRACCS, the appropriate penalty to be imposed on Atty. Recto-Sambajon is dismissal from service.

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[26] *Escaño v. Manaois*, A.M. No. 16-02-01-CTA, 15 November 2016.

[27] Section 50. Penalty for the Most Serious Offense. – If the respondent is found guilty of two (2) or more charges or counts, the penalty to be

WHEREFORE, the petition is **DENIED**. The 25 May 2011 Decision and the 13 July 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 117768 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

FIRST DIVISION

[G.R. No. 198952. September 6, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANILO SULAYAO *y* LABASBAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; SLIGHT INCONSISTENCIES IN THE TESTIMONY STRENGTHEN CREDIBILITY AS THEY SHOW THAT THE TESTIMONY WAS NOT REHEARSED, AS WHAT IS IMPORTANT IS THAT THERE IS CONSISTENCY AS TO THE OCCURRENCE AND IDENTITY OF THE PERPETRATOR, AND THAT THE PROSECUTION HAS ESTABLISHED THE EXISTENCE OF THE ELEMENTS OF THE CRIME AS WRITTEN IN LAW.— The number of BSDO on patrol and the number of BSDO who chased accused-appellant and his companions; and, the presence or absence of the media in the scene of the crime, are minor inconsistencies or discrepancies. These inconsistencies glaringly pertain only to trivial, collateral and inconsequential matters that do not affect the credibility of witnesses. The court treats them as badges of truth rather

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imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

than *indicia* of falsehood. Instead of weakening prosecution evidence, these minor lapses and inconsistencies strengthen the theory of the prosecution. As consistently held by this Court, slight inconsistencies in the testimony even strengthen credibility as they show that the testimony was not rehearsed. What is important is that there is consistency as to the occurrence and identity of the perpetrator, and that the prosecution has established the existence of the elements of the crime as written in law.

2. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ELEMENTS; THE INTENT TO ROB MUST PRECEDE THE TAKING OF HUMAN LIFE BUT THE KILLING MAY OCCUR BEFORE, DURING OR AFTER THE ROBBERY.— In the case of *Rodel Crisostomo v. People of the Philippines*, this Court held that: Robbery with homicide exists "when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and, (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery."

3. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; CONVICTION BASED ON CIRCUMSTANTIAL EVIDENCE CAN BE UPHELD, PROVIDED THE CIRCUMSTANCES PROVEN CONSTITUTE AN UNBROKEN CHAIN WHICH LEADS TO ONE FAIR AND REASONABLE CONCLUSION THAT POINTS TO THE ACCUSED, TO THE EXCLUSION OF ALL OTHERS, AS THE GUILTY PERSON.— In this case, the RTC and the CA did not err in convicting the accused-appellant of the crime charged on the basis of circumstantial evidence. Citing the case of *People of the Philippines v. Madelo Espina y Cuñasares*, this Court held: For circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis

that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt. Thus, conviction based on circumstantial evidence can be upheld, provided the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person, a conclusion adequately proven in this case.

4. ID.; ID.; DEFENSE OF DENIAL; IF UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, DENIAL IS INHERENTLY A WEAK DEFENSE AS IT IS NEGATIVE AND SELF-SERVING.— Against the damning evidence adduced by the prosecution, accused-appellant could only muster mere denial. During his testimony, he denied having committed the crime and implicated a certain Nando Saludar as the perpetrator of the crime. As ruled in various cases by this Court, denial, if unsubstantiated by clear and convincing evidence is inherently a weak defense as it is negative and self-serving. So it is, in this case.

5. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; PROPER IMPOSABLE PENALTY.— [P]ersons found guilty of committing the special complex crime of Robbery with Homicide are punishable with *reclusion perpetua* to death. Considering that the generic aggravating circumstance of abuse of superior strength was alleged in the information and proven during the trial, accused-appellant shall suffer the penalty of death pursuant to Article 63 of the Revised Penal Code, as amended. Nonetheless, in light of R.A. No. 9346, the penalty shall be reduced from death to *reclusion perpetua* without eligibility for parole.

6. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Anent the award of damages, the Court deems it proper to modify the amount given in order to conform with existing rules and recent jurisprudence. "When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and, (5) temperate damages." Thus, with respect to the crime for which herein accused-appellant is convicted, civil indemnity in the amount of PhP100,000 is granted without need of evidence other than the commission of the crime, moral

damages in the sum of PhP100,000 is granted automatically in the absence of any qualifying aggravating circumstance, exemplary damages in the sum of PhP100,000 is granted where the circumstances of the case show the highly reprehensible conduct of the offenders.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

On appeal[1] before this Court is the March 31, 2011 *Decision*[2] of the Court of Appeals (CA), 10th Division in *CA-G.R. CR-H.C. No. 03509*, affirming the Decision[3] dated August 28, 2008 of the Regional Trial Court (RTC), Branch 76 of Quezon City, in C*riminal Case No. Q-03-119757* convicting accused-appellant Danilo Sulayao y Labasbas of the crime of Robbery with Homicide committed against the victim Marianito Casiano Palacios (Marianito), defined and penalized under Article 294 of the Revised Penal Code (RPC), as amended by Republic Act No. 9346 (RA 9346).[4]

Culled from the records are the following salient facts:

The accusatorial portion of the August 6, 2003 *Information*[5] charging accused-appellant of the crime of Robbery with Homicide under Article 294 of the RPC, reads as follow:

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[1] Notice of Appeal filed with the Court of Appeals pursuant to Section 13 (c) of Rule 124 as amended by A.M. No. 00-5-03-SC, CA *rollo*, p. 119.

[2] Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Ricardo R. Rosario and Danton Q. Bueser, *Rollo,* pp. 2-20.

[3] Penned by Judge Alexander S. Balut, CA *rollo,* pp. 29-36.

[4] *An Act Prohibiting the Imposition of Death Penalty in the Philippines*.

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

That on or about the 3rd day of August 2003, in Quezon City, Philippines, the said accused, Danilo Sulayao y Labasbas, being then a regular employee of Floor Center Ceramics and Granite Sales, conspiring, confederating with two (2) other persons whose identities, whereabouts and other personal circumstances have not as (sic) yet been ascertained the (sic) mutually helping one another, with intent to gain and by means of violence and intimidation rob the FLOOR CENTER CERAMICS AND GRANITE SALES with business address at No. 1250 EDSA, Balintawak, this City, herein represented by AMY FERNANDEZ y HONRADO, in the manner as follows; (sic) accused pursuant to their conspiracy went to said establishment and once inside took, robbed and carried away cash money – Php238,805.69 and three (3) checks amounting to Php16,839.45 alltotally (sic) valued at Php255,645.14, Philippine Currency, belonging to said Floor Center Ceramics and Granite Sales and on the occasion thereof and as a necessary means to commit robbery said accused with intent to kill, treachery, evident premeditation and taking advantage of superior strength, did then and there attack, assault, and employ personal violence upon the person of MARIANITO CASIANO PALACIOS, by then and there stabbing the latter with a bladed weapon on the neck, thereby inflicting upon him serious and grave wounds which was the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Marianito Casiano Palacios and offended party Floor Center Ceramics and Granite Sales.

CONTRARY TO LAW.[6]

By virtue of a *Commitment Order*,[7] dated August 13, 2003, accused-appellant was incarcerated at the Quezon City Jail. When arraigned on October 1, 2003, he pleaded not guilty to the charge.[8] During the pre-trial conference conducted on October 8, 2003, the prosecution and the defense stipulated on the identity of accused-appellant, the jurisdiction of the trial court and the fact of the death of the victim, Marianito. The parties also formulated the following issues for resolution by

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[6] *Id*. at 1.

[7] *Id*. at 23.

[8] *Id*. at 26.

the court *a quo*: (1) whether or not accused-appellant committed the crime charged; (2) whether or not the prosecution would be able to prove accused-appellant's guilt beyond reasonable doubt; and, (3) the fact of death of the victim, Marianito.[9]

Upon the termination of the pre-trial, trial on the merits ensued.

The Prosecution's Version

The prosecution presented the following witnesses, namely: William Saquita (William)[10] and Jose Chito Baltazar (Jose Chito),[11] both Barangay Security Development Officers (BSDO) at Barangay Apolonio Samson, Balintawak, Quezon City; Amalia Honrado (Amalia),[12] the Branch Manager of Floor Center Ceramics and Granite Sales (Floor Center); Dr. Ravell Baluyot (Dr. Baluyot),[13] Senior Medico-Legal Officer of the National Bureau of Investigation (NBI), Victoria Palacios (Victoria),[14] wife of the victim; and, PO1 Rommel Merino (PO1 Merino),[15] police investigator assigned at the Central Police District (CPD) Camp Karingal, Quezon City.

William narrated that on August 3, 2003, at 12 midnight, while he was on patrol along EDSA boulevard with his fellow BSDO members, namely: Jose Chito, Rene Medina (Rene), Artemio Chavez (Artemio), and Jose Paragas (Jose), he saw two males and a female, wearing bloodstained clothes walking along the boulevard. When William's group approached the

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[9] *Id.* at 29.

[10] TSN, dated November 17, 2003, *Records*, pp. 28-34; TSN, dated December 1, 2003, *Records*, pp. 48-64.

[11] TSN, dated January 19, 2004, *Records,* pp. 83-100.

[12] TSN, dated March 8, 2004, *Records,* pp. 121-137; TSN, dated May 6, 2004, *Records,* pp. 139-157.

[13] TSN, dated October 29, 2003, *Records,* pp. 1-12.

[14] TSN, dated July 1, 2004, *Records,* pp. 179-193.

[15] TSN, dated August 12, 2004, *Records,* pp. 210-245; TSN, dated September 30, 2004, *Records,* pp. 284-294.

three individuals, they scampered in different directions. A chase ensued. They caught one of them, who was later identified as the accused-appellant. Accused-appellant had blood all over and he had a wound on his forehead. The other two individuals eluded the arrest by boarding a bus. Accused-appellant told William's group that he, together with the man and the woman who fled, had just robbed Floor Center and killed the security guard therein. William's group brought accused-appellant to the *barangay* hall.[16]

Thereafter, William's group and the Barangay Captain of Apolonio Samson returned to the building of Floor Center and immediately, they called the police. They noticed that the front glass door of the store was broken. William saw bloodstains, broken marbles and tiles scattered all over the place. Upon arrival, the police officers followed the trail of blood that led to the toilet. The police officers forcibly opened the locked door and once inside, they saw the lifeless body of the victim, Marianito, slumped on the floor in a pool of blood.[17]

On cross-examination, William testified, among others, that accused-appellant did not resist when he was caught.

Jose Chito substantially corroborated William's testimony.

Amalia recounted that on the night of the robbery, at around 2:00 a.m., she was awakened by a telephone call from an unidentified caller informing her that somebody was killed in the Floor Center. She rushed to the scene of the crime, opened the drawers located at the Accounting Section, and found that the following items were missing: (1) the amount of PhP34,701.30 which was kept at the mezzanine; (2) the amount of PhP204,104.30, representing the store's sales for three days; and, (3) three checks payable to cash in the total amount of PhP16,839.45. Floor Center lost the aggregate amount of PhP255,645.05. Amalia likewise recalled that upon seeing the accused-appellant, the latter apologized to her; he admitted that,

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[16] *Rollo*, pp. 102-103.

[17] *Id*. at 103.

although he was not the one who killed Marianito, he was the one who hammered the victim's head; and, he told her that he did not get any money from the robbery incident. Amalia testified that when accused-appellant made his voluntary admission, he was not assisted by counsel.[18]

Dr. Baluyot narrated that his autopsy on the victim's cadaver revealed that Marianito suffered contusions, incise wounds, hack wounds, lacerations, and stab wounds that caused his immediate death.[19]

PO1 Merino testified that after apprising accused-appellant of his constitutional rights and although without the assistance of counsel, he admitted that he and his companions planned to rob Floor Center.[20]

Victoria, the victim's wife, testified on the civil aspect of the case. She said that: (1) Marianito was receiving a monthly salary of PhP7,000; (2) the expenses incurred by their family by reason of Marianito's death amounted to PhP87,246.45; and, (3) she has an official receipt in the amount of PhP27,000, representing the payment for the memorial services.[21]

The Defense' Version

Accused-appellant testified solely for the defense.[22]

On August 2, 2003, at around 5:00 p.m., accused-appellant went home from work at the Floor Center store and thereafter went back to the store at 10:00 p.m. Upon his arrival, he noticed that the glass panel was broken. He went inside and saw broken tiles, with blood splattered on the floor. He called the guard–

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[18] *Id*.

[19] *Id*.

[20] *Id*. at 106.

[21] *Id*. at 107.

[22] TSN, dated March 9, 2006, *Records,* pp. 295-317; TSN, dated April 19, 2006, *Records,* pp. 319-343; TSN, dated October 4, 2007, *Records,* pp. 371-383; TSN, dated October 25, 2007, *Records,* pp. 398-406.

the victim Marianito, but there was no reply. He followed the trail of blood leading to the toilet. On his way out of the toilet, Nando Saludar (Nando), the brother of one of his co-workers, grabbed him and stabbed him with a piece of broken tile, causing him to fall. Nando tried to attack him again, but accused-appellant was able to flee. When accused-appellant reached the top of an overpass, he took out a T-shirt from his bag and wrapped it around his arm. While he was descending the stairs of the overpass, he came across two *barangay tanods*. Accused-appellant asked for their help and informed them that he was stabbed by Nando in the Floor Center. Accused-appellant and the *barangay tanods* headed back to the Floor Center.[23]

Once inside the store, one of the *barangay tanods* found the dead body of Marianito. Immediately, the *barangay tanods* handcuffed the accused-appellant. While on board the tricycle, one of the *barangay tanods* asked accused-appellant to admit that he committed the crime. They kicked and punched him, before he was brought to the *barangay* office. The police officers arrived and brought the accused-appellant back to the crime scene. When asked if he killed the victim, the accused-appellant denied it. Thereafter, media reporters arrived. Since he was confused at that time, accused-appellant could no longer remember what he told the media.[24]

On cross-examination, accused-appellant testified that he arrived at the Floor Center at 11:45 p.m. Although he was shock to see the store's broken door and scattered broken tiles splattered with blood, he did not report the matter to the police officers or *barangay* officials. He said that he had no medical certificate to prove the injury he sustained by reason of his having been stabbed by Nando.

The Trial Court's Ruling

On August 28, 2008, the RTC rendered its decision, the dispositive portion of which reads:

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[23] CA *rollo,* pp. 60-61.

[24] *Id.* at 61.

WHEREFORE, finding the accused Danilo Sulayao guilty beyond reasonable doubt of the crime of Robbery with Homicide, described and penalized under Article 294 of the Revised Penal Code, as amended by Republic Act 9346, the court hereby sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Marianito Palacios, as follows:

1. The amount of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity for the death of the victim;

2. The amount of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages; and

3. The amount of TWENTY-SEVEN THOUSAND PESOS (₱27,000.00) as actual damages.

He is also ordered to indemnify the owner of Floor Center Ceramics and Granite Sales for the stolen money amounting to TWO HUNDRED FIFTY-FIVE THOUSAND SIX-HUNDRED FORTY-FIVE PESOS AND FIVE CENTAVOS (₱255,645.05) Philippine Currency.

With costs against the accused.

SO ORDERED.[25]

Aggrieved, accused-appellant filed an appeal[26] before the CA.

On March 31, 2011, the CA rendered its assailed decision,[27] dismissing the appeal and affirming the RTC's decision.

Hence, this petition.

In this Court's April 12, 2012 Resolution,[28] We noted the accused-appellant's and the Office of the Solicitor General's (OSG's) respective Manifestations, stating in essence that they are dispensing with their supplemental briefs, and thus, adopting their respective *briefs* which they filed before the CA.

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

[26] *Id.* at 37.

[27] *Supra* note 2.

[28] *Id.* at 36.

The accused-appellant raises this lone assignment of error, to wit:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE.[29]

We sustain the conviction of accused-appellant.

The Court, in the case of *People of the Philippines v. Jerry Jacalne y Gutierrez*[30] held that:

> Time and again, We have ruled that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[31] The trial court has the singular opportunity to observe the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[32]

Although this rule admits of exceptions,[33] none of them is available in the instant case. There is, thus, no reason to deviate from the conclusions of the trial and the appellate courts.

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[29] *Id.* at 61.

[30] 674 Phil. 139 (2011).

[31] *Id.* at 145 (Jacalne case).

[32] *Id.* at 146 (Jacalne Case.).

[33] When the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value likely to change the outcome of the case have been overlooked by the lower court, or when the assailed decision is based on a misapprehension of facts. *People v. Jorge Bi-Ay, and "John Doe," Accused, Eliseo Bi-Ay, Jr. y Sarintas alias "Gideon,"* G.R. No. 192187, December 13, 2010, 637 SCRA 828, 835.

To exonerate himself from criminal liability, accused-appellant advanced two arguments. He avers that the court a *quo* failed to consider: (1) the inconsistencies of the prosecution witnesses; and, (2) his defense of denial.

Accused-appellant puts much capital on the inconsistent testimonies of the prosecution witnesses William and Jose Chito.

He insists that there were flaws in the prosecution's evidence on the following details, *thus*: (1) while William said that he was with four BSDO, namely, Jose Chito, Artemio, Rene and Jose on patrol, Jose Chito testified that he was with six BSDO on patrol, namely, himself, William, Mario Morgado, Jose, Artemio, and Rene; (2) while William recalled that three of them chased accused-appellant and no one chased the other guy and the woman; Jose Chito testified that all of them chased the two males and the woman; and, (3) while Saquita narrated that the media arrived together with the police officers and the Scene of the Crime Operatives (SOCO), Jose Chito testified that no member of the media arrived at the crime scene together with the police officers.[34]

These alleged inconsistencies, however, do not place in doubt the evidence of accused-appellant's guilt.

The number of BSDO on patrol and the number of BSDO who chased accused-appellant and his companions; and, the presence or absence of the media in the scene of the crime, are minor inconsistencies or discrepancies. These inconsistencies glaringly pertain only to trivial, collateral and inconsequential matters that do not affect the credibility of witnesses. The court treats them as badges of truth rather than indicia of falsehood. Instead of weakening prosecution evidence, these minor lapses and inconsistencies strengthen the theory of the prosecution. As consistently held by this Court, slight inconsistencies in the testimony even strengthen credibility as they show that the testimony was not rehearsed.[35]

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[34] CA *rollo,* p. 62.

[35] *Cicera v. People*, 739 Phil. 25, 38 (2014).

What is important is that there is consistency as to the occurrence and identity of the perpetrator, and that the prosecution has established the existence of the elements of the crime as written in law.[36]

In the case of *Rodel Crisostomo v. People of the Philippines,*[37] this Court held that:

Robbery with homicide exists "when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and, (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery."[38]

In this case, the RTC and the CA did not err in convicting the accused-appellant of the crime charged on the basis of circumstantial evidence.

Citing the case of *People of the Philippines v. Madelo Espina y Cuñasares*,[39] this Court held:

For circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt. Thus, conviction based on circumstantial evidence can be upheld, provided the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of

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[36] *Id.* (Cicera Case.)

[37] 644 Phil. 53 (2010).

[38] *Id.* at 61.

[39] 383 Phil. 656 (2000).

all others, as the guilty person, a conclusion adequately proven in this case.[40] (Citation omitted)

We quote with approval the CA's disquisition on the matter, thus:

Circumstantial evidence is not a "weaker" form of evidence *vis-a-vis* direct evidence. The Rules of Court do not distinguish between direct evidence and evidence of circumstances insofar as their probative value is concerned. No greater degree of certainty is required when the evidence is circumstantial than when it is direct, for in either case, the trier of fact must be convinced beyond a reasonable doubt as to the guilt of the accused.

Under Section 4, Rule 133 of the Revised Rules of Court, circumstantial evidence is sufficient for conviction if there is more than one circumstance, the facts from which the inference is derived are proven, and the combination of all the circumstances produces moral certainty as to convict beyond a reasonable doubt.

To the mind of this Court, the following pieces of circumstantial evidence are sufficient to prove the guilt of accused-appellant for robbery with homicide beyond reasonable doubt: (1) BSDO members sighted accused-appellant – with two others – wounded and wearing bloodstained clothes while walking along EDSA near the crime scene; (2) accused-appellant and his companions scampered in different directions when the BSDO members tried to approach them; (3) upon his apprehension by the BSDO members, accused-appellant disclosed that he and his companions just robbed a store and killed its security guard; (4) the store's security guard, Marianito Palacios, was found dead, soaked in his own blood inside the store where accused-appellant worked; (5) accused-appellant admitted to Amalia, the branch manager of Floor Center, that he hammered the victim's head and that he and his companions took money from the Floor Center during the subject incident.

All the foregoing circumstances were duly proven by the prosecution during the trial of the instant case. The presence of all the foregoing pieces of circumstantial evidence lead Us to the inescapable conclusion that the accused-appellant acted in conspiracy with his unidentified

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[40] *Id*. at 667.

companions in robbing Floor Center and in killing Marianito Palacios in the course of the robbery.[41] (Citations omitted)

Hence, both the lower court and the appellate court correctly found accused-appellant guilty of robbery with homicide.

Against the damning evidence adduced by the prosecution, accused-appellant could only muster mere denial. During his testimony, he denied having committed the crime and implicated a certain Nando Saludar as the perpetrator of the crime. As ruled in various cases by this Court, denial, if unsubstantiated by clear and convincing evidence is inherently a weak defense as it is negative and self-serving.[42] So it is, in this case.

Penalty and Damages

Likewise, persons found guilty of committing the special complex crime of Robbery with Homicide are punishable with *reclusion perpetua* to death. Considering that the generic aggravating circumstance of abuse of superior strength was alleged in the information and proven during the trial, accused-appellant shall suffer the penalty of death pursuant to Article 63 of the Revised Penal Code, as amended. Nonetheless, in light of R.A. No. 9346, the penalty shall be reduced from death to *reclusion perpetua* without eligibility for parole.[43] (Citations omitted)

Anent the award of damages, the Court deems it proper to modify the amount given in order to conform with existing rules and recent jurisprudence.[44] "When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and, (5) temperate damages."[45] Thus, with respect to

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[41] CA *rollo,* pp. 112-113.

[42] *People v. Mamaruncas*, 680 Phil. 192, 212 (2012).

[43] *People v. Bacero*, G.R. No. 208527, July 20, 2016.

[44] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[45] *People v. Llobera*, G.R. No. 203066, August 5, 2015, 765 SCRA 379, 397.

the crime for which herein accused-appellant is convicted, civil indemnity in the amount of PhP100,000 is granted without need of evidence other than the commission of the crime,[46] moral damages in the sum of PhP100,000 is granted automatically in the absence of any qualifying aggravating circumstance,[47] exemplary damages in the sum of PhP100,000 is granted where the circumstances of the case show the highly reprehensible conduct of the offenders.[48]

Since the amount of actual damages for funeral expenses has been ascertained by receipts in the amount of only PhP27,000, the same should be increased to PhP50,000 representing temperate damages, in line with recent jurisprudence.[49]

In addition, the Court also imposes on all the monetary awards for damages interest at the legal rate of six percent (6%) *per annum* from the date of finality of this decision until fully paid.[50]

WHEREFORE, premises considered, We **AFFIRM WITH MODIFICATIONS** the March 31, 2011 Decision of the Court of Appeals, 10th Division in CA-G.R. *CR-H.C. No. 03509*, which affirmed the Regional Trial Court's Decision dated August 28, 2008 in Criminal Case No. *Q-03-119757*, to read as follows:

Accused-appellant Danilo Sulayao y Labasbas is found **GUILTY** beyond reasonable doubt of the crime of robbery with homicide under Article 294 of the Revised Penal Code, as amended by Republic Act No. 9346, and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole; the accused-appellant is ordered to pay the heirs of Marianito Casiano Palacios the amounts of PhP100,000 as civil indemnity, PhP100,000 as moral damages, PhP100,000 as exemplary damages, and PhP50,000 as temperate damages, all

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[46] *Id*. at 39 (Jugueta Case.).

[47] *Id*. (Jugueta Case.).

[48] *Id*. (Jugueta Case.).

[49] *Id*. (Jugueta Case.).

[50] *People v. Veloso,* 703 Phil. 541, 544 (2013).

with legal interest at the rate of six percent (6%) *per annum* from the finality of judgment until full payment. The rest of the Court of Appeals' decision **STAND**.

SO ORDERED.

Leonardo-de Castro, del Castillo, and *Jardeleza, JJ.,* concur.

Sereno, C.J. (*Chairperson*), on official leave.

FIRST DIVISION

[G.R. No. 202505. September 6, 2017]

EXPRESS PADALA (ITALIA) S.P.A., now BDO REMITTANCE (ITALIA) S.P.A., *petitioner, vs.* **HELEN M. OCAMPO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; MODES OF SERVICE; GENERAL RULE; SUMMONS MUST BE SERVED PERSONALLY ON THE DEFENDANT; OTHER MODES OF SERVING SUMMONS WHEN MAY BE RESORTED TO.— The general rule in this jurisdiction is that summons must be served personally on the defendant. x x x. For justifiable reasons, however, other modes of serving summons may be resorted to. When the defendant cannot be served personally within a reasonable time after efforts to locate him have failed, the rules allow summons to be served by substituted service. Substituted service is effected by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof. When the defendant's whereabouts are unknown, the rules allow service

of summons by publication. As an exception to the preferred mode of service, service of summons by publication may only be resorted to when the whereabouts of the defendant are not only unknown, but cannot be ascertained by diligent inquiry. The diligence requirement means that there must be prior resort to personal service under Section 7 and substituted service under Section 8, and proof that these modes were ineffective before summons by publication may be allowed. This mode also requires the plaintiff to file a written motion for leave of court to effect service of summons by publication, supported by affidavit of the plaintiff or some person on his behalf, setting forth the grounds for the application.

2. ID.; ID.; ID.; ID.; SUBSTITUTED SERVICE; HOW EFFECTED; SUBSTITUTED SERVICE CANNOT BE RESORTED TO WHERE THE DEFENDANT NEITHER RESIDES NOR HOLDS OFFICE IN THE ADDRESS STATED IN THE SUMMONS.— We agree with the CA that substituted service is improper under the facts of this case. Substituted service presupposes that the place where the summons is being served is the defendant's ***current*** **residence** or **office/ regular place of business**. Thus, where the defendant neither resides nor holds office in the address stated in the summons, substituted service cannot be resorted to. As we explained in *Keister v. Navarro*: Under the Rules, substituted service may be effect[ed] (a) by leaving copies of the summons at the defendant's *dwelling house* or *residence* with some *person* of suitable age and discretion then *residing* therein, or (b) by leaving the copies at defendant's *office* or *regular place of business* with some *competent person in charge thereof*. The terms "dwelling house" or "residence" are generally held to refer to the time of service, hence it is not sufficient "to leave the copy at defendant's former dwelling house, residence, or place of abode, as the case may be, after his removal therefrom." They refer to the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time. Similarly, the terms "office" or "regular place of business" refer to the office or place of business of defendant at the time of service. Note that the rule designates the persons to whom copies of the process may be left. The rule presupposes that such a relation of confidence exists between the person with whom the copy

is left and the defendant and, therefore, assumes that such person will deliver the process to defendant or in some way give him notice thereof.

3. ID.; ID.; ID.; ID.; THE REGIONAL TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER THE PERSON OF THE DEFENDANT BECAUSE THE SUBSTITUTED SERVICE OF SUMMONS WAS INEFFECTIVE, AS THE DEFENDANT IS NOT A RESIDENT OF THE ADDRESS WHERE THE SUMMONS WAS SERVED. — Based on the sheriff's report, it is clear that Ocampo no longer resides in San Bernardo Village, Darasa, Tanauan, Batangas. The report categorically stated that "defendant Helen M. Ocampo and her family were already in Italy," without, however, identifying any specific address. Even BDO Remittance itself admitted in its petition for recognition that Ocampo's "whereabouts in Italy are no longer certain." This, we note, is the reason why in alleging the two addresses of Ocampo, one in Italy and one in the Philippines, BDO Remittance used the phrase "last known [address]" instead of the usual "resident of." Not being a resident of the address where the summons was served, the substituted service of summons is ineffective. Accordingly, the RTC did not acquire jurisdiction over the person of Ocampo.

4. ID.; ID.; ID.; ID.; MODES OF SERVICE OF SUMMONS MUST BE STRICTLY FOLLOWED IN ORDER THAT THE COURT MAY ACQUIRE JURISDICTION OVER THE PERSON OF THE DEFENDANT, TO AFFORD THE DEFENDANT AN OPPORTUNITY TO BE HEARD ON THE CLAIM AGAINST HIM.— BDO Remittance's reliance on *Palma v. Galvez* is misplaced for the simple reason that the case involved service of summons to a person who is *temporarily* out of the country. In this case, however, Ocampo's sojourn in Italy cannot be classified as temporary considering that she already resides there, albeit her precise address was not known. Modes of service of summons must be strictly followed in order that the court may acquire jurisdiction over the person of the defendant. The purpose of this is to afford the defendant an opportunity to be heard on the claim against him. BDO Remittance is not totally without recourse, as the rules allow summons by publication and extraterritorial service. Unlike substituted service, however, these are extraordinary modes which require leave of court.

5. ID.; ID.; ID.; ID.; IF A DEFENDANT HAS NOT BEEN VALIDLY SUMMONED, THE COURT ACQUIRES NO JURISDICTION OVER HIS PERSON, AND A JUDGMENT RENDERED AGAINST HIM IS VOID.— The service of summons is a vital and indispensable ingredient of a defendant's constitutional right to due process. As a rule, if a defendant has not been validly summoned, the court acquires no jurisdiction over his person, and a judgment rendered against him is void. Since the RTC never acquired jurisdiction over the person of Ocampo, the judgment rendered by the court could not be considered binding upon her.

APPEARANCES OF COUNSEL

BDO Unibank, Inc., Legal Services Group for petitioner.
Mark C. Acoyno for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] challenging the Decision[2] dated January 5, 2012 and Resolution[3] dated June 27, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 113475. The CA granted the petition for *certiorari* filed by respondent Helen M. Ocampo (Ocampo) and set aside the Decision[4] dated September 14, 2009 of the Regional Trial Court (RTC) in Civil Case No. MC08-3775 which granted BDO Remittance (Italia) S.P.A.'s (BDO Remittance) petition for recognition of foreign judgment.

The core issue being raised is whether service of summons was validly effected upon respondent, who lives in Italy, through substituted service.

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[1] *Rollo*, pp. 8-25.

[2] *Id.* at 27-44, penned by Associate Justice Danton Q. Bueser and Associate Justices Rosmari D. Carandang and Ricardo R. Rosario, concurring.

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

[4] *Id*. at 123-129.

BDO Remittance, a corporation with principal office in Italy, hired respondent Ocampo as a remittance processor in September 2002. She was dismissed in February 2004 for misappropriating the sum of €24,035.60 by falsifying invoices of money payments relating to customers' money transfer orders from February to December 2003.[5]

Accordingly, BDO Remittance filed a criminal complaint against Ocampo for the same acts before the Court of Turin, Italy. Ocampo pleaded guilty to the offense charged. On April 13, 2005, the Honorable Court of Turin convicted and sentenced her to suffer imprisonment of six months and a penalty of €300.00, but granted her the benefit of suspension of the enforcement of sentence on account of her guilty plea (the Court of Turin Decision).[6]

On September 22, 2008, BDO Remittance filed a petition for recognition of foreign judgment[7] with the RTC of Mandaluyong City. BDO Remittance prayed for the recognition of the Court of Turin Decision and the cancellation or restriction of Ocampo's Philippine passport by the Department of Foreign Affairs (DFA).[8]

On November 21, 2008, the sheriff attempted to personally serve the summons on Ocampo in her local address alleged in the petition located in San Bernardo Village, Darasa, Tanauan, Batangas. However, since the address was incomplete, the sheriff sought the help of barangay officials, who pointed him to the house belonging to Ocampo's father, Nicasio Ocampo. Victor P. Macahia (Macahia), uncle of Ocampo and present occupant, informed the sheriff that Ocampo and her family were already in Italy, and that he was only a caretaker of the house. The sheriff then proceeded to serve the summons upon Macahia.[9]

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[5] *Id.* at 123-124.

[6] *Id.* at 29.

[7] *Id*. at 115-121.

[8] *Id*. at 119.

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

After Ocampo failed to file an answer, BDO Remittance filed a motion to declare Ocampo in default. The RTC granted the motion and allowed BDO Remittance to present evidence *ex parte*.[10]

On September 14, 2009, the RTC rendered a Decision[11] in favor of BDO Remittance (RTC Decision). It recognized as valid and binding in the Philippines the Court of Turin Decision and ordered the DFA to cancel or restrict Ocampo's Philippine passport and not to allow its renewal until she has served her sentence.[12]

On February 11, 2010, Ocampo's mother, Laureana Macahia, received a copy of the RTC Decision and forwarded it to Ocampo.[13] Not having been represented by counsel *a quo*, the period of appeal lapsed. Ocampo was later able to engage the services of counsel who filed a petition for *certiorari* under Rule 65 with the CA on April 12, 2010.[14] Ocampo principally argued that the RTC acted in grave abuse of discretion in recognizing and ordering the enforcement of the Court of Turin Decision.[15]

In its now assailed Decision,[16] the CA set aside the RTC Decision and revoked the order to cancel or restrict Ocampo's Philippine passport (CA Decision). The CA first settled the issue of procedural due process, particularly whether Ocampo was properly served with summons. It held that since Ocampo's whereabouts were unknown, summons should have been served in accordance with Section 14, Rule 14 of the Rules of Civil Procedure. The sheriff however, erroneously effected the

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[10] *Id*. at 31.

[11] *Supra* note 4.

[12] *Rollo*, p. 128.

[13] *Id*. at 95.

[14] *Id*. at 176.

[15] *Id*. at 33.

[16] *Supra* note 2.

substituted service of summons under Section 7 of Rule 14. Thus, the CA concluded that the RTC did not acquire jurisdiction over Ocampo, and the RTC Decision against her is null and void. It also found that the RTC acted in grave abuse of discretion when it recognized a foreign judgment of a criminal case and ordered the DFA to restrict or cancel Ocampo's passport.[17]

After the CA denied its motion for reconsideration, BDO Remittance filed the present petition for review under Rule 45 arguing that: (1) Ocampo availed of the wrong remedy; and (2) the RTC did not gravely abuse its discretion in granting the petition for recognition of foreign judgment and ordering the DFA to restrict or cancel Ocampo's passport.[18]

In her comment,[19] Ocampo explained that BDO Remittance's insistence on the enforcement of Court of Turin Decision is misleading because, by availing of the benefit of suspension of the enforcement, the penalty of confinement will not be enforced upon her. She also presented a decree[20] from the High Court of Turin dated June 29, 2010 which stated that her criminal liability has been extinguished.

We deny the petition.

The general rule in this jurisdiction is that summons must be served personally on the defendant. Section 6, Rule 14 of the Rules of Court provides:

> Sec. 6. *Service in person on defendant*. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

For justifiable reasons, however, other modes of serving summons may be resorted to. When the defendant cannot be served personally within a reasonable time after efforts to locate

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

[18] *Id.* at 15-22.

[19] *Id.* at 94-114.

[20] *Id.* at 155-156.

him have failed, the rules allow summons to be served by substituted service. Substituted service is effected by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.[21]

When the defendant's whereabouts are unknown, the rules allow service of summons by publication.[22] As an exception to the preferred mode of service, service of summons by publication may only be resorted to when the whereabouts of the defendant are not only unknown, but cannot be ascertained by diligent inquiry. The diligence requirement means that there must be prior resort to personal service under Section 7 and substituted service under Section 8, and proof that these modes were ineffective before summons by publication may be allowed.[23] This mode also requires the plaintiff to file a written motion for leave of court to effect service of summons by publication, supported by affidavit of the plaintiff or some person on his behalf, setting forth the grounds for the application.[24]

In the present case, the sheriff resorted to substituted service upon Ocampo through her uncle, who was the caretaker of Ocampo's old family residence in Tanauan, Batangas. The CA held that substituted service was improperly resorted to. It found that since Ocampo's "whereabouts are unknown and cannot be ascertained by diligent inquiry x x x service may be effected only by publication in a newspaper of general circulation."[25]

We agree with the CA that substituted service is improper under the facts of this case. Substituted service presupposes

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[21] RULES OF COURT, Rule 14, Sec. 7.

[22] RULES OF COURT, Rule 14, Sec. 14.

[23] See *Pua v. Deyto*, G.R. No. 173336, November 26, 2012, 686 SCRA 365, 372-373, citing *Santos, Jr. v. PNOC Exploration Corporation*, G.R. No. 170943, September 23, 2008, 566 SCRA 272.

[24] RULES OF COURT, Rule 14, Sec. 17.

[25] *Rollo*, p. 35.

that the place where the summons is being served is the defendant's ***current*** **residence** or **office/regular place of business**. Thus, where the defendant neither resides nor holds office in the address stated in the summons, substituted service cannot be resorted to. As we explained in *Keister v. Navarro*:[26]

> Under the Rules, substituted service may be effect[ed] (a) by leaving copies of the summons at the defendant's *dwelling house* or *residence* with some *person* of suitable age and discretion then *residing* therein, or (b) by leaving the copies at defendant's *office* or *regular place of business* with some *competent person in charge thereof.* The terms "dwelling house" or "residence" are generally held to refer to the time of service, hence it is not sufficient "to leave the copy at defendant's former dwelling house, residence, or place of abode, as the case may be, after his removal therefrom." They refer to the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time. Similarly, the terms "office" or "regular place of business" refer to the office or place of business of defendant at the time of service. Note that the rule designates the persons to whom copies of the process may be left. The rule presupposes that such a relation of confidence exists between the person with whom the copy is left and the defendant and, therefore, assumes that such person will deliver the process to defendant or in some way give him notice thereof.[27] (Italics in the original, citations omitted.)

Based on the sheriff's report, it is clear that Ocampo no longer resides in San Bernardo Village, Darasa, Tanauan, Batangas. The report categorically stated that "defendant Helen M. Ocampo and her family were already in Italy,"[28] without, however, identifying any specific address. Even BDO Remittance itself admitted in its petition for recognition that Ocampo's "whereabouts in Italy are no longer certain."[29] This, we note, is the reason why in alleging the two addresses of Ocampo, one in Italy and one in the Philippines, BDO Remittance used

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[26] G.R. No. L-29067, May 31, 1977, 77 SCRA 209.

[27] *Id.* at 215-216.

[28] *Rollo*, p. 30.

[29] *Id.* at 118.

the phrase "last known [address]"[30] instead of the usual "resident of." Not being a resident of the address where the summons was served, the substituted service of summons is ineffective. Accordingly, the RTC did not acquire jurisdiction over the person of Ocampo.

BDO Remittance's reliance on *Palma v. Galvez*[31] is misplaced for the simple reason that the case involved service of summons to a person who is *temporarily* out of the country. In this case, however, Ocampo's sojourn in Italy cannot be classified as temporary considering that she already resides there, albeit her precise address was not known. Modes of service of summons must be strictly followed in order that the court may acquire jurisdiction over the person of the defendant. The purpose of this is to afford the defendant an opportunity to be heard on the claim against him.[32] BDO Remittance is not totally without recourse, as the rules allow summons by publication and extraterritorial service.[33] Unlike substituted service, however, these are extraordinary modes which require leave of court.

The service of summons is a vital and indispensable ingredient of a defendant's constitutional right to due process. As a rule, if a defendant has not been validly summoned, the court acquires no jurisdiction over his person, and a judgment rendered against him is void.[34] Since the RTC never acquired jurisdiction over the person of Ocampo, the judgment rendered by the court could not be considered binding upon her.

Consequently, it is no longer necessary to delve into the other issues raised in the petition. These issues can be resolved by the trial court upon acquiring jurisdiction over Ocampo and

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[30] *Id*. at 115.

[31] G.R. No. 165273, March 10, 2010, 615 SCRA 86.

[32] *Pacaña-Gonzales v. Court of Appeals*, G.R. No. 150908, January 21, 2005, 449 SCRA 196, 204.

[33] RULES OF COURT, Rule 14, Sec. 15.

[34] *Chu v. Mach Asia Trading Corporation*, G.R. No. 184333, April 1, 2013, 694 SCRA 302, 311.

giving her an opportunity to be heard. It is in a better position to receive and assess the evidence that may be presented by Ocampo, including the decree dated June 29, 2010 issued by the High Court of Turin, to the effect that her liability has been extinguished. While such claim would tend to render the case moot, we refuse to consider the argument at the first instance on two grounds: first, we are not a trier of facts; and second, the document submitted has not been authenticated in accordance with the rules on evidence.

WHEREFORE, the petition is **DENIED**. The Decision dated January 5, 2012 and Resolution dated June 27, 2012 of the Court of Appeals in CA-G.R. SP No. 113475 are **AFFIRMED** insofar as there was no valid service of summons. The Decision dated September 14, 2009 of the Regional Trial Court, Branch 212, Mandaluyong City in Civil Case No. MC08-3775 is declared **VOID**.

SO ORDERED.

Leonardo-de Castro,[*] *del Castillo,* and *Tijam, JJ.,* concur.

Sereno, C.J., on official leave.

SECOND DIVISION

[G.R. No. 205652. September 6, 2017]

PROCTER & GAMBLE ASIA PTE LTD., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE**, *respondent.*

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[*] Designated as Acting Chairperson of the Third Division per Special Order No. 2480 dated August 31, 2017.

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; REFUND OR TAX CREDITS OF UNUTILIZED INPUT VALUE ADDED TAX (VAT); JUDICIAL CLAIM; EXCEPTION TO THE MANDATORY AND JURISDICTIONAL 120+30-DAY PERIODS; THE COURT OF TAX APPEALS MAY TAKE COGNIZANCE OF THE CASE EVEN IF THE TAXPAYER FILED ITS JUDICIAL CLAIM WITHOUT WAITING FOR THE EXPIRATION OF THE 120-DAY MANDATORY PERIOD, WHERE THE CLAIM WAS FILED AFTER THE ISSUANCE OF BIR RULING NO. DA-489-03 ON DECEMBER 10, 2003 BUT BEFORE THE DATE WHEN *AICHI* WAS PROMULGATED BY THE COURT ON OCTOBER 10, 2010.— Section 112 of the NIRC, as amended, provides for the rules on claiming refunds or tax credits of unutilized input VAT x x x. Based on the plain language of the x x x provision, the CIR is given 120 days within which to grant or deny a claim for refund. Upon receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has 30 days within which to file a petition for review with the CTA. In *Aichi*, the Court ruled that compliance with the 120+30-day periods is mandatory and jurisdictional and is fatal to the filing of a judicial claim with the CTA. Subsequently, however, in *San Roque*, while the Court reiterated the mandatory and jurisdictional nature of the 120+30-day periods, it recognized as an exception BIR Ruling No. DA-489-03, issued prior to the promulgation of *Aichi*, where the BIR expressly allowed the filing of judicial claims with the CTA even before the lapse of the 120-day period. The Court held that BIR Ruling No. DA-489-03 furnishes a valid basis to hold the CIR in estoppel because the CIR had misled taxpayers into filing judicial claims with the CTA even before the lapse of the 120-day period: x x x. In *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, the Court came up with an outline summarizing the pronouncements in *San Roque*, to wit: x x x. **2 xxx. b. Exception - BIR Ruling No. DA-489-03. The judicial claim need not await the expiration of the 120-day period. if such was filed from December 10, 2003 (issuance of BIR Ruling No. DA-489-03) to October 6, 2010 (promulgation of *Aichi*).** In this case, records show that P&G filed its judicial

claims for refund on March 28, 2007 and June 8, 2007, respectively, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though P&G filed its judicial claim without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque*. In other words, P&G's judicial claims were deemed timely filed and should not have been dismissed by the CTA.

2. ID.; ID.; ID.; ID.; ID.; ALL TAXPAYERS MAY RELY UPON BIR RULING NO. DA-489-03, AS A GENERAL INTERPRETATIVE RULE, FROM THE TIME OF ITS ISSUANCE ON DECEMBER 10, 2003 UNTIL ITS EFFECTIVE REVERSAL BY THE COURT IN *AICHI*.— The CIR, however, argues that BIR Ruling No. DA-489-03 was already repealed and superseded on November 1, 2005 by Revenue Regulation No. 16-2005 (RR 16-2005), which echoed the mandatory and jurisdictional nature of the 120-day period under Section 112(C) of the NIRC. Thus, P&G cannot rely, in good faith, on BIR Ruling No. DA-489-03 because its judicial claims were filed in March and June 2007 or after RR 16-2005 took effect. In other words, it is the CIR's position that reliance on BIR Ruling No. DA-489-03 should only be permissible from the date of its issuance, on December 10, 2003, until October 31, 2005, or prior to the effectivity of RR 16-2005. The Court disagrees. This issue was also raised by the CIR in *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*, where the Court reiterated that **all** taxpayers may rely upon BIR Ruling No. DA-489-03, as a general interpretative rule, from the time of its issuance on December 10, 2003 until its effective reversal by the Court in *Aichi*. The Court further held that while RR 16-2005 may have re-established the necessity of the 120-day period, taxpayers cannot be faulted for still relying on BIR Ruling No. DA-489-03 even after the issuance of RR 16-2005 because the issue on the mandatory compliance of the 120-day period was only brought before the Court and resolved with finality in *Aichi*.

APPEARANCES OF COUNSEL

A.M. Sison, Jr. & Partners for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.:*

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Procter & Gamble Asia Pte Ltd. (P&G) against the Commissioner of Internal Revenue (CIR) seeking the reversal of the Decision[2] dated September 21, 2012 and Resolution[3] dated January 30, 2013 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB Case No. 742. The CTA *En Banc* affirmed the CTA Special Second Division's dismissal of P&G's claim for refund of unutilized input value-added tax (VAT) attributable to its zero-rated sales covering the first and second quarters of calendar year 2005, for being prematurely filed.

Facts

P&G is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarter in the Philippines.[4] It provides management, marketing, technical and financial advisory, and other qualified services to related companies as specified by its Certificate of Registration and License issued by the Securities and Exchange Commission.[5] It is a VAT-registered taxpayer

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[1] *Rollo,* pp. 43-79.

[2] *Id*. at 81-96. Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez and Cielito N. Mindaro-Grulla, concurring and Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas, dissenting.

[3] *Id*. at 123-127. Penned by Associate Justice Caesar A. Casanova with Acting Presiding Justice Juanito C. Castañeda, Jr. and Associate Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla, concurring and Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas, dissenting.

[4] *Id*. at 82.

[5] *Id*.

and is covered by Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000071787.[6]

P&G filed its Monthly VAT Declarations and Quarterly VAT Returns on the following dates:

VAT RETURN/ DECLARATION	DATE FILED (ORIGINAL)	DATE FILED (AMENDED)
January (Monthly) February (Monthly) Ending March (Quarterly)	February 21, 2005 March 18, 2005 April 25, 2005	March 19, 2007
April (Monthly) May (Monthly) Ending June (Quarterly)	May 20, 2005 June 21, 2005 July 26, 2005[7]	March 20, 2007[8]

On March 22, 2007 and May 2, 2007, P&G filed applications and letters addressed to the BIR Revenue District Office (RDO) No. 49, requesting the refund or issuance of tax credit certificates (TCCs) of its input VAT attributable to its zero-rated sales covering the taxable periods of January 2005 to March 2005, and April 2005 to June 2005.[9]

On March 28, 2007, P&G filed a petition for review with the CTA seeking the refund or issuance of TCC in the amount of ₱23,090,729.17 representing input VAT paid on goods or services attributable to its zero-rated sales for the first quarter of taxable year 2005. The case was docketed as CTA Case No. 7581.[10]

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[6] *Id*.

[7] Stated as July 26, 2006 in page 2 of CTA Decision, *id*.; but see Quarterly Value-Added Tax Return, *id*. at 389.

[8] *Rollo*, p. 82.

[9] *Id*.

[10] *Id*. at 83.

On June 8, 2007, P&G filed with the CTA another judicial claim for refund or issuance of TCC in the amount of ₱19,006,753.58 representing its unutilized input VAT paid on goods and services attributable to its zero-rated sales for the second quarter of taxable year 2005. The case was docketed as CTA Case No. 7639.[11]

On July 30, 2007, the CTA Division granted P&G's Motion to Consolidate CTA Case No. 7581 with 7639, inasmuch as the two cases involve the same parties and common questions of law and/or facts.[12]

Proceedings ensued before the CTA Division. P&G presented testimonial and voluminous documentary evidence to prove its entitlement to the amount claimed for VAT refund. The CIR, on the other hand, submitted the case for decision based on the pleadings, as the claim for refund was still pending before the BIR RDO No. 40.[13]

Meanwhile, on October 6, 2010, while P&G's claim for refund or tax credit was pending before the CTA Division, this Court promulgated *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[14] (*Aichi*). In that case, the Court held that compliance with the 120-day period granted to the CIR, within which to act on an administrative claim for refund or credit of unutilized input VAT, as provided under Section 112(C) of the National Internal Revenue Code of 1997 (NIRC), as amended, is mandatory and jurisdictional in filing an appeal with the CTA.

In a Decision[15] dated November 17, 2010, the CTA Division dismissed P&G's judicial claim, for having been prematurely filed.[16]

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[11] *Id*.

[12] *Id*. at 84.

[13] *Id*.

[14] 646 Phil. 710 (2010).

[15] *Rollo*, pp. 163-A to 179. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez concurring.

[16] *Id*. at 179.

Citing *Aichi,* the CTA Division held that the CIR is granted by law a period of 120 days to act on the administrative claim for refund.[17] Upon denial of the claim, or after the expiration of the 120-day period without action by the CIR, only then may the taxpayer-claimant seek judicial recourse to appeal the CIR's action or inaction on a refund/tax credit claim, within a period of 30 days.[18] According to the CTA Division, P&G failed to observe the 120-day period granted to the CIR.[19] Its judicial claims were prematurely filed with the CTA on March 28, 2007 (CTA Case No. 7581) and June 8, 2007 (CTA Case No. 7639), or only six (6) days and thirty-seven (37) days, respectively, from the filing of the applications at the administrative level.[20] Thus, the CTA Division ruled that inasmuch as P&G's petitions were prematurely filed, it did not acquire jurisdiction over the same.[21]

P&G moved for reconsideration but this was denied by the CTA Division in its Resolution[22] dated March 9, 2011.

Aggrieved, P&G elevated the matter to the CTA *En Banc* insisting, among others, that the Court's ruling in *Aichi* should not be given a retroactive effect.[23]

On September 21, 2012, the CTA *En Banc* rendered the assailed Decision affirming *in toto* the CTA Division's Decision and Resolution. It agreed with the CTA Division in applying the ruling in *Aichi* which warranted the dismissal of P&G's judicial claim for refund on the ground of prematurity.

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[17] *Id*. at 175-177.

[18] *Id*. at 177-178.

[19] *Id*. at 178.

[20] *Id*.

[21] *Id*.

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

[23] See *id*. at 85.

P&G moved for reconsideration,[24] but the same was denied by the Court *En Banc* for lack of merit.[25]

In the meantime, on February 12, 2013, this Court decided the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*, *Taganito Mining Corporation v. Commissioner of Internal Revenue*, and *Philex Mining Corporation v. Commissioner of Internal Revenue*[26] (*San Roque*), where the Court recognized BIR Ruling No. DA-489-03 as an exception to the mandatory and jurisdictional nature of the 120-day waiting period.

On March 27, 2013, P&G filed the present petition.[27]

Issue

Culled from the submissions of the parties, the singular issue for this Court's resolution is whether the CTA *En Banc* erred in dismissing P&G's judicial claims for refund on the ground of prematurity.

P&G avers that its judicial claims for tax refund/credit was filed with the CTA Division on March 28, 2007 and June 8, 2007, after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003, but before the adoption of the *Aichi* doctrine on October 6, 2010. Accordingly, pursuant to the Court's ruling in *San Roque,* its judicial claims with the CTA was deemed timely filed.[28]

P&G further contends that the CTA *En Banc* gravely erred in applying the *Aichi* doctrine retroactively. According to P&G, the retroactive application of *Aichi* amounts to a denial of its constitutional right to due process and unjust enrichment of the CIR.[29]

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[24] *Id*. at 105-121.

[25] *Id*. at 123-127.

[26] 703 Phil. 310 (2013).

[27] *Rollo,* pp. 43-79.

[28] *Id*. at 509.

[29] *Id*. at 516.

Lastly, P&G claims that assuming, without conceding, that its judicial claims were prematurely filed, its failure to observe the 120-day period was not jurisdictional but violates only the rule on exhaustion of administrative remedies, which was deemed waived when the CIR did not file a motion to dismiss and opted to actively participate at the trial.[30]

The CIR, on the other hand, insists that the plain language of Section 112(C) of the NIRC, as amended, demands mandatory compliance with the 120+30-day rule; and P&G cannot claim reliance in good faith with BIR Ruling No. DA-489-03 to shield the filing of its judicial claims from the vice of prematurity.[31]

The Court's Ruling

The Court finds the petition meritorious.

Exception to the mandatory and jurisdictional 120+30-day periods under Section 112(C) of the NIRC

Section 112 of the NIRC, as amended, provides for the rules on claiming refunds or tax credits of unutilized input VAT, the pertinent portions of which read as follows:

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-rated or Effectively Zero-rated Sales*. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within**

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[30] *Id*. at 518.

[31] See *id*. at 459, 468.

one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

Based on the plain language of the foregoing provision, the CIR is given 120 days within which to grant or deny a claim for refund. Upon receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has 30 days within which to file a petition for review with the CTA.

In *Aichi,* the Court ruled that compliance with the 120+30-day periods is mandatory and jurisdictional and is fatal to the filing of a judicial claim with the CTA.

Subsequently, however, in *San Roque,* while the Court reiterated the mandatory and jurisdictional nature of the 120+30-day periods, it recognized as an exception BIR Ruling No. DA-489-03, issued prior to the promulgation of *Aichi*, where the BIR expressly allowed the filing of judicial claims with the CTA even before the lapse of the 120-day period. The Court held that BIR Ruling No. DA-489-03 furnishes a valid basis to hold the CIR in estoppel because the CIR had misled taxpayers into filing judicial claims with the CTA even before the lapse of the 120-day period:

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. **The second exception is where the Commissioner, *through a general***

interpretative rule **issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code**.

x x x x x x x x x

BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, <u>all</u> taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.[32] (Emphasis supplied)

In *Visayas Geothermal Power Company v. Commissioner of Internal Revenue,*[33] the Court came up with an outline summarizing the pronouncements in *San Roque,* to wit:

For clarity and guidance, the Court deems it proper to outline the rules laid down in *San Roque* with regard to claims for refund or tax credit of unutilized creditable input VAT. They are as follows:

1. When to file an administrative claim with the CIR:

    a. General rule – Section 112(A) and *Mirant*

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[32] *Supra* note 26, at 373-376.

[33] 735 Phil. 321 (2014).

Within 2 years from the close of the taxable quarter when the sales were made.

b. Exception – *Atlas*

Within 2 years from the date of payment of the output VAT, if the administrative claim was filed from June 8, 2007 (promulgation of *Atlas*) to September 12, 2008 (promulgation of *Mirant*).

2. When to file a judicial claim with the CTA:

a. General rule – Section 112(D); *not* Section 229

i. Within 30 days from the full or partial denial of the administrative claim by the CIR; or

ii. Within 30 days from the expiration of the 120-day period provided to the CIR to decide on the claim. This is mandatory and jurisdictional beginning January 1, 1998 (effectivity of 1997 NIRC).

b. Exception – BIR Ruling No. DA-489-03

The judicial claim need not await the expiration of the 120-day period, if such was filed from December 10, 2003 (issuance of BIR Ruling No. DA-489-03) to October 6, 2010 (promulgation of *Aichi*).[34] (Emphasis and underscoring supplied)

In this case, records show that P&G filed its judicial claims for refund on March 28, 2007 and June 8, 2007, respectively, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though P&G filed its judicial claim without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque*. In other words, P&G's judicial claims were deemed timely filed and should not have been dismissed by the CTA.

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[34] *Id.* at 338-339.

Application and validity of BIR Ruling No. DA-489-03

The CIR, however, argues that BIR Ruling No. DA-489-03 was already repealed and superseded on November 1, 2005 by Revenue Regulation No. 16-2005 (RR 16-2005), which echoed the mandatory and jurisdictional nature of the 120-day period under Section 112(C) of the NIRC. Thus, P&G cannot rely, in good faith, on BIR Ruling No. DA-489-03 because its judicial claims were filed in March and June 2007 or after RR 16-2005 took effect.[35] In other words, it is the CIR's position that reliance on BIR Ruling No. DA-489-03 should only be permissible from the date of its issuance, on December 10, 2003, until October 31, 2005, or prior to the effectivity of RR 16-2005.

The Court disagrees.

This issue was also raised by the CIR in *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*,[36] where the Court reiterated that **all** taxpayers may rely upon BIR Ruling No. DA-489-03, as a general interpretative rule, from the time of its issuance on December 10, 2003 until its effective reversal by the Court in *Aichi*.[37] The Court further held that while RR 16-2005 may have re-established the necessity of the 120-day period, taxpayers cannot be faulted for still relying on BIR Ruling No. DA-489-03 even after the issuance of RR 16-2005 because the issue on the mandatory compliance of the 120-day period was only brought before the Court and resolved with finality in *Aichi.*[38]

Accordingly, in consonance with the doctrine laid down in *San Roque,* the Court finds that P&G's judicial claims were timely filed and should be given due course and consideration by the CTA.

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[35] *Rollo*, p. 472.

[36] G.R. No. 211072, November 7, 2016.

[37] *Id*. at 9.

[38] *Id*.

WHEREFORE, premises considered, the instant petition for review is hereby **GRANTED.** The Decision dated September 21, 2012 and the Resolution dated January 30, 2013 of the CTA *En Banc* in C.T.A. EB Case No. 742 are hereby **REVERSED AND SET ASIDE**. Accordingly, CTA Case Nos. 7581 and 7639 are **REINSTATED** and **REMANDED** to the CTA Special Second Division for the proper determination of the refundable amount due to petitioner Procter & Gamble Asia Pte Ltd., if any.

SO ORDERED.

