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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 172193. September 13, 2017]

CELERINO CHUA *alias* SUNTAY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; IF SUFFICIENT, COULD SUPPLANT THE LACK OR ABSENCE OF DIRECT EVIDENCE AND MAY BE RESORTED TO WHEN TO INSIST ON DIRECT TESTIMONY WOULD ULTIMATELY LEAD TO SETTING FELONS FREE; REQUISITES TO BE SUFFICIENT FOR CONVICTION.— Direct evidence was not the sole means of establishing the guilt of the accused beyond reasonable doubt. The lack or absence of direct evidence putting the accused at or near the scene of robbery and carnapping at the time of their commission did not necessarily mean that his guilt could not be proved by evidence other than direct evidence. Conviction could also rest purely on circumstantial evidence, which is that evidence that proves a fact or series of facts from which the fact in issue may be established by inference. Circumstantial evidence, if sufficient, could supplant the lack or absence of direct evidence. It may be resorted to when to insist on direct testimony would ultimately lead to setting felons free. Section 4, Rule 133 of the *Rules of Court* provides when circumstantial evidence is

sufficient for conviction if the conditions enumerated therein are shown to exist, to wit: Section 4. *Circumstantial evidence, when sufficient*. - Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. With respect to the third requisite, it is essential that the circumstantial evidence presented must constitute an unbroken chain that leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of others, as the guilty person. Circumstances that fully warranted the inference of Chua's having been the mastermind in the commission of the carnapping and the robbery incriminated him beyond reasonable doubt in the crimes for which he was convicted.

2. CRIMINAL LAW; REVISED PENAL CODE; PERSONS CRIMINALLY LIABLE FOR FELONIES; PRINCIPAL BY INDUCEMENT; ANY PERSON WHO DIRECTLY FORCES OR INDUCES OTHERS TO COMMIT THE CRIME, AND WHOSE INDUCEMENT OF THEM WAS NOT MERELY CASUAL BUT INFLUENTIAL AND CONTROLLING.— The x x x circumstances were sufficient and competent to prove that Chua masterminded the robbery and carnapping. As the mastermind, he directly induced Lato and Reyes to commit the robbery and the carnapping. His inducement of them was not merely casual but influential and controlling. Lato and Reyes could not have committed the crimes without Chua's inducement and plotting. In that capacity, Chua was a principal by inducement within the context of Article 17 of the *Revised Penal Code*, which provides: Article 17. *Principals*. - The following are considered principals: x x x. 2. **Those who directly force or induce others to commit it**; x x x.

3. ID.; ID.; CONSPIRACY; WHEN EXISTS; FOR AN ACCUSED TO BE VALIDLY HELD TO CONSPIRE WITH HIS CO-ACCUSED IN COMMITTING THE CRIMES, HIS OVERT ACTS MUST TEND TO EXECUTE THE OFFENSE AGREED UPON, FOR THE MERELY PASSIVE CONSPIRATOR CANNOT BE HELD TO BE STILL PART OF THE CONSPIRACY WITHOUT SUCH OVERT ACTS, UNLESS SUCH PASSIVE CONSPIRATOR IS THE

MASTERMIND.— Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime, and decide to commit it. For an accused to be validly held to conspire with his co-accused in committing the crimes, his overt acts must tend to execute the offense agreed upon, for the merely passive conspirator cannot be held to be still part of the conspiracy without such overt acts, unless such passive conspirator is the mastermind. In that respect, it is not always required to establish that two or more persons met and explicitly entered into the agreement to commit the crime by laying down the details of how their unlawful scheme or objective would be carried out. Conspiracy can also be deduced from the mode and manner in which the offense is perpetrated, or can be inferred from the acts of the several accused evincing their joint or common purpose and design, concerted action and community of interest. Clearly, the State successfully proved the existence of a conspiracy among the three accused.

4. ID.; ID.; SIMPLE ROBBERY; COMMITTED AS THE PHYSICAL INJURIES INFLICTED BY THE STABBING IN THE COURSE OF THE EXECUTION OF THE ROBBERY DID NOT CONSTITUTE ANY OF THE SERIOUS PHYSICAL INJURIES MENTIONED UNDER ARTICLE 263 OF THE REVISED PENAL CODE AS REQUIRED BY ARTICLE 294(2)(3) AND (4) OF THE REVISED PENAL CODE.— The CA properly convicted Chua of robbery as defined and punished under Article 294(5) of the *Revised Penal Code*. x x x . [T]he physical injuries inflicted by the stabbing in the course of the execution of the robbery did not constitute any of the serious physical injuries mentioned under Article 263 of the *Revised Penal Code* as required by Article 294(2)(3) and (4) of the *Revised Penal Code*. Specifically, the physical injuries inflicted on him did not render him insane, imbecile, impotent or blind; he did not also lose the use of speech or the power to hear or to smell, or an eye, a hand, a foot, an arm or a leg; or the use of any of such member; he did not also become incapacitated for the work in which he was theretofore habitually engaged; he did not become deformed; he did not lose any other part of his body, or the use thereof; he did not become ill or incapacitated for the performance of the work in which he was habitually engaged for a period of more than 90 days; or he did not become ill or incapacitated

for labor for more than 30 days. The crime is simple robbery under Article 294(5) of the *Revised Penal Code*.

5. ID.; ID.; CONSPIRACY; ONCE ESTABLISHED, THE ACT OF EACH OF THE CONSPIRATORS BECAME THE ACT OF ALL.— Being the mastermind, Chua was as responsible for the consequences of the acts committed by Lato and Reyes, the principals by direct participation. This is because of the conspiracy among the three of them. The informations had properly charged them as co-conspirators in robbery and carnapping. Once their conspiracy was established, the act of each of the conspirators became the act of all. Indeed, Chua could not escape responsibility for the acts done by his co-conspirators. The very nature of the planned robbery as a crime that entailed violence against persons warranted holding Chua fully responsible for all the consequences of the criminal plot.

6. ID.; ID.; SIMPLE ROBBERY; PROPER IMPOSABLE PENALTY.— The imposable penalty for robbery under Article 294(5) of the *Revised Penal Code* is *prision correccional* in its maximum period to *prision mayor* in its medium period, which ranges from four years, two months and one day to 10 years. In the absence of modifying circumstances, the penalty is imposed in its medium period, *that is*, six years, one month and 11 days to eight years and 20 days. The minimum of the indeterminate sentence is taken from the penalty next lower, which is *arresto mayor* in its maximum period to *prision correccional* in its medium period (*that is*, four months and one day to four years and two months). The CA correctly fixed the minimum of the indeterminate sentence. On the other hand, the maximum of the indeterminate sentence should be from the medium period of the penalty as stated herein.

7. ID.; ID.; PENALTIES; APPLICATION OF PENALTIES CONTAINING THREE PERIODS; THE COURT SHOULD TENDER JUSTIFICATION FOR IMPOSING THE CEILING OF THE PENALTY.— In its judgment, the CA applied the *ceiling* of the penalty but did not tender any justification for doing so. Such justification was required by the *seventh rule* enunciated in Article 64 of the *Revised Penal Code* on the application of penalties containing three periods. The need for the justification is explained in *Ladines v. People*, to wit: x x x although Article 64 of the *Revised Penal Code*,

which has set the rules "for the application of penalties which contain three periods," requires under its first rule that the courts should impose the penalty prescribed by law *in the medium period* should there be neither aggravating nor mitigating circumstances, **its seventh rule expressly demands that "*[w]ithin the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime*." By not specifying the justification for imposing the ceiling of the period of the imposable penalty, the fixing of the indeterminate sentence became arbitrary, or whimsical, or capricious. In the absence of the specification, the maximum of the indeterminate sentence for the petitioner should be the lowest of the medium period of *reclusion temporal*, which is 14 years, eight months and one day of *reclusion temporal*.** Although the CA should not have fixed the ceiling of the penalty without tendering the justification for doing so, we nonetheless note that such ceiling of eight years as the maximum of the indeterminate penalty was warranted. The appeal by Chua threw the records open for review, such that the penalty meted on him could be reviewed as a matter of course and rectified, if necessary, without infringing on his right as an accused. Thus, the Court will itself now tender the justification for imposing the ceiling of the penalty. Chua's masterminding of the robbery and carnapping against his own neighbor manifested the high degree of his criminality.

8. ID.; ANTI-CARNAPPING ACT OF 1972 (REPUBLIC ACT NO. 6539); CARNAPPING COMMITTED WITH VIOLENCE OR INTIMIDATION OF PERSONS, OR FORCE UPON THINGS; ACCUSED-APPELLANT FOUND GUILTY THEREOF IN CASE AT BAR; PROPER IMPOSABLE PENALTY.— Carnapping is defined as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things." Under Section 14 of Republic Act No. 6539, the penalty for carnapping committed without violence or intimidation of persons, or force upon things is imprisonment of not less than 14 years and eight months and not more than 17 years and four months; if committed by means of violence against or intimidation of any person, or force upon

things, the penalty is imprisonment of not less than 17 years and four months and not more than 30 years. The taking of the motor vehicle (owner-type jeep) belonging to the Ravagos by Lato and Reyes constituted carnapping. But it was clear error for the lower courts to punish Chua with the penalty for carnapping committed without violence or intimidation of persons, or force upon things. Even if the robbers took the motor vehicle after consummating the robbery in the course of the execution of which one of them stabbed Ravago four times, the taking of the motor vehicle in order to carry the stolen articles out was still attended by the same violence and intimidation of the owner and his wife, as well as of the rest of their household. As such, the correct imposable penalty is imprisonment of not less than 17 years and four months and not more than 30 years. Accordingly, the indeterminate sentence is imprisonment for 18 years, as minimum, to 22 years, as maximum.

9. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— We affirm the civil liability awarded to Ravago considering that Chua did not assail the award. Yet, we have to direct the payment of legal interest of 6% *per annum* on the ₱200,000.00 awarded as actual damages reckoned from the finality of this decision until full satisfaction.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondent.
Public Attorney's Office for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

The violence against or intimidation of persons perpetrated by the accused to commit a robbery under Article 294 of the *Revised Penal Code* renders the accused also liable for carnapping committed by means of violence against or intimidation of persons as defined and punished by Section 14 of Republic Act 6539 involving the taking of a vehicle to transport the stolen goods.

The Case

Celerino Chua *alias* Suntay (Chua) seeks to reverse the decision promulgated on October 20, 2005,[1] whereby the Court of Appeals (CA) affirmed his convictions for carnapping in violation of Republic Act 6539 (*Anti-Carnapping Act of 1972*) and for robbery as defined and punished by Article 294(5) of the *Revised Penal Code* handed down by the Regional Trial Court, Branch 81, in Malolos, Bulacan (RTC) through its decision of September 25, 2002.[2]

Antecedents

On January 25, 1994, Chua, along with Leonardo Reyes *alias* Leo and Arnold Lato *y* Baniel *alias* Arnold or Rodel, was charged in Criminal Case No. 397-M-94 of the RTC with the crime of carnapping under the information alleging as follows:

> That on or about the 24th day of October, 1993, in the municipality of Bocaue, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and helping one another, did then and there willfully, unlawfully and feloniously, with intent to gain and without the consent of the owner thereof, take, steal and carry away with them one owner type jeep (stainless) bearing Plate No. CFC-327, belonging to Sps. Reynaldo Ravago and Teresa Ravago, to the damage and prejudice of the said owners in the amount of ₱170,000.00.
>
> CONTRARY TO LAW.[3]

On January 27, 1994, the same accused were charged with robbery under the information filed in Criminal Case No. 428-M-94, to wit:

> That on or about the 24th day of October, 1993 in the municipality of Bocaue, province of Bulacan, Philippines, and within the jurisdiction

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[1] *Rollo,* pp. 126-137; penned by Associate Justice Arcangelita M. Romilla-Lontok, and concurred in by Associate Justice Marina L. Buzon and Associate Justice Danilo B. Pine.

[2] *Id*. at 52-68; penned by Judge Herminia V. Pasamba.

[3] *Id*. at 127.

of this Honorable Court, the above-named accused, conspiring, confederating together and helping one another did then and there willfully, unlawfully and feloniously, with intent to gain and by means of force and intimidation, take, rob and carry away with them the following, to wit:

one (1) colored TV set (Sony)	₱ 15,000.00
one (1) TV set B & W (Hitachi/Union)	₱ 5,000.00
two (2) Betamax (Sony)	₱ 18,000.00
one (1) VHS record (Toshiba)	₱ 12,000.00
one (1) Sansui compact disc	₱ 25,000.00
assorted jewelries (sic)	₱ 30,000.00
six (6) pcs. of assorted wristwatches	₱ 10,000.00
cash	₱ 7,000.00
TOTAL -	₱122,000.00

belonging to Sps. Reynaldo Ravago and Theresa Ravago, to the damage and prejudice of the said spouses in the total amount of ₱122,000.00; and by reason of and on the occasion of the commission of the said robbery, the above-named accused conspiring, confederating together and helping one another, did then and there wilfully, unlawfully and feloniously attack, assault and stab with bladed instrument, said Reynaldo E. Ravago thereby inflicting upon him serious physical injuries which required medical attendance and incapacitated him from his customary labor for a period of not more than thirty (30) days.[4]

Reyes and Lato remained at large; hence, only Chua was arraigned and tried for the crimes.

The CA synthesized the procedural and factual antecedents adduced by the Prosecution and the Defense as follows:

The prosecution presented eight (8) witnesses, namely: Teresa Legaspi-Ravago, Reynaldo Ravago, Valentina Legaspi, Juanito Olivario, Gerry Ormesa, Moises Legaspi, Jessie Tugas and John Laguidao.

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[4] *Id*. at 128.

The facts established by prosecution witness Teresa Ravago as follows:

On October 24, 1993 at around 2:50 o'clock in the morning, Teresa Legaspi-Ravago, accompanied by a helper, was about to leave for work at the Maymart Market in Meycauayan, Bulacan. Upon opening the door, she was immediately pushed inside the house by accused Arnold Lato. Lato was followed by accused Leonardo Reyes. Arnold tied the hands of Teresa and the helper with straw. Leonardo on the other hand went to the master's bedroom where Reynaldo was sleeping. Reynaldo was stabbed four times but was able to run to the bathroom and lock himself in.

The accused demanded jewelry and cash that the Ravagos earned as broker's commission from the sale of a fishpond. The two robbers wore stockings on the head to conceal their identities. Teresa was able to recognize the face of Arnold when the latter removed the stocking off his face as he searched for jewelry.

Said two (2) accused carted off their television sets, Sony Betamax sets, Karaoke, compact disc, assorted pieces of jewelry, VHS player and cash. The said stolen items were loaded in a stainless owner type jeep registered in the name of Teresa's mother, Valentina Legaspi, but given to the private complainants in 1990.

The robbery was immediately reported to the Bocaue Police Station. In the course of the investigation, Teresa was able to identify Arnold through photographs shown to her.

The robbers were later on identified as Arnold Lato and Leonardo Reyes. Arnold Lato was about her height, 5'2", dark and had earring on his right ear. The other, Leonardo Reyes, was 5'7" or 5'8", fair complexioned, thin and lanky. Both accused who were still at large were workers of Gerry Ormesa. Appellant Chua referred both accused to Gerry Ormesa. The straw ropes that were used to tie Teresa and her helper were being used by Arnold and Leo in their work. The built and height of the accused as described by Teresa fit the description of aforenamed workers of Gerry Ormesa. The clothes the robbers wore as described by Teresa were recognized by their employer Gerry as among those few clothings his two workers owned. Arnold and Leonardo stopped working after the October 24 incident. They left without waiting to receive the salaries due them.

Prior to the incident appellant Celerino Chua, together with his legitimate family resided about twenty (20) meters away from

complainants' house. After the incident, they left. Before Chua went into hiding he wrote the Ravagos to keep quiet about the incident, otherwise, harm would befall their family.

A couple from the place where the appellant resided gave information that the jeep was brought by the appellant Chua to Bani, Pangasinan. The jeep was recovered at Jessie Tugas' motor shop in Pangasinan. Appellant Chua and his live-in partner then resided in a nipa hut near the motor shop from November to December 1993. One Betamax unit was recovered in the nipa hut where appellant Chua and his girlfriend stayed.

Appellant Chua told Tugas that he is the owner of the jeep. Chua approached John Alden Laguidao, a friend of Tugas, who agreed to purchase the vehicle for Forty Thousand Pesos (₱40,000.00). Laguidao made a partial payment of Twenty Thousand Pesos (₱20,000.00) on the condition that the balance shall be paid upon the presentation of the certificate of registration.

Teresa was shocked by the incident. She was unable to return to work for sometime because of fear to step outside in the morning. She even received threats. She left the amount of damages to the discretion of the court.

Reynaldo Ravago corroborated Teresa's testimony. He added that he was stabbed four (4) times by the taller malefactor. He (Reynaldo) ran to the bathroom and locked himself in to avoid further harm. He heard the two robbers asking for their jewelry and cash which they earned as commission from the sale of a fishpond which they brokered. Appellant Celerino Chua knew of said transaction. Reynaldo stayed inside the bathroom for as long as the two (2) robbers had not yet left. After Reynaldo's wife opened the bathroom door, he was brought for treatment to Yanga Clinic. He was confined for five (5) days. He incurred expenses of about ₱17,000.00.

They were able to recover the vehicle in Jessie Tugas' shop in Bani, Pangasinan. It had already been sold to one John Aldrin Laguidao for ₱40,000.00. He saw the terms of the sale on a yellow pad which showed the seller to be Celerino Chua and one Meann (Chua's live-in partner). Pictures of the vehicle already dismantled (Exhibits "J", "J-1" to "J-19") and taken in Jessie's shop were presented. An inventory of the jeep's parts (Exhibits "M", and "M-1") were offered. Picture (Exhibit "J-13") of the nipa hut where Chua and MeAnn stayed was taken. The Betamax, among those stolen from the Ravagos,

was recovered from the same nipa hut where Chua and his companion stayed.

Valentina Legaspi, Teresa's mother, confirmed that the jeep, although registered in her name, was given to the spouses Ravago in 1991.

Juanito Olivario, the husband of Reynaldo Ravago's sister, accompanied Reynaldo to Bani, Pangasinan. They went first to the police station and requested for an escort to the shop of Jessie Tugas. Laguidao, the buyer of the jeep, was no longer in Bani. Reynaldo requested for a copy of the deed of sale between Chua and Laguidao. They were told it was missing.

Gerry Ormesa identified Celerino Chua in court. Chua is his sister's compadre. He identified the straw ropes to belong to him but used by the two accused, Arnold and Leo, in their work. He also admitted that the clothes shown him belonged to the two (2) accused.

Moises Legaspi, Teresa's father, identified the pictures of the subject vehicle (Exhibit "J", "J-1" to "J-16").

Jessie Tugas, a resident of Bani, Pangasinan, identified Chua in court. He came to know him when introduced by a nephew. He had an auto repair shop then. Chua was with MeAnn and two (2) men. He admitted that the jeep in question was repaired in his shop. Chua represented that he owned the jeep. He was offering it for sale. A "For Sale" sign was even posted at the back of the jeep. Tugas identified the pictures of the jeep (Exhibits "J", "J-1" to "J-16"). He also admitted that the picture (Exhibit "J-13) showed the nipa hut where Chua, MeAnn and his nephew stayed. Laguidao, his brother-in-law, bought the jeep. Laguidao gave a down payment of ₱20,000.00. Before the balance was paid, Reynaldo Ravago came to recover the vehicle.

John Laguidao identified Celerino Chua in court. He identified the pictures of the jeep. It was sold to him. Before he could pay the balance in full, the real owner came and showed him the certificate of registration. Upon verification of the chassis and engine numbers, the owner took the vehicle. Laguidao's receipt for the transaction could not be located anymore.

The accused thereafter presented defense evidence.

Accused Celerino Chua testified that he has no knowledge about the charges against him. He did not know personally the other accused,

Leonardo and Arnold. He drove part time for Reynaldo. In the early morning of October 24, 1993, he agreed to drive for Reynaldo but the vehicle he was supposed to drive was under repair. He went home and drove a passenger jeep instead. He started at 9:00 o'clock in the morning and went home at 6:00 o'clock in the evening. He proceeded to Sapang Palay, San Jose del Monte where he had a live-in partner, Mary-Ann Rodrigesa. He learned that the house of Reynaldo Ravago was robbed when the policemen came to Sapang Palay to ask him questions. He hid in Malolos because he was afraid that he might be killed. He also denied knowing John Laguidao and Jessie Tugas. He hid in his father's house in Malolos, Bulacan for three (3) years. He had not been to Bani, Pangasinan.

A barriomate and childhood playmate, Manuel Calumpang, testified in behalf of appellant Chua. Sometime in 1994, upon a chance meeting with the appellant, he heard two (2) persons talking to the former threatening him not to point to them otherwise he and his family would be killed. He was also told by the appellant that he had a case. Of the two who made the threats, one was short and the other was tall.[5]

Ruling of the RTC

As stated, the RTC convicted Chua for the crimes charged, decreeing:

WHEREFORE, foregoing premises considered, finding accused CELERINO CHUA alias SUNTAY guilty under Criminal Case No. 397-M-94 for violation of Republic Act 6539 otherwise known as the Anti-Carnapping Act of 1972, he is hereby sentenced to suffer an indeterminate sentence of fourteen years (14) and eight (8) months as minimum to seventeen (17) years and four (4) months as maximum.

Further, finding accused CELERINO CHUA alias SUNTAY guilty in Criminal Case No. 428-M-94 for Robbery under Article 294 (5) of the Revised Penal Code, he is hereby sentenced to suffer a penalty of four (4) years, two (2) months and one (1) day of *arresto mayor* as minimum to eight (8) years and twenty one (21) days of *prision mayor* as maximum and to indemnify the complainants Spouses Teresa Ravago and Reynaldo Ravago the amount of Php One Hundred Thirteen Thousand (less the value of (1) recovered Betamax Sony).

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[5] *Id*. at 129-133.

With accused preventive imprisonment credited in his favor.

Accused Celerino Chua is likewise directed to pay complainant Teresa Ravago the amount of Php Two Hundred Thousand as and for actual damages.

Costs against accused CELERINO CHUA.

Let the records of the case be sent to archive as against accused LEONARDO REYES alias "LEO" and ARNOLD LATO y BANIEL @ Arnold or Rodel who are still at large.

SO ORDERED.[6]

Decision of the CA

On appeal, Chua contended that the RTC had erred:

I

xxx IN CONVICTING ACCUSED-APPELLANT SOLELY ON THE BASIS OF CIRCUMSTANTIAL EVIDENCE.

II

xxx IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT ACCUSED-APPELLANT'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[7]

On October 20, 2005, the CA promulgated the assailed decision affirming the findings and conclusions of the RTC, pertinently observing:

Direct evidence of the commission of the crime is not only the matrix from which a trial court may draw its conclusion and finding of guilt. Circumstantial evidence is like a rope composed of many strands and cords – one strand might be insufficient, but five together may suffice to give it strength.

The requisite of circumstantial evidence to be sufficient basis for conviction are: (a) There is more than one circumstance; (b) the facts from which the inferences are derived have been established;

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

[7] *Id*. at 134.

and (c) the combination of all the circumstance is such as to warrant a finding of guilt beyond reasonable doubt.

This Court is convinced that the three (3) accused conspired to commit the crime. The circumstances before, during and after the incident point to the appellant as the mastermind. Direct proof is not essential to the establishment of conspiracy, as it may be inferred from the acts of the accused before, during and after the commission of the crime.

The circumstances in this case that point to appellant Chua as the mastermind are:

First, the day before the incident, Reynaldo Ravago told his compadre about the broker's commission he received in the sale of a fishpond. Appellant Chua eavesdropped and intently listened to the conversation.

Second, on the day of the robbery, Leonardo and Arnold, the two (2) other accused, asked for the said broker's commission. Only Celerino Chua could have told Arnold and Leo About said commission.

Third, subsequent to the commission of the crime, Celerino Chua disappeared. He left the place where he stayed. He hid in his father's house in Malolos Bulacan. Flight in jurisprudence has always been a strong indication of guilt, betraying a desire to evade responsibility.

Fourth is the sale of the owner type jeep. The seller was Celerino Chua. Both Jessie Tugas and John Laguidao categorically identified him as the person who sold and received the partial payment for the vehicle. During the recovery of the vehicle, another stolen item, the Betamax, was found in the place where Chua and his live-in partner had stayed. A disputable presumption exists that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act. Appellants offered no evidence to overcome or contradict such presumption.

It is also noted by this Court that appellant denied any knowledge in the commission of the crime as well as the fact that he knows the other accused. However, it was testified that appellant Chua was the one who referred Leonardo and Arnold to their employer. Being evidence that is negative and self-serving in nature, disavowals cannot secure more worthiness than the testimonies of prosecution witnesses who testified on clear and positive evidence.

Furthermore, the defense of the accused is alibi and denial. Alibi and denial are intrinsically weak absent material evidence of non-culpability.

The defense also failed to prove any reason for the filing of a case against the appellant. Settled is the doctrine that when there is no evidence to show any dubious reason or improper motive why a prosecution would testify falsely against the accused or implicate him in a serious offense the testimony deserves full faith and credit.

A judgment of conviction by the lower court is upheld on the basis of the circumstantial evidence that constitutes an unbroken chain which leads to one fair and reasonable conclusion that the defendant is guilty.

This Court affirms the conviction of Celerino Chua in Criminal Case No. 397-M-94 without modification of the penalty imposed by the trial court.[8]

The CA modified the penalty meted on Chua for the robbery stating thusly:

However, this Court finds the penalty in Criminal Case No. 428-M-94 for Robbery under Article 294(5) of the Revised Penal Code inaccurate. Though this Court agrees with the trial court that there was no evidence that Celerino Chua was part of any plan to inflict physical injury in the course of the robbery which justified imposition of the penalty under paragraph 5, Article 294 of the Revised Penal Code, yet, the penalty actually imposed was not accurate.

Since there is no mitigating and aggravating circumstance, the maximum penalty should have been *prision mayor* in its minimum period and the minimum penalty should have been the penalty next lower prescribed by the code. The minimum of the indeterminate penalty is left to the sound discretion of the court, to fix from within the range of the penalty next lower without reference to the periods into which it may be subdivided.[9]

The CA then accordingly disposed:

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[8] *Id*. at 134-136.

[9] *Id*. at 136-137.

WHEREFORE, in view of the foregoing, the appeal is hereby **DENIED.** The decision of Branch 81 of the Regional Trial Court of Malolos, Bulacan in Criminal Case No. 397-M-94 is **AFFIRMED** *in toto.*

Conviction in Criminal Case No. 428-M-94 is AFFIRMED with the **MODIFICATION** that appellant Chua is hereby sentenced to suffer a penalty of Four (4) years and Two (2) months of *Prision Correccional* as minimum to Eight (8) years of *Prision Mayor* as maximum.

Preventive imprisonment is credit(ed) in favor of the accused.

Accused Celerino Chua is likewise directed to pay complainant Teresa Ravago the amount of Php Two Hundred Thousand for actual damages.

Costs against accused Celerino Chua.

SO ORDERED.[10]

Issue

In his petition, Chua submits that the CA committed reversible errors in finding the existence of a conspiracy between him and the two other accused despite the failure of the State to establish his actual participation in the commission of the crimes charged; in finding him guilty of the crimes charged despite the insufficiency of the circumstantial evidence; and in holding him guilty as a principal in the commission of the crimes charged even assuming that he had sold the motor vehicle of the victims and that the betamax machine had been found in his place.

Was Chua's guilt for robbery and carnapping established beyond reasonable doubt?

Ruling of the Court

The Court **UPHOLDS** the decision of the CA.

1.
The State presented sufficient and reliable circumstantial evidence to establish

[10] *Id.* at 137.

the guilt of Chua beyond reasonable doubt for robbery and carnapping, as charged

Direct evidence was not the sole means of establishing the guilt of the accused beyond reasonable doubt. The lack or absence of direct evidence putting the accused at or near the scene of robbery and carnapping at the time of their commission did not necessarily mean that his guilt could not be proved by evidence other than direct evidence. Conviction could also rest purely on circumstantial evidence, which is that evidence that proves a fact or series of facts from which the fact in issue may be established by inference. Circumstantial evidence, if sufficient, could supplant the lack or absence of direct evidence. It may be resorted to when to insist on direct testimony would ultimately lead to setting felons free.[11]

Section 4, Rule 133 of the *Rules of Court* provides when circumstantial evidence is sufficient for conviction if the conditions enumerated therein are shown to exist, to wit:

Section 4. *Circumstantial evidence, when sufficient*. – Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

With respect to the third requisite, it is essential that the circumstantial evidence presented must constitute an unbroken chain that leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of others, as the guilty person.[12]

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[11] *Gan v. People,* G.R. No. 165884, April 23, 2007, 521 SCRA 550, 571.

[12] *People v. Canlas*, G.R. No. 141633, December 14, 2001, 372 SCRA 401, 411; *People v. Malimit*, G.R. No. 109775, November 14, 1996, 264 SCRA 167, 178.

Circumstances that fully warranted the inference of Chua's having been the mastermind in the commission of the carnapping and the robbery incriminated him beyond reasonable doubt in the crimes for which he was convicted. It is relevant to note that the CA listed the several circumstances that, taken together, proved the complicity of Chua in the robbery and carnapping, as follows:

> First, the day before the incident, Reynaldo Ravago told his compadre about the broker's commission he received in the sale of a fishpond. Appellant Chua eavesdropped and intently listened to the conversation.
>
> Second, on the day of the robbery, Leonardo and Arnold, the two (2) other accused, asked for the said broker's commission. Only Celerino Chua could have told Arnold and Leo About said commission.
>
> Third, subsequent to the commission of the crime, Celerino Chua disappeared. He left the place where he stayed. He hid in his father's house in Malolos Bulacan. Flight in jurisprudence has always been a strong indication of guilt, betraying a desire to evade responsibility.
>
> Fourth is the sale of the owner type jeep. The seller was Celerino Chua. Both Jessie Tugas and John Laguidao categorically identified him as the person who sold and received the partial payment for the vehicle. During the recovery of the vehicle, another stolen item, the Betamax, was found in the place where Chua and his live-in partner had stayed. A disputable presumption exists that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act. Appellants offered no evidence to overcome or contradict such presumption.
>
> It is also noted by this Court that appellant denied any knowledge in the commission of the crime as well as the fact that he knows the other accused. However, it was testified that appellant Chua was the one who referred Leonardo and Arnold to their employer. Being evidence that is negative and self-serving in nature, disavowals cannot secure more worthiness than the testimonies of prosecution witnesses who testified on clear and positive evidence.[13]

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[13] *Rollo*, p. 135.