Carpio, Acting C.J. (*Chairperson*), *Peralta, Perlas-Bernabe,* and *Reyes, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 208185. September 6, 2017]

PRISCILLA ZAFRA ORBE, *petitioner, vs.* **FILINVEST LAND, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; THE CIVIL CODE; SALES; REALTY INSTALLMENT BUYER ACT OR THE MACEDA LAW (REPUBLIC ACT NO. 6552); PROTECTS BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS AGAINST ONEROUS AND OPPRESSIVE CONDITIONS AND DELINEATES THE RIGHTS AND REMEDIES OF BUYERS AND PROTECTS THEM FROM ONE-SIDED AND PERNICIOUS CONTRACT STIPULATIONS; THE MACEDA LAW'S PROVISIONS MUST BE LIBERALLY CONSTRUED IN FAVOR OF BUYERS, AND ANY DOUBTS IN ITS INTERPRETATION MUST BE RESOLVED IN A MANNER THAT WILL AFFORD

BUYERS THE FULLEST EXTENT OF ITS BENEFITS.— Republic Act No. 6552, the Realty Installment Buyer Act or more popularly referred to as the Maceda Law, named after its author, the late Sen. Ernesto Maceda, was adopted with the purpose of "protect[ing] buyers of real estate on installment payments against onerous and oppressive conditions." It "delineat[es] the rights and remedies of … buyers and protect[s] them from one-sided and pernicious contract stipulations": Its declared public policy is to protect buyers of real estate on installment basis against onerous and oppressive conditions. The law seeks to address the acute housing shortage problem in our country that has prompted thousands of middle and lower class buyers of houses, lots and condominium units to enter into all sorts of contracts with private housing developers involving installment schemes. Lot buyers, mostly low income earners eager to acquire a lot upon which to build their homes, readily affix their signatures on these contracts, without an opportunity to question the onerous provisions therein as the contract is offered to them on a "take it or leave it" basis. Most of these contracts of adhesion, drawn exclusively by the developers, entrap innocent buyers by requiring cash deposits for reservation agreements which oftentimes include, in fine print, onerous default clauses where all the installment payments made will be forfeited upon failure to pay any installment due even if the buyers had made payments for several years. Real estate developers thus enjoy an unnecessary advantage over lot buyers who[m] they often exploit with iniquitous results. They get to forfeit all the installment payments of defaulting buyers and resell the same lot to another buyer with the same exigent conditions. To help especially the low income lot buyers, the legislature enacted R.A. No. 6552 delineating the rights and remedies of lot buyers and protect[ing] them from one-sided and pernicious contract stipulations. Having been adopted with the explicit objective of protecting buyers against what it recognizes to be disadvantageous and onerous conditions, the Maceda Law's provisions must be liberally construed in favor of buyers. Within the bounds of reason, fairness, and justice, doubts in its interpretation must be resolved in a manner that will afford buyers the fullest extent of its benefits.

2. ID.; ID.; ID.; ID.; SECTION 3 THEREOF; PAYING "AT LEAST TWO YEARS OF *INSTALLMENTS*" REFERS TO THE EQUIVALENT OF THE TOTALITY OF PAYMENTS

DILIGENTLY OR CONSISTENTLY MADE THROUGHOUT A PERIOD OF TWO (2) YEARS; THUS, WHERE INSTALLMENTS ARE TO BE PAID ON A MONTHLY BASIS, PAYING "AT LEAST TWO YEARS OF INSTALLMENTS" PERTAINS TO THE AGGREGATE VALUE OF 24 MONTHLY INSTALLMENTS.— Contrary to petitioner's allegations, she did not pay "at least two years of installments" as to fall within the protection of Section 3. In a sale by installment, a buyer defers full payment of the purchase price and ratably apportions payment across a period. It is typified by regular, fractional payments. It is these regular, fractional payments that are referred to as "installments." Thus, when Section 3 speaks of paying "at least two years of *installments,*" it refers to the equivalent of the totality of payments diligently or consistently made throughout a period of two (2) years. Accordingly, where installments are to be paid on a monthly basis, paying "at least two years of installments" pertains to the aggregate value of 24 monthly installments. As explained in *Gatchalian Realty v. Angeles*: It should be noted that Section 3 of R.A. 6552 and paragraph six of Contract Nos. 2271 and 2272, speak of "two years of installments." *The basis for `computation of the term refers to the installments that correspond to the number of months of payments*, and not to the number of months that the contract is in effect as well as any grace period that has been given. Both the law and the contracts thus *prevent any buyer who has not been diligent in paying his monthly installments from unduly claiming the rights provided in Section 3* of R.A. 6552.

3. ID.; ID.; ID.; ID.; ID.; THE PHRASE "AT LEAST TWO YEARS OF INSTALLMENTS" DOES NOT ONLY REFER TO THE PERIOD WHEN THE BUYER HAS BEEN MAKING PAYMENTS, WITH TOTAL DISREGARD FOR THE VALUE THAT THE BUYER HAS ACTUALLY CONVEYED, BUT IT ALSO REFERS TO THE PROPORTIONATE VALUE OF THE INSTALLMENTS MADE, AS WELL AS PAYMENTS HAVING BEEN MADE FOR AT LEAST TWO (2) YEARS.— The phrase "at least two years of installments" refers to value and time. It does not only refer to the period when the buyer has been making payments, with total disregard for the value that the buyer has actually conveyed. It refers to the proportionate value of the installments made, as well as payments having been made for

at least two (2) years. Laws should never be so interpreted as to produce results that are absurd or unreasonable. Sustaining petitioner's contention that she falls within Section 3's protection just because she has been paying for more than two (2) years goes beyond a justified, liberal construction of the Maceda Law. It facilitates arbitrariness, as intermittent payments of fluctuating amounts would become permissible, so long as they stretch for to (2) years. Worse, it condones an absurdity. It sets a precedent that would endorse minimal, token payments that extend for two (2) years. A buyer could, then, literally pay loose change for two (2) years and still come under Section 3's protection.

4. ID.; ID.; ID.; ID.; ID.; THE BUYER'S SATISFACTION OF THE REQUISITE TWO (2) YEARS' OR 24 MONTHS' WORTH OF INSTALLMENTS SHOULD BE RECKONED USING AS DIVISOR THE MONTHLY AMORTIZATIONS DUE FROM THE BUYER, RATHER THAN THE INSTALLMENT PAYMENTS ON THE DOWN PAYMENT; REQUISITE TWO (2) YEARS' OR 24 MONTHS' WORTH OF INSTALLMENTS NOT SATISFIED IN CASE AT BAR.— Reckoning payment of "at least two years of installments" on the basis of the regular fractional payments due from the buyer was demonstrated in *Marina Properties Corp. v. Court of Appeals*. There, the monthly amortization of ₱67,024.22 was considered in determining the validity of the cancellation of the contract by the seller x x x. In *Jestra Development and Management Corporation v. Pacifico*, where down payment was itself payable in portions, this Court reckoned the monthly installment payment for the down payment amounting to ₱121,666.66, rather than the monthly amortization. x x x. Jestra was wrong to use the installment payments on the down payment as divisor. It is an error to reckon the payment of two (2) years' worth of installments on the apportionment of the down payment because, even in cases where the down payment is broken down into smaller, more affordable portions, payments for it still do not embody the ratable apportionment of the contract price throughout the *entire* duration of the contract term. Rather than the partial payments for the down payment, it is the partition of the contract price into monthly amortizations that manifests the ratable apportionment across a complete contract term that is the essence of sales on installment. The

correct standard is that which was used in *Marina*, not in *Jestra.* x x x. Following *Marina,* this Court reckons petitioner's satisfaction of the requisite two (2) years' or 24 months' worth of installments using as divisor the monthly amortizations due from petitioner. However, this Court notes that the monthly amortizations due from petitioner were stipulated to escalate on a yearly basis. In keeping with the need to construe the Maceda Law in a manner favorable to the buyer, this Court uses as basis the monthly amortizations set for the first year, i.e., ₱27,936.84. With this as the divisor, it shall appear that petitioner has only paid 21.786 months' worth of installments. This falls short of the requisite two (2) years' or 24 months' worth of installments.

5. ID.; ID.; ID.; ID.; SECTION 4 THEREOF; FOR CANCELLATION TO BE VALID, IT IS REQUIRED THAT THE BUYER MUST HAVE BEEN GIVEN A 60-DAY GRACE PERIOD BUT FAILED TO UTILIZE IT, THE SELLER MUST HAVE SENT A NOTICE OF CANCELLATION OR DEMAND FOR RESCISSION BY NOTARIAL ACT, AND THE CANCELLATION SHALL TAKE EFFECT ONLY AFTER 30 DAYS OF THE BUYER'S RECEIPT OF THE NOTICE OF CANCELLATION.— Failing to satisfy Section 3's threshold, petitioner's case is governed by Section 4 of the Maceda Law. Thus, she was "entitled to a grace period of not less than sixty (60) days from the due date within which to make [her] installment payment. [Respondent], on the other hand, ha[d] the right to cancel the contract after thirty (30) days from receipt by [petitioner] of the notice of cancellation." For cancellation under Section 4 to be valid, three (3) requisites must concur. First, the buyer must have been given a 60-day grace period but failed to utilize it. Second, the seller must have sent a notice of cancellation or demand for rescission by notarial act. And third, the cancellation shall take effect only after 30 days of the buyer's receipt of the notice of cancellation. Respondent's October 4, 2004 notice indicates that petitioner failed to utilize the 60-day grace period. It also indicates that cancellation was to take effect "thirty (30) days from [its] receipt."

6. ID.; ID.; ID.; ID.; ID.; A NOTICE OF CANCELLATION ACCOMPANIED BY A JURAT IS NOT A VALID NOTARIAL ACT, AS AN ACKNOWLEDGEMENT IS

IMPERATIVE IN NOTICES OF CANCELLATION OR DEMANDS FOR RESCISSION.— The notice of cancellation was also accompanied by a jurat; thereby making it appear to have been a valid notarial act x x x. This is not however, the valid notarial act contemplated by the Maceda Law. In ordinary circumstances, "[n]otarization of a private document converts the document into a public one making it admissible in court without further proof of its authenticity." To enable this conversion, Rule 132, Section 19 of the Revised Rules of Evidence specifically requires that a document be "acknowledged before a notary public." x x x. Rule II, Section 1 of A.M. No. 02-8-13-SC, the 2004 Rules on Notarial Practice [defined] an acknowledgment x x x. Notarization under the Maceda Law extends beyond converting private documents into public ones. Under Sections 3 and 4, notarization enables the exercise of the statutory right of unilateral cancellation by the seller of a perfected contract. If an acknowledgement is necessary in the customary rendition of public documents, with greater reason should an acknowledgement be imperative in notices of cancellation or demands for rescission made under Sections 3 and 4 of the Maceda Law.

7. **ID.; ID.; ID.; ID.; ID.; THE OFFICER SIGNING FOR THE SELLER MUST INDICATE THAT HE OR SHE IS DULY AUTHORIZED TO EFFECT THE CANCELLATION OF AN OTHERWISE PERFECTED CONTRACT.—** Through an acknowledgement, individuals acting as representatives declare that they are authorized to act as such representatives. This is particularly crucial with respect to signatories to notices of cancellation or demands for rescission under Sections 3 and 4 of the Maceda Law. In a great number of cases, the sellers of real property shall be juridical persons acting through representatives. In these cases, it is imperative that the officer signing for the seller indicate that he or she is duly authorized to effect the cancellation of an otherwise perfected contract. Not all personnel are capacitated to effect these cancellations; individuals purporting to do so must demonstrate their specific authority. In the case of corporations, this authority is vested through board resolutions, or by stipulations in the articles of incorporation or by-laws. Respondent's notice of cancellation here was executed by an individual identified only as belonging to respondent's Collection Department. It was also accompanied not by an acknowledgement, but by a jurat. A jurat is a distinct

notarial act, which makes no averment concerning the authority of a representative. It is defined by Rule II, Section 6 of the 2004 Rules on Notarial Practice.

8. REMEDIAL LAW; THE 2004 RULES ON NOTARIAL PRACTICE; A COMMUNITY TAX CERTIFICATE IS NOT A COMPETENT EVIDENCE OF IDENTITY THAT NOTARIES PUBLIC SHOULD USE IN ASCERTAINING THE IDENTITY OF PERSONS APPEARING BEFORE THEM TO HAVE THEIR DOCUMENTS NOTARIZED.— Even if respondent's notarization by jurat and not by acknowledgement were to be condoned, respondent's jurat was not even a valid jurat executed according to the requirements of the 2004 Rules on Notarial Practice. The 2004 Rules on Notarial Practice took effect on August 1, 2004. It governed respondent's October 4, 2004 notice, which was notarized on October 6, 2004. As Rule II, Section 6 of these Rules clearly states, the person signing the document must be "personally known to the notary public or identified by the notary public through competent evidence of identity." Rule II, Section 12, in turn, defines "competent evidence of identity." x x x . The Proof of identity used by the signatory to respondent's notice of cancellation was a community tax certificate, which no longer satisfies this requirement. Rule II, Section 12 was eventually amended by A.M. No. 02-8-13-SC. As amended, it specifically rebukes the validity of a community tax certificate as a competent evidence of identity x x x. *Baylon v. Almo* explained why community tax certificates were specifically excluded as a permissible proof of identity: As a matter of fact, recognizing the established unreliability of a community tax certificate in proving the identity of a person who wishes to have his document notarized, we did not include it 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.

9. CIVIL LAW; THE CIVIL CODE; SALES; REALTY INSTALLMENT BUYER ACT OR THE MACEDA LAW (RA NO. 6552); THE NOTICE OF CANCELLATION IS CONSIDERED AN INVALID NOTARIAL ACT WHERE THE SELLER FAILS TO SATISFY THE IMPERATIVES OF THE 2004 RULES ON NOTARIAL PRACTICE, RENDERING ITS CANCELLATION OF THE PURCHASE

AGREEMENT INEFFECTUAL. — In ordinary circumstances, where notarization serves merely to convert a private document into a public document, notaries public have been admonished about faithfully observing the rules governing notarial acts: "Faithful observance and utmost respect of the legal solemnity of an oath in an acknowledgement or jurat is sacrosanct." It is with greater reason that the diligent observance of notarial rules should be impressed in cases concerned with a seller's exercise of a statutory privilege through cancellations under the Maceda Law. Respondent's failure to diligently satisfy the imperatives of the 2004 Rules on Notarial Practice constrains this Court to consider its notice as an invalid notarial act. This amounts to respondent's failure to satisfy the second requisites for valid cancellations under Section 4, ultimately rendering its cancellation of the purchase agreement ineffectual.

10. ID.; ID.; ID.; ID.; NO LIBERAL CONSTRUCTION OF THE MACEDA LAW IN FAVOR OF THE SELLER, AS THE PERMISSION FOR SELLER TO CANCEL CONTRACTS BECOMES AVAILABLE ONLY WHEN THE CONDITIONS THEREOF ARE HEEDFULLY SATISFIED.— To be effective, seller's cancellations under the Maceda Law must strictly comply with the requirements of Sections 3 and 4. This Court clarifies here that with respect to notices of cancellation or demands for rescission by notarial act, an acknowledgement is imperative. Moreover, when these are made through representatives of juridical persons selling real property, the authority of these representatives must be duly demonstrated. For corporations, the representative's authority must have either been granted by a board resolution or existing in the seller's articles of incorporation or by-laws. With the Maceda Law's avowed purpose of extending benefits to disadvantaged buyers and liberating them from onerous and oppressive conditions, it necessarily follows that the Maceda Law's permission for sellers to cancel contracts becomes available only when its conditions are heedfully satisfied. No liberal construction of the Maceda Law can be made in favor of the seller and at the same time burdening the buyer.

11. ID.; ID.; ID.; ID.; THE AMOUNT ACTUALLY PAID BY THE BUYER TO THE SELLER MUST BE REFUNDED, SUBJECT TO LEGAL INTEREST, WHERE THE SELLER DID NOT VALIDLY CANCEL THE CONTRACT AND

HAS ALREADY SOLD THE LOT TO ANOTHER PERSON.— Considering that it did not validly cancel its contract with petitioner and has also sold the lot to another person, it is proper that respondent be ordered to refund petitioner. This refund shall not be the *full*, actual value of the lot resold, as was ordered in *Active* and *Gatchalian,* lest petitioner be unjustly enriched. Rather, it shall only be the amount actually paid by petitioner to respondent, i.e., ₱608,648.20. In view of *Nacar v. Gallery Frames*, this amount shall be subject to legal interest at the rate of twelve percent (12%) per annum reckoned from the filing of petitioner's Complaint until June 30, 2013; and six percent (6%) per annum from July 1, 2013 until fully paid.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Perez & Partners for respondent.

D E C I S I O N

LEONEN, *J.*:

When Republic Act No. 6552 or the Maceda Law speaks of paying "at least two years of installments" in order for the benefits under its Section 3[1] to become available, it refers to the buyer's

[1] Rep. Act No. 6552, Sec. 3 provides:

Section 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.

payment of two (2) years' worth of the stipulated fractional, periodic payments due to the seller. When the buyer's payments fall short of the equivalent of two (2) years' worth of installments, the benefits that the buyer may avail of are limited to those under Section 4.[2] Should the buyer still fail to make payments within Section 4's grace period, the seller may cancel the contract. Any such cancellation is ineffectual, however, unless it is made through a valid notarial act.

This resolves a Petition for Review on Certiorari[3] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed October 11, 2012 Decision[4] and July 3, 2013 Resolution[5] of the Court of Appeals in CA-G.R. SP No. 118285 be reversed and set aside.

(b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

[2] Rep. Act No. 6552, Sec. 4 provides

Section 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

[3] *Rollo*, pp. 11–29.

[4] *Id*. at 209–227. The Decision was penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Vicente S. E. Veloso and Jane Aurora C. Lantion of the Twelfth Division, Court of Appeals, Manila.

[5] *Id*. at 245. The resolution was penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Vicente S. E. Veloso and Jane Aurora C. Lantion of the Twelfth Division, Court of Appeals, Manila.

The assailed Court of Appeals October 11, 2012 Decision reversed the prior rulings of the Office of the President, the Board of Commissioners of the Housing and Land Use Regulatory Board (HLURB Board of Commissioners), and of Housing and Land Use Arbiter Leonard Jacinto A. Soriano (Arbiter Soriano) of the Expanded National Capital Region Field Office of the Housing and Land Use Regulatory Board (HLURB Field Office). It held that petitioner Priscilla Zafra Orbe (Orbe) is entitled to the benefits of Section 3 of Republic Act No. 6552.[6] The assailed Court of Appeals July 3, 2013 Resolution denied Orbe's Motion for Reconsideration.[7]

Sometime in June 2001, Orbe entered into a purchase agreement with respondent Filinvest Land, Inc. (Filinvest) over a 385-square-meter lot identified as Lot 1, Block 10, Phase 1, Highlands Pointe, Taytay, Rizal. The total contract price was ₱2,566,795.00, payable on installment basis[8] under the following terms:

Total Contract Price	:	[₱]2,566,795.00
Reservation Fee	:	[₱]20,000.00
Down Payments	:	[₱]493,357.00
Payable on installments from 8/4/01 – 4/4/02	:	[₱]54,818.00 monthly
Balance	:	[₱]2,053,436.00
Payable on installments for a period of 7 years from 5/8/02 – 4/8/09		
First year	:	[₱]27,936.84 monthly
Second year	:	[₱]39,758.84 monthly
Third year	:	[₱]41,394.84 monthly
Fourth year to Seventh year	:	[₱]42,138.84 monthly[9]

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[6] *Id*. at 59 and 66.

[7] *Id*. at 228–232.

[8] *Id*. at 210.

[9] *Id*. at 212, *see footnote* 14.

From June 17, 2001 to July 14, 2004, Orbe paid a total of ₱608,648.20. These were mainly through several Metrobank checks, for which Filinvest issued official receipts.[10] Check payments were made as follows:

METROBANK CHECK NO.	DATE	AMOUNT
Metro Bank Check No. 0306533	June 17, 2001	[₱]20,000.00
Metro Bank Check No. 0306544	July 29, 2001	[₱]54,818.00
Metro Bank Check No. 0306545	Aug. 29, 2001	[₱]54,818.00
Metro Bank Check No. 0306546	Sept. 29, 2001	[₱]54,818.00
Metro Bank Check No. 0320243	May 8, 2002	[₱]100,000.00
Metro Bank Check No. 0320244	May 22, 2002	[₱]100,000.00
Metro Bank Check No. 0370882	March 26, 2003	[₱]80,000.00
Metro Bank Check No. 0370883	April 26, 2003	[₱]75,789.00
Metro Bank Check No. 0401000	Feb. 12, 2004	[₱]37,811.00
Metro Bank Check No. 0531301	July 14, 2004	[₱]30,000.00[11]

Orbe was unable to make further payments allegedly on account of financial difficulties.[12]

On October 4, 2004, Filinvest sent a notice of cancellation,[13] which was received by Orbe on October 18, 2004.[14] The notice and its accompanying jurat read:

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[10] *Id*. at 64–65.

OR NO.	DATE	AMOUNT	ACCOUNT
OR No. 375303	06/28/2001	[₱]20,000.00	reservation
OR No. 382315	07/31/2001	[₱]54,818.00	1st down payment
OR No. 389615	08/29/2001	[₱]54, 818.00	2nd down payment
OR No. 399797	10/18/2001	[₱]54, 818.00	partial 3rd DP/LPC
OR No. 410221	12/04/2001	[₱]593.86	LPC for down payment
OR No. 444630	05/22/2002	[₱]100,000.00	5th to 7th DP/LC
OR No. 442366	05/09/2002	[₱]100,000.00	4th& partial 5th DP/LPC
OR No. 504093	03/26/2003	[₱]80,000.00	6th partial 7th DP
OR No. 604163	07/22/2004	[₱]26,652.39	ICR
OR No. 604162	07/22/2004	[₱]3,347.61	Full DP/LPC

[11] *Id*.

[12] *Id*. at 210.

[13] *Id*. at 100.

[14] *Id*. at 212.

PRISCILLA Z. ORBE
#107 Morena St. Villaverde Homes
Novaliches, Q.C.

Re:	Account No.	6181426
	Project	HIGH
	Phase	1
	Block	10
	Lot	1

Gentlemen (sic):

Our records show that your account remains unpaid despite our written request for your payment. We have in fact given you sixty (60) days to update but you failed to settle your account. Accordingly, please be informed that we are now hereby canceling your account effective thirty (30) days from receipt hereof.

Very truly yours,

COLLECTION DEPARTMENT

By:

(sgd.)
MA. LOUELLA D. SENIA

Republic of the Philippines)
Makati City)S.S.

SUBSCRIBED AND SWORN to before me this OCT 06 2004, affiant exhibiting to me Community Tax Certificate No. 05465460 issued on February 09, 2004 at Manila.

(sgd.)
AVELIO L. SALCEDO
NOTARY PUBLIC
UNTIL DECEMBER 31, 2004
PTR NO. 3703389 3/01/04 SAN JUAN
IBP NO.609984 2/04/04 PASIG CITY

Doc. No. 314
Page No. 64
Book No. XVIII
Series of 2004[15]

Noting that "efforts . . . to seek for a reconsideration of said cancellation . . . proved futile," and that the parcel had since been sold by Filinvest to a certain Ruel Ymana "in evident bad faith,"[16] Orbe filed against Filinvest a Complaint for refund with damages dated November 13, 2007 before the HLURB Field Office.[17] Orbe emphasized that she had made payments "beginning June, 2001 up to October, 2004."[18] She further asserted that the October 4, 2004 Notice did not amount to an "effective cancellation by notarial act."[19]

In its Answer with Counterclaim, Filinvest asserted that Orbe failed to make *24 monthly amortization payments* on her account, and thus, could not benefit from Section 3 of Republic Act No. 6552. According to Filinvest, the ₱608,648.20 paid by Orbe from June 17, 2001 to July 14, 2004 covered only the reservation fee, down payment, and late payment charges, exclusive of the monthly amortization payments stipulated in the Purchase Agreement.[20]

In his July 25, 2008 Decision,[21] Arbiter Soriano of the HLURB Field Office ruled in favor of Orbe. He held that since Orbe made payments "from 17 June 2001 to 14 July 2004, or a period of more than two years,"[22] all of which should be credited to

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[15] *Id*. at 100.

[16] *Id*. at 68.

[17] *Id*. at 67–68.

[18] *Id*. at 67.

[19] *Id*. at 68.

[20] *Id*. at 212–213.

[21] *Id*. at 64–66.

[22] *Id*. at 65–66.

the principal,[23] she was entitled to a refund of the cash surrender value equivalent to 50% of the total payments she had made, pursuant to Section 3 of Republic Act No. 6552.[24]

Filinvest appealed to the HLURB Board of Commissioners.[25]

In its April 15, 2009 Decision,[26] the HLURB Board of Commissioners affirmed Arbiter Soriano's Decision.[27] It disagreed with Arbiter Soriano's conclusion that Orbe had paid two (2) years' installments. It specifically noted rather, that "the buyer's payments fell two (2) months short of the equivalent of two years of installments."[28] It added, however, that "[e]quity . . . should come in especially where, as here, the payment period is relatively short and the monthly installment is relatively of substantial amounts."[29] Thus, it concluded that Orbe was still entitled to a 50% refund.[30]

Filinvest then appealed to the Office of the President.[31]

In its February 4, 2011 Decision,[32] the Office of the President sustained the conclusion that Orbe was entitled to a 50% refund. It disagreed with the HLURB Board of Commissioners' finding that Section 3's benefits were available to Orbe purely as a matter of equity. It agreed instead with Arbiter Soriano's reliance

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[23] *Id*. at 66. He explained that, "There is nothing on record to show that payments had been made to cover charges for overdue payments, nor was she charged penalties for late payments. No demand has been made for delinquency charges, hence the payments ha[ve] been made on the principal."

[24] *Id*.

[25] *Id*. at 60.

[26] *Id*. at 60–63.

[27] *Id*. at 63.

[28] *Id*. at 62.

[29] *Id*. at 63.

[30] *Id*.

[31] *Id*. at 214.

[32] *Id*. at 54–59.

on how Orbe "ha[d] made installment payments for more than two (2) years."[33]

Filinvest made another appeal to the Court of Appeals,[34] arguing that:

> [W]hat [Republic Act No. 6552] requires for refund of the cash surrender value is not the length of time of at least two years from the first payment to the last payment, but the number of installments paid, that is, at least two years of installments or twenty[-]four (24) monthly installments paid.[35]

Thus, Section 3, which requires the refund of the cash surrender value, will only apply when the buyer has made at least 24 installment payments.[36]

In its assailed October 11, 2012 Decision,[37] the Court of Appeals reversed the prior rulings of the Office of the President, of the HLURB Board of Commissioners, and of Arbiter Soriano; and dismissed Orbe's Complaint.[38]

The Court of Appeals reasoned that the phrase "two years of installments" under Section 3 means that total payments made should at least be equivalent to *two years' worth of installments*.[39] Considering that Orbe's total payment of ₱608,648.20 was short of the required two (2) years' worth of installments, she could not avail of the benefits of Section 3.[40] What applied instead was Section 4, enabling a grace period of 60 days from the day the installment became due and further enabling the seller to cancel or rescind the contract through a notarial act, should

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[33] *Id*. at 58.

[34] *Id*. at 209–210

[35] *Id*. at 218.

[36] *Id*.

[37] *Id*. at 209–227.

[38] *Id*. at 226.

[39] *Id*. at 223.

[40] *Id*. at 222–226.

the buyer still fail to pay within the grace period.[41] It found Filinvest to have sent Orbe a valid, notarized notice of cancellation thereby precluding any further relief.[42]

In its assailed July 3, 2013 Resolution,[43] the Court of Appeals denied Orbe's Motion for Reconsideration.

Hence, the present petition was filed.[44]

For resolution is the issue of whether or not petitioner Priscilla Zafra Orbe is entitled to a refund or to any other benefit under Republic Act No. 6552.

The Court of Appeals correctly held that petitioner was not entitled to benefits under Section 3 of Republic Act No. 6552 as she had failed to pay two (2) years' worth of installments pursuant to the terms of her original agreement with respondent. It also correctly held that with the shortage in petitioner's payment, what applies is Section 4, instead of Section 3. This means that respondent could cancel the contract since petitioner failed to pay within the 60-day grace period.

The Court of Appeals, however, failed to realize that the notice of cancellation made by respondent was an invalid notarial act. Failing to satisfy all of Section 4's requisites for a valid cancellation, respondent's cancellation was ineffectual. The contract between petitioner and respondent should then be deemed valid and subsisting.[45] Considering however, that respondent has since sold the lot to another person, an equitable ruling is proper. Therefore, this Court rules in a manner consistent with how it resolved *Olympia Housing v. Panasiatic Travel*,[46]

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[41] *Id.* at 225–226.

[42] *Id.* at 226.

[43] *Id.* at 245.

[44] *Id.* at 11–29.

[45] *Gatchalian Realty v. Angeles*, 722 Phil. 407, 425 (2013) [Per *J.* Carpio, Second Division].

[46] 443 Phil. 385 (2003) [Per *J.* Vitug, First Division].

Pagtalunan v. Vda. de Manzano,[47] *Active Realty and Development v. Daroya*,[48] *Associated Marine Officers and Seamen's Union of the Philippines PTGWO-ITF v. Decena*,[49] and *Gatchalian Realty v. Angeles*.[50]

I

Republic Act No. 6552, the Realty Installment Buyer Act or more popularly referred to as the Maceda Law, named after its author, the late Sen. Ernesto Maceda, was adopted with the purpose of "protect[ing] buyers of real estate on installment payments against onerous and oppressive conditions."[51] It "delineat[es] the rights and remedies of . . . buyers and protect[s] them from one-sided and pernicious contract stipulations":[52]

> Its declared public policy is to protect buyers of real estate on installment basis against onerous and oppressive conditions. The law seeks to address the acute housing shortage problem in our country that has prompted thousands of middle and lower class buyers of houses, lots and condominium units to enter into all sorts of contracts with private housing developers involving installment schemes. Lot buyers, mostly low income earners eager to acquire a lot upon which to build their homes, readily affix their signatures on these contracts, without an opportunity to question the onerous provisions therein as the contract is offered to them on a "take it or leave it" basis. Most of these contracts of adhesion, drawn exclusively by the developers, entrap innocent buyers by requiring cash deposits for reservation agreements which oftentimes include, in fine print, onerous default clauses where all the installment payments made will be forfeited upon failure to pay any installment due even if the buyers had made payments for several years. Real estate developers thus enjoy an unnecessary advantage over lot buyers who[m] they often exploit

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[47] 559 Phil. 658 (2007) [Per *J.* Azcuna, First Division].

[48] 431 Phil. 753 (2002) [Per *J.* Puno, First Division].

[49] 696 Phil. 188 (2012) [Per *J.* Perlas-Bernabe, Second Division].

[50] 722 Phil. 407 (2013) [Per *J.* Carpio, Second Division].

[51] Rep. Act No. 6552, Sec. 2.

[52] *Active Realty and Development Corporation v. Daroya*, 431 Phil. 753, 761 (2002) [Per *J.* Puno, First Division].

with iniquitous results. They get to forfeit all the installment payments of defaulting buyers and resell the same lot to another buyer with the same exigent conditions. To help especially the low income lot buyers, the legislature enacted R.A. No. 6552 delineating the rights and remedies of lot buyers and protect[ing] them from one-sided and pernicious contract stipulations.[53]

Having been adopted with the explicit objective of protecting buyers against what it recognizes to be disadvantageous and onerous conditions, the Maceda Law's provisions must be liberally construed in favor of buyers. Within the bounds of reason, fairness, and justice, doubts in its interpretation must be resolved in a manner that will afford buyers the fullest extent of its benefits.

II

Sections 3 and 4 of the Maceda Law spell out the rights of defaulting buyers on installment payments, depending on the extent of payments made.

Section 3 governs situations in which a buyer "has paid at least two years of installments":

> Section 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:
>
> (a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made: *Provided*, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.

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[53] *Id*. at 760–761 *citing* Rep. Act No. 6552, Sec. 3, *Angeles vs. Calasanz*, 220 Phil. 10 (1985) [Per *J*. Gutierrez, *En Banc*]; and *Realty Exchange Venture Corporation vs. Sendino*, 304 Phil. 65 (1994) [Per *J*. Kapunan, First Division].

(b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: *Provided*, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

Section 4 governs situations "where less than two years of installments were paid":

Section 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

In both Sections 3 and 4, defaulting buyers are afforded grace periods in which they may pay the installments due. Should they fail to make payment within the applicable period, cancellation of their agreement with the seller may ensue.

III

Contrary to petitioner's allegations, she did not pay "at least two years of installments" as to fall within the protection of Section 3.

In a sale by installment, a buyer defers full payment of the purchase price and ratably apportions payment across a period. It is typified by regular, fractional payments. It is these regular, fractional payments that are referred to as "installments."[54]

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[54] See also *Levy Hermanos, Inc. v. Gervacio*, 69 Phil. 52 (1939) [Per *J.* Moran, *En Banc*], where this Court distinguished between a sale on installment and a sale on straight term. There, this Court described installment payments as "partial payments consist[ing] in relatively small amounts."

Thus, when Section 3 speaks of paying "at least two years of *installments*," it refers to the equivalent of the totality of payments diligently or consistently made throughout a period of two (2) years. Accordingly, where installments are to be paid on a monthly basis, paying "at least two years of installments" pertains to the aggregate value of 24 monthly installments. As explained in *Gatchalian Realty v. Angeles*:[55]

> It should be noted that Section 3 of R.A. 6552 and paragraph six of Contract Nos. 2271 and 2272, speak of "two years of installments." *The basis for computation of the term refers to the installments that correspond to the number of months of payments*, and not to the number of months that the contract is in effect as well as any grace period that has been given. Both the law and the contracts thus *prevent any buyer who has not been diligent in paying his monthly installments from unduly claiming the rights provided in Section 3* of R.A. 6552.[56] (Emphasis supplied)

The phrase "at least two years of installments" refers to value and time. It does not only refer to the period when the buyer has been making payments, with total disregard for the value that the buyer has actually conveyed.[57] It refers to the proportionate value of the installments made, as well as payments having been made for at least two (2) years.

Laws should never be so interpreted as to produce results that are absurd or unreasonable.[58] Sustaining petitioner's contention that she falls within Section 3's protection just because she has been paying for more than two (2) years goes beyond a justified, liberal construction of the Maceda Law. It facilitates arbitrariness, as intermittent payments of fluctuating amounts

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[55] 722 Phil. 407 (2013) [Per *J.* Carpio, Second Division].

[56] *Id.* at 419.

[57] See *Gatchalian Realty v. Angeles*, 722 Phil. 407, 419 (2013) [Per *J.* Carpio, Second Division] where the phrase "at least two years of installments" was clarified to not only refer to "the number of months that the contract is in effect."

[58] See *Ang Giok Chip v. Springfield Fire and Marine Insurance Co.*, 56 Phil. 375 (1931) [Per *J.* Malcolm, *En Banc*].

would become permissible, so long as they stretch for two (2) years. Worse, it condones an absurdity. It sets a precedent that would endorse minimal, token payments that extend for two (2) years. A buyer could, then, literally pay loose change for two (2) years and still come under Section 3's protection.

Reckoning payment of "at least two years of installments" on the basis of the regular, fractional payments due from the buyer was demonstrated in *Marina Properties Corp. v. Court of Appeals*.[59] There, the monthly amortization of ₱67,024.22 was considered in determining the validity of the cancellation of the contract by the seller:

> We likewise uphold the finding that MARINA's cancellation of the Contract To Buy and To Sell was clearly illegal. Prior to MARINA's unilateral act of rescission, H.L. CARLOS had already paid ₱1,810,330.70, or more than 50% of the contract price of ₱3,614,000.00. Moreover, the sum H.L. CARLOS had disbursed amounted to more than the total of 24 installments, *i.e.*, two years' worth of installments computed at a monthly installment rate of ₱67,024.22, inclusive of the downpayment.[60]

In *Jestra Development and Management Corporation v. Pacifico*,[61] where down payment was itself payable in portions, this Court reckoned the monthly installment payment for the down payment amounting to ₱121,666.66, rather than the monthly amortization. This Court justified this by referencing Section 3's injunction that "[d]own payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made":

> The total purchase price of the property is ₱2,500,000. As provided in the Reservation Application, the 30% down payment on the purchase price or ₱750,000 was to be paid in six monthly installments of ₱121,666.66. Under the Contract to Sell, the 70% balance of

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[59] 355 Phil. 705 (1998) [Per *J*. Davide, Jr., First Division].

[60] *Id*. at 719. See also *Rillo v. Court of Appeals*, 340 Phil. 570 (1997) [Per *J*. Puno, Second Division], where compliance was reckoned in relation to the monthly amortization of ₱7,092.00.

[61] 542 Phil. 400 (2007) [Per *J*. Carpio Morales, Second Division].

₱1,750,000.00 on the purchase price was to be paid in 10 years through monthly installments of ₱34,983, which was later increased to ₱39,468 in accordance with the agreement to restructure the same.

While, under the above-quoted Section 3 of R.A. No. 6552, the down payment is included in computing the total number of installment payments made, the proper divisor is neither ₱34,983 nor ₱39,468, but ₱121,666.66, the monthly installment on the down payment.

The ₱750,000 down payment was to be paid in six monthly installments. If the down payment of ₱750,000 is to be deducted from the total payment of ₱846,600, the remainder is only ₱96,600. Since respondent was able to pay the down payment in full eleven (11) months after the last monthly installment was due, and the sum of ₱76,600 representing penalty for delay of payment is deducted from the remaining ₱96,600, only a balance of ₱20,000 remains.

As respondent failed to pay at least two years of installments, he is not, under above-quoted Section 3 of R.A. No. 6552, entitled to a refund of the cash surrender value of his payments.[62]

Jestra was wrong to use the installment payments on the down payment as divisor. It is an error to reckon the payment of two (2) years' worth of installments on the apportionment of the down payment because, even in cases where the down payment is broken down into smaller, more affordable portions, payments for it still do not embody the ratable apportionment of the contract price throughout the *entire* duration of the contract term. Rather than the partial payments for the down payment, it is the partition of the contract price into monthly amortizations that manifests the ratable apportionment across a complete contract term that is the essence of sales on installment. The correct standard is that which was used in *Marina*, not in *Jestra*.

Marina also correctly demonstrated how Section 3's injunction that "[d]own payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made" should operate. In *Marina*, the total amount of ₱1,810,330.70 paid by the buyer was inclusive of payments for down payment worth ₱1,034,200.00 and cash deposit worth

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[62] *Id.* at 408-409.

₱50,000.00. In concluding that the buyer in *Marina* had paid more than two (2) years' or 24 months' worth of installments, what this Court considered was the total amount of ₱1,810,330.70 and not merely the payments on amortizations.

Following *Marina*, this Court reckons petitioner's satisfaction of the requisite two (2) years' or 24 months' worth of installments using as divisor the monthly amortizations due from petitioner. However, this Court notes that the monthly amortizations due from petitioner were stipulated to escalate on a yearly basis. In keeping with the need to construe the Maceda Law in a manner favorable to the buyer, this Court uses as basis the monthly amortizations set for the first year, *i.e.*, ₱27,936.84. With this as the divisor, it shall appear that petitioner has only paid 21.786 months' worth of installments. This falls short of the requisite two (2) years' or 24 months' worth of installments.

IV

Failing to satisfy Section 3's threshold, petitioner's case is governed by Section 4 of the Maceda Law.

Thus, she was "entitled to a grace period of not less than sixty (60) days from the due date within which to make [her] installment payment. [Respondent], on the other hand, ha[d] the right to cancel the contract after thirty (30) days from receipt by [petitioner] of the notice of cancellation."[63]

For cancellations under Section 4 to be valid, three (3) requisites must concur. First, the buyer must have been given a 60-day grace period but failed to utilize it. Second, the seller must have sent a notice of cancellation or demand for rescission by notarial act. And third, the cancellation shall take effect only after 30 days of the buyer's receipt of the notice of cancellation:

Essentially, the said provision provides for three (3) requisites before the seller may actually cancel the subject contract: ***first,*** the seller

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[63] *Rillo v. Court of Appeals*, 340 Phil. 570, 578 (1997) [Per *J.* Puno, Second Division].

shall give the buyer a **60-day grace period** to be reckoned from the date the installment became due; ***second,*** the seller must give the buyer a **notice of cancellation/demand for rescission by notarial act** if the buyer fails to pay the installments due at the expiration of the said grace period; and ***third,*** the seller may actually cancel the contract only **after thirty (30) days** from the buyer's receipt of the said notice of cancellation/demand for rescission by notarial act.[64] (Emphasis in the original)

Respondent's October 4, 2004 notice indicates that petitioner failed to utilize the 60-day grace period. It also indicates that cancellation was to take effect "thirty (30) days from [its] receipt":

Our records show that your account remains unpaid despite our written request for your payment. We have in fact given you sixty (60) days to update but you failed to settle your account. Accordingly, please be informed that we are now hereby canceling your account effective thirty (30) days from receipt hereof.[65]

The notice of cancellation was also accompanied by a jurat; thereby making it appear to have been a valid notarial act:

SUBSCRIBED AND SWORN to before me this OCT 06 2004, affiant exhibiting to me *Community Tax Certificate No. 05465460 issued on February 09, 2004 at Manila*.[66] (Emphasis supplied)

This is not, however, the valid notarial act contemplated by the Maceda Law.

In ordinary circumstances, "[n]otarization of a private document converts the document into a public one making it admissible in court without further proof of its authenticity."[67] To enable this conversion, Rule 132, Section 19 of the Revised

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[64] *Optimum Development Bank v. Spouses Jovellanos*, 722 Phil. 772, 785 (2013) [Per *J.* Perlas-Bernabe, Second Division].

[65] *Rollo*, p. 100.

[66] *Id*.

[67] *Maligsa v. Cabanting*, 338 Phil. 912, 917 (1997) [Per Curiam, *En Banc*].

Rules of Evidence specifically requires that a document be "acknowledged before a notary public."[68]

Rule II, Section 1 of A.M. No. 02-8-13-SC, the 2004 Rules on Notarial Practice, defines an acknowledgement, as follows:

SECTION 1. Acknowledgment. — "Acknowledgment" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and presents an integrally complete instrument or document;

(b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.

Notarization under the Maceda Law extends beyond converting private documents into public ones. Under Sections 3 and 4, notarization enables the exercise of the statutory right of unilateral cancellation by the seller of a perfected contract. If an acknowledgement is necessary in the customary rendition of public documents, with greater reason should an

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[68] RULES OF COURT, Rule 132, Sec. 19 provides:

Section 19. Classes of Documents. — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
(b) Documents acknowledged before a notary public except last wills and testaments; and
(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

acknowledgement be imperative in notices of cancellation or demands for rescission made under Sections 3 and 4 of the Maceda Law.

Through an acknowledgement, individuals acting as representatives declare that they are authorized to act as such representatives. This is particularly crucial with respect to signatories to notices of cancellation or demands for rescission under Sections 3 and 4 of the Maceda Law. In a great number of cases, the sellers of real property shall be juridical persons acting through representatives. In these cases, it is imperative that the officer signing for the seller indicate that he or she is duly authorized to effect the cancellation of an otherwise perfected contract. Not all personnel are capacitated to effect these cancellations; individuals purporting to do so must demonstrate their specific authority. In the case of corporations, this authority is vested through board resolutions, or by stipulations in the articles of incorporation or by-laws.

Respondent's notice of cancellation here was executed by an individual identified only as belonging to respondent's Collection Department. It was also accompanied not by an acknowledgement, but by a jurat.

A jurat is a distinct notarial act, which makes no averment concerning the authority of a representative. It is defined by Rule II, Section 6 of the 2004 Rules on Notarial Practice, as follows:

SECTION 6. Jurat. — "Jurat" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and presents an instrument or document;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;

(c) signs the instrument or document in the presence of the notary; and

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

Even if respondent's notarization by jurat and not by acknowledgement were to be condoned, respondent's jurat was not even a valid jurat executed according to the requirements of the 2004 Rules on Notarial Practice.

The 2004 Rules on Notarial Practice took effect on August 1, 2004.[69] It governed respondent's October 4, 2004 notice, which was notarized on October 6, 2004. As Rule II, Section 6 of these Rules clearly states, the person signing the document must be "personally known to the notary public or identified by the notary public through competent evidence of identity."

Rule II, Section 12, in turn, defines "competent evidence of identity." As originally worded, when the 2004 Rules on Notarial Practice came into effect on August 1, 2004, Rule II, Section 12 read:

> Section 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.

The proof of identity used by the signatory to respondent's notice of cancellation was a community tax certificate, which no longer satisfies this requirement.

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[69] Rule XIII, Sec. 2 provides:

> Section 2. Effective Date. — These Rules shall take effect on the first day of August 2004, and shall be published in a newspaper of general circulation in the Philippines which provides sufficiently wide circulation.

Rule II, Section 12 was eventually amended by A.M. No. 02-8-13-SC. As amended, it specifically rebukes the validity of a community tax certificate as a competent evidence of identity:

> Section 12. Competent Evidence of Identity. – The phrase "competent evidence of identity" refers to the identification of an individual based on:
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> 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 Regulations 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; 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.

Baylon v. Almo[70] explained why community tax certificates were specifically excluded as a permissible proof of identity:

> As a matter of fact, recognizing the established unreliability of a community tax certificate in proving the identity of a person who wishes to have his document notarized, we did not include it 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.[71]

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[70] 578 Phil. 238 (2008) [Per *J.* Quisumbing, Second Division].

[71] *Id.* at 242.

Marina Properties v. Court of Appeals[72] was unequivocal: "[I]n order to effect the cancellation of a contract, a notarial cancellation must first be had."[73] *Realty Exchange Venture Corp. v. Sendino*[74] explained, "Since R.A. 6552 mandates cancellation by notarial act — among other requirements — before any cancellation of a contract may be effected, petitioners' precipitate cancellation of its contract with private respondent without observing the conditions imposed by the said law was invalid and improper."[75] In *Active Realty and Development v. Daroya*,[76] where the seller "failed to send a notarized notice of cancellation,"[77] this Court decried the iniquity foisted upon a buyer. "[W]e find it illegal and iniquitous that petitioner, without complying with the mandatory legal requirements for canceling the contract, forfeited both respondent's land and hard-earned money."[78]

In ordinary circumstances, where notarization serves merely to convert a private document into a public document, notaries public have been admonished about faithfully observing the rules governing notarial acts: "Faithful observance and utmost respect of the legal solemnity of an oath in an acknowledgment or jurat is sacrosanct."[79] It is with greater reason that the diligent observance of notarial rules should be impressed in cases concerned with a seller's exercise of a statutory privilege through cancellations under the Maceda Law.

Respondent's failure to diligently satisfy the imperatives of the 2004 Rules on Notarial Practice constrains this Court to

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[72] 355 Phil. 705 (1998) [Per *J*. Davide, Jr., First Division].

[73] *Id*. at 720.

[74] 304 Phil. 65 (1994) [Per *J*. Kapunan, First Division].

[75] *Id*. at 77.

[76] 431 Phil. 753 (2002). [Per *J*. Puno, First Division].

[77] *Id*. at 757.

[78] *Id*. at 762–763.

[79] *Maligsa v. Cabanting,* 338 Phil. 912, 917 (1997) [Per Curiam, *En Banc*].

consider its notice as an invalid notarial act. This amounts to respondent's failure to satisfy the second requisite for valid cancellations under Section 4, ultimately rendering its cancellation of the purchase agreement ineffectual.

This Court is mindful of jurisprudence in which it has been lenient with the requirement of presenting a competent evidence of identity before a notary public.

Galicto v. Aquino,[80] *Coca-Cola Bottlers Philippines, Inc. v. Dela Cruz*,[81] *Victorio-Aquino v. Pacific Plans, Inc.*,[82] and *Reyes v. Glaucoma Research Foundation, Inc.*[83] concerned verifications and certifications of non-forum shopping in which jurats did not indicate the required competent evidence of identity. In these cases, this Court overlooked the defects considering that "defective jurat in the Verification/Certification of Non-Forum Shopping is not a fatal defect . . . The verification is only a formal, not a jurisdictional, requirement that the Court may waive."[84] Likewise, this Court considered it more appropriate to not hinder the consideration of pleadings in order that party-litigants may exhaustively plead their cases.[85]

Galicto, *Coca-Cola*, *Victorio-Aquino*, and *Reyes* are markedly different from the present controversy. They merely concerned formal infractions. In contrast, this case concerns Section 4's definite precondition for the seller's exercise of its option to repudiate a contract. At stake in *Galicto*, *Coca-Cola*, *Victorio-Aquino*, and *Reyes* was the right to be heard in judicial proceedings, a cognate of due process. What is at stake here

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[80] 683 Phil. 141 (2012) [Per *J.* Brion, *En Banc*].

[81] 622 Phil. 866 (2009) [Per *J.* Brion, Second Division].

[82] 749 Phil. 790 (2014) [Per *J.* Peralta, Third Division].

[83] 760 Phil. 779 (2015) [Per *J.* Peralta, Third Division].

[84] *Galicto v. Aquino III,* 683 Phil. 141, 175 (2012) [Per *J.* Brion, *En Banc*].

[85] See *Coca-Cola Bottlers Philippines, Inc. v. Dela Cruz*, 622 Phil. 866 (2009) [Per *J.* Brion, Second Division]; and *Victorio-Aquino v. Pacific Plans, Inc.*, 749 Phil. 790 (2014) [Per *J.* Peralta, Third Division].

is different: the grant of a statutory privilege relating to a civil contract.

To be effective, sellers' cancellations under the Maceda Law must strictly comply with the requirements of Sections 3 and 4. This Court clarifies here that with respect to notices of cancellation or demands for rescission by notarial act, an acknowledgement is imperative. Moreover, when these are made through representatives of juridical persons selling real property, the authority of these representatives must be duly demonstrated. For corporations, the representative's authority must have either been granted by a board resolution or existing in the seller's articles of incorporation or by-laws.

With the Maceda Law's avowed purpose of extending benefits to disadvantaged buyers and liberating them from onerous and oppressive conditions, it necessarily follows that the Maceda Law's permission for sellers to cancel contracts becomes available only when its conditions are heedfully satisfied. No liberal construction of the Maceda Law can be made in favor of the seller and at the same time burdening the buyer.

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There being no valid cancellation, the purchase agreement between petitioner and respondent "remains valid and subsisting."[86] However, respondent has already sold the lot purchased by petitioner to a certain Ruel Ymana.[87]

Gatchalian Realty v. Angeles[88] confronted a similar predicament. In determining the most judicious manner of disposing of the controversy, this Court considered the analogous cases of *Olympia Housing v. Panasiatic Travel*,[89] *Pagtalunan v. Vda. de Manzano*,[90] *Active Realty and Development v.*

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[86] *Gatchalian Realty v. Angeles*, 722 Phil. 407, 425 (2013) [Per J. Carpio, Second Division].

[87] *Rollo*, p. 68.

[88] 722 Phil. 407 (2013) [Per J. Carpio, Second Division].

[89] 443 Phil. 385 (2003) [Per J. Vitug, First Division].

[90] 559 Phil. 658 (2007) [Per J. Azcuna, First Division].

Daroya,[91] and *Associated Marine Officers and Seamen's Union of the Philippines PTGWO-ITF v. Decena*:[92]

In *Olympia*, this Court dismissed the complaint for recovery of possession for having been prematurely filed without complying with the mandate of R.A. 6552. We ordered the defaulting buyer to pay the developer the balance as of the date of the filing of the complaint plus 18% interest per annum computed from the day after the date of the filing of the complaint, but within 60 days from the receipt of a copy of the decision. Upon payment, the developer shall issue the corresponding certificate of title in favor of the defaulting buyer. If the defaulting buyer fails to pay the full amount, then the defaulting buyer shall vacate the subject property without need of demand and all payments will be charged as rentals to the property. There was no award for damages and attorney's fees, and no costs were charged to the parties.

In *Pagtalunan*, this Court dismissed the complaint for unlawful detainer. We also ordered the defaulting buyer to pay the developer the balance of the purchase price plus interest at 6% per annum from the date of filing of the complaint up to the finality of judgment, and thereafter, at the rate of 12% per annum. Upon payment, the developer shall issue a Deed of Absolute Sale of the subject property and deliver the corresponding certificate of title in favor of the defaulting buyer. If the defaulting buyer fails to pay the full amount within 60 days from finality of the decision, then the defaulting buyer should vacate the subject property without need of demand and all payments will be charged as rentals to the property. No costs were charged to the parties.

In *Active*, this Court held that the Contract to Sell between the parties remained valid because of the developer's failure to send a notarized notice of cancellation and to refund the cash surrender value. The defaulting buyer thus had the right to offer to pay the balance of the purchase price, and the developer had no choice but to accept payment. *However,* ***the defaulting buyer was unable to exercise this right because the developer sold the subject lot****. This Court ordered the developer to refund to the defaulting buyer the actual value of the lot with 12% interest per annum computed from*

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[91] 431 Phil. 753 (2002) [Per *J*. Puno, First Division].

[92] 696 Phil. 188 (2012) [Per *J*. Perlas-Bernabe, Second Division].

*the date of the filing of the complaint until fully paid, or to deliver a substitute lot at the option of the defaulting buye*r.

In *Associated*, this Court dismissed the complaint for unlawful detainer. We held that the Contract to Sell between the parties remained valid because the developer failed to send to the defaulting buyer a notarized notice of cancellation and to refund the cash surrender value. We ordered the MeTC to conduct a hearing within 30 days from receipt of the decision to determine the unpaid balance of the full value of the subject properties as well as the current reasonable amount of rent for the subject properties. We ordered the defaulting buyer to pay, within 60 days from the trial court's determination of the amounts, the unpaid balance of the full value of the subject properties with interest at 6% per annum computed from the date of sending of the notice of final demand up to the date of actual payment. Upon payment, we ordered the developer to execute a Deed of Absolute Sale over the subject properties and deliver the transfer certificate of title to the defaulting buyer. In case of failure to pay within the mandated 60-day period, we ordered the defaulting buyer to immediately vacate the premises without need for further demand. The developer should also pay the defaulting buyer the cash surrender value, and the contract should be deemed cancelled 30 days after the defaulting buyer's receipt of the full payment of the cash surrender value. If the defaulting buyer failed to vacate the premises, he should be charged reasonable rental in the amount determined by the trial court.[93] (Emphasis supplied)

Gatchalian proceeded to, first, assert the propriety of equitably resolving the controversy, and second, consider the options available to the buyer. It specifically noted that in the event that its subject properties were no longer available, only two (2) options remained: a refund or an offer of substitute properties. It was exclusively for the buyer to choose between these options:

We observe that this case has, from the institution of the complaint, been pending with the courts for 10 years. As both parties prayed for the issuance of reliefs that are just and equitable under the premises, and in the exercise of our discretion, we resolve to dispose of this case in an equitable manner. Considering that GRI did not validly rescind Contracts to Sell Nos. 2271 and 2272, Angeles has two options:

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[93] *Gatchalian Realty v. Angeles*, 722 Phil. 407, 426–427 (2013) [Per *J.* Carpio, Second Division].

1. The option to pay, within 60 days from the MeTC's determination of the proper amounts, the unpaid balance of the full value of the purchase price of the subject properties plus interest at 6% per annum from 11 November 2003, the date of filing of the complaint, up to the finality of this Decision, and thereafter, at the rate of 6% per annum. Upon payment of the full amount, GRI shall immediately execute Deeds of Absolute Sale over the subject properties and deliver the corresponding transfer certificate of title to Angeles.

In the event that the subject properties are no longer available, GRI should offer substitute properties of equal value. Acceptance of the suitability of the substitute properties is Angeles' sole prerogative. Should Angeles refuse the substitute properties, GRI shall refund to Angeles the actual value of the subject properties with 6% interest per annum computed from 11 November 2003, the date of the filing of the complaint, until fully paid; and

2. The option to accept from GRI ₱574,148.40, the cash surrender value of the subject properties, with interest at 6% per annum, computed from 11 November 2003, the date of the filing of the complaint, until fully paid. Contracts to Sell Nos. 2271 and 2272 shall be deemed cancelled 30 days after Angeles' receipt of GRI's full payment of the cash surrender value. No rent is further charged upon Angeles as GRI already had possession of the subject properties on 10 October 2006.[94] (Emphasis supplied)

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[94] *Id.* at 427–428. The dispositive portion read:

WHEREFORE, we DENY the petition. The Decision of the Court of Appeals in CA-G.R. SP No. 105964 promulgated on 11 November 2011 and the Resolution promulgated on 19 June 2012 are AFFIRMED with MODIFICATIONS.

1. The Metropolitan Trial Court of Las Piñas City is directed to conduct a hearing within a maximum period of 30 days from finality of this Decision to (1) determine Evelyn M. Angeles' unpaid balance on Contracts to Sell Nos. 2271 and 2272; and (2) the actual value of the subject properties as of 11 November 2003.

2. Evelyn M. Angeles shall notify the Metropolitan Trial Court of Las Piñas City and Gatchalian Realty, Inc. within a maximum period of 60 days from the Metropolitan Trial Court of Las Piñas City's determination of the unpaid balance whether she will pay the unpaid balance or accept the cash surrender value.

   Should Evelyn M. Angeles choose to pay the unpaid balance, she shall pay, within 60 days from the MeTC's determination of the

This case is most akin to *Active*. There, as in this case, the subject property was actually sold by the seller to a third person. *Gatchalian* mirrored *Active* in discerning an equitable ruling in the event that its subject properties had been sold by the seller to another person.

It was *Active* that originally identified two (2) options where a seller wrongly cancelled a contract with a buyer *and* had since sold that property to a third person, refunding the *actual*[95] value of the lot sold plus interest or delivering a substitute lot to the buyer:

Thus, for failure to cancel the contract in accordance with the procedure provided by law, we hold that the contract to sell between

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> proper amounts, the unpaid balance of the full value of the purchase price of the subject properties plus interest at 6% per annum from 11 November 2003, the date of filing of the complaint, up to the finality of this Decision, and thereafter, at the rate of 6% per annum. Upon payment of the full amount, GRI shall immediately execute Deeds of Absolute Sale over the subject properties and deliver the corresponding transfer certificate of title to Angeles.
>
> In the event that the subject properties are no longer available, GRI should offer substitute properties of equal value. Should Angeles refuse the substitute properties, GRI shall refund to Angeles the actual value of the subject properties with 6% interest per annum computed from 11 November 2003, the date of the filing of the complaint, until fully paid.
>
> Should Evelyn M. Angeles choose to accept payment of the cash surrender value, she shall receive from GRI ₱574,148.40 with interest at 6% per annum, computed from 11 November 2003, the date of the filing of the complaint, until fully paid. Contracts to Sell Nos. 2271 and 2272 shall be deemed cancelled 30 days after Angeles' receipt of GRI's full payment of the cash surrender value. No rent is further charged upon Evelyn M. Angeles.
>
> No costs.
>
> SO ORDERED.