Chua's complicity in the commission of robbery and carnapping is beyond dispute. It was he who had earlier referred his co-accused Lato and Reyes to Gerry Ormesa for purposes of employing them. But Lato and Reyes stopped working for Ormesa immediately after the commission of the crimes on October 24, 1993, and left even without receiving the salaries due to them. After the commission of the crimes, Chua himself, along with his common-law spouse, left his residence in the neighborhood where the house of complainant Reynaldo Ravago was (being only about 20 meters away from the latter's residence). Before he transferred, however, he warned Ravago to keep quiet about the robbery, or else harm would befall him and his family. Chua was also the person who later on sold the vehicle subject of the carnapping for ₱40,000.00 to one John Alden Laguidao who partially paid him ₱20,000.00 with the balance of ₱20,000.00 to be given upon Chua's presentation of the certificate of registration. In the meantime, Ravago learned from a couple who were residing in the place where Chua had transferred that the latter had brought the vehicle subject of the carnapping to Bani, Pangasinan. Thus, Ravago, with the help from the local police station, successfully recovered the vehicle, already dismantled, from the motor shop of one Jessie Tugas located in that place. Laguidao, Chua's buyer, was the brother-in-law of Tugas, who himself recalled that Chua, in the company of two men, had brought the vehicle to his shop claiming to be the owner of the vehicle. Chua and his common-law spouse then lived in a nipa hut near the motor shop. It was hardly coincidental that at the time of the recovery of the vehicle, Ravago's Betamax unit was recovered from Chua's nipa hut.

2.
Despite his physical absence from the scene of the crime, Chua was liable as a principal by inducement, and also for the violence committed by Lato and Reyes during the execution of the crimes

The foregoing circumstances were sufficient and competent to prove that Chua masterminded the robbery and carnapping.

As the mastermind, he directly induced Lato and Reyes to commit the robbery and the carnapping. His inducement of them was not merely casual but influential and controlling. Lato and Reyes could not have committed the crimes without Chua's inducement and plotting. In that capacity, Chua was a principal by inducement within the context of Article 17 of the *Revised Penal Code*, which provides:

> Article 17. *Principals.* — The following are considered principals:
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> 1. Those who take a direct part in the execution of the act;
>
> 2. **Those who directly force or induce others to commit it**;
>
> 3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime, and decide to commit it.[14] For an accused to be validly held to conspire with his co-accused in committing the crimes, his overt acts must tend to execute the offense agreed upon, for the merely passive conspirator cannot be held to be still part of the conspiracy without such overt acts, unless such passive conspirator is the mastermind. In that respect, it is not always required to establish that two or more persons met and explicitly entered into the agreement to commit the crime by laying down the details of how their unlawful scheme or objective would be carried out.[15] Conspiracy can also be deduced from the mode and manner in which the offense is perpetrated, or can be inferred from the acts of the several accused evincing their joint or common purpose and design, concerted action and community of interest.[16] Clearly, the State successfully proved the existence of a conspiracy among the three accused.

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[14] Article 8, second paragraph, *Revised Penal Code*.

[15] *People v. Pansacala*, G.R. No. 194255, June 13, 2012, 672 SCRA 549, 558-559.

[16] *People v. Fegidero*, G.R. No. 113446, August 4, 2000, 337 SCRA 274, 284.

3.
Robbery committed was that under Article 294(5) of the *Revised Penal Code*

Robbery is defined and punished under Article 294 of the *Revised Penal Code*, to wit:

Article 294. *Robbery with violence against or intimidation of persons; Penalties.* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.[17]

2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted; Provided, however, that when the robbery accompanied with rape is committed with a use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death (As amended by PD No. 767).

3. The penalty of *reclusion temporal*, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.

4. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by sub-divisions 3 and 4 of said Article 263.

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases. (As amended by R. A. 18).

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[17] This paragraph has since been amended by Republic Act No. 7659 (approved on December 13, 1993) to add: "or when the robbery shall have been accompanied by rape or intentional mutilation or arson."

The CA properly convicted Chua of robbery as defined and punished under Article 294(5) of the *Revised Penal Code*.

During the commission of robbery, Reyes, the taller between him and Lato, stabbed Ravago four times. Ravago escaped further harm only by running to the bathroom and locking himself in. In that time, the robbers demanded to know from him the hiding place of the jewelry and the commission earned from the sale of a fishpond that Ravago had brokered. The latter ignored the demand and just stayed inside the bathroom until after they had left, and his wife opened the bathroom door. She rushed him to the Yanga Clinic for treatment. He was confined in the Yanga Clinic for five days, and incurred expenses of about ₱17,000.00.

Yet, the physical injuries inflicted by the stabbing in the course of the execution of the robbery did not constitute any of the serious physical injuries mentioned under Article 263 of the *Revised Penal Code* as required by Article 294(2)(3) and (4) of the *Revised Penal Code*. Specifically, the physical injuries inflicted on him did not render him insane, imbecile, impotent or blind; he did not also lose the use of speech or the power to hear or to smell, or an eye, a hand, a foot, an arm or a leg; or the use of any of such member; he did not also become incapacitated for the work in which he was theretofore habitually engaged; he did not become deformed; he did not lose any other part of his body, or the use thereof; he did not become ill or incapacitated for the performance of the work in which he was habitually engaged for a period of more than 90 days; or he did not become ill or incapacitated for labor for more than 30 days. The crime is simple robbery under Article 294(5) of the *Revised Penal Code*.

The CA modified the penalty meted by the RTC after observing that "there was no evidence that Celerino Chua was part of any plan to inflict physical injury in the course of the robbery."[18] Although both lower courts agreed that there was no evidence

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[18] *Rollo*, p. 136.

showing that Chua had been part of any plan to inflict physical injury in the course of the robbery, the Court deems it necessary to issue a rectification lest such observation be unduly taken as sanctioned with concurrence.

Being the mastermind, Chua was as responsible for the consequences of the acts committed by Lato and Reyes, the principals by direct participation. This is because of the conspiracy among the three of them. The informations had properly charged them as co-conspirators in robbery and carnapping. Once their conspiracy was established, the act of each of the conspirators became the act of all. Indeed, Chua could not escape responsibility for the acts done by his co-conspirators. The very nature of the planned robbery as a crime that entailed violence against persons warranted holding Chua fully responsible for all the consequences of the criminal plot.

In *People v. Pareja*,[19] the trial court had appreciated one of two aggravating circumstances (price or reward) as the qualifying circumstance but had refused to consider the other (treachery) as a generic aggravating circumstance against the accused, who was the mastermind, on the ground that he had not been present when the crime was being actually committed, having left the means, modes or methods of its commission to a great extent to the discretion of the others. The trial court cited as its authority the ruling in *People v. De Otero* (51 Phil. 201). The Court, on appeal, disagreed with the lower court, and opined *per curiam* as follows:

> The citation is not in point. It refers to a case where the accused was convicted as principal by inducement *per se* under paragraph 2 of Article 17 of the Revised Penal Code, without proof of conspiracy with the other accused. In the case at bar, however, there was conspiracy among the defendants, and the rule is that every conspirator is responsible for the acts of the others in furtherance of the conspiracy. Treachery – evident in the act of the gunman in suddenly firing his revolver, preceded as it was by a false showing of courtesy to the victim, thus insuring the execution of the crime without risk from

[19] No. L-21937, November 29, 1969, 30 SCRA 693.

any defense or retaliation the victim might offer – should be appreciated as a generic aggravating circumstance against appellant.[20]

For the robbery, the RTC set the indeterminate sentence at four years, two months and one day of *arresto mayor*, as the minimum, and eight years and 21 days of *prision mayor*, as the maximum. The CA modified the indeterminate sentence by imposing four years and two months of *prision correccional*, as minimum, to eight years of *prision mayor*, as maximum.

The imposable penalty for robbery under Article 294(5) of the *Revised Penal Code* is *prision correccional* in its maximum period to *prision mayor* in its medium period, which ranges from four years, two months and one day to 10 years. In the absence of modifying circumstances, the penalty is imposed in its medium period, *that is*, six years, one month and 11 days to eight years and 20 days. The minimum of the indeterminate sentence is taken from the penalty next lower, which is *arresto mayor* in its maximum period to *prision correccional* in its medium period (*that is*, four months and one day to four years and two months). The CA correctly fixed the minimum of the indeterminate sentence. On the other hand, the maximum of the indeterminate sentence should be from the medium period of the penalty as stated herein.

In its judgment, the CA applied the *ceiling* of the penalty but did not tender any justification for doing so. Such justification was required by the *seventh rule* enunciated in Article 64 of the *Revised Penal Code* on the application of penalties containing three periods. The need for the justification is explained in *Ladines v. People*,[21] to wit:

> x x x although Article 64 of the *Revised Penal Code*, which has set the rules "for the application of penalties which contain three periods," requires under its first rule that the courts should impose the penalty prescribed by law *in the medium period* should there be neither aggravating nor mitigating circumstances, **its seventh rule**

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[20] *Id.* at 715-716.

[21] G.R. No. 167333, January 11, 2016, 778 SCRA 83, 93.

expressly demands that *"[w]ithin the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime*." By not specifying the justification for imposing the ceiling of the period of the imposable penalty, the fixing of the indeterminate sentence became arbitrary, or whimsical, or capricious. In the absence of the specification, the maximum of the indeterminate sentence for the petitioner should be the lowest of the medium period of *reclusion temporal*, which is 14 years, eight months and one day of *reclusion temporal*. (Bold underscoring supplied for emphasis; italicized portions are part of the original text)

Although the CA should not have fixed the ceiling of the penalty without tendering the justification for doing so, we nonetheless note that such ceiling of eight years as the maximum of the indeterminate penalty was warranted. The appeal by Chua threw the records open for review, such that the penalty meted on him could be reviewed as a matter of course and rectified, if necessary, without infringing on his right as an accused. Thus, the Court will itself now tender the justification for imposing the ceiling of the penalty. Chua's masterminding of the robbery and carnapping against his own neighbor manifested the high degree of his criminality.

4.
Carnapping committed with violence or intimidation of persons was established beyond reasonable doubt; hence, Chua's proper penalty should be higher

Carnapping is defined as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things."[22] Under Section 14 of Republic Act No. 6539, the penalty for carnapping committed without violence or intimidation of persons, or force upon things is imprisonment of not less than 14 years and eight months and

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[22] Section 2, Republic Act No. 6539.

not more than 17 years and four months; if committed by means of violence against or intimidation of any person, or force upon things, the penalty is imprisonment of not less than 17 years and four months and not more than 30 years.

The taking of the motor vehicle (owner-type jeep) belonging to the Ravagos by Lato and Reyes constituted carnapping. But it was clear error for the lower courts to punish Chua with the penalty for carnapping committed without violence or intimidation of persons, or force upon things. Even if the robbers took the motor vehicle after consummating the robbery in the course of the execution of which one of them stabbed Ravago four times, the taking of the motor vehicle in order to carry the stolen articles out was still attended by the same violence and intimidation of the owner and his wife, as well as of the rest of their household. As such, the correct imposable penalty is imprisonment of not less than 17 years and four months and not more than 30 years. Accordingly, the indeterminate sentence is imprisonment for 18 years, as minimum, to 22 years, as maximum.

5.
Civil liability

We affirm the civil liability awarded to Ravago considering that Chua did not assail the award. Yet, we have to direct the payment of legal interest of 6% *per annum* on the ₱200,000.00 awarded as actual damages reckoned from the finality of this decision until full satisfaction.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** in all respects the decision promulgated on October 20, 2005, subject to the following **MODIFICATIONS**, to wit:

(1) Petitioner **CELERINO CHUA *ALIAS* SUNTAY** is punished in Criminal Case No. 397-M-94, for carnapping, with the indeterminate sentence of 18 years, as minimum, to 22 years, as maximum; and

(2) The actual damages of ₱200,000.00 shall earn legal interest of 6% *per annum* reckoned from the finality of this decision until full satisfaction.

The petitioner shall pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179732. September 13, 2017]

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioner, vs.* **CMC/MONARK/PACIFIC/HI-TRI JOINT VENTURE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; VERIFICATION AND CERTIFICATION AGAINST NON-FORUM SHOPPING; CERTIFICATION AGAINST FORUM SHOPPING MUST BE EXECUTED BY THE PARTY OR PRINCIPAL AND NOT BY COUNSEL.— This Court has long enforced the strict procedural requirement of verification and certification against non-forum shopping. It is settled that certification against forum shopping must be executed by the party or principal and not by counsel. In *Anderson v. Ho*, this Court explained that it is the party who is in the best position to know whether he or she has filed a case before any courts. It is clear in this case that counsel for petitioner, Atty. Valderama, was not clothed with authority to sign on petitioner's behalf.

2. ID.; ID.; ID.; ID.; THE LACK OF A CERTIFICATION AGAINST FORUM SHOPPING, UNLIKE THAT OF VERIFICATION, IS NOT CURED BY ITS SUBMISSION AFTER THE FILING OF THE PETITION, EXCEPT WHEN IT IS MORE PRUDENT TO RESOLVE THE CASE ON ITS MERITS THAN DISMISS IT ON PURELY TECHNICAL GROUNDS.— This Court ruled before that: "the lack of a certification against forum shopping, unlike that of verification, is generally not cured by its submission after the filing of the petition." Nevertheless, exceptions exist, as in the case at bar, and it is more prudent to resolve the case on its merits than dismiss it on purely technical grounds.

3. ID.; ID.; ACTIONS; MOOT AND ACADEMIC PRINCIPLE; A CASE COULD NOT BE DEEMED MOOT AND ACADEMIC WHEN THERE REMAINS AN UNRESOLVED JUSTICIABLE CONTROVERSY.— Indeed, the rule is that courts will not rule on moot cases. However, the moot and academic principle is "not a magical formula that can automatically dissuade the courts in resolving a case." Exceptions exist that would not prevent a court from taking cognizance of cases seemingly moot and academic. In *Carpio v. Court of Appeals*, this Court held that a case could not be deemed moot and academic when there remains an unresolved justiciable controversy. x x x. In this case, issues arising from the mutually terminated Contract are not moot and academic. As the Court of Appeals found, there are actual substantial reliefs that respondent is entitled to. There is a practical use or value to decide on the issues raised by the parties despite the mutual termination of the Contract between them. These issues include the determination of amounts payable to respondent by virtue of the time extensions, respondent's entitlement to price adjustments due to the delay of the issuance of the Notice to Proceed, additional costs, actual damages, and interest on its claims. The agreement to mutually terminate the Contract did not wipe out petitioner's obligation to pay respondent on works done before the Contract's termination on October 27, 2004.

4. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; THE CONCERNED ADMINISTRATIVE AGENCY MUST

BE GIVEN THE OPPORTUNITY TO DECIDE A MATTER WITHIN ITS JURISDICTION BEFORE AN ACTION IS BROUGHT BEFORE THE COURTS, OTHERWISE, THE ACTION WILL BE DECLARED PREMATURE; STRICT APPLICATION OF THE DOCTRINE WILL BE SET ASIDE WHEN REQUIRING IT WOULD ONLY BE UNREASONABLE UNDER THE CIRCUMSTANCES.— Under the doctrine of exhaustion of administrative remedies, the concerned administrative agency must be given the opportunity to decide a matter within its jurisdiction before an action is brought before the courts, otherwise, the action will be declared premature. In this case, CIAC found and correctly ruled that respondent had duly complied with the contractual obligation to exhaust administrative remedies provided for under sub-clause 67.1 of the Conditions of Contract before it brought the case before the tribunal x x x. A total of 17 demand letters were sent to petitioner to no avail. To require respondent to wait for the DPWH Secretary's response while respondent continued to suffer financially would be to condone petitioner's avoidance of its obligations to respondent. Hence, even assuming that sub-clause 67.1 was not applicable, the case would still fall within the exceptions to the doctrine of exhaustion of administrative remedies since strict application of the doctrine will be set aside when requiring it would only be unreasonable under the circumstances.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF FACT OF CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC), A QUASI-JUDICIAL TRIBUNAL WHICH HAS EXPERTISE ON MATTERS REGARDING THE CONSTRUCTION INDUSTRY, SHOULD BE RESPECTED AND UPHELD; EXCEPTIONS.— As a general rule, findings of fact of CIAC, a quasi-judicial tribunal which has expertise on matters regarding the construction industry, should be respected and upheld. In *National Housing Authority v. First United Constructors Corp.*, this Court held that CIAC's factual findings, as affirmed by the Court of Appeals, will not be overturned except as to the most compelling of reasons: As this finding of fact by the CIAC was affirmed by the Court of Appeals, and it being apparent that the CIAC arrived at said finding after a thorough consideration of the evidence presented by both parties, the

same may no longer be reviewed by this Court. *The all too-familiar rule is that the Court will not, in a petition for review on certiorari, entertain matters factual in nature, save for the most compelling and cogent reasons*, like when such factual findings were drawn from a vacuum or arbitrarily reached, or are grounded entirely on speculation or conjectures, are conflicting or are premised on the supposed evidence and contradicted by the evidence on record or when the inference made is manifestly mistaken or absurd. This conclusion is made more compelling by the fact that the CIAC is a quasi-judicial body whose jurisdiction is confined to construction disputes. Indeed, settled is the rule that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals.

6. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; ARBITRATION; COMMERCIAL ARBITRATION, VOLUNTARY ARBITRATION UNDER THE LABOR CODE, AND CONSTRUCTION ARBITRATION, DISTINGUISHED.— In distinguishing between commercial arbitration, voluntary arbitration under Article 219(14) of the Labor Code, and construction arbitration, *Freuhauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific* ruled that commercial arbitral tribunals are purely ad hoc bodies operating through contractual consent, hence, they are *not* quasi-judicial agencies. In contrast, voluntary arbitration under the Labor Code and construction arbitration derive their authority from statute in recognition of the public interest inherent in their respective spheres. Furthermore, voluntary arbitration under the Labor Code and construction arbitration exist independently of the will of the contracting parties: Voluntary Arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining Agreements. These disputes were specifically excluded from the coverage of both the Arbitration Law and the ADR Law. Unlike purely commercial relationships, the relationship between capital and labor are heavily impressed with public interest. Because of this, Voluntary Arbitrators authorized to resolve labor disputes have been clothed with quasi-judicial authority. On the other hand, commercial

relationships covered by our commercial arbitration laws are purely private and contractual in nature. Unlike labor relationships, they do not possess the same compelling state interest that would justify state interference into the autonomy of contracts. Hence, commercial arbitration is a purely private system of adjudication facilitated by private citizens instead of government instrumentalities wielding quasi-judicial powers. Moreover, judicial or quasi-judicial jurisdiction cannot be conferred upon a tribunal by the parties alone. The Labor Code itself confers subject-matter jurisdiction to Voluntary Arbitrators. *Notably, the other arbitration body listed in Rule 43 — the Construction Industry Arbitration Commission (CIAC) — is also a government agency attached to the Department of Trade and Industry. Its jurisdiction is likewise conferred by statute. By contrast, the subject-matter jurisdiction of commercial arbitrators is stipulated by the parties.*

7. ID.; ID.; ID.; ID.; FINDINGS OF CIAC AND THE COURT OF APPEALS THAT RESPONDENT WAS ENTITLED TO THE FOREIGN COMPONENT OF THE CONTRACT, AFFIRMED.— This Court affirms the findings of CIAC and the Court of Appeals that respondent is entitled to the foreign component of the Contract. x x x. CIAC found that petitioner was not justified in withholding the payment for the dollar component of the Contract. Further, it found that respondent was justified and not at fault for not reviewing the Letter of Credit. In *National Housing Authority v. First United Constructors Corp.*, this Court held that the respondent contractor was entitled to the payment of its claims, as the non-posting of the required Payment Guarantee Bond was due to the inaction of petitioner National Housing Authority x x x. In the present case, the renewal of the Letter of Credit hinged on the extension of the contract period. Despite notice by respondent of the bank's requirement for the renewal of the Letter of Credit, petitioner chose to ignore respondent's requests for time extensions. Therefore, petitioner cannot shift the blame to respondent and claim that the Letter of Credit was a condition *sine qua non* for the payment of the dollar component of the project.

8. ID.; ID.; ID.; ID.; FINDINGS OF THE COURT OF APPEALS AND THE CIAC THAT RESPONDENT WAS ENTITLED TO TIME EXTENSIONS DUE TO PETITIONER'S

DELAYED PAYMENTS, PEACE AND ORDER SITUATION, AND VARIATION ORDER NO. 2, AFFIRMED, AS THE SAME ARE CLEARLY SUPPORTED BY THE FACTS ON RECORD. — This Court sees no reason to deviate from the findings of both CIAC and the Court of Appeals with regard to respondent's entitlement to time extensions: 1) under Variation Order No. 2; 2) due to the delay in payment; and 3) due to the peace and order situation, since these are supported by the evidence on record. To reiterate, findings of fact of administrative agencies and quasi-judicial bodies are entitled to great respect and even finality when affirmed by the appellate court. In this case, the Court of Appeals found that respondent was entitled to the time extensions as evaluated by CIAC, the agency tasked to resolve issues regarding the construction industry. Both tribunal found that respondent was entitled to the extensions due to petitioner's delayed payments, peace and order situation, and Variation Order No. 2. These findings are clearly supported by the facts on record.

9. ID.; ID.; ID.; ID.; FINDINGS OF BOTH CIAC AND THE COURT OF APPEALS THAT RESPONDENT WAS NOT ENTITLED TO A PRICE ADJUSTMENT UNDER PRESIDENTIAL DECREE NO. 1594, AFFIRMED; THE ASIAN DEVELOPMENT BANK GUIDELINES SHOULD GOVERN ISSUES ARISING FROM THE CONTRACT IN CASE AT BAR.— Both CIAC and the Court of Appeals found that respondent was not entitled to a price adjustment: As to the *first* issue raised by the Claimant, this Court finds that the CIAC committed no reversible error in not awarding the price adjustment being sought by the Claimant under P.D. 1594, finding as flawed its claim based on the alleged DPWH's delay in the issuance of the notice to proceed. x x x. While respondent did not appeal the Court of Appeals' ruling with regard to its entitlement to a price adjustment under Presidential Decree No. 1594, for purposes of clarity and to finally settle the matter, this Court affirms the findings of CIAC and the Court of Appeals. This Court has held that a foreign loan agreement with international financial institutions, such as a multilateral lending agency organized by governments like the Asian Development Bank, is an executive or international agreement contemplated by our government procurement system. In *Abaya v. Ebdane, Jr.*, this Court upheld the applicability of the Japan Bank for

International Cooperation's Procurement Guidelines to the implementation of the projects to be undertaken pursuant to the loan agreement between the Republic of the Philippines and Japan Bank for International Cooperation. While the Implementing Rules and Regulations of Presidential Decree No. 1594 provide the formula for price adjustment in case of delay in the issuance of a notice to proceed, the law does not proscribe parties from making certain contractual stipulations. In this case, the Construction Contract is clear that in case of price adjustments, Clause 70 of the Conditions of Contract will apply x x x. It is unclear from the records, however, whether the Asian Development Bank Guidelines was substantially the same as Clause 70 of the Conditions of Contract. Nevertheless, as in the *Abaya* case, it should be the guidelines that the parties have agreed upon, i.e., the Asian Development Bank Guidelines, that should govern in case of issues arising from the contract. Respondent failed to proffer evidence on what the Asian Development Bank Guidelines provide, if any, in the event of a delay in the issuance of a Notice to Proceed.

10. ID.; ID.; ID.; ID.; FINDINGS OF THE CIAC AND THE COURT OF APPEALS THAT THE RESPONDENT WAS ENTITLED TO EQUIPMENT AND FINANCIAL LOSSES, AFFIRMED.— It has been sufficiently established that a peace and order problem arose at the project site x x x. This Court finds that CIAC and the Court of Appeals did not err when they found that respondent was entitled to its claim for equipment and financial losses. The situation was an assumed risk of petitioner as employer and is, thus, compensable under Clause 20.4 of the Conditions of Contract, which lists the Employer's risks x x x. It is clear from the x x x provision that the assumed risks of the employer under Clause 20.4 of the Conditions of Contract include rebellion, revolution, insurrection, or military or usurped power, or civil war.

11. REMEDIAL LAW; CIVIL PROCEDURE; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; SPECIFIC DENIAL; THE DEFENDANT MUST SPECIFY EACH MATERIAL ALLEGATION OF FACT THE TRUTH OF WHICH HE DOES NOT ADMIT AND, WHENEVER PRACTICABLE, SHALL SET FORTH THE SUBSTANCE OF THE MATTERS UPON WHICH HE RELIES TO

SUPPORT HIS DENIAL; MODES OF SPECIFIC DENIAL.— In its Answer before CIAC, petitioner denied respondent's claims for additional costs under Clause 69.4. Petitioner stated that its denial will be explained more specifically in its Affirmative Defenses x x x. However, a perusal of petitioner's Affirmative Defenses reveals that no such qualification was made. Under Rule 8, Section 10 of the Rules of Court, the "defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial." There are three (3) modes of specific denial provided for under the Rules: 1) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial.

12. ID.; ID.; ID.; ID.; THE DENIAL IN THE ANSWER MUST BE DEFINITE AS TO WHAT IS ADMITTED AND WHAT IS DENIED, SUCH THAT THE ADVERSE PARTY WILL NOT HAVE TO RESORT TO GUESSWORK OVER WHAT IS ADMITTED, WHAT IS DENIED, AND WHAT IS COVERED BY DENIALS OF KNOWLEDGE AS SUFFICIENT TO FORM A BELIEF. — In *Aquintey v. Spouses Tibong*, this Court held that using "specifically" in a general denial does not automatically convert that general denial to a specific one. The denial in the answer must be definite as to what is admitted and what is denied, such that the adverse party will not have to resort to guesswork over "what is admitted, what is denied, and what is covered by denials of knowledge as sufficient to form a belief." x x x. This Court finds that petitioner failed to specifically deny the claims of respondent and had, therefore, admitted such claims. This Court agrees that respondent was able to establish its claims before the CIAC. This Court notes that the project was in Mindanao, and mobilization of workers and equipment is not an easy feat and not without cost. Respondent believed that the suspension would

only be temporary and work could resume at any time once petitioner settled its obligation. Petitioner must compensate respondent for the costs it incurred without any fault on respondent's part.

13. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONSTRUCTION CONTRACTS; A CONTRACT IS THE LAW BETWEEN THE PARTIES AND, ABSENT ANY SHOWING THAT ITS PROVISIONS ARE WHOLLY OR IN PART CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER, OR PUBLIC POLICY, IT SHALL BE ENFORCED TO THE LETTER BY THE COURTS; NO BASIS FOR THE AWARD OF INTEREST IN CASE AT BAR.— It is fundamental that a contract is the law between the parties and, absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts. Respondent was not able to establish the basis of its claim that it is entitled to an award of 24% interest. Moreover, as found by the Court of Appeals and CIAC, the parties had agreed to delete the provision on interest on delayed payments, since the project was funded by the Asian Development Bank.

14. ID.; ID.; ID.; DAMAGES; ACTUAL DAMAGES; THE ISSUE ON THE AMOUNT OF ACTUAL OR COMPENSATORY DAMAGES IS A QUESTION OF FACT, AND EXCEPT AS PROVIDED BY LAW OR BY STIPULATION, ONE IS ENTITLED TO ADEQUATE COMPENSATION ONLY FOR PECUNIARY LOSS DULY PROVEN; NO BASIS FOR THE AWARD OF ACTUAL DAMAGES IN CASE AT BAR.— There is also no basis to award respondent 24% interest as actual damages for the additional expenses it incurred due to petitioner's delayed payments. Before actual damages may be awarded, it is imperative that the claimant proves its claims first. The issue on the amount of actual or compensatory damages is a question of fact, and except as provided by law or by stipulation, one is entitled to adequate compensation only for pecuniary loss duly proven. In this case, respondent has not sufficiently shown how awarding it 24% interest per annum on delayed payments corresponds to the actual damages it allegedly suffered. Respondent failed to show a causal relation

between the alleged losses and the injury it suffered from petitioner's actions.

15. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES NOT RAISED ON APPEAL ARE ALREADY FINAL AND CANNOT BE DISTURBED.— Respondent claims that it should be paid in U.S. dollars as specified in the Contract. It argues that the present case is an exception to the general rule that obligations should be paid in Philippine currency. The Court of Appeals held that the parties subsequently agreed that payments made after March 31, 2003 shall be in pesos only x x x. Again, considering that respondent did not appeal the Court of Appeals decision, the appellate court's ruling on this issue is deemed final as to respondent, and there is no need to remand this issue to the CIAC. Issues not raised on appeal are already final and cannot be disturbed.

16. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; INTEREST; LEGAL INTEREST OF 12% AND 6% PER ANNUM, IMPOSED.— Before *Nacar* and Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796 dated May 16, 2013, the rate of legal interest was pegged at 12% per annum from finality of judgment until its satisfaction, "this interim period being deemed to be by then an equivalent to a forbearance of credit." With this Court's pronouncement in *Nacar*, the rate of interest imposed should be modified. The monetary awards, as computed by the CIAC, should earn legal interest at the rate of 12% per annum until June 30, 2013, after which, it shall earn legal interest at the rate of 6% per annum until full satisfaction.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Aguirre Abaño Pamfilo Paras Pineda & Agustin Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

As the administrative agency tasked with resolving issues pertaining to the construction industry, the Construction Industry Arbitration Commission enjoys a wide latitude in recognition of its technical expertise and experience. Its factual findings are, thus, accorded respect and even finality, particularly when they are affirmed by an appellate court.

This is a Petition for Review on Certiorari[1] assailing the Court of Appeals Decision[2] dated September 20, 2007 in CA-G.R. SP Nos. 88953 and 88911, which affirmed the March 1, 2005 Award of the Construction Industry Arbitration Commission (CIAC).

On April 29, 1999, Republic of the Philippines, through the Department of Public Works and Highways (DPWH), and CMC/Monark/Pacific/Hi-Tri J.V. (the Joint Venture) executed "Contract Agreement for the Construction of Contract Package 6MI-9, Pagadian-Buug Section, Zamboanga del Sur, Sixth Road Project, Road Improvement Component Loan No. 1473-PHI"[3] (Contract) for a total contract amount of ₱713,330,885.28.[4]

Parts I (General Conditions with forms of tender + agreement) and II (Conditions of Particular Application + Guidelines for Preparation of Part II Clauses) of the "Conditions of Contract for Works of Civil Engineering Construction of the Federation International Des Ingenieurs – Conseils" (Conditions of Contract)

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[1] *Rollo,* pp. 398–463.

[2] *Id.* at 464–480. The Decision was penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose C. Reyes, Jr. and Japar B. Dimaampao of the Special Eighth Division, Court of Appeals, Manila.

[3] *Id*. at 481–485.

[4] *Id*. at 482.

formed part of the Contract.[5] DPWH hired BCEOM French Engineering Consultants to oversee the project.[6]

On October 23, 2002, or while the project was ongoing, the Joint Venture's truck and equipment were set on fire. On March 11, 2003, a bomb exploded at Joint Venture's batching plant located at Brgy. West Boyogan, Kumalarang, Zamboanga del Sur. According to reports, the bombing incident was caused by members of the Moro Islamic Liberation Front.[7]

The Joint Venture made several written demands for extension and payment of the foreign component of the Contract. There were efforts between the parties to settle the unpaid Payment Certificates amounting to ₱26,737,029.49. Thus, only the foreign component of US$358,227.95 was up for negotiations subject to further reduction of the amount on account of payments subsequently received by the Joint Venture from DPWH.[8]

In a letter dated September 18, 2003, BCEOM French Engineering Consultants recommended that DPWH promptly pay the outstanding monies due the Joint Venture.[9] The letter also stated that the actual volume of the Joint Venture's accomplishment was "2,732m^2 of hardrock and 4,444m^3 of rippable rock," making the project 80% complete when it was halted.[10]

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[5] *Id.* at 401. The "Conditions of Contract for Works of Civil Engineering Construction" is a standard contract form prepared by the Federation International Des Ingenieurs – Conseils (FIDIC). The standard contract is recommended for general use for the purpose of construction of such works where tenders are invited on an international basis. The Conditions of Contract are also equally suitable for use on domestic contracts. It is commonly referred to as the Red Book in the construction industry. Available at <http://fidic.org/bookshop/about-bookshop/which-fidic-contract-should-i-use> (last accessed on September 4, 2017>.

[6] *Id.*

[7] *Id*. at 491–492, Joint Venture's Complaint before the CIAC and pp. 742–744, CIAC Award.

[8] *Id*. at 728, CIAC Award.

[9] *Id.*

[10] *Id*. at 740.

On March 3, 2004, the Joint Venture filed a Complaint[11] against DPWH before CIAC. Joint Venture's claims, which amounted to ₱77,206,047.88, were as follows:

CLAIMANT'S CLAIM

Foreign component of the project of (US$358,227.95 @Php34.90)	Php12,502,155.46
Interest as of December 3, 2003 (Computation for the damages & losses incurred: Php10,297,090.42 + (US$118,094.93 @34.90)	Php14,418,603.47
Equipment and financial losses	5,080,000.00
Additional costs in the contract price under Clause 69.4	20,311,072.66
Adjustment in the contract price under Presidential Decree No. 1594 (9,313,402.91 in pesos and 266,859.68 in dollar)	18,626,805.81
Effect of the bombing incident	6,267,410.48
TOTAL CLAIMS	**Php77,206,047.88**[12]

Meanwhile, on July 8, 2004, the Joint Venture sent a "Notice of Mutual Termination of Contract"[13] to DPWH requesting for a mutual termination of the contract subject of the arbitration case. This is due to its diminished financial capability due to DPWH's late payments, changes in the project involving payment terms, peace and order problems, and previous agreement by the parties.

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[11] *Id*. at 486–500.

[12] *Id*. at 732, CIAC Award.

[13] *Id*. at 553–555.

On July 16, 2004, then DPWH Acting Secretary Florante Soriquez accepted the Joint Venture's request for mutual termination of the contract.[14]

After hearing and submission of the parties' respective memoranda,[15] CIAC promulgated an Award[16] on March 1, 2005, directing DPWH to pay the Joint Venture its money claims plus legal interest. CIAC, however, denied the Joint Venture's claim for price adjustment due to the delay in the issuance of a Notice to Proceed under Presidential Decree No. 1594 or the "Policies, Guidelines, Rules, and Regulations for Government Infrastructure Contracts."[17] The dispositive portion of the Award read:

> WHEREFORE, premises considered and in view of the resolution of the issues presented, an Award is hereby rendered ordering the Respondent DPWH to pay the Claimant the following:
>
> 1. Foreign Component of US$358,227.95 plus legal interest of US$18,313.79;
>
> 2. Equipment and Plant Losses of ₱5,080,000, plus legal interest of ₱464,298.08;
>
> 3. Additional Costs resulting from the Bombing of ₱6,267,410.48 plus legal interest of ₱320,410.63, and
>
> 4. Additional Costs in the contract price under Clause 69.4 of ₱20,311,072.66 plus legal interest of [₱]1,038,368.78.
>
> The claim of Claimant for adjustment under [Presidential Decree No.] 1594 of ₱18,626,805.81 is hereby denied.
>
> Pursuant to the case of Eastern Shipping Lines vs. Court of Appeals, 234 SCRA 78, the foregoing monetary awards shall earn interest at the rate of 12% per annum from the date the Award becomes final and executor until its satisfaction.

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[14] *Id*. at 338–339.

[15] *Id*. at 733, CIAC Award.

[16] *Id*. at 726–751.

[17] *Id*. at 741–742 (CIAC Award).

SO ORDERED.[18]

DPWH and the Joint Venture filed their respective petitions for review before the Court of Appeals.[19]

The Court of Appeals in its Decision[20] dated September 20, 2007, sustained CIAC's Award with certain modifications and remanded the case to CIAC for the determination of the number of days extension that the Joint Venture is entitled to and "the conversion rate in pesos of the awarded foreign exchange payments stated."[21]

The Court of Appeals held that CIAC did not commit reversible error in not awarding the price adjustment sought by the Joint Venture under Presidential Decree No. 1594 since it was the Asian Development Bank's Guidelines on procurement that was applicable and not Presidential Decree No. 1594.[22]

The Court of Appeals also held that CIAC did not err in not awarding actual damages in the form of interest at the rate of 24% since there was no provision for such interest payment in the Contract. However, the Court of Appeals ruled that CIAC was correct when it awarded legal interest.[23]

The Court of Appeals sustained the Joint Venture's argument on the non-inclusion of a clear finding of its entitlement to time extensions in the dispositive portion of the CIAC Award.[24] The Court of Appeals held that CIAC did not clearly dispose of the matter:

Yet, a close scrutiny of the foregoing disposition shows that it does not refer to the 133 days as per Variation Order No. 2 since CIAC

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[18] *Id*. at 750–751.

[19] *Id.* at 78–79.

[20] *Id.* at 464–480.

[21] *Id*. at 480.

[22] *Id*. at 473–474.

[23] *Id*. at 474–475.

[24] *Id.* at 475–476.

made mention that the project is already terminated and the entire volume under said Order "will not be consumed". Whether or not the Claimant then deserves to get the full 133 calendar days is a matter that has to be clearly resolved. On this, We hold that this Court is not prepared to engage into a technical bout that only the expertise of the CIAC can pass upon.[25]

On the other hand, the Court of Appeals did not accept DPWH's argument that the case was already moot and academic. According to the Court of Appeals, when the Joint Venture requested for the mutual termination of the Contract on July 8, 2004, it did not waive its right to be paid the amounts due to it.[26]

The Court of Appeals, however, raised a concern with regard to CIAC's order for DPWH to pay its liabilities in US dollars. It held that the parties have agreed that "all payments for works carried out after 31 May 2003 and related price escalation claims and retention releases in the contract will be in pesos only, therefore no foreign exchange payments." This was never contested by the Joint Venture; hence, it may be presumed that it acquiesced to the request of the DPWH.[27]

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, premises considered, the assailed Decision is hereby **AFFIRMED** with **MODIFICATION** to include the award to the Claimant of time extensions per: 1) delay in payment at One Hundred Eight (108) days, and 2) extension Twenty-Nine (29) days due to peace and order situation.

Re 1) the award of time extension per Variation Order No. 2 – as stated earlier elsewhere in the Decision, the CIAC must make a vivid presentation of the number of calendar days the Claimant is entitled to, and 2) the conversion rate in pesos of the awarded foreign exchange payments states, *supra*, in the assailed Decision, these matters are

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[25] *Id*. at 477.

[26] *Id*. at 477–478.

[27] *Id.* at 479.

hereby **REMANDED** to the CIAC for proper disposition. Accordingly, the rest of the challenged Decision **STANDS**.

SO ORDERED.[28] (Emphasis in the original)

Petitioner DPWH filed the present Petition for Review[29] assailing the Court of Appeals Decision. In a Resolution[30] dated January 28, 2008, this Court required respondent Joint Venture to file its Comment.

On March 27, 2008, respondent filed its comment/opposition.[31] Petitioner thereafter filed its Reply[32] on September 3, 2008.

The issues for resolution in this case are:

First, whether or not the case has become moot and academic due to the parties' mutual termination of the Construction Contract;

Second, whether or not the case is premature due to Joint Venture's non-compliance with the doctrine of exhaustion of administrative remedies;

Third, whether or not the Joint Venture is entitled to the foreign component of the Project in the amount of US$358,227.95;

Fourth, whether or not the Joint Venture is entitled to time extensions due to Variation Order No. 2, peace and order problems, and delay in payment;

Fifth, whether or not the Joint Venture is entitled to a price adjustment due to the delay of the issuance of the Notice of the Proceed;

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[28] *Id*. at 479–480.

[29] *Id*. at 398–463.

[30] *Id*. at 779.

[31] *Id*. at 785–815.

[32] *Id*. at 823–852.

Sixth, whether or not the Asian Development Bank Guidelines on Procurement or Presidential Decree 1594 applies with regard to price adjustments due to the delay of the issuance of the Notice to Proceed;

Seventh, whether or not the Joint Venture is entitled to its claim for equipment and financial losses due to peace and order situation (additional costs);

Eighth, whether or not the Joint Venture is entitled to actual damages and interest on its claims; and

Finally, whether or not the Joint Venture should be paid in local currency or in U.S. dollars.

I

According to respondent Joint Venture, the Petition suffers from a fatal defect in its certification against non-forum shopping. The verification and certification against non-forum shopping was signed only by petitioner's counsel, Atty. Mary Jean D. Valderama, from the Office of the Solicitor General.[33]

This Court has long enforced the strict procedural requirement of verification and certification against non-forum shopping.[34] It is settled that certification against forum shopping must be executed by the party or principal and not by counsel.[35] In *Anderson v. Ho*,[36] this Court explained that it is the party who is in the best position to know whether he or she has filed a case before any courts.[37] It is clear in this case that counsel for

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[33] *Id.* at 461.

[34] *Anderson v. Ho*, 701 Phil. 6, 13–15 (2013) [Per *J.* Del Castillo, Second Division]; *Clavecilla v. Quitain,* 518 Phil. 53, 62–64 (2006) [Per *J.* Austria-Martinez, First Division].

[35] *Agustin v. Cruz-Herrera*, 726 Phil. 533, 542–543 (2014) [Per *J.* Reyes, First Division], *Mariveles Shipyard Corp. v. Court of Appeals*, 461 Phil. 249, 263 (2003) [Per *J.* Quisumbing, Second Division].

[36] 701 Phil. 6 (2013) [Per *J.* Del Castillo, Second Division].

[37] *Id*. at 14.

petitioner, Atty. Valderama, was not clothed with authority to sign on petitioner's behalf.

In Resolution[38] dated December 10, 2007, this Court noted petitioner's Manifestation that after the petition was posted, the verification page signed by DPWH Secretary Hermogenes E. Ebdane was submitted to the Office of the Solicitor General. In the same Resolution, this Court granted the Office of the Solicitor General's motion to admit the attached verification and to substitute and attach it to the petition.

This Court ruled before that: "the lack of a certification against forum shopping, unlike that of verification, is generally not cured by its submission after the filing of the petition."[39] Nevertheless, exceptions[40] exist, as in the case at bar, and it is more prudent to resolve the case on its merits than dismiss it on purely technical grounds.[41]

II

In the assailed Decision, the Court of Appeals held that the mutual termination of the Contract by the parties did not render the case moot and academic.[42] Accordingly, when respondent requested for the mutual termination of the Contract, it did not waive its right to be paid the amounts due to it as shown in its letter:

In view of the above considerations, we hereby respectfully request for MUTUAL TERMINATION of our Contract. *Our availment of this remedy does not mean though that we are waiving our rights*

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[38] *Id*. at 396-A.

[39] *Clavecilla v. Quitain,* 518 Phil. 53, 63 (2006) [Per *J.* Austria-Martinez, First Division].

[40] *Donato v. Court of Appeals*, 462 Phil. 676, 690 (2003) [Per *J.* Austria-Martinez, Second Division]; *Spouses Wee v. Galvez*, 479 Phil. 737, 749 (2004) [Per *J.* Quisumbing, First Division].

[41] See *Diamond Taxi v. Llamas, Jr.,* 729 Phil. 364, 379 (2014) [Per *J.* Brion, Second Division].

[42] *Rollo*, pp. 477–478.

(1) to be paid for any and all monetary benefits due and owing to us under the contract such as but not limited to payments for works already done, materials delivered on site which are intended solely for the construction and completion of the project, price escalation, etc., (2) and without prejudice to our outstanding claims and entitlements that are lawfully due to us.[43] (Emphasis supplied)

Petitioner argues that the Court of Appeals erred in rendering the assailed Decision, considering that the case is already moot and academic. Petitioner insists that "the parties' mutual termination of their contract prior to the adjudication of this case by the CIAC on March 1, 2005, rendered the proceedings before CIAC moot and academic."[44]

According to petitioner, the principle of unjust enrichment does not apply in this case "because respondent has incurred negative slippage/delay in carrying out their contractual obligations due to reasons attributable to it. Moreover, the parties' mutual termination of the contract rendered the proceedings before the CIAC moot because there was no more contract to be enforced."[45]

Petitioner's argument is untenable.

Indeed, the rule is that courts will not rule on moot cases.[46] However, the moot and academic principle is "not a magical formula that can automatically dissuade the courts in resolving a case."[47] Exceptions exist that would not prevent a court from taking cognizance of cases seemingly moot and academic.[48]

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[43] *Id.* at 555.

[44] *Id*. at 426.

[45] *Id*. at 414.

[46] *Pasig Printing Corp. v. Rockland Construction Co., Inc.*, 726 Phil. 256, 265 (2014) [Per *J.* Mendoza, Third Division].

[47] *David v. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[48] *Id*. at 754.

In *Carpio v. Court of Appeals*,[49] this Court held that a case could not be deemed moot and academic when there remains an unresolved justiciable controversy. In that case, this Court affirmed the Court of Appeals' assailed resolutions, which denied petitioner's prayer for dismissal based on the argument that the Sheriff's execution pending appeal of the trial court's decision rendered the case moot and academic. This Court held that:

> *[I]t is obvious that there remains an unresolved justiciable controversy in the appealed case* for accion publiciana. In particular, did respondent-spouses Oria really encroach on the land of petitioner? If they did, does he have the right to recover possession of the property? Furthermore, without preempting the disposition of the case for accion publiciana pending before the CA, we note that if respondents built structures on the subject land, and if they were builders in good faith, they would be entitled to appropriate rights under the Civil Code. *This Court merely points out that there are still issues that the CA needs to resolve in the appealed case before it.*
>
> Moreover, there are also the questions of whether respondents should be made to pay back monthly rentals for the alleged encroachment; and whether the reward of attorney's fees, which are also being questioned, was proper. *The pronouncements of the CA on these issues would certainly be of practical value to the parties*. After all, should it find that there was no encroachment, for instance, respondents would be entitled to substantial relief. In view of all these considerations, it cannot be said that the main case has become moot and academic.[50] (Emphasis supplied.)

In this case, issues arising from the mutually terminated Contract are not moot and academic. As the Court of Appeals found, there are actual substantial reliefs that respondent is entitled to. There is a practical use or value to decide on the issues raised by the parties despite the mutual termination of the Contract between them. These issues include the determination of amounts payable to respondent by virtue of the time extensions, respondent's entitlement to price adjustments

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[49] 705 Phil. 153 (2013) [Per *C.J.* Sereno, First Division].

[50] *Id*. at 164.

due to the delay of the issuance of the Notice to Proceed, additional costs, actual damages, and interest on its claims. The agreement to mutually terminate the Contract did not wipe out petitioner's obligation to pay respondent on works done before the Contract's termination on October 27, 2004.

III

According to petitioner, the filing of the claim before CIAC was premature, since under CIAC rules, there must be an exhaustion of administrative remedies first before government contracts are brought to it for arbitration.[51]

Respondent, on the other hand, denies violating the rule on exhaustion of administrative remedies. It claims that it sent at least 17 demand letters to petitioner, four (4) of which were sent to the DPWH Secretary directly.[52]

Petitioner's argument fails to convince.

The case is not premature. The pertinent provision on available administrative remedies can be found in Sub-Clause 67.1 of the Conditions of Contract:

> Settlement of Disputes
>
> Engineer's Decision 67.1 If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, *the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party.* Such reference shall state that it is made pursuant to this Clause. No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause.

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[51] *Rollo*, pp. 426–427.

[52] *Id*. at 793–794.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty-fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be, *give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration*, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor.[53] (Emphasis supplied)

Under the doctrine of exhaustion of administrative remedies, the concerned administrative agency must be given the opportunity to decide a matter within its jurisdiction before an action is brought before the courts, otherwise, the action will be declared premature.[54]

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[53] http://www.quantumconsult.org/wp-content/uploads/2012/01/2927771-FIDIC- for-civil-engineeing-construction-1987.pdf (Accessed on September 4, 2017)

[54] See *University of Santo Tomas v. Sanchez*, 640 Phil. 189, 194–195 (2010) [Per *J.* Del Castillo, First Division].

In this case, CIAC found and correctly ruled that respondent had duly complied with the contractual obligation to exhaust administrative remedies provided for under sub-clause 67.1 of the Conditions of Contract before it brought the case before the tribunal:

> The Claimant further alleged that, despite of such knowledge, no relief from the Secretary was forthcoming. It would therefore be an exercise in futility if Claimant, after it had sent respondent the seventeen (17) demand letters and despite the unequivocal admission by Respondent's foreign consultant in charge of the project of respondent's liability and failure to pay (Annex C of the Complaint), will further be required to undergo another series of presentation and exchange of documentation. Moreover, Respondent has not indicated any practical benefit of resending the demand to the Secretary nor any prejudice for not doing so.
>
> In this particular contract project, the procedural requirements governing the Settlement of Disputes is specifically provided under Clause 67 of the Conditions of the Contract which Claimant has complied with pursuant to the first paragraph of its letter dated September 10, 2004 (annex R) pertinent provisions thereof is read, as follows:
>
> > "Pursuant to the provision of Clause 67.1 of the conditions of contracts, we are formally referring to your good office several office several [sic] points of disagreement between the position you have taken and the position we have argued for. These were already the subject of voluminous correspondence between your good self and our company but no clear-cut resolution of the issues raised was ever made."
>
> In the last paragraph of the letter on September 10, 2004 (Annex "R"), Claimant has requested Respondent for a definitive ruling on the disputes which were enumerated therein so that Claimant could avail of the remedies given to it by the aforesaid Clause 67.1. In spite of Claimant's request, respondent DPWH did not act on the same.
>
> The evidence also disclosed that as far as delayed payments are concerned, Claimant made various verbal and written demands for payment as evidenced by Exhibits "E" to "E-16" or starting December 5, 2000. The demands were not heeded.[55]

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[55] *Rollo*, p. 735.

A total of 17 demand letters were sent to petitioner to no avail. To require respondent to wait for the DPWH Secretary's response while respondent continued to suffer financially would be to condone petitioner's avoidance of its obligations to respondent. Hence, even assuming that sub-clause 67.1 was not applicable, the case would still fall within the exceptions to the doctrine of exhaustion of administrative remedies[56] since strict application of the doctrine will be set aside when requiring it would only be unreasonable under the circumstances.[57]

IV

Petitioner avers that the Court of Appeals gravely erred in rendering the assailed decision because it completely ignored, overlooked, or misappreciated facts of substance, which, if duly considered, would materially affect the outcome of the case. Petitioner argues that the present case is an exception to the rule that only questions of law may be raised in a Petition for Review under Rule 45 of the Rules of Court.[58]

Before delving into the issues raised, it is imperative to understand CIAC's role as the arbitral tribunal at the center of this dispute.

CIAC was created under Executive Order No. 1008, or the "Construction Industry Arbitration Law." It was originally under the administrative supervision of the Philippine Domestic Construction Board[59] which, in turn, was an implementing agency of the Construction Industry Authority of the Philippines.[60] The Construction Industry Authority of the Philippines is presently

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[56] *Paat v. Court of Appeals,* 334 Phil. 146, 153 (1997) [Per *J.* Torres, Jr., Second Division].

[57] *Information Technology Foundation of the Phils. v. Commission on Elections,* 464 Phil. 173, 207 (2004) [Per *J.* Panganiban, *En Banc*].

[58] *Rollo*, pp. 430–431.

[59] Exec. Order No. 1008, Sec. 3.

[60] Exec. Order No. 1008, 4th Whereas Clause.

a part of the Department of Trade and Industry as an attached agency.[61]

CIAC's specific purpose is the "early and expeditious settlement of disputes"[62] in the construction industry as a recognition of the industry's role in "the furtherance of national development goals."[63]

Section 4 of the Construction Industry Arbitration Law lays out CIAC's jurisdiction:

> Section 4. Jurisdiction. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.
>
> Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Republic Act No. 9184 or the "Government Procurement Reform Act," recognized CIAC's competence in arbitrating over contractual disputes within the construction industry:

> Section 59. Arbitration. — Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": *Provided,*

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[61] http://www.dti.gov.ph/about/the-organization/attached-agencies.

[62] Exec. Order No. 1008, Sec. 2.

[63] Exec. Order No. 1008, 3rd Whereas Clause.

however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: Provided, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution. (Emphasis supplied)

CIAC's authority to arbitrate construction disputes was then incorporated into the general statutory framework on alternative dispute resolution through Republic Act No. 9285, the "Alternative Dispute Resolution Act of 2004". Section 34 of Republic Act No. 9285 specifically referred to the Construction Industry Arbitration Law, while Section 35 confirmed CIAC's jurisdiction:

CHAPTER 6 - ARBITRATION OF CONSTRUCTION DISPUTES

Section 34. Arbitration of Construction Disputes: Governing Law. - The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Constitution Industry Arbitration Law.

Section 35. Coverage of the Law. - Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

As a general rule, findings of fact of CIAC, a quasi-judicial tribunal which has expertise on matters regarding the construction industry, should be respected and upheld. In *National Housing Authority v. First United Constructors Corp.*,[64] this Court held that CIAC's factual findings, as affirmed by the Court of Appeals, will not be overturned except as to the most compelling of reasons:

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[64] 672 Phil. 621 (2011) [Per *J.* Perez, Second Division].

As this finding of fact by the CIAC was affirmed by the Court of Appeals, and it being apparent that the CIAC arrived at said finding after a thorough consideration of the evidence presented by both parties, the same may no longer be reviewed by this Court. *The all too-familiar rule is that the Court will not, in a petition for review on certiorari, entertain matters factual in nature, save for the most compelling and cogent reasons,* like when such factual findings were drawn from a vacuum or arbitrarily reached, or are grounded entirely on speculation or conjectures, are conflicting or are premised on the supposed evidence and contradicted by the evidence on record or when the inference made is manifestly mistaken or absurd. This conclusion is made more compelling by the fact that the CIAC is a quasi-judicial body whose jurisdiction is confined to construction disputes. Indeed, settled is the rule that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals.[65] (Emphasis supplied)

In distinguishing between commercial arbitration, voluntary arbitration under Article 219(14) of the Labor Code,[66] and construction arbitration, *Freuhauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific*[67] ruled that commercial arbitral tribunals

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[65] *Id*. at 658.

[66] LABOR CODE, Art. 212(14) provides:
Article 212. Definitions. —
. . .
14. "Voluntary Arbitrator" means any person accredited by the Board as such or any person named or designated in the Collective Bargaining Agreement by the parties to act as their Voluntary Arbitrator, or one chosen with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the Collective Bargaining Agreement, or any official that may be authorized by the Secretary of Labor and Employment to act as Voluntary Arbitrator upon the written request and agreement of the parties to a labor dispute.
. . . . . .

[67] G.R. No. 204197, November 23, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/204197.pdf> [Per *J*. Brion, Second Division].

are purely ad hoc bodies operating through contractual consent, hence, they are *not* quasi-judicial agencies. In contrast, voluntary arbitration under the Labor Code and construction arbitration derive their authority from statute in recognition of the public interest inherent in their respective spheres. Furthermore, voluntary arbitration under the Labor Code and construction arbitration exist independently of the will of the contracting parties:

> Voluntary Arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining Agreements. These disputes were specifically excluded from the coverage of both the Arbitration Law and the ADR Law.
>
> Unlike purely commercial relationships, the relationship between capital and labor are heavily impressed with public interest. Because of this, Voluntary Arbitrators authorized to resolve labor disputes have been clothed with quasi-judicial authority.
>
> On the other hand, commercial relationships covered by our commercial arbitration laws are purely private and contractual in nature. Unlike labor relationships, they do not possess the same compelling state interest that would justify state interference into the autonomy of contracts. Hence, commercial arbitration is a purely private system of adjudication facilitated by private citizens instead of government instrumentalities wielding quasi-judicial powers.
>
> Moreover, judicial or quasi-judicial jurisdiction cannot be conferred upon a tribunal by the parties alone. The Labor Code itself confers subject-matter jurisdiction to Voluntary Arbitrators.
>
> *Notably, the other arbitration body listed in Rule 43 — the Construction Industry Arbitration Commission (CIAC) — is also a government agency attached to the Department of Trade and Industry. Its jurisdiction is likewise conferred by statute. By contrast, the subject-matter jurisdiction of commercial arbitrators is stipulated by the parties*.[68] (Emphasis supplied)

V

Petitioner argues that respondent is not entitled to US$358,227.95, as the foreign component of the Contract,

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

because it is not yet legally demandable.[69] In declaring that petitioner should pay the amount as the foreign component of the project, CIAC held that petitioner did not deny said amount in its answer and that respondent's failure to renew its Letter of Credit does not justify petitioner's act in withholding the dollar component of the project.[70]

Petitioner maintains that the delay in payment was due to the negative slippage incurred by respondent and its failure to renew its Letter of Credit. Petitioner argues that under Clause 60.11 of the Conditions of the Contract, Part II, an irrevocable standby letter of credit is required before petitioner can release the advance payment.[71] Petitioner states:

> In this case, respondent does not deny that its **LC No. OIDS-00022-00027-0 issued by the United Coconut Planters Bank (UCPB) expired on October 15, 2003.** Petitioner reminded respondent several times on the imperative need for the renewal of its LC to avoid delay in the processing of its billing. The purpose of said LC is to guarantee the return of the advance payment by petitioner to respondent.[72]

Hence, petitioner claims that respondent cannot compel the payment of the foreign component of the Contract because it did not comply with the letter of credit requirement. Moreover, petitioner asserts that "In directing petitioner to pay the said award to respondent without the latter posting the said letter of credit, the CIAC and the Court of Appeals effectively amended the stipulation thereon in the contract which is legally impermissible."[73]

For respondent's part, it argues that it was impossible to renew the Letter of Credit. It explained that banks refused the renewal of the Letter of Credit since the original contract period

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[69] *Id*. at 431–435.

[70] *Id*. at 738–739.

[71] *Id*. at 432–433.

[72] *Id*. at 433–434.

[73] *Id*. at 434.

had already expired and petitioner did not act on respondent's requests for extension.[74] In addition, evidence shows that "the main reason of the non-payment of dollar component was due to unresolved issues, the right of way acquisition problem between ADB and the [government], wherein ADB was forced to suspend the loan disbursement for the entire 6th Road Improvement Project effective 01 June 2003 due to this conflict."[75] Nevertheless, respondent admitted that the mutual termination of the Contract rendered the requirement of a Letter of Credit for the release of the $358,227.95 moot and academic.[76]

This Court affirms the findings of CIAC and the Court of Appeals that respondent is entitled to the foreign component of the Contract.

CIAC found that petitioner was not justified in withholding the payment for the dollar component of the Contract.[77] Further, it found that respondent was justified and not at fault for not reviewing the Letter of Credit. It held that:

> The Arbitral Tribunal is persuaded that the main reason for the non-payment of the dollar component was due to the unresolved issues (right of way acquisition) between the ADB and the Government of the Philippines where the Loan Disbursement was suspended by ADB for the 6th Road Improvement Project effective 01 June 2003 . . . The foreign Consultant even admonished Respondent DPWH and reiterated that it should take prompt action to effect payment of outstanding monies due, and nothing was ever mentioned of the failure to renew the Letter of Credit. (paragraph 3.2 of affidavit by Ferdinand Mariano)
>
> *Moreover, Claimant explained to the Respondent why the Letter of credit could not be renewed in its letter of 01 and 15 March 2004 (Exh. "C-16" and "C-17"). It appears that one of the bank's requirements for issuance of the Letter of Credit was the approved*

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[74] *Id*. at 798.

[75] *Id.*

[76] *Id.* at 798–799.

[77] *Id.* at 738.

time extension and the extension of the contract, but Respondent refused to issue any document extending the contract.

On the other hand, the Respondent's justification was only based on its accounting requirement. It asserted that the LC guaranteed the advance payment as well as the work completion. It further stated that the LC was a requirement by the funding bank (By Subair S. Diron, paragraph 3.1.1 of Joint Affidavit by Heinz Reister, Diron and Pandapatan)[78] (Emphasis supplied)

In *National Housing Authority v. First United Constructors Corp.,*[79] this Court held that the respondent contractor was entitled to the payment of its claims, as the non-posting of the required Payment Guarantee Bond was due to the inaction of petitioner National Housing Authority:

Petitioner's subsequent refusal to process and pay these claims despite FUCC's willingness to submit a surety bond to secure the balance of the advance payment still to be recouped by NHA — as the parties had agreed upon — which bond would be submitted when the check payment for the claim is about to be released, clearly constitutes a violation by NHA of FUCC's right to be paid these acknowledged and recognized claims. Thus, respondent had an accrued cause of action against petitioner for these claims at the time it filed its Complaint, the constitutive elements of which are clearly set forth therein.[80] (Emphasis supplied)

In the present case, the renewal of the Letter of Credit hinged on the extension of the contract period. Despite notice by respondent of the bank's requirement for the renewal of the Letter of Credit, petitioner chose to ignore respondent's requests for time extensions. Therefore, petitioner cannot shift the blame to respondent and claim that the Letter of Credit was a condition *sine qua non* for the payment of the dollar component of the project.

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[78] *Id*. at 739.

[79] 672 Phil. 621 (2011) [Per *J*. Perez, Second Division].

[80] *Id.* at 653.

VI

Petitioner also assails the findings of the Court of Appeals with regard to the time extensions respondent is entitled to. Petitioner argues that both the CIAC and the Court of Appeals failed to consider the subsequent payments made to respondent after the conclusion of the arbitration hearings. Thus, the tribunal's finding that petitioner still owes respondent US$358,227.95 is factually erroneous.

Petitioner claims that "respondent failed to prove that it is entitled to the time extensions of: (1) 133-calendar days in addition to the 144-calendar days previously agreed by the parties and (2) 108-calendar days due to delayed payments."[81]

On the other hand, respondent argues that it is entitled to time extensions in addition to the 144 calendar days granted to it under Variation Order No. 2.[82] Respondent claims it is entitled to a total of 277 calendar days based on the approved revised Project Evaluation Review Tracking-Critical Path Method (PERT-CPM) diagram and S-Curve.[83] As explained by witness Engr. Reyes, rock excavation requires special skills, equipment, and explosives. These factors were not considered when the original contract schedule was prepared.[84]

Respondent further claims that it is entitled to another time extension due to the delay in payment. Respondent maintains that it infused more than double the 10% credit line amounting to ₱157,747,945.00.[85] Respondent also claims that it had already mobilized working and state-of-the-art equipment.[86]

The DPWH Bureau of Construction evaluated respondent's request for time extension and recommended its approval to

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[81] *Id*. at 435.

[82] *Id*. at 799–801.

[83] *Id*. at 800.

[84] *Id*.

[85] *Id*. at 801.