[95] N.b., the amount to be refunded was the actual value, not the original contract price. The same value was used for reckoning the amount to be refunded in *Gatchalian*. In *Gatchalian*, this Court stated: "GRI shall refund to Angeles the actual value of the subject properties with 6% interest per annum computed from 11 November 2003, the date of the filing of the complaint, until fully paid."

the parties remains valid and subsisting. Following Section 3(a) of R.A. No. 6552, respondent has the right to offer to pay for the balance of the purchase price, without interest, which she did in this case. Ordinarily, petitioner would have had no other recourse but to accept payment. However, respondent can no longer exercise this right as the subject lot was already sold by the petitioner to another buyer which lot, as admitted by the petitioner, was valued at ₱1,700.00 per square meter. *As respondent lost her chance to pay for the balance of the ₱875,000.00 lot, it is only just and equitable that the petitioner be ordered to* ***refund to respondent the actual value of the lot resold****, i.e., ₱875,000.00, with 12% interest per annum computed from August 26, 1991 until fully paid or to deliver a substitute lot at the option of the respondent.*[96] (Emphasis supplied)

In *Active*, the buyer managed to pay the full price of the principal value of the lot but was still short of the total contract price net of interest.[97] Unlike the buyer in *Active*, petitioner here has only made partial payments. Thus, a full refund of the actual value of the lot, as *Active* and *Gatchalian* ordered, is improper. In addition, petitioner has disavowed any interest in proceeding with the purchase.[98] She has even admitted to not having the financial capacity for this.[99] The antecedents, too, demonstrate that petitioner made no further attempt at proceeding with the purchase. Therefore, this Court follows *Active*'s precedent, as it did in *Gatchalian*, but makes adjustments in consideration of the peculiarities of this case.

Considering that it did not validly cancel its contract with petitioner and has also sold the lot to another person, it is proper that respondent be ordered to refund petitioner. This refund shall not be the *full*, actual value of the lot resold, as was ordered in *Active* and *Gatchalian*, lest petitioner be unjustly enriched.

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[96] *Active Realty and Development Corporation v. Daroya*, 431 Phil. 753, 761 (2002) [Per *J.* Puno, First Division].

[97] The principal amount was ₱224,025.00; total payments to be made, net of interest, were ₱346,367.00; at the time of default, the buyer had paid ₱314,816.00.

[98] *Rollo*, p. 21.

[99] *Id*.

Rather, it shall only be the amount actually paid by petitioner to respondent, *i.e.*, ₱608,648.20. In view of *Nacar v. Gallery Frames,* this amount shall be subject to legal interest at the rate of twelve percent (12%) per annum reckoned from the filing of petitioner's Complaint[100] until June 30, 2013; and six percent (6%) per annum from July 1, 2013 until fully paid.[101]

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The assailed October 11, 2012 Decision and July 3, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 118285 are **REVERSED** and **SET ASIDE**.

Respondent Filinvest Land, Inc. is ordered to refund petitioner Priscilla Zafra Orbe the amount of ₱608,648.20. This refund shall earn legal interest at twelve percent (12%) per annum from November 17, 2004 to June 30, 2013, and six percent (6%) per annum, reckoned from July 1, 2013 until fully paid.

This case is **REMANDED** to the Housing and Land Use Regulatory Board Expanded National Capital Regional Field Office **FOR PROPER EXECUTION**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

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[100] Respondent's obligation to refund petitioner ensued at the moment it became impossible for petitioner to avail of her rights under Section 4 of the Maceda Law, that is, when respondent sold the property to Ruel Ymana. Interest on it accrued from the moment of the filing of petitioner's Complaint, the date of judicial demand. *Eastern Shipping Lines v. Court of Appeals* (which articulated the guidelines for the reckoning of legal interest that were in effect when the material incidents of this case arose) explained that in the absence of stipulation, the interest due on a breach of obligation consisting in the payment of a sum of money "shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand."

[101] 716 Phil. 267 (2013) [Per *J.* Peralta, *En Banc*]. *See* Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013.

THIRD DIVISION

[G.R. No. 208625. September 6, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAMON FRANCICA *y* NAVALTA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC) AS AMENDED BY R.A. 8353; RAPE; ELEMENTS OF RAPE UNDER ARTICLE 266-A(1) OR RAPE THROUGH FORCE OR INTIMIDATION; RAPE UNDER ARTICLE 266-A(2) OR RAPE THROUGH DIRECT ASSAULT, DESCRIBED.— For a charge of rape under Article 266-A(1) to prosper, it must be proven that "(1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented." On the other hand, rape under Article 266-A(2) is described in *Ricalde v. People* as "'instrument or object rape,' 'gender-free rape,' or 'homosexual rape.' The gravamen of rape through sexual assault is 'the insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice.'"

2. ID.; ID.; RAPE UNDER ARTICLE 266-A(1)(d) OR STATUTORY RAPE; ELEMENTS, EXPLAINED.— Rape under Article 266-A(1)(d) is also called statutory rape as "it departs from the usual modes of committing rape." The child victim's consent in statutory rape is immaterial because the law presumes that her young age makes her incapable of discerning good from evil. *People v. Gutierez* explained the elements of statutory rape: Statutory rape is committed when (1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.

3. REMEDIAL LAW; EVIDENCE; POSITIVE AND CATEGORICAL TESTIMONY OF THE CHILD VICTIM

GIVEN FULL WEIGHT AND CREDIT AS AGAINST THE ACCUSED'S DEFENSE OF DENIAL.— As shown by her testimony, AAA was able to narrate in a straightforward and categorical manner what transpired between her and Francica. In a long line of cases, this Court has given full weight and credence to the testimony of child victims, holding that their "[y]outh and immaturity are generally badges of truth and sincerity." Compared to AAA's candid and categorical testimony, Francica's defense of denial must fail. *Imbo v. People* emphasized that the self-serving defense of denial falters against the "positive identification by, and straightforward narration of the victim." This Court has likewise repeatedly held that the lone yet credible testimony of the offended party is sufficient to establish the guilt of the accused.

4. ID.; ID.; PHYSICAL EVIDENCE; HEALED LACERATIONS IN THE VICTIM'S VAGINA STRONGLY CORROBORATES HER TESTIMONY THAT SHE WAS SEXUALLY ABUSED.— Despite the absence of the medico-legal officer as a witness, the presence of healed lacerations corroborates AAA's testimony as it "is the best physical evidence of forcible defloration." It is well-established that "[p]hysical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses." The physical evidence of the healed lacerations in AAA's vagina strongly corroborates her testimony that she was sexually abused by Francica.

5. CRIMINAL LAW; RPC AS AMENDED BY R.A. 8353 IN RELATION TO R.A. 7610; STATUTORY RAPE; PENALTY AND CIVIL LIABILITY.— Article 266-B of the Revised Penal Code provides that the penalty of *reclusion perpetua* shall be imposed in cases of rape stated in the first paragraph of Article 266-A where there are no aggravating or qualifying circumstances present. This corresponds with Section 5(b) of Republic Act No. 7610, which also provides for the penalty of *reclusion perpetua* if the rape victim is below 12 years old[.] x x x The lower courts correctly imposed the penalty of *reclusion perpetua* for each count of statutory rape. However, this Court increases the amount of civil indemnity of ₱50,000.00 to ₱75,000.00, moral damages of ₱50,000.00 to ₱75,000.00, and exemplary damages of ₱25,000.00 to ₱75,000.00 pursuant to prevailing jurisprudence. In addition, interest at the legal rate of six percent (6%) per annum shall be imposed on all

damages awarded from the date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

No amount, especially not the ₱50.00 paid by the accused for sexually abusing his 11-year-old victim, will ever compensate for her trauma. The depravity of a grown man in taking advantage of a child's trust and innocence and her family's poverty to repeatedly rape her rightfully deserves condemnation and the most severe punishment that can be meted out under the law.

This Court is asked to review the February 22, 2013 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 03929. This Decision affirmed the conviction of accused-appellant Ramon Francica (Francica) for three (3) counts of statutory rape under Article 266-A(1)(d) of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Republic Act No. 7610, and imposed the penalty of *reclusion perpetua* for each count of rape.[2]

This Court restates the facts as found by the lower courts.

On February 3, 2005, in Criminal Case No. 05-1287-FC-H, an Information[3] was filed against Francica before Branch 209, Regional Trial Court, Mandaluyong City. This Information read:

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[1] *Rollo,* pp. 2-11. The Decision was penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan of the Tenth Division, Court of Appeals, Manila.

[2] *Id*. at 10.

[3] RTC *records*, pp. 1-2.

That on or about the 2nd day of February 2005, in the city of Mandaluyong, Philippines, a place within the jurisdiction of [this Honorable Court,] the above-named accused, being the neighbor of the victim, did, then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a girl eleven (11) years of age, by then and there inserting his private part into [the] latter's vagina, all against the latter's will, which acts [sic] debases, degrades or demeans the intrinsic worth and dignity of the victim (a child) as a human being.

CONTRARY TO LAW.[4]

When arraigned,[5] Francica pleaded not guilty to the crime charged against him.

On September 20, 2005, in Criminal Case Nos. MC05-1483-FC-H and MC05-1484-FC-H, two (2) additional Informations were also filed against Francica before Branch 209, Regional Trial Court, Mandaluyong City. The second Information read:

That on or about the 19th day of January 2005, in the city of Mandaluyong, Philippines, a place within the jurisdiction of [this Honorable Court,] the above-named accused, motivated by carnal lust and by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a girl eleven (11) years of age, a child within the meaning of R.A. 7610, by then and there inserting his private part into the latter's vagina, all against the latter's will, which acts [sic] debases, degrades or demeans the intrinsic worth and dignity of the victim (a child) as a human being.

CONTRARY TO LAW.[6]

The third Information read:

That sometime in the month of March 2004, in the City of Mandaluyong, Philippines, a place within the jurisdiction [of this Honorable Court,] the above-named accused, motivated by carnal

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[4] *Id*. at 1.

[5] *Id*. at 13.

[6] *Id*. at 49.

lust and by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a girl eleven (11) years of age, a child within the meaning of R.A. 7610, by then and there inserting his private part into the latter's vagina, all against the latter's will, which acts [sic] debases, degrades or demeans the intrinsic worth and dignity of the victim (a child) as a human being.

CONTRARY TO LAW.[7]

On October 26, 2005, the trial court ordered the consolidation of the three (3) charges of rape.[8]

Francica also pleaded not guilty to the two (2) other charges of rape against him.[9]

Trial on the merits ensued.

The prosecution presented the child victim, AAA, who was then 11 years old and a Grade 6 student at a public school in Nueve de Pebrero in Mandaluyong City.[10]

AAA testified that she lived with her parents and five (5) siblings in Mandaluyong City near Cardinal Sin. AAA claimed that she knew Francica because he was their neighbor.[11]

AAA testified that Francica was a good person because he would sometimes give her money whenever he touched her.[12] When asked how Francica touched her, AAA answered that he licked her breasts and inserted his penis into her vagina.[13]

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[7] *Id*. at 58.

[8] *Id*. at 69.

[9] *Id*. at 71-72.

[10] TSN dated August 30, 2005, pp. 3-4, 6-7.

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

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

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

She claimed that Francica started touching her sometime in March 2004 and that this went on many times. He would sometimes even give her ₱50.00 after touching her.[14]

The next prosecution witness was BBB, AAA's grandmother. BBB testified that AAA lived on the ground floor of her house in Nueve de Pebrero while she lived on the second floor. BBB claimed to know Francica because he had been her neighbor for many years.[15]

BBB testified that she had two (2) bathrooms at the back of her house.[16] In the afternoon of February 2, 2005, she was using one (1) of them when she heard a voice say, *"May tao. Si Mamang yata yun"* from inside the other lavatory.[17] When she went out, she saw someone run out of the other bathroom. She quickly looked inside the washroom and saw AAA. She ran after the other person and when he looked backed, she recognized him as Francica.[18]

She was unable to catch Francica and when she returned to her house, she saw her other grandchild, CCC, talking with AAA. CCC was outside the bathrooms when the commotion happened and CCC told BBB that she saw AAA pulling up her underwear inside the lavatory after Francica ran out.[19]

BBB claimed that she had heard rumors that Francica and AAA regularly had sexual intercourse and that she had confronted AAA about this before, but AAA never confirmed these rumors.[20]

After she saw AAA and Francica inside the bathroom, BBB told Josephine, AAA's aunt, about what happened. AAA and

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[14] *Id*. at 9.

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

[16] *Id*. at 23.

[17] *Id*. at 17.

[18] *Id*. at 13-17.

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

[20] *Id*. at 17-18.

Josephine then went to the barangay hall to report the incident.[21]

BBB testified that she was summoned to the barangay hall later that afternoon to confront Francica. She claimed that Francica admitted the accusation against him, for which he was mauled inside the barangay hall.[22]

After the barangay investigation, BBB and AAA went to the police station to execute their respective affidavits.[23]

BBB testified that AAA's family was very poor and that AAA's mother could not look after her children because she had a gambling problem. BBB admitted that she would prefer that AAA be placed under the custody of the Department of Social Welfare and Development because she was already overtaxed with looking after and providing for several other grandchildren and could no longer take care of AAA.[24]

The third prosecution witness was Carlos C. Gojo (Gojo), a member of Task Force Anti-Vice. He testified that after BBB reported AAA's rape, Task Force Anti-Vice teamed up with Bantay Bayan of Addition Hills that same day to arrest Francica. The two (2) groups went to Francica's house where they found and arrested him. Gojo attested that Francica was informed of his constitutional rights to be silent and be represented by a lawyer during his arrest.[25]

Gojo admitted that they had no warrant of arrest when they arrested Francica since they relied on the complaint lodged against Francica.[26]

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[21] *Id*. at 19.

[22] *Id*. at 20-21.

[23] *Id*. at 22; RTC records, pp. 4-5.

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

[25] TSN dated August 9, 2006, pp. 3-6.

[26] *Id*. at 9.

Both parties agreed to stipulate[27] on the testimony of PO1 Jocelyn Samson, who investigated the case and endorsed the complaint against Francica to the Office of the City Prosecutor.

The trial court then ruled that the prosecution waived its right to present as its witness medico-legal PSI Pierre Paul Carpio, M.D. (PSI Carpio), who examined AAA, because of his repeated failure to attend the hearings.[28]

The last prosecution witness was Court Social Worker Leonor Laureles (Laureles), who conducted the Social Case Study Report[29] on AAA upon the trial court's directive.[30] Laureles testified that she interviewed AAA, who opened up about the abuse she underwent because of Francica.[31] Laureles also averred that she had recommended that AAA be referred to an institution as she was neglected by her parents.[32]

Francica was the only witness for the defense and he denied that he ever had sexual intercourse with AAA. He claimed that he was only set up by AAA's family after he found out from Nora, AAA's other aunt, that AAA had a relationship with her uncle. Francica stated that he told AAA's parents about her relationship with her uncle, but they ignored him. Francica further claimed that he was made a scapegoat after he revealed AAA's relationship with her uncle.[33]

Francica did not deny being inside the bathroom with AAA, but he claimed that it was a common facility and that he was urinating when AAA went inside to wait for her turn to use the

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[27] RTC records, pp. 221-222.

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

[29] CA *rollo,* pp. 38-41.

[30] TSN dated August 6, 2008, pp. 4-5.

[31] *Id*. at 7-8.

[32] *Id*. at 12-15.

[33] TSN dated October 22, 2008, pp. 5-8 and TSN dated November 19, 2008, p. 4.

toilet. It was at this point when AAA's cousin and BBB saw them inside the lavatory.[34]

On March 3, 2009, the trial court rendered judgment[35] finding Francica guilty of three (3) counts of statutory rape and meting out the penalty of *reclusion perpetua* for each count.[36]

The trial court ruled that all the elements of statutory rape were established with AAA's credible and candid testimony, corroborated by BBB's testimony.[37]

The trial court also held that it was immaterial that the prosecution failed to present the testimony of medico-legal PSI Carpio, since "a medical examination is not indispensable to the prosecution of rape as long as the evidence on hand convinces the court that conviction for rape is proper."[38]

The dispositive portion of the trial court's decision read:

> WHEREFORE, premises considered, this Court finds the accused RAMON FRANCICA y NAVALTA GUILTY beyond reasonable doubt of three (3) counts of Statutory Rape and he is hereby sentenced to suffer the penalty of three (3) *reclusion perpetua* to be served successively. The accused is further ordered to pay the victim, for each count of rape, the amount of ₱50,000.00 as civil indemnity, ₱25,000.00 as exemplary damages, and ₱50,000.00 as moral damages.
>
> COSTS against the accused.
>
> SO ORDERED.[39]

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[34] TSN dated November 19, 2008, pp. 8-9.

[35] RTC records, pp. 311–321. The Decision in Crim. Case Nos. MC05-1287-FC and MC05-1483-4-FC-H was penned by Presiding Judge Monique A. Quisumbing-Ignacio of Branch 209, Regional Trial Court, Mandaluyong City.

[36] *Id*. at 321.

[37] *Id*. at 317–319.

[38] *Id*. at 319.

[39] *Id*. at 321.

Francica filed a Notice of Appeal.[40] In his appeal,[41] he claimed that the prosecution's failure to present medico-legal PSI Carpio was fatal to the prosecution's case because there were matters that should be clarified by the examining physician.[42]

On February 22, 2013, the Court of Appeals rendered a decision[43] affirming Francica's conviction.

The Court of Appeals held that AAA's *Sinumpaang Salaysay* and her testimony in court were consistent in showing that she repeatedly had sexual intercourse with Francica, sometimes in exchange for ₱50.00.[44]

In upholding the trial court's assessment on the credibility of the witnesses, the Court of Appeals stated that "the trial judge enjoys the peculiar advantage of observing firsthand the deportment of witnesses while testifying, and is, therefore, in a better position to form accurate impressions and conclusions."[45]

The Court of Appeals emphasized that a conviction for rape based on the sole testimony of the victim is possible, as long as the victim's testimony is competent and credible.[46]

Finally, the Court of Appeals asserted that a medical examination of a rape victim is not indispensable to the prosecution of a rape case, as it is merely corroborative in nature.[47]

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

WHEREFORE, premises considered, the instant Appeal is hereby **DENIED.** The Decision of the court *a quo* dated 3 March 2009 is hereby **AFFIRMED *in toto*.**

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[40] *Id*. at 324.

[41] CA *rollo,* pp. 79-91.

[42] *Id*. at 87.

[43] *Rollo,* pp. 2-11.

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

[45] *Id*. at 6.

[46] *Id*. at 9.

[47] *Id*. at 10.

SO ORDERED.[48] (Emphasis in the original)

On March 21, 2013, Francica filed a Notice of Appeal[49] with the Court of Appeals, which was given due course in the Resolution[50] dated April 23, 2013. Hence, this appeal was instituted.

In the Resolution[51] dated October 23, 2013, this Court notified the parties that they may file their respective supplemental briefs, if they so desired. However, both parties manifested[52] that they were dispensing with the filing of their supplemental briefs.

In his appellant's brief,[53] Francica denies the accusations of rape against him and insists that he was merely made a fall guy to cover up AAA's sexual relationship with her uncle.[54]

Francica also claims that the lower courts erred in declaring that the prosecution's failure to present the medico-legal officer was not fatal to the case since it affects the reliability of AAA's allegations.[55]

Francica points out that the alleged rape on February 2, 2005 happened at 1:30 p.m. and AAA was examined that same day at 5:53 p.m.[56] However, the initial medico-legal report submitted by PSI Carpio showed shallow healed lacerations at 3:00 and 9:00 positions.[57] Francica maintains that if AAA was indeed raped that afternoon, the lacerations should either be fresh

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[48] *Id*.

[49] CA *rollo,* pp. 155-156.

[50] *Id*. at 161.

[51] *Rollo,* p. 17-17-A.

[52] *Id*. at 18-20 and 22-23.

[53] CA *rollo,* pp. 79-91.

[54] *Id*. at 84-85.

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

[56] *Id*. at 88.

[57] *Id*. at 87.

bleeding laceration or "fresh healing with fibrin formation and with edema of the surrounding tissue"[58] and not healed lacerations as stated in the medico-legal report.

Francica likewise asserts that not all lacerations in the vagina are caused by sexual acts because normal activities like jumping and running can also lead to lacerations or injury. He opines that the initial medico-legal report failed to describe the degree and location of the laceration, thereby creating doubt that the laceration was indeed caused by a sexual act.[59]

On the other hand, the prosecution emphasizes that given the nature of rape cases, conviction usually rests on the sole testimony of the victim.[60] The prosecution contends that AAA's credibility as a witness survived strict scrutiny since she was credible and straightforward during her testimony. She positively identified Francica and testified with specificity what transpired between them.[61]

The prosecution underscores that jurisprudence is consistent that when a child victim says that she has been raped, her testimony should be given full weight and credence.[62]

Finally, the prosecution contends that the finding of a healed laceration instead of a fresh bleeding or fresh healing laceration is irrelevant, as this Court ruled in *People v. Espino*[63] that full penile penetration of the vagina is not an element of rape.[64]

The only issue to be resolved by this Court is whether the prosecution was able to prove beyond reasonable doubt that accused-appellant was guilty of statutory rape as defined under

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[58] *Id*. at 88.

[59] *Id*. at 89.

[60] *Id*. at 122.

[61] *Id*. at 124-125.

[62] *Id*. at 126.

[63] *Id*. at 127-128.

[64] *Id*. at 128.

Article 266-A(1)(d) of the Revised Penal Code, as amended by Republic Act No. 8353,[65] in relation to Republic Act No. 7610.[66]

This Court affirms Francica's conviction.

I

This Court notes that in the Information[67] dated February 3, 2005, Francica was charged with rape under Article 266-A(2) of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Republic Act No. 7610, while he was charged with rape under Article 266-A(1) under the two (2) other Informations.[68]

Rape is defined in Article 266-A of the Revised Penal Code as:

> Article 266-A. *Rape; When and How Committed.* — Rape is committed:
>
> 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a. Through force, threat, or intimidation;
>
> b. When the offended party is deprived of reason or otherwise unconscious;
>
> c. By means of fraudulent machination or grave abuse of authority; and
>
> d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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[65] Anti-Rape Law of 1997.

[66] Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

[67] RTC *records,* pp. 1-2.

[68] *Id.* at 49-50 and 58-59.

For a charge of rape under Article 266-A(1) to prosper, it must be proven that "(1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented."[69]

On the other hand, rape under Article 266-A(2) is described in *Ricalde v. People*[70] as "'instrument or object rape,' 'gender-free rape,' or 'homosexual rape.' The gravamen of rape through sexual assault is 'the insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice.'"[71]

Francica was charged with rape under Article 266-A(2) in the Information dated February 3, 2005, yet even a cursory reading of this Information shows that the allegations and the acts or omissions complained of pertain to rape under Article 266-A(1)(d) or carnal knowledge of a girl below 12 years of age:

> That on or about the 2nd day of February 2005, in the city of Mandaluyong, Philippines, a place within the jurisdiction of [this Honorable Court,] the above-named accused, being the neighbor of the victim, did, then and there willfully, unlawfully and feloniously have *carnal knowledge with [AAA], a girl eleven (11) years of age, by then and there inserting his private part into [the] latter's vagina*, all against the latter's will, which acts [sic] debases, degrades or demeans the intrinsic worth and dignity of the victim (a child) as a human being.[72] (Emphasis supplied)

It is well-established that the nature of a criminal charge is determined "by the recital of the ultimate facts and circumstances

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[69] *People v. Dalan*, 736 Phil. 298, 300 (2014) [Per *J.* Brion, Second Division].

[70] 751 Phil. 793 (2015) [Per *J.* Leonen, Second Division].

[71] *Id*. at 804.

[72] RTC *records,* p. 1.

in the complaint or information"[73] and not by the caption of the information or the provision of the law claimed to have been violated.[74] Thus, the lower courts did not err in treating and trying all charges against Francica as rape through carnal knowledge under Article 266-A(1)(d).

II

Rape under Article 266-A(1)(d) is also called statutory rape as "it departs from the usual modes of committing rape."[75] The child victim's consent in statutory rape is immaterial because the law presumes that her young age makes her incapable of discerning good from evil.[76] *People v. Gutierez*[77] explained the elements of statutory rape:

> Statutory rape is committed when (1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.[78]

The defense did not dispute the fact that AAA was 11 years old at the time of the incidents. Her birth certificate[79] was presented into evidence before the trial court and was not questioned by the defense. What only needs to be proven, therefore, is whether AAA and Francica had sexual intercourse.

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[73] *Pielago v. People,* 706 Phil. 460, 470 (2013) [Per *J.* Reyes, First Division]

[74] *Id*. at 470.

[75] *People v. Teodoro,* 622 Phil. 328, 337 (2009) [Per *J.* Brion, Second Division].

[76] *Id*. at 337.

[77] 731 Phil. 352 (2014) [Per *J.* Leonen, Third Division].

[78] *Id*. at 357.

[79] CA *rollo,* p. 42.

AAA testified as follows:

Q [FISCAL TRONCO]: Kilala mo ba iyong akusado sa kasong ito si Ramon Fran[c]ica?

A: Opo.

Q: Bakit mo siya kilala?

A: Kapit-bahay po namin.

. . . .

Q: Mabait ba siya sa 'yo?

A: (Witness nodded in the positive).

. . . .

Q: Bakit sinabi mo mabait siya sa 'yo?

A: Kasi po binibigyan niya ako ng pera.

Q: Palagi ka ba niyang binibigyan ng pera?

A: Minsan lang po.

Q: Ito bang perang binibigay niya sa'yo may kapalit?

A: Opo.

Q: Ano ang kapalit noon?

A: No answer.

Q: Naiintindihan mo ba iyong tanong o gusto mong ibahin? Bakit ka niya binibigyan ng pera?

A: Ginagalaw niya po ako.

Q: Binibigyan ka ba niya ng pera dahil ginagalaw ka niya?

A: Opo.

Q: Magkano ang binibigay niya sa 'yo?

A: ₱50.00 po.

Q: Sa natatandaan mo, ilang beses ka na niyang ginagalaw at binibigyan ng pera.

A: Marami na po.

Q: Alam mo ba kung kailan nagsimula iyon? Alam mo ba na kailangan mo dito na magsabi ng katotohanan lamang at bawal magsinungaling?

A: Opo.

Q: So, yung sinasabi mo ngayon totoo yan lahat?

A: Opo.

Q: Kailan nga nagsimula yung paggalaw niya sa 'yo?

A: Mga March 2004 po.

Q: 'Pag sinabi mong "ginalaw ka niya" ano ang ginalaw niya sa 'yo?

A: Dede ko po at ari kop o [sic].

Q: Paano niya ginagalaw yung dede mo?

A: Dinidilaan po niya.

Q: Eh yung ari mo paano naman niya ginagalaw?

A: Pinapasok po niya yung ari niya.[80]

AAA's testimony is consistent with her *Sinumpaang Salaysay*:[81]

T: Bakit ka na ririto [sic] sa amin[g] opisina?
S: Para po sabihin yung ginawa sa akin ni Amon **(victim refer[r]ing to suspect identified as one Ramon Francisca)** [sic]

T: Ano ba ang ginawa sa iyo ni **Amon**?
S: Dinidilaan niya po yung dede ko po at yung ari po nya ay pinapasok niya sa pepe ko.

T: Kailan nangyari ang insidente?
S: Kanina lang po, mga 1:30 po sa banyo po.

T: May sinabi ka sa akin kanina na matagal nya nang gin[a]gawa sa iyo ito. Naaalala mo pa ba kung kailan nag sinmula [sic]?
S: Opo. Noon pong March 2004 po.

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[80] TSN dated August 30, 2005, pp. 7-10.

[81] CA *Rollo,* p. 33.

T: Sabihin mo nga sa akin kung paano nagsimula ang insedente?
S: Nandoon po ako sa Bulatao **(Bulatao Compound)** at naglalaro, lumapit siya (Ramon Francisca) [sic] sa akin at sinabi niya na punta ka na doon sa banyo. Nagpunta naman po ako[,] tapos po ay pinapasok nya ako sa loob ng banyo at pumasok din sya. Tapos po ay dinilaan nya ako sa dede ko tapos po yung ari nya ay ipinasok nya sa pepe ko. Umiyak po ako sa sobrang sakit. Nang matapos po ay binigyan nya ako ng pera. Tapos po ay naging madalas na po.

T: Magkano naman ang ibinigay nyang pera sa iyo?
S: Fifty pesos (50.00Php) po.

T: Kailan naman yung mga sumunod na insedente.
S: Yung iba po ay hindi ko na matandaan pero noong January 19[,] 2005 ng gabi ay tinawag nya uli ako at pinapunta nya sa bahay nya at ginawa nya uli yung ginagawa nya sa akin.

T: Hindi ka ba nag sumbong sa magulang mo?
S: [N]agsumbong po ako sa mama ko pero hindi po sya naniniwala sa akin.

T: Yung insedente kanina, maari mo bang sabihin sa akin?
S: Kanina naman po ay nasa Bulatao uli ako at naglalaro tinawag nya po ako pinapunta nya ako sa banyo at dinilaan nya ang dede ko at pinasok ang ari nya sa pepe.[82] (Emphasis in the original)

As shown by her testimony, AAA was able to narrate in a straightforward and categorical manner what transpired between her and Francica. In a long line of cases,[83] this Court has given full weight and credence to the testimony of child victims, holding that their "[y]outh and immaturity are generally badges of truth and sincerity."[84]

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[82] *Id.*

[83] See *Pielago v. People*, 706 Phil. 460, 471(2013) [Per *J.* Reyes, First Division]; *Campos v. People*, 569 Phil. 658, 671 (2008) [Per *J.* Ynares-Santiago, Third Division], *citing People v. Capareda*, 473 Phil. 301, 330 (2004) [Per *J.* Callejo, Sr., Second Division]; *People v. Galigao*, 443 Phil. 246, 260 (2003) [Per *J.* Ynares-Santiago, *En Banc*].

[84] *People v. Oliva*, 616 Phil. 786, 792 (2009) [Per *J.* Nachura, Third Division].

Compared to AAA's candid and categorical testimony, Francica's defense of denial must fail. *Imbo v. People*[85] emphasized that the self-serving defense of denial falters against the "positive identification by, and straightforward narration of the victim."[86] This Court has likewise repeatedly held that the lone yet credible testimony of the offended party is sufficient to establish the guilt of the accused.[87]

Francica's defense that he was merely set up to become the fall guy so that AAA's family can hide her sexual relationship with her uncle is not worthy of belief. Additionally, Francica's exposé is primarily hearsay in character since it was supposedly relayed to him by AAA's aunt Nora, who was not presented as a witness before the trial court to corroborate his testimony. Thus, this Court concurs with the trial court when it held that "[t]he 'secret' is too specious a motive for one to file not only one but three serious charges of rape against the accused."[88]

BBB also corroborated AAA's testimony on the sexual abuse committed on February 2, 2005:

Q: What did you see inside the bathroom which is being done to your granddaughter, Madam Witness?

A: When I was inside the bathroom which is just beside the other room, I heard noise inside that bathroom. I don't know whose [sic] inside. My other grandchild who was about to throw or dispose something at that time [was] standing at that time, and when I went out [of] the bathroom that was also the time that someone who was inside the other bathroom also went out, ma'am.

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[85] G.R. No. 197712, April 20, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/197712.pdf> [Per *J*. Perez, First Division].

[86] *Id*. at 5.

[87] *Ricalde v. People,* 751 Phil. 793, 807 (2015) [Per *J*. Leonen, Second Division]; *Garingarao v. People*, 669 Phil. 512, 522 (2011) [Per *J*. Carpio, Second Division]; *People v. Tagaylo,* 398 Phil. 1123, 1131-1132 (2000) [Per *CJ* Davide, Jr., First Division].

[88] CA *rollo,* p. 52.

Q: What did you see when you got out of the bathroom?

A: When I went out of the bathroom that was the time that the person went out of the bathroom and that person who went out of the bathroom ran but I saw my grandchild inside the bathroom and then I ran after the person who ran and then when we were running looked back and then I saw the person's face, and then I uttered, "*Walang hiya ka ikaw pala!"*

Q: What did you exactly see your grandchild doing at that particular time, Madam Witness?

A: She was standing but when I asked my other grandchild who was outside at that time what my grandchild saw, she told me that she was pulling up her underwear, ma'am.

Q: Just for clarification, Madam Witness, the grandchild that you saw inside the bathroom, are you referring to the victim in this case?

A: Yes, Ma'am. Her name is [AAA].[89]

The trial court found AAA's testimony to be worth believing, being both positive and credible, thus:

> [AAA] is a credible witness. She has not obtained enough experience and maturity to concoct such a story of rape. Her testimony, considering her very young age, was straightforward and candid. Thus, it is sufficient to convict the accused.[90]

The Court of Appeals likewise found that "AAA made sensible, straightforward and categorical answers to the substantial, relevant and material questions."[91]

The rule is settled that the trial court's factual findings and evaluation of witnesses' credibility and testimony should be entitled to great respect unless it is shown that the trial court may have "overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."[92]

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[89] TSN dated August 30, 2005, pp. 13-15.

[90] CA *rollo,* p. 50.

[91] *Rollo,* p. 9.

[92] *People v. De Jesus,* 695 Phil. 114, 122 (2012) [Per *J.* Brion, Second Division].

Francica's argument that the presence of healed hymenal lacerations belies AAA's accusation that he sexually abused her on February 2, 2005 must fail in light of the fact that hymenal laceration is not an element of rape. *People v. Araojo*[93] expounds on the evidentiary weight of a hymenal laceration in a charge of rape:

> The absence of external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape, hymenal laceration not being, to repeat, an element of the crime of rape. A healed or fresh laceration would of course be a compelling proof of defloration. What is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.[94] (Citations omitted)

Despite the absence of the medico-legal officer as a witness, the presence of healed lacerations corroborates AAA's testimony as it "is the best physical evidence of forcible defloration."[95]

It is well-established that "[p]hysical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses."[96] The physical evidence of the healed lacerations in AAA's vagina strongly corroborates her testimony that she was sexually abused by Francica.

Beyond reasonable doubt, Francica took advantage of AAA's youth and naiveté to repeatedly sexually abuse her.

Article 266-B[97] of the Revised Penal Code provides that the penalty of *reclusion perpetua* shall be imposed in cases of rape

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[93] 616 Phil. 275 (2009) [Per *J*. Velasco, Third Division].

[94] *Id*. at 288.

[95] *People v. Noveras*, 550 Phil. 871, 887 (2007) [Per *J*. Callejo, Sr., Third Division].

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

[97] REV. PEN. CODE, Art. 266-B provides:

> Article 266-B. Penalty. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

stated in the first paragraph of Article 266-A where there are no aggravating or qualifying circumstances present. This corresponds with Section 5(b) of Republic Act No. 7610, which also provides for the penalty of *reclusion perpetua* if the rape victim is below 12 years old:

> Section 5. Child Prostitution and Other Sexual Abuse. —
>
> . . . . . .
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, *That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape* or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period[.] (Emphasis supplied)

The lower courts correctly imposed the penalty of *reclusion perpetua* for each count of statutory rape. However, this Court increases the amount of civil indemnity of ₱50,000.00 to ₱75,000.00, moral damages of ₱50,000.00 to ₱75,000.00, and exemplary damages of ₱25,000.00 to ₱75,000.00 pursuant to prevailing jurisprudence.[98]

In addition, interest at the legal rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid.[99]

WHEREFORE, the Decision dated February 22, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 03929, finding accused-appellant Ramon Francica y Navalta guilty beyond reasonable doubt of three (3) counts of statutory rape is **AFFIRMED** with **MODIFICATION**. The accused-appellant

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[98] *People v. Jugueta,* 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*].

[99] *Ricalde v. People,* 751 Phil. 793, 816 (2015) [Per *J.* Leonen, Second Division].

is sentenced to suffer the penalty of three (3) *reclusion perpetua* to be served successively and is ordered to pay AAA, for each count of rape, the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

Costs against accused-appellant.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

FIRST DIVISION

[G.R. No. 212731. September 6, 2017]

SPOUSES FIRMO S. ROSARIO AND AGNES ANNABELLE DEAN-ROSARIO, *petitioners, vs.* **PRISCILLA P. ALVAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA* BY CONCLUSIVENESS OF JUDGMENT; ELEMENTS, PRESENT IN CASE AT BAR; PETITIONERS ARE NOW ESTOPPED FROM QUESTIONING THE EXISTENCE OF THE LOAN AND THE LEGAL PERSONALITY OF RESPONDENT TO FORECLOSE THE SUBJECT PROPERTY.— [T]here is *res judicata* by conclusiveness of judgment when all the following elements are present: (1) the judgment sought to bar the new action must be final; (2) the

decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, but not identity of causes of action. In this case, all the elements are present: first, the November 15, 2006 Decision has attained finality; second, the said decision was rendered by a court having jurisdiction over the subject matter and the parties; third, the said decision disposed of the case on the merits; and fourth, there is, as between the previous case and the instant case, an identity of parties. Since there is conclusiveness of judgment in this case, petitioner spouses Rosario are estopped from raising issues that were already adjudged in the November 15, 2006 Decision as "the dictum laid down in the earlier final judgment is conclusive and continues to be binding between the parties, their privies and successors-in-interest, as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court in a later case x x x." In short, "the binding effect and enforceability of that earlier dictum can no longer be re-litigated in a later case since the issue has already been resolved and finally laid to rest in the earlier case." Consequently, there is no need for Us to delve into the issues raised by petitioner spouses Rosario pertaining to the existence of the loan and the legal personality of Priscilla to file a case for judicial foreclosure as the November 15, 2006 Decision already established the existence of the loan in the amount of ₱1.8 million and recognized the legal personality of Priscilla to foreclose the subject property, as she was the one who loaned spouses Rosario the amount of ₱1.8 million.

2. CIVIL LAW; CONTRACTS; REFORMATION; CONCEPT AND RATIONALE; THE PRONOUNCEMENT IN THE NOVEMBER 15, 2006 DECISION THAT THE PARTIES' INTENTION WAS TO EXECUTE AN EQUITABLE MORTGAGE IS SUFFICIENT REFORMATION OF SUCH INSTRUMENT.— Reformation of an instrument is a remedy in equity where a written instrument already executed is allowed by law to be reformed or construed to express or conform to the real intention of the parties. The *rationale* of the doctrine is that it would be unjust and inequitable to allow the enforcement of a written instrument that does not express or reflect the real intention of the parties. In the November 15, 2006 Decision,

the CA denied petitioner spouses' Complaint for declaration of nullity of contract of sale on the ground that what was required was the reformation of the instruments, pursuant to Article 1365 of the Civil Code. In ruling that the Deeds of Absolute Sale were actually mortgages, the CA, in effect, had reformed the instruments based on the true intention of the parties. Thus, the filing of a separate complaint for reformation of instrument is no longer necessary because it would only be redundant and a waste of time. Besides, in the November 15, 2006 Decision, the CA already declared that absent any proof that petitioner spouses Rosario had fully paid their obligation, respondent may seek the foreclosure of the subject lots. In view of the foregoing, we find no error on the part of the CA in ruling that a separate action for reformation of instrument is no longer necessary as the declaration in the November 15, 2006 Decision that the parties' intention was to execute an equitable mortgage is sufficient reformation of such instrument.

APPEARANCES OF COUNSEL

Mauricio C. Ulep for petitioners.
Tan Acut Lopez & Pison for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action."[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the May 27, 2014 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 98928.

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[1] *Heirs of Tomas Dolleton v. Fil-Estate Management, Inc.,* 602 Phil. 781, 803 (2009).

[2] *Rollo,* pp. 18-40.

[3] *Id.* at 545-556; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting.

Factual Antecedents

On separate dates in 1989, petitioner Agnes Annabelle Dean-Rosario (Agnes) borrowed from respondent Priscilla Alvar (Priscilla) a total of ₱600,000.00, secured by real estate mortgages over two parcels of land covered by Transfer Certificates of Title Nos. 167438 (residence of petitioner spouses Agnes and Firmo Rosario) and 167439 (a five-door rental apartment).[4]

In December 1990, the mortgages were discharged.[5]

On March 16, 1992 and July 17, 1992, Agnes executed two Deeds of Absolute Sale over the two lots in favor of Priscilla's daughter, Evangeline Arceo (Evangeline), for the amount of ₱900,000.00 each.[6] Evangeline later sold the lots to Priscilla also for the price of ₱900,000.00 each.[7]

On April 27, 1994, Priscilla sent a demand letter to petitioner spouses Rosario asking them to vacate Lot 1.[8] This prompted petitioner spouses Rosario to file before the Regional Trial Court (RTC) of Makati City a Complaint for Declaration of Nullity of Contract of Sale and Mortgage, Cancellation of Transfer Certificates of Title and Issuance of new TCTs with Damages, docketed as Civil Case No. 94-1797, against Priscilla.[9] Petitioner spouses Rosario alleged that Priscilla deceived Agnes into signing the Deeds of Absolute Sale in favor of Evangeline, as Agnes merely intended to renew the mortgages over the two lots.[10]

Priscilla, in turn, filed with the RTC a Complaint for Recovery of Possession, docketed as Civil Case No. 96-135.[11] She claimed

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[4] *Id*. at 545.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 546.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

that she is the absolute owner of the subject lots and that Agnes sold the lots because she was in dire need of money.[12]

The cases were consolidated and on April 4, 2003, the RTC rendered a Decision granting Priscilla's complaint for recovery of possession while denying petitioner spouses Rosario's complaint for declaration of nullity of contract of sale.[13] The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, Civil Case No. 94-1797 is ordered dismissed for lack of merit. Defendants' counterclaims are also ordered dismissed.
>
> [Respondent] having proven her claim in Civil Case No. 96-135, [petitioner spouses Rosario] are hereby ordered to vacate the house and lot located at No. 2703 Apolinario corner General Capinpin Streets, Bangkal, Makati City, covered by TCT No. 188995 and restore possession thereof to its rightful owner, [respondent].
>
> SO ORDERED.[14]

On appeal, the CA reversed the April 4, 2003 Decision of the RTC. In its November 15, 2006 Decision,[15] the CA ruled that although the transfers from Agnes to Priscilla were identified as absolute sales, the contracts are deemed equitable mortgages pursuant to Article 1602[16] of the Civil

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[12] *Id*.

[13] *Id*. at 526.

[14] *Id*. at 526-527.

[15] *Id*. at 522-537; penned by Associate Justice Noel G. Tijam (now a Member of this Court), and concurred in by Associate Justices Remedios A. Salazar-Fernando and Arturo G. Tayag.

[16] Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

(1) When the price of a sale with right to repurchase is unusually inadequate;
(2) When the vendor remains in possession as lessee or otherwise;
(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
(4) When the purchaser retains for himself a part of the purchase price;

Code.[17] Thus, the CA disposed of the case in this wise:

> In view of these, We resolve [petitioner spouses'] prayers in the following manner:
>
> Anent their prayer for the issuance of new certificates of titles, We hold the cancellation of [petitioner Agnes'] title over the 2 lots was void. Titles to the subject lots, which had supposedly been transferred to [Evangeline] and later to [Priscilla], actually remained with [petitioner Agnes], as owner-mortgagor, conformably with the well-established doctrine that the mortgagee does not automatically become the owner of the mortgaged property as the ownership thereof remains with the mortgagor. Hence, it is not necessary for Us to order the issuance of new titles under the name of [petitioner Agnes]. Accordingly, TCT No. 167438 and TCT No. 167439 issued under the name of [petitioner Agnes] must be reinstated, while TCT No. 188920 and TCT No. 188995 issued in the name of [Priscilla] must be nullified.
>
> Anent their prayer for the nullification of the Deeds of Absolute Sale and the Mortgage, We resolve to deny the same. Although the subject deeds of sale in favor of [Evangeline] were actually for mortgage, said type of simulation of contracts does not result in the nullification of the deeds but requires the reformation of the instrument, pursuant to Article 1365 of the Civil Code.
>
> Moreover, as [petitioner spouses Rosario] admitted they mortgaged the 2 lots to [Priscilla] as security for the payment of their loans. Absent any proof that [petitioner spouses Rosario] had fully paid their loans to [Priscilla], [Priscilla] may seek the foreclosure of the 2 lots if [petitioner spouses Rosario] failed to pay their loans of ₱1.8 Million, the amounts appearing in the Deeds of Absolute Sale.
>
> WHEREFORE, the Appeal is GRANTED. The assailed Decision dated April 4, 2003 of the Regional Trial Court of Makati City, Branch

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(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

[17] *Rollo*, pp. 536-537.

150, in Civil Cases Nos. 94-1797 & 96-135, is hereby REVERSED and SET ASIDE.

A new one is hereby entered ordering the reinstatement of TCT No. 167438 and TCT No. 167439 issued under the name of [petitioner] Agnes Dean-Rosario and ordering the cancellation of TCT No. 188920 and TCT No. 188995 issued under the name of [Priscilla].[18]

Since the parties did not file a motion for reconsideration or an appeal, the CA Decision became final and executory.[19]

On October 17, 2007, Priscilla sent a letter to Agnes demanding the payment of her outstanding obligation amounting to ₱1.8 million.[20] Due to the failure or refusal of petitioner spouses Rosario to heed the demand, Priscilla filed before the RTC of Makati, Branch 148, a Complaint[21] for Judicial Foreclosure of Real Estate Mortgage, docketed as Civil Case No. 07-997.[22]

Petitioner spouses Rosario moved for the dismissal of the Complaint, but the RTC denied the same.[23]

They then filed a Petition for *Certiorari* before the CA, docketed as CA-G.R. SP No. 107484, questioning the denial of their Motion to Dismiss.[24]

On May 25, 2010, the CA rendered a Decision dismissing the Petition for lack of merit.[25]

On September 5, 2011, the Supreme Court issued a Resolution denying the Petition for Review on *Certiorari* filed by petitioner spouses Rosario.[26]

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[18] *Id*.

[19] *Id*. at 547.

[20] *Id*. at 548.

[21] *Id*. at 41-51.

[22] *Id*. at 548.

[23] *Id*.

[24] *Id*. at 549.

[25] *Id*.

[26] *Id*.

Meanwhile, on May 5, 2009, Priscilla filed a Motion to Declare Defendants in Default for the failure of petitioner spouses Rosario to file an answer within the reglementary period, which the RTC granted.[27]

Ruling of the Regional Trial Court

On January 25, 2012, the RTC rendered a Decision[28] in favor of Priscilla, the dispositive portion of which reads:

> WHEREFORE, premises considered, decision is hereby rendered ordering [petitioner] Spouses Firmo S. Rosario and Agnes Annabelle Dean-Rosario to pay the [respondent] Priscilla Alvar, jointly and severally, the following sums:
>
> 1. Php1,800,000.00 as the aggregate amount of [petitioner spouses Agnes and Firmo Rosario's] obligation to [Priscilla], plus 12% legal interest per annum from the time of demand on October 18, 2007 until the obligation is fully paid;
>
> 2. Php62,903.88 as reimbursement for payment of real property taxes due on the subject lots;
>
> 3. Php200,000.00 as attorney's fees and litigation expenses in the amount of Php200,000.00
>
> All the above must be paid within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment. In default of such payment, the two (2) parcels of land covered by TCT Nos. 167438 and 167439 subject matter of the suit including its improvements shall be sold to realize the mortgage debt and costs, in the manner and under the regulations that govern sales of real estate under execution.
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> SO ORDERED.[29]

Aggrieved, petitioner spouses Rosario appealed to the CA.

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[27] *Id*. at 549-550.

[28] *Id*. at 498-507 (last page of the Decision is missing).

[29] *Id*. at 550-551.

Ruling of the Court of Appeals

On May 27, 2014, the CA affirmed the January 25, 2012 Decision of the RTC with modification that: (1) the interest rate imposed shall be 6% per annum in accordance with Bangko Sentral ng Pilipinas (BSP) Circular No. 799, Series of 2013; and (2) the attorney's fees and litigation expenses shall be reduced to ₱50,000.00.[30]

Issues

Hence, petitioner spouses Rosario filed the instant Petition with the following issues:

I.

WHETHER THE HONORABLE [CA] COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT A REFORMATION OF INSTRUMENT BETWEEN THE PARTIES IS NO LONGER NECESSARY DESPITE AN EARLIER RULING BY THE HONORABLE [CA] THAT REFORMATION IS REQUIRED ESPECIALLY BECAUSE:

A) [Respondent] had no personality to file a complaint for judicial foreclosure. To allow this would violate the ruling of this Honorable Court in Borromeo v. Court of Appeals, 550 SCRA 269 and Article 1311 of the New Civil Code.

B) The obligation of the petitioner [spouses Rosario] in the amount of ₱1,800,000.00 has no legal and factual basis.

C) The original real estate mortgages between the parties have been cancelled or discharged. The alleged new Deeds of Sale to the daughter of the [respondent] are fake and simulated.

II.

WHETHER THE RULING OF THE [CA] IS CONTRARY TO THE CASE OF GO V. BACARON, 472 SCRA 339.

III.

WHETHER THE HONORABLE [CA] COMMITTED GRAVE ABUSE OF DISCRETION IN NOT HOLDING THAT A

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[30] *Id*. at 555.

REFORMATION OF THE INSTRUMENTS CAN BE MADE PRIOR TO FORECLOSURE PROCEEDINGS (AS A RESULT OF THE RULING THAT THE CONTRACT BETWEEN THE PARTIES SHOULD BE TREATED AS AN EQUITABLE MORTGAGE).[31]

Simply put, the issue is whether the CA erred in dismissing the appeal.

Petitioner spouses Rosario's Arguments

Petitioner spouses Rosario contend that Priscilla had no legal personality to institute the judicial foreclosure proceedings as the Deeds of Absolute Sale, which were deemed equitable mortgages, were executed by them in favor of Evangeline, not Priscilla.[32] They also claim that the obligation in the amount of ₱1.8 million has no legal and factual bases as the only loan they obtained was in the amount of ₱600,000.00.[33] Lastly, they insist that before the subject lots can be judicially foreclosed, a reformation of the fake and simulated Deeds of Absolute Sale must first be done to enable them to present documentary and parol evidence.[34]

Respondent's Arguments

Priscilla, on the other hand, maintains that she has a legal personality to institute the foreclosure proceedings pursuant to the November 15, 2006 Decision.[35] The indebtedness of petitioner spouses Rosario was also established in the said Decision, which has long attained finality.[36] She asseverates that the loan has not been paid and that the judicial foreclosure is not based on the old mortgages that have been discharged, but on the Deeds of Absolute Sale, which were considered as

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[31] *Id*. at 684-685.

[32] *Id*. at 687-689.

[33] *Id*. at 689-690.

[34] *Id*. at 690-698.

[35] *Id*. at 665-668.

[36] *Id*. at 668-670.

equitable mortgages in the November 15, 2006 Decision.[37] As to the reformation of the instruments, Priscilla asserts that there is no need for such reformation as the declaration in the November 15, 2006 Decision is sufficient.[38]

Our Ruling

The Petition lacks merit.

There is conclusiveness of judgment as to the issues pertaining to the existence of the loan and the legal personality of Priscilla to file a case for judicial foreclosure.

At the outset, it must be pointed out that the November 15, 2006 Decision of the CA in CA-G.R. CV No. 81350, from which this case arose, has attained finality due to the failure of the parties to file a motion for reconsideration or an appeal. As such, the factual findings and conclusions in the November 15, 2006 Decision may no longer be disputed by petitioner spouses Rosario as *res judicata* by conclusiveness of judgment, which bars them from challenging the same issues.

Unlike *res judicata* by prior judgment, where there is identity of parties, subject matter, and causes of action, there is only identity of parties and subject matter in *res judicata* by conclusiveness of judgment.[39] Since there is no identity of cause of action, the judgment in the first case is conclusive only as to those matters actually and directly controverted and determined.[40] Thus, there is *res judicata* by conclusiveness of judgment when all the following elements are present:

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[37] *Id.* at 670-672.

[38] *Id.* at 672-674.

[39] *Heirs of Tomas Dolleton v. Fil-Estate Management, Inc., supra* note 1 at 802-803.

[40] *Id.* at 803.

(1) the judgment sought to bar the new action must be final;

(2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties;

(3) the disposition of the case must be a judgment on the merits; and

(4) there must be as between the first and second action, identity of parties, but not identity of causes of action.[41]

In this case, all the elements are present: first, the November 15, 2006 Decision has attained finality; second, the said decision was rendered by a court having jurisdiction over the subject matter and the parties; third, the said decision disposed of the case on the merits; and fourth, there is, as between the previous case and the instant case, an identity of parties.

Since there is conclusiveness of judgment in this case, petitioner spouses Rosario are estopped from raising issues that were already adjudged in the November 15, 2006 Decision as "the dictum laid down in the earlier final judgment is conclusive and continues to be binding between the parties, their privies and successors-in-interest, as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court in a later case x x x."[42] In short, "the binding effect and enforceability of that earlier dictum can no longer be re-litigated in a later case since the issue has already been resolved and finally laid to rest in the earlier case."[43]

Consequently, there is no need for Us to delve into the issues raised by petitioner spouses Rosario pertaining to the existence of the loan and the legal personality of Priscilla to file a case for judicial foreclosure as the November 15, 2006 Decision already established the existence of the loan in the amount of

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[41] *Navarette v. Manila International Freight Forwarders, Inc.,* G.R. No. 200580, February 11, 2015, 750 SCRA 414, 425-426.

[42] *Degayo v. Magbanua-Dinglasan*, G.R. No. 173148, April 6, 2015, 755 SCRA 1, 12.

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

₱1.8 million[44] and recognized the legal personality of Priscilla to foreclose the subject property, as she was the one who loaned spouses Rosario the amount of ₱1.8 million.[45]

The pronouncement in the November 15, 2006 Decision that the parties' intention was to execute an equitable mortgage is sufficient reformation of such instrument.

The only issue left for us to determine is whether a reformation of the contract is required before the subject lots may be foreclosed.

We rule in the negative.

Reformation of an instrument is a remedy in equity where a written instrument already executed is allowed by law to be reformed or construed to express or conform to the real intention of the parties.[46] The *rationale* of the doctrine is that it would be unjust and inequitable to allow the enforcement of a written instrument that does not express or reflect the real intention of the parties.[47]

In the November 15, 2006 Decision, the CA denied petitioner spouses' Complaint for declaration of nullity of contract of sale on the ground that what was required was the reformation of the instruments, pursuant to Article 1365[48] of the Civil Code.[49]

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[44] *Rollo*, pp. 532-537.

[45] Priscilla was "the one who paid for the 'purchase price' of the 2 lots at the time of their supposed sale to [her daughter, Evangeline]." *Id*. at 535.

[46] *Rosello-Bentir v. Hon. Leanda,* 386 Phil. 802, 811 (2000).

[47] *Id.* at 805-806.

[48] Article 1365. If two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper.

[49] *Rollo*, p. 536.

In ruling that the Deeds of Absolute Sale were actually mortgages,[50] the CA, in effect, had reformed the instruments based on the true intention of the parties. Thus, the filing of a separate complaint for reformation of instrument is no longer necessary because it would only be redundant and a waste of time.

Besides, in the November 15, 2006 Decision, the CA already declared that absent any proof that petitioner spouses Rosario had fully paid their obligation, respondent may seek the foreclosure of the subject lots.[51]

In view of the foregoing, we find no error on the part of the CA in ruling that a separate action for reformation of instrument is no longer necessary as the declaration in the November 15, 2006 Decision that the parties' intention was to execute an equitable mortgage is sufficient reformation of such instrument.

WHEREFORE, the Petition is hereby **DENIED**. The assailed May 27, 2014 Decision of the Court of Appeals in CA-G.R. CV No. 98928 is hereby **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro,[*] *Perlas-Bernabe,*[**] and *Jardeleza, JJ.,* concur.

Sereno, C.J., on official leave.

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[50] *Id.*

[51] *Id.* at 537.

[*] Acting Chairperson, per Special Order No. 2480 dated August 31, 2017.

[**] Per August 23, 2017 Raffle; vice Justice Noel Gimenez Tijam who recused from the case due to prior participation in the Court of Appeals.

FIRST DIVISION

[G.R. No. 214880. September 6, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AMANTE PADLAN *y* LEONES @ BUTOG,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE (RPC); RAPE; CIRCUMSTANCES BY WHICH RAPE IS COMMITTED.—** Under Article 266-A of the RPC, rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force, threat, or intimidation; 2. When the offended party is deprived of reason or otherwise unconscious; 3. By means of fraudulent machination or grave abuse of authority; and 4. **When the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present.

2. **ID.; ID.; ID.; ELEMENTS OF STATUTORY RAPE, SUFFICIENTLY ESTABLISHED; IT IS ENOUGH THAT THE AGE OF THE VICTIM IS PROVEN AND THAT THERE WAS SEXUAL INTERCOURSE.—** In *People v. Gutierez*, the Court held that there is statutory rape when: "(1) the offended party is under [twelve] years of age[;] and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse." In the present case, all the elements of statutory rape have been sufficiently established in Criminal Case Nos. 2755-M-2005 and 2756-M-2005 since the prosecution's evidence showed that on two separate occasions, Padlan had carnal knowledge of "AAA," a woman under 12 years of age. The defense did not dispute the fact that "AAA" was nine years old at the time of the incident. Her birth certificate, which was presented during trial before the RTC, clearly stated that her date of birth is August 20, 1996.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT.— [T]he RTC found that "AAA's" testimony was credible since it was given in a categorical, straightforward, spontaneous, and frank manner despite her young age. We find no compelling reason to deviate from these findings especially since the CA affirmed the same. The finding of credibility should not be overturned since the trial court judge had the opportunity to personally examine the demeanor of the witnesses when they testified on the stand. The finding of credibility may be overturned only when certain facts or circumstances are overlooked, misunderstood, or misapplied, and the same could have materially affected the outcome of the case. No such circumstance is present in the case at bar. Thus, the finding for "AAA's" credibility stands.

4. ID.; ID.; DEFENSE OF ALIBI; UNCORROBORATED AND UNSUBSTANTIATED CLAIM CANNOT PREVAIL OVER THE POSITIVE TESTIMONY OF THE WITNESS; ACCUSED FAILED TO ESTABLISH THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE PLACE WHERE THE CRIME WAS COMMITTED.— Padlan denied the charges against him and presented an alibi. x x x These are all uncorroborated self-serving statements. Time and again, the Court has held that denial and alibi are inherently weak defenses that cannot prevail over the positive and categorical testimony and identification of the complainant. Moreover, for alibi to prosper, it is insufficient that the accused prove that he was somewhere else when the crime was committed; he must likewise establish that it was physically impossible for him to have been present at the scene of the crime at the time of its commission. In this case, while Padlan alleged that on August 7, 2005 he was in Nueva Ecija with his employer buying vegetables, Padlan failed to present the testimony of such employer. Consequently, his claim remained uncorroborated and unsubstantiated. As such, in the face of the accusation against him, his alibi cannot prevail over the positive testimony of "AAA." Moreover, the distance alone from Meycauayan, Bulacan to Nueva Ecija does not conclusively prove that it was physically impossible for Padlan to go to Nueva Ecija and still return to Bulacan to commit the crime of rape. "Physical impossibility

refers not only to the geographical distance between the place where the accused was and the place where the crime was committed when the crime transpired, but more importantly, the facility of access between the two places."

5. **CRIMINAL LAW; RPC IN RELATION TO REPUBLIC ACT (RA) 7610; ACTS OF LASCIVIOUSNESS; ELEMENTS THEREOF, SUFFICIENTLY ALLEGED AND DULY PROVEN DURING TRIAL.—** To be held liable for lascivious conduct under Sec. 5(b), Art. III of RA 7610, the following elements of Acts of Lasciviousness under Art. 336 of the RPC must be met: 1. That the offender commits any act of lasciviousness or lewdness; 2. That it is done 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; 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. 3. That the offended party is another person of either sex. In addition to the elements under Art. 336 of the RPC, the following requisites for sexual abuse under Sec. 5(b), Art. III of RA 7610, must also be established to wit: 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. 3. The child, whether male or female, is below 18 years of age. In the present case, the Information in Criminal Case No. 2757-M-2005 specifically stated: (1) that "AAA" was a nine-year old minor at the time of the incident; and (2) that Padlan committed acts of lasciviousness against "AAA" by touching her vagina. Contrary to the ruling of the RTC which was affirmed by the CA, we find that the elements of lascivious conduct under Sec. 5(b), Art. III of RA 7610 have been sufficiently alleged in the Information and duly proven during trial.

6. **ID.; ID.; ID.; PENALTY UNDER RA 7610 APPLIES AS LONG AS THE CHILD IS SUBJECTED TO SEXUAL ABUSE; PROPER PENALTY AND CIVIL LIABILITY.—** It is clear from the above that "AAA" need not be a child exploited in prostitution for money or profit in order for the provisions of RA 7610 to apply. As long as a child is subjected to sexual abuse, either by engaging in sexual intercourse or lascivious

conduct, the penalty under Sec. 5 (b), Art. III of RA 7610 shall be the proper imposable penalty. x x x [I]n Criminal Case No. 2757-M-2005, Padlan is hereby sentenced to an indeterminate penalty of imprisonment of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Furthermore, Padlan is ordered to pay the victim, "AAA," the amounts of ₱20,000.00 as civil indemnity; ₱15,000.00 as moral damages; ₱15,000.00 as exemplary damages; and a fine of ₱15,000.00 in line with prevailing jurisprudence.

7. ID.; ID.; RAPE; PENALTY OF *RECLUSION PERPETUA*, AFFIRMED; AWARD OF DAMAGES, INCREASED.— [A]s to the award of damages in Criminal Case Nos. 2755-M-2005 and 2756-M-2005 for the crime of rape, the Court increases the same in line with the rule enunciated in *People v. Jugueta,* where the Court held that in the crime of rape where the imposable penalty is *reclusion perpetua*, the proper amounts of damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages. Hence in Criminal Case Nos. 2755-M-2005 and 2756-M-2005, where Padlan was convicted of two (2) counts of rape and sentenced to *reclusion perpetua*, the Court further modifies the award of exemplary damages to ₱75,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This resolves the appeal filed by the appellant Amante Padlan *y* Leones (Padlan) assailing the April 15, 2014 Decision[1] of

[1] CA *rollo,* pp. 82-95; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser.

the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05517 which affirmed with modifications the November 10, 2011 Joint Decision[2] of the Regional Trial Court (RTC) of Malolos City, Branch 18, in Criminal Case Nos. 2755-M-2005, 2756-M-2005, and 2757-M-2005, finding Padlan guilty beyond reasonable doubt of two counts of rape and one count of acts of lasciviousness, respectively.

Three Informations were filed against Padlan charging him with two counts of rape under Article 266-A of the Revised Penal Code (RPC) in relation to Republic Act No. 7610[3] (RA 7610), and one count of acts of lasciviousness under Article 336 of the RPC in relation to RA 7610, allegedly committed as follows:

Criminal Case No. 2755-M-2005

The undersigned Asst. Provincial Prosecutor accuses Amante Padlan y Leones @ Butog of the crime of Rape penalized under the provisions of Art. 266-A of the Revised Penal Code, as amended by R.A. 8353 in relation to R.A. 7610, committed as follows:

That on or about the 7th day of August, 2005, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have [sic] carnal knowledge of "AAA", 9 years old, against her will and without her consent and after having carnal knowledge of said "AAA" inserted his finger into her genital, thereby affecting badly the latter's emotional and psychological well being and development.

Contrary to law.[4]

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[2] Records, pp. 148-159, penned by Presiding Judge Victoria C. Fernandez-Bernardo.

[3] Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

[4] Records, p. 2.

Criminal Case No. 2756-M-2005

The undersigned Asst. Provincial Prosecutor accuses Amante Padlan y Leones @ Butog of the crime of Rape penalized under the provisions of Art. 266-A of the Revised Penal Code, as amended by R.A. 8353 in relation to R.A. 7610, committed as follows:

That on or about the 27th day of September, 2005, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge of "AAA," 9 years old, against her will and without her consent and after having carnal knowledge of said "AAA" inserted his finger into her genital, thereby affecting badly the latter's emotional and psychological well being and development.

Contrary to law.[5]

Criminal Case No. 2757-M-2005

The undersigned Asst. Provincial Prosecutor accuses Amante Padlan y Leones @ Butog of the crime of Acts of Lasciviousness penalized under the provisions of Art. 336 of the Revised Penal Code in relation to R.A. 7610, Sec. 5 (b), committed as follows:

That on or about the 28th day of September, 2005, in the municipality of Meycauayan, province of Bulacan, Philippines, 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, with lewd designs, commit acts of lasciviousness upon the person of "AAA", a nine (9) year old minor, by touching her vagina and against her will, thereby badly affecting the psychological and emotional well being of said "AAA".

Contrary to law.[6]

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[5] *Id.* (2nd).

[6] *Id.* (3rd).

When arraigned on October 24, 2005, Padlan pleaded not guilty to all the offenses charged against him. After the pre-trial conference, trial on the merits followed. During trial, the prosecution presented the testimonies of "AAA" and her mother, "BBB", while the defense presented Padlan.

Version of the Prosecution

"AAA" is a nine-year old girl from Meycauayan, Bulacan. She testified that on August 7, 2005, at about 1:00 p.m., while she was sleeping inside their house, she was surprised when Padlan woke her up and asked her to stand up. "AAA" stood up as she was told. Padlan then touched her vagina and continued caressing it until he was fully aroused. Thereafter, Padlan took "AAA's" clothes off and undressed himself as well. He told "AAA" to lie down. Padlan then inserted his penis inside "AAA's" vagina. According to "AAA," the insertion of appellant's penis was only for a short time but the insertion was so painful that it caused her to shout '*Aray!*' Padlan withdrew his penis and inserted his finger inside "AAA's" vagina instead. "AAA" again exclaimed in pain, which caused Padlan to remove his finger. Thereafter, "AAA" put her clothes back on. She did not report the incident to her mother because of Padlan's threat to kill her mother if she did.

The second incident occurred in the evening of September 27, 2005 when Padlan called "AAA" and told her that her mother, "BBB," wanted her to go to a certain *Ate* Sharon to borrow money. Padlan warned "AAA" that "BBB" would spank her if she did not obey her order. Consequently, "AAA" followed Padlan to *Ate* Sharon's house. When they reached an *aratiles* tree along the way, Padlan stopped "AAA" and told her to lie down on the ground. Padlan then removed "AAA's" shorts and underwear and inserted his penis inside her vagina. After Padlan was finished satisfying his lust, "AAA" went home by herself.

The following day on September 28, 2005, "AAA" was sleeping in her sister's bedroom while her mother was gathering *kangkong* outside. "AAA" was again roused from her sleep when she felt Padlan touching and rubbing her vagina. "AAA"

quickly ran towards her mother to prevent Padlan from going any further with his advances.

The next day, "AAA" complained to "BBB" about the pain she felt in her vagina. "BBB" examined "AAA's" vagina and saw that it was swollen and had pus. When asked who was responsible for her swollen vagina, "AAA" told her mother about what Padlan had done to her. "BBB" then confronted Padlan about "AAA's" claims. According to "BBB", Padlan admitted that he raped "AAA" twice.

"AAA's" older brother reported the rape incidents to the police. Padlan was then apprehended by the police authorities while "AAA" was brought to Camp Crame for a medical examination.

"BBB" testified that she knew Padlan because their neighbor, Alvin Padlan (Alvin), adopted him. When Alvin left for Masbate, he left Padlan under her care with a promise that he would get him upon his return. As such, Padlan lived with "BBB's" family since August 15, 2003 until September 28, 2005 when he was arrested.

Version of the Defense

For his defense, Padlan denied the charge of rape against him and put up the defense of alibi. He claimed that on August 7, 2005, at around 12:00 noon, he went to Nueva Ecija with his employer to buy vegetables to be resold at a public market in Bulacan. Padlan claimed that he returned to the Bulacan public market at about 2:00 a.m. the following morning.

On September 27, 2005 at around 12:00 noon, Padlan claimed that he was resting inside the house of "AAA" after selling vegetables at the public market. After about an hour, he took a bath and went back to the market to collect payments from the buyer of his vegetables. He claimed that he collected payments until 12:00 midnight.

On September 28, 2005, at around 11:00 a.m., Padlan rested at home after selling vegetables. He took a bath, ate, and watched television. He claimed that he did not have any encounter with

"AAA" and that he was surprised to learn that he was being accused of rape. After being confronted by "BBB," Padlan insisted that he did not know anything about the accusations of rape against him.

Ruling of the Regional Trial Court

On November 10, 2011, the RTC of Malolos City, Bulacan, Branch 18 rendered judgment finding Padlan guilty as charged. The RTC was convinced that the prosecution, through the testimonies of "AAA" and her mother, was able to establish the guilt of Padlan beyond reasonable doubt.

The dispositive part of the RTC's Joint Decision reads:

> WHEREFORE, accused Amante L. Padlan, as his guilt in these three cases has been proven beyond reasonable doubt, is hereby sentenced:
>
> a) In Criminal Case No. 2755-M-2005, to suffer *reclusion perpetua* and to pay private victim civil indemnity in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00;
>
> b) In Criminal Case No. 2756-M-2005, to suffer the penalty of *reclusion perpetua* and to pay private victim civil indemnity in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00; and
>
> c) In Criminal Case No. 2757-M-2005, to suffer the imprisonment five (5) months and eleven (11) days of *arresto mayor* and two (2) years, four (4) months and one (1) day of *prision correccional.*
>
> SO ORDERED.[7]

Aggrieved by the RTC's Joint Decision, Padlan appealed to the CA.

Ruling of the Court of Appeals

On April 15, 2014, the CA affirmed the RTC's Joint Decision and held as follows:

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[7] *Id*. at 158-159.

WHEREFORE, the appeal is DENED for lack of merit. With the MODIFICATION increasing the award of civil indemnity and moral damages to ₱75,000.00 each, and awarding ₱30,000.00 as exemplary damages in Criminal Case Nos. 2755-M-2005 and 2756-M-2005, the Joint Decision dated November 10, 2011 of the Regional Trial Court of Malolos City, Bulacan, Branch 18, is AFFIRMED in all other respects. All monetary awards for damages 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.[8]

Dissatisfied with the CA's Decision, Padlan, through his counsel, filed a Notice of Appeal[9] dated May 13, 2014 manifesting his intention to appeal the CA Decision to this Court.

In a Resolution[10] dated January 12, 2015, this Court directed the parties to submit their respective supplemental briefs, if they so desired.

In its Manifestation[11] dated April 15, 2015, the Office of the Solicitor General (OSG) informed this Court that it was adopting all arguments adduced in its Appellee's Brief dated May 21, 2013 in lieu of filing a Supplemental Brief.

Likewise, Padlan filed a Manifestation[12] dated May 6, 2015, indicating that he would no longer file a Supplemental Brief since he had already argued all the relevant issues in his Appellant's Brief.

Issue

The lone issue raised by Padlan in his Appellant's Brief is whether the trial court erred in finding him guilty of the crimes imputed against him despite the prosecution's failure to prove

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[8] CA *rollo,* pp. 94-95.

[9] *Id.* at 96.

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

[11] *Id.* at 34-36.

[12] *Id.* at 37-41.

his guilt beyond reasonable doubt. According to Padlan, the prosecution failed to overcome the presumption of his innocence. Padlan challenges the credibility of "AAA" and insists that he was in a different place at the time the alleged crimes were committed. Padlan thus prays for his acquittal.

Our Ruling

The appeal lacks merit.

After a careful review of the records of the case, the Court finds no cogent reason to depart from the findings of both the RTC and CA that the prosecution was able to sufficiently prove beyond a reasonable doubt all the elements of the crimes of rape and acts of lasciviousness. The Court affirms the Decision of the CA finding Padlan guilty of two counts of rape and one count of acts of lasciviousness, but with modifications on the penalty imposed and amount of damages awarded.

Under Article 266-A of the RPC, rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force, threat, or intimidation;

2. When the offended party is deprived of reason or otherwise unconscious;

3. By means of fraudulent machination or grave abuse of authority; and

4. **When the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present.

In *People v. Gutierez,*[13] the Court held that there is statutory rape when: "(1) the offended party is under [twelve] years of age[;] and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it

[13] 731 Phil. 352, 357 (2014).

was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse."

In the present case, all the elements of statutory rape have been sufficiently established in Criminal Case Nos. 2755-M-2005 and 2756-M-2005 since the prosecution's evidence showed that on two separate occasions, Padlan had carnal knowledge of "AAA," a woman under 12 years of age. The defense did not dispute the fact that "AAA" was nine years old at the time of the incident. Her birth certificate, which was presented during trial before the RTC, clearly stated that her date of birth is August 20, 1996.[14]

During her direct examination, "AAA" categorically stated that Padlan inserted his penis into her vagina on August 7, 2005 and again on September 27, 2005. The relevant portions of her testimony reveal the following incident on August 7, 2005:

FISCAL VITUG

x x x x x x x x x

Q: On August 7, 2005, from 1:00 p.m. onwards, where were you?
A: I was in our house, ma'am.

x x x x x x x x x

Q: You said you were sleeping at that time, was there any unusual incident that took place, if any?
A: There was, ma'am.

Q: What is this incident you are referring to?
A: He woke me up and asked me to stand up, ma'am.

x x x x x x x x x

Q: You said "*Ginising po nya ako at pinatayo ako*," who are you referring to?
A: Amante Padlan, ma'am.

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[14] Records, p. 74, Exhibit "B".

x x x x x x x x x

Q: Do you know Amante Padlan?
A: Yes, ma'am.

Q: How long have you known him?
A: When he lived in our house, ma'am.

x x x x x x x x x

Q: Then what happened next, if any?
A: He asked me to stand up and touched my vagina, ma'am.

x x x x x x x x x

Q: Aside from touching your vagina, what else did he do next, if any?
A: He asked me to remove my dress then he put out his penis and asked me to lie down and tried to insert his penis into my vagina, ma'am.

x x x x x x x x x

Q: How long did he insert his penis into your vagina?
A: 1½, ma'am.

COURT

Q: 1½ of what, in terms of minutes or hours?
A: *Oras po*, Your Honor.[15]

x x x x x x x x x

Q: Now after you said "aray" and he stopped. What else happened?
A: He inserted his finger, ma'am.

Q: Where did he insert his finger?
A: He inserted his finger into my vagina, ma'am.[16]

On September 27, 2005 Padlan again succeeded in having sexual intercourse with AAA. She narrated her ordeal as follows:

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[15] TSN, January 25, 2006, pp. 2-6.

[16] TSN, May 29, 2006, p. 3.

FISCAL LAGROSA

x x x x x x x x x

Q: Now do you know what [sic] the incident that happened on September 27?

A: Yes, ma'am.

x x x x x x x x x

Q: And where did you go?
A: We went to the tree of "Aratiles," Ma'am.

Q: And what happened at the "Aratiles" tree?
A: We stopped there, Ma'am.

Q: And what did you do when you stopped?
A: He removed my panty and my shorts, Ma'am.

Q: And after he removed your panty and your shorts, what happened next?
A: He drew out his penis, Ma'am.

Q: After he drew out his penis, what happened?
A: He inserted his penis into my private part, Ma'am.[17]

Further, "AAA" testified that on September 28, 2005, while she was asleep, she felt someone touching her vagina. Upon opening her eyes, "AAA" saw that it was Padlan who was touching her vagina.[18]

As shown by "AAA's" testimony, she was able to narrate in a clear and candid manner how Padlan raped and molested her. Being a 9-year old rape victim, her testimony deserves full weight and credence. "[A] girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true."[19] Moreover, the defense did not present any improper motive on "AAA" why she would impute a serious charge of rape against

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[17] TSN, October 23, 2006, pp. 3-4.

[18] TSN, May 29, 2006, pp. 7-8.

[19] *People v. Veloso,* 703 Phil. 541, 553 (2013), citing *People v. Salazar,* 648 Phil. 520, 531 (2010).

Padlan. Verily, we affirm the CA that all the elements of Rape and Acts of Lasciviousness had been proven in the case at bar.

Besides, the RTC found that "AAA's" testimony was credible since it was given in a categorical, straightforward, spontaneous, and frank manner despite her young age.[20] We find no compelling reason to deviate from these findings especially since the CA affirmed the same. The finding of credibility should not be overturned since the trial court judge had the opportunity to personally examine the demeanor of the witnesses when they testified on the stand. The finding of credibility may be overturned only when certain facts or circumstances are overlooked, misunderstood, or misapplied, and the same could have materially affected the outcome of the case. No such circumstance is present in the case at bar. Thus, the finding for "AAA's" credibility stands.

For his defense, Padlan denied the charges against him and presented an alibi. He contended that on the dates when the rape and acts of lasciviousness were alleged to have been committed, he was either in Nueva Ecija buying vegetables for resale in Bulacan, collecting payments from his buyers at the market and resting at home thereafter, or watching television at home. These are all uncorroborated self-serving statements. Time and again, the Court has held that denial and alibi are inherently weak defenses that cannot prevail over the positive and categorical testimony and identification of the complainant.[21] Moreover, for alibi to prosper, it is insufficient that the accused prove that he was somewhere else when the crime was committed; he must likewise establish that it was physically impossible for him to have been present at the scene of the crime at the time of its commission.

In this case, while Padlan alleged that on August 7, 2005 he was in Nueva Ecija with his employer buying vegetables, Padlan failed to present the testimony of such employer. Consequently,

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[20] Records, p. 155.

[21] *People v. Amistoso,* 701 Phil. 345, 362-363 (2013).

his claim remained uncorroborated and unsubstantiated. As such, in the face of the accusation against him, his alibi cannot prevail over the positive testimony of "AAA". Moreover, the distance alone from Meycauayan, Bulacan to Nueva Ecija does not conclusively prove that it was physically impossible for Padlan to go to Nueva Ecija and still return to Bulacan to commit the crime of rape. "Physical impossibility refers not only to the geographical distance between the place where the accused was and the place where the crime was committed when the crime transpired, but more importantly, the facility of access between the two places."[22]

Further, Padlan testified that on September 27-28, 2005, he was resting inside the house of "AAA's" family after selling vegetables at the public market. Instead of removing himself from the *locus criminis*, his testimony placed him squarely at the very scene of the crime or its immediate vicinity. Thus, in the face of "AAA's" positive identification of Padlan as her rapist, we reject Padlan's defense of alibi.

The Court, however, disagrees with the RTC and the CA with regard to the imposition of penalty for the crime of Acts of Lasciviousness in Criminal Case No. 2757-M-2005. The RTC, as affirmed by the CA, imposed the penalty of imprisonment of five (5) months and eleven (11) days of *arresto mayor* as minimum and two (2) years, four (4) months, and one (1) day of *prision correccional* as maximum pursuant to the provisions of Art. 336 of the RPC. The RTC did not apply the penalty prescribed by Sec. 5(b), Art. III of RA 7610 since according to the RTC, "the informations did not particularly allege what particular Section of R.A. 7610 ha[d] been violated by the accused."[23]

We disagree with the RTC.

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[22] *People v. Viojela*, 697 Phil. 513, 529 (2012).

[23] Records, p. 156.

A plain reading of the accusatory portion of the Information in Criminal Case No. 2757-M-2005 reads:

INFORMATION

The undersigned Asst. Provincial Prosecutor accuses Amante Padlan y Leones @ Butog of the crime of Acts of Lasciviousness penalized under the provisions of Art. 336 of the Revised Penal Code **in relation to R.A. 7610, Sec. 5 (b)**, committed as follows:

> That on or about the 28th day of September, 2005, in the municipality of Meycauayan, province of Bulacan, Philippines, 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, with lewd designs, **commit acts of lasciviousness upon the person of AAA, a nine (9) year old minor, by touching her vagina** and against her will, thereby badly affecting the psychological and emotional well being of said AAA.
>
> Contrary to law.[24] (Emphasis supplied)

To be held liable for lascivious conduct under Sec. 5(b), Art. III of RA 7610, the following elements of Acts of Lasciviousness under Art. 336 of the RPC must be met:

1. That the offender commits any act of lasciviousness or lewdness;
2. That it is done 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;
    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.
3. That the offended party is another person of either sex.[25]

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[24] *Id*. at 2 (3rd).

[25] *People v. Quimvel*, G.R. No. 214497, April 18, 2017.

In addition to the elements under Art. 336 of the RPC, the following requisites for sexual abuse under Sec. 5(b), Art. III of RA 7610, must also be established to wit:

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.
3. The child, whether male or female, is below 18 years of age.[26]

In the present case, the Information in Criminal Case No. 2757-M-2005 specifically stated: (1) that "AAA" was a nine-year old minor at the time of the incident; and (2) that Padlan committed acts of lasciviousness against "AAA" by touching her vagina. Contrary to the ruling of the RTC which was affirmed by the CA, we find that the elements of lascivious conduct under Sec. 5(b), Art. III of RA 7610 have been sufficiently alleged in the Information and duly proven during trial.

Sec. 2(h), of the Implementing Rules and Regulations of RA 7610 defines lascivious conduct as:

> [T]he **intentional touching**, either directly or through clothing, **of the genitalia**, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. (Emphasis supplied)

More importantly, Sec. 5(b), Art. III of RA 7610 specifically states the following:

> Section 5. *Child Prostitution and Other Sexual Abuse.* – Children, whether male or female, who for money, profit, or any other consideration or **due to the coercion or influence of any adult**, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

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[26] *Id.*

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: **Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period**; x x x

In *People v. Aycardo*,[27] the Court explained that a child need not be exploited in prostitution for the provisions of RA 7610 to apply:

Section 5 (b), Article III of R.A. No. 7610 punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one — through coercion, intimidation or influence — engages in sexual intercourse or lascivious conduct with a child. Thus, a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult.

It is clear from the above that "AAA" need not be a child exploited in prostitution for money or profit in order for the provisions of RA 7610 to apply. As long as a child is subjected to sexual abuse, either by engaging in sexual intercourse or lascivious conduct, the penalty under Sec. 5 (b), Art. III of RA 7610 shall be the proper imposable penalty.

In *Olivarez v. Court of Appeals*,[28] the Court held:

Thus a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. In this case, Cristina was sexually abused because she was coerced or intimidated by petitioner to indulge in a lascivious

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[27] G.R. No. 218114, June 5, 2017.

[28] 503 Phil. 421, 432-433 (2005).

conduct. Furthermore, it is inconsequential that the sexual abuse occurred only once. As expressly provided in Section 3 (b) of R.A. 7610, the abuse may be habitual or not. It must be observed that Article III of R.A. 7610 is captioned as "Child Prostitution and Other Sexual Abuse" because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit. The law covers not only child prostitution but also other forms of sexual abuse. x x x

Accordingly, a modification of the penalty imposed by the RTC in Criminal Case No. 2757-M-2005 is in order.

The proper imposable penalty for acts of lasciviousness under the circumstances is *reclusion temporal* in its medium period which ranges from fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months.

The Indeterminate Sentence Law (ISL) provides that if the offense is punished under a special law, as in this case, the maximum term shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.[29] Nonetheless, the Court had already held in *People v. Simon*[30] that when an offense is defined in a special law but the penalty therefor is taken from the technical nomenclature in the RPC, the legal effects under the system of penalties native to the Code would necessarily apply to the special law. Thus, in *People v. Santos*,[31] which also involved a case of acts of lasciviousness under Sec. 5 (b), Art. III of RA 7610, the Court held that in the absence of mitigating or aggravating circumstances, the minimum term shall be taken

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[29] Sec.1, Republic Act No. 4103, AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR AND FOR OTHER PURPOSES

[30] 304 Phil. 725, 756 (1994).

[31] 753 Phil. 637, 651 (2015), citing *Dulla v. Court of Appeals,* 382 Phil. 791, 809-810 (2000).

from the penalty one degree lower to the prescribed penalty of *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from twelve (12) years, ten (10) months and twenty-one (21) days to fourteen (14) years and eight (8) months, while the maximum shall be taken from the medium period of the imposable penalty, that is *reclusion temporal* medium, which ranges from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.

Applying the foregoing, in Criminal Case No. 2757-M-2005, Padlan is hereby sentenced to an indeterminate penalty of imprisonment of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Furthermore, Padlan is ordered to pay the victim, "AAA," the amounts of ₱20,000.00 as civil indemnity; ₱15,000.00 as moral damages; ₱15,000.00 as exemplary damages; and a fine of ₱15,000.00 in line with prevailing jurisprudence.[32]

Finally, as to the award of damages in Criminal Case Nos. 2755-M-2005 and 2756-M-2005 for the crime of rape, the Court increases the same in line with the rule enunciated in *People v. Jugueta*,[33] where the Court held that in the crime of rape where the imposable penalty is *reclusion perpetua,* the proper amounts of damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages. Hence in Criminal Case Nos. 2755-M-2005 and 2756-M-2005, where Padlan was convicted of two (2) counts of rape and sentenced to *reclusion perpetua,* the Court further modifies the award of exemplary damages to ₱75,000.00.

WHEREFORE, the April 15, 2014 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05517 is **AFFIRMED with FURTHER MODIFICATIONS** as follows:

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[32] *People v. Aycardo, supra* note 27; *Quimvel v. People, supra* note 25.

[33] G.R. No. 202124, April 5, 2016, 788 SCRA 331, 373.

1. In Criminal Case Nos. 2755-M-2005 and 2756-M-2005, appellant Amante Padlan is found guilty beyond reasonable doubt of two counts of rape as defined under Article 266-A (1)(d) and penalized under Article 266-B of the Revised Penal Code. Appellant Amante Padlan is sentenced to suffer the penalty of imprisonment of *reclusion perpetua* and is ordered to pay the victim, "AAA," the increased amounts of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages, all with interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

2. In Criminal Case No. 2757-M-2005, appellant Amante Padlan is found guilty of Acts of Lasciviousness as defined under Article 336 of the Revised Penal Code in relation to, and penalized under Section 5(b), Article III of Republic Act No. 7610. Appellant Amante Padlan is sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. He is further ordered to pay the victim, "AAA," the amounts of ₱20,000.00 as civil indemnity; ₱15,000.00 as moral damages; ₱15,000.00 as exemplary damages; and a fine of ₱15,000.00, all with interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Leonardo-de Castro, Caguioa, and *Tijam, JJ.*, concur.

Sereno, C.J., on official leave.

SECOND DIVISION

[G.R. No. 217194. September 6, 2017]

SOCIETE DES PRODUITS, NESTLE, S.A., *petitioner, vs.* **PUREGOLD PRICE CLUB, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 43 PETITION; PETITIONER FILED ITS PETITION FOR REVIEW WITH THE COURT OF APPEALS WITHIN THE PRESCRIBED PERIOD.— The Decision of the ODG-IPO was received by Nestle's substituted counsel on 14 March 2014. On 27 March 2014, within the 15-day reglementary period provided for by Section 4 of Rule 43, Nestle filed a Motion for Extension of Time to file Verified Petition for Review (motion for extension) with the CA. In a Resolution dated 3 April 2014, the CA granted Nestle's motion for extension and gave Nestle until 13 April 2014 to file its petition for review. x x x Since 13 April 2014 fell on a Sunday, Nestle had until 14 April 2014, which was the next working day, within which to file the petition for review. Nestle did file the petition for review with the CA on 14 April 2014. Accordingly, the CA committed a grave error when it ruled that Nestle's petition for review was filed beyond the prescribed period.

2. ID.; CIVIL PROCEDURE; CERTIFICATION AGAINST FORUM SHOPPING; FAILURE TO ATTACH COPY OF THE BOARD RESOLUTION OR SECRETARY'S CERTIFICATE TO PROVE THE REPRESENTATIVE'S AUTHORITY TO SIGN THE CERTIFICATION IN BEHALF OF THE CORPORATION IS FATAL; A POWER OF ATTORNEY EVIDENCING REPRESENTATIVE'S AUTHORITY IS NOT ENOUGH.— The authority of the representative of a corporation to sign the certification against forum shopping originates from the board of directors through either a board of directors' resolution or secretary's certificate which must be submitted together with the certification against forum shopping. x x x Nestle, itself, acknowledged in this petition the absence of a board resolution or secretary's certificate issued by the board of directors of Nestle to prove the authority of

Barot to sign the certification against forum shopping on behalf of Nestle, to wit: "[t]hus, while **there is no board resolution and/or secretary's certificate to prove the authority of Dennis Jose R. Barot to file the petition and Verification/Certification of Non-Forum Shopping on behalf of petitioner-corporation**, there is a Power of Attorney evidencing such authority." The power of attorney submitted by Nestle in favor of Barot was signed by Celine Jorge. However, the authority of Celine Jorge to sign the power of attorney on behalf of Nestle, allowing Barot to represent Nestle, was not accompanied by a board resolution or secretary's certificate from Nestle showing that Celine Jorge was authorized by the board of directors of Nestle to execute the power of attorney in favor of Barot. In *Development Bank of the Philippines v. Court of Appeals*, this Court held that the failure to attach a copy of a board resolution proving the authority of the representative to sign the certification against forum shopping was fatal to its petition and was sufficient ground to dismiss since the courts are not expected to take judicial notice of board resolutions or secretary's certificates issued by corporations[.] x x x Accordingly, the CA did not err in ruling that the petition for review should be dismissed due to the failure of Nestle to comply with the proper execution of the certification against forum shopping required by Section 5, Rule 7 of the Rules of Court.

3. **COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE (RA 8293); TRADEMARK, DEFINED.—** A trademark is any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others.

4. **ID.; ID.; ID.; TWO TESTS TO DETERMINE SIMILARITY OR LIKELIHOOD OF CONFUSION BETWEEN TWO PRODUCTS; DOMINANCY TEST AND HOLISTIC TEST, DISTINGUISHED.—** In determining similarity or likelihood of confusion, our jurisprudence has developed two tests: the dominancy test and the holistic test. The dominancy test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception. If the competing trademark contains the main, essential, and dominant features of another, and confusion or deception is likely to result, likelihood of confusion exists. The question is whether the use

of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive consumers. In *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, this Court gave greater weight to the similarity of the appearance of the product arising from the adoption of the dominant features of the registered mark, to wit: "[c]ourts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets and market segments." The dominancy test is now incorporated into law in Section 155.1 of RA 8293[.] x x x In contrast, the holistic test entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both marks in order that the observer may draw his conclusion whether one is confusingly similar to the other.

5. ID.; ID.; ID.; THE LIKELIHOOD OF CONFUSION BETWEEN NESTLE'S MARK "COFFEE-MATE" AND PUREGOLD'S "COFFEE MATCH" DOES NOT EXIST; THE COURT UPHOLDS THE REGISTRATION OF PUREGOLD'S MARK.— We agree with the findings of the BLA-IPO and ODG-IPO. The distinctive features of both marks are sufficient to warn the purchasing public which are Nestle's products and which are Puregold's products. While both "-MATE" and "MATCH" contain the same first three letters, the last two letters in Puregold's mark, "C" and "H", rendered a visual and aural character that made it easily distinguishable from Nestle's mark. Also, the distinctiveness of Puregold's mark with two separate words with capital letters "C" and "M" made it distinguishable from Nestle's mark which is one word with a hyphenated small letter "-m" in its mark. In addition, there is a phonetic difference in pronunciation between Nestle's "-MATE" and Puregold's "MATCH." As a result, the eyes and ears of the consumer would not mistake Nestle's product for Puregold's product. Accordingly, this Court sustains the findings of the BLA-IPO and ODG-IPO that the likelihood of confusion between Nestle's product and Puregold's product does not exist and upholds the registration of Puregold's mark.

APPEARANCES OF COUNSEL

Bengzon Negre Untalan for petitioner.
Sioson Sioson & Associates for respondent.

D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

Before the Court is a petition for review on certiorari[1] assailing the 15 May 2014 Resolution[2] and the 14 October 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 134592.

The Facts

Petitioner Societe des Produits Nestle, S.A. (Nestle) is a corporation organized and existing under the laws of Switzerland which is engaged in the business of marketing and selling of coffee, ice cream, chocolates, cereals, sauces, soups, condiment mixes, dairy and non-dairy products, etc.[4] Respondent Puregold Price Club, Inc. (Puregold) is a corporation organized under Philippine law which is engaged in the business of trading goods such as consumer goods on wholesale or on retail basis.[5]

On 14 June 2007, Puregold filed an application[6] for the registration of the trademark "COFFEE MATCH" with the Intellectual Property Office (IPO). The registration was filed

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[1] *Rollo,* pp. 12-46. Under Rule 45 of the Rules of Court.

[2] *Id.* at 62. Signed by Division Clerk of Court Atty. Celedonia M. Ogsimer.

[3] *Id.* at 64-67. Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Apolinario D. Bruselas, Jr. and Eduardo B. Peralta, Jr. concurring.

[4] *Id.* at 189.

[5] *Id.* at 230.

[6] *d.* at 218-220.

by Puregold for use on coffee, tea, cocoa, sugar, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, and honey under Class 30 of the International Classification of Goods.[7]

On 5 December 2008, Nestle filed an opposition[8] against Puregold's application for registration. Nestle alleged that it is the exclusive owner of the "COFFEE-MATE" trademark and that there is confusing similarity between the "COFFEE-MATE" trademark and Puregold's "COFFEE MATCH" application.[9] Nestle alleged that "COFFEE-MATE" has been declared an internationally well-known mark and Puregold's use of "COFFEE MATCH" would indicate a connection with the goods covered in Nestle's "COFFEE-MATE" mark because of its distinct similarity. Nestle claimed that it would suffer damages if the application were granted since Puregold's "COFFEE MATCH" would likely mislead the public that the mark originated from Nestle.[10]

The Decision of the Bureau of Legal Affairs-Intellectual Property Office

In a Decision[11] dated 16 April 2012, the Bureau of Legal Affairs-Intellectual Property Office (BLA-IPO) dismissed Nestle's opposition. The BLA-IPO ruled that Nestle's opposition was defective because the verification and certification against forum shopping attached to Nestle's opposition did not include a board of directors' resolution or secretary's certificate stating Mr. Dennis Jose R. Barot's (Barot) authority to act on behalf of Nestle. The BLA-IPO ruled that the defect in Nestle's opposition was sufficient ground to dismiss.[12]

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[7] *Id*. at 218.

[8] *Id*. at 68-76.

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

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

[11] *Id*. at 294-301.

[12] *Id*. at 299.

The BLA-IPO held that the word "COFFEE" as a mark, or as part of a trademark, which is used on coffee and similar or closely related goods, is not unique or highly distinctive. Nestle combined the word "COFFEE" with the word "-MATE," while Puregold combined the word "COFFEE" with the word "MATCH." The BLA-IPO ruled that while both Nestle's "-MATE" and Puregold's "MATCH" contain the same first three letters, the last two in Puregold's mark rendered a visual and aural character that makes it easily distinguishable from Nestle's "COFFEE-MATE."[13] Also, the letter "M" in Puregold's mark is written as an upper case character and the eyes of a consumer would not be confused or deceived by Nestle's "COFFEE- MATE" where the letter "M" is written in lower case. Consequently, the BLA-IPO held that the consumer cannot mistake the mark and the products of Nestle as those of Puregold's.[14]

The dispositive portion of the Decision states:

> WHEREFORE, premises considered, the instant opposition is hereby DISMISSED. Let the filewrapper of Trademark Application Serial No. 4-2007-006134 be returned, together with a copy of this DECISION, to the Bureau of Trademarks for information and appropriate action.
>
> SO ORDERED.[15]

On 11 June 2012, Nestle filed an appeal[16] with the Office of the Director General of the Intellectual Property Office (ODG-IPO).

The Decision of the ODG-IPO

In a Decision[17] dated 7 February 2014, the Office of the ODG-IPO dismissed Nestle's appeal. The ODG-IPO held that Barot's

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[13] *Id*. at 300.

[14] *Id*.

[15] *Id*. at 301.

[16] *Id*. at 302-331.

[17] *Id*. at 412-418.

authority to sign the certification against forum shopping was not sufficiently proven by Nestle. The ODG-IPO ruled that Barot's authority, which was contained in the power of attorney executed, should not be given weight unless accompanied by proof or evidence of his authority from Nestle.[18]

The ODG-IPO held that the competing marks are not confusingly similar and that consumers would unlikely be deceived or confused from Puregold's use of "COFFEE MATCH." The ODG-IPO ruled that the common feature of "COFFEE" between the two marks cannot be exclusively appropriated since it is generic or descriptive of the goods in question. The ODG-IPO ruled that there is no visual, phonetic, or conceptual similarity between the two marks. Visual similarity is not present in the two marks, as Nestle's mark consists of a hyphenated word with the paired word being "MATE" while Puregold's mark consists of the paired word "MATCH." While it is true that the first three letters "M", "A", and "T" are common in the two marks, Puregold's mark, which are two separate words, with the capitalization of the letters "C" and "M", is readily apparent when "COFFEE MATCH" and "COFFEE-MATE" are compared side by side.[19]

The dispositive portion of the Decision states:

> WHEREFORE, premises considered, the appeal is hereby DISMISSED. Let a copy of this Decision and the records of this case be furnished and returned to the Director of Bureau of Legal Affairs for appropriate action. Further, let also the Director of the Bureau of Trademarks and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance, and records purposes.
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> SO ORDERED.[20]

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[18] *Id*. at 415.

[19] *Id*. at 417.

[20] *Id*. at 418.

On 14 April 2014, Nestle filed a Petition for Review[21] with the Court of Appeals.

The Decision of the CA

In a Resolution dated 15 May 2014, the CA dismissed Nestle's petition for review on procedural grounds.

The Resolution states:

A perusal of the Petition for Review shows that:

1. the title thereof does not bear the name of party respondent Puregold Price Club, Inc.

2. there is no board resolution and/or secretary's certificate to prove the authority of Dennis Jose R. Barot to file the petition and to sign the Verification/Certification of Non-Forum Shopping on behalf of petitioner-corporation; and

3. certified true copies of material [portions] of the record which were mentioned therein were not attached, such as respondent's trademark application (rollo, p. 12), petitioner's Opposition thereto, Reply, the parties' respective position papers, petitioner's appeal, respondent's Comment, the parties' respective memoranda, etc.

The above considering, the Court RESOLVES to DISMISS the petition outright.[22]

On 13 June 2014, Nestle filed a Motion for Reconsideration[23] which was denied by the CA on 14 October 2014.[24] The Resolution of the CA states:

We DENY the Motion for Reconsideration because it is without merit.

The petitioner filed the Petition beyond the 15-day reglementary period.

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[21] *Id*. at 425-455.

[22] *Id*. at 62.

[23] *Id*. at 480-492.

[24] *Id*. at 64-67.

Under Rule 43, Section 4 of the Rules of Court, a party may file an appeal to this Court from quasi-judicial bodies like the Intellectual Property Office, within 15 days from receipt of the assailed judgment, order, or resolution.

Petitioner's counsel of record before the Intellectual Property Office ("IPO"), the Sapalo Velez Bundang & Bulilan Law Offices ("SVBB Law Offices") received a copy of the assailed Decision on 19 February 2014. Thus, petitioner had until 7 March 2014 to appeal. While the Bengzon Negre & Untalan Law Offices ("Bengzon Law Offices") entered its appearance before the IPO, no evidence was submitted before this Court showing that the Bengzon Law Offices was properly substituted as petitioner's counsel in place of SVBB Law Offices (petitioner's counsel of record). Thus, the 15-day reglementary period started to run from the date SVBB Law Offices received a copy of the Decision.

Clearly, when petitioner filed the Motion for Extension on 27 March 2014, and the Petition on 14 April 2014, the reglementary period had already lapsed.

Further, the petitioner obstinately refuses to cure the procedural infirmities we observed in the Resolution of 15 May 2014.

SO ORDERED.[25]

The Issues

Nestle presented the following issues in this petition:

1. The Honorable Court of Appeals erred in dismissing petitioner's motion for reconsideration upon an erroneous appreciation of certain antecedent facts, and similarly erred in dismissing the petition for review on procedural grounds.

2. There is merit to the substantive issues raised by petitioner, which deserves to be given due course and a final ruling.[26]

The Ruling of this Court

We deny the petition.

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[25] *Id*. at 65-66.

[26] *Id*. at 17-18.

Before discussing the substantive issues, we shall first discuss the procedural issues in this case.

Nestle filed its petition for review within the period granted by the Court of Appeals.

The CA dismissed Nestle's petition for review on the ground that Nestle filed its petition for review after the 15-day reglementary period required by Section 4, Rule 43 of the Rules of Court.

The CA is wrong.

Section 4, Rule 43 of the Rules of Court states:

> Section 4. *Period of appeal*. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

During the proceedings in the ODG-IPO, Nestle substituted its counsel, Sapalo, Velez, Bundang and Bulilan Law Offices, with Bengzon, Negre and Untalan Law Offices (Nestle's substituted counsel). On 20 September 2013, Nestle's substituted counsel entered its appearance in the ODG-IPO.[27] In an Order[28] dated 1 October 2013, the ODG-IPO noted the appearance of Nestle's substituted counsel and included their appearance in the records of the case, to wit:

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[27] *Id*. at 404-405.

[28] *Id*. at 410-411.

Wherefore, the APPEARANCE is hereby noted and included in the records. Accordingly, let copies of all pleadings, orders, notices and communications, be sent to the aforementioned address.

SO ORDERED.[29]

The Decision of the ODG-IPO was received by Nestle's substituted counsel on 14 March 2014. On 27 March 2014, within the 15-day reglementary period provided for by Section 4 of Rule 43, Nestle filed a Motion for Extension of Time to file Verified Petition for Review[30] (motion for extension) with the CA. In a Resolution[31] dated 3 April 2014, the CA granted Nestle's motion for extension and gave Nestle until 13 April 2014 to file its petition for review. The resolution states:

> The Court GRANTS petitioner's Motion for Extension of Time to File Verified Petition for Review and gives petitioner until April 13, 2014 within which to do so.[32]

Since 13 April 2014 fell on a Sunday, Nestle had until 14 April 2014, which was the next working day, within which to file the petition for review. Nestle did file the petition for review with the CA on 14 April 2014. Accordingly, the CA committed a grave error when it ruled that Nestle's petition for review was filed beyond the prescribed period.

Nestle failed to properly execute a certification against forum shopping as required by Section 5, Rule 7 of the Rules of Court.

Section 5, Rule 7 of the Rules of Court provides:

> Section 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other

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[29] *Id.* at 410.

[30] *Id.* at 419-422.

[31] *Id.* at 424. Signed by Division Clerk of Court Atty. Celedonia M. Ogsimer.

[32] *Id.*

initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (Emphasis supplied)

In *Zulueta v. Asia Brewery, Inc.*,[33] this Court ruled that the requirements under the Rules of Court involving the certification against forum shopping apply both to natural and juridical persons, to wit: "[t]he requirement that the petitioner should sign the certificate of non-forum shopping applies even to corporations, considering that the mandatory directives of the Circular and the Rules of Court make no distinction between natural and juridical persons."[34]

In *Fuentebella v. Castro,*[35] this Court held that the certification against forum shopping must be signed by the principal party. In case the principal party cannot sign, the one signing on his or her behalf must have been duly authorized, to wit: "the

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[33] 406 Phil. 543 (2001).

[34] *Id*. at 553.

[35] 526 Phil. 668 (2006).

petitioner or the principal party must execute the certification against forum shopping. The reason for this is that the principal party has actual knowledge whether a petition has previously been filed involving the same case or substantially the same issues. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized."[36]

Juridical persons, including corporations, that cannot personally sign the certification against forum shopping, must act through an authorized representative. The exercise of corporate powers including the power to sue is lodged with the board of directors which acts as a body representing the stockholders. For corporations, the authorized representative to sign the certification against forum shopping must be **selected or authorized collectively by the board of directors**. In *Eslaban, Jr. v. Vda. de Onorio*,[37] this Court ruled that if the real party in interest is a corporation, an officer of the corporation acting alone has no authority to sign the certification against forum shopping. An officer of the corporation can only validly sign the certification against forum shopping if he or she is authorized by the board of directors through a board resolution or secretary's certificate. In *Gonzales v. Climax Mining Ltd.*,[38] this Court ruled that a board resolution authorizing a corporate officer to execute the certification against forum shopping is a necessary requirement under the Rules. A certification signed by a person who was not duly authorized by the board of directors renders the petition for review subject to dismissal.[39]

The authority of the representative of a corporation to sign the certification against forum shopping originates from the board of directors through either a board of directors' resolution or secretary's certificate which must be submitted together with

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[36] *Id*. at 675.

[37] 412 Phil. 667 (2001).

[38] 492 Phil. 682 (2005).

[39] *Id*. at 691.

the certification against forum shopping. In *Zulueta*, this Court declared invalid a petition for review with a certification against forum shopping signed by the party's counsel which was not supported by a board resolution or secretary's certificate proving the counsel's authority. This Court dismissed the case and held: "[t]he signatory in the Certification of the Petition before the CA should not have been respondents' retained counsel, who would not know whether there were other similar cases of the corporation. Otherwise, this requirement would easily be circumvented by the signature of every counsel representing corporate parties."[40] Likewise, in *Eslaban*, this Court held that a certification signed by counsel alone is defective and constitutes a valid cause for the dismissal of the petition.[41]

Nestle, itself, acknowledged in this petition the absence of a board resolution or secretary's certificate issued by the board of directors of Nestle to prove the authority of Barot to sign the certification against forum shopping on behalf of Nestle, to wit: "[t]hus, while **there is no board resolution and/or secretary's certificate to prove the authority of Dennis Jose R. Barot to file the petition and Verification/Certification of Non-Forum Shopping on behalf of petitioner-corporation**, there is a Power of Attorney evidencing such authority."[42] The power of attorney submitted by Nestle in favor of Barot was signed by Céline Jorge. However, the authority of Céline Jorge to sign the power of attorney on behalf of Nestle, allowing Barot to represent Nestle, was not accompanied by a board resolution or secretary's certificate from Nestle showing that Céline Jorge was authorized by the board of directors of Nestle to execute the power of attorney in favor of Barot. In *Development Bank of the Philippines v. Court of Appeals*,[43] this Court held that the failure to attach a copy of a board resolution proving the authority of the representative to sign the certification against

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[40] *Supra* note 33, at 554.

[41] *Supra* note 37, at 675.

[42] *Rollo*, p. 23.

[43] 483 Phil. 216 (2004).

forum shopping was fatal to its petition and was sufficient ground to dismiss since the courts are not expected to take judicial notice of board resolutions or secretary's certificates issued by corporations, to wit:

> What petitioners failed to explain, however, is their failure to attach a certified true copy of Resolution No. 0912 to their petition for *certiorari* in CA-G.R. SP No. 60838. **Their omission is fatal to their case. Courts are not, after all, expected to take judicial notice of corporate board resolutions or a corporate officer's authority to represent a corporation.** To be sure, petitioners' failure to submit proof that Atty. Demecillo has been authorized by the DBP to file the petition is a "sufficient ground for the dismissal thereof."[44] (Emphasis supplied)

Accordingly, the CA did not err in ruling that the petition for review should be dismissed due to the failure of Nestle to comply with the proper execution of the certification against forum shopping required by Section 5, Rule 7 of the Rules of Court.

Puregold's mark may be registered.

A trademark is any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others.[45] Section 123 of Republic Act No. 8293[46] (RA 8293) provides for trademarks which cannot be registered, to wit:

> Sec. 123. *Registrability*. –
>
> 123.1 A mark[47] cannot be registered if it:

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[44] *Id*. at 221.

[45] *Dermaline, Inc. v. Myra Pharmaceuticals, Inc.*, 642 Phil. 503 (2010).

[46] AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES.

[47] A visible sign capable of distinguishing goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods.

x x x x x x x x x

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

(i) The same goods or services, or

(ii) Closely related goods or services, or

(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;

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

(f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use;

(g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;

(h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;

x x x x x x x x x (Emphasis supplied)

In *Coffee Partners, Inc. v. San Francisco & Roastery, Inc.*,[48] this Court held that the gravamen of trademark infringement is the likelihood of confusion. There is no absolute standard for the likelihood of confusion. Only the particular, and sometimes peculiar, circumstances of each case can determine its existence. Thus, in infringement cases, precedents must be evaluated in the light of each particular case.[49]

In determining similarity or likelihood of confusion, our jurisprudence has developed two tests: the dominancy test and the holistic test.[50] The dominancy test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception. If the competing trademark contains the main, essential, and dominant features of another, and confusion or deception is likely to result, likelihood of confusion exists. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive consumers.[51] In *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*,[52] this Court gave greater weight to the similarity of the appearance of the product arising from the adoption of the dominant features of the registered mark, to wit: "[c]ourts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets and market segments."[53] The dominancy test is now incorporated into law in Section 155.1 of RA 8293 which states:

SECTION 155. *Remedies; Infringement*. — Any person who shall, without the consent of the owner of the registered mark:

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[48] 628 Phil. 13 (2010).

[49] *Id*. at 23, citing *Philip Morris, Inc. v. Fortune Tobacco Corporation*, G.R. No. 158589, 27 June 2006, 493 SCRA 333.

[50] *Id*. at 23-24.

[51] *Id*. at 24.

[52] 480 Phil. 402 (2004).

[53] *Id*. at 434.

> 155.1 Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or **a dominant feature thereof** in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; (Emphasis supplied)

In contrast, the holistic test entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both marks in order that the observer may draw his conclusion whether one is confusingly similar to the other.[54]

The word "COFFEE" is the common dominant feature between Nestle's mark "COFFEE-MATE" and Puregold's mark "COFFEE MATCH." However, following Section 123, paragraph (h) of RA 8293 which prohibits exclusive registration of generic marks, the word "COFFEE" cannot be exclusively appropriated by either Nestle or Puregold since it is generic or descriptive of the goods they seek to identify. In *Asia Brewery, Inc. v. Court of Appeals*,[55] this Court held that generic or descriptive words are not subject to registration and belong to the public domain. Consequently, we must look at the word or words paired with the generic or descriptive word, in this particular case "-MATE" for Nestle's mark and "MATCH" for Puregold's mark, to determine the distinctiveness and registrability of Puregold's mark "COFFEE MATCH."

We agree with the findings of the BLA-IPO and ODG-IPO. The distinctive features of both marks are sufficient to warn the purchasing public which are Nestle's products and which are Puregold's products. While both "-MATE" and "MATCH"

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[54] *Id.*

[55] 296 Phil. 298 (1993).

contain the same first three letters, the last two letters in Puregold's mark, "C" and "H," rendered a visual and aural character that made it easily distinguishable from Nestle's mark. Also, the distinctiveness of Puregold's mark with two separate words with capital letters "C" and "M" made it distinguishable from Nestle's mark which is one word with a hyphenated small letter "-m" in its mark. In addition, there is a phonetic difference in pronunciation between Nestle's "-MATE" and Puregold's "MATCH." As a result, the eyes and ears of the consumer would not mistake Nestle's product for Puregold's product. Accordingly, this Court sustains the findings of the BLA-IPO and ODG-IPO that the likelihood of confusion between Nestle's product and Puregold's product does not exist and upholds the registration of Puregold's mark.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 15 May 2014 Resolution and the 14 October 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 134592.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 218628. September 6, 2017]

EVERGREEN MANUFACTURING CORPORATION, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS,** *respondent.*

[G.R. No. 218631. September 6, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND

HIGHWAYS, *petitioner*, *vs.* **EVERGREEN MANUFACTURING CORPORATION,** *respondent*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; THE VALUE OF THE PROPERTY AT THE TIME OF TAKING MUST BE TAKEN INTO ACCOUNT IN DETERMINING JUST COMPENSATION; WHEN THERE WAS NO EVIDENCE AS TO THE VALUE OF THE PROPERTY AT THE TIME OF TAKING, THE COURT CONSIDERED THE MEAN OF THE PRICES OF THE PROPERTIES FOR THE PRIOR AND SUBSEQUENT YEARS TO THE TIME OF TAKING.— [W]e find that the lower courts and the commissioners failed to consider the time of taking when they arrived at their respective findings on the amount of just compensation. While remanding the case to receive evidence in order to determine the amount of just compensation at the time of taking would enable the court to clearly determine the amount of just compensation due to Evergreen, we find that it would be prejudicial to both the government and Evergreen to do so. Remanding the case would unnecessarily delay the payment of just compensation due to Evergreen, and it would also increase the amount of interest that would accrue against Republic-DPWH. Thus, we find that a finding of just compensation based on available records would be most beneficial to both parties concerned. In 2000, this Court found that the just compensation for similar properties situated in the vicinity was ₱26,100.00. In 2008, the commissioners found the selling price of the properties in the surrounding area to be from ₱35,000.00 to ₱40,000.00 per square meter. The time of taking was in 2004, or right in the middle of 2000 and 2008. Thus, we may consider the mean of the prices of the properties for the years 2000 and 2008 to arrive at the amount of just compensation in 2004. Taking the higher value of the range of price in 2008 and the amount of just compensation as affirmed by this Court in 2000, we find that the amount of just compensation in 2004 is ₱33,050.00 per square meter or a total of ₱5,720,294.00.

2. ID.; ID.; ID.; ID.; INTEREST ON THE PAYMENT OF JUST COMPENSATION; WHERE THE AMOUNT DEPOSITED FOR THE PAYMENT OF JUST COMPENSATION IS MUCH LESS THAN THAT ADJUDGED BY THE COURT, THE DIFFERENCE IN THE AMOUNT BETWEEN THE INITIAL PAYMENT AND THE FINAL AMOUNT AS ADJUDGED BY THE COURT SHOULD EARN LEGAL INTEREST AS A FORBEARANCE OF MONEY; CASE AT BAR.— The delay in the payment of just compensation is a forbearance of money. As such, this is necessarily entitled to earn interest. The difference in the amount between the final amount as adjudged by the court and the initial payment made by the government — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money. x x x With respect to the amount of interest on the difference between the initial payment and final amount of just compensation as adjudged by the court, we have upheld in *Eastern Shipping Lines, Inc. v. Court of Appeals*, and in subsequent cases thereafter, the imposition of 12% interest rate from the time of taking when the property owner was deprived of the property, until 1 July 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% per annum by BSP Circular No. 799. Accordingly, from 1 July 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum. In the present case, Republic-DPWH filed the expropriation complaint on 22 March 2004. As this preceded the actual taking of the property, the just compensation shall be appraised as of this date. No interest shall accrue as the government did not take possession of the Subject Premises. Republic-DPWH was able to take possession of the property on 21 April 2006 upon the agreement of the parties. Thus, a legal interest of 12% per annum on the difference between the final amount adjudged by the Court and the initial payment made shall accrue from 21 April 2006 until 30 June 2013. From 1 July 2013 until the finality of the Decision of the Court, the difference between the initial payment and the final amount adjudged by the Court shall earn interest at the rate of 6% per annum. Thereafter, the total amount of just compensation shall earn legal interest of 6% per annum from the finality of this Decision until full payment thereof.

APPEARANCES OF COUNSEL

The Law Firm of Chan Robles and Associates for Evergreen Manufacturing Corporation.

Office of the Solicitor General for Republic of the Philippines.

D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

These are consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court. Evergreen Manufacturing Corporation (Evergreen) is the petitioner in G.R. No. 218628 while the Republic of the Philippines, represented by the Department of Public Works and Highways (Republic-DPWH), is the petitioner in G.R. No. 218631. Both challenge the 26 June 2014 Decision[1] and the 25 May 2015 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 98157. The CA affirmed, with modification, the 30 June 2011 Decision[3] and the 3 November 2011 Order[4] of the Regional Trial Court (RTC), Branch 166 of Pasig City in SCA No. 2641 for Expropriation.

The Facts

Evergreen is the registered owner of a parcel of land situated in Barangay Santolan, Pasig City, which covers an area of 1,428.68 square meters and is covered by Transfer Certificate of Title No. PT-114857 (Subject Property). Republic-DPWH seeks to expropriate a portion of the Subject Property covering 173.08 square meters (Subject Premises) which will be used

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[1] *Rollo* (G.R. No. 218628), pp. 11-25. Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Isaias P. Dicdican and Michael P. Elbinias concurring.

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

[3] *Id.* at 244-254. Penned by Presiding Judge Rowena De Juan-Quinagoran.

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

for a public purpose – the construction of Package 3, Marikina Bridge and Access Road, Metro Manila Urban Transport Integration Project.

Based on the zonal, industrial classification and valuation of the Bureau of Internal Revenue (BIR) of the real properties situated in Barangay Santolan, Evangelista Street, in the vicinity of A. Rodriguez boundary where the Subject Property is situated, the properties have an appraised value of ₱6,000.00 per square meter. While Republic-DPWH offered to acquire the Subject Premises by negotiated sale, Evergreen declined this offer. Thus, Republic-DPWH filed a complaint for expropriation on 22 March 2004.

Evergreen, in opposing the complaint for expropriation, alleged that the conditions for filing a complaint for expropriation have not been met, and that there is no necessity for expropriation. It argued that an expropriation of the Subject Premises would impair the rights of leaseholders in gross violation of the constitutional proscription against impairment of the obligation of contracts. It prayed for the dismissal of the complaint for failure to state a cause of action. In the alternative, in the possibility that expropriation is deemed proper, Evergreen prayed that in addition to the payment of just compensation, Republic-DPWH be ordered to (a) cause a re-survey of the remaining areas of the Subject Property and draw a new lot plan and vicinity plan for each area; (b) draw up a new technical description of the remaining areas for approval of the proper government agencies; (c) cause the issuance of new titles for the remaining lot; (d) provide new tax declaration for the new title; and (e) pay incidental expenses relative to the titling of the expropriated areas.