[86] *Id*. at 802.

the Secretary.[87] However, the recommendation was withdrawn "on the pretext that said DPWH guidelines for computation of time extension due to delayed payments [were] revised and modified."[88]

Respondent points out that petitioner, through Engr. Pierre Castelli, had acknowledged that the delayed payment had greatly affected respondent's cash flow.[89]

Respondent likewise asserts that it is entitled to a time extension due to peace and order problems. Petitioner did not object to respondent's entitlement to an extension due to the peace and order situation. Hence, the only thing required is to determine the number of calendar days' extension respondent is entitled to based on the circumstances.[90]

Chief Resident Engineer Andre Drockur of BCEOM French Engineering Consultant recommended a time extension of 29 calendar days due to the peace and order situation. While respondent did not agree with the consultant's recommendation, it still adopted such recommendation to expedite the computation of time extension due to peace and order problems.[91]

According to CIAC, respondent was entitled to time extensions in addition to the 144-calendar day extension agreed upon by the parties, as per Variation Order No. 2:

> The Arbitral tribunal finds that the computation presented by the Claimant based form the approved revised PERT/CPM and S-Curve is acceptable and the 277 calendar days should have been granted by the Respondent or an additional of 133 calendar days. However, the project is now terminated. The actual accomplishment as per letter of [Chief Resident Engineer] to DPWH dated September 18, 2003 shows that the actual volume of accomplishment was only 2,732

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[87] *Id.* at 802.

[88] *Id*.

[89] *Id*. at 803.

[90] *Id*. at 803–805.

[91] *Id*. at 805.

m^2 of hardrock and 4,444 m^3 of rippable rock. Thus, the entire volume under Change Order #2 [or Variation Order No. 2] will not be consumed as the work is now 80% complete[.][92]

The Court of Appeals affirmed that respondent was entitled to a 133-day time extension in addition to the 144 calendar days under Variation Order No. 2.[93] However, the Court of Appeals noted that CIAC did not specify whether respondent was entitled to the full 133 days extension, considering that it found that the entire volume in Variation Order No. 2 will not be fully used up due to respondent's 80% accomplishment.[94]

CIAC also held that respondent was entitled to a time extension of 108 calendar days due to petitioner's delayed payments[95] and another time extension of 29 calendar days due to the peace and order situation in the project area.[96]

This Court sees no reason to deviate from the findings of both CIAC and the Court of Appeals with regard to respondent's entitlement to time extensions: 1) under Variation Order No. 2; 2) due to the delay in payment; and 3) due to the peace and order situation, since these are supported by the evidence on record.

To reiterate, findings of fact of administrative agencies and quasi-judicial bodies are entitled to great respect and even finality when affirmed by the appellate court.[97] In this case, the Court of Appeals found that respondent was entitled to the time extensions as evaluated by CIAC, the agency tasked to resolve issues regarding the construction industry. Both tribunals found that respondent was entitled to the extensions due to petitioner's

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[92] *Id*. at 740.

[93] *Id*. at 477.

[94] *Id*. at 476–477.

[95] *Id*. at 740–741.

[96] *Id*. at 741.

[97] See *Keppel Cebu Shipyard, Inc. v. Pioneer Insurance and Surety Corp.,* 695 Phil. 169, 194 (2012) [Per *J*. Mendoza, *En Banc*].

delayed payments, peace and order situation, and Variation Order No. 2. These findings are clearly supported by the facts on record.

However, in light of the mutual termination of the Contract, the remand of the case to CIAC will serve no practical purpose and is, therefore, unnecessary.

VII

According to respondent, the delay in the issuance of the Notice to Proceed entitles it to a price adjustment under Presidential Decree No. 1594. Bidding was conducted in January 1998 and respondent was declared the winning bidder. The Contract was signed on April 29, 1999. However, the Notice to Proceed was issued on May 5, 1999, or after a delay of more than 120 days from the bidding date, which entitles the bidder to an adjustment in the contract unit price under Presidential Decree No. 1594.[98]

On the other hand, petitioner claims that respondent did not question the findings of the Court of Appeals regarding price adjustment and claim for actual damages. Hence, it should not be allowed to assail the Court of Appeals' ruling on this issue before this Court.[99]

Both CIAC and the Court of Appeals found that respondent was not entitled to a price adjustment:

> As to the *first* issue raised by the Claimant, this Court finds that the CIAC committed no reversible error in not awarding the price adjustment being sought by the Claimant under P.D. 1594, finding as flawed its claim based on the alleged DPWH's delay in the issuance of the notice to proceed.
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> We quote with approval the pertinent ratiocination of the CIAC on this point, thus:
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> . . . . . .

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[98] *Rollo*, pp. 806–807.

[99] *Id.* at 845–848.

> However, the Claimant is not entitled to a price adjustment under P.D. 1594 because it is the ADB Guideline[s] on Procurement which should be followed, and not the provisions on P.D. 1594. In fact the bid of the Contractor was awarded despite its being above the approved Agency Estimates (AAE), based on the ADB guidelines, and against the provisions of P.D. 1594 (paragraph 7.2 of Joint Affidavit by Heinz Reister, Diron and Pandapatan).
>
> The Arbitral Tribunal finds that the Guidelines of the Asian Development Bank govern this subject Project. Moreover, P.D. 1594 honors the treaties and international or executive agreements to which the Philippine Government is a signatory. Loan agreements such as those entered into with international funding institutions like ADB are considered to be within the ambit of DOJ opinion No. 46, S. 1987 and are therefore exempt from the application of P.D. No. 1594 as amended (Paragraph 7.1.1 of Joint Affidavit by Heinz Reister, Diron and Pandapatan).
>
> . . . . . .
>
> *If the Claimant's bid was awarded despite its being above the approved Agency Estimates based on the ADB guidelines, and against the provisions of P.D. 1594, We cannot see the rationale on why the Claimant now refuses to abide by the ADB guidelines on procurement. After the claimant was benefited by the approved bid at the inception of the project, We hold that it is unjustified for the Claimant not to be bound by the ADB/guidelines under the pretext that it fails to get the supposed price adjustment.*[100] (Emphasis supplied)

While respondent did not appeal the Court of Appeals' ruling with regard to its entitlement to a price adjustment under Presidential Decree No. 1594, for purposes of clarity and to finally settle the matter, this Court affirms the findings of CIAC and the Court of Appeals.

This Court has held that a foreign loan agreement with international financial institutions, such as a multilateral lending agency organized by governments like the Asian Development Bank, is an executive or international agreement contemplated by our government procurement system.[101]

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[100] *Id*. at 473–474.

[101] *Department of Budget and Management Procurement Service* (*DBM-PS) v. Kolonwel Trading,* 551 Phil. 1030, 1049 (2007) [Per *J*. Garcia, *En*

In *Abaya v. Ebdane, Jr.,*[102] this Court upheld the applicability of the Japan Bank for International Cooperation's Procurement Guidelines to the implementation of the projects to be undertaken pursuant to the loan agreement between the Republic of the Philippines and Japan Bank for International Cooperation.[103]

While the Implementing Rules and Regulations[104] of Presidential Decree No. 1594 provide the formula for price adjustment in case of delay in the issuance of a notice to proceed, the law does not proscribe parties from making certain contractual stipulations. In this case, the Construction Contract is clear that in case of price adjustments, Clause 70 of the Conditions of Contract will apply:

3. That computation and payment of contract prices adjustment will be applied in accordance with Clause 70 of the Conditions of Contract;[105]

Banc] This case applied the provisions of Rep. Act No. 9184 or the Government Procurement Reform Act which came into effect in 2003.

[102] 544 Phil. 645 (2007) [Per *J.* Callejo, Sr., Third Division].

[103] *Id*. at 687.

[104] IB 10.10 - ISSUANCE OF NOTICE TO PROCEED

1. The concerned government office/agency/corporation should issue the Notice to Proceed (NTP) to the successful bidder not later than fifteen (15) calendar days from the date of approval of the contract by the concerned/ authorized government official. The effectivity date of the NTP shall be specified by the agency concerned.

2. For projects whereby the Notice to Proceed (NTP) is issued after 120 calendar days from the bidding date, the awarded bidder may request for a contract unit price adjustment using the parametric formulae updated to the month of the NTP. Computation of the unit price adjustment shall be the original contract unit price multiplied by the fluctuation factor K without deducting the 5%. Such updated unit prices shall be used as basis for computing the regular progress billings, and price escalation for work accomplishment shall be calculated using the parametric formulae herein prescribed as applied to the updated unit prices reckoned from the month of the NTP. Adjustment of unit prices shall be made within fourteen (14) calendar days from the date the required indices are available/issued by the appropriate government agency.

[105] *Rollo*, p. 482.

It is unclear from the records, however, whether the Asian Development Bank Guidelines was substantially the same as Clause 70 of the Conditions of Contract. Nevertheless, as in the *Abaya* case, it should be the guidelines that the parties have agreed upon, i.e., the Asian Development Bank Guidelines, that should govern in case of issues arising from the contract. Respondent failed to proffer evidence on what the Asian Development Bank Guidelines provide, if any, in the event of a delay in the issuance of a Notice to Proceed.

VIII

Petitioner argues that "CIAC and the Court of Appeals grossly erred in awarding ₱5,080,000.00, plus legal interest of ₱464,298.08 for the alleged equipment and financial losses; and additional cost resulting from the alleged bombing incident of ₱6,267,410.48, plus legal interest of ₱320,410.63."[106]

Furthermore, petitioner asserts that "the award to respondent of additional costs in the contract price under Clause 69.4 of the General Conditions of the Contract in the amount of ₱20,311,072.66, plus legal interest of ₱1,038,368.78 is improper."[107] Petitioner maintains that the award to respondent of additional costs in the contract price under Clause 69.4 of the General Conditions of Contract was baseless, since the Engineer had not yet consulted with the parties to determine the amount of additional costs.[108]

In contrast, respondent claims that it is entitled to equipment and financial losses due to the peace and order situation.[109]

Petitioner's arguments are untenable.

It has been sufficiently established that a peace and order problem arose at the project site:

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[106] *Id*. at 442.

[107] *Id*. at 447.

[108] *Id*. at 449–450.

[109] *Id*. at 807.

The Arbitral Tribunal was persuaded by the fact that six (6) named persons and four (4) John Does were accused of Destructive Arson in the Municipal Circuit Trial Court of Dumalinao Zamboanga del Sur for feloniously setting on fire simultaneously one (1) unit of Kumatsu Payloader amounting to Php3,000,000.00 and one (1) unit Isuzu 10 Wheeler Dump Truck amounting to Php800,000.00, both belonging to the Claimant. The accused are believed NP's with motives of hatred due to vain collection of revolutionary taxes from Claimant (Exh. "C-5").

The burning of the Payloader and Dump Truck, subject of the criminal case (Exh. "C-5") was corroborated in its entirety by the testimony of Pedrito G. Palancos, operator of the burnt Payloader in his affidavit, paragraph 6.6 to 6.9, part of the records of this case.

The Chief of Police of Kumalarang, Zamboanga del Sur submitted a Special Written Report to the PNP Provincial Director, regarding the bombing at Claimant's batching plant in Boyugan, Kumalarang, del Sur on 11 March 2003.

The bombing incident revealed that it resulted in conflagration causing damage to the Generator Set, Caterpillar Brand KVA 180-180 and the Conveyor, with total estimated cost of Php7,300,000.00.

Intelligence Action Agent gathered information that MILF Members, all armed with undetermined numbers, but believed to be under Commander Susob Edris, were sighted by the barangay officials and the neighbor of the Plant location, when the incident occurred. (Exh. "C-9").

The two incidents described above, one costing approximately Php3,800,000.00 and the other costing approximately Php7,300,000.00, will have a total of approximately Php11,100,000.00 or Php11,347,410.48 to be exact. This is the amount that Claimant is entitled due to the peace and order situation at the Project site.[110]

This Court finds that CIAC and the Court of Appeals did not err when they found that respondent was entitled to its claim for equipment and financial losses. The situation was an assumed risk of petitioner as employer and is, thus, compensable under Clause 20.4 of the Conditions of Contract, which lists the Employer's risks as:

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[110] *Id*. at 742–743.

(a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,

(b) rebellion, revolution, insurrection, or military or usurped power, or civil war,

(c) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,

(d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,

(e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Works,

(f) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract,

(g) loss or damage to the extent that it is due to the design of the Works, other any part of the design provided by the Contractor or for which the Contractor is responsible,

(h) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.[111] (Emphasis supplied)

It is clear from the above provision that the assumed risks of the employer under Clause 20.4 of the Conditions of Contract include rebellion, revolution, insurrection, or military or usurped power, or civil war.

Petitioner further insists that respondent is not yet entitled to the claim because there is no determination by the Engineer of the costs incurred, as required under Clause 69.4 of the Conditions of Contract.[112]

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[111] *Id*. at 530. *See* <http://www.quantumconsult.org/wp-content/uploads/2012/01/2927771-FIDIC-for-civil-engineeing-construction-1987.pdf> (last accessed on September 4, 2017).

[112] *Id*. at 449–450.

In its Answer before CIAC, petitioner denied respondent's claims for additional costs under Clause 69.4. Petitioner stated that its denial will be explained more specifically in its Affirmative Defenses:

> 6. DENIES the allegations in paragraphs 12, 13, 14, 15 and 16 of the complaint for being preposterous, misleading and patently without legal and factual basis, the truth being that as per the Conditions of Contract, complainant is not entitled to the payment of additional cost on slowdown or suspension of work on the project, reimbursement for alleged equipment losses and additional time extensions to complete the project *specifically stated/discussed in the Affirmative Defenses hereof.*[113] (Emphasis supplied)

However, a perusal of petitioner's Affirmative Defenses reveals that no such qualification was made.

Under Rule 8, Section 10 of the Rules of Court, the "defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial." There are three (3) modes of specific denial provided for under the Rules:

> 1) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial.[114]

In *Aquintey v. Spouses Tibong*,[115] this Court held that using "specifically" in a general denial does not automatically convert that general denial to a specific one. The denial in the answer

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[113] *Id*. at 503.

[114] *Philippine Bank of Communications v. Spouses Go*, 658 Phil. 43, 57 (2011) [Per *J*. Mendoza, Second Division].

[115] 540 Phil. 422 (2006) [Per *J.* Callejo, Sr., First Division].

must be definite as to what is admitted and what is denied, such that the adverse party will not have to resort to guesswork over "what is admitted, what is denied, and what is covered by denials of knowledge as sufficient to form a belief."[116]

The petitioner only tackled the issue on the claim for additional costs in the Joint Affidavit of petitioner's witnesses Heinz Reister, Subair S, Diron, and Abdulfatak A. Pandapatan:

> Issue No. 9. Is claimant entitled to additional cost under Clause 69.4 of the General Conditions of Contract? If so, how much?
>
> Subair S. Diron and Abdulfatak A. Pandapatan testifying:
>
> 9.1 Q: Is claimant entitled to additional cost/charges under Clause 69.4 of the General Conditions of Contract?
>
> A: Not yet, the claimant should establish that it is allowed.[117]

This Court finds that petitioner failed to specifically deny the claims of respondent and had, therefore, admitted such claims. This Court agrees that respondent was able to establish its claims before the CIAC. This Court notes that the project was in Mindanao, and mobilization of workers and equipment is not an easy feat and not without cost. Respondent believed that the suspension would only be temporary and work could resume at any time once petitioner settled its obligation. Petitioner must compensate respondent for the costs it incurred without any fault on respondent's part.

IX

During the arbitration hearing before the CIAC, respondent itself admitted that there was no provision in the Conditions of Contract for interest at the rate of 24% per annum on delayed payments.[118]

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[116] *Id.* at 441.

[117] *Rollo*, p. 579.

[118] *Id*. at 747.

Respondent tries to excuse the lack of contractual stipulations by claiming that the amount of 24% interest is payment for actual damages and not stipulated interest.[119]

Respondent claims that petitioner is liable for the amounts respondent owes its creditors in the total amounts of ₱10,297,090.42 and USD$118,094.93. In addition, respondent avers that petitioner should pay it 6% interest per annum computed from the receipt of the first demand letter for payment sent by respondent, as a result of delay in the payment for work accomplished.[120]

The Court is not convinced.

It is fundamental that a contract is the law between the parties and, absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts.[121]

Respondent was not able to establish the basis of its claim that it is entitled to an award of 24% interest. Moreover, as found by the Court of Appeals and CIAC, the parties had agreed to delete the provision on interest on delayed payments, since the project was funded by the Asian Development Bank.[122]

There is also no basis to award respondent 24% interest as actual damages for the additional expenses it incurred due to petitioner's delayed payments.

Before actual damages may be awarded, it is imperative that the claimant proves its claims first. The issue on the amount of actual or compensatory damages is a question of fact,[123] and

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[119] *Id*. at 813.

[120] *Id*.

[121] *Stronghold Insurance Co., Inc. v. Interpacific Container Services*, 762 Phil. 483, 491 (2015) [Per *J*. Perez, First Division].

[122] *Rollo*, pp. 474–475.

[123] *City of Dagupan v. Maramba,* 738 Phil. 71, 96 (2014) [Per *J*. Leonen, Third Division].

except as provided by law or by stipulation, one is entitled to adequate compensation only for pecuniary loss duly proven.[124]

In this case, respondent has not sufficiently shown how awarding it 24% interest per annum on delayed payments corresponds to the actual damages it allegedly suffered. Respondent failed to show a causal relation between the alleged losses and the injury it suffered from petitioner's actions.

X

Respondent claims that it should be paid in U.S. dollars as specified in the Contract.[125] It argues that the present case is an exception to the general rule that obligations should be paid in Philippine currency.[126]

The Court of Appeals held that the parties subsequently agreed that payments made after March 31, 2003 shall be in pesos only:

> However, one aspect in the CIAC decision is shrouded with cloud. This concerns CIAC's order to DPWH to pay its alleged liability to the Claimant in US dollars. *It is worthy to note that aside from the agreement of the parties – particularly in paragraph 5 of the contract, supra, to fix the exchange rate at ₱34.9 for every US$1.00, the Claimant itself has acknowledged in its request that it was advised by the DPWH per its letter dated 13 August 2003 that all payments for works earned out after 31 March 2003 and related price escalation claims and retention releases in the contract will be in pesos only, therefore no foreign exchange payments.* This fact was never contested by the Claimant thereby creating a presumption that it has acquiesced to the request of the DPWH. Thus, we cannot see Our way through on why the CIAC has still to make a ruling on the Interest Computation of Delayed Payment at 6% Per Annum at US$45,206.14 as well as the Foreign Component of US$358,227.95 plus legal interest at US$18.313.79 citing the exemption of transactions where the funds involved are the proceeds of loans or investments made through bona fide intermediaries or agents, by foreign government and banking

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[124] CIVIL CODE, Art. 2199.

[125] *Id*. at 813–814.

[126] *Id*. at 814.

institutions such as the Asian Development Bank (ADB) from the coverage of Republic Act 529 otherwise known a[s] "An Act to Assure Uniform Value to Philippine Coin and Currency'". Worse, there was no mention about the subsequent notice by the DPWH to the Claimant, supra about their subsequent understanding on "no foreign exchange payments". This is indeed one dubious area that needs to be clarified by no less than the ClAC itself.[127] (Emphasis supplied)

Again, considering that respondent did not appeal the Court of Appeals decision, the appellate court's ruling on this issue is deemed final as to respondent, and there is no need to remand this issue to the CIAC. Issues not raised on appeal are already final and cannot be disturbed.[128]

XI

CIAC imposed legal interest in its Award as follows:

In view of the foregoing, the Claimant is entitled to payment of legal interest of 6% per annum from the receipt of its extrajudicial demand.

Thus, under Issue No. 3 where the Claimant was awarded US$358,227.95, the Claimant is entitled to legal interest of 6% per annum commencing from 2 March 2004 up to this date (or 311 days) in the amount of US$18,313.79.

Under Issue No. 8 where the Claimant was awarded ₱11,347,410.48, the Claimant is entitled to legal interest of 6% per annum for the Equipment and Plant of ₱5,080,000.00 commencing from 1 July 2003 (or 556 days) in the amount of ₱464,298.08 and for the resulting Additional Expenses of ₱6,267,410.48 commencing from 2 March 2004 (or 311 days) in the amount of ₱320,410.63.

Under Issue No. 9 where the Claimant was awarded ₱20,311,072.66, the Claimant is entitled to legal interest of 6% per annum for Additional Cost under 69.4 of the Conditions of Contract commencing from 2 March 2004 (or 311 days) in the amount of ₱1,038,368.78.

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[127] *Id*. at 478–479 (Court of Appeals Decision).

[128] See *A.C. Ransom Labor Union-CCLU v. National Labor Relations Commission*, 226 Phil. 199, 204 (1986) [Per *J*. Melencio-Herrera, First Division].

Under Issue No. 10 with respect to the delayed payment of billings for various amounts and on various dates, the Claimant is entitled to legal interest of 6% per annum as detailed in Attachment 1, in the amount of US$45,206.14 and ₱2,175,516.63.

However, pursuant to the Eastern Shipping Lines vs. Court of Appeals, 234 SCRA 78 (1994), a monetary award shall earn interest at the rate of 12% per annum from the date when the award becomes final and executory until its satisfaction.[129]

On May 16, 2013, the Monetary Board of the Bangko Sentral ng Pilipinas issued Resolution No. 796, which revised the interest rate to be imposed on the loan or forbearance of any money, goods, or credits. This was implemented in Bangko Sentral ng Pilipinas Circular No.799[130] Series of 2013, which reads:

The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.

This Circular shall take effect on 1 July 2013.

Nacar v. Gallery Frames[131] then laid down the guidelines for the imposition of legal interest:

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[129] *Rollo*, p. 749.

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

[131] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per *J*. Peralta, *En Banc*].

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 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.[132]

Before *Nacar* and Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796 dated May 16, 2013, the rate of legal interest was pegged at 12% per annum from finality of judgment until its satisfaction, "this interim period being deemed to be by then an equivalent to a forbearance of credit."[133]

With this Court's pronouncement in *Nacar*, the rate of interest imposed should be modified. The monetary awards, as computed by the CIAC, should earn legal interest at the rate of 12% per annum until June 30, 2013, after which, it shall earn legal interest at the rate of 6% per annum until full satisfaction.

The other issues raised by the parties were no longer discussed due to the mutual termination of the Contract by parties, which rendered them moot and academic.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals Decision dated September 20, 2007 in CA-G.R. SP Nos. 88953 and 88911 is **AFFIRMED with MODIFICATION** as follows: (1) that the order remanding the case to the Construction Industry Arbitration Commission for proper disposition is **REVERSED** for being moot and academic; and (2) that the legal interest rate is pegged at twelve percent (12%) per annum until June 30, 2013, and then at six percent (6%) per annum until full satisfaction.

SO ORDERED.

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

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[132] *Id*. at 281–283.

[133] See *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236, 254 (1994) [Per *J*. Vitug, *En Banc*].

THIRD DIVISION

[G.R. No. 179757. September 13, 2017]

LEONARDO P. CASONA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; IN AN APPEAL OF A CRIMINAL CONVICTION THAT OPENS THE ENTIRE RECORDS OF THE TRIAL TO REVIEW, THE COURT IS NOT LIMITED TO REVIEWING ERRORS OF LAW AND IT MAY ALSO EXAMINE ANY ERROR EVEN IF NOT ASSIGNED BY THE ACCUSED.— [I]t is wrong for the OSG to vigorously insist that this appeal by petition for review on *certiorari* could not be the occasion for the petitioner to argue in his favor that the CA erred in its appreciation and evaluation of the facts. Such insistence, though generally true, is not controlling in an appeal of a criminal conviction that opens the entire records of the trial to review. This can only mean that the Court is not to be limited to reviewing questions of law. As a consequence, the Court, in the course of its review, may also examine any error even if not assigned by the accused.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; RATIONALE, EXPLAINED.— There is no question that the *Comprehensive Dangerous Drugs Act of 2002* was enacted to revise the approaches in law enforcement involving drug-related offenses. The legislators then believed that the predecessor enactment, Republic Act No. 6425, as amended, did not include needed safeguards against evidence tampering or substitution. Among the new approaches was the incorporation of affirmative safeguards to deny wayward law enforcers apprehending violators any opportunity for tampering with the confiscated evidence, and to ensure the preservation of the integrity of the evidence from the moment of seizure until the ultimate disposal thereof upon order of the trial court. This approach was a true recognition of the value as evidence of guilt of the seized illegal substances themselves – which are

no less the *corpus delicti* in the drug-related offenses of illegal sale and illegal possession so essential to the conviction and incarceration of the offenders. Inasmuch as the dangerous drug itself constitutes the *corpus delicti* of the offense charged, its identity and integrity must be shown by the State to have been preserved. On top of the elements for proving the offense of illegal possession, therefore, is that the substance possessed is the very substance presented in court. The State must establish this element with the same exacting degree of certitude as that required for ultimately handing down a criminal conviction. To achieve this degree of certitude, the Prosecution has to account for all the links in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it is presented in court as proof of the *corpus delicti.* The process, though tedious, must be undergone, for the end is always worthwhile – the preservation of the chain of custody that will prevent unnecessary doubts about the identity of the evidence.

3. ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS OF CHAIN OF CUSTODY RULE IS EXCUSED ONLY UNDER JUSTIFIABLE GROUNDS FOR AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED; FAILURE OF THE STATE OR ITS AGENTS TO TENDER CREDIBLE EXPLANATION FOR NON-COMPLIANCE, THEN THE EVIDENCE OF GUILT NECESSARILY BECOMES SUSPECT.— The Court has already recognized that strict adherence to the rule on chain of custody was almost always impossible to do. Strict adherence is not always expected, therefore, as borne out by the saving declaration in the last paragraph of Section 21 (a) of the IRR to the effect that the seizure and custody of the dangerous substances should not be rendered void or invalid by the non-compliance with the requirements under justifiable grounds for as long as the integrity and evidentiary value of the seized items are preserved by the apprehending officers. But such saving declaration did not come into play herein because, *one*, the seizing officers did not tender their justification for the lapses committed; and, *two*, there was really no showing by the State that the integrity and evidentiary value of the *shabu* had been properly preserved. To stress, the obligation to tender the credible explanation for any non-compliance with the affirmative safeguards imposed by Section 21 of the *Comprehensive Dangerous Drugs Act of 2002* pertained

to the State, and its agents, and to no other. If the State and its agents do not discharge such obligation, then the evidence of guilt necessarily becomes suspect.

4. ID.; ID.; ID.; REASONABLE DOUBT AS TO THE GUILT OF THE ACCUSED EXISTS WHEN THERE ARE LAPSES IN THE OBSERVANCE OF THE AFFIRMATIVE SAFEGUARDS.— [T]he State did not establish the petitioner's guilt beyond reasonable doubt. How can there be any moral certainty of his guilt as having illegally possessed the *shabu* presented at the trial if there were lapses in the observance of the affirmative safeguards? In view of the suspicion infecting the evidence of guilt, his defense of not having been the focus of the operation by the police officers when he first encountered them that evening gains ground. As a result, his version of being apprehended only on his return from the off-track betting station cannot be discounted or dismissed as implausible. Therein lies the reasonable doubt of his guilt.

5. ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES CANNOT BE RELIED ON WHEN THERE WAS CONCRETE AND UNDENIABLE EVIDENCE OF LAPSES COMMITTED BY THE ARRESTING OFFICERS.— It is quite notable that the CA relied too much on the presumption of regularity in the performance of official duties on the part of the arresting officers. Such reliance was premised on the failure of the petitioner during the trial to impute any ill motive against them for arresting and incriminating him. In our view, however, such reliance was legally unwarranted. To begin with, the presumption of regularity in the performance of official duties should not even be relied upon because there was concrete and undeniable evidence of lapses committed by the arresting officers in their compliance with the affirmative safeguards. The presumption has been erected only for convenience, to excuse the State from the duty to adduce proof that official duties have been regularly performed by its agents, because of the physically impossible or time-consuming task of detailing all the steps establishing the regular performance of official duties.

6. ID.; ID.; ID.; TO PLACE A HIGHER VALUE IN THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES THAN IN THE

MORE SUBSTANTIAL PRESUMPTION OF INNOCENCE FAVORING THE ACCUSED WOULD BE UNCONSTITUTIONAL.— [I]t would be unconstitutional to place a higher value in the presumption of regularity in the performance of official duties – a mere tool of evidence – than in the more substantial presumption of innocence favoring the petitioner as an accused – a right enshrined no less than in the Bill of Rights. Preferring the former would ignore the experience in the streets that actually bears witness to so many illegal arrests and unreasonable incriminations of the innocent. In *People v. Andaya*, therefore, we have precisely warned against judicially pronouncing guilty the person arrested by law enforcers just because he could not impute any ill motives to them for arresting him, and have cautioned against presuming the regularity of the arrest on that basis alone[.]

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Too much reliance on the presumption of regularity in the performance of official duties on the part of the arresting officers in the prosecution of drug-related offenses is unwarranted if the records show non-compliance with the affirmative safeguards prescribed to preserve the chain of custody of the contraband. The presumption of regularity applies only when there is no showing of non-compliance.

The Case

The petitioner appeals the decision promulgated on March 30, 2007 in C.A.-G.R. CR No. 29905,[1] whereby the Court of

[1] *Rollo,* pp. 70-84; penned by Associate Justice Enrico A. Lanzanas, with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Rosalinda Asuncion-Vicente concurring.

Appeals (CA) affirmed the decision rendered on August 29, 2005 by the Regional Trial Court (RTC), Branch 214, in Mandaluyong City convicting him of a violation of Section 11, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).[2]

Antecedents

The Office of the City Prosecutor of Mandaluyong City charged the petitioner with illegal possession of *shabu* in violation of Section 11 of the *Comprehensive Dangerous Drugs Act of 2002*, alleging in the information as follows:

> That on or about the 6th day of February 2004, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug, did, then and there willfully, unlawfully, and feloniously and knowingly have in his possession, custody and control two (2) heat-sealed transparent plastic sachets each containing 0.03 and 0.02 grams of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, commonly known as 'shabu' a dangerous drug, without corresponding license and prescription.
>
> Contrary to law.[3]

The CA adopted the summary of the evidence of the State as presented by the Office of the Solicitor General (OSG) in the *appellee's brief*, to wit:

> On February 6, 2004, at 7:20 in the morning, the drug enforcement unit of the Mandaluyong City Police Station received a telephone call from a concerned citizen regarding an illegal drug activity in Barangay Poblacion, particularly in Paraiso Street. On the basis of said information, PO2 Oliver Yumul, the officer-in-charge of the said unit, called a meeting to conduct a surveillance operation in the said area.
>
> Immediately after coordinating with the Philippine Drug Enforcement Agency (PDEA), a team, composed of PO1 Gomez,

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[2] *Id*. at 39-41; penned by Judge Edwin D. Sorongon.

[3] *Id*. at 39.

PO1 Alfaro, PO1 Saupi, PO1 Madlangbayan, POS Adriano and their team leader, proceeded to the area.