On 19 August 2004, after depositing One Million Thirty Eight Thousand Four Hundred Eighty Pesos (₱1,038,480.00) – which is equivalent to 100% of the value of the Subject Premises based on the BIR zonal valuation of ₱6,000.00 per square meter – Republic-DPWH filed a Motion for the issuance of a Writ of Possession. On 6 December 2004, a Writ of Possession was issued by the RTC. On 14 September 2005, Republic-DPWH filed a Motion for Issuance of a New Writ of Possession as the

first writ of possession was not implemented. Subsequently, on 2 March 2006, Evergreen filed a Motion to Withdraw the Initial Deposit. This was opposed by Republic-DPWH as it was not yet allowed entry into the Subject Premises. On 21 April 2006, the parties entered into an agreement allowing Republic-DPWH to enter into and/or possess the Subject Premises. On 15 November 2006, the RTC granted the Motion to Withdraw Initial Deposit.

During the pre-trial, Evergreen and Republic-DPWH agreed that the issue to be resolved in the expropriation complaint was the amount of just compensation. Three (3) real estate brokers/appraisers were appointed as commissioners to determine the current fair market value of the Subject Premises.

On 15 October 2007, the RTC appointed the members of the Board of Commissioners, namely: Norviendo Ramos, Jr., (later replaced by Atty. Jade Ferrer Wy), the City Assessor or his representative, and the RTC Clerk of Court of Pasig City. Thereafter, the Commissioners submitted separate Appraisal Reports. Bonifacio Maceda, Jr. of the City Assessor's office recommended the payment of ₱15,000.00 per square meter, Atty. Jade Ferrer Wy recommended ₱37,500.00 per square meter and Atty. Pablita Migriño of the Office of the RTC Clerk of Court of Pasig City recommended the amount of ₱30,000.00 per square meter for the Subject Premises.

The Ruling of the RTC

On 30 June 2011, the RTC rendered its Decision[5] fixing the just compensation for the Subject Premises at Twenty Five Thousand Pesos (₱25,000.00) per square meter. The RTC directed Republic-DPWH to pay Evergreen the amount of Three Million Two Hundred Eighty-Eight Thousand Five Hundred Twenty Pesos (₱3,288,520.00), which was the amount due after deducting the deposit made by Republic-DPWH which had already been withdrawn by Evergreen. The dispositive portion of the Decision states:

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[5] *Id*. at 244-254.

WHEREFORE, premises considered, judgment is hereby rendered fixing the amount of just compensation for 173.08 square meters of the subject parcel of land being expropriated at Twenty Five Thousand Pesos (₱25,000.00) per square meter.

Plaintiff is directed to pay the said defendant the net amount of Three Million Two Hundred Eighty Eight Thousand Five Hundred Twenty Pesos (Php3,288,520.00) and subject to payment by defendant of any unpaid real property taxes and other taxes and fees due.

Other claims of defendant [are] denied, for lack of merit.

Cost of litigation is adjudged against the plaintiff.

SO ORDERED.[6]

Both Republic-DPWH and Evergreen filed their respective Motions for Partial Reconsideration. Republic-DPWH argued that the just compensation should be fixed only at Fifteen Thousand Pesos (₱15,000.00) per square meter while Evergreen argued that the RTC erred in fixing the just compensation at merely Twenty Five Thousand Pesos (₱25,000.00). Evergreen further asked for the payment of consequential damages as a result of its lost income with its billboard lessee and decrease in value of the Subject Property and legal interest on the amount of just compensation. In an Order dated 3 November 2011,[7] the RTC denied the motions. Thus, both parties appealed to the CA.

The Ruling of the CA

In a Decision dated 26 June 2014,[8] the CA increased the amount of just compensation for the Subject Premises at Thirty Five Thousand Pesos (₱35,000.00) per square meter, or a total of Six Million Fifty Seven Thousand Eight Hundred Pesos (₱6,057,800.00). The CA held:

In their separate Commissioner's Appraisal Report, Atty. Wy and Atty. Pablita Migriño stated, that: (1) the selling price of the properties

[6] *Id*. at 254.

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

[8] *Id*. at 11-25.

in the surrounding area is within the range of ₱35,000.00 and ₱40,000.00 per square meter; and (2) in 2000, the just compensation of a nearby property was ₱26,100.00 per square meter as determined by RTC-Branch 70, Pasig City, and affirmed by the Supreme Court in *Light Rail Transit Authority vs. Clayton Industrial Corporation, et al.* Thus, just compensation of ₱25,000.00 per square meter set by the RTC, is far too low for a property expropriated in 2004.

Consequently, it would be more in accord with justice and equity to increase the just compensation of the subject property to ₱35,000.00 per square meter, agreed to by two of the three commissioners, Atty. Wy and RTC Clerk of Court, Atty. Migriño, for a total of ₱6,057,800.00 for the 173.08 square meters sought to be expropriated.[9]

The CA, however, denied the claim of consequential damages or interest by Evergreen. The CA found that based on the records of the RTC, the Subject Premises expropriated by the Republic-DPWH did not include and would not encroach on the residential building and billboard owned by Evergreen. Evergreen also failed to present any evidence to prove that its remaining properties would be adversely affected or damaged by the expropriation. As for the issue regarding the interest on the amount of just compensation until final payment, the CA held that Evergreen is not entitled to such interest as Republic-DPWH's payment was deposited in the account of Evergreen months before it was able to take possession of the Subject Premises pursuant to the Writ of Possession issued by the RTC. The dispositive portion of the CA Decision provides:

WHEREFORE, premises considered, both appeals are PARTIALLY GRANTED. The Decision dated June 30, 2011 of the Regional Trial Court, Branch 166, Pasig City, in SCA No. 2641, is AFFIRMED with MODIFICATION that the just compensation for the 173.08 square meters of the property expropriated is ₱35,000.00 per square meter, or a total of ₱6,057,800.00, minus the amount of ₱1,038,480.00 paid over by Republic-DPWH in order to take possession of the expropriated property, and withdrawn by Evergreen sometime on or after November 15, 2006. No costs.

SO ORDERED.[10]

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[9] *Id.* at 21. Citations omitted.

[10] *Id.* at 24.

In a Resolution dated 25 May 2015,[11] the CA denied the Motions for Partial Reconsideration filed by both Evergreen and Republic-DPWH. Hence, Evergreen filed with this Court its petition for review on *certiorari* dated 3 August 2015[12] while Republic-DPWH filed its own petition for review on *certiorari* dated 29 July 2015.[13]

The Issues

In its petition, Evergreen argues that it is entitled to the payment of interest for the Subject Premises expropriated by Republic-DPWH:

THE HONORABLE COURT OF APPEALS, WITH UTMOST DUE RESPECT, GRAVELY ERRED WHEN IT DENIED PETITIONER'S CLAIM FOR PAYMENT OF INTEREST FOR THE PROPERTY EXPROPRIATED BY THE RESPONDENT.[14]

On the other hand Republic-DPWH raises the following arguments in its own petition:

THE QUESTIONED DECISION AND RESOLUTION OF THE COURT OF APPEALS ARE NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE, CONSIDERING THAT:

I. THE JUST COMPENSATION FIXED BY THE COURT OF APPEALS HAS NO BASIS IN FACT AND IN LAW.

A. THE COMMISSIONERS' REPORTS ARE MANIFESTLY HEARSAY AND BEREFT OF ANY KIND OF EVIDENCE. THEREFORE, IT SHOULD BE DISREGARDED PURSUANT TO THE PRONOUNCEMENTS OF THE HONORABLE COURT IN *NPC VS. YCLA SUGAR DEVELOPMENT CORPORATION* AND *NAPOCOR VS. DIATO-BERNAL.*

B. SECTION 4, RULE 67 OF THE RULES OF COURT MANDATES THAT THE VALUE OF JUST COMPENSATION

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

[12] *Id.* at 32-50.

[13] *Rollo* (G.R. No. 218631), pp. 31-73.

[14] *Rollo* (G.R. No. 218628), p. 39.

SHALL BE DETERMINED AS OF THE DATE OF THE TAKING OF THE PROPERTY OR THE FILING OF THE COMPLAINT, WHICHEVER COMES FIRST. HERE, THE AMOUNT OF JUST COMPENSATION FOR THE EXPROPRIATED INDUSTRIAL PROPERTY IS BASED ON THE "CURRENT" SELLING PRICE OF COMMERCIAL PROPERTIES.

C. THERE IS NO *BONA FIDE* VALUATION OF THE EXPROPRIATED PROPERTY. THE COMMISSIONERS' REPORT HINGED COMPLETELY ON THE VALUATION OF THE BOARD OF COMMISSIONERS (BOC) IN THE LRTA CASE.

1. THE JUST COMPENSATION PRONOUNCED IN *LRTA* WAS NOT INTENDED TO BECOME A PRECEDENT, MUCH LESS AN AUTHORITY TO BE APPLIED INVARIABLY IN OTHER EXPROPRIATION CASES. THE JUST COMPENSATION AWARDED THEREIN WAS A RESULT OF THE DELIBERATION OF THE BOC IN THAT CASE PURSUANT TO THE EVIDENCE PRESENTED BY THE PARTIES.[15]

The Ruling of the Court

We partly grant the petitions.

AMOUNT OF JUST COMPENSATION

First, we note that only questions of law should be raised in a petition for review on *certiorari* under Rule 45. Factual findings of the lower courts will generally not be disturbed.[16] Thus, the factual issues pertaining to the value of the property expropriated are questions of fact which are generally beyond the scope of the judicial review of this Court under Rule 45.[17] However,

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[15] *Rollo* (G.R. No. 218631), pp. 51-52.

[16] *Spouses Plaza v. Lustiva,* 728 Phil. 359 (2014), citing *Calanasan v. Spouses Dolorito*, 722 Phil. 1 (2013).

[17] *National Power Corporation v. Spouses Asoque,* G.R. No. 172507, 14 September 2016, citing *Land Bank of the Philippines v. Spouses Costo*, 700 Phil. 290, 300 (2012).

we have consistently recognized several exceptions to this rule, to wit:

> The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again. Nevertheless, in several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (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 petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[18]

In this case, given that the findings on the amount of just compensation of the RTC and CA differ, we find that a review of the facts is in order.

Just compensation has been defined as the fair and full equivalent of the loss.[19] More specifically, just compensation has been defined in this wise:

> Notably, just compensation in expropriation cases is defined "as the full and fair equivalent of the property taken from its owner by

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[18] *Development Bank of the Philippines v. Traders Royal Bank*, 642 Phil. 547, 556-557 (2010).

[19] *National Power Corporation v. Court of Appeals*, 479 Phil. 850 (2004), citing *Manila Railroad Co. v. Velasquez*, 32 Phil. 286 (1915).

the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. The word 'just' is used to modify the meaning of the word 'compensation' to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample."[20]

The determination of just compensation in expropriation proceedings is essentially a judicial prerogative.[21] This determination of just compensation, which remains to be a judicial function performed by the court, is usually aided by the appointed commissioners. In *Spouses Ortega v. City of Cebu*,[22] we held:

> Likewise, in the recent cases of *National Power Corporation v. dela Cruz* and *Forfom Development Corporation v. Philippine National Railways*, we emphasized the primacy of judicial prerogative in the ascertainment of just compensation as aided by the appointed commissioners, to wit:
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> > Though the ascertainment of just compensation is a judicial prerogative, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases. While it is true that the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, it may only do so for valid reasons; that is, where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive. Thus, "trial with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all."[23]

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[20] *Republic v. Mupas*, G.R. No. 181892, 19 April 2016, 790 SCRA 217, 277, citing *Apo Fruits Corporation v. Land Bank of the Philippines*, 647 Phil. 251 (2010).

[21] *National Power Corporation v. Spouses Asoque*, *supra* note 17, citing *National Power Corporation v. Spouses Zabala,* 702 Phil. 491, 499-500 (2013) and *Land Bank of the Philippines v. Celada,* 515 Phil. 467, 477 (2006).

[22] 617 Phil. 817 (2009).

[23] *Id.* at 826. Citations omitted.

Both the RTC and the CA relied on the reports of commissioners Atty. Wy and Atty. Migriño to determine the amount of just compensation for the Subject Premises. However, Republic-DPWH argues that the reports of these two commissioners were not supported by any documentary evidence and were based solely on opinions and hearsay. Further, Republic-DPWH argues that the recommendations of Atty. Wy and Atty. Migriño are incorrect as the value given by said commissioners was computed at the time the inspection was undertaken in 2008, and not at the time of taking, which was in 2004. It argues that the basis of just compensation should be the value of the expropriated property at the time of taking because the value of the property had already been greatly enhanced since then.

We find merit in these arguments.

While Atty. Wy and Atty. Migriño relied on several documents to support their finding of just compensation, we find these to be insufficient and misleading. In particular, they relied on the BIR Zonal Valuation for the year 2000, and the 2000 decisions of the trial court in *Light Rail Transit Authority (LRTA) v. Clayton Industrial Corporation and Alfonso Chua* and *LRTA v. Rodolfo L. See*, *et al.*,[24] which decision was affirmed by this Court in 2002.[25] The reliance on these cases was made by the commissioners because they involved similar properties in the vicinity. In those cases, the amount of just compensation for the expropriated properties was ₱26,100.00 per square meter, in addition to the consequential damages or disturbance fee.

First, we note that while the amount of just compensation in this case is not an authority to be applied blindly and invariably in other expropriation cases, this Court has allowed reference to similar cases of expropriation to help determine the amount of just compensation.[26] However, the cases relied on by the

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[24] *Rollo,* (G.R. No. 218631), p. 102.

[25] See Resolution in G.R. No. 150220, 23 January 2002.

[26] See *National Power Corporation v. Spouses Asoque*, *supra* note 17.

commissioners were decided in the year 2000, while the taking of the Subject Premises in this case happened in 2004 when Republic-DPWH filed a case for expropriation against Evergreen. Moreover, the BIR Zonal Valuations considered by the commissioners were also for the year 2000. Evidently, these reflect the value of the Subject Property in 2000. Just compensation must be the value of the property at the time of taking.[27] If there were other documentary evidence to show the value of the property at a point nearer to the time of the taking, in this case the year 2004, then consideration of year 2000 documents would not be fatal. However, if the only documents to support the finding of just compensation are from a year which is not the year when the taking of the expropriated property took place, then this would be plainly inaccurate.

Next, while documentary evidence is indeed important to support the finding of the value of the expropriated property, the commissioners are given leeway to consider other factors to determine just compensation for the property to be expropriated. In *National Power Corporation v. Spouses Asoque*,[28] we upheld the finding of the RTC therein and quoted:

> x x x. **Likewise, this Court takes cognizance of the fact that the commissioner may avail or consider certain factors in determining the fair market value of the property apart from the proffered documentary evidences.** Thus, the factors taken into account by the commissioner in arriving at the recommended fair market value of the property at Php800.00 per square meter, aside from the evidence available, were valid criteria or gauge in the determination of the just compensation of the subject property. (Boldfacing and underscoring supplied)

This determination, however, should still reflect the value of the property as of the date of taking. In this case, the commissioners found that the properties in the area, as of the time of the ocular inspection in 2008, had a demand selling

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[27] *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, 713 Phil. 55 (2013).

[28] *Supra* note 17.

price ranging from ₱35,000.00 to ₱40,000.00 per square meter.[29] A reading of their individual reports shows that they considered the location of the Subject Premises, as well as its size and prospective uses, the neighborhood, and the nearby establishments. This was well within their prerogative to do so, as we have held that all the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, must thus be considered in determining just compensation.[30] However, these must be the conditions existing at the time the taking was made by the government. While the size and location of the property would not have changed from the time of taking until the time when the ocular inspection was conducted, the establishments and neighborhood surrounding the property may have undergone changes after the property was taken by the government. The improvements introduced after the time of taking should not unduly benefit the property owner by unnecessarily increasing the value of the property.

Unfortunately, in this case, all of the conditions they took into account in determining just compensation did not reflect the value of the Subject Premises at the time of taking. Documentary or otherwise, the commissioners failed to rely on such evidence that would prove the value of the Subject Premises at the time of the taking, which should be the basis for the determination of just compensation. There was nothing to show the value of the property in 2004, which was the year the taking of the Subject Premises took place. The BIR Zonal Valuation and the court decisions were reflective of the value of the property in 2000, four years before the taking of the Subject Premises by the government. On the other hand, the ocular inspection was conducted in 2008, four years after the time of taking. Clear factual evidence must be presented for the correct determination of just compensation.

However, we cannot agree with the insistence of Republic-DPWH that the just compensation for the Subject Premises is

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[29] *Rollo* (G.R. No. 218631), p. 105.

[30] *National Power Corporation v. Spouses Asoque*, *supra* note 17, citing *National Power Corporation v. Suarez*, 589 Phil. 219, 225 (2008).

only Fifteen Thousand Pesos (₱15,000.00). As correctly found by the CA, this is merely the zonal valuation of the commercial lots and therefore cannot be made as the sole basis for the fair market value of the land. Zonal valuation, although one of the indices of the fair market value of real estate, cannot by itself be the sole basis of just compensation in expropriation cases.[31]

Another argument of Republic-DPWH is that the commissioners erred in using the land valuation and listing of commercial properties when the Subject Premises were classified as industrial.

Again, we disagree. It has been settled that the value and character of the land at the time it was taken by the government are the criteria for determining just compensation.[32] All three commissioners found that the property was located in an area that was classified as commercial.[33] It also found that the property was best used as commercial.[34] We find no reason to disturb the findings of the commissioners who conducted an ocular inspection, and the lower courts which affirmed the findings of the commissioners.

To recapitulate, we find that the commissioners and lower courts correctly identified the Subject Premises as commercial, based on the value and character of the land at the time of the taking. We also find that there was sufficient evidence – documentary and those obtained through ocular inspection – to support a finding of just compensation. However, we find that the lower courts and the commissioners failed to consider the time of taking when they arrived at their respective findings on the amount of just compensation.

While remanding the case to receive evidence in order to determine the amount of just compensation at the time of taking

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[31] *Republic v. Asia Pacific Integrated Steel Corporation,* 729 Phil. 402 (2014).

[32] *National Power Corporation v. Spouses Chiong*, 452 Phil. 649, 664 (2003).

[33] *Rollo* (G.R. No. 218628) pp. 181-189.

[34] *Id.*

would enable the court to clearly determine the amount of just compensation due to Evergreen, we find that it would be prejudicial to both the government and Evergreen to do so. Remanding the case would unnecessarily delay the payment of just compensation due to Evergreen, and it would also increase the amount of interest that would accrue against Republic-DPWH. Thus, we find that a finding of just compensation based on available records would be most beneficial to both parties concerned.

In 2000, this Court found that the just compensation for similar properties situated in the vicinity was ₱26,100.00. In 2008, the commissioners found the selling price of the properties in the surrounding area to be from ₱35,000.00 to ₱40,000.00 per square meter. The time of taking was in 2004, or right in the middle of 2000 and 2008. Thus, we may consider the mean of the prices of the properties for the years 2000 and 2008 to arrive at the amount of just compensation in 2004. Taking the higher value of the range of price in 2008 and the amount of just compensation as affirmed by this Court in 2000, we find that the amount of just compensation in 2004 is ₱33,050.00 per square meter or a total of ₱5,720,294.00.

INTEREST ON THE PAYMENT OF JUST COMPENSATION

Evergreen argues that it is entitled to legal interest on the balance of the just compensation, computed from the time of the filing of the complaint until the judgment attains finality.

We find merit in Evergreen's arguments.

Section 9, Article III of the 1987 Constitution provides that "no private property shall be taken for public use without just compensation." Just compensation in expropriation cases has been held to contemplate just and timely payment, and prompt payment is the payment in full of the just compensation as finally determined by the courts.[35] Thus, just compensation envisions

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[35] *Land Bank of the Philippines v. Hababag, Sr.*, G.R. No. 172352, 8 June 2016, 792 SCRA 399, citing *Land Bank of the Philippines v. Santos*, G.R. No. 213863, 27 January 2016, 782 SCRA 441.

a payment in full of the expropriated property. Absent full payment, interest on the balance would necessarily be due on the unpaid amount. In *Republic v. Mupas*,[36] we held that interest on the unpaid compensation becomes due if there is no full compensation for the expropriated property, in accordance with the concept of just compensation. We held:

> The reason is that just compensation would not be "just" if the State does not pay the property owner interest on the just compensation from the date of the taking of the property. Without prompt payment, the property owner suffers the immediate deprivation of both his land and its fruits or income. The owner's loss, of course, is not only his property but also its income-generating potential.
>
> Ideally, just compensation should be immediately made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property.
>
> However, if full compensation is not paid for the property taken, then the State must pay for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived. **Interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.**
>
> Thus, **interest in eminent domain cases "runs as a matter of law and follows as a matter of course from the right of the landowner to be placed in as good a position as money can accomplish, as of the date of taking**."[37] (Emphasis supplied)

In the present case, we find that there is still unpaid compensation due to Evergreen. Republic-DPWH complied with Republic Act No. (RA) 8974,[38] the applicable law for expropriation in this case. Section 4 of RA 8974 provides in part:

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[36] 769 Phil. 21 (2015).

[37] *Id.* at 194-195. Citations omitted.

[38] AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES.

Section 4. *Guidelines for Expropriation Proceedings*. — Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

> (a)Upon the filing of the complaint, and after due notice to the defendant, **the implementing agency shall immediately pay the owner of the property** the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;
>
> x x x x x x x x x

Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a writ of possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. **When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court**. (Emphasis supplied)

Republic-DPWH had complied with the requirements of Section 4, paragraph (a) of RA 8974 when it deposited the equivalent of 100% of the value of the Subject Premises based on the BIR zonal valuation of the property for the account of Evergreen. This deposit was made before Republic-DPWH was able to take possession of the Subject Premises through the issuance of the writ of possession. Verily, under the law, the initial payment is a prerequisite for the issuance of the writ of possession. However, this payment alone and by itself does

not constitute just compensation. We note that this is only the first of the two payments the government must make. Section 4 of RA 8974 specifically provides that "when the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court." Thus, under RA 8974, there must be a completion of two payments before just compensation is deemed to have been made.

Therefore, while Republic-DPWH had made the deposit of the amount as prescribed in the first paragraph of Section 4 of RA 8974, it still has not made the constitutionally required payment of just compensation because the amount deposited is much less than that adjudged by the court. The law requires two payments to constitute payment of just compensation. Again, in *Republic v. Mupas*,[39] we have explicitly stated that the initial payment does not excuse the government from paying the difference of the amount adjudged and the interest thereon:

> The Government's initial payment of just compensation does not excuse it from avoiding payment of interest on the difference between the adjudged amount of just compensation and the initial payment.
>
> The initial payment scheme as a prerequisite for the issuance of the writ of possession under RA 8974 only provides the Government flexibility to immediately take the property for public purpose or public use pending the court's final determination of just compensation. Section 4(a) of RA 8974 only addresses the Government's need to immediately enter the privately owned property in order to avoid delay in the implementation of national infrastructure projects.
>
> Otherwise, Section 4 of RA 8974 would be repugnant to Section 9, Article 3 of the 1987 Constitution which mandates that private property shall not be taken for public use without just compensation. To reiterate, the Constitution commands the Government to pay the property owner no less than the full and fair equivalent of the property from the date of taking.[40]

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[39] *Supra* note 36.

[40] *Supra* note 36, at 196-197.

Republic-DPWH avers that interest will only accrue if there is delay in the payment of just compensation, and that in this case, there is no such unjustified delay because it has deposited the amount required by law before taking possession of the Subject Premises.

We do not agree.

Again, just compensation should be made at the time of taking, and the amount of payment should be the fair and equivalent value of the property. In this case, Republic-DPWH was able to take possession of the Subject Premises even before making a full and fair payment of just compensation because RA 8974 allowed for the possession of the property merely upon the initial payment which forms part of the just compensation. Thus, it is clear that the government has not yet made the full and fair payment of just compensation to Evergreen.

As explained by this Court in *Apo Fruits Corporation v. Land Bank of the Philippines*,[41] the rationale for imposing interest on just compensation is to compensate the property owners for the income that they would have made if they had been properly compensated – meaning if they had been paid the full amount of just compensation – at the time of taking when they were deprived of their property. The Court held:

> We recognized in *Republic v. Court of Appeals* the need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. We ruled in this case that:
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> > The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, i[f] fixed at the time of the actual taking by the government. **Thus, if property is taken for public use before compensation is deposited**

[41] 647 Phil. 251 (2010).

> **with the court having jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.**

Aside from this ruling, Republic notably overturned the Court's previous ruling in *National Power Corporation v. Angas* which held that just compensation due for expropriated properties is not a loan or forbearance of money but indemnity for damages for the delay in payment; since the interest involved is in the nature of damages rather than earnings from loans, then Art. 2209 of the Civil Code, which fixes legal interest at 6%, shall apply.

In Republic, the Court recognized that **the just compensation due to the landowners for their expropriated property amounted to an effective forbearance on the part of the State.** Applying the Eastern Shipping Lines ruling, the Court fixed the applicable interest rate at 12% per annum, computed from the time the property was taken until the full amount of just compensation was paid, in order to eliminate the issue of the constant fluctuation and inflation of the value of the currency over time.[42] (Emphasis in the original)

The delay in the payment of just compensation is a forbearance of money. As such, this is necessarily entitled to earn interest.[43] The difference in the amount between the final amount as adjudged by the court and the initial payment made by the government – which is part and parcel of the just compensation due to the property owner – should earn legal interest as a forbearance of money. In *Republic v. Mupas*,[44] we stated clearly:

> Contrary to the Government's opinion, the interest award is not anchored either on the law of contracts or damages; it is based on the owner's constitutional right to just compensation. **The difference**

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[42] *Id.* at 273-275.

[43] *Republic v. Court of Appeals*, 433 Phil. 106 (2002).

[44] *Supra* note 36, at 197. Citations omitted.

in the amount between the final payment and the initial payment — in the interim or before the judgment on just compensation becomes final and executory — is not unliquidated damages which do not earn interest until the amount of damages is established with reasonable certainty. The difference between final and initial payments forms part of the just compensation that the property owner is entitled from the date of taking of the property.

Thus, when the taking of the property precedes the filing of the complaint for expropriation, the Court orders the condemnor to pay the full amount of just compensation from the date of taking whose interest shall likewise commence on the same date. The Court does not rule that the interest on just compensation shall commence [on] the date when the amount of just compensation becomes certain, e.g., from the promulgation of the Court's decision or the finality of the eminent domain case. (Emphasis supplied)

With respect to the amount of interest on the difference between the initial payment and final amount of just compensation as adjudged by the court, we have upheld in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[45] and in subsequent cases thereafter,[46] the imposition of 12% interest rate from the time of taking when the property owner was deprived of the property, until 1 July 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% per annum by BSP Circular No. 799. Accordingly, from 1 July 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum.

In the present case, Republic-DPWH filed the expropriation complaint on 22 March 2004. As this preceded the actual taking of the property, the just compensation shall be appraised as of

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[45] 304 Phil. 236 (1994).

[46] Cited in *Republic v. Mupas*, *supra* note 36. See *Reyes v. National Housing Authority,* 443 Phil. 603 (2003), *Land Bank of the Philippines v. Wycoco,* 464 Phil. 83 (2004), *Republic v. Court of Appeals,* 494 Phil. 494 (2005), *Land Bank of the Philippines v. Imperial,* 544 Phil. 378 (2007), *Philippine Ports Authority v. Rosales-Bondoc,* 557 Phil. 737 (2007), and *Spouses Curata v. Philippine Ports Authority,* 608 Phil. 9 (2009).

this date. No interest shall accrue as the government did not take possession of the Subject Premises. Republic-DPWH was able to take possession of the property on 21 April 2006 upon the agreement of the parties. Thus, a legal interest of 12% per annum on the difference between the final amount adjudged by the Court and the initial payment made shall accrue from 21 April 2006 until 30 June 2013. From 1 July 2013 until the finality of the Decision of the Court, the difference between the initial payment and the final amount adjudged by the Court shall earn interest at the rate of 6% per annum. Thereafter, the total amount of just compensation shall earn legal interest of 6% per annum from the finality of this Decision until full payment thereof.

WHEREFORE, premises considered, the Court resolves as follows:

1. The petition in G.R. No. 218631 is **PARTIALLY GRANTED**. The assailed decisions of the Court of Appeals and Regional Trial Court are **AFFIRMED** with **MODIFICATION** that the just compensation for the 173.08 square meters of the expropriated property is ₱33,050.00 per square meter, or a total of ₱5,720,294.00.

2. The petition in G.R. No. 218628 is **PARTIALLY GRANTED**.

    (a) The claim for legal interest on the difference between the final amount of just compensation of ₱5,720,294.00 and the initial deposit made by the Republic of the Philippines, represented by the Department of Public Works and Highways, in the amount of ₱1,038,480.00 shall earn legal interest of 12% per annum from the date of taking or 21 April 2006 until 30 June 2013.

    (b) The difference between the total amount of just compensation and the initial deposit shall earn legal interest of 6% per annum from 1 July 2013 until the finality of the Decision.

(c) The total amount of just compensation shall earn legal interest of 6% per annum from the finality of this Decision until full payment thereof.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 180969.* September 11, 2017]

NOEL NAVAJA, *petitioner, vs.* **HON. MANUEL A. DE CASTRO or his successor, in his capacity as Presiding Judge of the Municipal Circuit Trial Court of Jagna & Garcia-Hernandez, Jagna, Bohol, and ATTY. EDGAR BORJE**, *respondents.*

SYLLABUS

1. **CRIMINAL LAW; PRESIDENTIAL DECREE (PD) No. 1829 ENTITLED "PENALIZING OBSTRUCTION OF APPREHENSION AND PROSECUTION OF CRIMINAL OFFENDERS"; OBSTRUCTION OF JUSTICE; ELEMENTS.—** Section 1 of PD 1829 defines and penalizes the acts constituting the crime of obstruction of justice x x x. The elements of the crime are: (*a*) that the accused committed any of the acts listed under Section 1 of PD 1829; and (*b*) that such commission was done for the purpose of obstructing, impeding, frustrating, or delaying the successful investigation and prosecution of criminal cases.

2. **ID.; ID.; PRINCIPLE OF *DELITO CONTINUADO*; A SINGLE CRIME CONSISTING OF A SERIES OF ACTS ARISING**

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* Part of the Supreme Court's Case Decongestion Program.

FROM A SINGLE CRIMINAL RESOLUTION OR INTENT NOT SUSCEPTIBLE OF DIVISION; REQUISITES; EXPLAINED; PETITIONER SHOULD ONLY BE CHARGED AND HELD LIABLE FOR A SINGLE VIOLATION OF P.D. NO. 1829.— Petitioner's acts of allegedly preventing Ms. Magsigay from appearing and testifying in a preliminary investigation proceeding and offering in evidence a false affidavit were clearly motivated by a single criminal impulse in order to realize only one criminal objective, which is to obstruct or impede the preliminary investigation proceeding in I.S. Case No. 04-1238. Thus, applying the principle of *delito continuado*, petitioner should only be charged with one (1) count of violation of PD 1829 which may be filed either in Jagna, Bohol where Ms. Magsigay was allegedly prevented from appearing and testifying in I.S. Case No. 04-1238, or in Tagbilaran City, Bohol where petitioner allegedly presented a false affidavit in the same case. However, since he was already charged — and in fact, convicted in a Judgment dated July 3, 2007 — in the MTCC-Tagbilaran, the case in MCTC-Jagna should be dismissed as the events that transpired in Jagna, Bohol should only be deemed as a partial execution of petitioner's single criminal design. The Court's pronouncement in *Gamboa v. CA* is instructive on this matter, to wit: Apart and isolated from this plurality of crimes (ideal or real) is what is known as "*delito continuado*'" or "continuous crime." This is a single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division. For Cuello Calon, when the actor, there being unity of purpose and of right violated, commits diverse acts, *each of which*, although of a delictual character, merely *constitutes a partial execution* of a single particular delict, such concurrence or delictual acts is called a "*delito continuado*." In order that it may exist, there should be "plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated and unity of criminal intent and purpose, *which means* that two or more violations of the same penal provision *are united in one and the same intent leading to the perpetration* of the same criminal purpose or aim." Consequently, the criminal case in MCTC-Jagna must be dismissed; otherwise, petitioner will be unduly exposed to double jeopardy, which the Court cannot countenance.

APPEARANCES OF COUNSEL

Bonghanoy Bonghanoy & Godornes for petitioner.
Martinez Vergara Gonzalez & Serrano for private respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 26, 2007 and the Resolution[3] dated November 12, 2007 of the Court of Appeals (CA) in CA-GR. SP. No. 02354, which affirmed the Order[4] dated September 21, 2006 of the Regional Trial Court of Loay, Bohol, Branch 50 (RTC) in Sp. Civil Action No. 0357, and accordingly, sustained the denial of petitioner Noel Navaja's (petitioner) motion to quash filed before the Municipal Circuit Trial Court of Jagna & Garcia-Hernandez, Jagna, Bohol (MCTC-Jagna).

The Facts

The instant case is an offshoot of a preliminary investigation proceeding initiated by DKT Philippines, Inc. (DKT) before the Office of the Provincial Prosecutor of Bohol (OPP-Bohol) in Tagbilaran City, charging its then-Regional Sales Manager for Visayas, Ana Lou B. Navaja (Ana Navaja), of the crime of falsification of a Private Document, docketed as I.S. Case No. 04-1238.[5] In the course of the said proceeding, a certain Ms. Marilyn Magsigay (Ms. Magsigay), a material witness for DKT, was subpoenaed to appear in a hearing before the OPP-Bohol

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[1] *Rollo*, pp. 12-44.

[2] *Id*. at 49-59. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Priscilla Baltazar-Padilla and Stephen C. Cruz, concurring.

[3] *Id*. at 62.

[4] *Id*. at 64-66. Penned by Executive Presiding Judge Dionisio R. Calibo, Jr.

[5] See *id*. at 68 and 70.

on March 15, 2004 in order to shed light on the official receipt allegedly falsified by Ana Navaja.[6] On March 9, 2004, petitioner, who is Ana Navaja's husband, allegedly went to Ms. Magsigay's workplace in Garden Café, Jagna, Bohol, and told her that as per instruction from Ana Navaja's lawyer, Atty. Orwen Bonghanoy (Atty. Bonghanoy), her attendance in the scheduled hearing is no longer needed (March 9, 2004 incident).[7] Thus, Ms. Magsigay no longer attended the scheduled March 15, 2004 hearing where petitioner and Atty. Bonghanoy presented an affidavit purportedly executed by Ms. Magsigay and notarized by a certain Atty. Rolando Grapa (Atty. Grapa) in Cebu City, supporting Ana Navaja's counter-affidavit (March 15, 2004 incident).[8] Resultantly, I.S. Case No. 04-1238 was dismissed.[9]

Meanwhile, respondent Atty. Edgar Borje (Atty. Borje), DKT's counsel, found out from Ms. Magsigay herself that: (*a*) she would have attended the scheduled March 15, 2004 hearing were it not for the misrepresentation of petitioner that her presence therein was no longer required; (*b*) she was merely told by her superior in Garden Café to sign the affidavit and that she did not personally prepare the same; and (*c*) she could not have gone to Cebu to have it notarized before Atty. Grapa as she was at work on that day.[10] This prompted Atty. Borje to file the following criminal complaints before the OPP-Bohol and the City Prosecution Office of Tagbilaran City: the first one,[11] charging petitioner of Obstruction of Justice, specifically, for violation of Section 1 (a) of Presidential Decree No. (PD) 1829[12] in connection with the March 9, 2004 incident; and the second

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[6] See *id*. at 70.

[7] *Id*.

[8] See *id*. at 251-252 and 259-260.

[9] See *id*. at 70 and 252.

[10] *Id*. at 252.

[11] See Complaint-Affidavit dated June 24, 2004; *id*. at 73-78.

[12] Entitled "PENALIZING OBSTRUCTION OF APPREHENSION AND PROSECUTION OF CRIMINAL OFFENDERS" (January 16, 1981).

one,[13] charging petitioner and Atty. Bonghanoy of Obstruction of Justice as well, specifically, for violation of Section 1 (f) of the same law in connection with the March 15, 2004 incident.[14] After due proceedings, separate Informations were filed. The case relating to the March 9, 2004 incident was filed before the MCTC-Jagna,[15] while that relating to the March 15, 2004 incident was filed before the Municipal Trial Court in Cities of Tagbilaran City, Bohol (MTCC-Tagbilaran).[16]

Consequently, petitioner filed a Motion to Dismiss/Quash Information (Motion to Quash)[17] before the MCTC-Jagna, principally arguing that the charge of violation of Section 1 (a) of PD 1829 pending before it should have been absorbed by the charge of violation of Section 1 (f) of the same law pending before the MTCC-Tagbilaran, considering that: (*a*) the case pending before the latter court was filed first; (*b*) the criminal cases filed before the MCTC-Jagna and MTCC-Tagbilaran arose from a single preliminary investigation proceeding, involving the same set of facts and circumstances, and flowed from a single alleged criminal intent, which is to obstruct the investigation of I.S. Case No. 04-1238; and (*c*) to allow separate prosecutions of the foregoing cases would be tantamount to a violation of his right to double jeopardy.[18]

The MCTC-Jagna Ruling

In an Order[19] dated November 2, 2005, the MCTC-Jagna denied petitioner's Motion to Quash. It held that petitioner had no right to invoke the processes of the court, since at the time

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[13] See Complaint Affidavit dated June 24, 2004; *rollo*, pp. 91-94.

[14] See *id*. at 50.

[15] See Information in Crim. Case No. 2878 dated September 22, 2004; *id*. at 68.

[16] See Information in Crim. Case No. 15942 dated August 27, 2004; *id*. at 246-247.

[17] Dated August 3, 2005. *Id*. at 104-116.

[18] See *id*. at 107-112.

[19] *Id*. at 136. Penned by Presiding Judge Manuel A. De Castro.

he filed said motion, the MCTC-Jagna has yet to acquire jurisdiction over his person.

On reconsideration, the MCTC-Jagna issued a Resolution[20] dated January 24, 2006 upholding the denial of the Motion to Quash. It ruled that in the criminal case before it, petitioner is being charged with violation of Section 1 (a) of PD 1829, an offense separate and distinct from violation of Section 1 (f) of the same law, which is pending before the MTCC-Tagbilaran. As such, said offenses may be prosecuted independently from each other.[21]

Aggrieved, petitioner elevated[22] his case to the RTC.

The RTC Ruling

In an Order[23] dated September 21, 2006, the RTC denied the petition, thereby, affirming the MCTC-Jagna Ruling. It held that the criminal cases pending before the MCTC-Jagna for violation of Section 1 (a) of PD 1829 and MTCC-Tagbilaran for violation of Section 1 (f) of the same law are two (2) separate offenses, considering that: (*a*) the case in MCTC-Jagna has only one (1) accused, *i.e.*, petitioner, while the one pending before the MTCC-Tagbilaran has two (2), *i.e.*, petitioner and Atty. Bonghanoy; and (*b*) the places of commission are different, as the March 9, 2004 incident happened in Jagna, Bohol, while the March 15, 2004 incident occurred in Tagbilaran City, Bohol. Further, the RTC opined that while both offenses arose from substantially the same set of facts, each crime involves some important act which is not an essential element of the other.[24]

Dissatisfied, petitioner appealed to the CA.[25]

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[20] *Id*. at 137-138.

[21] *Id*. at 138.

[22] See petition for *certiorari* dated February 15, 2006; *id*. at 117-132.

[23] *Id*. at 64-66.

[24] *Id*. at 65-66.

[25] See Memorandum [For Petitioner-Appellant] dated January 31, 2007; *id*. at 211-229.

The CA Ruling

In a Decision[26] dated June 26, 2007, the CA affirmed the RTC Ruling. It held that petitioner allegedly committed several acts which constitute violations of different provisions of PD 1829, namely: (*a*) the March 9, 2004 incident where he prevented Ms. Magsigay from attending the scheduled hearing in I.S. Case No. 04-1238 by means of deceit and misrepresentation, which is a violation of Section 1 (a) of the law; and (*b*) the March 15, 2004 incident where he, along with Atty. Bonghanoy, submitted a purported spurious affidavit of Ms. Magsigay in the scheduled hearing in I.S. Case No. 04-1238, which is a violation of Section 1 (f) of the same law. Moreover, the CA pointed out that the foregoing acts were committed in distinct places and locations. As such, there is more than enough basis to try petitioner for two (2) separate crimes under two (2) distinct Informations.[27]

Unperturbed, petitioner moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated November 12, 2007; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ruled that petitioner may be separately tried for different acts constituting violations of PD 1829, namely, violations of Sections 1 (a) and (f) of the same law allegedly committed during the pendency of a single proceeding.

The Court's Ruling

The petition is meritorious.

Section 1 of PD 1829 defines and penalizes the acts constituting the crime of obstruction of justice, the pertinent portions of which read:

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[26] *Id*. at 49-59.

[27] See *id*. at 53-57.

[28] See motion for reconsideration dated July 20, 2007; *id*. at 230-244.

[29] *Id*. at 62.

Sec. 1. The penalty of *prision correccional* in its maximum period, or a fine ranging from 1,000 to 6,000 pesos, or both, shall be imposed upon any person who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:

(a) preventing witnesses from testifying in any criminal proceeding or from reporting the commission of any offense or the identity of any offender/s by means of bribery, misrepresentation, deceit, intimidation, force or threats;

x x x x x x x x x

(f) making, presenting or using any record, document, paper or object with knowledge of its falsity and with intent to affect the course or outcome of the investigation of, or official proceedings in, criminal cases;

x x x x x x x x x

The elements of the crime are: (*a*) that the accused committed any of the acts listed under Section 1 of PD 1829; and (*b*) that such commission was done for the purpose of obstructing, impeding, frustrating, or delaying the successful investigation and prosecution of criminal cases.[30]

In this case, two (2) separate Informations were filed against petitioner, namely: (*a*) an Information dated September 22, 2004 charging him of violation of Section 1 (a) of PD 1829 before the MCTC-Jagna for allegedly preventing Ms. Magsigay from appearing and testifying in a preliminary investigation hearing;[31] and (*b*) an Information dated August 27, 2004 charging him of violation of Section 1 (f) of the same law before the MTCC-Tagbilaran for allegedly presenting a false affidavit.[32] While the Informations pertain to acts that were done days apart and in different locations, the Court holds that petitioner should

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[30] See *Padiernos v. People*, G.R. No. 181111, August 17, 2015, 766 SCRA 614, 628-629.

[31] See *rollo*, p. 68.

[32] See *id*. at 246-247.

only be charged and held liable for a single violation of PD 1829. This is because the alleged acts, albeit separate, were motivated by a single criminal impulse – that is, to obstruct or impede the preliminary investigation proceeding in I.S. Case No. 04-1238, which was, in fact, eventually dismissed by the OPP-Bohol.[33] The foregoing conclusion is premised on the principle of *delito continuado*, which envisages a single crime committed through a series of acts arising from one criminal intent or resolution.[34] In *Santiago v. Garchitorena*,[35] the Court explained the principle of *delito continuado* as follows:

> According to Cuello Calon, for *delito continuado* to exist there should be **a plurality of acts performed during a period of time; unity of penal provision violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provisions are united in one and the same intent or resolution leading to the perpetration of the same criminal purpose or aim** (II Derecho Penal, p. 520; I Aquino, Revised Penal Code, 630, 1987 ed).
>
> Accordingly to Guevarra, in appearance, a *delito continuado* **consists of several crimes but in reality there is only one crime in the mind of the perpetrator** (Commentaries on the Revised Penal Code, 1957 ed., p. 102; Penal Science and Philippine Criminal Law, p. 152).
>
> Padilla views such offense as consisting of a series of acts arising from one criminal intent or resolution (Criminal Law, 1988 ed. pp. 53-54).
>
> x x x x x x x x x
>
> **The concept of *delito continuado*, although an outcrop of the Spanish Penal Code, has been applied to crimes penalized under special laws**, e.g. violation of [Republic Act] No. 145 penalizing the charging of fees for services rendered following up claims for war veteran's benefits x x x.

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[33] See *id*. at 70.

[34] *Paera v. People*, 664 Phil. 630, 636-637 (2011).

[35] G.R. No. 109266, December 2, 1993, 228 SCRA 214, 224.

Under Article 10 of the Revised Penal Code, the Code shall be supplementary to special laws, unless the latter provide the contrary. Hence, **legal principles developed from the Penal Code may be applied in a supplementary capacity to crimes punished under special laws**.[36] (Emphases and underscoring supplied)

In ruling that the acts imputed to petitioner are deemed separate crimes and thus, may be tried separately, the CA cited the case of *Regis v. People* (*Regis*),[37] wherein it was held that the malversation committed through falsification of document performed on different dates constitute independent offenses which must be punished separately.[38] However, a closer perusal of *Regis* shows that its factual milieu is not on all fours with the instant case. In *Regis*, the accused, then municipal treasurer of Pinamungahan, Cebu, signed payrolls on two (2) different dates, *i.e.*, April 30, 1931 and May 2, 1931, making it appear that certain workers worked as laborers in a municipal project when in truth, there were no such workers and that he and his co-accused misappropriated the payroll amounts to themselves. The Court ruled that the accused may be held liable for two (2) separate crimes, considering that when the accused committed the first act constituting malversation committed through falsification of document, it did not appear that he was already predisposed to committing the second act constituting the same crime.[39] Clearly, when the accused in *Regis* falsified the payroll of April 30, 1931, and later, the payroll of May 2, 1931, he – though committing similar acts – could not be said to have been motivated by a single criminal impulse as he was working towards discernibly distinct criminal objectives.

In contrast, petitioner's acts of allegedly preventing Ms. Magsigay from appearing and testifying in a preliminary investigation proceeding and offering in evidence a false affidavit were clearly motivated by a single criminal impulse in order

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[36] *Id.* at 223-225; citation omitted.

[37] 67 Phil. 43 (1938).

[38] See *id.* at 46-48.

[39] See *id.* at 47.

to realize only one criminal objective, which is to obstruct or impede the preliminary investigation proceeding in I.S. Case No. 04-1238. Thus, applying the principle of *delito continuado*, petitioner should only be charged with one (1) count of violation of PD 1829 which may be filed either in Jagna, Bohol where Ms. Magsigay was allegedly prevented from appearing and testifying in I.S. Case No. 04-1238, or in Tagbilaran City, Bohol where petitioner allegedly presented a false affidavit in the same case.[40] However, since he was already charged – and in fact, convicted in a Judgment[41] dated July 3, 2007 – in the MTCC-Tagbilaran, the case in MCTC-Jagna should be dismissed as the events that transpired in Jagna, Bohol should only be deemed as a partial execution of petitioner's single criminal design. The Court's pronouncement in *Gamboa v. CA*[42] is instructive on this matter, to wit:

> Apart and isolated from this plurality of crimes (ideal or real) is what is known as "*delito continuado*" or "continuous crime." This is a single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division. For Cuello Calon, when the actor, there being unity of purpose and of right violated, commits diverse acts, *each of which,* although of a delictual character, merely *constitutes a partial execution* of a single particular delict, such concurrence or delictual acts is called a "*delito continuado.*" In order that it may exist, there should be "plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated and unity of criminal intent and purpose, *which means* that two or more violations of the same penal provision *are united in one and the same intent leading to the perpetration* of the same criminal purpose or aim."[43]

Consequently, the criminal case in MCTC-Jagna must be dismissed; otherwise, petitioner will be unduly exposed to double jeopardy, which the Court cannot countenance.

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[40] See Section 15, Rule 110 of the Revised Rules of Criminal Procedure.

[41] *Rollo*, pp. 248-264. Penned by Judge Emma Eronico-Supremo.

[42] 160-A Phil. 962 (1975).

[43] *Id*. at 969.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 26, 2007 and the Resolution dated November 12, 2007 of the Court of Appeals in CA-GR. SP. No. 02354 are hereby **REVERSED** and **SET ASIDE**. Accordingly, Criminal Case No. 2878 pending before the Municipal Circuit Trial Court of Jagna & Garcia-Hernandez, Jagna, Bohol is **DISMISSED**.

SO ORDERED.

Carpio,[**] *Acting C.J.* (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 207943. September 11, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERT BALANZA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC) AS AMENDED BY RA 8353; RAPE; ELEMENTS, ESTABLISHED IN CASE AT BAR.— Article 266-A of the Revised Penal Code, as amended by RA 8353 provides that rape is committed by having 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. In the case at bar, both the RTC and CA found that the

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[**] Acting Chief Justice per Special Order No. 2479 dated August 31, 2017.

prosecution was able to sufficiently establish beyond a reasonable doubt all the elements of the crime of rape. This Court finds no compelling reason to depart from these findings.

2. REMEDIAL LAW; EVIDENCE; POSITIVE IDENTIFICATION PREVAILS OVER THE DEFENSE OF DENIAL AND ALIBI.— It is clear from the above that Balanza was positively identified by "AAA" as the person who raped her in the cornfield. We have consistently held that positive identification prevails over the defense of denial and alibi especially when the victim was not actuated by any improper motive, as in this case. It is also a time-honored principle that, "no young and decent lass will publicly cry rape if such were not the truth."

3. ID.; ID.; CREDIBILITY OF WITNESSES; NO COGENT REASON TO DEPART FROM THE FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS.— It also bears stressing that testimonies of child victims are given full weight and credit, for when a child "says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed." "AAA's" testimony that she was raped by Balanza was straightforward and trustworthy. The Court thus finds no cogent reason to depart from the factual findings of the trial court concerning the rape and "AAA's" credibility, which were affirmed by the CA.

4. ID.; ID.; DEFENSE OF ALIBI; ACCUSED FAILED TO PROVE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION.— As for Balanza's defense that he was in Joseph's house at the time of the commission of the crime, the Court finds the same untenable. Well-settled is the rule that for the defense of alibi to prosper, the accused must prove that he was present at another place at the time of the commission of the crime and that it was physically impossible for him to be at the scene of the crime. In this case, Balanza testified that the house of Joseph is only about 100 meters more or less from his nipa hut. The element of physical impossibility is thus missing. The CA is thus correct in ruling that the said distance cannot conclusively preclude the possibility of Balanza's presence at the scene of the crime at 8:00 p.m. of October 7, 2006 when the crime was committed.

5. CRIMINAL LAW; RPC IN RELATION TO RA 7610; RAPE; CIVIL LIABILITY; AWARD OF DAMAGES, INCREASED.— [A]s to the award of damages, the Court increases the same, in line with the ruling enunciated in *People v. Jugueta*, where this Court held that where the imposable penalty is *reclusion perpetua*, the proper amounts of awarded damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages, regardless of the number of qualifying aggravating circumstances present. In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from the finality of this Decision until full payment.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Albert L. Hontanosas for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

This resolves the appeal filed by the appellant Robert Balanza (Balanza) assailing the March 29, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01087 which affirmed with modifications the September 25, 2009 Judgment[2] of Branch 14, Regional Trial Court (RTC) of Cebu City in Criminal Case No. CBU-81714, which found Balanza guilty beyond reasonable doubt of the crime of rape in relation to Republic Act No. 7610 (RA 7610) otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, and imposing upon him the penalty of *reclusion perpetua.*

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[1] CA *rollo,* pp. 66-73; penned by Associate Justice Edgardo L. De Los Santos and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Abraham B. Borreta.

[2] Records, pp. 55-56, penned by Presiding Judge Raphael B. Yrastorza, Sr.

Balanza, together with "BBB", was charged with rape of a 14-year-old girl, allegedly committed as follows:

That on or about the 7th day of October, 2006, at around 8:00 P.M., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, with the use of force and intimidation upon the person of [AAA], a minor, 14 years of age, with deliberate intent, did then and there willfully, unlawfully and feloniously take turns in having carnal knowledge [of] the latter, without her consent and against her will.

CONTRARY TO LAW.[3]

The other accused, "BBB", was dropped from the Information since he was a 13-year-old minor and thus exempt from criminal liability pursuant to Section 6, in relation to Section 20, of RA 9344[4] or the Juvenile Justice and Welfare Act of 2006, as amended by RA 10630. Instead of being arraigned, the minor

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[3] *Id*. at 1-3.

[4] **SEC. 6.** ***Minimum Age of Criminal Responsibility.*** – A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act. x x x

SEC. 20. ***Children Below the Age of Criminal Responsibility.***– If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered non-governmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise, known as "The Child and Youth Welfare Code."

was subjected to an intervention program under the Department of Social Welfare and Development. As such, only Balanza was arraigned wherein he pleaded not guilty.

Version of the Prosecution

"AAA" testified that she knew Balanza since they were neighbors in Cebu. At about 8:00 p.m., on October 7, 2006, "AAA" was on her way home from work when Ronnel Fernandez (Ronnel) approached and told her that Balanza wanted to talk to her. Apparently, Balanza wanted to offer her the position of treasurer in their fraternity "Junior KKK," which stood for "Krist King Kappa." "AAA" refused Ronnel and Balanza's offer. Thereafter, Ronnel and another fraternity member, Rommel Inot (Rommel) held her hands and forced her to go with them towards a nipa hut owned by Balanza.

Inside the nipa hut, "AAA" saw Balanza and several other fraternity members, namely Vernie Tinapay, Jemerico Inot, and John John Taborada. Balanza offered "AAA" the position of treasurer in their fraternity. "AAA" was surprised since she was not even a member of their fraternity. After refusing the offer, members of the Junior KKK forcibly brought "AAA" to a cornfield nearby. At the cornfield, Balanza forcibly removed "AAA's" pants and inserted his penis inside her vagina. "AAA" felt helpless and cried while Balanza was raping her. After Balanza consummated his bestial act, another fraternity member, "BBB", followed Balanza's example and raped "AAA" by inserting his penis into her vagina. After raping her, Balanza and "BBB" fled the cornfield leaving "AAA" by her miserable and helpless self. "AAA" went home thereafter feeling violated and ashamed.

Version of the Defense

For his defense, Balanza denied the charge of rape against him and claimed that on the night of the commission of the alleged crime, he was at his neighbor Joseph Antonio's (Joseph) house which is located 100 meters away from his house. Balanza insisted that at 7:00 p.m., he went straight to Joseph's house immediately after school and stayed there until 10:00 p.m. He

claimed that the following persons were with him inside the house: Giovanne, Meve, and Joseph. Later that night, at around 9:00 p.m., Joseph's wife Rosa also joined them inside the house.

Ruling of the Regional Trial Court

On September 25, 2009, the RTC of Cebu City, Branch 14 rendered judgment finding Balanza guilty as charged.

The dispositive part of the RTC's Judgment reads:

> WHEREFORE, in view of the foregoing premises, judgment is rendered finding the accused, ROBERTO BALANZA, GUILTY beyond reasonable doubt as principal of Rape in relation to R.A. 7610 and imposes upon him the indivisible penalty of imprisonment of *reclusion perpetua.*
>
> Accused is also ordered to pay the minor the amount of FIFTY THOUSAND (Php50,000.00) PESOS as his civil liability to the minor.
>
> SO ORDERED.[5]

Aggrieved by the RTC's Judgment, Balanza appealed to the CA.

Ruling of the Court of Appeals

On March 29, 2012, the CA affirmed with modification the RTC's Judgment and held as follows:

> WHEREFORE, in view of all the foregoing, the 25 September 2009 Decision of the Regional Trial Court, Branch 14, Cebu City, is hereby AFFIRMED with MODIFICATIONS. ROBERT BALANZA is hereby found GUILTY beyond reasonable doubt of RAPE and is hereby sentenced to suffer the penalty of *reclusion perpetua*. Also, the accused-appellant is ORDERED to pay AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.
>
> No pronouncement as to costs.
>
> SO ORDERED.[6]

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[5] Records, p. 56.

[6] CA *rollo,* p. 71.

On April 24, 2012, Balanza, through his counsel, filed a Notice of Appeal.[7] In its Resolution[8] dated May 21, 2013, the CA gave due course to Balanza's Notice of Appeal.

In a Resolution[9] dated September 23, 2013, this Court directed the parties to submit their respective supplemental briefs, if they so desired.

In its Manifestation[10] dated November 20, 2013, the Office of the Solicitor General informed this Court that it would no longer file a supplemental brief because it had already substantially and exhaustively responded to and refuted Balanza's arguments raised in his brief.

Likewise, Balanza filed a Manifestation[11] dated October 3, 2014, indicating that he had stated all his arguments in his Appellant's Brief and no longer intended to file a supplemental brief.

The lone issue raised in his Appellant's Brief is whether Balanza was positively identified by "AAA" as the culprit in the charge of rape. According to Balanza, his identity as the perpetrator of the crime was not sufficiently established by the prosecution through clear and convincing evidence. Balanza likewise maintained that the circumstances surrounding the commission of the crime cast doubt on the credibility of "AAA." Balanza thus prays for his acquittal.

Our Ruling

The appeal is unmeritorious.

Article 266-A of the Revised Penal Code, as amended by RA 8353 provides that rape is committed by having carnal knowledge of a woman under any of the following circumstances:

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[7] *Id.* at 76.

[8] *Id.* at 90-91.

[9] *Rollo*, pp. 16-17.

[10] *Id.* at 18-20.

[11] *Id.* at 32.

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.

In the case at bar, both the RTC and CA found that the prosecution was able to sufficiently establish beyond a reasonable doubt all the elements of the crime of rape. This Court finds no compelling reason to depart from these findings.

Balanza contends that he was not positively identified by "AAA" as the perpetrator of the crime.

We disagree.

During trial, "AAA" clearly and positively identified Balanza as the person who ravaged her in the cornfield. The relevant portions of her testimony provide as follows:

Q: Now, Miss witness, how do you know Robert Balanza?
A: We are neighbors, Sir.

Q: How long have you been neighbors with Robert Balanza?
A: Long time already, Sir.

x x x x x x x x x

Q: Now, last October 7, 2006, Miss witness, at about 8:00 P.M., where were you, if you remember?
A: I came from my place of work on my way to my house, Sir.

Q: And on your way to your house, Miss Witness, how were you going towards your house, were you walking or riding a car?
A: By walking, sir.

Q: And while you were walking, Miss Witness, what untoward incident did any [sic] occur?
A: While walking towards our house x x x Ronel approached me and x x x told me that Robert Balanza wanted to see me.

Q: What is the full name of this Ronel Fernandez?
A: Ronel Fernandez, Sir.

Q: What was your reply when Ronel Ferna[n]dez told you that Robert Balanza would want to meet with you?
A: I refused, Sir, I told him I don't like.

Q: If you know, [Ms.] Witness, what was the purpose of Robert Balanza in wanting to meet with you at that time?
A: Ronel Fernandez told me that I would be given a rank.

Q: What rank, Miss witness, rank in what, Miss witness?
A: They wanted to appoint me as their treasurer.

Q: Do you know what group or organization would you be a treasurer of?
A: In Junior KKK.

Q: And what if you know, Miss witness, is this Junior KKK all about?
A: Krist King Kappa.

Q: Were you a member of this Junior KKK at that time?
A: No, sir.

x x x x x x x x x

Court to the Witness:

Q: Why do you know the accused, Robert Balanza?
A: We were neighbors, Sir.

Q: And what does he do with this Junior KKK, if you know?
A: He is the founder of Junior KKK, Your Honor.

Court to Pros. Carrillo: Proceed.

Pros. Carillo to the witness.

Q: Now, you said that you refused Ronel Fernandez[']s requests that you go with him and talk to Robert Balanza, what happened next, Miss Witness?
A: They forced me to go with them since Rommel Inot also arrived, Sir.

Q: Who do you [refer] as they?
A: Ronel Fernandez and Rommel Inot, Sir.

Q: How were you forced?
A: They held my hands, Sir, and then they forced me to go with them to the nipa hut of Robert Balanza.

x x x x x x x x x

Q: Now, Miss Witness, this is the incident, which happened on October 7, 2006. Now, you said that you were forced by Ronel Fernandez and the others to go to the nipa hut of Robert Balanza, what time was that, Miss witness?
A: 8:00 o'clock in the evening, Sir.

Q: And how far was this from the place where Ronel Fernandez approached you?
A: About 20 meters, Sir.

Q: Now, how did they force you, Miss Witness, to go with them to the nipa hut of Robert Balanza?
A: I resisted, Sir, and I don't like to go with them, but they forced me, they held my hands, they forced me to go with them to the nipa hut of Robert Balanza, Sir.

Q: And while you were being forced to go to the nipa hut of Robert Balanza, what were you doing?
A: I resisted, Sir, in order to keep free from them.

Q: And were you able to get free from Ronel Fernandez?
A: No, sir.

Q: And did you in effect [reach] the nipa hut of Robert Balanza?
A: Yes, sir.

Q: And what did you see upon arriving or reaching the house of Robert Balanza?
A: I saw Robert Balanza sitting inside the nipa hut, Sir.

Q: And then what happened after you saw Robert Balanza near the nipa hut?
A: He talked to me, Sir, and he promised to give me a rank in Junior KKK, Sir.

Q: And what was your reaction or reply when he said he was going to give you a rank?
A: I was surprised why Robert Balanza [gave] me a rank when in fact I was not a member [of] their [organization].

Q: By the way, Miss Witness, you said that you were forced by Ronel Fernandez and Rommel Inot to the house of Robert Balanza, aside from Ronel Fernandez, Rommel Inot and Robert Balanza, were there other persons at the place?
A: Yes, Sir.

Q: Now, who were [they], Miss Witness?
A: Vernie Tinapay, Jemerico Inot, John John Taborado, no other, Sir.

Q: What were their relations to Junior KKK, if you know?
A: They were members of the Junior KKK, Sir.

Q: Now, after you were surprised why they would want to make you a treasurer not being a member, what happened next?
A: Then they brought [me] to the cornfield, Sir.

x x x x x x x x x

Q: Now, Miss Witness, you mentioned in your affidavit that when you reached the cornfield Robert Balanza pulled down his shorts, how about you, Miss Witness, what were you wearing at that time?
A: I was wearing a long short pants, Sir.

Q: Now, you also mentioned that he inserted his sex organ [into] your sex organ, how was he able to insert his sex organ [into] your sex organ while you were still wearing your short?
A: He removed my long short pants, Sir.

Q: What was your reaction, Miss Witness, when Robert Balanza started to remove your shorts?
A: I cried, Sir.

Q: And why did you cry?
A: I was afraid, because he [was] going to harm me during that time.

Q: Now, you mentioned in your affidavit that he forcibly inserted his sex organ into your sex organ, what did you feel, Miss Witness, when Robert Balanza inserted his penis into your vagina?
A: I felt pain, Sir.

Q: And what were you doing while Robert Balanza was raping you?
A: I cried, Sir.

Q: And why were you crying?
A: Because of the incident, I was afraid to tell x x x my mother and also I was ashamed of what happened to me, Sir.

Q: And after him, Miss Witness, you mentioned that ["BBB"] also took off his short pants and also did the same thing to you, what do you mean, "also did the same"?
A: He followed also what Robert Balanza did to me, Sir.

Q: He also inserted his penis into your vagina?
A: Yes, Sir.[12]

It is clear from the above that Balanza was positively identified by "AAA" as the person who raped her in the cornfield. We have consistently held that positive identification prevails over the defense of denial and alibi especially when the victim was not actuated by any improper motive, as in this case. It is also a time-honored principle that, "no young and decent lass will publicly cry rape if such were not the truth."[13]

It also bears stressing that testimonies of child victims are given full weight and credit, for when a child "says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed."[14] "AAA's" testimony that she was raped by Balanza was straightforward and trustworthy. The Court thus finds no cogent reason to depart from the factual findings of the trial court concerning the rape and "AAA's" credibility, which were affirmed by the CA.

As for Balanza's defense that he was in Joseph's house at the time of the commission of the crime, the Court finds the same untenable. Well-settled is the rule that for the defense of alibi to prosper, the accused must prove that he was present at another place at the time of the commission of the crime and that it was physically impossible for him to be at the scene of the crime. In this case, Balanza testified that the house of Joseph

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[12] TSN, August 1, 2008, pp. 4-10.

[13] *People v. Veluz*, 593 Phil. 145, 161 (2008).

[14] *People v. Sobusa*, 624 Phil. 533, 547 (2010).

is only about 100 meters more or less from his nipa hut.[15] The element of physical impossibility is thus missing. The CA is thus correct in ruling that the said distance cannot conclusively preclude the possibility of Balanza's presence at the scene of the crime at 8:00 p.m. of October 7, 2006 when the crime was committed.

Finally, as to the award of damages, the Court increases the same, in line with the ruling enunciated in *People v. Jugueta,*[16] where this Court held that where the imposable penalty is *reclusion perpetua,* the proper amounts of awarded damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages, regardless of the number of qualifying aggravating circumstances present. In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from the finality of this Decision until full payment.[17]

WHEREFORE, the March 29, 2012 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01087 finding appellant Robert Balanza **GUILTY** of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATIONS** that the awards of civil indemnity, moral damages, and exemplary damages are increased to ₱75,000.00 each, all with interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Sereno, C.J., Velasco, Jr.,[*] *Leonardo-de Castro,* and *Tijam, JJ.,* concur.

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[15] TSN, February 13, 2009, p. 7.

[16] G.R. No. 202124, April 5, 2016, 788 SCRA 331, 373.

[17] *Id*. at 388.

[*] Per raffle dated September 6, 2017 vice Justice Francis H. Jardeleza who recused due to prior participation as Solicitor General.

FIRST DIVISION

[G.R. No. 215730. September 11, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MELCHOR PANES *y* MAGSANOP,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE, THREE COUNTS OF QUALIFIED RAPE, COMMITTED IN CASE AT BAR; PENALTY IMPOSED IS *RECLUSION PERPETUA* FOR EACH COUNT BUT WITHOUT ELIGIBILITY FOR PAROLE.—** It is beyond cavil that appellant had carnal knowledge of "AAA" on three separate occasions and the same were committed through force, threat, or intimidation. Appellant also used his moral ascendancy to cow "AAA" to submit to his bestial desires. It is also undisputed that it was properly alleged in the three Informations and proved during trial that appellant is the father of "AAA," a 13-year-old minor at the time of the rape incidents. Undoubtedly, appellant committed the crime of qualified rape (three counts). Both the trial court and the CA therefore properly sentenced him to suffer the penalty of *reclusion perpetua* for each count of qualified rape but without eligibility of parole.

2. **ID.; ID.; ID.; CIVIL LIABILITY; AMOUNT OF DAMAGES, INCREASED.—** [T]he amount of damages awarded must be modified. In line with prevailing jurisprudence, the awards of civil indemnity, moral damages, and exemplary damages are increased to ₱100,000.00 each. In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this Decision until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Melchor Panes *y* Magsanop (appellant) appeals from the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05909 dated March 19, 2014, finding him guilty of three (3) counts of qualified rape, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Decision dated October 25, 2012 of the RTC, Branch 70, Iba, Zambales in Criminal Cases Nos. RTC-4420-I, RTC-4421-I, and RTC-4422-I is hereby AFFIRMED with MODIFICATION that the award of exemplary damages is increased to ₱30,000.00 for each count of Qualified Rape.
>
> No costs.
>
> SO ORDERED.[2]

Factual Antecedents

On May 18, 2005, the Office of the Provincial Prosecutor of Zambales indicted the appellant for qualified rape under three separate Informations. Docketed as Criminal Case No. RTC-4420-I, Criminal Case No. RTC-4421-I and Criminal Case No. RTC-4422-I, the accusatory portion of each Information states —

Criminal Case No. RTC-4420-I[3]

> That on or about the 22nd day of September 2003, in Sitio Tumangan, Brgy. San Juan, Municipality of Botolan, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, through threat, force, influence and

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[1] CA *rollo*, pp. 103-126; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Eduardo B. Peralta, Jr.

[2] *Id*. at 125.

[3] Records, Vol. I, p. 2.

violence, did then and there willfully, unlawfully and feloniously have sexual intercourse with and carnal knowledge of his own daughter, 13-year old minor ["AAA"], to the damage and prejudice of said minor ["AAA"].

CONTRARY TO LAW.

Criminal Case No. RTC-4421-I[4]

That on or about the 15th day of October 2004, at about 12:00 midnight in Sitio Tumangan, Brgy. San Juan, Municipality of Botolan, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, through threat, force, influence and violence, did then and there willfully, unlawfully and feloniously have sexual intercourse with and carnal knowledge of his own daughter, 13-year old minor ["AAA"], to the damage and prejudice of said minor ["AAA"].

CONTRARY TO LAW.

Criminal Case No. RTC-4422-I[5]

That in or about the month of September 2003, in Sitio Tumangan, Brgy. San Juan, Municipality of Botolan, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, through threat, force, influence and violence, did then and there willfully, unlawfully and feloniously have sexual intercourse with and carnal knowledge of his own daughter, 13-year old minor ["AAA"], to the damage and prejudice of said minor ["AAA"].

CONTRARY TO LAW.

All three cases were consolidated and heard by Branch 70 of the RTC of Iba, Zambales. During arraignment, appellant pleaded "not guilty" to all three charges.[6]

During the preliminary conference, the parties stipulated on the identity of the appellant; the identity of the private

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[4] Records, Vol. II, p. 2.

[5] Records, Vol. III, p. 2.

[6] Records, Vol. I, p. 17.

complainant "AAA;" that "AAA" is the daughter of the appellant; that "AAA" was born on January 16, 1991, as shown in her birth certificate; and that before the institution of these criminal cases, appellant and "AAA" and her siblings were living together under one roof at Sitio Tumangan, San Juan, Botolan, Zambales.[7]

Trial on the merits ensued.

"AAA" testified on the three occasions when she was ravished by her father. She narrated that on September 22, 2003, after her father assisted her mother in giving birth, the former went upstairs where she was sleeping together with her siblings. Sensing that somebody was holding her thigh, "AAA" woke up and saw her father. Appellant held her thigh, removed her panty, and then embraced her. "AAA", although afraid, tried to remove appellant's hold on her thigh but was unsuccessful. Appellant then undressed and proceeded to have carnal knowledge of her. "AAA" felt pain.

Three days later, appellant again raped "AAA". According to "AAA," she and her father were on their way home and while passing by a creek, appellant pushed her towards a big rock, removed her clothes, inserted his penis into her vagina, then made push and pull movements. "AAA" was shocked as she was not expecting her father to rape her in such a place.

The third ravishment was committed inside their house. Appellant first embraced "AAA" then pushed her to the floor. "AAA" tried to resist but her effort proved futile. Appellant succeeded in removing her panty and inserted his penis into her vagina.

The trial court found "AAA's" testimony to be candid and straightforward, even during cross-examination. It also held that it was unlikely for "AAA" to fabricate such a serious charge against her own father. On the other hand, the RTC did not lend credence to appellant's denial and alibi because aside from being a weak defense, appellant did not offer any other evidence to substantiate the same.

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[7] *Id*. at 19.

Against this backdrop, the RTC ruled for the prosecution, finding no merit at all in the appellant's plea of denial, thus —

> In [r]ape cases, the relationship of the victim to the accused and the minority of the victim are special qualifying circumstances which must be alleged and proved by the prosecution. These were clearly established by the prosecution by the presentation of the birth certificate of the minor victim showing that she was born on 16 January 1991 and her father is Melchor Panes and this was not rebutted by the defense.
>
> When the victim of rape is under 18 years of age and the offender is a parent, such as in these cases, the death penalty shall be imposed. However, in view of the enactment of R.A. No. 9345, an [A]ct prohibiting the imposition of death penalty, accused Panes can only be sentenced to *reclusion perpetua* for each count of qualified rape under Art. 266-B of the Revised Penal Code.
>
> Consistent with prevailing jurisprudence, accused should likewise be held liable for each count of qualified rape, to pay the complaining witness the amount of [₱]75,000.00 as civil indemnity and the amount of [₱]75,000.00 as moral damages.
>
> Exemplary damages in the amount of [₱]25,000.00 for each count of qualified rape must also be awarded in view of the special qualifying circumstance[s] of minority and relationship as a measure to help deter fathers with perverse tendencies and aberrant sexual behavior for preying upon and sexually abusing their daughters (People vs. Luisito Baun, G.R. No. 167503, 10 August 2008).[8]

Inevitably, the RTC disposed as follows —

> IN VIEW THEREOF, accused MELCHOR PANES *y* MAGSANOP is found GUILTY beyond reasonable doubt of three (3) counts of qualified rape and is sentenced to suffer the penalty of *Reclusion Perpetua* for each count and without possibility of parole.
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> Further, accused is ordered to pay private complainant civil indemnity of Php75,000.00 for each case, Php75,000.00 as moral damages for each case and exemplary damages in the amount of Php25,000.00 for each case.[9]

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[8] *Id*. at 430.

[9] *Id*. at 430-431.

Dissatisfied with the RTC's verdict, the appellant went up to the CA on this sole assignment of error —

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THREE (3) COUNTS OF QUALIFIED RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[10]

The CA denied the appeal, refuting point-by-point the arguments advanced in support thereof by the appellant, *viz.*:

The appeal lacks merit.

x x x x x x x x x

In seeking his acquittal, accused-appellant Panes contends in the instant appeal that: private complainant AAA's testimony is unconvincing, speculative, and incredible; there were times when private complainant AAA failed to answer the questions of the prosecutor; the examining physician found no external laceration, swelling, or hematoma on private complainant AAA's external genitalia; and, there is doubt as to whether she fully understood the meaning of what she testified on.

After a careful and thorough review of the facts of the case, as well as the law and jurisprudence pertinent thereto, this Court affirms accused-appellant Panes' conviction for three (3) counts of Qualified Rape which he committed against his own daughter, private complainant AAA.

x x x x x x x x x

The three (3) counts of Qualified Rape for which accused-appellant Panes was convicted transpired on: (1) September 22, 2003, when her mother BBB had recently given birth; (2) a few days after September 22, 2003, near the creek, and, (3) in the evening of October 15, 2004, after a quarrel between private complainant AAA's parents.

x x x x x x x x x

The testimony of private complainant AAA that she was raped x x x coincides with the findings of Dr. Fernando Igrobay in his Medicolegal Report dated November 14, 2003, wherein he found old lacerations around the inner vaginal wall at all positions. x x x

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[10] CA *rollo*, p. 42.

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The rule is well-settled that youth and immaturity are badges of truth and sincerity. It is highly improbable for an innocent girl such as private complainant AAA, who is very naïve [in] the ways of this world, to fabricate a charge so humiliating not only to herself but to her family. With that in mind, this Court finds no cogent reason to discredit the above-quoted testimony of private complainant AAA. The fact remains that there was a categorical declaration from the victim that she was ravished by her father several times. It should be emphasized that this alone is already enough to sustain the charges against accused-appellant Panes.

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Accused-appellant Panes points out that there were times when private complainant AAA failed to answer questions from the prosecution when she was asked regarding the subject incidents. Be that as it may, this Court finds that such failure to answer when private complainant AAA initially testified in this case is not fatal to the prosecution and does not destroy her credibility. Since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness.

It may be well to note that the alleged reluctance of private complainant AAA to testify only happened during the initial stage of her direct examination. Needless to state, her age, level of intelligence, and mental capacity should be taken into account, not to mention psychological stress. Private complainant AAA is a child who stopped in her studies and reached only Grade III. Further, it is not uncommon for a young rural lass such as private complainant AAA to be initially hesitant to disclose how she was ravished, which is a painful experience. Throughout her entire testimony, private complainant AAA kept mentioning that she was afraid of her father. It is not farfetched to say that in trying to recall what happened, the fear and trauma which she experienced for so many years having lived under the same roof as his [sic] tormentor, was suddenly relived, especially as accused-appellant Panes was brought face to face with her when she testified. Besides, there was only a mere failure to answer the initial questions propounded, which should not be equated with glaring contradictions and inconsistencies. Indeed, rape is a harrowing experience which the victim might in fact be trying to

forget, more so in this case as private complainant AAA's violator is her own father.

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Relatedly, anent intimidation as an element of the crime of Rape, such must be viewed in the light of the perception of the victim at the time of the commission of the crime. The Supreme Court has previously observed that victims of tender age are easily intimidated and cowed into silence even by the mildest threat against their lives. Here, private complainant AAA disclosed that her father held her by the neck and threatened to kill her. Accused-appellant Panes, at times, held a knife. Private complainant AAA described her father as having red eyes, drunk, and had a sharp look at her whenever they were in their house. It is thus evident that she was in an intimidating environment as she lived with her debaucher.

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On another point, accused-appellant Panes, in his *Sinumpaang Salaysay* as well as his testimony, harps on the defense that he could not have raped private complainant AAA on October 15, 2004 as all of his children were there in the house. The thrust of accused-appellant Panes' argument, however, has long been rejected in jurisprudence. Time and again, it has been said that lust is no respecter of place and time. It is not necessary that the place where the rape is committed be isolated. Rapists are not deterred from committing their odious acts by the presence of people nearby. Neither the crampness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held sufficient and effective obstacle to deter the commission of rape. There have been too many instances when rape was committed under circumstances as indiscreet and audacious as a room full of family members sleeping side by side.

x x x x x x x x x

Anent the *Sinumpaang Salaysay* purportedly executed by BBB, CCC, and private complainant AAA's siblings, the same are devoid of any weight or probative value. Despite being faced with three (3) counts of qualified rape, each punishable by *reclusion perpetua* without the benefit of parole, quite telling is the fact that none of these supposed affiants, who are relatives of accused-appellant Panes, was ever presented in court to testify and corroborate his already weak defense.

It should be emphasized that BBB herself assisted her daughter and even signed private complainant AAA's *Sinumpaang Salaysay*. BBB's sudden turnaround that she merely made up the story that her husband raped her daughter is flimsy and tenuous. It is a mere afterthought which should not be given probative value. Indeed, retractions are generally unreliable and are looked upon with disfavor by the courts. x x x

x x x x x x x x x

This Court could only imagine private complainant AAA's hardship and misery, that after being raped several times by her own father, her mother, BBB, from whom she should draw strength, abandoned her in her quest for justice. To the mind of this Court, that private complainant AAA remained unwavering and determined despite the withdrawal of her family's support, speaks volumes of her credibility.

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Accused-appellant Panes' contention that no external laceration, swelling, or hematoma was found on private complainant AAA's genitalia deserves scant consideration. To reiterate, in the Medicolegal Report dated November 14, 2003, Dr. Fernando Igrobay noted old lacerations around the inner vaginal wall at all positions. At that time, private complainant AAA was examined for five (5) rape incidents that transpired from July 2003 to November 2003. Dr. Ernesto Domingo later observed a healed laceration at 9:00 o'clock position and that private complainant AAA's physical virginity was lost. Contrary to the stance of accused-appellant Panes, these medical findings are in fact consistent with private complainant AAA's allegations that she was raped by her father on the alleged dates.

In any case, it bears emphasis that hymenal laceration is not an element of rape. Otherwise stated, the presence of lacerations in the victim's vagina is not necessary to prove rape. It is not necessary to show that the victim had a reddening of the external genitalia or sustained a hematoma on other parts of her body to sustain the possibility of a rape charge.

Anent the qualifying circumstances of minority and relationship, both were averred in the informations and admitted by the defense. Private complainant AAA's Birth Certificate, duly presented in evidence, shows that she was born on January 16, 1991 and that her father is accused-appellant Panes.

Furthermore, this Court affirms the award of civil indemnity and moral damages as decreed by the lower court. However, the award of exemplary damages should be increased to ₱30,000.00 for each count, to conform with recent jurisprudence.[11]

Dissatisfied with the CA's pronouncement, appellant filed a Notice of Appeal.[12] On April 15, 2015, the Court resolved to require the parties to submit their respective supplemental briefs.[13] However, in separate Manifestations,[14] both parties opted to adopt the briefs they submitted before the appellate court.

Our Ruling

The appeal lacks merit.

The CA's verdict is in full accord with the evidence on record. It is beyond cavil that appellant had carnal knowledge of "AAA" on three separate occasions and the same were committed through force, threat, or intimidation. Appellant also used his moral ascendancy to cow "AAA" to submit to his bestial desires. It is also undisputed that it was properly alleged in the three Informations and proved during trial that appellant is the father of "AAA," a 13-year-old minor at the time of the rape incidents. Undoubtedly, appellant committed the crime of qualified rape (three counts). Both the trial court and the CA therefore properly sentenced him to suffer the penalty of *reclusion perpetua* for each count of qualified rape but without eligibility of parole.

However, the amount of damages awarded must be modified. In line with prevailing jurisprudence, the awards of civil indemnity, moral damages, and exemplary damages are increased to ₱100,000.00 each.[15] In addition, all damages awarded shall

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[11] *Id.* at 109-125.

[12] *Rollo*, p. 26.

[13] *Id.* at 31.

[14] *Id.* at 32-41.

[15] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382-383.

earn interest at the rate of 6% *per annum* from date of finality of this Decision until full payment.[16]

WHEREFORE, the appeal is **DISMISSED**. The March 19, 2014 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05909 finding appellant Melchor Panes *y* Magsanop **GUILTY** of three (3) counts of Qualified Rape and sentencing him to suffer the penalty of *reclusion perpetua* for each count is **AFFIRMED with MODIFICATIONS** that the amounts of civil indemnity, moral damages, and exemplary damages, are each increased to ₱100,000.00 for each count, all with interest at the rate of 6% *per annum* from date of finality of this Decision until full payment.

SO ORDERED.

Sereno, C.J. (*Chairperson*), *Leonardo-de Castro, Tijam,* and *Reyes, Jr.,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 219123. September 11, 2017]

DESIDERIO C. CUTANDA, *petitioner, vs.* **MARLOW NAVIGATION PHILS., INC., and/or MARLOW NAVIGATION CO. LTD. and/or ANTONIO GALVEZ, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS,

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[16] *Id*. at 388.

[*] Per raffle dated September 6, 2017 *vice J.* Jardeleza who recused due to prior action as Solicitor General.

ENUMERATED AND APPLIED; THE CONFLICTING FINDINGS OF THE COURT OF APPEALS AND THE NATIONAL LABOR RELATIONS COMMISSION NECESSITATE A REVIEW OF THE FACTUAL ISSUES PRESENTED IN THIS CASE.— As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present: 1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures; 2. when the inference made is manifestly mistaken, absurd or impossible; 3. when there is grave abuse of discretion; 4. when the judgment is based on a misapprehension of facts; 5. when the findings of fact are conflicting; 6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7. when the findings are contrary to that of the trial court; 8. when the findings are conclusions without citation of specific evidence on which they are based; 9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent; 10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and] 11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. While the issue as to whether or not petitioner's illness is compensable as total and permanent disability is essentially a factual issue, the present case falls under one of the exceptions because the findings of the CA differ with that of the NLRC. Hence, a resolution of the issues presented before this Court is necessary.

2. LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY BENEFITS; REQUIREMENTS FOR AN INJURY OR ILLNESS TO BE COMPENSABLE.— [I]n situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires

the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.

3. ID.; ID.; ID.; THE PURPOSE OF THE 120 OR 240 DAYS PERIODS IS TO DETERMINE THE CATEGORY OF THE SEAFARER'S INJURY OR ILLNESS; SEAFARER'S INJURY OR ILLNESS, WHEN DEEMED TOTAL AND PERMANENT.— The very purpose of those periods is the proper determination as to whether the injured seafarer categorized as Grade 2 to 14 can, in legal contemplation, be considered as totally and permanently disabled. Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (*AREC*) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled. Moreover, the company-designated physician is expected to arrive at a **definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days**. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.

4. ID.; ID.; ID.; WHERE SEAFARER HAD BEEN UNFIT TO WORK WAY BEYOND THE 240 DAYS PERIOD, HE IS LEGALLY CONSIDERED AS TOTALLY AND PERMANENTLY DISABLED AND IS ENTITLED TO PERMANENT TOTAL COMPENSATION.— [I]t appears that petitioner had been unfit to work way beyond the 240 days provided by law, hence, petitioner can be legally considered as totally and permanently disabled and is entitled to permanent total compensation of US$60,000.00 under Section 32 of the POEA-SEC.

APPEARANCES OF COUNSEL

R. Go, Jr. Law Office for petitioner.
Saba Gonzaga Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

For this Court's consideration is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated August 26, 2015 of petitioner Desiderio C. Cutanda that seeks to reverse and set aside the Decision[1] dated March 19, 2015 and Resolution[2] dated July 1, 2015, both of the Court of Appeals (*CA*), reversing the Decision dated April 16, 2014 and Resolution dated May 23, 2014 of the National Labor Relations Commission (*NLRC*), 4th Division granting petitioner total and permanent disability benefits in the amount of US$60,000.00; attorney's fees in the amount of US$6,000.00; and moral damages in the amount of ₱50,000.00.

The facts follow.

Petitioner was hired by respondent Marlow Navigation Phils., Inc. (*MNPI*) to work as a Key Able Seaman on board vessel

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justices Marlene Gonzales-Sison and Ramon A. Cruz; *rollo* pp. 79-97.

[2] *Id*. at 99-101.

MV "Malte Rambow" for a period of ten (10) months and with a basic monthly salary of US$680.00. Prior to his employment, he underwent a medical examination and was declared "fit to work" by the company-designated physicians. Incidentally, he was previously employed by respondents on different employment contracts for a period of fifteen (15) years.[3]

On April 3, 2012, petitioner departed from the Philippines to join the vessel earlier mentioned in which his duties included planning, controlling, executing and reporting all maintenance and repair works on deck, in close coordination and under the supervision of the Chief Officer of the vessel. He was also in charge of supervising the safety of the crew during working hours; taking charge of the tugboat line during mooring and unmooring operation; watching the bow of the vessel to avoid accidents and collisions; supervising the junior ratings; steering the ship manually or automatically or with the use of emergency steering apparatus as directed by the navigating officer, Chief Mate, or the Ship Captain; breaking out rigs; overhauling and stowing of cargo-handling gears, stationary riggings and running gears; overhauling lifeboats, winches and falls; manually greasing the wire of the crane; chipping off rust; and painting the deck and superstructure of the ship, as well as other duties as may be assigned by his superiors.[4]

Thereafter, on October 8, 2012, petitioner had an accident aboard the vessel while performing his duties at the Port of Tanjung, Pelepas, Malaysia wherein his left index and middle fingers were severely injured and also suffered laceration wounds, when his left hand was caught and crushed by the tug's line (rope) when the tugboat started pulling the line while the tug's line was not yet free from the ship. After the accident, he was immediately brought to Puteri Specialist Hospital (*Johor*) SDN BHD in Malaysia for emergency medical treatment.[5]

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[3] *Id.* at 80.

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

[5] *Id*. at 81.

The day after the accident, on October 9, 2012, petitioner was medically repatriated and arrived in the Philippines on that same day. He immediately reported to the respondent MNPI's office and was referred to Notre Dame Medical Clinic where he was diagnosed with "Lacerated Wounds 2nd& 3rd digits, Left Hand." Petitioner was then treated and later referred for rehabilitation/physical therapy. The said accident was supported by official records of the Social Security System (*SSS*). Petitioner then underwent continuous physical therapy until April 3, 2013, or for a period of six (6) months from the time of the occurrence of the accident on October 8, 2012 and was still found to be unfit to work, as shown by medical certificates dated January 4, 2013, April 2, 2013, and April 3, 2013, all issued by the Panay Orthopaedic and Rehabilitation Institute (*PORI*) in Iloilo City. However, despite medical intervention and months of therapy, petitioner's condition did not improve and he could not return to his work as Key Able Seaman because of the said injuries.[6]

Eventually, petitioner demanded from the respondents that he be paid his disability benefits, but to no avail. Respondents even stopped providing medical attention to petitioner after the lapse of 120 days despite the recommendation of PORI that the latter undergo further physical therapy. Respondents also refused to shoulder the expenses incurred for the medicine of petitioner.[7]

Aggrieved, petitioner filed a complaint for payment of total disability benefits, reimbursement of medical expenses, sick allowance, moral and exemplary damages and attorney's fees.[8]

Petitioner alleged that his injuries are work-related resulting to a loss of his earning capacity, and rendering him unfit to return to work for more than 240 days and that his continuing inability to pursue his usual work and earn therefrom constitutes permanent and total disability. According to him, he is entitled to the maximum or "Grade 1" disability compensation under

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[6] *Id*.

[7] *Id.*

[8] *Id*. at 102.

the POEA Standard Employment Contract (*POEA-SEC*) corresponding to US$60,000.00 under Sec. 20 (B) (6) thereof, and is also entitled to the payment of his medical expenses and sickness allowance. He also argued that respondents' actions in denying to pay him disability benefits is a gross violation of the POEA-SEC and that respondents acted in bad faith and in an oppressive manner and as such, petitioner must be awarded moral damages and attorney's fees.

Respondents, on the other hand, contended, among other things that when petitioner was eventually repatriated in the Philippines, he was referred to Dr. Orlino Hosaka, Jr. for medical care and treatment on October 10, 2012 and that the latter referred petitioner to an orthopaedic surgeon and rehabilitation specialist in which the treatment under the company-designated physician and specialist lasted for months. They also claimed that petitioner was regularly examined to check his recovery and that on February 11, 2013, under Dr. Hosaka's medical report, a conclusion was made that petitioner was suffering from a disability "Grade 10" based on POEA-SEC Schedule of Disability Gradings where it is specified that the loss of grasping power of small objects between the fold of the finger of one hand corresponds to a Grade 10 disability grading. Thus, according to respondents, since Dr. Hosaka is the company-designated physician, his finding of Grade 10 disability should prevail. They also insisted that they are not guilty of bad faith since petitioner was immediately given medical attention and care and never faltered in fulfilling their responsibilities.

The Labor Arbiter, on January 14, 2014, decided in favor of petitioner. The dispositive portion of the said Decision reads as follows:

> WHEREFORE, respondent Marlow Navigation Phils., Inc. and/or Marlow Navigation Co., Ltd. are hereby ordered to pay the complainant the Philippine peso equivalent at the time of the actual payment of the awards denominated in foreign currency:
>
> 1. US$60,000.00 representing permanent and total disability benefit;
> 2. US$6,000.00 representing attorney's fees; and
> 3. ₱50,000.00 representing moral damages.

The liability of the respondents for the judgment awards is joint and several.

SO ORDERED.[9]

According to the Labor Arbiter, the respondents were mistaken in their notion that in determining the disability benefits due a seafarer, only the POEA SEC, specially its schedule of benefits, must be considered. Such is governed not only by medical findings but by contract and law. The Labor Arbiter found that the conflicting diagnoses were rendered, not by the company physician and the physician chosen by the petitioner, but by the company physician and his "Iloilo coordinating physician and surgeon." It must be noted that the company physician declared that the complainant suffered a Grade 10 disability 126 days after petitioner signed-off from the vessel, while the "Iloilo coordinating physician" declared him to be unfit to work exactly 240 days after sign-off.

Thus, according to the Labor Arbiter, petitioner is entitled to permanent total disability benefits of US$60,0000.00. The Labor Arbiter further ruled that respondents' refusal to pay petitioner's just claim smacks of bad faith and calls for an award of moral damages and attorney's fees.

On appeal, the NLRC, in its Decision dated April 16, 2014 affirmed the decision of the Labor Arbiter, thus:

WHEREFORE, the appeal filed by respondents is DISMISSED for lack of merit. The Decision of Labor Arbiter Cheryl M. Ampil dated January 14, 2014 is AFFIRMED.

SO ORDERED.[10]

After respondents' motion for reconsideration was denied by the NLRC, they elevated the case to the CA and on March 19, 2015, the CA reversed the decision of the NLRC, thus:

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[9] *Id.* at 263-264.

[10] *Id*. at 351.

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby GRANTED. The assailed Decision dated April 16, 2014 and the Resolution dated May 23, 2014 of the NLRC, Fourth Division in NLRC LAC OFW Case No. (M) 03-000230-14, NLRC NCR OFW Case No. (M) 02-02505-13 are hereby SET ASIDE.

Petitioners are hereby ORDERED to pay private respondent Cutanda the amount of USD10,075.00 in disability benefits, to be paid in Philippine currency equivalent at the exchange rate during the time of payment. The award of moral damages and attorney's fees are ordered DELETED.

SO ORDERED.[11]

The CA ruled that the company-designated physician, Dr. Hosaka, was able to make a determination that petitioner has a Grade 10 disability within the 240-day period from the time he suffered his injury, thus, such declaration effectively prevented petitioner's temporary disability from becoming permanent. It also held that based on the POEA-SEC, disability payments are compensated in accordance with the schedule of benefits enumerated under Section 32 thereof. Furthermore, the CA ruled that without successfully refuting the medical assessment of Dr. Hosaka by making use of the option provided for under Section 20 (A) (3) of the POEA-SEC, petitioner's claim must necessarily fail. As such, the CA opined that since the POEA-SEC expressly states that any item in the schedule of disabilities under section 32 with a classification Grade 1 shall be considered and shall constitute total and permanent disability, then all other grades, including the diagnosis of Dr. Hosaka that petitioner is suffering from Grade 10 disability cannot be considered total and permanent. It then added that injuries classified under Grade 1 disabilities are more severe and traumatic, and more pervasive in its effects and that needless to state, the severity of the injuries classified under Grade 1 will indubitably and completely render the worker incapable of earning livelihood from a job he is accustomed to is trained to perform, thus, the CA is not prepared to put in equal footing petitioner with those who suffered far

[11] *Id.* at 96-97.

worse, and to award him the same amount of benefits intended to those who are clearly and irrefutably, totally and permanently disabled. As to deletion of moral damages and attorney's fees, the CA ruled that there is a lack of factual and legal bases to award such.

Hence, the present petition after the denial petitioner's motion for reconsideration. Petitioner assigns the following grounds/ reasons for the allowance of his petition:

(1) THE HONORABLE COURT OF APPEALS ACTED IN A WAY NOT IN ACCORD WITH THE DECISIONS OF THIS HONORABLE SUPREME COURT IN HOLDING THAT SEAMAN CUTANDA DID NOT SUFFER PERMANENT TOTAL DISABILITY DESPITE THE FACT THAT HE HAS BEEN UNABLE TO RETURN TO HIS WORK AS SEAMAN FOR MORE THAN 240 DAYS BECAUSE OF HIS WORK-RELATED INJURY.

(2) THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE PRESUMPTION OF PERMANENT TOTAL DISABILITY ENUNCIATED IN THE CASE OF ALPHA SHIP MANAGEMENT CORPORATION VS. CALO (G.R. NO. 192034, JANUARY 13, 2014)

(3) THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN APPLYING ONLY SEC. 32 OF THE POEA STANDARD EMPLOYMENT CONTRACT IN MEASURING THE DEGREE OF SEAMAN CUTANDA'S DISABILITY WITHOUT REGARD TO THE LABOR CODE PROVISIONS WHICH ARE APPLICABLE TO SEAFARERS.

(4) THE HONORABLE COURT OF APPELAS ERRED IN NOT APPYING THE LABOR CODE CONCEPT OF PERMANENT TOTAL DISABILITY TO THE CASE AT BAR.

(5) THE HONORABLE COURT OF APPEALS ERRED IN ITS APPRECIATION OF EVIDENCE IN NOT FINDING THAT THERE IS NO NEED FOR SEAMAN CUTANDA TO SEEK THE OPINION OF HIS OWN DESIGNATED PHYSICIAN SINCE THE COMPANY-DESIGNATED PHYSICIAN ALREADY DECLARED HIM UNFIT TO WORK.

(6) THE COURT OF APPEALS DEPARTED FROM THE USUAL COURSE OF PROCEEDINGS IN REVERSING THE NLRC'S FINDINGS AFFIRMING THOSE OF THE LABOR ARBITER,

WHICH ARE ENTITLED TO RESPECT AND FINALITY, BEING SUPPORTED BY SUBSTANTIAL EVIDENCE.

(7) THE COURT OF APPEALS GRAVELY ERRED REVERSING THE FINDINGS OF BOTH THE LABOR ARBITER AND THE NLRC THAT SEAMAN CUTANDA IS ENTITLED TO THE MAXIMUM OR "GRADE 1" DISABILITY COMPENSATION UNDER THE POEA STANDARD EMPLOYMENT CONTRACT.

(8) THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE FINDINGS OF BOTH THE LABOR ARBITER AND THE NLRC THAT THE RESPONDENTS ARE LIABLE FOR MORAL DAMAGES AND ATTORNEY'S FEES.[12]

In their Comment[13] dated November 23, 2015, the respondents insist that the CA did not err in ruling that petitioner is only entitled to the benefits under the classification of Grade 10 and that the arguments the latter presented in his petition are factual and cannot be the subject of a petition for *certiorari* under Rule 45 of the Rules of Court.

As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court[14] are reviewable by this Court.[15] Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much

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

[13] *Id.* at 485-518.

[14] Section 1, Rule 45 of the Rules of Court, as amended, provides:

Section 1. *Filing of petition with Supreme Court.* A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[15] *Philippine Transmarine Carriers, Inc. v. Cristino*, G.R. No. 188638, December 9, 2015, 777 SCRA 114, 127, citing *Heirs of Pacencia Racaza v. Spouses Abay-Abay*, 687 Phil. 584, 590 (2012).

respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[16] However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;'
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[17]

While the issue as to whether or not petitioner's illness is compensable as total and permanent disability is essentially a factual issue, the present case falls under one of the exceptions because the findings of the CA differ with that of the NLRC. Hence, a resolution of the issues presented before this Court is necessary.

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[16] *Id*., citing *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al*., 620 Phil. 505, 512 (2009).

[17] *Id*. at 127-128, citing *Co v. Vargas*, 676 Phil. 463, 471 (2011).

This Court finds this present petition meritorious.

The following are the applicable provisions of laws that govern a seafarer's disability claim as summarized in *Jebsen Maritime, Inc., et al. v. Ravena*:[18]

> The entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract and the medical findings.
>
> By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI (Disability benefits) of the Labor Code, in relation to Rule X, Section 2 of the Rules and Regulations Implementing the Labor Code.
>
> By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency executes prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.
>
> Lastly, the medical findings of the company-designated physician, the seafarer's personal physician, and those of the mutually-agreed third physician, pursuant to the POEA-SEC, govern.

Pertinent to the resolution of this petition's factual issues of compensability (of *ampullary* cancer) and compliance (with the POEA-SEC prescribed procedures for disability determination) is Section 20-B of the 2000 POEA-SEC (the governing POEA-SEC at the time the petitioners employed Ravena in 2006). It reads in part:

> SECTION 20. COMPENSATION AND BENEFITS
>
> x x x x x x x x x
>
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> x x x x x x x x x
>
> 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

[18] 743 Phil. 371 (2014).

the seafarer is declared fit to work or 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 by the company-designated physician or the degree of permanent disability has been assessed by the company-designated physician** but in no case shall it 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 illness not listed in Section 32 of this Contract are disputably presumed as work related.

x x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused either by injury or illness, the seafarer shall be compensated in accordance with the schedule of 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. (Emphasis and underscoring supplied)

x x x x x x x x x

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.[19]

Thus, in situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.[20]

This Court finds that the facts as found by the NLRC are accurate, indisputable and based on the evidence presented, thus:

Here, it is undisputed that on October 8, 2012, complainant had an accident on board respondents' vessel while in the performance of his duties as Key Able Seaman. Complainant's left had was caught and crushed by the tug's line (rope). He sustained laceration wound on his left index and middle fingers which required toilet, debridement

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[19] *Jebsen Maritime, Inc. v. Ravena, supra*, at 385-387. (Citations omitted)

[20] *Id.,* at 388-389.

and suturing of wounds, and some medications at the Puteri Specialist Hospital (Johor) in Malaysia. The attending medications thereat found complainant unfit for sea duty, resulting to the latter's repatriation the following day, October 9, 2012, for further medical treatment and management. Complainant was examined by respondents' company-designated physician at the Notre Dame Medico Dental Clinics, Inc., who recommended him for physical therapy at the Panay Orthopaedic & Rehabilitation Institute in Iloilo City. Complainant underwent physical therapy sessions thereat from November 7, 2012 to March 1, 2013. On February 11, 2013, while complainant finished only 4 sessions out of the 12 sessions prescribed by the Rahab Medicine Specialist, the company-designated physician already assessed complainant's disability as Grade 10.

As such, it was duly proven that petitioner can claim the compensation and benefits that Section 20-B of the POEA-SEC provides. The issue then arises as to whether he is entitled to a permanent and total disability compensation or not. The CA, in ruling that he is not entitled, stated that the company-designated physician, Dr. Hosaka, was able to make a determination that petitioner has a Grade 10 disability within the 240-day period from the time he suffered his injury, thus, such declaration effectively prevented petitioner's temporary disability from becoming permanent.

In *Marlow Navigation Philippines, Inc. v. Osias*[21] this Court expounded on the 120-day and 240-day periods, thus:

> As early as 1972, the Court has defined the term permanent and total disability in the case of *Marcelino v. Seven-Up Bottling Co. of the Phil*, in this wise: "[permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for, or accustomed to perform, or any other kind of work which a person of his mentality and attainments could do."
>
> The present controversy involves the permanent and total disability claim of a specific type of labourer – a seafarer. The substantial rise in the demand for seafarers in the international labor market led to an increase of labor standards and relations issues, including claims

[21] G.R. No. 215471, November 23, 2015, 775 SCRA 342.

for permanent and total disability benefits. To elucidate on the subject, particularly on the propriety and timeliness of a seafarer's entitlement to permanent and total disability benefits, a review of the relevant laws and recent jurisprudence is in order.

Article 192(c) (1) of the Labor Code, which defines permanent and total disability of laborers, provides that:

ART. 192. Permanent Total Disability.

x x x x x x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for **more than one hundred twenty days**, except as otherwise provided in the Rules; [emphasis supplied]

The rule referred to is Rule X, Section 2 of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code (*IRR*), which states:

Sec. 2. Period of entitlement. – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. [Emphasis and Underscoring Supplied]

These provisions should be read in relation to the 2000 Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*) whose Section 20 (B) (3) states:

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.** [Emphasis Supplied]

In *Crystal Shipping, Inc. v. Natividad*, (*Crystal Shipping*) the Court ruled that "[permanent disability is the inability of a worker to perform

his job for more than 120 days, regardless of whether or not he loses the use of any part of his body." Thereafter, litigant-seafarers started citing *Crystal Shipping* to demand permanent and total disability benefits simply because they were incapacitated to work for more than 120 days.

The *Court in Vergara v. Hammonia Maritime Services, Inc. (Vergara)*, however, noted that the doctrine expressed in *Crystal Shipping* – that inability to perform customary work for more than 120 days constitutes permanent total disability — should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. It was provided therein that:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made <u>because the seafarer requires further medical attention</u>, then the temporary total disability period may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition. [Emphasis and Underscoring Supplied]

In effect, by considering the law, the POEA-SEC, and especially the IRR, *Vergara* extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Moreover, in that case, the disability grading provided by the company-designated physician was given more weight compared to the mere incapacity of the seafarer therein for a period of more than 120 days.

The apparent conflict between the 120-day period under *Crystal Shipping* and the 240-day period under *Vergara* was observed in the

case of *Kestrel Shipping Co., Inc. v. Munar (Kestrel).* In the said case, the Court recognized that *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping*. A seafarer's inability to work despite the lapse of 120 days would not automatically bring about a total and permanent disability, considering that the treatment of the company-designated physician may be extended up to a maximum of 240 days. In *Kestrel,* however, as the complaint was filed two years before the Court promulgated *Vergara* on October 6, 2008, then the seafarer therein was not stripped of his cause of action.

To further clarify the conflict between *Crystal Shipping* and *Vergara,* the Court in *Montierro v. Rickmers Marine Agency Phils., Inc.* stated that "[i]f the maritime compensation complaint was filed prior to October 6, 2008, the 120-day rule applies; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies."

Then came *Carcedo v. Maine Marine Phils., Inc. (Carcedo).* Although the said case recognized the 240-day rule in Vergara, it was pronounced therein that "[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, **subject to the periods prescribed by law.**" Carcedo further emphasized that "[t]he company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled."

Finally, in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr, (Elburg)*, it was affirmed that the Crystal Shipping doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, the pronouncement in *Carcedo* was reiterated – that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any

justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In essence, the Court in *Elburg* no longer agreed that the 240-day period provided by *Vergara*, which was sourced from the IRR, should be an absolute rule. The company-designated physician would still be obligated to assess the seafarer within the original 120-day period from the date of medical repatriation and only with sufficient justification may the company-designated physician be allowed to extend the period of medical treatment to 240 days. The Court reasoned that:

> Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.
>
> On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.
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> x x x x x x x x x

Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took into consideration the applicability of both the 120-day period under the

Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.

Hence, as it stands, the current rule provides: **(1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.**

For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws and regulations is to strive for social justice over the diverging interests of the employer and the employee.[22]

In *Elburg Shipmanagement Phils., Inc. et al. v. Quiogue, Jr.*[23] this Court set forth the following guidelines, to wit:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. **If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient**

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[22] *Marlow Navigation Philippines, Inc., et al. v Osias, supra*, at 352-359. (Citations omitted)

[23] G.R. No. 211882, July 29, 2015, 764 SCRA 431, 453-454.

justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In the present case, the conflict arises in the findings of the company-designated physician and that of the "Iloilo coordinating physician and surgeon." Although the company-designated physician, Dr. Hosaka, was able to make a determination that petitioner has a Grade 10 disability within the 240-day period or on February 11, 2013, the attending physician at the company-designated Panay Orthopaedic & Rehabilitation Institute, Iloilo City, issued a Medical Certificate on April 2, 2013 or on the 174th day, stating that complainant is "not fit to work" as of that date, and recommended that he undergo rehabilitation treatment for another 3 to 6 months. As correctly observed by the NLRC, neither of the two, the company-designated physician and the coordinating physician and surgeon declared petitioner fit to work or has already regained full use of his injured fingers, thus:

However, the company-designated physician at the Notre Dame Medico Dental Clinic, Inc. never issued any certification declaring that complainant is already fit for sea duties as of February 11, 2012, when he issued the Grade 10 disability grading for complainant. Also, the company-designated physician thereat never lifted the finding of the company-designated physician in Puteri Specialist Hospital (Johor), Malaysia, that complainant is unfit for sea duty, which required his repatriation for further medical treatment and management. Hence, such finding of unfitness for sea duty remains.

In fact, the attending physician at the company-designated Panay Orthopaedic & Rehabilitation Institute, Iloilo City, issued a Medical Certificate on April 2, 2013, stating that complainant is "not fit to work" as of that date, and recommended that he undergo rehabilitation treatment for another 3 to 6 months. Unfortunately, there is no showing in the records that respondents heeded said recommendation. There

is no showing in the records that respondents directed complainant to undergo further much needed rehabilitation treatment after his last physical therapy session of March 1, 2013.

Notably,, from October 9, 2012 when complainant was disembarked from the vessel for further medical treatment and management, up to this writing, which is more that eighteen (18) months, and obviously more than 240 days, there is no showing in the records that he was able to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform, any kind of work which a person of his mentality and attainment could do, much less, as a seaman. Indeed, no profit-oriented employer would ever employ as Key Able Seaman or Able Seaman in an ocean-going vessel, a person, like complainant, who has "limitation in motion of digits 2-3 (L) hand with poor grip."[24]

The very purpose of those periods is the proper determination as to whether the injured seafarer categorized as Grade 2 to 14 can, in legal contemplation, be considered as totally and permanently disabled. Indeed, under Section 32[25] of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent.[26] However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled.[27] In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation

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[24] *Rollo*, pp. 349-350.

[25] NOTE: Any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability.

[26] *Olidana v. Jebsens Maritime, Inc*., G.R. No. 215313, October 21, 2015, 773 SCRA 592, 605, citing *Kestrel Shipping Co., Inc., et al. v. Munar*, 702 Phil. 717, 730 (2013).

[27] *Id.*

(*AREC*) implementing Title II, Book IV of the Labor Code.[28] That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do.[29] Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.[30] Moreover, the company-designated physician is expected to arrive at a **definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days**.[31] That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.[32]

In this case, although petitioner has been assessed to fall under the category of Grade 10 within the period provided by law, such was not a definite assessment as to his fitness to work as shown by the medical certificates issued by the company-designated physician and the coordinating physician and surgeon. The findings of the Labor Arbiter accurately show such conclusion, thus:

x x x Based on the Accident Report dated October 8, 2012 rendered by the Master, it appears that the complainant's left hand was accidentally crushed while he was performing his duties on the date in question. Consequently, he was signed off from the vessel and was back in the Philippines on October 9, 2012. On the following day, he was seen by the company physician who rendered a report with the following remarks: debridement and suturing of the complainant's left index and middle fingers were done in Malaysia; x-ray was done and showed fracture. In his report dated January 9, 2013, the company physician stated that the complainant had "completed 24 sessions of physical therapy" and that he was recommending the continuation of his physical therapy for another

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[28] *Id.*

[29] *Id.* at 730-731.

[30] *Id.* at 731.

[31] *Id.*

[32] *Id.*

month. The last reports rendered by the company physician are both dated February 11, 2013. The following contents thereof are noteworthy:

Report dated February 11, 2013:

- In the month of February, the complainant was seen by the Iloilo coordinating physician and surgeon.
- The complainant finished four (not 24) sessions of physical therapy.
- Findings: lacks full flexion of the index finger but has a good grip strength.
- Diagnosis: lacerated wounds, w2nd and 3rd digits, left hand.
- Recommendation: refer back to Rehab Medicine

Specialist on February 14, 2013

Report dated February 11, 2013

- Estimated length of further medical treatment: another one month of physical therapy which he needs to fully recover.
- Diagnosis and chances of returning to work: Good chance of returning to work.

At this point we are recommending him for disability grading 10 under hands: loss of grasping power for small object between the fold of the finger of one hand."

The complainant submitted four (4) medical certificates issued by physicians of the Panay Orthopedic & Rehabilitation Institute in Iloilo City, who are apparently the "Iloilo coordinating physician and surgeon" referred to by the company physician in his report dated February 11, 2013. The following contents of the above mentioned medical certificates are noteworthy:

Medical Certificate dated January 4, 2013:

- Complainant was first examined on January 4, 2013.
- Complainant's condition: limited full extension flexion of 2nd& 3d digits.

- Recommendation: continuation of rehab for another 2-3 months.

Medical Certificate dated April 2, 3013

- Complainant was seen on April 2, 2013.

- Remarks: patient is not fit to work, still has limitation in motion of digits 2-3 left hand with poor grip; continued rehab treatment for another 3-6 months recommended.

Medical Certificate dated April 3, 2013

- The complainant underwent 24 treatment sessions from November 7, 2012 to February 26, 2013 and one such session in March 2013.

Medical Certificate dated June 5, 2013

- The complainant was seen on June 5, 2013.

The complainant was declared unfit to work.[33]

From the above findings, it appears that petitioner had been unfit to work way beyond the 240 days provided by law, hence, petitioner can be legally considered as totally and permanently disabled and is entitled to permanent total compensation of US$60,000.00 under Section 32 of the POEA-SEC.

In finding otherwise, the CA ruled that it is not prepared to put in equal footing petitioner with those who suffered far worse or those classified under Grade 1. This is a wrong sentiment and interpretation of the law. As stated earlier, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled.

As to the award of moral damages and attorney's fees, this Court, also finds it appropriate to sustain the ruling of the NLRC. As correctly ruled by the NLRC:

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[33] *Rollo*, pp. 257-260.

Anent the claim for moral damages, We find that respondents, in evident bad faith, discontinued complainant's much need rehabilitation treatment for three (3) to six (6) months more, as recommended on April 2, 2013 by the attending physician at the company-designated Panay Orthopaedic & Rehabilitation Institute, Iloilo City. Hence, his award for moral damages must be sustained.

Complainant's award for attorney's fees equivalent to ten percent (10%) of his total monetary award must also be affirmed. This is pursuant to Article 2208 (8) of the Civil Code, which states that the award of attorney's fees is justified for indemnity under the workmen's compensation and employer's liability laws.[34]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated August 26, 2015 of petitioner Desiderio C. Cutanda is **GRANTED** and the Decision dated March 19, 2015 and Resolution dated July 1, 2015, both of the Court of Appeals are **REVERSED** and **SET ASIDE**. Consequently, the Decision dated April 16, 2014 and Resolution dated May 23, 2014 of the National Labor Relations Commission, 4th Division granting petitioner total and permanent disability benefits in the amount of US$60,000.00, attorney's fees in the amount of US$6,000.00, and moral damages in the amount of ₱50,000.00, are **AFFIRMED** and **REINSTATED.**

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[34] *Id.* at 350.

SECOND DIVISION

[G.R. No. 221620. September 11, 2017]

TERESA R. IGNACIO, represented by her Attorney-in-fact, ROBERTO R. IGNACIO, *petitioner, vs.* **OFFICE OF THE CITY TREASURER OF QUEZON CITY, VICTOR B. ENDRIGA, OFFICE OF THE CITY ASSESSOR OF QUEZON CITY, THE REGISTRAR OF DEEDS OF QUEZON CITY, ATTY. FELIXBERTO F. ABAD, and ALEJANDRO RAMON and RACQUEL DIMALANTA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; CONFERRED BY LAW AND DETERMINED FROM THE MATERIAL AVERMENTS IN THE COMPLAINT AND THE CHARACTER OF THE RELIEF SOUGHT.— Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. **Case law holds that jurisdiction is conferred by law and determined from the nature of action pleaded as appearing from the material averments in the complaint and the character of the relief sought.** Once the nature of the action is determined, it remains the same even on appeal until a decision rendered thereon becomes final and executory.

2. ID.; ID.; ID.; ID.; APPELLATE JURISDICTION OF THE COURT OF TAX APPEALS (CTA) OVER THE DECISIONS OF THE REGIONAL TRIAL COURT (RTC) BECOMES OPERATIVE ONLY WHEN THE CASE INVOLVES A LOCAL TAX ISSUE.— Based on the above-cited provision of law, it is apparent that the CTA's appellate jurisdiction over decisions, orders, or resolutions of the RTCs becomes operative only when the RTC has ruled on a local tax case. Thus, before the case can be raised on appeal to the CTA, the action before the RTC must be in the nature of a tax case, or one which primarily involves a tax issue. x x x [C]ases decided

by the RTC which involve issues relating to the power of the local government to impose real property taxes are considered as local tax cases, which fall under the appellate jurisdiction of the CTA. To note, these issues may, *inter alia*, involve the legality or validity of the real property tax assessment; protests of assessments; disputed assessments, surcharges, or penalties; legality or validity of a tax ordinance; claims for tax refund/credit; claims for tax exemption; actions to collect the tax due; and even prescription of assessments.

3. **ID.; ID.; ID.; ID.; WHERE THE RTC DECISION EMANATES FROM AN ACTION FOR RECOVERY OF OWNERSHIP AND POSSESSION WHICH IS NOT ANCHORED ON A TAX ISSUE BUT ON DUE PROCESS CONSIDERATIONS, THE CASE WAS PROPERLY ELEVATED TO THE COURT OF APPEALS.—** [A] reading of the Annulment Complaint shows that Teresa's action before the RTC-Br. 85 is **essentially one for recovery of ownership and possession of the property, with damages, which is not anchored on a tax issue, but on due process considerations.** Particularly, she alleged that: (*a*) public respondents sent the Notice of Delinquency in July 2008, and the corresponding Warrant of Levy in May 2009, to a wrong address; (*b*) they knew her correct address as early as March 2007, or before they sent the Notice and Warrant; (*c*) she had in fact already filed an action against them involving a different property, for likewise sending the notice to a wrong address; and (*d*) their willful violation of her right to notice of the levy and auction sale deprived her of her right to take the necessary steps and action to prevent the sale of the property, participate in the auction sale, or otherwise redeem the property from Sps. Dimalanta. In other words, the Annulment Complaint's allegations do not contest the tax assessment on the property, as Teresa only bewails the alleged lack of due process which deprived her of the opportunity to participate in the delinquency sale proceedings. As such, the RTC-Br. 85's ruling thereon could not be characterized as a local tax case over which the CTA could have properly assumed jurisdiction on appeal. In fine, the case was correctly elevated to the CA.

4. **ID.; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*, DEFINED; REQUISITES TO ABSOLUTELY BAR A SUBSEQUENT ACTION.—** *Res judicata* literally means a

matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. It also refers to the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. For *res judicata* to absolutely bar a subsequent action, the following requisites must concur: (*a*) the former judgment or order must be final; (*b*) the judgment or order must be on the merits; (*c*) it must have been rendered by a court having jurisdiction over the subject matter and parties; and **(*d*) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action**.