Upon arrival thereat, PO1 Gomez and PO1 Alfaro stay (sic) inside the van while the rest of the group namely: PO1 Madalangbayan (sic), POS Adriano, PO1 Saupi and their team leader went off. While walking in their civilian clothes, they saw two (2) male persons in the middle of Paraiso street exchanging something. PO1 Madalangbayan (sic), who was only an arm's length away from the two (2) suspects, saw one of them place a small plastic sachet in between his two (2) fingers and then hand it to the other. The person to whom the plastic sachet was handed turned out to be the appellant.

Immediately, the group approached appellant and his companion and introduced themselves as police officers. At that instance, appellant's companion ran away. The other police officers chased him but he escaped. Appellant, on the other hand, was prevented from fleeing by PO1 Madlangbayan who arrested him. Upon arrest, PO1 Madlangbayan noticed that appellant was holding a plastic sachet in his hand. After discovering that it contained suspected shabu, he ordered him to pull out the contents of his pocket. Consequently, PO1 Madlangbayan recovered another plastic sachet from appellant containing white crystalline substance.

PO1 Madlangbayan informed appellant of his constitutional rights and brought him to the Mandaluyong City Police Station for investigation. The plastic sachets recovered from appellant were submitted to the SOCO for chemical analysis which, after examination, yielded positive for the presence of methamphetamine hydrochloride, otherwise known as "shabu."[4] (Citations omitted)

On the other hand, the petitioner vigorously denied the accusation. He insisted during the trial that he was on his way to the off-track betting station at around 7:20 pm on February 6, 2004 when he encountered police operatives from the Anti-Illegal Drugs Unit along Paraiso Street in Mandaluyong City who mentioned to him that they would be conducting a raid; that on his way back from the betting station he again encountered the same police operatives but this time they arrested him for

[4] *Id*. at 71-72.

allegedly selling *shabu*; that he resisted the arrest because he was surprised by their conduct, but to no avail; and that they brought him with them to the hospital before taking him to their office, where he was investigated and eventually detained.[5]

Ruling of the RTC

On August 29, 2005, the RTC declared the petitioner guilty beyond reasonable doubt of the charge, to wit:

> WHEREFORE, the prosecution having successfully established the guilt of the accused beyond reasonable doubt, he is hereby sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS AND ONE (1) DAY and to pay a fine of ₱300,000.00.
>
> Accused is credited in full of the preventive imprisonment he has served in confinement.
>
> Let the physical evidence subject matter of this case be confiscated and forfeited in favor of the State and referred to the PDEA for proper disposition.
>
> SO ORDERED.[6]

Decision of the CA

On appeal, the CA affirmed the conviction, disposing:

> *In sum,* we find no cogent reason to alter the findings of the trial court, and no ground to question its conclusions.
>
> ***WHEREFORE,*** finding no reversible error committed by the trial court, the appealed Decision of the Regional Trial Court, Branch 214, Mandaluyong City in Criminal Case No. MC-04-7897-D, finding appellant Laonardo Casono (sic) y Perez guilty beyond reasonable doubt of the crime of Violation of Section 11, Article [II] of Republic Act 9165, the appeal is *hereby* ***AFFIRMED IN TOTO.***
>
> **SO ORDERED.**[7]

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

[6] *Id*. at 41.

[7] *Id.* at 83-84.

The CA accorded more weight to the testimonies of the police officers based on the presumption of regularity in the performance of official duties and for lack of showing of any improper motive on their part to falsely testify against the petitioner. Also, it observed that the arresting police officers properly preserved the integrity of the dangerous drug.

Issue

The petitioner now seeks the reversal of the decision of the CA, and raises the sole issue of:

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE PATENT WEAKNESS OF THE PROSECUTION EVIDENCE.[8]

The petitioner submits that the testimony of PO1 Madlangbayan was not worthy of belief; that the police officers had no probable cause to apprehend him because they had acted only on the basis of information from an unnamed concerned citizen; and that the CA erred in finding that the chain of custody was preserved by the arresting officers.

The OSG counters that the submissions of the petitioner involved purely questions of fact that were beyond the ambit of the appeal of this nature; that the CA correctly found him guilty beyond reasonable doubt of the offense charged based on the testimony of PO1 Madlangbayan showing the presence of all the elements of the offense; and that the integrity and evidentiary value of the seized articles were preserved.

Ruling of the Court

The appeal is meritorious.

Every conviction for a crime should only be handed down after proof beyond reasonable doubt of the guilt of the accused for the crime charged has been adduced. "Proof beyond reasonable doubt does not mean such a degree of proof as,

[8] *Id*. at 15.

excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."[9]

Such degree of proof fell short herein; hence, the Court sees it fit to acquit the petitioner.

First of all, it is wrong for the OSG to vigorously insist that this appeal by petition for review on *certiorari* could not be the occasion for the petitioner to argue in his favor that the CA erred in its appreciation and evaluation of the facts. Such insistence, though generally true, is not controlling in an appeal of a criminal conviction that opens the entire records of the trial to review. This can only mean that the Court is not to be limited to reviewing questions of law. As a consequence, the Court, in the course of its review, may also examine any error even if not assigned by the accused.

Secondly, the Court cannot ignore the very palpable permissiveness on the part of the RTC as the trial court and of the CA as the intermediate appellate court in enforcing the statutory safeguards put in place by no less than Congress in order to ensure the integrity of the evidence to be presented against a violator of the *Comprehensive Dangerous Drugs Act of 2002*. Such permissiveness was contrary to the letter and spirit of the law, and should be rebuffed by not letting the unworthy conviction stand. This, because the State and its agents must be the first to comply with the safeguards; there would be lawlessness among the enforcers of the law otherwise.

There is no question that the *Comprehensive Dangerous Drugs Act of 2002* was enacted to revise the approaches in law enforcement involving drug-related offenses. The legislators then believed that the predecessor enactment, Republic Act No. 6425, as amended, did not include needed safeguards against evidence tampering or substitution. Among the new approaches was the incorporation of affirmative safeguards to deny wayward law enforcers apprehending violators any opportunity for

[9] Section 2, Rule 133 of the *Rules of Court*.

tampering with the confiscated evidence, and to ensure the preservation of the integrity of the evidence from the moment of seizure until the ultimate disposal thereof upon order of the trial court. This approach was a true recognition of the value as evidence of guilt of the seized illegal substances themselves – which are no less the *corpus delicti* in the drug-related offenses of illegal sale and illegal possession so essential to the conviction and incarceration of the offenders.

Inasmuch as the dangerous drug itself constitutes the *corpus delicti* of the offense charged, its identity and integrity must be shown by the State to have been preserved. On top of the elements for proving the offense of illegal possession, therefore, is that the substance possessed is the very substance presented in court. The State must establish this element with the same exacting degree of certitude as that required for ultimately handing down a criminal conviction.[10] To achieve this degree of certitude, the Prosecution has to account for all the links in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it is presented in court as proof of the *corpus delicti*. The process, though tedious, must be undergone, for the end is always worthwhile – the preservation of the chain of custody that will prevent unnecessary doubts about the identity of the evidence.

In particular, the *Comprehensive Dangerous Drugs Act of 2002* has incorporated affirmative safeguards that the apprehending officers should faithfully comply with in their seizure and custody of dangerous drugs, *viz.*:

> 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

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[10] *People v. Adrid*, G.R. No. 201845, March 6, 2013, 692 SCRA 683, 697.

confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of 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;

x x x x x x x x x

Complementing this provision is Section 21(a) of Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, to wit:

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

As the law stands, there can be no avoidance of the responsibility to comply on the part of the arresting officers.

A careful review of the records reveals that the police operatives did not faithfully follow the affirmative safeguards. For one, although the safeguards required a physical inventory

and photographing of the *shabu* immediately upon seizure and confiscation "in the presence of the accused xxx, 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," there was no showing why no such inventory and photographing of the *shabu* had been made by the arresting team. It is true that under the guidelines they could have also made the inventory and photographing at the police station by virtue of the confiscation having been *in flagrante delicto*. Yet, they also did not make any inventory or take any photographs at the police station. And, secondly, it was not also established that any of the police operatives had marked the seized *shabu* at the crime scene and in the presence of the petitioner, a representative of the media, a representative of the DOJ, and any elected official, as similarly required. In this regard, PO1 Madlangbayan identified the *shabu* in court through the markings "LCP-1" and "LCP-2" (which were the initials of the petitioner),[11] but there was no testimony by him or any other about the specific circumstances of the placing of such markings, such as the time when and the place where the markings were actually made.

The lack of the inventory signed by the petitioner himself or by his representative as well as by the representative of the media and the DOJ and/or the elected official *as required by law* could very well be held to mean that no *shabu* had been seized from the petitioner on that occasion. Also, the lack of testimony by PO1 Madlangbayan on when and where he had placed the markings "LCP-1" and "LCP-2" on the sachets of *shabu* sidelined the safeguards. Despite the blatant lapses in the compliance with the statutory safeguards, the records do not contain any explanation offered by the State for the lapses. The non-compliance with the affirmative safeguards thus rendered the evidence of the *corpus delicti* open to doubt.

The CA observed in its assailed decision that the *shabu* had been properly preserved by the police operatives, and further

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[11] *Rollo,* p. 119.

noted the fact that the plastic sachet containing the *shabu* had been examined as to its contents which were later on presented in court.[12] However, the observations by the CA did not abate the doubts surrounding the conviction of the petitioner. We should insist that the members of the arresting and seizing team should have themselves rendered the explanation for the lapses thus noted. No one else could have done so. In fact, neither the RTC nor the CA could assume the responsibility of explaining the lapses, even by inference from the record, for their doing so would slacken the safeguards and tolerate the non-compliance by the arresting lawmen at the time of the seizure. We should emphatically remember that the particular safeguard requiring the presence of the media and DOJ representatives, or the presence of the elected official, being designed to insulate the arrest of the violator and the seizure of the drug from suspicion,[13] could be complied with only prior to or simultaneously with the arrest of the suspect and confiscation of the contraband. Moreover, the requirement for marking of the *shabu* to be made *at or nearest to the time of the seizure* would at least guarantee that the identity of the substance be preserved despite its movement from one hand to the next in the chain of custody starting from the seizure until disposal by order of the trial court.[14]

The significance of preserving the integrity of the chain of custody for the dangerous drugs confiscated cannot ever be understated. The Dangerous Drugs Board (DDB) dutifully promulgated a formal rule to preserve the chain of custody in DDB Regulation No. 1, Series of 2002, and stated in Section 1 (b) thereof:

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**

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[12] *Id*. at 82.

[13] *People v. Mendoza*, G.R. No. 192432, June 23, 2014, 727 SCRA 113, 126.

[14] *Reyes v. Court of Appeals,* G.R. No. 180177, April 18, 2012, 670 SCRA 148, 163.

each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition;

The Court has already recognized that strict adherence to the rule on chain of custody was almost always impossible to do.[15] Strict adherence is not always expected, therefore, as borne out by the saving declaration in the last paragraph of Section 21 (a) of the IRR to the effect that the seizure and custody of the dangerous substances should not be rendered void or invalid by the non-compliance with the requirements under justifiable grounds for as long as the integrity and evidentiary value of the seized items are preserved by the apprehending officers.[16] But such saving declaration did not come into play herein because, *one*, the seizing officers did not tender their justification for the lapses committed;[17] and, *two*, there was really no showing by the State that the integrity and evidentiary value of the *shabu* had been properly preserved.

To stress, the obligation to tender the credible explanation for any non-compliance with the affirmative safeguards imposed by Section 21 of the *Comprehensive Dangerous Drugs Act of 2002* pertained to the State,[18] and its agents, and to no other. If the State and its agents do not discharge such obligation, then the evidence of guilt necessarily becomes suspect.

In light of the foregoing, the State did not establish the petitioner's guilt beyond reasonable doubt. How can there be

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[15] *People v. Angngao,* G.R. No. 189296, March 11, 2015, 752 SCRA 531, 543.

[16] *Id.* at 543-544.

[17] *People v. Alagarme*, G.R. No. 184789, February 23, 2015, 751 SCRA 317, 329.

[18] *People v. Barte*, G.R. No. 179749, March 1, 2017.

any moral certainty of his guilt as having illegally possessed the *shabu* presented at the trial if there were lapses in the observance of the affirmative safeguards? In view of the suspicion infecting the evidence of guilt, his defense of not having been the focus of the operation by the police officers when he first encountered them that evening gains ground. As a result, his version of being apprehended only on his return from the off-track betting station cannot be discounted or dismissed as implausible. Therein lies the reasonable doubt of his guilt.

It is quite notable that the CA relied too much on the presumption of regularity in the performance of official duties on the part of the arresting officers. Such reliance was premised on the failure of the petitioner during the trial to impute any ill motive against them for arresting and incriminating him. In our view, however, such reliance was legally unwarranted. To begin with, the presumption of regularity in the performance of official duties should not even be relied upon because there was concrete and undeniable evidence of lapses committed by the arresting officers in their compliance with the affirmative safeguards. The presumption has been erected only for convenience, to excuse the State from the duty to adduce proof that official duties have been regularly performed by its agents, because of the physically impossible or time-consuming task of detailing all the steps establishing the regular performance of official duties. Moreover, it would be unconstitutional to place a higher value in the presumption of regularity in the performance of official duties – a mere tool of evidence – than in the more substantial presumption of innocence favoring the petitioner as an accused – a right enshrined no less than in the Bill of Rights. Preferring the former would ignore the experience in the streets that actually bears witness to so many illegal arrests and unreasonable incriminations of the innocent. In *People v. Andaya*,[19] therefore, we have precisely warned against judicially pronouncing guilty the person arrested by law enforcers just because he could not impute any ill motives to them for arresting him, and have cautioned against presuming the regularity of the arrest on that basis alone, stating:

[19] G.R. No. 183700, October 13, 2014, 738 SCRA 105, 118-119.

xxx We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. The State must fully establish that for us. If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.

Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.

The criminal accusation against a person must be substantiated by proof beyond reasonable doubt. The Court should steadfastly safeguard his right to be presumed innocent. Although his innocence could be doubted, for his reputation in his community might not be lily-white or lustrous, he should not fear a conviction for any crime, least of all one as grave as drug pushing, unless the evidence against him was clear, competent and beyond reasonable doubt. Otherwise, the presumption of innocence in his favor would be rendered empty.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on March 30, 2007 affirming the decision of the Regional Trial Court, Branch 214, in Mandaluyong City finding and declaring petitioner Leonardo P. Casona guilty of a violation of Section 11, Article II of Republic Act No. 9165 as charged in the information; and **ACQUITS** him for failure of the State to establish his guilt beyond reasonable doubt.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187869. September 13, 2017]

TEODULFO E. LAO, JR., ROGER A. ABADAY, ZALDY O. OCON, AND ENRICO D. SALCEDO, *petitioners, vs.* **LGU OF CAGAYAN DE ORO CITY, MAYOR CONSTANTINO JARAULA, VICE MAYOR VICENTE Y. EMANO, CITY COUNCILOR RAMON TABOR, CITY COUNCILOR REYNALDO ADVINCULA, CITY COUNCILOR IAN MARK NACAYA, CITY COUNCILOR PRESIDENT ELIPE, CITY COUNCILOR EMMANUEL ABEJUELA, CITY COUNCILOR ALFONSO GOKING, CITY COUNCILOR ALDEN BACAL, CITY COUNCILOR ALEXANDER DACER, CITY COUNCILOR MARYCOR CALIZO, CITY COUNCILOR AARON NERI, CITY COUNCILOR ADRIAN BARBA, CITY COUNCILOR IAN CAESAR ACENAS, CITY COUNCILOR SIMEON LICAYAN, CITY COUNCILOR KAREN VI POQUITA, CITY COUNCILOR DANTE PAJO, IN THEIR PRIVATE AND/OR OFFICIAL CAPACITIES AND MEGA INTEGRATED AGRO-LIVESTOCK FARM CORPORATION PRESIDENT ERWIN BRYAN SEE[*],** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; LIMITED TO QUESTIONS OF LAW; QUESTION OF LAW, EXPLAINED; WHETHER OR NOT THE

[*] While the caption of the petition for Review states that one of the respondents is "MEGA Integrated Agro-Livestock Farm Corporation President Erwin Bryan See," the body states respondent to be "MEGA Integrated Agro- Livestock Farm Corporation represented by its president Erwin Bryan See" (*Rollo*, p. 8). MEGA Integrated Agro-Livestock Farm Corporation and Erwin Bryan See jointly filed their Comment to the petition for Review (*Rollo*, pp. 223-263).

REGIONAL TRIAL COURT CORRECTLY DENIED THE ISSUANCE OF THE TEMPORARY RESTRAINING ORDER AND DISMISSED THE COMPLAINT FOR ITS LACK OF JURISDICTION AND PETITIONER'S STANDING IS A QUESTION OF LAW.— Direct resort to this Court by way of petition for review on certiorari is permitted when only questions of law are involved. There is a question of law when there is doubt as to which law should be applied to a particular set of facts. Questions of law do not require that the truth or falsehood of facts be determined or evidence be received and examined. Matters of evidence more properly pertain to the trial courts as the trier of facts and the appellate courts as the reviewer of facts. x x x [W]hether or not the Regional Trial Court correctly denied the issuance of the temporary restraining order and dismissed the complaint due to its lack of jurisdiction and petitioners' standing is a question of law which may be resolved by this Court.

2. ID.; CIVIL PROCEDURE; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; MUST CONTAIN ANY STATEMENT THAT AFFIANTS WERE PERSONALLY KNOWN TO THE NOTARY PUBLIC OR HAVE PRESENTED COMPETENT EVIDENCE OF IDENTITY.— [T]he petition's Verification and Certification of Non-Forum Shopping is improperly notarized, there being no statement that the affiants were either personally known to the notary public or that competent evidence of their identities was presented. Under the 2004 Rules on Notarial Practice (Notarial Rules), an individual who appears before a notary public to take an oath or affirmation of a document must, among others, be personally known to or be identified by the notary public through competent evidence of identity. x x x Here, neither the petition's Verification and Compliance with Non-Forum Shopping Law nor its Affidavit of Proof of Service contains any statement that their respective affiants were personally known to the notary public or have presented competent evidence of identity pursuant to Rule II, Section 12 of the 2004 Rules on Notarial Practice. The omission is also evident in the Affidavit of Proof of Service attached to petitioners' Reply. In all these instances, the notary public was Atty. Manolo Z. Tagarda, Sr. (Atty. Tagarda), who also serves as counsel for petitioners.

3. LEGAL ETHICS; ATTORNEYS; NOTARIES PUBLIC; FAILURE TO INDICATE ANY STATEMENT THAT AFFIANTS WERE PERSONALLY KNOWN TO THE NOTARY PUBLIC OR HAVE PRESENTED COMPETENT EVIDENCE OF IDENTITY CONSTITUTES A VIOLATION NOT ONLY OF NOTARIAL RULES BUT ALSO THE CODE OF PROFESSIONAL RESPONSIBILITY.— Notaries public must observe "the highest degree of care" in ensuring compliance with the basic requirements of the Notarial Rules. Notaries public who fail to indicate in notarized documents that the affiants are personally known to them or have presented competent evidence of their identities violate not only the Notarial Rules, but also Canon 1, Rule 1.01 of the Code of Professional Responsibility[.] x x x Atty. Tagarda should show cause why he should not be made administratively liable for failure to comply with the Notarial Rules and the Code of Professional Responsibility.

4. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. (RA) 8975; PROHIBITS THE COURTS TO ISSUE PRELIMINARY INJUNCTION OR TEMPORARY RESTRAINING ORDER AGAINST GOVERNMENT PROJECTS; BUILD-OPERATE-TRANSFER PROJECTS OF LOCAL GOVERNMENT UNITS ARE COVERED BY RA 8975.— Republic Act No. 8975 expressly prohibits the issuance by all courts, other than this Court, of any temporary restraining orders, preliminary injunctions, or preliminary mandatory injunctions against national government projects[.] x x x Among the "national government projects" covered by the prohibition in Section 3 of Republic Act No. 8975 are projects covered by Republic Act No. 6957, as amended, otherwise known as the Build-Operate-Transfer Law[.] x x x That Build-Operate-Transfer projects of local government units are covered by Republic Act No. 8975 was affirmed in *GV Diversified International, Inc. v. Court of Appeals*. The issuance of a temporary restraining order against the opening of sealed bids for a "Build and Transfer Contract" with Cagayan De Oro City was found to be in violation of Republic Act No. 8975[.]

5. ID.; ID.; ID.; ID.; ID.; COURT MAY GRANT INJUNCTIVE RELIEF IF THE CASE INVOLVES A MATTER OF EXTREME URGENCY INVOLVING A CONSTITUTIONAL

ISSUE; CASE AT BAR NOT A CASE OF.— The only exception when a court other than this Court may grant injunctive relief is if it involves a matter of extreme urgency, involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The party seeking a writ of preliminary injunction or temporary restraining order as an exception to Republic Act No. 8975 must discharge the burden of proving a clear and compelling breach of a constitutional provision[.] x x x While conclusive proof of the right to be protected is not necessary, there must still be a clear presentation of the existing basis of facts which shows the right being threatened[.] x x x . . . for the court to act, **there must be an existing basis of facts affording a present right which is directly threatened by an act sought to be enjoined. And while a clear showing of the right claimed is necessary, its existence need not be conclusively established**. x x x Here, the alleged breach of petitioners' ostensible rights was neither clear nor compelling as to warrant an exception from Republic Act No. 8975. Petitioners' claim that the Agora Complex BOT Contract would require that the Agora Complex be made an exclusive terminal for public utility vehicles in violation of the "constitutional right of citizens to free enterprise" does not entitle them to a temporary restraining order. Apart from mere allegations, they have not pointed to any grave injustice or irreparable injury to constitutional rights that would be sustained if no injunctive reliefs are issued against the execution of the Agora Complex BOT Contract.

6. **REMEDIAL LAW; CIVIL PROCEDURE; REAL PARTY IN INTEREST; CITY COUNCILORS MAY FILE A SUIT FOR THE DECLARATION OF NULLITY OF A CONTRACT ON THE GROUND THAT THE CITY MAYOR HAD NO AUTHORITY TO SIGN; CASE AT BAR.—** City councilors may file a suit for the declaration of nullity of a contract on the basis that the city mayor had no authority to do so because the city mayor's authority to bind the city to obligations must emanate from the City Council. Under Title III, Chapter III, Article I, Section 455(b)(l)(vi) of Republic Act No. 7160, otherwise known as the Local Government Code, the city mayor may sign all bonds, contracts, and obligations on behalf of a city only upon authority of the sangguniang panlungsod or pursuant to law or ordinance[.] x x x The requirement of the sangguniang

> panlungsod's prior authority is a measure of check and balance on the powers of the city mayor[.] x x x As the City Council is the source of the mayor's power to execute contracts for the city, its members have the authority, interest, and even duty to file cases in behalf of the city to restrain t he execution of contracts entered into in violation of the Local Government Code[.] x x x Here, it is undisputed that petitioners are members of the City Council of Cagayan De Oro. They have alleged that public respondent Mayor Jaraula entered into the Agora Complex BOT Contract without being authorized by the City Council of Cagayan De Oro, in violation of the requirement in Title III, Chapter III, Article I, Section 455(b)(l)(vi) of the Local Government Code. Clearly, as they are part of the very body in which authority is allegedly being undermined by the city mayor, they have the right and duty to question the basis of the mayor's authority to sign a contract which binds the city.

APPEARANCES OF COUNSEL

Manolo Z. Tagarda, Sr. for petitioners.

Francis U. Ku for respondents E. Bryan See & Mega Integrated Agro-Livestock Farm Corporation.

Andrew L. Barba, co-counsel for respondents LGU & Local Gov't. Officials.

D E C I S I O N

LEONEN, *J.*:

Republic Act No. 7160, otherwise known as the Local Government Code, requires prior authorization from the sangguniang panlungsod, law, or ordinance, before a city mayor may sign a contract in behalf of the city. If the city mayor has no authority from the sangguniang panlungsod to sign a contract, members of the sangguniang panlungsod have standing to file a case to have this contract declared null and void.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court questioning the March 30, 2009 Resolution[2] and May 11, 2009 Order[3] of Branch 17, Regional Trial Court, Cagayan De Oro City. This petition is filed by Barangay Captain Enrico D. Salcedo (Salcedo) of Gusa, Cagayan De Oro City and Cagayan De Oro City Councilors Teodulfo E. Lao, Jr. (Lao), Roger A. Abaday (Abaday), and Zaldy O. Ocon (Ocon) (collectively, petitioners),[4]

The Regional Trial Court denied petitioners' prayer for the issuance of a temporary restraining order. It likewise dismissed their complaint for declaration of nullity of the contract for the redevelopment of Agora Market and Terminal entered into by Cagayan De Oro City Mayor Constantino Jaraula (Mayor Jaraula) and MEGA Integrated Agro-Livestock Farm Corporation (Mega Farm) through its President Erwin Bryan See (See).[5]

On March 19, 2007, the City Council of Cagayan De Oro (City Council) passed City Ordinance No. 10557-2007,[6] which approved See's unsolicited proposal "for the redevelopment of Agora Complex into a Modern Integrated Terminal, Public Market, and Vegetable Landing Area."[7] The redevelopment would be under a build-operate-transfer scheme. At the time, the City Mayor was Vicente Y. Emano (Mayor Emano).[8]

See's unsolicited proposal was the basis of a draft Build-Operate-Transfer (BOT) Contract,[9] in which the project

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[1] *Rollo*, pp. 6–25.

[2] *Id*. at 209–213. The Resolution, docketed as Civil Case No. 2009-076, was penned by Presiding Judge Florencia D. Sealana-Abbu of Branch 17, Regional Trial Court, Cagayan de Oro City.

[3] *Id*. at 221.

[4] *Id.* at 7.

[5] *Id*. at 213.

[6] *Id*. at 36.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 78–98.

proponent was Mega Farm.[10] The City Council resolved not to object to the draft contract in its Resolution No. 8651-2007 dated June 25, 2007.[11] However, the City Council deferred consideration on the proposed Ordinance No. 2007-210, which authorized the mayor to enter into the contract, and referred it to the Committee on Economic Enterprises.[12]

The Cagayan De Oro City Government caused the publication of an Invitation to Qualify and to Bid for Comparative Proposal for the Agora Complex redevelopment in the Manila Standard Today on July 2, 2007, July 9, 2007, and July 16, 2007. This Invitation was signed by Mayor Emano[13] and was supposedly based on Resolution No. 8651-2007.[14]

On October 24, 2007, the city Bids and Awards Committee issued Resolution No. 41-2007, declaring that no bid was submitted to compete with Mega Farm's proposal.[15]

On January 27, 2009, Mega Farm, through See, and the then newly elected Mayor Jaraula executed the Build-Operate-Transfer Contract for the Redevelopment of Agora Complex (Agora Complex BOT Contract).[16] The terms and conditions of this Contract were allegedly different from those in the draft contract in Resolution No. 8651-2007.

On March 19, 2009, petitioners filed their Complaint for Declaration of Nullity of the Re-Development of Agora Market and Terminal Contract Under Build-Operate-Transfer (BOT) Scheme and All Ordinances, Resolutions and Motions of the City Council Relative Thereto with Prayer for Temporary

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[10] *Id.* at 79.

[11] *Id.* at 99.

[12] *Id*. at 100.

[13] *Id*. at 101.

[14] *Id*. at 29.

[15] *Id*. at 28–29.

[16] *Id*. at 102–112.

Restraining Order (TRO) & Preliminary Prohibitory Injunction with Damages with the Regional Trial Court of Misamis Oriental.[17]

This complaint was filed against City Government of Cagayan De Oro and the incumbent Cagayan De Oro City officials, in their personal and official capacities: Mayor Jaraula; Vice Mayor Vicente Y. Emano; Councilors Ramon Tabor, Reynaldo Advincula, Ian Mark Nacaya, President Elipe, Emmanuel Abejuela, Alfonso Goking, Alden Bacal, Alexander Dacer, Marycor Calizo, Aaron Neri, Adrian Barba, Ian Caesar Acenas, Simeon Licayan, Karen Vi Poquita, Dante Pajo; and Mega Farm and See.[18]

In their complaint, petitioners, as public officers and in their personal capacity, questioned the execution and the contents of the Agora Complex BOT Contract. They alleged that it was issued in bad faith and with fraudulent maneuvers between Mega Farm and the City Government of Cagayan De Oro.[19]

Petitioners further alleged that Mega Farm was unqualified to undertake the redevelopment of the Agora Complex as the construction and remodeling of structures were not the primary purposes of the corporation. They added that Mega Farm had no financial capacity to undertake the ₱250,000,000.00 project when it only had a paid-up capital of ₱625,000.00.[20] They also claimed that the provisions of the Agora Complex BOT Contract were infirm for being disadvantageous to the City Government of Cagayan De Oro.[21]

They prayed that the Agora Complex BOT Contract be declared null and void. They also prayed for moral and exemplary damages due to the other city councilors' insulting behavior

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[17] *Id*. at 26–33.

[18] *Id.* at 26.

[19] *Id*. at 27–28.

[20] *Id*. at 29–30.

[21] *Id.* at 32.

toward them during the deliberations for the initial draft of the build-operate-transfer contract and the Agora Complex BOT Contract, and for attorney's fees.[22] Finally, they prayed for the issuance of a temporary restraining order, alleging that the Agora Complex BOT Contract would "result to irreparable damage to the [local government unit] of Cagayan de Oro City and its constituent tax payers."[23]

The City Government and the public officials of Cagayan De Oro (collectively, public respondents) filed an Urgent Omnibus Motion: a) To Dismiss; or b) For a Bill of Particulars.[24] In their Motion, they alleged that the complaint should be dismissed since the Regional Trial Court had not acquired jurisdiction over the complaint, as petitioners did not pay the required docket fees for the damages they had allegedly suffered.[25]

Further, they claimed that the Regional Trial Court did not have jurisdiction over the issue of the complaint. They reasoned that Republic Act No. 8975[26] does not allow the Regional Trial Court to issue temporary restraining orders against the government or any entity, acting under the government's direction to stop the following acts:

(a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
(b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
(c) Commencement, prosecution, execution, implementation, operation of any such contract or project;

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[22] *Id*. at 33.

[23] *Id.* at 32.

[24] *Id*. at 158–165.

[25] *Id*. at 160.

[26] An Act To Ensure The Expeditious Implementation And Completion Of Government Infrastructure Projects By Prohibiting Lower Courts From Issuing Temporary Restraining Orders, Preliminary Injunctions Or Preliminary Mandatory Injunctions, Providing Penalties For Violations Thereof, And For Other Purposes (2000).

(d) Termination or rescission of any such contract/project; and
(e) The undertaking or authorization of any other lawful activity necessary for such contract/project.[27]

Furthermore, the issue did not fall within the exception under Section 3 of Republic Act No. 8975, as it did not involve a matter of extreme urgency involving a constitutional issue.[28]

Public respondents also claimed that petitioners have no cause of action. They argued that while they were impleaded as the incumbent members of the City Council in their personal and official capacities, the ultimate facts, as alleged by petitioners, show that at the time the Ordinances were enacted in 2007, respondent city councilors had not yet been elected.[29]

On their alternative prayer for a bill of particulars, public respondents requested for petitioners to specify the irreparable damage that would happen to the City Government of Cagayan De Oro City and its taxpayers, and to quantify and define in monetary terms their ambiguous claim for moral and exemplary damages.[30]

On March 25, 2009, the hearing on the prayer for temporary restraining order commenced. A continuation of the hearing was scheduled on March 30, 2009.[31]

Petitioners objected[32] to the Motion to Dismiss, claiming that it was not procedurally sound. They pointed out that the March 25, 2009 hearing, which was supposedly on the issuance of the temporary restraining order, became a hearing on the issues raised in the motion to dismiss.[33]

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[27] Rep. Act No. 8975, Sec. 3.

[28] *Rollo*, p. 162.

[29] *Id*. at 163.

[30] *Id*. at 164.

[31] *Id*. at 10–11.

[32] *Id.* at 166–173.

[33] *Id.* at 167.

Petitioners alleged that Section 3 of Republic Act No. 8975 did not apply to the Agora Complex BOT Contract as it was not a national government contract but a local government contract. Further, even if it was not a local government contract, it is within the exception contemplated in the law, as it involved constitutional violations.[34] Moreover, it was an urgent issue considering that the Agora Complex BOT Contract had not ripened into a contract because of Mayor Jaraula's lack of authority to enter into it and because of Mega Farm's lack of financial capacity to undertake the project.[35]

On March 30, 2009, the Regional Trial Court issued a Resolution[36] denying the issuance of a temporary restraining order and dismissing the complaint.

The Regional Trial Court held that the Agora Complex BOT Contract, which was covered by Republic Act No. 6975, as amended by Republic Act No. 7718, was considered a national government project under Section 2[37] of Republic Act No. 8975. Due to this classification of the project and petitioners' failure to prove that the exceptions applied, the trial court was prohibited from issuing temporary restraining orders or preliminary injunctions over the project.[38]

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[34] *Id.* at 168–169.

[35] *Id.* at 170–171.

[36] *Id.* at 209–213.

[37] Rep. Act No. 8975, Sec. 2 provides:

Section 2. *Definition of Terms.* –

(a) "*National government projects"* shall refer to all current and future national government infrastructure, engineering works and service contracts, including projects undertaken by government-owned and -controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding.

[38] *Rollo,* pp. 212–213.

It found that petitioners' basis in requesting for the issuance of a temporary restraining order—that the Agora Complex BOT Contract was entered into through gross, wanton, and fraudulent maneuvers—was not a constitutional issue. There was no showing that petitioners' rights had been violated and that there was a "possibility of irreparable damage or injury."[39] Furthermore, it held that since petitioners were not parties to the contract, they could not file the complaint, not even as taxpayers because the Agora Complex BOT Contract did not involve any appropriation of public funds.[40]

Petitioners filed their Motion for Reconsideration,[41] in which they maintained that even if Republic Act No. 8975 prohibited Regional Trial Courts from ruling on temporary restraining orders, "the power to try the main case and render judgment remains with the [Regional Trial Courts]."[42] Petitioners also insisted that the Agora Complex BOT Contract was unconstitutional and that they had *locus standi* because as elected city councilors, they were the voice of the people and the "watch-dog" against possible abuses. Finally, they argued that they could file the complaint as taxpayers since the Agora Complex BOT Contract involved public funds amounting to ₱250,000,000.00.[43]

Petitioners' Motion for Reconsideration was denied by the Regional Trial Court, which ruled that the validity of the Agora Complex BOT Contract was not a constitutional issue and that petitioners were "not parties to the contract where they may suffer actual or threatened injury."[44]

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[39] *Id*. at 213 citing *Heirs of Eugenia Roxas v. Intermediate Appellate Court*, 255 Phil. 558 (1989) [Per *J*. Cortes, Third Division].

[40] *Id*.

[41] *Id*. at 214–220.

[42] *Id*. at 217.

[43] *Id.* at 219.

[44] *Id*. at 221.

On June 3, 2009, petitioners filed their Petition for Review[45] on Certiorari under Rule 45 of the Rules of Court directly with this Court.

In their Petition for Review, petitioners claim that the Regional Trial Court erroneously dismissed their case on the ground of lack of jurisdiction.[46] They argue that what is prohibited by Republic Act No. 8975 is only the issuance of temporary restraining orders or writs of preliminary injunction by the Regional Trial Court. Thus, the Regional Trial Court still has jurisdiction over the main cause of action, namely, the declaration of nullity of the Agora Complex BOT Contract.[47]

Further, petitioners allege that the Agora Complex BOT Contract is unconstitutional as its terms are monopolistic and is in violation of Article III, Section 1 of the Constitution[48] and the principle of free enterprise. In particular, the provision in the Agora Complex BOT Contract regarding "the exclusivity of Fruits and Vegetables Landing and the Bus Terminal"[49] is contrary to the ruling of this Court in *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.*[50]

Petitioners further aver that the Regional Trial Court failed to find that the Agora Complex BOT Contract is null and void from the beginning, considering that Mayor Emano and Mayor Jaraula had no authority to enter into this contract because the City Council had not issued any ordinance allowing them to do so.[51]

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[45] *Id.* at 3–25.

[46] *Id.* at 13.

[47] *Id.* at 13–14.

[48] CONST., Art. III, Sec. 1 provides:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[49] *Rollo*, p. 14.

[50] 492 Phil. 314 (2005) [Per *J.* Carpio-Morales, *En Banc*].

[51] *Rollo,* pp. 15–17.

Moreover, they claim that Mega Farm lacks financial capability to undergo the project. The determination of Mega Farm's financial capability should have been determined in the pre-qualification stage, but this was not done.[52]

Finally, petitioners argue that they have legal standing to file the complaint. They claim that "the principle of lack of personality presupposes existence of a valid or voidable contract and the subject matter of the contract is private in nature."[53] Since the Agora Complex BOT Contract is null and void from the beginning, then the principle of *locus standi* is inapplicable. Petitioners argue that they can file the case not merely as taxpayers but as elected officers who look out for the funds of the city. Additionally, they allege that while there is no actual disbursement of ₱250,000,000.00 for the project, the money represents the profit that would be generated from the public once the redeveloped Agora Complex is operational.[54]

This Court issued a Resolution[55] dated June 10, 2009, requiring respondents to comment on the Petition for Review within 10 days from its notice.

On August 6, 2009, private respondents Mega Farm and See filed their Comment.[56]

They argue that it was improper for petitioners to directly file this petition with this Court, as it involves both questions of fact and law.[57] Moreover, the Verification and Certification of Non-Forum Shopping attached to this petition is improperly subscribed.[58] They further argue that there was no error on the part of the Regional Trial Court when it denied the temporary

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[52] *Id*. at 18.

[53] *Id*. at 19.

[54] *Id*. at 21.

[55] *Id*. at 222.

[56] *Id*. at 223–263.

[57] *Id*. at 224.

[58] *Id*. at 233.

restraining order and dismissed the entire case. Private respondents Mega Farm and See allege that in dismissing the case for the trial court's lack of jurisdiction and petitioners' lack of legal standing, the Regional Trial Court in effect dismissed the complaint based on lack of, or failure to state, a cause of action.[59]

Furthermore, the constitutionality of the law or the City Ordinance connected to the Agora Complex BOT Contract is not actually the *lis mota* of the case but the validity of the contract itself.[60] In addition, they point out that the prayer for temporary restraining order has already become moot, since ordinances have been issued, the contract has been signed, and the construction has begun.[61]

Private respondents Mega Farm and See claim that petitioners have no *locus standi*, as they are not businessmen, fruit or vegetable vendors, or jeepney operators who will be directly affected by their alleged unconstitutional part of the contract—the exclusive use of the Eastbound Terminal and the exclusive disposition and drop-off of vegetables in Agora.[62] Neither can they sue as taxpayers, as there is no appropriation of public funds. Instead, what is apparent in their complaint and in the present petition is that they are filing based on their positions as city councilors and as barangay captain of Gusa, Cagayan De Oro City. Private respondents Mega Farm and See allege that petitioners cannot sue as public officers because they failed to show that they have material interest in the project.[63]

Meanwhile, public respondents filed a Motion for Extension of Time, praying for an additional 20 days to file their comment to the Petition for Review.[64]

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[59] *Id*. at 241.

[60] *Id.* at 244.

[61] *Id*. at 254.

[62] *Id*. at 245–246.

[63] *Id*.at 246.

[64] *Id*. at 270–273.

This Court issued a Resolution[65] dated August 26, 2009, noting Mega Farm and See's Comment and granting public respondents' motion.

On August 24, 2009, public respondents filed their Comment[66] to the petition.

Public respondents allege that Republic Act No. 8975 prohibits the Regional Trial Court from issuing temporary restraining orders unless an urgent constitutional issue is involved, which petitioners failed to show.[67] They also claim that petitioners' complaint was dismissed not exclusively on lack of jurisdiction but on the premise that they failed to show that they were the proper parties to question the Agora Complex BOT Contract.[68] Because of this, it is misleading for petitioners to claim that the dismissal of the case was based only on Republic Act No. 8975.[69]

They further argue that petitioners failed to show that the execution of the Agora Complex BOT Contract caused them direct, personal, and substantial injury. They were not parties to the contract, or fruit or vegetable vendors, or public utility operators who would be directly affected by the exclusivity of the Eastbound Terminal and of the drop-off of vegetables in Agora. Neither could they complain as taxpayers, as there was no disbursement of public funds required for the project.[70]

On September 2, 2009, petitioners filed their Reply[71] to public respondents' Comment. On September 18, 2009, they filed their Reply to private respondents' Comment.[72] Petitioners claim that

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[65] *Id*. at 275.

[66] *Id*. at 276–302.

[67] *Id*. at 284–285.

[68] *Id*. at 285.

[69] *Id*. at 286.

[70] *Id*. at 292–293.

[71] *Id*. at 305–309.

[72] *Id*. at 310–317.

their petition involves only questions of law and is, thus, cognizable by this Court.[73] They also claimed that the Verification and Certification of Non-Forum Shopping is sufficient, having been duly subscribed and sworn to before a notary public.[74] They reiterate that the Agora Complex BOT Contract is void, there being no ordinance issued by the City Council of Cagayan De Oro authorizing Mayor Jaraula to sign it. The contract being void, the principle of standing is inapplicable. Thus, they may question its validity, even if they are not parties to the contract.[75]

This Court issued a Resolution dated October 14, 2009[76] noting public respondents' Comment and petitioners' Replies to public and private respondents' Comments. This Court also expunged from the records the rejoinder filed by public respondents since it lacked a motion for leave to file rejoinder.

The issues for this Court's resolution are:

First, whether or not it was proper for Teodulfo E. Lao, Jr., Roger A. Abaday, Zaldy O. Ocon, and Enrico D. Salcedo to file a Petition for Review under Rule 45 directly with this Court;

Second, whether or not Teodulfo E. Lao, Jr., Roger A. Abaday, Zaldy O. Ocon, and Enrico D. Salcedo's Verification and Certification of Non-Forum Shopping is fatally defective as to warrant the dismissal of the Petition for Review;

Third, whether or not the Regional Trial Court correctly denied the issuance of the temporary restraining order against the Agora Complex Build-Operate-Transfer Contract; and

Finally, whether or not Teodulfo E. Lao, Jr., Roger A. Abaday, Zaldy O. Ocon, and Enrico D. Salcedo have *locus standi* to file a complaint to have the Agora Complex Build-Operate-Transfer Contract declared null and void.

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[73] *Id*. at 305.

[74] *Id*. at 306.

[75] *Id*. at 315.

[76] *Id*. at 334.

I

Under Rule 41, Section 2 of the Rules of Court, there are three (3) modes of appeal from a judgment or final order of the Regional Trial Court:

Section 2. Modes of appeal. –

(a) *Ordinary appeal.* – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.* – In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.

Direct resort to this Court by way of petition for review on certiorari is permitted when only questions of law are involved.[77]

There is a question of law when there is doubt as to which law should be applied to a particular set of facts.[78] Questions of law do not require that the truth or falsehood of facts be determined or evidence be received and examined.[79] Matters

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

[78] *Ronquillo v. National Electrification Administration*, G.R. No. 172593, April 20, 2016, 790 SCRA 611, 630 [Per *J.* Leonen, Second Division].

[79] *Ligtas v. People*, 766 Phil. 750, 763 (2015) [Per *J.* Leonen, Second Division], citing *Ruiz v. People*, 512 Phil. 127, 135 (2005) [Per *J.* Callejo, Sr., Second Division].

of evidence more properly pertain to the trial courts as the trier of facts and the appellate courts as the reviewer of facts.[80]

As correctly pointed out by public respondents, among the four (4) errors that petitioners assign to the Regional Trial Court, two (2) are questions of fact. The nullity of the Agora Complex BOT Contract due to the mayor's alleged lack of authority to sign it and the local government's alleged failure to determine the project proponent's financial capacity require the reception and examination of evidence. These issues are questions of fact not cognizable in a petition for review under Rule 45.

Nonetheless, whether or not the Regional Trial Court correctly denied the issuance of the temporary restraining order and dismissed the complaint due to its lack of jurisdiction and petitioners' standing is a question of law which may be resolved by this Court.

II

As pointed out by private respondents,[81] the petition's Verification and Certification of Non-Forum Shopping is improperly notarized, there being no statement that the affiants were either personally known to the notary public or that competent evidence of their identities was presented.

Under the 2004 Rules on Notarial Practice (Notarial Rules), an individual who appears before a notary public to take an oath or affirmation of a document must, among others, be personally known to or be identified by the notary public through competent evidence of identity.[82] Rule II, Section 12 of the Notarial Rules defines "competent evidence of identity" as:

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[80] *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 769 (2013) [Per *J.* Brion, Second Division].

[81] *Rollo*, p. 233.

[82] RULES ON NOTARIAL PRACTICE, Rule II, Secs. 2 and 6 state:
Section 2. *Affirmation or Oath*. – The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:
(a) appears in person before the notary public;
(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

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.

Here, neither the petition's Verification and Compliance with Non-Forum Shopping Law[83] nor its Affidavit of Proof

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(c) avows under penalty of law to the whole truth of the contents of the instrument or document.

. . . . . .

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.

[83] *Rollo*, p. 24.

of Service[84] contains any statement that their respective affiants were personally known to the notary public or have presented competent evidence of identity pursuant to Rule II, Section 12 of the 2004 Rules on Notarial Practice. The omission is also evident in the Affidavit of Proof of Service[85] attached to petitioners' Reply. In all these instances, the notary public was Atty. Manolo Z. Tagarda, Sr. (Atty. Tagarda), who also serves as counsel for petitioners.

Notaries public must observe "the highest degree of care" in ensuring compliance with the basic requirements of the Notarial Rules.[86] Notaries public who fail to indicate in notarized documents that the affiants are personally known to them or have presented competent evidence of their identities violate not only the Notarial Rules, but also Canon 1, Rule 1.01 of the Code of Professional Responsibility:

> A notary public exercises duties calling for carefulness and faithfulness. Notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions. In line with this mandate, a notary public should not notarize a document unless the person who signed the same is the very person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. By failing in this regard, the notary public permits a falsehood which does not only transgress the Notarial Rules but also Rule 1.01, Canon 1 of the Code of Professional Responsibility, which provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Verily, a notarized document is, by law, entitled to full faith and credit upon its face; and it is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[87] (Citations omitted)

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[84] *Id.* at 25.

[85] *Id.* at 309.

[86] *Atty. Bartolome v. Atty. Basilio*, 771 Phil. 1, 5 (2015) [Per *J.* Perlas-Bernabe, First Division].

[87] *Id.* at 9–10.

Atty. Tagarda should show cause why he should not be made administratively liable for failure to comply with the Notarial Rules and the Code of Professional Responsibility.

As for the petition itself, the defect of the failure to show that competent evidence of identity was presented may be overlooked in view of the merits of the case.[88]

III

The Regional Trial Court correctly denied the issuance of a temporary restraining order against the Agora Complex BOT Contract.

Contrary to the claim of petitioners, the Regional Trial Court did not dismiss the complaint on the basis of lack of jurisdiction pursuant to Republic Act No. 8975. It only denied the issuance of a temporary restraining order on this basis. It is well-settled that despite the provisions of Republic Act No. 8975, trial courts still retain jurisdiction over the main cause of action to nullify or implement a national government contract.[89]

Republic Act No. 8975 expressly prohibits the issuance by all courts, other than this Court, of any temporary restraining orders, preliminary injunctions, or preliminary mandatory injunctions against national government projects:

Section 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions*. — No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its

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[88] See *Coca-Cola Bottlers Philippines, Inc. v. Dela Cruz*, 622 Phil. 886 (2009) [Per *J.* Brion, Second Division]; *Heirs of Zaulda v. Zaulda*, 729 Phil. 639 (2014) [Per *J.* Mendoza, Third Division].

[89] See *Dynamic Builders & Construction Co. (Phil.), Inc. v. Hon. Presbitero, Jr.*, 757 Phil. 454 (2015) [Per *J.* Leonen, *En Banc*]; *Republic v. Nolasco*, 496 Phil. 853 (2005) [Per *J.* Tinga, Second Division]; *Hontiveros-Baraquel v. Toll Regulatory Board*, 754 Phil. 406 (2015) [Per *C.J.* Sereno, First Division].

subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

(a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

(b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;

(c) Commencement, prosecution, execution, implementation, operation of any such contract or project;

(d) Termination or rescission of any such contract/project; and

(e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

Among the "national government projects" covered by the prohibition in Section 3 of Republic Act No. 8975 are projects covered by Republic Act No. 6957, as amended, otherwise known as the Build-Operate-Transfer Law:

Section 2. Definition of Terms. —

(a) "National government projects" shall refer to all current and future national government infrastructure, engineering works

> and service contracts, including projects undertaken by government-owned and -controlled corporations, *all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law*, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding. (Emphasis supplied)

That Build-Operate-Transfer projects of local government units are covered by Republic Act No. 8975 was affirmed in *GV Diversified International, Inc. v. Court of Appeals*.[90] The issuance of a temporary restraining order against the opening of sealed bids for a "Build and Transfer Contract" with Cagayan De Oro City was found to be in violation of Republic Act No. 8975:

> Based on [Sections 2, 3 and 4 of Republic Act No. 8975], a preliminary injunction issued by any court, other than the Supreme Court, for the purpose of restraining the bidding or awarding of a national government project, is void.
>
> In this case, the preliminary injunction issued by the RTC sought to restrain the City of Cagayan de Oro from opening the sealed bids for the South Diversion Road and PCDG Cargo Bridge Project. The said venture, which is covered by the Build-Operate-and-Transfer Law, is clearly a national government project within the meaning of Rep. Act No. 8975. Therefore, the subject writ of preliminary injunction is, by operation of law, void and of no force and effect.
>
> Consequently, the Court of Appeals, in lifting the preliminary injunction issued by the RTC, did not commit grave abuse of discretion. On the contrary, the Court of Appeals in fact served the purpose of Rep. Act No. 8975. The lifting of the subject preliminary injunction paved the way for the opening of the sealed bids pursuant to the City's invitation to qualified bidders. As a result, the implementation of the aforesaid infrastructure project continued without any undue and costly delay, as expressly mandated by Rep. Act No. 8975.[91]

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[90] 532 Phil. 296 (2006) [Per *J*. Quisumbing, Third Division].

[91] *Id*. at 304.

Here, as found by the Regional Trial Court, the Agora Complex BOT Contract falls within the prohibition in Republic Act No. 8975:

> The Jaraula-See BOT Contract must be read in the light of RA 8975 and RA 7718. The subject project – the redevelopment of the Agora market was admitted by plaintiff to be a BUILD-OPERATE-TRANSFER scheme between the City Government and that of the project proponent, hence, the definition of "national government projects" under SEC. 2 of RA 8975 is not limited to current and future national government infrastructure, engineering works and service contracts including projects undertaken by government-owned or [-]controlled corporations, but ALL PROJECTS COVERED by Republic Act No. 6975 as amended by Republic Act No. 7718 otherwise known as Build-Operate-Transfer Law" [.][92] (Emphasis in the original)

The only exception when a court other than this Court may grant injunctive relief is if it involves a matter of extreme urgency, involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.[93]

The party seeking a writ of preliminary injunction or temporary restraining order as an exception to Republic Act No. 8975 must discharge the burden of proving a clear and compelling breach of a constitutional provision:

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[92] *Rollo*, p. 212.

[93] Rep. Act No. 8975, Sec. 3 which states in part:

> Section 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.— . . .
>
> *This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.* The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought. (Emphasis supplied)

See also *Republic v. Nolasco*, 496 Phil. 853 (2005) [Per *J.* Tinga, Second Division].

Mere allegation or invocation that constitutionally protected rights were violated will not automatically result in the issuance of injunctive relief. The plaintiff or the petitioner should discharge the burden to show a clear and compelling breach of a constitutional provision. Violations of constitutional provisions are easily alleged, but trial courts should scrutinize diligently and deliberately the evidence showing the existence of facts that should support the conclusion that a constitutional provision is clearly and convincingly breached. In case of doubt, no injunctive relief should issue. In the proper cases, the aggrieved party may then avail itself of special civil actions and elevate the matter.[94]

While conclusive proof of the right to be protected is not necessary, there must still be a clear presentation of the existing basis of facts which shows the right being threatened:

Conclusive proof of the existence of the right to be protected is not demanded, however, for, as the Court has held in *Saulog v. Court of Appeals*, it is enough that:

> . . . for the court to act, **there must be an existing basis of facts affording a present right which is directly threatened by an act sought to be enjoined. And while a clear showing of the right claimed is necessary, its existence need not be conclusively established**. In fact, the evidence to be submitted to justify preliminary injunction at the hearing thereon need not be conclusive or complete but need only be a "sampling" intended merely to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. **This should really be so since our concern here involves only the propriety of the preliminary injunction and not the merits of the case still pending with the trial court.**
>
> Thus, to be entitled to the writ of preliminary injunction, the private respondent needs only to show that it has the **ostensible right to the final relief prayed for in its complaint**[.][95] (Emphasis in the original)

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[94] *Dynamic Builders & Construction Co. (Phil.), Inc. v. Hon. Presbitero, Jr.*, 757 Phil. 454, 473 (2015) [Per *J.* Leonen, *En Banc*].

[95] *Nerwin Industries Corp. v. PNOC-Energy Development Corp.,* 685 Phil. 412, 426–427 (2012) [Per *J.* Bersamin, First Division].

Here, the alleged breach of petitioners' ostensible rights was neither clear nor compelling as to warrant an exception from Republic Act No. 8975. Petitioners' claim that the Agora Complex BOT Contract would require that the Agora Complex be made an exclusive terminal for public utility vehicles in violation of the "constitutional right of citizens to free enterprise"[96] does not entitle them to a temporary restraining order. Apart from mere allegations, they have not pointed to any grave injustice or irreparable injury to constitutional rights that would be sustained if no injunctive reliefs are issued against the execution of the Agora Complex BOT Contract. The trial court correctly denied the prayer for a temporary restraining order.

IV

The dismissal by the trial court of the complaint due to petitioners' lack of personality to file suit is erroneous. Petitioners, as members of the City Council of Cagayan De Oro, may file a case to question a contract entered into by the city mayor allegedly without the City Council's authority.

Rule 3, Section 2 of the Rules of Court defines the real party in interest that may institute a case:

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

The real party in interest which may file a case, questioning the validity of a contract entered into by the city mayor, who is alleged to have no authority to do so, is the city itself. It is the local government unit which stands to be injured or benefited by any judgment that may be made in this case. The city councilors merely represent the city in the suit. As explained in *City Council of Cebu v. Cuizon*:[97]

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[96] *Rollo*, p. 32.

[97] 150-C Phil. 116 (1972) [Per *J*. Teehankee, *En Banc*].

It seems clearly self-evident from the foregoing recitation of the undisputed antecedents and factual background that the lower court gravely erred in issuing its dismissal order on the ground of plaintiffs' alleged lack of interest or legal standing as city councilors or as taxpayers to maintain the case at bar. The lower court founded its erroneous conclusion on the equally erroneous premise of citing and applying Article 1397 of the Civil Code that "the action for the annulment of contracts may be instituted (only) by all who are thereby obliged principally or subsidiarily."

The lower court's fundamental error was in treating plaintiffs' complaint as a *personal* suit on their own behalf and applying the test in such cases that plaintiffs should show personal interest as parties who would be benefited or injured by the judgment sought. Plaintiffs' suit is patently not a personal suit. Plaintiffs clearly and by the express terms of their complaint filed the suit as a *representative* suit on behalf and for the benefit of the city of Cebu.[98] (Citation omitted)

City councilors may file a suit for the declaration of nullity of a contract on the basis that the city mayor had no authority to do so because the city mayor's authority to bind the city to obligations must emanate from the City Council. Under Title III, Chapter III, Article I, Section 455(b)(1)(vi) of Republic Act No. 7160, otherwise known as the Local Government Code, the city mayor may sign all bonds, contracts, and obligations on behalf of a city only upon authority of the sangguniang panlungsod or pursuant to law or ordinance:

Section 455. Chief Executive: Powers, Duties and Compensation. –

. . . . . .

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the city government, and in this connection, shall:

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[98] *Id*. at 128.

> … … …
>
> (vi) Represent the city in all its business transactions and sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the sangguniang panlungsod or pursuant to law or ordinance[.]

The requirement of the sangguniang panlungsod's prior authority is a measure of check and balance on the powers of the city mayor:

> Yet, this is obviously not the effect Congress had in mind when it required, as a condition to the local chief executive's representation of the local government unit in business transactions, the prior authorization of the *sanggunian* concerned. The requirement was deliberately added as a measure of check and balance, to temper the authority of the local chief executive, and in recognition of the fact that the corporate powers of the local government unit are wielded as much by its chief executive as by its council.[99]

As the City Council is the source of the mayor's power to execute contracts for the city, its members have the authority, interest, and even duty to file cases in behalf of the city, to restrain the execution of contracts entered into in violation of the Local Government Code:

> Under such circumstances, in the same manner that a stockholder of a corporation is permitted to institute derivative or representative suits as nominal party plaintiff for the benefit of the corporation which is the real party in interest, more so may plaintiffs as city councilors exclusively empowered by the city charter to "make all appropriations for the expenses of the government of the city" and who were the very source of the authority granted to the city mayor to enter into the questioned transactions which authority was later revoked by them, as per the allegations of the complaint at bar, be deemed to possess the necessary authority, and interest, if not duty, to file the present suit on behalf of the City and to prevent the disbursement of city funds under contracts impugned by them to

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[99] *Quisumbing v. Garcia*, 593 Phil. 655, 671 (2008) [Per *J.* Tinga, *En Banc*].

have been entered into by the city mayor without lawful authority and in violation of law.[100] (Citations omitted)

Here, it is undisputed that petitioners are members of the City Council of Cagayan De Oro. They have alleged that public respondent Mayor Jaraula entered into the Agora Complex BOT Contract without being authorized by the City Council of Cagayan De Oro, in violation of the requirement in Title III, Chapter III, Article I, Section 455(b)(1)(vi) of the Local Government Code. Clearly, as they are part of the very body in which authority is allegedly being undermined by the city mayor, they have the right and duty to question the basis of the mayor's authority to sign a contract which binds the city.

WHEREFORE, the petition is **PARTIALLY GRANTED.** On the dismissal of the Complaint for the Declaration of Nullity of the Redevelopment of Agora Market and Terminal Contract Under Build-Operate-Transfer Scheme and All Ordinances, Resolutions and Motions of the City Council Relative Thereto with Prayer for Temporary Restraining Order and Preliminary Prohibitory Injunction with Damages, the March 30, 2009 Resolution and May 11, 2009 Order of the Regional Trial Court in Civil Case No. 2009-076 are **REVERSED**. The denial of the issuance of a Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction is **AFFIRMED**. Let this case be **REMANDED** to the Regional Trial Court of origin for further proceedings.

Let a copy of this Decision be **FURNISHED** the Office of the Bar Confidant for the filing of the appropriate action against Atty. Manolo Z. Tagarda, Sr. for possible violation of the 2004 Rules of Notarial Practice and the Code of Professional Responsibility, to be re-docketed as a separate administrative action.

SO ORDERED.

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

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[100] *City Council of Cebu v. Cuizon*, 150-C Phil. 116, 132 (1972) [Per *J.* Teehankee, *En Banc*].

THIRD DIVISION

[G.R. No. 191652. September 13, 2017]

TEAM IMAGE ENTERTAINMENT, INC., AND FELIX S. CO, *petitioners, vs.* **SOLAR TEAM ENTERTAINMENT, INC.,** *respondent.*

[G.R. No. 191658. September 13, 2017]

SOLAR TEAM ENTERTAINMENT, INC., *petitioner, vs.* **TEAM IMAGE ENTERTAINMENT, INC., AND FELIX S. CO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; CONTRACTS; COMPROMISE AGREEMENT; TEAM IMAGE WAS IN DEFAULT FOR FAILURE TO RESUME PAYMENTS OF ITS OBLIGATION UNDER THE COMPROMISE AGREEMENT.—** Based on the periods and conditions provided in paragraphs 6 to 9, except for the payment of ₱13,000,000.00, Team Image should have already performed its monetary obligations under the Compromise Agreement by April 26, 2004, when it filed its first motion for issuance of writ of execution and suspension of payment. For instance, 50 days from the signing of the Compromise Agreement on April 28, 2003 would fall on June 17, 2003. Hence, by June 17, 2003, Team Image should have already paid Solar Team 3,267,000.00 in post-dated checks. Another obligation would be for Team Image to pay Solar Team ₱1,015,425.06 within 60 days from the signing of the Compromise Agreement, the 60th day being June 27, 2003. There is no proof, however, that Team Image complied with these obligations within the required periods. That Team Image filed a motion for suspension of payments further demonstrates that it had not fully paid its obligations under the Compromise Agreement.

2. **ID.; ID.; ID.; ID.; SOLAR TEAM VIOLATED THE COMPROMISE AGREEMENT WHEN IT REFUSED TO WITHDRAW THE COMPLAINT-IN-INTERVENTION IT**

FILED AGAINST TEAM IMAGE.— Paragraph 22 requires both Team Image and Solar Team to "immediately provisionally dismiss all actions, whether civil or criminal, they may have filed against each other." They shall cause the permanent dismissal of the actions "after [SGV and Co.] shall have finally completed the audit and accounting tasked upon it." When the Compromise Agreement was executed on April 28, 2003, there was a pending collection case filed by ABC Television against Team Image when Solar Team filed a complaint-in-intervention. It does not appear that Solar Team filed a motion to dismiss the complaint-in-intervention it had filed against Team Image; hence, Solar Team violated paragraph 22 of the Compromise Agreement. That the term "provisional dismissal," in its technical sense, only applies to criminal cases is not an argument for Solar Team to refuse to withdraw the complaint-in-intervention. It does not appear that Team Image and Solar Team meant to use the term in its technical sense. Considering that the parties agreed in paragraph 21 that the Compromise Agreement "shall operate as total waiver and discharge of any or all claims, counterclaims, causes of action, claims and demands of whatever kind and nature which each may have against the other," the parties intended to terminate all the cases they filed against each other.