5. ID.; ID.; ID.; ID.; *RES JUDICATA*, NOT A CASE OF; THE DECISION IN THE CANCELLATION CASE DOES NOT BAR THE FILING OF ANNULMENT CASE AS THERE IS NO IDENTITY OF CAUSES OF ACTION BETWEEN THESE TWO CASES.— [I]t is clear that the causes of action in the two (2) cases are different: in the Cancellation Case, the cause is the expiration of the one-year redemption period without the landowners having redeemed the property; whereas in the Annulment Case, the cause is the alleged nullity of the auction sale for denial of the property owners' right to due process. Moreover, the issues raised and determined in these cases differ: in the former, the issue is whether Sps. Dimalanta is entitled to the cancellation of Teresa's TCT and the issuance of a new one in their favor; while in the latter, the issue is whether she is entitled to recover the property, and to damages. The LRC, in the Cancellation Case, granted Sps. Dimalanta's petition based simply on a finding that there was indeed a failure to redeem the property within the one-year period therefor, without ruling on whether the property's owners were duly notified of the auction sale. In other words, the validity of the auction sale raised as an issue in the Annulment Case was never an issue, nor was it determined with finality, in the Cancellation Case. Since the validity of the auction sale was not raised or resolved in the December 22, 2011 Decision in the Cancellation Case, the subsequent filing of the complaint in the Annulment Case was not barred by *res judicata*.

6. ID.; ID.; FORUM SHOPPING, CONCEPT OF; TEST TO DETERMINE WHETHER A PARTY VIOLATED THE RULE AGAINST FORUM SHOPPING; REQUISITES OF *LITIS PENDENTIA* AS A GROUND FOR THE DISMISSAL OF CIVIL ACTION; NO *LITIS PENDENTIA* EXISTS BETWEEN THE ANNULMENT CASE AND THE PETITION FOR RELIEF AS THE RIGHTS ASSERTED AND THE RELIEFS PRAYED FOR ESSENTIALLY DIFFER.— Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved by some other court, to increase the chances of obtaining a favorable decision if not in one court, then in another. **To determine whether a party violated the rule against forum shopping, it is crucial to ask whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another**. As compared to the doctrine of *res judicata*, which had been explained above, *litis pendentia*, as a ground for the dismissal of a civil action, pertains to a situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. Its requisites are: (*a*) identity of parties or at least such parties that represent the same interests in both actions; (*b*) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (*c*) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. In this case, the Court finds that no *litis pendentia* exists between the Annulment Case and the Petition for Relief, as the rights asserted and reliefs prayed for, even though based on similar set of facts, essentially differ. Moreover, any judgment rendered in one will not necessarily amount to *res judicata* in the action under consideration: on one hand, a ruling in the Annulment Case may result in the recovery of the property's ownership and possession; on the other hand, a favorable ruling in the Petition for Relief will result only in the setting aside of the LRC Decision in the Cancellation Case.

APPEARANCES OF COUNSEL

Reynaldo C. Rafael for petitioner.

Racquel R. Dimalanta for respondent spouses Alejandro Ramon and Racquel Dimalanta.

Office of the City Attorney for respondents Office of the City Treasurer of Quezon City, *et al*.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Resolutions dated January 26, 2015[2] and November 24, 2015[3] of the Court of Appeals (CA) in CA-G.R. CV No. 102111, which affirmed the Resolution[4] dated June 3, 2013 of the Regional Trial Court of Quezon City (RTC), Branch 85 (RTC-Br. 85) in Civil Case No. Q-12-70759 dismissing the complaint[5] filed by petitioner Teresa R. Ignacio (Teresa) for annulment of warrant of levy, public auction sale, recovery of ownership and possession, and damages on the ground of *res judicata*.

The Facts

On February 9, 2012, Teresa, represented by her Attorney-in-Fact, Roberto R. Ignacio, filed before the RTC-Br. 85 a Complaint[6] for Annulment of Warrant of Levy, Public Auction Sale, Sheriffs Certificate of Sale, Recovery of Ownership and Possession, and Damages (Annulment Complaint), docketed as Civil Case No. Q-12-70759 (**Annulment Case**), against the

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[1] *Rollo*, pp. 8-27.

[2] *Id*. at 30-34. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Samuel H. Gaerlan and Pedro B. Corales, concurring.

[3] *Id*. at 36-38.

[4] *Id*. at 159-163. Penned by Presiding Judge Maria Filomena D. Singh.

[5] Dated February 6, 2012. *Id*. at 66-78.

[6] *Id*.

Office of the City Treasurer of Quezon City, Victor B. Endriga (Endriga), the Office of the City Assessor of Quezon City, the Registrar of Deeds (RD) of Quezon City, and Atty. Felixberto F. Abad (Abad; collectively, public respondents), and Spouses Alejandro Ramon and Racquel Dimalanta (Sps. Dimalanta). Teresa alleged that she is the registered co-owner of a real property covered by Transfer Certificate of Title (TCT) No. 60125[7] which public respondents, with malice and bad faith, sold at a public auction in 2009 to Sps. Dimalanta without notice of the levy and auction sale proceedings, thereby depriving her of said property without due process of law.[8] She added that public respondents were in bad faith as they did not return to her the difference between the bid price paid by Sps. Dimalanta and her alleged tax liability.[9]

Accordingly, she prayed that judgment be rendered ordering: (*a*) the annulment and cancellation of the Warrant of Levy[10] and Notice of Levy,[11] as well as of the Certificate of Sale of Delinquent Property to Purchaser[12] and the public auction sale proceedings; (*b*) the City Treasurer of Quezon City to allow her to pay real estate taxes for the periods stated in the Statement of Delinquency[13] and the succeeding tax periods until updated, excluding interest and penalties for the succeeding periods; (*c*) the City Treasurer of Quezon City, Endriga and/or Abad to pay jointly and severally actual damages; and (*d*) Sps. Dimalanta, with the public respondents, to jointly and severally pay moral and exemplary damages, attorney's fees, and litigation expenses.[14]

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[7] *Id*. at 41-45.

[8] See *id*. at 66, 69, and 72-74.

[9] See *id*. at 74.

[10] *Id*. at 46.

[11] *Id*. at 49.

[12] *Id*. at 47.

[13] *Id*. at 48.

[14] See *id*. at 76-77.

In response,[15] public respondents argued that they had strictly complied with the legal and procedural requirements for the conduct of the public auction sale, particularly pointing out that they sent the auction sale notice[16] to the address she provided the Office of the City Assessor, *i.e.*, Tandang Sora Avenue, Quezon City, which the City Assessor used in the Tax Declaration[17] and which Teresa has not changed to date.[18]

For their part, Sps. Dimalanta moved[19] to dismiss the complaint, arguing that Teresa's cause of action is barred by the final judgment[20] in LRC Case No. Q-31505 (11)[21] (**Cancellation Case**) rendered by the RTC-Branch 83, acting as a land registration court (LRC), which upheld and confirmed the validity of the auction sale, including their ownership of the property, and ordered the issuance of a new title in their name.[22] They added that the complaint states no cause of action, as Teresa has no interest in the property;[23] and that she did not comply with Section 267,[24] Chapter V, Title II, Book II of the

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[15] See Answer dated April 12, 2012; *id*. at 81-92.

[16] Not attached to the *rollo*.

[17] *Rollo*, p. 83.

[18] *Id*. at 85.

[19] See Motion to Dismiss dated May 4, 2012; *id*. at 94-100.

[20] See Decision dated December 22, 2011, penned by Presiding Judge Ralph S. Lee (*id*. at 101-103) and the Certificate of Finality dated February 6, 2012, issued by Branch Clerk of Court Pearl Angeli F. Ronquillo (*id*. at 104).

[21] In the Motion to Dismiss, this case was referred to as "LRC Case No. 31777 (11)." It appears from the records that the parties, as well as the RTC-Br. 85, interchangeably used this docket number with LRC Case No. Q-31505 (11) for the Cancellation Case initiated by Sps. Dimalanta before the LRC that led to the December 22, 2011 Decision and February 6, 2012 Certificate of Finality. (See *id*. at 94-95, 161-162, 138, and 193).

[22] See *id*. at 94-96.

[23] See *id*. at 97-98.

[24] Section 267, Chapter V, Title II, Book II of the Local Government Code provides:

Local Government Code,[25] which requires a deposit with the court of the amount for which the real property was sold so that an action assailing the validity of the auction sale may be entertained.[26]

Public respondents subsequently filed a Manifestation,[27] similarly moving for the dismissal of the Annulment Complaint on the same ground of *res judicata*.

Meanwhile, on June 14, 2012, Teresa filed a Motion for Leave to File Petition for Relief from Judgment (with Motion to Set Aside Decision and Certificate of Finality)[28] and the corresponding Petition for Relief[29] before the LRC in the Cancellation Case, seeking to set aside the Decision dated December 22, 2011[30] and the Certificate of Finality[31] dated February 6, 2012 on the ground that the LRC did not make any ruling on the validity of the auction sale of the property covered

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> Sec. 267. Action Assailing Validity of Tax Sale. — No court shall entertain any action assailing the validity of any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

[25] Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991," approved on October 10, 1991.

[26] See *rollo*, pp. 98-99.

[27] Dated May 17, 2012; *id*. at 105-107.

[28] *Id*. at 134-137.

[29] See Petition for Relief from Judgment (With Motion to Set Aside Decision and Certificate of Finality; *id*. at 138-154. Teresa did not indicate in her Petition for Relief, docketed as LRC Case No. Q-31777 (11), the case docket number for the December 22, 2011 Decision and February 6, 2012 Certificate of Finality.

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

[31] *Id*. at 104.

by TCT No. 60125;[32] and that she was deprived of her right to due process when she was not notified of the notice/statement of delinquency and the warrant of levy.[33] In an Order[34] dated August 7, 2013, the LRC granted the aforesaid motion, allowing the parties to "file additional pleadings or memoranda x x x [a]fterwhich x x x the Petition for Relief from judgment will be submitted for resolution x x x."[35]

The RTC-Br. 85 Ruling

In a Resolution[36] dated June 3, 2013, the RTC-Br. 85 dismissed with prejudice the Annulment Complaint on the ground of *res judicata*, and declared that the LRC's December 22, 2011 Decision in the Cancellation Case, which involved the same property covered by the present complaint, has already attained finality per the February 6, 2012 Certificate of Finality;[37] thus, it is conclusive on all issues that could be raised in the Annulment Case in relation thereto.[38]

Teresa moved for reconsideration,[39] which the RTC-Br. 85 denied in a Resolution[40] dated December 19, 2013. Aggrieved, Teresa appealed[41] to the CA which public respondents and Sps. Dimalanta opposed essentially on jurisdictional and procedural grounds.[42]

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[32] *Id*. at 149.

[33] See *id*. at 142-146.

[34] *Id*. at 158.

[35] *Id*.

[36] *Id*. at 159-163. Penned by Presiding Judge Maria Filomena D. Singh.

[37] *Id*. at 162.

[38] See *id*. at 161.

[39] See motion for reconsideration dated July 22, 2013; *id*. at 167-174

[40] *Id*. at 192-195.

[41] See Brief for Plaintiff-Appellant dated August 8, 2014, *id*. at 199-219.

[42] See public respondents' Motion to Dismiss dated August 27, 2014 (*id*. at 222-225) and Sps. Dimalanta's Motion to Dismiss Appeal (With

The CA Ruling and Subsequent Proceedings

In a Resolution[43] dated January 26, 2015, the CA upheld the RTC-Br. 85's dismissal of the Annulment Complaint, declaring that the issue involving the subject property in the Annulment Case had already been decided with finality by the LRC Decision in the Cancellation Case; hence, barred by *res judicata*.[44]

Dissatisfied, Teresa moved[45] for reconsideration which the CA denied in a Resolution[46] dated November 24, 2015; hence, this petition.

In the interim, the LRC, in the Cancellation Case, issued a Resolution[47] dated February 9, 2015 denying Teresa's motion for leave to file the Petition for Relief. However, in a Resolution[48] dated June 11, 2015, the LRC admitted her motion for reconsideration[49] and ordered Sps. Dimalanta to comment on Teresa's Petition for Relief.

The Issues Before the Court

The essential issues for the Court's resolution are: (*a*) whether or not the CA has jurisdiction over Teresa's appeal from the RTC-Br. 85's Decision; (*b*) assuming the CA has jurisdiction, whether or not it erred in upholding the RTC-Br. 85's dismissal of the Annulment Case on the ground of *res judicata*; and (*c*) whether or not Teresa committed forum shopping when she filed the Petition for Relief in the Cancellation Case.

Reservation to File Appellee's Memorandum) dated October 27, 2014 (*id*. at 233-242).

[43] *Id*. at 30-34.

[44] See *id*. at 33.

[45] See Motion for Reconsideration dated February 17, 2015; *id*. at 245-255.

[46] *Id*. at 36-38.

[47] *Id*. at 286-288. Copy of the Resolution indicates the docket number L.R.C. Case No. Q-31505(11).

[48] *Id*. at 291-292.

[49] Not attached to the *rollo*.

The Court's Ruling

The petition is meritorious.

On the issue of jurisdiction, public respondents argue[50] that the RTC-Br. 85's Resolution dismissing with prejudice the Annulment Case on the ground of *res judicata* has already become final, maintaining that Teresa should have elevated the case to the Court of Tax Appeals (CTA), and not to the CA,[51] pursuant to Section 7 (a) (3) of Republic Act (RA) No. 9282,[52] *viz.*:

SEC. 7. *Jurisdiction*. – The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction[.]

The Court disagrees, as the CA properly assumed jurisdiction over Teresa's appeal.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.[53] In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. **Case law holds that jurisdiction is conferred by law and determined from the nature of action pleaded**

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[50] See Comment (on the Petition for Review on *Certiorari*) dated June 2, 2016; *rollo*, pp. 332-335.

[51] See *id*. at 332-333.

[52] Entitled "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES," (approved on March 30, 2004).

[53] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015, 759 SCRA 306, 311.

as appearing from the material averments in the complaint and the character of the relief sought.[54] Once the nature of the action is determined, it remains the same even on appeal until a decision rendered thereon becomes final and executory.

Based on the above-cited provision of law, it is apparent that the CTA's appellate jurisdiction over decisions, orders, or resolutions of the RTCs becomes operative only when the RTC has ruled on a local tax case. Thus, before the case can be raised on appeal to the CTA, the action before the RTC must be in the nature of a tax case, or one which primarily involves a tax issue. In *National Power Corporation v. Municipal Government of Navotas*:[55]

> Indeed, the CTA, sitting as Division, has jurisdiction to review by appeal the decisions, rulings and resolutions of the RTC over local tax cases, which includes real property taxes. This is evident from a perusal of the Local Government Code (LGC) which includes the matter of Real Property Taxation under one of its main chapters. Indubitably, the power to impose real property tax is in line with the power vested in the local governments to create their own revenue sources, within the limitations set forth by law. As such, the collection of real property taxes is conferred with the local treasurer rather than the Bureau of Internal Revenue.[56]

Thus, cases decided by the RTC which involve issues relating to the power of the local government to impose real property taxes are considered as local tax cases, which fall under the appellate jurisdiction of the CTA. To note, these issues may, *inter alia*, involve the legality or validity of the real property tax assessment; protests of assessments; disputed assessments, surcharges, or penalties; legality or validity of a tax ordinance; claims for tax refund/credit; claims for tax exemption; actions to collect the tax due; and even prescription of assessments.

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[54] See *Penta Pacific Realty Corporation v. Ley Construction and Development Corporation*, 747 Phil. 672 (2014); *Cabrera v. Francisco*, 716 Phil. 574 (2013); *Cadimas v. Carrion*, 588 Phil. 408 (2008); and *Jimenez, Jr. v. Jordana*, 486 Phil. 452 (2004).

[55] 747 Phil. 744 (2014).

[56] *Id*. at 753.

In this case, a reading of the Annulment Complaint shows that Teresa's action before the RTC-Br. 85 is **essentially one for recovery of ownership and possession of the property, with damages**,[57] **which is not anchored on a tax issue, but on due process considerations.** Particularly, she alleged that: (*a*) public respondents sent the Notice of Delinquency in July 2008, and the corresponding Warrant of Levy in May 2009, to a wrong address;[58] (*b*) they knew her correct address as early as March 2007, or before they sent the Notice and Warrant;[59] (*c*) she had in fact already filed an action against them involving a different property, for likewise sending the notice to a wrong address;[60] and (*d*) their willful violation of her right to notice of the levy and auction sale deprived her of her right to take the necessary steps and action to prevent the sale of the property, participate in the auction sale, or otherwise redeem the property from Sps. Dimalanta.[61] In other words, the Annulment Complaint's allegations do not contest the tax assessment on the property, as Teresa only bewails the alleged lack of due process which deprived her of the opportunity to participate in the delinquency sale proceedings. As such, the RTC-Br. 85's ruling thereon could not be characterized as a local tax case over which the CTA could have properly assumed jurisdiction on appeal. In fine, the case was correctly elevated to the CA.

Proceeding to the next issue, the Court finds that the Annulment Case was not barred by *res judicata*.

Res judicata literally means a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. It also refers to the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within

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[57] See *rollo*, p. 66.

[58] See *id*. at 69-70.

[59] See *id*. at 71.

[60] *Id*.

[61] See *id*. at 72-73.

its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[62]

For *res judicata* to absolutely bar a subsequent action, the following requisites must concur: (*a*) the former judgment or order must be final; (*b*) the judgment or order must be on the merits; (*c*) it must have been rendered by a court having jurisdiction over the subject matter and parties; and **(*d*) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action**.[63]

In this case, the Court disagrees with the conclusion reached by the RTC-Br. 85 and the CA that the December 22, 2011 Decision in the Cancellation Case barred the filing of the complaint in the Annulment Case as **there is no identity of causes of action between these two (2) cases**.

To recap, in the Cancellation Case, Sps. Dimalanta, as the petitioners, sought to compel the registered owners to surrender the owner's duplicate certificate of title, or, in the alternative, to cancel or annul TCT No. 60125 issued by the Quezon City-RD in the name of Sps. Krause Ignacio and Teresa Reyes, among others,[64] and issue new TCTs in their favor on the ground that the one-year redemption period had lapsed without the owners

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[62] *Republic of the Philippines v. Yu*, 519 Phil. 391, 395-396 (2006). See also *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376, 382 (2015); *Rivera v. Heirs of Villanueva*, 528 Phil. 570, 576 (2006); *Oropeza Marketing Corporation v. Allied Banking Corporation*, 441 Phil. 551, 563 (2002); and *Gutierrez v. CA*, 271 Phil. 463, 465 (1991), citing *Black's Law Dictionary*, p. 1470 (Rev 4th ed., 1968).

[63] *Dy v. Yu*, 763 Phil. 491, 509 (2015). See also *Republic of the Philippines v. Yu*, *id*. at 396; and *Gutierrez v. CA*, *id*. at 467.

[64] Teresa's co-owners whose names likewise appeared in TCT No. 60125 are: Sps. Antonio Ignacio and Priscilla Sarenas; Manula Ignacio; Sps. Modesta Ignacio and Ambrosio Makalintal, Jr.; Sps. Lydia Ignacio and John Russo; Sps. Lourdes Ignacio and Nicolas Roque; Sps. Marina Ignacio and Avelino Mendoza, Jr.; and Sps. Yolanda Lopez and Salvador Ignacio. See *rollo*, pp. 101-102.

having redeemed the property which they bought during an auction sale held on June 21, 2007 and July 2, 2009, where they emerged as the highest bidders.[65] At the initial hearing held on September 16, 2011, the LRC noted that the jurisdictional requirements were established with the marking in evidence of the petition, the notice of hearing, the proofs of service on the parties duly required by law to be notified, and the Certificate of Posting.[66] It then granted the petition after finding, during the *ex-parte* hearing, that Sps. Dimalanta purchased the subject property *via* said auction sale and that Teresa failed to redeem the same within the one-year redemption period therefor;[67] thus, they were adjudged to be entitled to the issuance of a new TCT in their names and to a writ of possession.[68]

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[65] *Id*. at 102.

[66] *Id*. at 101-102.

[67] See *id*. at 102-103.

[68] *Id*. at 103. The LRC particularly said:

> At the initial hearing on September 16, 2011, the jurisdictional requirements were established with the marking in evidence of the Petition dated June 21, 2011 (Exhibit "A"), the Notice of Hearing dated August 18, 2011 (Exhibit "B"), the proofs of service thereof upon the Office the Solicitor General, Office of the Land Registration Authority, Office of the Registry of Deeds, Office of the City Prosecutor, Office of the City Attorney (Exhibits "B-1" to "B-5") and the Certificate of Posting dated September 6, 2011 (Exhibit "C"). There being no oppositor around, an order of general default was declared and the petitioners were allowed to present their evidence *ex parte*.
>
> At the *ex parte* hearing held on September 22, 2011, petitioner Alejandro Ramon P. Dimalanta was presented to substantiate the petition. From the evidence adduced, the following facts were duly established: that Petitioner Alejandro Ramon P. Dimalanta and Racquel R. Dimalanta purchased [the parcel of land] covered by [TCT No. 60125] (Ignacio Property) x x x registered in the names of x x x Sps. Krause Ignacio & Teresa Reyes x x x via an auction sale held on July 2, 2009 x x x in which petitioners emerged as the highest bidder; that the [Certificate] of Sale [was] annotated in the [title] on x x x August 4, 2009 x x x; that after the lapse of one year without the registered owners redeeming the property, Final [Bill] of Sale [was] issued x x x; that this instant petition was filed with the alternative prayer for cancellation/annulment of the same and issuance of a new [TCT] in

In contrast, Teresa, in the Annulment Case, sought the annulment of the warrant and notice of levy, the auction sale, the certificate of sale, and the recovery of ownership and possession of the property, with damages[69] on the ground that she was not given notice of the levy and auction sale thereby depriving her of the property without due process of law. As earlier noted, Teresa alleged and argued in her complaint that public respondents sent the notice of the levy and auction sale proceedings to a vague and unspecified address, *i.e.*, Tandang Sora, Quezon City, even while they knew, as early as March 2007, that her correct address is No. 48 Broadway Street, New Manila, Quezon City;[70] and thus, effectively depriving her of her right to take the necessary steps to prevent the sale of her property or otherwise redeem it from Sps. Dimalanta.[71]

Based on the foregoing, it is clear that the causes of action in the two (2) cases are different: in the Cancellation Case, the cause is the expiration of the one-year redemption period without

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lieu thereof in the event that respondents would not or could not deliver the same. x x x.

Petitioners having proven its entitlement to the issuance of new titles in their names and to writ of possession, the instant petition should be favorably acted upon.

WHEREFORE, the petition dated June 21, 2011 is hereby GRANTED. x x x. (*Id*. at 101-103).

[69] *Id*. at 76-77.

[70] *Id*. at 70-71. See also the following: March 21, 2007 letter sent by Endriga to Teresa; April 18, 2007 letter-reply of Roberto R. Ignacio, Teresa's Attorney-in-Fact; April 27, 2007 letter sent by Endriga to Teresa, likewise sent to the same address; and the complaint filed by Teresa in May 2008 against the Quezon City Treasurer and Endriga, docketed as Civil Case No. Q-08-62657, all indicating No. 48, Broadway St., Quezon City as Teresa's permanent address (see *id*. at 50-53).

[71] See *id*. at 73. Particularly, she claimed that because of the lack of notice, she failed to: comply with the notice of delinquency by paying the delinquent tax due; prevent the annotation of the warrant of levy, or cause its lifting or cancellation, by paying the tax due; prevent the sale of the property at the auction sale, likewise by paying the tax due; participate in the public auction sale; and exercise her redemption right within the one-year period from the date of the auction sale.

the landowners having redeemed the property; whereas in the Annulment Case, the cause is the alleged nullity of the auction sale for denial of the property owners' right to due process. Moreover, the issues raised and determined in these cases differ: in the former, the issue is whether Sps. Dimalanta is entitled to the cancellation of Teresa's TCT and the issuance of a new one in their favor; while in the latter, the issue is whether she is entitled to recover the property, and to damages. The LRC, in the Cancellation Case, granted Sps. Dimalanta's petition based simply on a finding that there was indeed a failure to redeem the property within the one-year period therefor, without ruling on whether the property's owners were duly notified of the auction sale. In other words, the validity of the auction sale raised as an issue in the Annulment Case was never an issue, nor was it determined with finality, in the Cancellation Case. Since the validity of the auction sale was not raised or resolved in the December 22, 2011 Decision in the Cancellation Case, the subsequent filing of the complaint in the Annulment Case was not barred by *res judicata*.

Finally, the Court likewise finds that the filing of the Petition for Relief did not amount to forum shopping.

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved by some other court, to increase the chances of obtaining a favorable decision if not in one court, then in another.[72] **To determine whether a party violated the rule against forum shopping, it is crucial to ask whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another**.[73]

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[72] *Agrarian Reform Beneficiaries Association v. Fil-Estate Properties, Inc.*, G.R. No. 163598, August 12, 2015, 766 SCRA 313, 348.

[73] *Home Guaranty Corporation v. La Savoie Development Corporation*, 752 Phil. 123, 142 (2015), citing *Yap v. Chua*, 687 Phil. 392, 400 (2012).

As compared to the doctrine of *res judicata*, which had been explained above, *litis pendentia*, as a ground for the dismissal of a civil action, pertains to a situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. Its requisites are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[74]

In this case, the Court finds that no *litis pendentia* exists between the Annulment Case and the Petition for Relief, as the rights asserted and reliefs prayed for, even though based on similar set of facts, essentially differ. Moreover, any judgment rendered in one will not necessarily amount to *res judicata* in the action under consideration: on one hand, a ruling in the Annulment Case may result in the recovery of the property's ownership and possession; on the other hand, a favorable ruling in the Petition for Relief will result only in the setting aside of the LRC Decision in the Cancellation Case.[75]

In fine, absent any valid ground for the dismissal of the Annulment Case, the Court therefore orders that it be reinstated and, consequently, remanded to the RTC-Br. 85, which is hereby directed to proceed with and resolve the same with reasonable dispatch.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated January 26, 2015 and November 24, 2015 of the Court of Appeals in CA- G.R. CV No. 102111 are hereby **SET ASIDE**.

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[74] *Yap v. Chua*, *id*. at 400. See also *Bandillion v. La Filipina Uygongco Corporation,* G.R. No. 202446, September 16, 2015, 770 SCRA 624, 649; *Agrarian Reform Beneficiaries Association v. Fil-Estate Properties, Inc*., *supra* note 72, at 348-349; *Home Guaranty Corporation v. La Savoie Development Corporation, id*. at 142.

[75] See Section 6, Rule 38 of the Rules of Court.

Civil Case No. Q-12-70759 is hereby **REINSTATED** and consequently, **REMANDED** to the Regional Trial Court of Quezon City, Branch 85, in accordance with this Decision.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Peralta, Caguioa*, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 223262. September 11, 2017]

DENNIS M. CONCEJERO, *petitioner, vs.* **COURT OF APPEALS and PHILIPPINE NATIONAL BANK**, *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* IT WAS GRAVE ABUSE OF DISCRETION FOR THE COURT OF APPEALS TO DISMISS A PETITION FOR *CERTIORARI* ALTHOUGH THE RECORDS SHOWED THAT IT WAS FILED ON TIME.— The Court of Appeals should have noted the Motion for Extension of Time to File Petition for *Certiorari* seeking an extension of 15 days, considering that petitioner had 60 days within which to file the petition. Since the appellate court dismissed the case on November 3, 2014, when petitioner filed his Manifestation and Motion explaining that in filing the Motion for Extension of Time to File Petition for *Certiorari,* he overlooked Section 4, Rule 65 of the Rules of Court, which provides a period of 60 days to file a petition for *certiorari*, the appellate court could have recalled its Resolution dated November 3, 2014 when

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[*] Acting Chief Justice per Special Order No. 2479 dated August 31, 2017.

petitioner timely filed his petition. However, in the Resolution dated June 18, 2015, the appellate court merely noted petitioner's Manifestation and Motion on the ground that petitioner failed to file a motion for reconsideration of its Resolution dated November 3, 2014, dismissing the case, even if the records showed that petitioner filed his petition for *certiorari* on time. And, in the same Resolution dated June 18, 2015, the appellate court directed that the entry of the Resolution dated November 3, 2014 be effected by the Division Clerk of Court. Moreover, petitioner's motion for reconsideration of the Resolution dated June 18, 2015 was denied in the Resolution dated May 4, 2016. In effect, petitioner was deprived of the right to file his petition for *certiorari* within the 60-day period provided by Section 4, Rule 65 of the Rules of Court. Hence, the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the case docketed as CA-G.R. SP No. 137479 on November 3, 2014, even if the petition for *certiorari* was timely filed.

APPEARANCES OF COUNSEL

Celso Thomas B. Valmores for petitioner.
PNB Legal Group for respondent PNB.

D E C I S I O N

PERALTA, *J.*:

This is a petition for *certiorari* under Rule 65 of the Rules of Court, seeking to annul and set aside the Resolutions dated November 3, 2014, June 18, 2015, and March 4, 2016 of the Court of Appeals[1] on the ground that the assailed Resolutions were rendered with grave abuse of discretion amounting to lack or excess of jurisdiction.

The facts are as follows:

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[1] Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Magdangal M. De Leon and Stephen C. Cruz, concurring.

Petitioner Dennis M. Concejero was the Assistant Vice-President and Head of the Branch Operations Review Department (*BORD*) of respondent Philippine National Bank (*PNB*). As head of the BORD, petitioner was responsible for the overall review of compliance of domestic branches with internal control policies, established procedures and guidelines of the bank, among others. His primary mandate was to eradicate fraud and prosecute fraudsters. He supervised 26 Branch Operations Review Officers in their operations review of all branches, gave authority to convene the Regional Fact-Finding Committees, reviewed the reports and indorsed fraud to legal and audit.[2]

In a Memorandum dated January 24, 2013, respondent PNB, through its Administrative Board, charged petitioner with several acts constituting abuse of authority, concealment of knowledge of commission of fraud, deceit or other forms of irregularity, willful breach of trust resulting in loss of confidence and gross misconduct.[3]

Petitioner submitted his Answer to the charge on February 4, 2013.[4]

On February 5, 2013, petitioner was placed under preventive suspension for 30 days, beginning February 8, 2013 until March 9, 2013. Also, on February 5, 2013, PNB's Administrative Board conducted an administrative hearing where both petitioner and his counsel appeared.[5]

On February 13, 2013, respondent PNB, through its Chief Employee Relations Officer, issued an implementing Order on the administrative charge for abuse of authority, concealment, willful breach of trust and confidence against petitioner. In the said Order, the Administrative Board's Decision dated February 8, 2013 was quoted in its entirety and petitioner was

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[2] *Rollo*, pp. 65-66.

[3] *Id.* at 66.

[4] *Id.*

[5] *Id.*

further informed that the Board found him guilty of willful breach of trust resulting in loss of confidence and he was meted the penalty of dismissal.[6]

On April 4, 2013, petitioner filed a Complaint for illegal suspension and dismissal and prayed for separation pay in lieu of reinstatement and payment of his full backwages, holiday pay, 13th month pay, allowances, bonuses, moral and exemplary damages, and attorney's fees.[7]

On February 18, 2014, the Labor Arbiter ruled that petitioner's dismissal was for a just and valid cause and that he was afforded due process. The Labor Arbiter dismissed the complaint for lack of merit.[8]

Petitioner appealed the decision of the Labor Arbiter to the National Labor Relations Commission (*NLRC*).

In a Decision[9] dated July 31, 2014, the NLRC denied the appeal and affirmed the decision of the Labor Arbiter. It held:

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All told, the respondents have shown sufficient and substantial documentary and testimonial evidence to conclude that despite complainant's knowledge of the irregular lending activities at the Pioneer Branch, he willfully concealed its existence and that he prevented a formal investigation from being conducted on the matter. Since the complainant occupied a position imbued with trust and confidence, the commission of such misfeasance and nonfeasance resulted to the loss of the trust and confidence reposed in him by the respondent PNB. In Sagales vs. Rustan's Commercial Corporation, the Supreme Court held that in loss of trust and confidence, as a just cause for dismissal, it is sufficient that there must only be some basis for the loss of trust and confidence or that there is reasonable ground to believe, if not to entertain the moral conviction, that the employee

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[6] *Id*. at 66-67.

[7] *Id*. at 67.

[8] *Id*. at 68.

[9] *Id*. at 64-77.

concerned is responsible in the misconduct and that his participation in the misconduct rendered him absolutely unworthy of trust and confidence.

x x x x x x x x x

There being no illegal dismissal, the complainant's claim for full backwages, separation pay, holiday pay, 13th month pay, allowances, bonuses, moral and exemplary damages, and attorney's fees must likewise fail.

WHEREFORE, premises considered, the appeal is denied. The decision of the Labor Arbiter Cheryl M. Ampil dated February 18, 2014 is AFFIRMED.[10]

Petitioner's motion for reconsideration was denied by the NLRC in its Resolution[11] dated September 17, 2014. Petitioner received a copy of the Resolution on September 23, 2014.

On October 8, 2014, or 21 days after receipt of the NLRC Resolution denying his motion for reconsideration, petitioner filed with the Court of Appeals a Motion for Extension of Time to File Petition for *Certiorari*.[12] He stated therein that he received the NLRC Resolution denying his motion for reconsideration on September 23, 2014 and that he had until October 8, 2014 (or 15 days) to appeal the Resolution to the Court of Appeals through a petition for *certiorari*. He prayed that he be granted 15 days extension or until October 23, 2014 within which to file his petition for *certiorari* with the appellate court.

On November 3, 2014, the Court of Appeals promulgated a Resolution dismissing the case docketed as CA-G.R. SP No. 137479. The Resolution reads:

Given the absence, at this juncture, of the appropriate Petition for Certiorari, in keeping with counsel for petitioner's Motion for Extension therefor until October 23, 2014, SP No. 137479 is hereby DISMISSED.[13]

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

[11] *Id.* at 79.

[12] CA *rollo*, p. 3.

[13] *Id*. at 7.

Meanwhile, on October 23, 2014, petitioner's counsel filed a Manifestation and Motion[14] stating that in filing the Motion for Extension of Time to File Petition for *Certiorari* on October 8, 2014, he overlooked Section 4, Rule 65 of the Rules of Court, which provides a period of 60 days to file a petition for *certiorari*. Hence, his last day to file the petition is on November 22, 2014. He prayed that he be allowed to file his petition on or before November 22, 2014.

On November 24, 2014, petitioner filed his Petition for *Certiorari*[15] with the Court of Appeals.

On January 27, 2015, the Court of Appeals promulgated a Resolution, which reads:

> After the Resolution of November 3, 2014, the Rollo later disclosed the Manifestation and Motion dated October 22, 2014 as received by the Court on November 4, 2014, inclusive of the Petition for Certiorari (Rule 65) dated November 24, 2014, which Manifestation and Motion is REFERRED to the private respondent for Comment thereon in ten (10) days from notice thereof.[16]

On February 20, 2015, respondent filed a Comment/Opposition to Manifestation and Motion,[17] praying that petitioner's Manifestation and Motion be denied for lack or merit.

On March 10, 2015, the Court of Appeals promulgated its Resolution,[18] which reads:

> Petitioner's "Manifestation and Motion" and private respondent's Comment/Opposition thereto are now submitted for appropriate action.

On June 18, 2015, the Court of Appeals promulgated a Resolution, which reads:

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[14] *Id*. at 8.

[15] *Id*. at 10.

[16] *Id*. at 723.

[17] *Id*. at 724.

[18] *Id*. at 728.

Without any Motion for Reconsideration from counsel for petitioner after the dismissal of the current case per the Resolution of November 3, 2014, a copy of which was received by counsel for petitioner on November 10, 2014 per return card now on file, We hereby simply NOTE counsel for petitioner's Manifestation and Motion, subject-matter of the Resolutions of January 27, 2015 and March 10, 2015, and irrespective of counsel for respondent PNB's averments on the Comment/Opposition to Manifestation and Motion.

Accordingly, and by reason of the foregoing details, let the corresponding Entry of the Resolution of November 3, 2014 be effected by the Division Clerk of Court.[19]

On June 18, 2015, the Resolution dated November 3, 2015 became final and executory and was recorded in the Book of Entries of Judgment.[20]

Petitioner filed a motion for reconsideration of the Resolution dated June 18, 2015, which motion was denied by the Court of Appeals in a Resolution dated March 4, 2016, to wit:

Inasmuch as what ought to be resolved, at this juncture, was merely the prospect of recall of the Resolution of June 18, 2015, per counsel for petitioner's Motion for Reconsideration of the Resolution dated June 18, 2015, and like what We expressed on the assailed Resolution on the absence of any Motion for Reconsideration following the dismissal of SP No. 137479, through the initial Resolution of November 3, 2014, there was, therefore, no cogent legal basis for the recall of the Resolution of June 18, 2015.

Accordingly, We hereby DENY counsel for petitioner's Motion for Reconsideration of the Resolution dated June 18, 2015, especially so when the Resolution of November 3, 2014 attained the character of finality when it was not formally challenged by counsel for petitioner in the manner expected by the Rules of Court.[21]

Hence, this petition for *certiorari* under Rule 65 of the Rules of Court, alleging thus:

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[19] *Id*. at 730.

[20] *Id*. at 788.

[21] *Id*. at 810.

I

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED CA-G.R. SP No. 137479 BEFORE THE LAPSE OF THE SIXTY (60) DAY REGLEMENTARY PERIOD TO FILE A PETITION UNDER RULE 65.

II

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED PATENT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN, BEING AWARE OF THE PERIOD SET BY THE RULES, IT SIMPLY NOTED PETITIONER'S MANIFESTATION AND MOTION DATED OCTOBER 22, 2014, AND THEN ORDERED THE CORRESPONDING ENTRY OF THE RESOLUTION OF NOVEMBER 3, 2014 BY THE DIVISION CLERK OF COURT.

III

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED PATENT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN, AFTER NO REINSTATEMENT OF THE EARLIER ERRONEOUS DISMISSAL, IT DENIED PETITIONER'S MOTION FOR RECONSIDERATION DATED JULY 21, 2015 DESPITE THE FACT THAT HIS PETITION WAS CLEARLY FILED ON TIME.

IV

PUBLIC RESPONDENT COURT OF APPEALS COMMITTED PATENT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT EVADED PERFORMANCE OF A POSITIVE DUTY, THEREBY VIOLATING THE CONSTITUTION AND ITS OWN INTERNAL RULES.[22]

Petitioner states that while his former counsel erroneously asked for a 15-day extension with the mistaken belief that he had an original period of 15 days only to file the petition for *certiorari*, this was corrected just in time when the same counsel

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

filed the Manifestation and Motion dated October 22, 2014 pointing to his error.

Petitioner contends that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction because it dismissed the case based on Section 4, Rule 65 of the 1997 Rules of Civil Procedure as stated in Footnote No. 2 of the Resolution dated November 3, 2014. Considering that the appellate court recognized that the case (CA-G.R. SP No. 137479) was being appealed to it under Rule 65, it was incumbent upon the Court of Appeals to allow petitioner to file the required pleading within the period fixed by the Rules, and not whimsically shorten the same with full knowledge that the 60-day period had not yet lapsed. Since petitioner filed the petition within the prescribed period, nothing prevented the Court of Appeals from reinstating the petition, giving due course to the same and adjudicating the case on the merits.

Petitioner contends that the acts of the Court of Appeals of simply "noting" the Manifestation and Motion, ignoring the petition that was filed on time, and ordering the Entry of Resolution are tantamount to depriving him of his rights under the Rules of Court and ultimately in contravention of the dictates and guarantees of the Constitution. He also alleges that the Court of Appeals evaded performance of a positive duty, thereby violating the Constitution and its internal rules.

Petitioner prays that the Resolutions dated November 3, 2014, June 18, 2015, and March 4, 2016 promulgated by the Court of Appeals be reversed and set aside, and that the appellate court be ordered to admit the petition for *certiorari* and give it due course.

The main issue is whether or not the Court of Appeals gravely abused its discretion in dismissing petitioner's appeal from the Decision of the NLRC through a petition for *certiorari* under Rule 65 of the Rules of Court in its Resolution dated November 3, 2014.

We grant the petition.

The decision of the NLRC is appealable to the Court of Appeals through a petition for *certiorari* under Rule 65 of the Rules of Court, which provides:

> SEC. 4. *When and where petition filed.* — The petition shall be filed not later than **sixty (60) days** from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
>
> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. **If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.**
>
> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.[23]

Petitioner received notice of the NLRC Resolution denying his motion for reconsideration on September 23, 2014. On October 8, 2014, or 21 days after receipt of the NLRC Resolution, petitioner filed a Motion for Extension of Time to File Petition for *Certiorari*, asking for an extension of 15 days or until October 23, 2014 to file his petition.

Petitioner had 60 days to file a petition for *certiorari* under Rule 65. Since petitioner received the NLRC Resolution denying his motion for reconsideration on September 23, 2014, he had until November 22, 2014 (the 60th day) within which to file his petition. However, November 22, 2014 fell on a Saturday; hence, petitioner had until the next working day or until November 24, 2014 (Monday) to file the petition under Section 1, Rule 22 of the Rules of Court:

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[23] Emphasis supplied.

Section 1. *How to Compute Time*. — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day** of the period, as thus computed, **falls on a Saturday**, a Sunday, or a legal holiday in the place where the court sits, **the time shall not run until the next working day**.[24]

In the Resolution dated November 3, 2014, the Court of Appeals dismissed the case because petitioner failed to file his petition for *certiorari* on October 23, 2014 as prayed for in his earlier motion for extension, even if the 60-day period to file the petition under Section 4, Rule 65 had not lapsed.

Therefore, the Court finds that the Court of Appeals gravely abused its discretion in dismissing the case on November 3, 2014 before the 60-day period to file the petition for *certiorari* expired. Even if petitioner, who sought an extension of 15 days, or until October 23, 2014 to file the petition for *certiorari*, failed to file the petition on October 23, 2014, the case, however, was not yet dismissible because petitioner was entitled to a 60-day period within which to file the petition and had until November 24, 2014 to file it. The records show that petitioner timely filed his petition on November 24, 2014.

The Court of Appeals should have noted the Motion for Extension of Time to File Petition for *Certiorari* seeking an extension of 15 days, considering that petitioner had 60 days within which to file the petition. Since the appellate court dismissed the case on November 3, 2014, when petitioner filed his Manifestation and Motion explaining that in filing the Motion for Extension of Time to File Petition for *Certiorari*, he overlooked Section 4, Rule 65 of the Rules of Court, which provides a period of 60 days to file a petition for *certiorari*, the appellate court could have recalled its Resolution dated November 3, 2014 when petitioner timely filed his petition. However, in the Resolution dated June 18, 2015, the appellate

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[24] Emphasis supplied.

court merely noted petitioner's Manifestation and Motion on the ground that petitioner failed to file a motion for reconsideration of its Resolution dated November 3, 2014, dismissing the case, even if the records showed that petitioner filed his petition for *certiorari* on time. And, in the same Resolution dated June 18, 2015, the appellate court directed that the entry of the Resolution dated November 3, 2014 be effected by the Division Clerk of Court. Moreover, petitioner's motion for reconsideration of the Resolution dated June 18, 2015 was denied in the Resolution dated May 4, 2016.

In effect, petitioner was deprived of the right to file his petition for *certiorari* within the 60-day period provided by Section 4, Rule 65 of the Rules of Court.

Hence, the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the case docketed as CA-G.R. SP No. 137479 on November 3, 2014, even if the petition for *certiorari* was timely filed.

WHEREFORE, the Resolutions of the Court of Appeals dated November 3, 2014, June 18, 2015, and March 4, 2016 in CA-G.R. SP No. 137479 are **ANNULLED** and **SET ASIDE**, and the case is **REMANDED** to the Court of Appeals for further proceedings with dispatch.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 225500. September 11, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONAS GERONIMO *y* PINLAC**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS, ELEMENTS OF; IN BOTH CASES, IT IS ESSENTIAL THAT THE IDENTITY OF THE PROHIBITED DRUGS BE ESTABLISHED.— For the successful prosecution of unauthorized sale of dangerous drugs, it is necessary that the essential elements thereof are proven beyond reasonable doubt, to wit: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. On the other hand, in cases wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. In both cases, it is essential that the identity of the prohibited drug be established with moral certainty. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.

2. ID.; ID.; CHAIN OF CUSTODY RULE; REQUIREMENTS THEREOF UNDER SECTION 21 OF RA 9165, EXPLAINED.— Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. Under the said section, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory**

and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination. In the case of *People v. Mendoza*, the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."

3. **ID.; ID.; ID.; STRICT COMPLIANCE WITH THE CHAIN OF CUSTODY RULE MAY BE DISPENSED WITH PROVIDED THAT JUSTIFIABLE GROUND EXISTS AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; THE REASONS BEHIND NON-COMPLIANCE MUST BE EXPLAINED AND PROVEN AS A FACT.—** The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that **the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure**, and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**

In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved.** Also, in *People v. De Guzman*, it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**

4. **ID.; ID.; ID.; ID.; FAILURE TO PROVIDE JUSTIFIABLE GROUND FOR NON-COMPLIANCE IS FATAL TO THE PROSECUTION; THE PLURALITY OF THE BREACHES OF PROCEDURE COMMITTED BY THE POLICE OFFICERS AND UNEXPLAINED BY THE STATE, MILITATE AGAINST THE FINDING OF GUILT BEYOND REASONABLE DOUBT, HENCE, ACQUITTAL OF THE ACCUSED IS IN ORDER.—** [T]he justification given by IA1 Arquero was grossly insufficient and without legal basis. It appears that he clearly misunderstood the law and its application in buy-bust operations. The law mandates the apprehending team to follow the prescribed procedure under Section 21 of RA 9165 mainly to ensure the proper chain of custody and avoid the possibility of switching, planting, or contamination of evidence. There is nothing in the law which exempts the apprehending officers from securing the presence of an elected public official and a representative from the DOJ or media, particularly in instances when they are not equipped with a search warrant as claimed by IA1 Arquero. x x x [T]here were inconsistencies in the statements of the members of the apprehending team as to why the requisite inventory and photography were not done immediately after seizure and confiscation of the dangerous drugs and at the place of Geronimo's arrest. While the law allows that the same may be done at the nearest police station or office of the apprehending team, the police officers must nevertheless provide justifiable grounds therefor in order for the saving clause to apply. Here,

the apprehending officers failed to discharge that burden. Accordingly, the plurality of the breaches of procedure committed by the police officers, unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised. It is well-settled that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. As such, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21 of RA 9165, as amended by RA 10640, as well as its IRR, Geronimo's acquittal is perforce in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Jonas Geronimo *y* Pinlac (Geronimo) assailing the Decision[2] dated December 18, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06405, which affirmed the Joint Decision[3] dated October 7, 2013 of the Regional Trial Court of Caloocan City, Branch 127 (RTC) in Crim. Case Nos. C-83928 and C-83929, finding him guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic

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[1] See Notice of Appeal dated January 21, 2015; *rollo*, pp. 16-17.

[2] *Id*. at 2-15. Penned by Associate Justice Vicente S. E. Veloso with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela concurring.

[3] CA *rollo*, pp. 50-69. Penned by Presiding Judge Victoriano B. Cabanos.

Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from two (2) Informations[5] filed before the RTC accusing Geronimo of the crimes of illegal sale and illegal possession of dangerous drugs, the accusatory portions of which state:

Criminal Case No. C-83928

"That on or about the 12th day of April, 2010 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to IO1 Crisanto L. Lorilla, a [bona fide] member of the Philippine Drug Enforcement Agency, who posed as poseur buyer, METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) and MEFENOREX, dangerous drugs, weighing 0.1076 gram, without the corresponding license or prescription therefore, knowing the same to be such.

Contrary To Law."[6]

Criminal Case No. C-83929

"That on or about the 12th day of April, 2010 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control One (1) self-sealing transparent plastic bag with marking EXH B 04-12-10 CLL containing dried MARIJUANA leaves and fruiting tops weighing 4.1283 grams, which when subjected for laboratory examination gave POSITIVE result to the tests for

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[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Records, pp. 2-3 and 27-28.

[6] *Id*. at 2.

Marijuana, a dangerous drugs [sic], in gross violation of the above-cited law.

Contrary To Law." [7]

The prosecution alleged that at around ten (10) o'clock in the morning of April 12, 2010, a tip was received from a confidential informant that Geronimo was peddling illegal drugs in Caloocan City. Acting on the said tip, Intelligence Agent 1 Joshua V. Arquero (IA1 Arquero) immediately organized a buy-bust operation, which was coordinated with the Philippine Drug Enforcement Agency (PDEA) Regional Office and the Philippine National Police (PNP). IA1 Arquero then instructed the informant to order ₱500.00 worth of *shabu* from Geronimo.[8] At around nine (9) o'clock in the evening, the buy-bust team composed of IA1 Arquero, Intelligence Officer (IO) 1 Crisanto Lorilla (IO1 Lorilla), IO 2 Lorenzo Advincula (IO2 Advincula),[9] a certain IO1 Camayang, and one IO1 Mellion reached the target area in Narra Street, Barangay 171, Caloocan City and conducted a quick surveillance thereof. Moments later, Geronimo arrived, took out from his right pocket a transparent plastic sachet containing a suspected *shabu*, and handed it over to the poseur-buyer, IO1 Lorilla, who, in turn, paid him with the buy-bust money.[10] Shortly after, IO1 Lorilla lit a cigarette to signal the rest of the team that the transaction was completed, prompting IO2 Advincula to rush towards the scene to arrest Geronimo. Subsequently, IO1 Lorilla and IO2 Advincula frisked Geronimo's pockets. IO1 Lorilla recovered the buy-bust money, while IO2 Advincula recovered the marijuana leaves wrapped in a newspaper and gave them to the former. The team proceeded to the headquarters in Quezon City, and the confiscated items were supposedly marked, photographed, and inventoried by

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[7] *Id.* at 27.

[8] See *rollo*, p. 3. See also CA *rollo*, pp. 54 and 58; and TSN July 26, 2010, pp. 4-9.

[9] "IO1 Advincula" in some parts of the records.

[10] See *rollo*, p. 3. See also CA *rollo*, pp. 54-55.

IO1 Lorilla in the presence of Geronimo and Barangay *Kagawad* Jose Y. Ruiz.[11] After conducting the inventory, IO1 Lorilla secured the letter-request for laboratory examination from IO1 Jayson R. Albao and delivered the specimens to the PNP Crime Laboratory for testing. Consequently, the specimens were received and examined by Forensic Chemist Jappeth M. Santiago, who later on revealed that the substance found in the plastic sachet tested positive for the presence of *methamphetamine hydrochloride* and *mefenorex*, while the other wrapped specimen tested positive for the presence of marijuana, all dangerous drugs.[12]

For his part, Geronimo interposed the defenses of denial and frame-up, maintaining that at the time of the incident, he was drinking at the house of his friend Julian Faura, Jr. (Faura) when three (3) unidentified armed men suddenly arrived and forced him to board a white Toyota Revo. There, he noticed that his girlfriend Elaine Cabral (Cabral), whom he recently had an argument with, was inside the vehicle as well. According to Geronimo, Cabral suddenly slapped him, while the other men repeatedly hit him. Geronimo claimed that he was then brought to the PDEA office, where he was forced to drink something and urinate in a small bottle. Subsequently, the police officers allegedly brought out several plastic sachets, placed them on the table, and instructed Geronimo to stand before it while they took pictures of the same. During trial, Geronimo pleaded not guilty to the crimes charged and presented Faura as his witness.[13]

The RTC Ruling

In a Joint Decision[14] dated October 7, 2013, the RTC found Geronimo guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165 and, accordingly, sentenced

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[11] See *rollo*, p. 4. See also CA *rollo*, pp. 33 and 55.

[12] See *rollo*, p. 4. See also CA *rollo*, p. 55.

[13] See *rollo*, pp. 4-5. See also CA *rollo*, pp. 61-62.

[14] CA *rollo*, pp. 50-69.

him as follows: (*a*) in Crim. Case No. C-83928, to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and (*b*) in Crim. Case No. C-83929, to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and eight (8) months, as maximum, and to pay a fine of ₱300,000.00.[15] It held that all the essential elements of the crimes of illegal sale and illegal possession of dangerous drugs were duly proven. On the other hand, Geronimo's defenses of denial and frame-up failed to create reasonable doubt in view of his positive identification as the culprit, as well as the presumption of regularity accorded to police officers in the discharge of their duties.[16]

Moreover, the RTC declared that the integrity and evidentiary value of the seized drugs were shown to have been preserved from the time of seizure to receipt by the forensic chemist up to presentation in court. It added that the requisite marking of seized items immediately upon their confiscation at the place of arrest is not absolute and can thus be done at the nearest police station or office of the apprehending team, given that there is no exact definition of the phrase "immediately upon confiscation in Philippine Jurisprudence.[17]

Aggrieved, Geronimo elevated his conviction to the Court of Appeals (CA).[18]

The CA Ruling

In a Decision[19] dated December 18, 2014, the CA affirmed *in toto* the ruling of the RTC,[20] finding that all the necessary elements of the crimes charged have been adequately proven.

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[15] See *id*. at 68-69.

[16] See *id*. at 68.

[17] See *id*. at 66-67.

[18] See Brief for the Accused-Appellant dated June 18, 2014; *id*. at 26-48.

[19] *Rollo*, pp. 2-15.

[20] See *id*. at 14.

Moreover, Geronimo failed to prove that the evidence was tampered or meddled with, and that the police officers improperly performed their duties; and on the contrary, it was shown that the integrity and evidentiary value of the seized drugs were preserved.[21]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Geronimo's conviction for illegal sale and illegal possession of dangerous drugs, as respectively defined and penalized under Sections 5 and 11, Article II of RA 9165, should be upheld.

The Court's Ruling

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[22] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[23]

In this case, Geronimo was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. For the successful prosecution of unauthorized sale of dangerous drugs, it is necessary that the essential elements thereof are proven beyond reasonable doubt, to wit: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[24] On the other hand, in cases wherein an accused is

[21] See *id*. at 10-14.

[22] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[23] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[24] *People v. Sumili*, 753 Phil. 342, 348 (2015).

charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[25]

In both cases, it is essential that the identity of the prohibited drug be established with moral certainty. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[26]

Relatedly, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.[27] Under the said section, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination.[28] In the case of *People v. Mendoza*,[29] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during**

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[25] *People v. Bio*, 753 Phil. 730, 736 (2015).

[26] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[27] See *People v. Sumili*, *supra* note 34, at 349-350.

[28] See Section 21 (1) and (2), Article II of RA 9165.

[29] 736 Phil. 749 (2014).

the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 *(Dangerous Drugs Act of 1972)* again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[30]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.[31] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[32] – provide

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[30] *Id.* at 764; emphases and underscoring supplied.

[31] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[32] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" approved on July 15, 2014, Section 1 of which states:

> Section 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," is hereby amended to read as follows:
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> "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:
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> "(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

that **the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure**, and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[33] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[34] In *People v. Almorfe*,[35] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved**.[36] Also, in

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> 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.
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> x x x x x x x x x"

[33] See Section 21 (a), Article II of the IRR of RA 9165.

[34] See *People v. Goco*, G.R. No. 219584, October 17, 2016.

[35] 631 Phil. 51 (2010).

[36] See *id.* at 60.

People v. De Guzman,[37] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**[38]

In his Brief,[39] Geronimo prayed for his acquittal in light of the police officers' non-compliance with Section 21 of RA 9165 and its IRR and their failure to proffer a plausible explanation therefor.[40] In particular, he claims that the inventory and certification was neither done in the presence of nor signed by a representative from the DOJ and the media.[41]

The appeal is meritorious.

An examination of the records reveals that although the requisite inventory and photography of the seized items were conducted in the presence of Geronimo and an elected public official, the same was not done in the presence of the representatives from the DOJ and the media. In an attempt to justify such absence, IA1 Arquero testified that:

ATTY QUILAS:

Q: You said you are a team leader and you knew for a fact the requirements that in the subsequent inventory, an elected official, a representative from the Media, a representative from the Department of Justice, you know for a fact that they are required, is not that correct?

[IA1 ARQUERO]:

A: In Section 21 of RA 9165 that is a requirement and prior to that operation is a buy-bust operation. So, in the buy-bust operation we don't need to comply with the requirements, we don't need to call the Media Representative, an elected official and a Representative

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[37] 630 Phil. 637 (2010).

[38] *Id.* at 649.

[39] See Brief for Accused-Appellant dated June 18, 2014; CA *rollo*, pp. 28-48.

[40] See *id*. at 46-47.

[41] See *id*. at 44.

from the D.O.J. unless there is a search warrant were taken briefly to go with the apprehending officers in entering the house. In the buy-bust operation we don't do that, sir.

x x x x x x x x x (Underscoring supplied)[42]

Based on the foregoing testimony, the justification given by IA1 Arquero was grossly insufficient and without legal basis. It appears that he clearly misunderstood the law and its application in buy-bust operations. The law mandates the apprehending team to follow the prescribed procedure under Section 21 of RA 9165 mainly to ensure the proper chain of custody and avoid the possibility of switching, planting, or contamination of evidence. There is nothing in the law which exempts the apprehending officers from securing the presence of an elected public official and a representative from the DOJ or media, particularly in instances when they are not equipped with a search warrant as claimed by IA1 Arquero. In fact, RA 9165 and its IRR explicitly provide that non-compliance with the required procedure can only be allowed under exceptional circumstances, provided that justifiable grounds are given and proven as a fact therefor by the apprehending officers, which IA1 Arquero likewise failed to show in this case.

Moreover, records reveal that the said inventory and photography of the seized items were not done at the place of arrest but at the office of the apprehending officers in Barangay Pinyahan, Quezon City. During IA1 Arquero's direct examination, he maintained that since the area of operation was "so dark" and "risky," he decided to instruct the buy-bust team to conduct said processes at their office, to wit:

PROS CANSINO:

Q: You said after effecting the arrest and apprising the accused of his violation and constitutional rights and you proceeded to your office, why did you not conduct the required inventory, photograph and marking at the place of operation?

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[42] TSN, September 19, 2011, p. 29.

[IA1 ARQUERO:]

A: Because the area is so dark and there are many people there may be the cohorts of the suspect so being the team leader and the area may be risky, I ordered them to withdraw and conduct the inventory and photography of the said item to the nearest station which is in our office at [Brgy.] Pinyahan, Quezon City, sir.

x x x x x x x x x (Underscoring supplied)[43]

On the contrary, IO2 Advincula earlier testified that the apprehending team went directly to their office to conduct the inventory even if there was no threat to their security and safety at the place of Geronimo's arrest:

[ATTY. QUILAS:]

Q: And despite of the fact that you were armed you just left the area after the arrest of the suspect?

[IO2 ADVINCULA:]

A: Yes, sir.

Q: And went ahead directly to your office and conduct inventory?

A: Yes, sir.

Q: There was not even a threat, serious threat on your team after the arrest of the suspect, is not that right?