3. **ID.; ID.; ID.; ID.; SOLAR TEAM DID NOT VIOLATE THE COMPROMISE AGREEMENT WHEN TIENG (SOLAR TEAM'S CEO) FAILED TO CAUSE THE DISMISSAL OF THE CRIMINAL CASES FOR ESTAFA HE HAD FILED AGAINST CO (TEAM IMAGE'S PRESIDENT); CRIMINAL LIABILITY CANNOT BE THE SUBJECT OF A COMPROMISE.—** However, despite paragraphs 21 and 22 of the Compromise Agreement, Solar Team cannot be deemed to have violated it for failing to cause the dismissal of the criminal cases for estafa Tieng filed against Co. It is settled that criminal liability cannot be the subject of a compromise. "[A] criminal case is committed against the People, and the offended party may not waive or extinguish the criminal liability that the law imposes for its commission." This explains why "a compromise is not one of the grounds prescribed by the Revised Penal Code for the extinction of criminal liability."

4. **ID.; ID.; ID.; ID.; POWER TO GRANT CRIMINAL IMMUNITY AND COMPROMISING CRIMINAL**

LIABILITY, DISTINGUISHED.— Team Image confused the Presidential Commission on Good Government's power to grant criminal immunity with the act of compromising criminal liability. Granting criminal immunity is allowed because no criminal case has yet been filed in court, and therefore, there is no criminal liability to compromise. On the other hand, compromising criminal liability presupposes that a criminal case has already been filed in court, the dismissal of which is already based on the sound discretion of the trial court. In other words, the dismissal cannot be automatic, regardless of the agreement between the private complainant and the accused to dismiss the case. As discussed, the real offended party in a criminal case is the State and the outcome of the criminal case cannot be based on the will of the private complainant who is a mere witness for the prosecution.

5. **ID.; ID.; ID.; ID.; IT WAS PREMATURE FOR TEAM IMAGE TO CLAIM THAT IT MADE OVERPAYMENTS TO SOLAR TEAM.—** Under paragraphs 4 and 5 of the Compromise Agreement, there must first be an audit and accounting by SGV and Co. before there can be a final determination of the share of Team Image from the collectibles from VTV Corporation. There is no showing that SGV and Co. had already completed its audit and accounting when Team Image filed a motion for the issuance of a writ of execution. The supposed admission of Tieng in Civil Case No. 05-603 that he received ₱22,971,572.03 is not a judicial admission contemplated under Rule 129, Section 4 of the Rules of Court. Rule 129, Section 4 requires that the admission be made in the same case. The admission of Tieng was made in a different case. Therefore, the admission in Civil Case No. 05-603 cannot be made basis to contend that Tieng misrepresented the amounts he stated in paragraph 4 of the Compromise Agreement. The Court of Appeals correctly held that it was premature for Team Image to claim overpayments.

6. **ID.; ID.; ID.; ID.; WHEN BOTH PARTIES VIOLATED THE TERMS OF THE COMPROMISE AGREEMENT, THEY ARE BOTH LIABLE TO PAY LIQUIDATED DAMAGES; CONSIDERING THAT THE PARTIES ARE CONCURRENTLY LIABLE TO EACH OTHER IN EQUAL AMOUNTS, THE COURT CONFIRMS THAT THE AMOUNTS ARE SET OFF BY OPERATION OF LAW.—**

> Team Image violated paragraphs 6 and 7 of the Compromise Agreement by failing to pay its monetary obligations under these paragraphs. For these violations, Team Image must pay Solar Team ₱2,000,000.00 in liquidated damages. As for Solar Team, it violated paragraph 22 of the Compromise Agreement for failure to withdraw the complaint-in-intervention it had earlier filed against Team Image. Hence, Solar Team must pay Team Image ₱2,000,000.00 in liquidated damages. x x x Considering that the parties are equally liable to each other in the amount of ₱2,000,000.00, this Court confirms that the amounts are set off by operation of law.

APPEARANCES OF COUNSEL

Teresita Gandionco-Oledan for Team Image Entertainment, Inc. & Felix S. Co.

David Cui-David Buenaventura & Ang Law Offices for Solar Team Entertainment, Inc.

D E C I S I O N

LEONEN, *J.*:

A judgment upon a compromise is rendered based on the parties' reciprocal concessions. With all the more reason should a judgment upon a compromise be complied with in good faith considering that the parties themselves crafted its terms.

These are consolidated Petitions for Review on Certiorari assailing the December 10, 2009 Decision[1] and March 17, 2010 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 104961.

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[1] *Rollo* (G.R. No. 191652), pp. 64–94 and *rollo* (G.R. No. 191658), pp. 39–70. The Decision was penned by Associate Justice Arcangelita M. Romilla-Lontok and was concurred in by Associate Justices Arturo G. Tayag and Sixto C. Marella, Jr. of the Special Sixth Division, Court of Appeals, Manila.

[2] *Id*. at 96–99 and *rollo* (G.R. No. 191658), pp. 72–75. The Resolution was penned by Associate Justice Arcangelita M. Romilla-Lontok and was concurred in by Associate Justices Portia Aliño-Hormachuelos and Mario V. Lopez of the Second Division, Court of Appeals, Manila.

The Court of Appeals held that both parties—Team Image Entertainment, Inc. (Team Image) and Solar Team Entertainment, Inc. (Solar Team)—violated the Compromise Agreement they had entered into in connection with a civil case for accounting[3] filed before Branch 59, Regional Trial Court, Makati City. Team Image was specifically ordered to pay Solar Team ₱2,000,000.00 in liquidated damages for failing to settle its monetary obligation to Solar Team within the period provided in the Compromise Agreement.[4] Further, the Court of Appeals allowed Team Image to suspend payments under the Compromise Agreement because Solar Team failed to withdraw the complaint-in-intervention it had earlier filed against Team Image's President, Felix S. Co (Co), contrary to their agreement to dismiss all actions they had filed against each other.[5]

Solar Team owned movies, films, telenovelas, television series, programs, and coverage specials that it aired over block times in several television stations.[6] It derived profits by selling advertising spots to interested business enterprises.[7]

On April 24, 1996, Solar Team entered into a Marketing Agreement with Team Image,[8] which agreed to act as Solar Team's exclusive marketing agent by selling advertising spots to business enterprises on behalf of Solar Team.[9]

According to Solar Team, Team Image breached their Marketing Agreement by failing to disclose the names of the

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[3] Docketed as Civil Case No. 00-1122, see *rollo* (G.R. No. 191652), p. 64.

[4] *Rollo* (G.R. No. 191652), p. 92.

[5] *Id*.

[6] *Id*. at 65 and *rollo* (G.R. No. 191658), p. 40.

[7] *Id*. at 153 and *rollo* (G.R. No. 191658), p. 113, Court of Appeals Decision dated December 12, 2007. The Decision involved Solar Team's Petition for *Certiorari* assailing the November 3, 2005 and April 7, 2006 Orders of the trial court.

[8] *Id*.

[9] *Id*. at 65 and *rollo* (G.R. No. 191658), p. 40.

entities to which Team Image sold advertising spots. Further, Team Image allegedly represented itself as the owner of Solar Team's television programs, series, and telenovelas, hence collecting the proceeds of the sale without remitting them to Solar Team. For these reasons, Solar Team demanded that Team Image render an accounting of all the transactions the latter had entered into pursuant to the Marketing Agreement and that it remit all the proceeds it had received in selling Solar Team's television programs, series, and telenovelas.[10]

When Team Image refused to render an accounting, Solar Team filed against Team Image and its President, Co, a Complaint for Accounting and Damages before the Regional Trial Court of Makati.[11] The case was raffled to Branch 59, presided by Judge Winlove M. Dumayas (Judge Dumayas).[12]

On January 17, 2002, the trial court rendered a Decision,[13] finding that Team Image breached the Marketing Agreement. According to the trial court, Team Image only had the authority to sell advertisement spots on behalf of Solar Team, not to collect any sales proceeds. Thus, it ordered Team Image to render an accounting of all its transactions and collections under the Marketing Agreement. The dispositive portion of this Decision read:

> WHEREFORE, judgment is hereby rendered in favor of [Solar Team] and against [Team Image and Felix S. Co], as follows:
>
> a. Ordering [Team Image and Felix S. Co] jointly and severally to immediately render an accounting within fifteen (15) days from receipt of this decision, on all its sales and collections on the television properties of [Solar Team] mentioned in *Annex "A"* of the complaint, from date of the agency agreement (*Exhibit "A"*) on April 24, 1996 until the filing of the complaint;

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[10] *Id.* at 154 and *rollo* (G.R. No. 191658), p. 114.

[11] *Id*. and *rollo* (G.R. No. 191658), p. 114.

[12] *Id.* at 152 and *rollo* (G.R. No. 191658), p. 112.

[13] *Rollo* (G.R. No. 191658), pp. 81–85.

b. Directing [Team Image and Felix S. Co] jointly and severally to make available to [Solar Team] or its authorized representatives, accountant[s] or auditors, within fifteen (15) days from receipt hereof, all their books of accounts and records on all their sales and collections on [Solar Team's] aforesaid television properties[; and]

c. Ordering [Team Image and Felix S. Co] jointly and severally to pay [Solar Team] the sum of Php50,000.00 for attorney's fee; and Php200,000.00 for moral, exemplary[,] nominal and temperate damages; and cost[s] of suit.

SO ORDERED.[14]

More than a year after or on April 28, 2003, Solar Team and Team Image entered into a Compromise Agreement,[15] submitting it to the trial court for approval. In essence, the parties agreed on the payment terms and their division of receivables from the media company VTV Corporation, which had purchased advertising spots from Team Image as Solar Team's marketing agent. For purposes of accounting and auditing these receivables, the parties hired SyCip Gorres Velayo and Company (SGV and Co.) as auditor.

With respect to other business ventures that the parties may have jointly undertaken, paragraph 18 of the Compromise Agreement stated that the parties must submit a certification of the existence of these receivables:

18. To further assure each one of them, both parties shall within ten (10) days from the date of execution of this agreement, submit to one another, certification and/or reasonable and available proof of the existence of said receivables.[16]

The parties likewise agreed to waive all their claims against each other and to cause the provisional dismissal of all the

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[14] *Id.* at 84–85.

[15] *Rollo* (G.R. No. 191652), pp. 104–112 and *rollo* (G.R. No. 191658), pp. 86–94.

[16] *Id.* at 110 and *rollo* (G.R. No. 191658), p. 92.

criminal and civil actions that they had filed against each other. Paragraphs 21 and 22 of the Compromise Agreement provided:

> 21. This agreement constitutes the final repository of all the prior understanding agreements and contracts of the parties and shall operate as total waiver and discharge of any or all claims, counterclaims, causes of action, claims and demands of whatever kind and nature which each may have against the other, including their respective heirs[,] assigns[,] and successors-in-interest arising out of any of all matters, cause or thing, whether directly or indirectly, related with the Marketing Agency Agreement dated 24 April 1996.
>
> 22. By virtue hereof, the parties have agreed, as they hereby agree to immediately provisionally dismiss all actions, whether civil or criminal, they may have filed against the other, and after SGV shall have finally completed the audit and accounting tasked upon it, the results of which is final and binding upon the parties, all said civil and/or criminal actions shall be permanently dismissed by the parties.[17]

Further, the parties agreed to the immediate issuance of a writ of execution and payment of liquidated damages in case of breach of the Compromise Agreement. Paragraph 24 of the Compromise Agreement stated:

> 24. In the event SGV shall have made a final determination of the respective accountability of the parties and any of the parties fail to comply with the same, or in the event any of the parties is remiss or reneges from [its] commitment/s as specified in this Agreement or breaches the warranties and/or representation as contained herein, then the aggrieved party shall be entitled to an immediate issuance of a writ of execution to enforce compliance thereof and the guilty party shall pay the innocent party the sum of ₱2 Million Pesos by way of liquidated damages and/or penalty and shall, likewise, shoulder all the expenses in enforcing this compromise agreement by a writ of execution. Moreover, the innocent party shall have the right to invoke the principle of reciprocity of obligations in contracts as provided for by law.[18]

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[17] *Id.* at 110–111 and *rollo* (G.R. No. 191658), pp. 92–93.

[18] *Id.* at 111 and *rollo* (G.R. No. 191658), p. 93.

Finding the provisions of the Compromise Agreement not contrary to law, morals, or public policy, the trial court approved and rendered judgment based on the Compromise Agreement in its Decision[19] dated April 30, 2003.

The parties subsequently filed motions for issuance of a writ of execution on account of the other's alleged violation of the Compromise Agreement.

The first motion for issuance of a writ of execution was filed by Team Image on April 26, 2004.[20] Team Image prayed that the trial court allow it to suspend payments to Solar Team under the Compromise Agreement due to the alleged failure of Solar Team's Chief Executive Officer, William Tieng (Tieng), to collect receivables from VTV Corporation. In addition, Solar Team allegedly failed to submit to Team Image a certification on the existence of the receivables from VTV Corporation, in violation of paragraph 18 of the Compromise Agreement.

In its Order[21] dated April 29, 2004, the trial court allowed Team Image to suspend payments to Solar Team "until after [the trial court] shall have resolved [the April 26, 2004 motion for issuance of a writ of execution]."[22] The trial court subsequently issued a Writ of Execution on May 28, 2004.[23] However, in its Order[24] dated November 23, 2004, the trial court granted Solar Team's Motion for Reconsideration; thus, it set aside its previous order allowing suspension of payment and quashed the writ of execution. The dispositive portion of the November 23, 2004 Order read:

ORDER

Finding the Motion for Reconsideration filed by [Solar Team] to be impressed with merit, the same is hereby GRANTED.

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[19] *Id*. at 113–120.

[20] *Id*. at 72 and *rollo* (G.R. No. 191658), pp. 95–98.

[21] *Id*. at 121.

[22] *Id*.

[23] *Id*. at 122.

[24] *Id*.

Accordingly, the Order of the Court dated April 30, 2004 is hereby RECONSIDERED and set aside and the Writ of Execution dated May 28, 2004 is hereby QUASHED.[25]

Team Image moved to reconsider the November 23, 2004 Order.[26]

In the meantime, on October 6, 2005, Team Image filed a second motion[27] for issuance of a writ of execution and suspension of payments (October 6, 2005 Motion) due to Solar Team's alleged violation of paragraphs 21 and 22 of the Compromise Agreement. According to Team Image, Solar Team failed to cause the dismissal of its complaint-in-intervention in a collection case filed against Team Image,[28] with Solar Team actively participating in the civil case after the execution of the Compromise Agreement.

In its Order[29] dated November 3, 2005, the trial court granted the October 6, 2005 Motion, issuing a writ of execution to enforce payment by Solar Team of ₱2,000,000.00 in liquidated damages and allowing Team Image to suspend payments to Solar Team. The dispositive portion of the November 3, 2005 Order read:

> WHEREFORE, premises considered, the Court hereby . . . GRANTS [Team Image's] motion for the issuance of a writ of execution along with their prayer for an order allowing suspension of payment and Orders [Solar Team] to comply with paragraphs 21 and 22 of the compromise agreement executed by the parties herein.
>
> Accordingly, let a writ of execution be issued against [Solar Team] to enforce payment of the sum of ₱2 Million Pesos as liquidated damages pursuant to paragraph 24 of the compromise agreement.

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[25] *Id*.

[26] *Id*. at 73.

[27] *Id*. at 123–128.

[28] *Id.* at 125, *Associated Broadcasting Company v. Team Image Entertainment, Inc.*, Civil Case No. 97-024 filed before Branch 137, Regional Trial Court, Makati City.

[29] *Id*. at 129–135.

SO ORDERED.[30]

Solar Team moved for a partial reconsideration of the November 3, 2005 Order.[31]

On December 6, 2005, Solar Team filed its own motion[32] for issuance of a writ of execution due to Team Image's alleged violation of paragraph 20 of the Compromise Agreement.[33] Solar Team claimed that Team Image failed to submit documents necessary for the auditing and accounting of receivables to SGV and Co., the appointed auditor under the Compromise Agreement.

Meanwhile, in its Order[34] dated April 7, 2006, the trial court denied both Team Image's Motion for Reconsideration of the November 23, 2004 Order and Solar Team's Motion for Partial Reconsideration of the November 3, 2005 Order. The trial court found that Team Image filed the Motion for Reconsideration beyond the reglementary period. As for Solar Team, the trial court found that it had failed to comply with its obligation to cause the dismissal of all pending cases that it had filed against Team Image. Hence, Solar Team was ordered to pay Team Image ₱2,000,000.00 in liquidated damages per paragraph 24 of the Compromise Agreement. The dispositive portion of the April 7, 2006 Order read:

WHEREFORE, premises considered, this Court resolves to DENY [Team Image's] Motion for Reconsideration dated August 22, 2005 from the Order of this Court dated November 23, 2004. [Solar Team's]

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[30] *Id*. at 135.

[31] *Id*. at 136 and *rollo* (G.R. No. 191658), p. 109.

[32] *Rollo* (G.R. No. 191658), pp. 100–103.

[33] Paragraph 20 of the Compromise Agreement provides:

20. The parties warrant and assure each other that they shall promptly provide SGV with all the necessary papers and documents which the latter may require in its audit and accounting, it being the intention of said parties that any or all such audit and accounting as provided for elsewhere in this Agreement should be terminated within ninety (90) days from date of execution hereof.

[34] *Rollo* (G.R. No. 191652), pp. 136–138 and *rollo* (G.R. No. 191658), pp. 109–111.

Motion for Partial Reconsideration dated November 19, 2005 from the Order of this Court dated November 3, 2005 is, likewise, DENIED for lack of merit.

SO ORDERED.[35]

On December 5, 2007, Team Image filed before the trial court its third motion[36] for issuance of writ of execution with prayer for suspension of payments (December 5, 2007 Motion). Team Image argued that Solar Team's Tieng violated anew paragraphs 21 and 22 of the Compromise Agreement by failing to cause the dismissal of the criminal cases he had earlier filed against Team Image's Co. On December 18, 2007, Team Image filed an Omnibus Motion[37] with prayer for issuance of a writ of execution and suspension of payments (December 18, 2007 Omnibus Motion), this time, for Solar Team's Tieng to return to Team Image a total of ₱25,862,750.00. This amount allegedly included the collections in excess of the ₱26,000,000.00 fixed in the Compromise Agreement; the ₱2,891,226.97 supposedly collected by a certain Ma. Fe Barreiro (Barreiro)[38] without Solar Team's authority but actually redounded to Tieng's benefit; and a total of ₱8,500,000.00 in post-dated checks still in possession of Tieng. Thus, Team Image reiterated its prayer for the trial court to implement the November 3, 2005 Order directing Solar Team to pay Team Image liquidated damages.[39]

In its Order[40] dated January 9, 2008, the trial court ordered the implementation of the November 3, 2005 Order to enforce payment of liquidated damages by Solar Team for failure to cause the dismissal of its complaint-in-intervention in the collection case filed against Team Image. A Writ of Execution[41]

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[35] *Id*. at 138 and *rollo* (G.R. No. 191658), p. 111.

[36] *Id*. at 139–145.

[37] *Id.* at 163–178.

[38] *Id.* at 167.

[39] *Id*. at 177–178. See *rollo* (G.R. No. 191652) pp. 168–169.

[40] *Id*. at 199–200.

[41] *Id.* at 201–202.

was subsequently issued on January 16, 2008, directing the sheriff to implement the November 3, 2005 Order.

Two (2) days after or on January 18, 2008, Solar Team filed a motion to defer the implementation of the January 16, 2008 Writ of Execution.[42] Solar Team likewise filed a motion to hold in abeyance the implementation of the Letters of Garnishment issued pursuant to the January 16, 2008 Writ of Execution.[43]

Acting on Team Image's December 5, 2007 Motion and December 18, 2007 Omnibus Motion in the Order[44] dated January 21, 2008, the trial court directed Solar Team, through Tieng, to cause the dismissal of the criminal cases filed against Co pursuant to paragraphs 21 and 22 of the Compromise Agreement.

Further, the trial court found that Tieng indeed had excess collections from VTV Corporation. In his complaint for sum of money filed against VTV Corporation, Tieng allegedly admitted that he had collected ₱22,971,572.03 from VTV Corporation, an amount which exceeded the ₱10,275,547.48 disclosed in paragraph 4 of the Compromise Agreement.[45]

The trial court likewise found that contrary to Solar Team's representation in paragraph 5 of the Compromise Agreement,[46]

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[42] *Id*. at 74–75.

[43] *Id*. at 75 and *rollo* (G.R. No. 191658), p. 51.

[44] *Id*. at 203–213.

[45] *Id*. at 208.

[46] *Id*. at 105. Paragraph 5 of the Compromise Agreement provides:

5. William Tieng represents and warrants that the aforesaid sum of ₱2,891,226.97 which is charged as marketing commissions are unauthorized collections which, did not redound to the benefit of the parties from their joint operation as stated in the paragraph immediately preceding, but to the personal gain and advantage of their marketing agent, Maria Fe Barriero, hence, earnest efforts shall be exerted by said William Tieng to collect the same from the offending party. After said collection or in the event that said amount shall be proved to have redounded to the benefit of said William Tieng, then William Tieng shall turn-over the said amount to [Solar Team]

the ₱2,891,226.97 supposedly collected by Barreiro without Solar Team's authority actually redounded to Tieng's benefit.[47]

Based on these findings, the trial court ordered Solar Team to return the excess amounts and incorrect charges and to pay Team Image a total of ₱8,000,000.00 in liquidated damages for breaching four (4) warranties made in the Compromise Agreement. The dispositive portion of the January 21, 2008 Order read:

> WHEREFORE, PREMISES CONSIDERED, this Court hereby grants [Team Image and Felix S. Co's] *1*) Motion for the issuance of writ of execution for violation of paragraphs 21 and 22 of the compromise agreement with prayer for an order allowing continuance of suspension of payment of obligation/s, if any, as per paragraph 24 thereof dated December 5, 2007; and *2*) Omnibus motion for the issuance of an order directing William Tieng to return to [Team Image and Felix S. Co]; *(a)* overpayment under the compromise agreement *(b)* marketing commission falsely charged against the share of [Team Image and Felix S. Co] in the VTV operations and *(c)* for writ of execution and suspension of payment, if any dated December 18, 2007.
>
> Accordingly, [Team Image and Felix S. Co] are hereby authorized to suspend payment of their obligation, if any, pursuant to paragraph 24 of the compromise agreement and that:
>
> ON THE FIRST MOTION
>
> *a)* William Tieng is hereby ordered to dismiss and/or cause the dismissal of Criminal Case Nos. 07-1235 and 07-1236 now pending before the Regional Trial Court of Parañaque City, Metro Manila; and
>
> *b)* Let a writ of execution issue to enforce the payment to [Team Image and Felix S. Co] the sum of TWO MILLION (PhP2,000,000.00) PESOS as liquidated damages on account of William Tieng's breach of warranties and representations under paragraphs 21 and 22 of the compromise agreement.

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and thereafter SGV shall determine the share of Felix S. Co thereon which share shall be paid immediately to the latter.

[47] *Id.* at 211–212.

ON THE SECOND MOTION

a) William Tieng is hereby ordered to pay/return to [Team Image and Felix S. Co] the sum of TWENTY[-]FIVE MILLION EIGHT HUNDRED SIXTY[-]TWO THOUSAND SEVEN HUNDRED FIFTY and 00/100 (PhP25,862,750.00) PESOS broken down as: PhP17,362,750.00 cash amount received by William Tieng and PhP8,500,000.00, total amount of checks still in the possession of William Tieng;

b) William Tieng is hereby ordered to turn over to [Solar Team] the amount of TWO MILLION EIGHT HUNDRED NINETY[-]ONE THOUSAND TWO HUNDRED TWENTY[-]SIX and 97/100 (Php2,891,226.97) PESOS and for SGV to pay [Team Image and Felix S. Co's] share thereon;

c) Let a writ of execution issue to enforce payment of the sum of FOUR MILLION (Php4,000,000.00) PESOS by way of liquidated damages on account of TIENG's aforesaid two (2) breaches of warranty and representation under the first ground hereof and; and another FOUR MILLION (PhP4,000,000.00) PESOS by way of liquidated damages on account of TIENG's aforesaid two (2) breaches of warranty and representation under the second ground hereof or a total of EIGHT MILLION (PhP8,000,000.00) PESOS, all pursuant to paragraph 24 of the Compromise Agreement.

SO ORDERED.[48]

A Motion for Reconsideration of the January 21, 2008 Order was filed by Solar Team.[49] When the trial court ordered the deputy sheriff to deliver the garnished amount to Team Image through a certified bank check, Solar Team likewise filed a Motion for Reconsideration.[50]

In its Omnibus Order[51] dated May 19, 2008, the trial court acted on Team Image's December 18, 2007 Omnibus Motion.

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[48] *Id*. at 212–213.

[49] *Id.* at 214.

[50] *Id*.

[51] *Id*. at 214–222 and *rollo* (G.R. No. 191658), pp. 123–131.

According to the trial court, the only remedy allowed under the Compromise Agreement is the filing of a motion for issuance of a writ of execution and that the orders allowing Team Image to suspend payments were merely temporary and did not exonerate or release Team Image and Co from their obligation.[52] It then found that Team Image and Co were "clearly in default in the payment of their obligation"[53] under the Compromise Agreement. Therefore, the trial court set aside all its previous orders that allowed Team Image to suspend payments, i.e., the November 3, 2005 and January 21, 2008 Orders.

Furthermore, acting on Solar Team's Motion for Reconsideration, the trial court reversed and set aside its January 21, 2008 Order where it declared that Solar Team made excess collections from VTV Corporation. The trial court reversed itself, and said that it was "premature to declare that there was overpayment made to [Solar Team] or William Tieng"[54] because the appointed auditor, SGV and Co., had not yet finalized the required audit.

Nevertheless, the trial court reiterated that Solar Team violated the Compromise Agreement when it failed to cause the dismissal of the complaint-in-intervention it had filed against Team Image. The trial court ordered Solar Team to pay Team Image ₱2,000,000.00 in liquidated damages and to deposit the amount before the Office of the Clerk of Court of the Regional Trial Court of Makati.

The dispositive portion of the May 19, 2008 Omnibus Order read:

WHEREFORE, PREMISES CONSIDERED, this Court hereby resolves the parties' motions, as follows:

1. [Solar Team's] Urgent Omnibus Motion dated January 18, 2008 praying that:

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[52] *Id*. at 216 and *rollo* (G.R. No. 191658), p. 125.

[53] *Id*. at 217 and *rollo* (G.R. No. 191658), p. 126.

[54] *Id*. at 220 and *rollo* (G.R. No. 191658), p. 129.

1) the implementation of the Writ of Execution dated January 10, 2008 be held in abeyance is hereby **DENIED** for being moot and academic;

2) a Writ of Execution be issued against [Team Image] to enforce payment of the sum of TWO MILLION (Php2,000,000.00) PESOS and the unpaid obligation of [Team Image] pursuant to paragraph 24 of the compromise agreement is **GRANTED**. The previous Orders of this Court allowing suspension of payment are hereby RECONSIDERED AND SET ASIDE;

2. [Solar Team's] Urgent Motion dated January 21, 2008 praying that the Letters of Garnishment be recalled and/or their implementation be held in abeyance is hereby **DENIED** for being moot and academic;

3. [Solar Team's] Motion for Reconsideration dated January 28, 2008 is hereby **GRANTED**. The Order dated January 21, 2008 is hereby RECONSIDERED and SET ASIDE;

4. [Solar Team's] Omnibus Motion dated March 27, 2008 seeking that [Solar Team] be allowed to deposit the amount of ₱2 Million Pesos to the Office of the Clerk of Court – Regional Trial Court of Makati City is **GRANTED**.

5. Finally, [Team Image and Felix S. Co's] prayer to cite [Solar Team's William Tieng] and his counsels for direct contempt is hereby **DENIED** for lack of merit.

Accordingly, [Solar Team] is hereby ordered to deposit the amount of ₱2 Million Pesos to the Office of the Clerk of Court – Regional Trial Court of Makati City within ten (10) days from receipt of this Order, the same will be released only after final determination of the obligations of [Team Image and Felix S. Co] pursuant to the compromise agreement and after the issue on the violation of the same agreement by [Solar Team] for its failure to cause the dismissal of Civil Case No. 97-024 has been resolved with finality.

On the other hand, [Team Image and Felix S. Co] are hereby ordered to pay [Solar Team] as follows:

1) the sum of TWO MILLION (Php2,000,000.00) PESOS as liquidated damages for their failure to pay [Solar Team] the value of the dishonored checks despite its demand after the April 30, 2004 Order allowing the suspension of payment to [Solar Team] was set aside by the November 23, 2004 Order of this Court.

2) the sum of EIGHT MILLION FIVE HUNDRED THOUSAND (₱8,500,000.00) PESOS representing the value of the seventeen (17) dishonored checks which has remained unpaid as provided under paragraph 7 of the compromise agreement.

Let a writ of execution issue against [Team Image and Felix S. Co] to enforce the payment of the sum of TWO MILLION (Php2,000,000.00) PESOS as liquidated damages and EIGHT MILLION FIVE HUNDRED THOUSAND (₱8,500,000.00) PESOS representing the value of the said seventeen (17) dishonored checks or a total of TEN MILLION FIVE HUNDRED THOUSAND (₱10,500,000.00), pursuant to paragraphs 7 and 24 of the compromise agreement.

SO ORDERED.[55]

Team Image filed a Motion for Reconsideration of the May 19, 2008 Omnibus Order, which the trial court denied in its August 8, 2008 Order,[56] the dispositive portion of which read:

WHEREFORE, premises considered, this Court resolves to DENY [Solar Team's] Motion to Consider [Team Image and Felix S. Co's] Motion for Reconsideration as Not Filed dated July 2, 2008. [Team Image and Felix S. Co's] Motion for Reconsider[a]tion dated June 17, 2008 is likewise DENIED for utter lack of merit.

Accordingly, let the Writ as ordered by this Court to be issued per its Order dated May 19, 2008 be now issued and implemented in the manner provided for under Rule 39, Section 8 of the Rules of Court and according to its aforesaid terms.

SO ORDERED.[57]

Team Image filed a Petition for Certiorari before the Court of Appeals to assail the May 19, 2008 and August 8, 2008 Orders of the trial court.[58]

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[55] *Id*. at 220–222 and *rollo* (G.R. No. 191658), pp. 129–131.

[56] *Id*. at 244–247 and *rollo* (G.R. No. 191658), pp. 132–135.

[57] *Id*. at 247 and *rollo* (G.R. No. 191658), p. 135.

[58] *Id*. at 64 and *rollo* (G.R. No. 191658), p. 39.