A: None, sir.

x x x x x x x x x (Underscoring supplied)[44]

Clearly, there were inconsistencies in the statements of the members of the apprehending team as to why the requisite inventory and photography were not done immediately after seizure and confiscation of the dangerous drugs and at the place of Geronimo's arrest. While the law allows that the same may be done at the nearest police station or office of the apprehending

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[43] TSN, September 19, 2011, p. 13.

[44] TSN, August 16, 2011, p. 23.

team, the police officers must nevertheless provide justifiable grounds therefor in order for the saving clause to apply. Here, the apprehending officers failed to discharge that burden.

Accordingly, the plurality of the breaches of procedure committed by the police officers, unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised.[45] It is well-settled that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[46] As such, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21 of RA 9165, as amended by RA 10640, as well as its IRR, Geronimo's acquittal is perforce in order.

As a final note, it is fitting to mention that "the Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions. Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty."[47]

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[45] See *People v. Sumili*, *supra* note 24, at 352.

[46] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[47] See *Bulauitan v. People*, G.R. No. 218891, September 19, 2016; citation omitted.

WHEREFORE, the appeal is **GRANTED**. The Decision dated December 18, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 06405 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jonas Geronimo *y* Pinlac is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 225808. September 11, 2017]

SPOUSES EDGARDO M. AGUINALDO and NELIA T. TORRES-AGUINALDO, *petitioners, vs.* **ARTEMIO T. TORRES, JR.,**[**] *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; IMPROPER NOTARIZATION OF THE

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[*] Acting Chief Justice per Special Order No. 2479 dated August 31, 2017.

[**] Substituted by his heirs Artemio L. Torres III, Emiko Nakajima Torres, Michael Melvin L. Torres, Reedah Chigusa N. Torres, and Ritz Emi N. Torres. See CA Resolution dated July 14, 2016; *rollo*, p. 53.

QUESTIONED DEED OF SALE STRIPPED IT OF ITS PUBLIC CHARACTER AND REDUCED IT TO A PRIVATE DOCUMENT; REQUIREMENTS BEFORE A PRIVATE DOCUMENT MAY BE RECEIVED IN EVIDENCE.— [I]t should be pointed out that the 1991 deed of sale was improperly notarized, having been signed by respondent and witness Bucapal in Makati City and by petitioners in the USA, but notarized in Tanza, Cavite, which is in violation of the notarial officer's duty to demand that the party acknowledging a document must appear before him, sign the document in his presence, and affirm the contents and truth of what are stated therein. As aptly observed by the CA, the evidence on record amply shows that Nelia could not have been in the Philippines at the time the said deed was signed. The improper notarization of the 1991 deed of sale stripped it of its public character and reduced it to a private instrument. Hence, it is to be examined under the parameters of Section 20, Rule 132 of the Rules of Court (Rules) which pertinently provides that "**[b]efore any private document offered as authentic is received in evidence, its due execution and authenticity must be proved** either: (*a*) [b]y anyone who saw the document executed or written; or (*b*) **[b]y evidence of the genuineness of the signature or handwriting of the maker."**

2. **ID.; ID.; ID.; MANNER BY WHICH THE GENUINENESS OF HANDWRITING MAY BE PROVED.—** Section 22, Rule 132 of the same Rules provides the manner by which **the genuineness of handwriting may be proved**, *i.e.*: (*a*) by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted or been charged; (*b*) **by a comparison, made by** the witness or **the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge**.

3. **CIVIL LAW; CIVIL CODE; CONTRACTS; WHILE THE IMPROPER NOTARIZATION OF THE DEED OF SALE DID NOT AFFECT THE VALIDITY OF THE SALE OF THE SUBJECT PROPERTIES, IT HOWEVER RENDERED SAID DEED UNREGISTERABLE; PETITIONERS ARE DIRECTED TO EXECUTE A REGISTERABLE DEED IN RESPONDENT'S FAVOR AS**

A NECESSARY CONSEQUENCE OF THE JUDGMENT UPHOLDING THE VALIDITY OF THE SALE TO HIM; REASON.— Although the improper notarization of the 1991 deed of sale did not affect the validity of the sale of the subject properties to respondent, the same, however, rendered the said deed unregistrable, since notarization is essential to the registrability of deeds and conveyances. Bearing in mind that the legal requirement that the sale of real property must appear in a public instrument is merely a coercive means granted to the contracting parties to enable them to reciprocally compel the observance of the prescribed form, and considering that the existence of the sale of the subject properties in respondent's favor had been duly established, the Court upholds the CA's directive for petitioners to execute a registrable deed of conveyance in respondent's favor within thirty (30) days from finality of the decision, in accordance with the prescribed form under Articles 1357 and 1358 (1) of the Civil Code. Notably, if petitioners fail to comply with this directive within the said period, respondent has the option to file the proper motion before the court *a quo* to issue an order divesting petitioners' title to the subject properties under the parameters of Section 10 (a), Rule 39 of the Rules of Court. To be sure, the directive to execute a registrable deed of conveyance in respondent's favor – albeit not specifically prayed for in respondent's Answer with Counterclaim – is but a necessary consequence of the judgment upholding the validity of the sale to him, and an essential measure to put in proper place the title to and ownership of the subject properties and to preclude further contentions thereon. As aptly explained by the CA, "[t]o leave the [1991 deed of sale] as a private one would not necessarily serve the intent of the country's land registration laws[, and] resorting to another action merely to compel the [petitioners] to execute a registrable deed of sale would unnecessarily prolong the resolution of this case, especially when the end goal would be the same." In this relation, case law states that a judgment should be complete by itself; hence, the courts are to dispose finally of the litigation so as to preclude further litigation between the parties on the same subject matter, thereby avoiding a multiplicity of suits between the parties and their privies and successors-in-interests.

APPEARANCES OF COUNSEL

Erlando A. Abrenica for petitioners.
Ubano Siangho Lozada & Cabantac for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated May 20, 2015 and the Resolution[3] dated July 14, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 96014, which (*a*) affirmed the Decision[4] dated January 21, 2010 of the Regional Trial Court of Trece Martires City, Branch 23 (RTC), dismissing the complaint for annulment of sale, cancellation of title, and damages filed by petitioners Spouses Edgardo M. Aguinaldo and Nelia T. Torres-Aguinaldo (Nelia; collectively, petitioners) against respondent Artemio T. Torres, Jr. (respondent); and (*b*) ordered petitioners to execute a registrable deed of conveyance in favor of respondent within thirty (30) days from the finality of the CA Decision, in accordance with Articles 1357 and 1358 (1) of the Civil Code.[5]

The Facts

On March 3, 2003, petitioners filed a complaint[6] for annulment of sale, cancellation of title, and damages against respondent before the RTC. They claimed that they are the registered owners of three (3) lots covered by Transfer Certificates of Title (TCT) Nos. T-93596, T-87764, and T-87765 situated in Tanza, Cavite

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[1] *Id*. at 9-29.

[2] *Id*. at 32-51. Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Stephen C. Cruz and Elihu A. Ybañez, concurring.

[3] *Id*. at 53-57.

[4] *Id*. at 72-79. Penned by Executive Judge Aurelio G. Icasiano, Jr.

[5] *Id*. at 50-51.

[6] Dated March 3, 2003. *Id*. at 60-65.

(subject properties).[7] Sometime in December 2000, they discovered that the titles to the subject properties were transferred to respondent who, in bad faith, and through fraud, deceit, and stealth, caused the execution of a Deed of Absolute Sale[8] dated July 21, 1979 (1979 deed of sale), purportedly selling the subject properties to him, for which he was issued TCT Nos. T-305318, T-305319, and T-305320[9] (subject certificates of title).

Respondent filed his Answer with Counterclaim,[10] denying participation in the execution of the 1979 deed of sale, and averring that the subject properties were validly sold by petitioners to him through a Deed of Absolute Sale[11] dated March 10, 1991 (1991 deed of sale).[12] He claimed that petitioners caused the registration of the 1979 deed of sale with the Register of Deeds of Trece Martires City, and the transfer of title in his name, hence, they are estopped from impugning the validity of his title. Moreover, the action has prescribed, having been filed beyond four (4) years from discovery of the averred fraud, reckoned from the registration of the said deed on March 26, 1991.[13] He further alleged that petitioners only filed the instant baseless suit to harass him in view of their acrimonious relationship, and thus, interposed a counterclaim for moral damages and attorney's fees.[14]

The RTC Proceedings

On respondent's motion,[15] a copy of the 1991 deed of sale was transmitted to the National Bureau of Investigation (NBI)

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

[8] Records, pp. 13-15.

[9] *Id*. at 16-18, 19-20, and 21-23.

[10] Dated August 18, 2003; *rollo*, pp. 66-71.

[11] Records, pp. 60-62.

[12] *Id*. at 67.

[13] *Rollo*, p. 68.

[14] *Id*. at 69.

[15] See Motion to Issue an Order dated April 7, 2006; records, pp. 196-198.

Questioned Documents Department for examination and determination of its genuineness.[16] The NBI thereafter submitted reports concluding that petitioners' questioned signatures thereon and their sample signatures were written by the same persons.[17]

Thus, in a Decision[18] dated January 21, 2010, the RTC dismissed the complaint, holding that petitioners failed to establish their claim by preponderance of evidence.[19] It found that petitioners validly sold the subject properties to respondent,[20] considering too Nelia's admission of the sale in her letter[21] dated November 12, 1998 (November 12, 1998 letter) to respondent.[22]

Aggrieved, petitioners appealed[23] before the CA.[24]

The CA Ruling

In a Decision[25] dated May 20, 2015, the CA denied the appeal and upheld the RTC's findings and conclusions.[26] While it ruled that the **1979** deed of sale was spurious after conducting its own examination of petitioners' signatures thereon and on other pertinent documents, and thus, did not transfer title over the subject properties to respondent, it declared that there was, nonetheless, a valid sale to the latter,[27] considering that:

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[16] *Rollo*, p. 73.

[17] *Id*. at 76.

[18] *Id*. at 72-79.

[19] *Id*. at 79.

[20] *Id*. at 78.

[21] Records, pp. 190-193.

[22] *Id*. at 190, 192.

[23] See Appellant's Brief dated June 9, 2011; *rollo*, pp. 85-129.

[24] *Id*. at 37.

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

[26] *Id*. at 51.

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

(*a*) petitioners failed to rebut the authenticity and due execution of the **1991** deed of sale on account of their genuine signatures thereon as established by the NBI reports,[28] and the CA's own independent examination of their signatures on various documents submitted before the court;[29] (*b*) Nelia admitted the existence of the sale of the subject properties in her November 12, 1998 letter to respondent;[30] and (*c*) respondent's religious payment of real property taxes on the subject properties from 1993 to 2003 supports his claim of ownership, for no one in his right mind would be paying taxes for a property if he does not claim possession in the concept of an owner.[31]

However, the CA observed that despite its authenticity and due execution, the 1991 deed of sale was improperly notarized, given that it was signed by respondent and witness Lalaine Bucapal (Bucapal) in Makati City, and by petitioners in the United States of America (USA), but notarized in Tanza, Cavite;[32] as such, the same could not be properly registered by the Register of Deeds.[33] Accordingly, the CA found it equitable to compel petitioners to execute a registrable deed of conveyance in favor of respondent within thirty (30) days from finality of the Decision, in accordance with Articles 1357 and 1358 (1) of the Civil Code.[34]

Petitioners filed a motion for reconsideration,[35] which the CA denied in a Resolution[36] dated July 14, 2016; hence, this petition.

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[28] *Id*. at 45.

[29] *Id*. at 40.

[30] *Id*. at 41.

[31] *Id*. at 44.

[32] *Id*. at 45-46.

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

[34] *Id*. at 50-51.

[35] Dated June 11, 2015; *id*. at 131-136.

[36] *Id*. at 53-57.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in ruling that there was a valid conveyance of the subject properties to respondent and directing petitioners to execute a registrable deed of conveyance in his favor within thirty (30) days from the finality of the decision.

The Court's Ruling

In the present case, the complaint was filed assailing the validity of the 1979 deed of sale, the execution of which was denied by both parties. However, while the CA found that petitioners' signatures on the said deed were manifestly different from their signatures on other pertinent documents before it, and thus, declared the said deed as spurious and did not validly transfer title to the subject properties, it failed to nullify the subject certificates of title issued pursuant to the said deed. Settled is the rule that a forged deed of sale is null and void and conveys no title.[37] Notably, the complaint prayed for the nullification of the said certificates of title based on the spurious 1979 deed of sale.[38] Hence, finding the foregoing in order, the CA's ruling must be modified accordingly.

Nonetheless, save for the above modification, the Court agrees with the CA's conclusion that a valid conveyance of the subject properties to respondent was established.

While respondent denied participation in the execution of the 1979 deed of sale, he claimed that the subject properties were validly sold by petitioners to him through the 1991 deed of sale.[39] On the other hand, petitioners denied the existence and due execution of the said deed, claiming that they could not have signed the same as they were in the USA when it was supposedly executed.[40]

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[37] See *Rufloe v. Burgos*, 597 Phil. 261, 270 (2009).

[38] See *rollo*, p. 63.

[39] *Id.* at 36.

[40] *Id.* at 46.

Thus, central to the resolution of the instant controversy is the determination of the authenticity of the 1991 deed of sale which, however, is a question of fact rather than of law.[41] It bears to stress that it is not the function of the Court to re-examine, winnow, and weigh anew the respective sets of evidence of the parties,[42] absent a showing that they fall under certain recognized exceptions,[43] none of which are present here.

At the outset, it should be pointed out that the 1991 deed of sale was improperly notarized, having been signed by respondent and witness Bucapal in Makati City and by petitioners in the USA, but notarized in Tanza, Cavite,[44] which is in violation of the notarial officer's duty to demand that the party acknowledging a document must appear before him,[45] sign the document in his presence,[46] and affirm the contents and truth of what are stated therein.[47] As aptly observed by the CA, the evidence on record

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[41] *Spouses Bernales v. Heirs of Sambaan*, 624 Phil. 88, 97 (2010).

[42] *Almagro v. Spouses Amaya, Sr.*, 711 Phil. 493, 503-504 (2013).

[43] Recognized exceptions to the rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) **when the findings of fact are conflicting**; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellee and the appellant; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (See *id*.; emphasis supplied; citations omitted)

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

[45] See *Coronado v. Felongco*, 398 Phil. 496, 502 (2000).

[46] See *Realino v. Villamor*, 176 Phil. 632, 635 (1978).

[47] See *Heirs of Amado Celestial v. Heirs of Celestial*, 455 Phil. 704, 717 (2003), citing *Protacio v. Mendoza*, 443 Phil. 12, 20 (2003).

amply shows that Nelia could not have been in the Philippines at the time the said deed was signed.[48]

The improper notarization of the 1991 deed of sale stripped it of its public character and reduced it to a private instrument.[49] Hence, it is to be examined under the parameters of Section 20, Rule 132 of the Rules of Court (Rules) which pertinently provides that "**[b]efore any private document offered as authentic is received in evidence, its due execution and authenticity must be proved** either: (*a*) [b]y anyone who saw the document executed or written; or (*b*) **[b]y evidence of the genuineness of the signature or handwriting of the maker**."[50] Emphases supplied.

In relation thereto, Section 22, Rule 132 of the same Rules provides the manner by which **the genuineness of handwriting may be proved**, *i.e.*: (*a*) by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted or been charged; (*b*) **by a comparison, made by** the witness or **the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge**.

In this case, the CA made an independent examination of petitioners' signatures on the 1991 deed of sale (questioned signatures), and concluded that they are the same signatures found on other pertinent documents (standard/sample signatures),[51] which is the same conclusion arrived at by the NBI.[52] The due execution and authenticity of the said deed having been ostensibly established by the finding that the signatures of petitioners thereon were genuine, the burden was shifted

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[48] *Rollo*, p. 46.

[49] *Heirs of Sarili v. Lagrosa*, 724 Phil. 608, 619 (2014).

[50] *Id*.

[51] *Rollo*, p. 40.

[52] *Id.* at 40-41.

upon the latter to prove by contrary evidence that the subject properties were not so transferred[53] — especially in light of Nelia's admission of the sale[54] in her November 12, 1998 letter to respondent, as well as respondent's payment of the real property taxes for the same[55] — which petitioners, however, failed to discharge convincingly.

The Court has held in a number of cases that forgery cannot be presumed and must be proved by clear, positive, and convincing evidence, and the burden of proof lies on the party alleging forgery to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it.[56] In this case, the claimed forgery was ruled out by a comparison of petitioners' questioned signatures with their standard/sample signatures, but other than their own declaration that their signatures on the 1991 deed of sale were forged, petitioners failed to present any evidence to corroborate their claim.

Although the improper notarization of the 1991 deed of sale did not affect the validity of the sale of the subject properties to respondent, the same, however, rendered the said deed unregistrable, since notarization is essential to the registrability of deeds and conveyances.[57] Bearing in mind that the legal

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[53] See *Heirs of Biona v. CA*, 414 Phil. 297, 306 (2001).

[54] Records, p. 190.

[55] See Official Receipts of Payment of Real Property Tax; *id*. at 385-393. Jurisprudence is replete with cases holding that realty tax payments of property are good indicia of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. The payment of taxes, coupled with actual possession of the land covered by the tax declaration, strongly supports a claim of ownership. See *Imuan v. Cereno*, 615 Phil. 489, 501 (2009).

[56] See *Ambray v. Tsourous*, G.R. No. 209264, July 5, 2016; *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855 (2015).

[57] See Section 12, Presidential Decree No. 1529 entitled "Property Registration Decree," approved on June 11, 1978.

requirement that the sale of real property must appear in a public instrument is merely a coercive means granted to the contracting parties to enable them to reciprocally compel the observance of the prescribed form,[58] and considering that the existence of the sale of the subject properties in respondent's favor had been duly established, the Court upholds the CA's directive for petitioners to execute a registrable deed of conveyance in respondent's favor within thirty (30) days from finality of the decision, in accordance with the prescribed form under Articles 1357[59] and 1358[60] (1) of the Civil Code. Notably, if petitioners fail to comply with this directive within the said period, respondent has the option to file the proper motion before the court *a quo* to issue an order divesting petitioners' title to the subject properties under the parameters of Section 10 (a),[61] Rule 39 of the Rules of Court.

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[58] *Chong v. CA*, 554 Phil. 43, 62 (2007). See also *San Miguel Properties, Inc. v. BF Homes, Inc.*, 765 Phil. 672, 708 (2015), citing *Cenido v. Spouses Apacionado*, 376 Phil. 801, 820 (1999).

[59] Article 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article [Article 1358], **the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract**. (Emphasis supplied)

[60] Article 1358. The following must appear in a public document:
(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2, and 1405[.]

[61] Section 10. *Execution of judgments for specific act.* — (a) *Conveyance, delivery of deeds, or other specific acts; vesting title.* — **If a judgment directs a party to execute a conveyance of land or personal property**, or to deliver deeds or other documents, or to perform any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effects as if done by the party. **If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law.** (Emphases supplied)

To be sure, the directive to execute a registrable deed of conveyance in respondent's favor — albeit not specifically prayed for in respondent's Answer with Counterclaim — is but a necessary consequence of the judgment upholding the validity of the sale to him, and an essential measure to put in proper place the title to and ownership of the subject properties and to preclude further contentions thereon. As aptly explained by the CA, "[t]o leave the [1991 deed of sale] as a private one would not necessarily serve the intent of the country's land registration laws[, and] resorting to another action merely to compel the [petitioners] to execute a registrable deed of sale would unnecessarily prolong the resolution of this case, especially when the end goal would be the same."[62] In this relation, case law states that a judgment should be complete by itself; hence, the courts are to dispose finally of the litigation so as to preclude further litigation between the parties on the same subject matter, thereby avoiding a multiplicity of suits between the parties and their privies and successors-in-interests.[63]

As a final note, it must be clarified that while the Court has declared TCT Nos. T-305318, T-305319, and T-305320 null and void, the duty to process the cancellation of the said titles devolves upon respondent's heirs. Likewise, it is the latter's duty to register the new deed of sale as herein compelled so as to secure the issuance of new certificates of title over the subject properties in their names.

WHEREFORE, the petition is **DENIED**. The Decision dated May 20, 2015 and the Resolution dated July 14, 2016 of the Court of Appeals in CA-G.R. CV No. 96014 are **AFFIRMED** with the **MODIFICATION** declaring the Deed of Absolute Sale dated July 21, 1979, as well as Transfer Certificates of Title Nos. T-305318, T-305319, and T-305320 in the name of respondent Artemio Torres, Jr. **NULL and VOID**. Petitioners are **DIRECTED** to execute a registrable deed of conveyance

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[62] See *rollo*, p. 64.

[63] *Spouses Gonzaga v. CA*, 483 Phil. 424, 437 (2004).

in respondent's favor within thirty (30) days from finality of this Decision, in accordance with the prescribed form under Articles 1357 and 1358 (1) of the Civil Code. In case of non-compliance with this directive within the said period, respondent has the option to file the proper motion before the court *a quo* to issue an order divesting petitioners' title to the subject properties under the parameters of Section 10 (a), Rule 39 of the Rules of Court.

SO ORDERED.

Carpio,[***] *Acting C.J.* (*Chairperson*), *Peralta, Caguioa*, and *Reyes, Jr., JJ.*, concur.

[***] Acting Chief Justice per Special Order No. 2479 dated August 31, 2017.

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ACTS OF LASCIVIOUSNESS

Commission of — Elements are: 1. that the offender commits any act of lasciviousness or lewdness; 2. that it is done 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; 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; 3. that the offended party is another person of either sex; in addition to the elements under Art. 336 of the RPC, the following requisites for sexual abuse under Sec. 5(b), Art. III of R.A. No. 7610, must also be established to wit: 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. 3. the child, whether male or female, is below 18 years of age. (People *vs.* Padlan *y* Leones @ Butog, G.R. No. 214880, Sept. 6, 2017) p. 1008

ADMINISTRATIVE LAW

Administrative offense of being notoriously undesirable — In the administrative offense of being notoriously undesirable, a two-fold test is employed, to wit: (1) whether it is common knowledge or generally known as universally believed to be true or manifest to the world that the employee committed the acts imputed against him; and (2) whether he had contracted the habit for any of the enumerated misdemeanors. (Atty. Recto-Sambajon vs. Public Attorney's Office, G.R. No. 197745, Sept. 6, 2017) p. 879

Conduct prejudicial to the best interest of the service — Need not be related to or connected with the public officer's official function as it suffices that the act in question tarnishes the image and integrity of his/her

public office. (Atty. Recto-Sambajon *vs.* Public Attorney's Office, G.R. No. 197745, Sept. 6, 2017) p. 879

Misconduct — A transgression of some established and definite rule of action, more particularly, unlawful behaviour or gross negligence by a public officer; it is qualified as grave when it is attended with corruption or wilful intent to violate the law or to disregard established rules; otherwise the misconduct is only simple. (Atty. Recto-Sambajon *vs.* Public Attorney's Office, G.R. No. 197745, Sept. 6, 2017) p. 879

AGGRAVATING CIRCUMSTANCES

Evident premeditation — The prosecution must prove: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the culprit has clung to his determination; and (c) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will. (People *vs.* Racal @ Rambo, G.R. No. 224886, Sept. 4, 2017) p. 665

ALIBI

Defense of — Denial and alibi are inherently weak defenses that cannot prevail over the positive and categorical testimony and identification of the complainant; for alibi to prosper, it is insufficient that the accused prove that he was somewhere else when the crime was committed; he must likewise establish that it was physically impossible for him to have been present at the scene of the crime at the time of its commission. (People *vs.* Padlan *y* Leones @ Butog, G.R. No. 214880, Sept. 6, 2017) p. 1008

— For the defense of alibi to prosper, the accused must prove that he was present at another place at the time of the commission of the crime and that it was physically impossible for him to be at the scene of the crime. (People *vs.* Balanza, G.R. No. 207943, Sept. 11, 2017) p. 1083

APPEALS

Factual findings of administrative bodies — Factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive and binding upon this Court. (Macalanda, Jr. *vs*. Atty. Acosta, G.R. No. 197718, Sept. 6, 2017) p. 869

— Findings of fact made by quasi-judicial and administrative bodies are generally binding upon the Supreme Court; it admits exceptions such as when it is in disregard of the evidence on record. (Atty. Recto-Sambajon *vs*. Public Attorney's Office, G.R. No. 197745, Sept. 6, 2017) p. 879

Factual findings of quasi-judicial tribunals — Factual findings of the labor tribunals when affirmed by the CA are generally accorded not only respect, but even finality; notwithstanding, it admits of exceptions such as when there is misapprehension of facts. (Coseteng *vs*. Perez, G.R. No. 185938, Sept. 6, 2017) p. 846

Factual findings of the trial court — Should not be disturbed on appeal, unless there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case. (People *vs.* Racal @ Rambo, G.R. No. 224886, Sept. 4, 2017) p. 665

Petition for review on certiorari to the Supreme Court under Rule 45 — As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by this Court; factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. (Cutanda *vs*. Marlow Navigation Phils., Inc., G.R. No. 219123, Sept. 11, 2017) p. 1106

— Limited to questions of law and the factual findings of the lower courts or quasi-judicial agencies are conclusive on this Court. (Macalanda, Jr. *vs*. Atty. Acosta, G.R. No. 197718, Sept. 6, 2017) p. 869

— Requires that only questions of law should be raised; factual questions are not the proper subject of an appeal by *certiorari* as it is not the Court's function to once again analyze and calibrate evidence that has already been considered in the lower courts. (Encarnacion Construction & Industrial Corp. *vs.* Phoenix Ready Mix Concrete Dev't. & Construction, Inc., G.R. No. 225402, Sept. 4, 2017) p. 687

*Right to appea*l — Disciplining authorities have the right to appeal CSC decisions which have modified the penalty originally meted against erring government personnel; if it were otherwise, the government would be deprived of its right to weed out undeserving public servants. (Atty. Recto-Sambajon *vs*. Public Attorney's Office, G.R. No. 197745, Sept. 6, 2017) p. 879

Rules on — Appellate court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned; it is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal; Court of Appeals may, with no less authority, reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal; exceptions, in the following instances: (1) Grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; (4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which

the lower court ignored; (5) Matters not assigned as errors on appeal but closely related to an error assigned; and (6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent. (Diaz-Enriquez *vs.* Dir. of Lands, G.R. No. 168065, Sept. 6, 2017) p. 823

ATTORNEYS

Attorney's fees — An acceptance fee is generally non-refundable, but such rule presupposes that the lawyer has rendered legal service to his client; in the absence of such service, the lawyer has no basis for retaining complainant's payment. (Martin *vs.* Atty. Dela Cruz, A.C. No. 9832, Sept. 4, 2017) p. 646

Code of Professional Responsibility — A lawyer is duty-bound to competently and diligently serve his client once the former takes up the latter's cause; the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. (Martin *vs*. Atty. Dela Cruz, A.C. No. 9832, Sept. 4, 2017) p. 646

CERTIORARI

Petition for — It was grave abuse of discretion for the Court of Appeals to dismiss a petition for certiorari although the records showed that it was filed on time. (Concejero *vs.* CA, G.R. No. 223262, Sept. 11, 2017) p. 1151

CLERKS OF COURT

Duties — Duties include conducting periodic inventory of dockets, records and exhibits and ensuring that the said records and exhibits of each case are accounted for; to ensure an orderly and efficient record management in the court. (Hon. Botigan-Santos *vs*. Gener, A.M. No. P-16-3521 [Formerly OCA I.P.I. No. 15-4493-P], Sept. 4, 2017) p. 655

— The Clerk shall safely keep all records, papers, files, exhibits, and public property committed to her charge; the Office of the Clerk of Court performs a very delicate function, having control and management of all court

records, exhibits, documents, properties and supplies; being the custodian thereof, the clerk of court is liable for any loss, shortage, destruction or impairment of said funds and properties. (*Id.*)

Liabilities of — A simple act of neglect resulting to loss of funds, documents, properties or exhibits in custodia legis ruins the confidence lodged by the parties to a suit or the citizenry in our judicial process. (Hon. Botigan-Santos vs. Gener, A.M. No. P-16-3521 [Formerly OCA I.P.I. No. 15-4493-P], Sept. 4, 2017) p. 655

2002 Revised Manual for Clerks of Court — The Clerk of Court, being the officer in charge of the court's exhibits is mandated to observe the prescribed procedure in the disposal and/or destruction of court exhibits when they are no longer needed. (Hon. Botigan-Santos vs. Gener, A.M. No. P-16-3521 [Formerly OCA I.P.I. No. 15-4493-P], Sept. 4, 2017) p. 655

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Application of — For the successful prosecution of unauthorized sale of dangerous drugs, it is necessary that the essential elements thereof are proven beyond reasonable doubt, to wit: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; on the other hand, in cases wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug; in both cases, it is essential that the identity of the prohibited drug be established with moral certainty. (People *vs.* Geronimo *y* Pinlac, G.R. No. 225500, Sept. 11, 2017) p. 1163

Chain of custody rule — Section 21, Art. II of R.A. No. 9165 provides the chain of custody rule, outlining the procedure

that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. (People *vs.* Geronimo *y* Pinlac, G.R. No. 225500, Sept. 11, 2017) p. 1163

— Strict compliance with the requirements of Sec. 21 of R.A. No. 9165 may not always be possible; the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. (*Id.*)

— The apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination. (*Id.*)

— The plurality of the breaches of procedure committed by the police officers, unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised. (*Id.*)

— Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the seized drugs, the evils of switching, planting or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly

heads as to negate the integrity and credibility of the seizure and confiscation of the said drugs that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. (*Id*.)

CONTRACTS

Contract of adhesion — One wherein one party imposes a ready-made form of contract on the other; it is a contract whereby almost all of its provisions are drafted by one party, with the participation of the other party being limited to affixing his or her signature or "adhesion" to the contract; however, contracts of adhesion are not invalid *per se* as they are binding as ordinary contracts. (Encarnacion Construction & Industrial Corp. *vs.* Phoenix Ready Mix Concrete Dev't. & Construction, Inc., G.R. No. 225402, Sept. 4, 2017) p. 687

Interpretation of — The natural presumption is that one does not sign a document without first informing himself of its contents and consequences. (Encarnacion Construction & Industrial Corp. *vs.* Phoenix Ready Mix Concrete Dev't. & Construction, Inc., G.R. No. 225402, Sept. 4, 2017) p. 687

Reformation of — A remedy in equity where a written instrument already executed is allowed by law to be reformed or construed to express or conform to the real intention of the parties; the rationale of the doctrine is that it would be unjust and inequitable to allow the enforcement of a written instrument that does not express or reflect the real intention of the parties. (Sps. Rosario *vs*. Alvar, G.R. No. 212731, Sept. 6, 2017) p. 994

Validity of — Although the improper notarization of the deed of sale did not affect the validity of the sale of the subject properties , the same, however, rendered the said deed unregistrable, since notarization is essential to the registrability of deeds and conveyances; the legal requirement that the sale of real property must appear in a public instrument is merely a coercive means granted to the contracting parties to enable them to reciprocally

compel the observance of the prescribed form. (Sps. Aguinaldo *vs.* Torres, Jr., G.R. No. 225808, Sept. 11, 2017) p. 1179

COURT OF APPEALS

Jurisdiction — The annulment complaint shows that the action before the RTC is essentially one for recovery of ownership and possession of the property, with damages, which is not anchored on a tax issue, but on due process considerations; the Annulment Complaint's allegations do not contest the tax assessment on the property; as such, the RTC's ruling thereon could not be characterized as a local tax case over which the CTA could have properly assumed jurisdiction on appeal; the case was correctly elevated to the CA. (Ignacio *vs.* Office of the City Treasurer of Quezon City, G.R. No. 221620, Sept. 11, 2017) p. 1133

COURT OF TAX APPEALS

Jurisdiction — CTA's appellate jurisdiction over decisions, orders, or resolutions of the RTCs becomes operative only when the RTC has ruled on a local tax case; before the case can be raised on appeal to the CTA, the action before the RTC must be in the nature of a tax case, or one which primarily involves a tax issue; cases decided by the RTC which involve issues relating to the power of the local government to impose real property taxes are considered as local tax cases, which fall under the appellate jurisdiction of the CTA. (Ignacio *vs.* Office of the City Treasurer of Quezon City, G.R. No. 221620, Sept. 11, 2017) p. 1133

COURTS

Jurisdiction — Defined as the power and authority of a court to hear, try, and decide a case; case law holds that jurisdiction is conferred by law and determined from the nature of action pleaded as appearing from the material averments in the complaint and the character of the relief sought; once the nature of the action is determined, it remains the same even on appeal until a decision

rendered thereon becomes final and executory. (Ignacio *vs.* Office of the City Treasurer of Quezon City, G.R. No. 221620, Sept. 11, 2017) p. 1133

DAMAGES

Attorney's fees — May be recovered when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest; award of attorney's fees is the exception rather than the general rule and counsel's fees are not to be awarded every time a party wins a suit; the discretion of the court to award attorney's fees under Art. 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. (Coseteng *vs.* Perez, G.R. No. 185938, Sept. 6, 2017) p. 846

Civil liability — When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages. (People *vs.* Sulayao y Labasbas, G.R. No. 198952, Sept. 6, 2017) p. 895

Exemplary damages — Imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages. (Coseteng *vs.* Perez, G.R. No. 185938, Sept. 6, 2017) p. 846

Moral damages — Not automatically granted; there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendants' acts. (Coseteng *vs.* Perez, G.R. No. 185938, Sept. 6, 2017) p. 846

DELITO CONTINUADO

Principle of — Continuous crime; this is a single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division; when the actor, there being unity of purpose and of right violated, commits diverse acts, each of which, although of a delictual

character, merely constitutes a partial execution of a single particular delict, such concurrence or delictual acts is called a "delito continuado;" in order that it may exist, there should be plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated and unity of criminal intent and purpose, which means that two or more violations of the same penal provision are united in one and the same intent leading to the perpetration of the same criminal purpose or aim. (Navaja *vs*. Hon. De Castro, G.R. No.180969, Sept. 11, 2017) p. 1072

DENIAL

Defense of — If unsubstantiated by clear and convincing evidence is inherently a weak defense as it is negative and self-serving. (People *vs*. Sulayao *y* Labasbas, G.R. No. 198952, Sept. 6, 2017) p. 895

— Positive identification prevails over the defense of denial and alibi especially when the victim was not actuated by any improper motive. (People *vs.* Balanza, G.R. No. 207943, Sept. 11, 2017) p. 1083

DENIAL AND ALIBI

Defense of — Inherently weak defenses that cannot be accorded greater evidentiary weight than the positive declaration by credible witnesses. (People vs. Lidasan, G.R. No. 227425, Sept. 4, 2017) p. 698

EMINENT DOMAIN

Just compensation — The delay in the payment of just compensation is a forbearance of money; this is necessarily entitled to earn interest; the difference in the amount between the final amount as adjudged by the court and the initial payment made by the government, which is part and parcel of the just compensation due to the property owner, should earn legal interest as a forbearance of money. (Evergreen Mfg. Corp. *vs*. Rep. of the Phils., G.R. No. 218628, Sept. 6, 2017) p. 1048

— The value of the property at the time of taking must be taken into account in determining just compensation. (*Id*.)

EMPLOYMENT, TERMINATION OF

Compromise agreement — A compromise agreement, which allows an employee facing an imminent dismissal to opt for honorable severance from employment, may be validly entered into between an employer and employee. (Coseteng *vs*. Perez, G.R. No. 185938, Sept. 6, 2017) p. 846

Constructive dismissal — Floating status refers to a temporary lay-off or off-detail of an employee by reason of a bona fide suspension of the operation of a business or undertaking which shall not exceed six months; when the suspension exceeds six months, the employment is deemed terminated. (Coseteng *vs*. Perez, G.R. No. 185938, Sept. 6, 2017) p. 846

— Not every inconvenience, disruption, difficulty, or disadvantage that an employee must endure results in a finding of constructive dismissal. (*Id*.)

— There is constructive dismissal when there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits; it exists when there is clear act of discrimination, insensibility or disdain by an employer which becomes unbearable for the employee to continue his employment. (*Id*.)

Management prerogative — The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them. (Coseteng *vs*. Perez, G.R. No. 185938, Sept. 6, 2017) p. 846

Separation pay — An employee who voluntarily resigned from work is not entitled to separation pay or financial assistance. (Coseteng *vs*. Perez, G.R. No. 185938, Sept. 6, 2017) p. 846

— As a general rule, an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or CBA, or it is sanctioned by established employer practice or policy. (*Id.*)

— To merit the application of social justice and equity, such employee must not be dismissed by reason of serious misconduct or causes reflective of his lack of moral character; otherwise, it will have the effect of rewarding rather than punishing the erring employee for his offense. (*Id.*)

EVIDENCE

Circumstantial evidence — For circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt; conviction based on circumstantial evidence can be upheld, provided the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person, a conclusion adequately proven in this case. (People *vs.* Sulayao y Labasbas, G.R. No. 198952, Sept. 6, 2017) p. 895

Documentary evidence — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) by anyone who saw the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker. (Sps. Aguinaldo *vs.* Torres, Jr., G.R. No. 225808, Sept. 11, 2017) p. 1179

— Manner by which the genuineness of handwriting may be proved: (a) by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted or been charged; and

(b) by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (*Id*.)

Physical evidence — Physical evidence is evidence of the highest order; it speaks more eloquently than a hundred witnesses. (People *vs.* Francica *y* Navalta, G.R. No. 208625, Sept. 6, 2017) p. 972

EXEMPTING CIRCUMSTANCES

Insanity — An inquiry into the mental state of an accused should relate to the period immediately before or at the very moment the felony is committed. (People *vs.* Racal @ Rambo, G.R. No. 224886, Sept. 4, 2017) p. 665

— Diminished capacity is not the same as complete deprivation of intelligence or discernment; mere abnormality of mental faculties does not exclude immutability. (*Id*.)

FORUM SHOPPING

Certification against forum shopping — The authority of the representative of a corporation to sign the certification against forum shopping originates from the board of directors through either a board of directors' resolution or secretary's certificate which must be submitted together with the certification against forum shopping; failure to attach a copy of a board resolution proving the authority of the representative to sign the certification against forum shopping was fatal to its petition and was sufficient ground to dismiss since the courts are not expected to take judicial notice of board resolutions or secretary's certificates issued by corporations. (Societe Des Produits, Nestle, S.A. *vs.* Puregold Price Club, Inc., G.R. No. 217194, Sept. 6, 2017) p. 1030

Concept of — Act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances

and all raising substantially the same issues, either pending in or already resolved by some other court, to increase the chances of obtaining a favorable decision if not in one court, then in another. (Ignacio *vs.* Office of the City Treasurer of Quezon City, G.R. No. 221620, Sept. 11, 2017) p. 1133

— As compared to the doctrine of *res judicata*, *litis pendentia*, as a ground for the dismissal of a civil action, pertains to a situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious; its requisites are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. (*Id.*)

— To determine whether a party violated the rule against forum shopping, it is crucial to ask whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. (*Id.*)

JUDGES

Code of Judicial Conduct — A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel; a judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity. (Re: Report on the Preliminary Results of the Spot Audit in the RTC, Br. 170, Malabon City, A.M. No. 16-05-142-RTC, Sept. 5, 2017) p. 724

Liability of — To hold a judge administratively liable for gross misconduct, ignorance of the law or incompetence

of official acts in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice; absent such proof, the judge is presumed to have acted in good faith in exercising his judicial functions. (Re: Report on the Preliminary Results of the Spot Audit in the RTC, Br. 170, Malabon City, A.M. No. 16-05-142-RTC, Sept. 5, 2017) p. 724

— Use of an improvised system of counting the applicants (instead of the applications) in the special raffle is simply unacceptable, as the Executive Judge, much less the Clerk of Court, has absolutely no discretion to deviate from the prescribed ratio for the raffling of cases without prior approval from this court. (*Id.*)

Misconduct — A transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public office; the misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. (Re: Report on the Preliminary Results of the Spot Audit in the RTC, Br. 170, Malabon City, A.M. No. 16-05-142-RTC, Sept. 5, 2017) p. 724

Neglect of duty — Gross neglect of duty is classified as a grave offense punishable by dismissal from the service, even for the first offense, while simple neglect of duty is a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. (Re: Report on the Preliminary Results of the Spot Audit in the RTC, Br. 170, Malabon City, A.M. No. 16-05-142-RTC, Sept. 5, 2017) p. 724

— Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, in so far as other persons may be affected. (*Id.*)

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Commission of — The elements of the crime are as follows: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: i) the kidnapping or detention lasts for more than three days; ii) it is committed by simulating public authority; iii) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or iv) the person kidnapped or detained is a minor, female, or a public officer. (People vs. Lidasan, G.R. No. 227425, Sept. 4, 2017) p. 698

MITIGATING CIRCUMSTANCES

Sufficient provocation — Any unjust or improper conduct or act of the victim adequate enough to excite a person to commit a wrong, which is accordingly proportionate in gravity. (People *vs.* Racal @ Rambo, G.R. No. 224886, Sept. 4, 2017) p. 665

Voluntary plea of guilt — A plea of guilty made after arraignment and after trial had begun does not entitle the accused to have such plea considered as a mitigating circumstance. (People *vs.* Racal @ Rambo, G.R. No. 224886, Sept. 4, 2017) p. 665

MURDER

Commission of — The following elements must be established: (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 Art. 248 of the RPC; and (4) that the killing is not parricide or infanticide. (People *vs.* Racal @ Rambo, G.R. No. 224886, Sept. 4, 2017) p. 665

NOTARY PUBLIC

Liability of — A notary public is personally accountable for all entries in his notarial register; he cannot relieve

himself of this responsibility by passing the buck to his secretary. (Sps. Chambon *vs.* Atty. Ruiz, A.C. No. 11478, Sept. 5, 2017) p. 712

— A notary public shall not affix an official signature or seal on a notarial certificate that is incomplete. (*Id.*)

(Re: Report on the Preliminary Results of the Spot Audit in the RTC, Br. 170, Malabon City, A.M. No. 16-05-142-RTC, Sept. 5, 2017) p. 724

Notarized document — Notarization by a notary public converts a private document into a public document, making the same admissible in evidence without further proof of authenticity; thus, a notarial document is, by law, entitled to full faith and credit upon its face. (Sps. Chambon *vs.* Atty. Ruiz, A.C. No. 11478, Sept. 5, 2017) p. 712

Rules on notarial practice — The person signing the document must be personally known to the notary public or identified by the notary public through competent evidence of identity. (Zafra Orbe *vs.* Filinvest Land, Inc., G.R. No. 208185, Sept. 6, 2017) p. 934

OBSTRUCTION OF JUSTICE

Commission of — Elements of the crime are: (a) that the accused committed any of the acts listed under Sec. 1 of P.D. No. 1829; and (b) that such commission was done for the purpose of obstructing, impeding, frustrating, or delaying the successful investigation and prosecution of criminal cases. (Navaja *vs.* Hon. De Castro, G.R. No.180969, Sept. 11, 2017) p. 1072

2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Disability benefits — In situations where the seafarer seeks to claim the compensation and benefits that Sec. 20-B grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Sec. 20-B; (4) his

illness is one of the enumerated occupational diseases or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Sec. 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable. (Cutanda *vs*. Marlow Navigation Phils., Inc., G.R. No. 219123, Sept. 11, 2017) p. 1106

— The very purpose of those periods is the proper determination as to whether the injured seafarer categorized as Grade 2 to 14 can, in legal contemplation, be considered as totally and permanently disabled; if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled; the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days; that should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled. (*Id*.)

— Where seafarer had been unfit to work way beyond the 240 days provided by law, he is legally considered as totally and permanently disabled and is entitled to permanent total compensation. (*Id*.)

PUBLIC LAND ACT (C.A. NO. 141)

Alienable land — An applicant is not necessarily entitled to have the land registered under the Torrens system simply because no one appears to oppose his title and to oppose the registration of his land; he must show, even though there is no opposition to the satisfaction of the court, that he is the absolute owner, in fee simple. (Diaz-Enriquez *vs.* Dir. of Lands, G.R. No. 168065, Sept. 6, 2017) p. 823

Application for land registration — A mere invocation of "private rights" does not automatically entitle an applicant to have the property registered in his name; persons claiming the protection of private rights in order to exclude their lands from military reservations must show by clear

and convincing evidence that the pieces of property in question have been acquired by a legal method of acquiring public lands. (Diaz-Enriquez *vs.* Dir. of Lands, G.R. No. 168065, Sept. 6, 2017) p. 823

— The necessary requirements for the grant of an application for land registration are the following: 1) the applicant must, by himself or through his predecessors-in-interest, have been in possession and occupation of the subject land; 2) the possession and occupation must be open, continuous, exclusive, and notorious; 3) the possession and occupation must be under a *bona fide* claim of ownership for at least thirty years immediately preceding the filing of the application; and 4) the subject land must be an agricultural land of the public domain. (*Id.*)

Lands of public domain — Lands of the public domain, unless declared otherwise by virtue of a statute or law, are inalienable and can never be acquired by prescription; no amount of time of possession or occupation can ripen into ownership over lands of the public domain; all lands of the public domain presumably belong to the State and are inalienable. (Diaz-Enriquez *vs.* Dir. of Lands, G.R. No. 168065, Sept. 6, 2017) p. 823

— The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration or claiming ownership, who must prove that the land subject of the application is alienable or disposable; to overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable. (*Id.*)

QUALIFYING CIRCUMSTANCES

Treachery — Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it. (People *vs.* Racal @ Rambo, G.R. No. 224886, Sept. 4, 2017) p. 665

— The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected

way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape; in order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. (*Id*.)

RAPE

Commission of — Committed by having carnal knowledge of a woman under any of the following circumstances: 1) by using force, threat, or intimidation; 2) when the offended party is deprived of reason or otherwise unconscious; 3) by means of fraudulent machination or grave abuse of authority; and 4) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (People *vs.* Padlan *y* Leones @ Butog, G.R. No. 214880, Sept. 6, 2017) p. 1008

— For a charge of rape under Art. 266-A(1) to prosper, it must be proven that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented; rape under Art. 266-A(2) is described as "instrument or object rape," gender-free rape, or homosexual rape; the gravamen of rape through sexual assault is the insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice. (People *vs.* Francica *y* Navalta, G.R. No. 208625, Sept. 6, 2017) p. 972

— Rape is committed by having 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. (People *vs.* Balanza, G.R. No. 207943, Sept. 11, 2017) p. 1083

Qualified rape — Penalty imposed is *reclusion perpetua* for each count but without eligibility of parole. (People *vs.* Panes *y* Magsanop, G.R. No. 215730, Sept. 11, 2017) p. 1096

Statutory rape — The child victim's consent in statutory rape is immaterial because the law presumes that her young age makes her incapable of discerning good from evil; committed when: (1) the offended party is under 12 years of age; and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. (People *vs.* Francica *y* Navalta, G.R. No. 208625, Sept. 6, 2017) p. 972

— There is statutory rape when: (1) the offended party is under twelve years of age; and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority; it is enough that the age of the victim is proven and that there was sexual intercourse. (People *vs.* Padlan *y* Leones @ Butog, G.R. No. 214880, Sept. 6, 2017) p. 1008

REALTY INSTALLMENT BUYER PROTECTION ACT (R.A. NO. 6552)

Application of — Faithful observance and utmost respect of the legal solemnity of an oath in an acknowledgement or *jurat* is sacrosanct; it is with greater reason that the diligent observance of notarial rules should be impressed in cases concerned with a seller's exercise of a statutory privilege through cancellations under the Maceda Law. (Zafra Orbe *vs.* Filinvest Land, Inc., G.R. No. 208185, Sept. 6, 2017) p. 934

— It is an error to reckon the payment of two (2) years' worth of installments on the apportionment of the down

payment because, even in cases where the down payment is broken down into smaller, more affordable portions, payments for it still do not embody the ratable apportionment of the contract price throughout the entire duration of the contract term; rather than the partial payments for the down payment, it is the partition of the contract price into monthly amortizations that manifests the ratable apportionment across a complete contract term that is the essence of sales on installment. (*Id.*)

— Notarization under the Maceda Law extends beyond converting private documents into public ones; under Secs. 3 and 4, notarization enables the exercise of the statutory right of unilateral cancellation by the seller of a perfected contract; if an acknowledgement is necessary in the customary rendition of public documents, with greater reason should an acknowledgement be imperative in notices of cancellation or demands for rescission made under Secs. 3 and 4 of the Maceda Law. (*Id.*)

— The amount actually paid by the buyer to the seller must be refunded, subject to legal interest, where the seller did not validly cancel the contract and has already sold the lot to another person. (*Id.*)

— The phrase "at least two years of installments" refers to value and time; it does not only refer to the period when the buyer has been making payments, with total disregard for the value that the buyer has actually conveyed; it refers to the proportionate value of the installments made, as well as payments having been made for at least two (2) years. (*Id.*)

— The sellers of real property shall be juridical persons acting through representatives; in these cases, it is imperative that the officer signing for the seller indicate that he or she is duly authorized to effect the cancellation of an otherwise perfected contract. (*Id.*)

— To be effective, seller's cancellations under the Maceda Law must strictly comply with the requirements of Secs. 3 and 4; this Court clarifies here that with respect to

notices of cancellation or demands for rescission by notarial act, an acknowledgement is imperative; when these are made through representatives of juridical persons selling real property, the authority of these representatives must be duly demonstrated. (*Id*.)

— To help especially the low income lot buyers, the legislature enacted R.A. No. 6552 delineating the rights and remedies of lot buyers and protecting them from one-sided and pernicious contract stipulations; having been adopted with the explicit objective of protecting buyers against what it recognizes to be disadvantageous and onerous conditions, the Maceda Law's provisions must be liberally construed in favor of buyers. (*Id*.)

Section 3 — When Sec. 3 speaks of paying "at least two years of installments," it refers to the equivalent of the totality of payments diligently or consistently made throughout a period of two (2) years; where installments are to be paid on a monthly basis, paying "at least two years of installments" pertains to the aggregate value of 24 monthly installments; the basis for computation of the term refers to the installments that correspond to the number of months of payments and not to the number of months that the contract is in effect as well as any grace period that has been given; both the law and the contracts thus prevent any buyer who has not been diligent in paying his monthly installments from unduly claiming the rights provided in Sec. 3 of R.A. No. 6552. (Zafra Orbe *vs.* Filinvest Land, Inc., G.R. No. 208185, Sept. 6, 2017) p. 934

Section 4 — For cancellation under Sec. 4 to be valid, three (3) requisites must concur: first, the buyer must have been given a 60-day grace period but failed to utilize it; second, the seller must have sent a notice of cancellation or demand for rescission by notarial act; and third, the cancellation shall take effect only after 30 days of the buyer's receipt of the notice of cancellation. (Zafra Orbe *vs.* Filinvest Land, Inc., G.R. No. 208185, Sept. 6, 2017) p. 934

RES JUDICATA

Conclusiveness of judgment — Elements are present: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, but not identity of causes of action. (Sps. Rosario *vs*. Alvar, G.R. No. 212731, Sept. 6, 2017) p. 994

Principle of — Means a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment; for *res judicata* to absolutely bar a subsequent action, the following requisites must concur: (*a*) the former judgment or order must be final; (*b*) the judgment or order must be on the merits; (*c*) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (d) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action. (Ignacio *vs.* Office of the City Treasurer of Quezon City, G.R. No. 221620, Sept. 11, 2017) p. 1133

ROBBERY WITH HOMICIDE

Commission of — Exists when a homicide is committed either by reason, or on occasion, of the robbery; to sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. (People *vs.* Sulayao *y* Labasbas, G.R. No. 198952, Sept. 6, 2017) p. 895

SEARCH WARRANTS

Application for — An application for a search warrant merely constitutes a criminal process and is not in itself a criminal action; venue is jurisdictional in criminal cases; venue

is only procedural, and not jurisdictional, in applications for the issuance of a search warrant. (Re: Report on the Preliminary Results of the Spot Audit in the RTC, Br. 170, Malabon City, A.M. No. 16-05-142-RTC, Sept. 5, 2017) p. 724

— Application for search warrant shall be filed with the following: (a) any court within whose jurisdiction a crime was committed; (b) for compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known or any court within the judicial region where the warrant shall be enforced. (*Id*.)

— The absence of a statement of compelling reasons is not a ground for the outright denial of a search warrant application, since it is not one of the requisites for the issuance of a search warrant; the statement of compelling reasons is only a mandatory requirement in so far as the proper venue for the filing of a search warrant application is concerned; it cannot be viewed as an additional requisite for the issuance of a search warrant. (*Id*.)

— The determination of the existence of compelling reasons under Sec. 2(b) of Rule 126 is a matter squarely addressed to the sound discretion of the court where such application is filed, subject to review by an appellate court in case of grave abuse of discretion amounting to excess or lack of jurisdiction. (*Id*.)

SHERIFFS

Duties of — In enforcing the writ of execution in ejection cases, the sheriff shall give notice thereof and demand that the defendant vacate the property in three (3) days; in the execution of a judgment for money, the sheriff must make a demand first on the judgment obligor, before resorting to garnishment and/or levy. (Soliva *vs.* Taleon, A.M. No. P-16-3511[Formerly OCA I.P.I. No. 14-4346-P], Sept. 6, 2017) p. 813

SOCIAL LEGISLATION

Tenancy relationship — A juridical tie which arises between a landowner and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landowner, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land; for tenancy relationship to exist, the following elements must be shown to concur, to wit: (1) the parties are the landowner and the tenant; (2) the subject matter is agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between landowner and tenant or agricultural lessee. (Macalanda, Jr. *vs*. Atty. Acosta, G.R. No. 197718, Sept. 6, 2017) p. 869

— Occupancy and cultivation of an agricultural land, no matter how long, will not *ipso facto* make one a *de jure* tenant; independent and concrete evidence is necessary to prove personal cultivation, sharing of harvest, or consent of the landowner. (*Id*.)

SUMMONS

Modes of service — Must be strictly followed in order that the court may acquire jurisdiction over the person of the defendant; the purpose of this is to afford the defendant an opportunity to be heard on the claim against him. (Express Padala (Italia) S.P.A. *vs.* Ocampo, G.R. No. 202505, Sept. 6, 2017) p. 911

Service of — The service of summons is a vital and indispensable ingredient of a defendant's constitutional right to due process; as a rule, if a defendant has not been validly summoned, the court acquires no jurisdiction over his person, and a judgment rendered against him is void. (Express Padala (Italia) S.P.A. *vs.* Ocampo, G.R. No. 202505, Sept. 6, 2017) p. 911

Substituted service — Not being a resident of the address where the summons was served, the substituted service of summons is ineffective. (Express Padala (Italia) S.P.A. *vs.* Ocampo, G.R. No. 202505, Sept. 6, 2017) p. 911

— Presupposes that the place where the summons is being served is the defendant's current residence or office/ regular place of business; where the defendant neither resides nor holds office in the address stated in the summons, substituted service cannot be resorted to; substituted service may be effected: (a) by leaving copies of the summons at the defendant's dwelling house or residence with some person of suitable age and discretion then residing therein; or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof; the terms "dwelling house" or "residence" are generally held to refer to the time of service, hence it is not sufficient to leave the copy at defendant's former dwelling house, residence, or place of abode, as the case may be, after his removal therefrom. (*Id.*)

— The general rule in this jurisdiction is that summons must be served personally on the defendant; for justifiable reasons, however, other modes of serving summons may be resorted to; when the defendant cannot be served personally within a reasonable time after efforts to locate him have failed, the rules allow summons to be served by substituted service; substituted service is effected by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof. (*Id.*)

TAXATION

National Internal Revenue Code — All taxpayers may rely upon BIR Ruling No. DA-489-03, as a general interpretative rule, from the time of its issuance on December 10, 2003 until its effective reversal by the Court in *Aichi*; while RR 16-2005 may have re-established

the necessity of the 120-day period, taxpayers cannot be faulted for still relying on BIR Ruling No. DA-489-03 even after the issuance of RR 16-2005 because the issue on the mandatory compliance of the 120-day period was only brought before the Court and resolved with finality in *Aichi*. (Procter & Gamble Asia PTE Ltd. *vs.* Commissioner of Internal Revenue, G.R. No. 205652, Sept. 6, 2017) p. 921

— CIR is given 120 days within which to grant or deny a claim for refund; upon receipt of CIR's decision or ruling denying the said claim or upon the expiration of the 120-day period without action from the CIR, the taxpayer has 30 days within which to file a petition for review with the CTA. (*Id.*)

TRADEMARK

Definition — Any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others. (Societe Des Produits, Nestle, S.A. *vs.* Puregold Price Club, Inc., G.R. No. 217194, Sept. 6, 2017) p. 1030

Dominancy test — In determining similarity or likelihood of confusion, our jurisprudence has developed two tests: the dominancy test and the holistic test; the dominancy test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, if the competing trademark contains the main, essential, and dominant features of another and confusion or deception is likely to result, likelihood of confusion exists; the question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive consumers. (Societe Des Produits, Nestle, S.A. *vs.* Puregold Price Club, Inc., G.R. No. 217194, Sept. 6, 2017) p. 1030

Holistic test — Entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity; the discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both marks in order that the observer may draw his conclusion whether one is confusingly similar to the other. (Societe Des Produits, Nestle, S.A. *vs.* Puregold Price Club, Inc., G.R. No. 217194, Sept. 6, 2017) p. 1030

WITNESSES

Credibility of — Court defers to the factual findings of the trial court, especially considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties. (People *vs*. Lidasan, G.R. No. 227425, Sept. 4, 2017) p. 698

— Slight inconsistencies in the testimony even strengthen credibility as they show that the testimony was not rehearsed; what is important is that there is consistency as to the occurrence and identity of the perpetrator and that the prosecution has established the existence of the elements of the crime as written in law. (People *vs.* Sulayao y Labasbas, G.R. No. 198952, Sept. 6, 2017) p. 895

— The finding of credibility should not be overturned since the trial court judge had the opportunity to personally examine the demeanor of the witnesses when they testified on the stand; the finding of credibility may be overturned only when certain facts or circumstances are overlooked, misunderstood, or misapplied, and the same could have materially affected the outcome of the case. (People *vs.* Padlan *y* Leones @ Butog, G.R. No. 214880, Sept. 6, 2017) p. 1008

Testimony of — Court has given full weight and credence to the testimony of child victims, holding that their youth and immaturity are generally badges of truth and sincerity. (People *vs*. Francica *y* Navalta, G.R. No. 208625, Sept. 6, 2017) p. 972

— Testimonies of child victims are given full weight and credit, for when a child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. (People *vs.* Balanza, G.R. No. 207943, Sept. 11, 2017) p. 1083

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