The issue for the Court of Appeals' resolution was whether or not the trial court gravely abused its discretion:

First, in ordering the Clerk of Court to keep in the trial court's custody the deposited ₱2,000,000.00 in liquidated damages instead of ordering Solar Team Entertainment, Inc. to pay the amount directly to Team Image Entertainment, Inc.;

Second, in disallowing Team Image Entertainment, Inc. from suspending payments because the Compromise Agreement allegedly did not allow suspension of payments;

Third, in ruling that a criminal case cannot be the subject of a compromise;

Fourth, in refusing to rule on whether or not Solar Team Entertainment, Inc.'s William Tieng made excess collections from VTV Corporation; and

Finally, in holding that only a maximum of ₱2,000,000.00 in liquidated damages may be claimed under the Compromise Agreement regardless of the number of violations.[59]

On the first action, the Court of Appeals held that the trial court gravely abused its discretion in ordering the Clerk of Court to keep in *custodia legis* the ₱2,000,000.00 liquidated damages deposited by Solar Team for its failure to dismiss the complaint-in-intervention it had filed against Team Image. By keeping this amount in court custody instead of ordering the Clerk of Court to deliver it to Team Image, the trial court allegedly stayed the execution of a final and executory judgment.[60]

On the second action, the Court of Appeals ruled that the Compromise Agreement allowed for suspension of payments, paragraph 24[61] of which stated that the "principle of reciprocity" under the Civil Code applied to the parties. The Court of Appeals stated that Team Image was not obliged to pay its monetary

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[59] *Id*. at 78–80.

[60] *Id*. at 80–84 and *rollo* (G.R. No. 191658), pp. 56–60.

[61] Paragraph 24 of the Compromise Agreement provides:

obligations under the Compromise Agreement since Solar Team violated several of its provisions such as submitting the required certification of receivables and dismissing the cases earlier filed against Team Image.[62]

Nevertheless, the Court of Appeals found that the trial court November 23, 2004 Order which allowed the suspension of Team Image's payments was merely temporary. When the trial court set aside this Order, Team Image should have resumed paying its obligations to Solar Team until November 3, 2005, when the trial court granted Team Image's second motion to suspend payments. By failing to resume its payment in the interim, Team Image and Co were in default from November 23, 2004 to November 3, 2005.[63]

On the third action, the Court of Appeals said that criminal liability cannot be the subject of a compromise; hence, Solar Team cannot be deemed to have violated the Compromise Agreement when it failed to cause the dismissal of the criminal cases against Co.[64]

On the fourth action, the Court of Appeals refused to resolve the issue of grave abuse of discretion because doing so would

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24. In the event SGV shall have made a final determination of the respective accountability of the parties and any of the parties fail to comply with the same, or in the event any of the parties is remiss or reneges from [its] commitment/s as specified in this Agreement or breaches the warranties and/or representation as contained herein, then the aggrieved party shall be entitled to an immediate issuance of a writ of execution to enforce compliance thereof and the guilty party shall pay the innocent party the sum of ₱2 Million Pesos by way of liquidated damages and/or penalty and shall, likewise, shoulder all the expenses in enforcing this compromise agreement by a writ of execution. Moreover, the innocent party shall have the right to invoke the principle of reciprocity of obligations in contracts as provided for by law.

[62] *Rollo* (G.R. No. 191652), pp. 85–87 and *rollo* (G.R. No. 191658), pp. 61–63.

[63] *Id*. at 84–85 and *rollo* (G.R. No. 191658), pp. 60–61.

[64] *Id*. at 87–88 and *rollo* (G.R. No. 191658), pp. 63–64.

allegedly preempt the proceedings before Branch 57, Regional Trial Court, Makati City where Solar Team sued VTV Corporation for ₱18,617,915.81 in advertising spot fees.[65]

On the last action, the Court of Appeals held that only a maximum of ₱2,000,000.00 in liquidated damages may be paid under the Compromise Agreement, paragraph 24[66] of which still maintained that liquidated damages are payable in case of failure to comply with "commitments" and in case of "breaches [of] warranties." The use of plural "commitments" and "breaches," observed the Court of Appeals, meant that ₱2,000,000.00 is payable for collective breaches of the Compromise Agreement. In the words of the Court of Appeals, "the totality of infractions or the number of violations would not be relevant and liquidated damages would be pegged at Two Million (₱2,000,000.00) Pesos for the total violations."[67]

In its December 10, 2009 Decision,[68] the Court of Appeals partly granted Team Image's Petition for Certiorari, disposing the case in this wise:

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[65] *Id*. at 88 and *rollo,* (G.R. No. 191658) p. 64.

[66] Paragraph 24 of the Compromise Agreement provides:

24. In the event SGV shall have made a final determination of the respective accountability of the parties and any of the parties fail to comply with the same, or in the event any of the parties is remiss or reneges from [its] commitment/s as specified in this Agreement or breaches the warranties and/or representation as contained herein, then the aggrieved party shall be entitled to an immediate issuance of a writ of execution to enforce compliance thereof and the guilty party shall pay the innocent party the sum of ₱2 Million Pesos by way of liquidated damages and/or penalty and shall, likewise, shoulder all the expenses in enforcing this compromise agreement by a writ of execution. Moreover, the innocent party shall have the right to invoke the principle of reciprocity of obligations in contracts as provided for by law.

[67] *Rollo* (G.R. No. 191652), p. 89 and *rollo* (G.R. No. 191658), p. 65.

[68] *Id.* at 64–94 and *rollo* (G.R. No. 191658), pp. 39–70.

WHEREFORE, premises considered, the petition is **PARTLY GRANTED** and resolved as follows:

The implementation of the Writ of Execution dated January 10, 2008 is **AFFIRMED.**

The payment by [Team Image] of TWO MILLION (Php2,000,000.00) PESOS pursuant to paragraph 24 of the Compromise Agreement for its failure to settle its obligation within the period from November 23, 2004 to November 3, 2005 is **AFFIRMED.**

The suspension of payment granted in the Order dated November 3, 2005 **STAYS** until respondent Solar Team Entertainment, Inc. withdraws the complaint-in-intervention in Civil Case No. 97-024 before Branch 137, Regional Trial Court of Makati City.

The denial of the recall of the issued Letters of Garnishment is **AFFIRMED**.

The order to deposit the amount of ₱2 Million Pesos to the Office of the Clerk of Court – Regional Trial Court of Makati City is **REVERSED and SET ASIDE**. The garnished amount of Two (₱2M) Million pesos representing liquidated damages is ordered released from the custody of the Clerk of Court of the Regional Trial Court of Makati City and delivered to [Team Image].

The reversal of the order which requires [Solar Team's] William Tieng to cause the dismissal of Criminal Case Nos. 07-1235 and 07-1236 is **AFFIRMED.**

The reversal of the order requiring [Solar Team's] William Tieng to pay the sum of TWO MILLION (Php2,000,000.00) PESOS as liquidated damages on account of its failure to dismiss Crim. Case Nos. 07-1235 and 07-1236 is **AFFIRMED**.

The reversal of the order requiring [Solar Team's] William Tieng to return the sum of TWENTY[-]FIVE MILLION EIGHT HUNDRED SIXTY[-]TWO THOUSAND SEVEN HUNDRED FIFTY and 00/100 PESOS (PhP25,862,750.00) on account of [Solar Team's] alleged admission in its pleading in Civil Case No. 05-603 despite the pendency of the SGV audit is **AFFIRMED**.

The reversal of the order requiring [Solar Team's] William Tieng to turn over the amount of TWO MILLION EIGHT HUNDRED

NINETY[-]ONE THOUSAND TWO HUNDRED TWENTY[-]SIX and 97/100 (Php2,891,226.97) PESOS to [Solar Team] is **AFFIRMED**.

The reversal of the order requiring [Solar Team's] William Tieng to pay a total of EIGHT MILLION PESOS (PhP8,000,000.00) PESOS, pursuant to paragraph 24 of the Compromise Agreement for alleged breaches of warranty and representation is **AFFIRMED**.

SO ORDERED.[69]

Team Image and Solar Team filed their separate Motions for Reconsideration,[70] both of which were denied in the Resolution[71] dated March 17, 2010.

Separate Petitions for Review on Certiorari were filed by Team Image and Co[72] and Solar Team.[73] The Petitions were thereafter consolidated.[74] Comments[75] and Replies[76] had likewise been filed by the parties.

The issues for this Court's resolution are the following:

First, whether or not the Court of Appeals erred in finding no grave abuse of discretion on the part of the trial court when the latter declared Team Image Entertainment, Inc. in default for failing to resume payments from November 23, 2004 to November 3, 2005;

Second, whether or not the Court of Appeals erred in finding no grave abuse of discretion on the part of the trial court when

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[69] *Id*. at 92–93 and *rollo* (G.R. No. 191658), pp. 68–69.

[70] *Id*. at 96 and *rollo* (G.R. No. 191658), p. 72.

[71] *Id.* at 96–99 and *rollo* (G.R. No. 191658), pp. 72–75.

[72] *Id*. at 7–62.

[73] *Id*. at 11–35.

[74] *Id*. at 281–282 and *rollo* (G.R. No. 191658), pp. 333–334. No resolution explicitly declaring the cases as consolidated can be found in the records of the case.

[75] *Id*. at 283–311 and *rollo* (G.R. No. 191658), pp. 355–364.

[76] *Id*. at 373–379 and *rollo* (G.R. No. 191658), pp. 408–412.

the latter declared Solar Team Entertainment, Inc. to have violated the Compromise Agreement for failing to withdraw the complaint-in-intervention it had earlier filed in a collection case against Team Image Entertainment, Inc.;

Third, whether or not the Court of Appeals erred in finding no grave abuse of discretion on the part of the trial court when the latter declared that Solar Team Entertainment, Inc. did not violate the Compromise Agreement for failing to cause the dismissal of the criminal cases for estafa filed by Solar Team Entertainment, Inc.'s William Tieng against Team Image Entertainment, Inc.'s Felix S. Co;

Fourth, whether or not the Court of Appeals erred in finding no grave abuse of discretion in the trial court's reversal of its earlier order that required Solar Team Entertainment, Inc.'s William Tieng to turn over ₱25,862,750.00 to Team Image Entertainment, Inc. as overpayments and ₱2,891,226.97 to Solar Team Entertainment, Inc. as amounts collected by William Tieng from VTV Corporation; and,

Finally, whether or not only a maximum of ₱2,000,000.00 in liquidated damages may be awarded under the Compromise Agreement.

On the first issue, Team Image argues that the Court of Appeals erred in affirming the trial court's May 19, 2008 Order declaring Team Image to have defaulted in paying its obligation under the Compromise Agreement. Team Image maintains that the trial court, in its own November 3, 2005 Order, stated that Team Image was entitled to suspend payments under the Compromise Agreement because Solar Team did not withdraw the complaint-in-intervention it had earlier filed against Team Image. Team Image's liability under the Compromise Agreement, if any, only became due and demandable on April 7, 2006 when the trial court set aside the November 3, 2005 Order, not on February 19, 2005 as erroneously found by the trial court in its subsequent May 19, 2008 Order.[77]

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[77] *Id.* at 29–33.

On the second issue, Team Image maintained that Solar Team violated the Compromise Agreement because the latter failed to withdraw the complaint-in-intervention it had filed in *ABC v. Team Image*, a collection case against Team Image. The trial court's November 3, 2005 and April 7, 2006 Orders that ordered Solar Team to withdraw its complaint-in-intervention were affirmed on certiorari by the Court of Appeals in CA-G.R. SP No. 94102 and on appeal by this Court in G.R. No. 183848. While Solar Team filed a Motion for Reconsideration in G.R. No. 183848, the Motion was already denied with finality. Thus, Solar Team's argument that it cannot withdraw its complaint-in-intervention pending the resolution of its Motion for Reconsideration "rest[s] on a shaky and slim foundation[.]"[78]

On the third issue, Team Image argues that the Court of Appeals erred in declaring that criminal liability cannot be the subject of a compromise. Team Image maintains that there was nothing in the Compromise Agreement which was contrary to law, morals, or public policy. Further, courts encourage judgments based on compromise, the only exceptions being matters relating to: (a) civil status of persons; (b) the validity of a marriage or a legal separation; (c) any ground for legal separation; (d) future support; (e) the jurisdiction of courts; and, (f) future legitime.[79] Paragraph 24 of the Compromise Agreement that required Solar Team to dismiss all cases it had filed against Team Image and Co does not fall within these exceptions. Consequently, Solar Team must cause the dismissal of the criminal cases it filed against Team Image and Co per paragraph 24 of the Compromise Agreement.[80]

On the fourth issue, Team Image maintains that the Court of Appeals erred in affirming the reversal of trial court's earlier Orders requiring Solar Team's Tieng to turn over a total of ₱25,862,750.00 in excess collections from VTV Corporation

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[78] *Rollo* (G.R. No. 191658), p. 363.

[79] CIVIL CODE, Art. 2035.

[80] *Rollo* (G.R. No. 191652), pp. 35–42.

to Team Image for equal division among the parties. Team Image argues that contrary to Solar Team and Tieng's representation in paragraph 4 of the Compromise Agreement, Tieng collected more than ₱10,275,547.48 from VTV Corporation. Specifically, Tieng received ₱22,971,527.03 from VTV Corporation as he alleged in his Complaint in Civil Case No. 05-603 pending before Branch 57 of the trial court. In addition, the ₱2,891,226.97 supposedly collected by Barreiro without Solar Team's authority actually redounded to the benefit of Tieng; hence, the amount should likewise be returned for equal distribution between Solar Team and Team Image.[81]

On the fifth issue, Team Image argues that the Court of Appeals erred in affirming the reversal by the trial court of its earlier Order for Solar Team to pay a total of ₱8,000,000.00 in liquidated damages. According to Team Image, it is clear from paragraph 24 of the Compromise Agreement that a writ of execution may issue for every violation of the Compromise Agreement. Hence, for every writ of execution, a corresponding award of liquidated damages to the aggrieved party must be paid. Team Image contends that the maximum amount of ₱2,000,000.00 in liquidated damages allowed to be awarded would "result in a serious crisis whereby one party will contravene and/or breach with impunity any of [its] representations and warranties, and worst, even all of them, with only a relatively small amount of penalty compared [to] the actual amount which is the subject matter of the entire compromise agreement."[82]

Arguing on the first issue, Solar Team counters that Team Image defaulted in its payments under the Compromise Agreement as was earlier found by the trial court. Between November 23, 2004, when the trial court set aside its initial order allowing suspension of payments, and November 3, 2005, when the trial court again allowed suspension of payments, there was an almost one (1)-year period when Team Image should

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[81] *Id*. at 47–50.

[82] *Id*. at 55.

have resumed its payments to Solar Team. Team Image, thus, defaulted in its payments during this almost one (1)-year period and the Court of Appeals correctly affirmed the November 3, 2005 and April 7, 2006 Orders directing Team Image to pay Solar Team ₱2,000,000.00 in liquidated damages for violation of the Compromise Agreement.[83]

On the second issue, Solar Team maintains that it did not violate the Compromise Agreement when it failed to withdraw the complaint-in-intervention it had filed in *ABC v. Team Image.* Solar Team alleges that the issue of whether or not it indeed violated the Compromise Agreement is currently pending before this Court in a Petition for Review docketed as *Solar Team v. Hon. Dumayas*, G.R. No. 183848. Consequently, the Court of Appeals should not have resolved this issue in deference to this Court's "supreme authority."[84]

On the third issue, Solar Team echoes the Court of Appeals' pronouncement that criminal liability cannot be the subject of a compromise. A crime being a violation of public law, the aggrieved party is the public in general, not a private individual. Consequently, neither Team Image nor Solar Team, both being private entities, may agree to cause the dismissal of the criminal cases they filed against each other because they are both mere witnesses, not parties, in the criminal cases.[85]

On the fourth issue, Solar Team maintains that Team Image's claim of overpayments is premature considering that the appointed auditing firm, SGV and Co., has not yet finalized its accounting report as required under paragraph 24 of the Compromise Agreement. Further, Tieng's supposed admission that he received ₱22,971,572.03 from VTV Corporation was, at best, an extrajudicial admission not made in the present case. This admission cannot be used against him and the Court of

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[83] *Id.* at 297–301.

[84] *Rollo* (G.R. No. 191658), pp. 30–31.

[85] *Rollo* (G.R. No. 191652), pp. 301–305.

Appeals correctly affirmed the trial court orders that set aside the earlier directives for Solar Team to return Team Image's alleged overpayments.[86]

On the fifth issue, Solar Team reiterates the Court of Appeals' pronouncement that only a maximum of ₱2,000,000.00 in liquidated damages may be awarded based on the Compromise Agreement. Solar Team argues that nothing in the Compromise Agreement provided that each breach would correspond to an award of liquidated damages. Furthermore, paragraph 24 used "breaches of warranties" and "commitments," meaning, "there can be as many orders of compliance as there are proven breaches,"[87] but only a maximum of ₱2,000,000.00 in liquidated damages, regardless of the number of supposed breaches, may be awarded.[88]

This Court *partially grants* the respective Petitions for Review on Certiorari filed by Team Image and Solar Team.

I

Under the Compromise Agreement, Team Image acknowledged and agreed to pay a total of ₱26,000,000.00 representing marketing commissions collectible from VTV Corporation. Team Image also agreed to pay half of the professional fees of SGV and Co., the auditing firm hired to determine the final amounts payable by the parties under the Compromise Agreement. The specific payment terms were provided in paragraphs 6 to 9 of the Compromise Agreement:

> 6. After crediting for the moment the amount of ₱7,384,320.51 mentioned in paragraph 4 hereof, as having been collected by William Tieng from VTV, the parties agree that there remains, for the moment, a balance of EIGHTEEN MILLION SIX HUNDRED FIFTEEN THOUSAND SIX HUNDRED SEVENTY[-]NINE AND 49/100 PESOS (₱18,615,679.49) which Felix Co [and/or Team Image] agree

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[86] *Id*. at 305–307.

[87] *Id*. at 308.

[88] *Id.* at 307–309.

to jointly and severally pay William Tieng in the following manner and schedule:

₱3,267,000.00 – by a 50[-]day postdated check from date of signing, which amount Felix Co [and/or Team Image] represent to be his own collectibles from Duty Free Philippines, Inc. The encashment of said check shall not be dependent upon Felix Co's/[Team Image's] ability to collect from Duty Free Philippines, Inc.

₱349,428.37 – to be withdrawn from the joint account of William Tieng and Felix S. Co with Philippine Bank of Communications; *Provided, That,* Felix S. Co shall jointly sign a withdrawal slip or document to effect or authorize the withdrawal thereof.

₱983,826.06 – to be taken from the earlier collections of SGV deposited with International Exchange Bank; *Provided, That* Felix S. Co and William Tieng shall jointly sign a withdrawal slip or document for the withdrawal of the same.

The total of the above sums is FOUR MILLION SIX HUNDRED THOUSAND TWO HUNDRED FIFTY[-]FOUR AND 43/100 (₱4,600,254.43).

7. Felix Co/[Team Image] shall jointly and severally pay and liquidate the remaining balance of FOURTEEN MILLION FIFTEEN THOUSAND FOUR HUNDRED TWENTY[-]FIVE AND 06/100 PESOS (₱14,015,425.06) in the following manner:

₱1,015,425.06 – on or before 60 days from date of signing this agreement; *Provided, That*, Felix Co/[Team Image] shall issue the corresponding postdated check therefor; and

₱13,000,000.00 – to be paid in twenty[-]six (26) equal monthly installments of 500,000.00 each beginning 30 July 2003 and every 30th of the month thereafter until fully liquidated, *Provided, That*, Felix Co/[Team Image] shall issue the corresponding postdated checks therefor.

8. Felix Co/[Team Image] likewise agree, to jointly and severally immediately reimburse William Tieng, upon the execution of this agreement, fifty percent (50%) of the amount of TWO HUNDRED SEVENTY[-]EIGHT THOUSAND SIX HUNDRED SEVENTY

PESOS (₱278,670.00) which the latter had paid to Sycip Gorres & Velayo (SGV), by way of the latter's professional fee or the sum of One Hundred Thirty[-]Nine Thousand Three Hundred Thirty[-]Five (₱139,335) Pesos.

9. Felix Co further agrees to recompense William Tieng the amount of ₱600,000.00, subject matters of I.S. No. 99-F-3526 and ₱2,225,244.59, subject matter of I.S. No. 99-F-3525, both of the Office of the City Prosecutor, Parañaque City, Metro Manila, or the total amount of ₱2,825,244.59 by way of postdated checks in five (5) equal monthly installments of ₱565,048.92 each installments, the same to commence on 15 July 2003 and every 15th day of the month thereafter, *Provided, That*, the parties agree to submit these accounts to SGV for the final determination of the nature of the consideration of these checks, i.e., whether or not the same represent over-payment on the capital contribution of Felix S. Co into Solar Team Entertainment, Inc. (STEI) to purchase TV programs/materials owned by Solar Entertainment Corporation and/or from other suppliers and/or personal indebtedness of Felix S. Co to William Tieng, *Provided, That,* SGV shall finish said accounting or on before 01 July 2003, and, *Provided, Finally, that*, in the event SGV shall determine before the due date of any of the five (5) postdated checks herein mentioned, that said amounts of the two (2) aforementioned checks are over-payment on the capital contribution of Felix Co, then Felix S. Co shall have the right to stop the payment of the checks which have not been presented for payment and William Tieng shall immediately return to Felix S. Co the amount/s of the check/s so far encashed.[89]

The table below summarizes Team Image's monetary obligations and the periods or conditions required for their performance:

Obligation	Period or condition required for performance of obligation	Basis under the Compromise Agreement
Payment of ₱3,267,000.00 through a postdated check	Fifty (50) days from date of signing the Compromise Agreement	Paragraph 6

[89] *Id*. at 105–108.

Withdrawal of ₱349,428.37 from the joint account of William Tieng and Felix S. Co	No period or condition provided, i.e., a pure obligation demandable at once[90]	Paragraph 6
Withdrawal of ₱983,826.06 from earlier collections of SGV and Co.	Upon the joint signing of a withdrawal slip by William Tieng and Felix S. Co or any document authorizing the withdrawal	Paragraph 6
Payment of ₱1,015,425.06	On or before 60 days from date of signing the Compromise Agreement	Paragraph 7
Payment of ₱13,000,000.00	To be paid in twenty-six (26) equal monthly installments of ₱500,000.00 each beginning 30 July 2003 and every 30th of the month thereafter until fully liquidated	Paragraph 7
Reimburse William Tieng ₱139,335.00 representing 50% of SGV and Co.'s professional fees	Immediately, i.e., upon the execution of the Compromise Agreement on April 28, 2003	Paragraph 8
A total of ₱2,825,244.59 representing the amounts subject matters of I.S. No. 99-F-3526 and I.S. No. 99-F-3525, both of the Office of the City Prosecutor, Parañaque City, Metro Manila	By way of postdated checks in five (5) equal monthly installments of ₱565,048.92 each installments, the same to commence on 15 July 2003 and every 15th day of the month thereafter	Paragraph 9

[90] CIVIL CODE, Art. 1179 partly provides:

Art. 1179. Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once.

Based on the periods and conditions provided in paragraphs 6 to 9, except for the payment of ₱13,000,000.00, Team Image should have already performed its monetary obligations under the Compromise Agreement by April 26, 2004, when it filed its first motion for issuance of writ of execution and suspension of payment. For instance, 50 days from the signing of the Compromise Agreement on April 28, 2003 would fall on June 17, 2003. Hence, by June 17, 2003, Team Image should have already paid Solar Team ₱3,267,000.00 in post-dated checks. Another obligation would be for Team Image to pay Solar Team ₱1,015,425.06 within 60 days from the signing of the Compromise Agreement, the 60th day being June 27, 2003.[91] There is no proof, however, that Team Image complied with these obligations within the required periods. That Team Image filed a motion for suspension of payments further demonstrates that it had not fully paid its obligations under the Compromise Agreement.

While it is true that the trial court granted the Motion for Suspension of Payments in its April 29, 2004 Order, this Order was subsequently set aside on November 23, 2004. Until the trial court granted Team Image's second motion for suspension of payments on November 3, 2005, Team Image had almost a year to resume payments. However, Team Image did not do so. The Court of Appeals, therefore, correctly held that Team Image was in default for failure to resume payments under the Compromise Agreement. Team Image violated paragraphs 6 to 9 of the Compromise Agreement.

II

Paragraphs 21 and 22 of the Compromise Agreement are again provided below:

> 21. This agreement constitutes the final repository of all the prior understanding agreements and contracts of the parties and shall operate as total waiver and discharge of any or all claims, counterclaims, causes of action, claims and demands of whatever kind and nature

[91] The Compromise Agreement was entered into on April 28, 2003.

which each may have against the other, including their respective heirs[,] assigns[,] and successors-in-interest arising out of any of all matters, cause or thing, whether directly or indirectly, related with the Marketing Agency Agreement dated 24 April 1996.

22. By virtue hereof, the parties have agreed, as they hereby agree to immediately provisionally dismiss all actions, whether civil or criminal, they may have filed against the other, and after SGV shall have finally completed the audit and accounting tasked upon it, the results of which is final and binding upon the parties, all said civil and/or criminal actions shall be permanently dismissed by the parties.

Paragraph 22 requires both Team Image and Solar Team to "immediately provisionally dismiss all actions, whether civil or criminal, they may have filed against each other." They shall cause the permanent dismissal of the actions "after [SGV and Co.] shall have finally completed the audit and accounting tasked upon it."

When the Compromise Agreement was executed on April 28, 2003, there was a pending collection case filed by ABC Television against Team Image when Solar Team filed a complaint-in-intervention. It does not appear that Solar Team filed a motion to dismiss the complaint-in-intervention it had filed against Team Image; hence, Solar Team violated paragraph 22 of the Compromise Agreement.

That the term "provisional dismissal," in its technical sense, only applies to criminal cases[92] is not an argument for Solar Team to refuse to withdraw the complaint-in-intervention. It

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[92] RULES OF COURT, Rule 117, Sec. 8 provides:

Section 8. *Provisional dismissal.* — A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

does not appear that Team Image and Solar Team meant to use the term in its technical sense. Considering that the parties agreed in paragraph 21 that the Compromise Agreement "shall operate as total waiver and discharge of any or all claims, counterclaims, causes of action, claims and demands of whatever kind and nature which each may have against the other," the parties intended to terminate all the cases they filed against each other.

The pendency of the Motion for Reconsideration filed by Solar Team in *Solar Team v. Hon. Dumayas*, G.R. No. 183848, may no longer be invoked because it had already been denied with finality. Even if G.R. No. 183848 remained active, it originated from a Petition for Certiorari questioning the interlocutory Order of November 3, 2005, a suit that can proceed separately from the main case.[93] It merely continued the certiorari proceedings before the Court of Appeals; hence, this Court need not await the resolution of G.R. No. 183848 before resolving whether or not Solar Team violated the Compromise Agreement for failing to withdraw its complaint-in-intervention against Team Image.

III

However, despite paragraphs 21 and 22 of the Compromise Agreement, Solar Team cannot be deemed to have violated it for failing to cause the dismissal of the criminal cases for estafa Tieng filed against Co. It is settled that criminal liability cannot be the subject of a compromise.[94] "[A] criminal case is committed against

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[93] See *Leynes v. Former Tenth Division of the Court of Appeals,* 655 Phil. 29 (2011) [Per *J.* Leonardo-de Castro, First Division]; *Federal Builders, Inc. v. Daiichi Properties and Development, Inc.,* 598 Phil. 580 (2009) [Per *J.* Chico-Nazario, Third Division]; *Chua v. Santos,* 483 Phil. 392 (2004) [Per *J.* Callejo, Sr., Second Division].

[94] CIVIL CODE, Art. 2034 provides:

Art. 2034. There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty. See also *Trinidad v. Office of the Ombudsman,* 564 Phil. 382, 391(2007) [Per *J.* Carpio Morales, *En Banc*].

the People, and the offended party may not waive or extinguish the criminal liability that the law imposes for its commission."[95] This explains why "a compromise is not one of the grounds prescribed by the Revised Penal Code for the extinction of criminal liability."[96]

None of the cases cited by Team Image supports its argument that criminal liability may be subject of a compromise. *Chavez v. Presidential Commission on Good Government*[97] and *Benedicto v. Board of Administrators*,[98] ironically cited by Team Image, are both clear that compromise is encouraged only in *civil* cases. *Chavez* explicitly stated that "[w]hile a compromise in civil suits is expressly authorized by law, there is no similar general sanction as regards criminal liability."[99]

Team Image confused the Presidential Commission on Good Government's power to grant criminal immunity[100] with the act of compromising criminal liability. Granting criminal immunity is allowed because no criminal case has yet been filed in court, and therefore, there is no criminal liability to compromise. On the other

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[95] *Trinidad v. Office of the Ombudsman,* 564 Phil. 382, 391(2007) [Per *J.* Carpio Morales, *En Banc]*.

[96] *Id.*

[97] 360 Phil. 133 (1998) [Per *J.* Panganiban, First Division].

[98] G.R. No. 87710, March 31, 1992, 207 SCRA 659 [Per *J.* Griño-Aquino, *En Banc*].

[99] *Chavez v. Presidential Commission on Good Government,*360 Phil. 133, 169 (1998) [Per *J.* Panganiban, First Division].

[100] Exec. Order No. 14 as amended by Exec. Order No. 14-A, Sec. 5 provides:

Section 5. The Presidential Commission on Good Government is authorized to grant immunity from criminal prosecution to any person who provides information or testifies in any investigation conducted by such Commission to establish the unlawful manner in which any respondent, defendant or accused has acquired or accumulated the property or properties in question in any case where such information or testimony is necessary to ascertain or prove the latter's guilt or his civil liability. The immunity thereby granted shall be continued to protect the witness who repeats such testimony before the Sandiganbayan when required to do so by the latter or by the Commission.

hand, compromising criminal liability presupposes that a criminal case has already been filed in court, the dismissal of which is already based on the sound discretion of the trial court.[101] In other words, the dismissal cannot be automatic, regardless of the agreement between the private complainant and the accused to dismiss the case. As discussed, the real offended party in a criminal case is the State and the outcome of the criminal case cannot be based on the will of the private complainant who is a mere witness for the prosecution.

The cases involved here are cases not under the jurisdiction of the Presidential Commission on Good Government. *Chavez* and *Benedicto*, therefore, do not apply.

All told, the Court of Appeals correctly found no grave abuse of discretion on the part of the trial court when it held that Team Image and Solar Team cannot agree on the dismissal of the criminal cases. Solar Team did not violate the Compromise Agreement when Tieng failed to cause the dismissal of the criminal cases for estafa he had filed against Co.

IV

Furthermore, it was premature for Team Image to claim that it made overpayments to Solar Team when Tieng allegedly admitted to receiving from VTV Corporation the amount of ₱22,971,572.03, significantly more than the ₱10,275,547.48 provided in paragraph 4 of the Compromise Agreement.

Paragraphs 3, 4, and 5 of the Compromise Agreement provide:

3. The parties agree that William Tieng is entitled to initially receive the amount of TWENTY[-]SIX MILLION PESOS (₱26,000,000.00), Philippine Currency, as stipulated and embodied in their handwritten memorandum of agreement executed on 05 May 1998, out of the sales and collections made by [Team Image]/Felix S. Co as marketing agent of [Solar Team]. This is so because, [Team Image]/Felix S. Co have admitted having earlier collected at least the sum of at least ₱26M, hence, to equalize the sharing of Felix S. Co and William

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[101] *Chavez v. Presidential Commission on Good Government,* 360 Phil. 133, 172 (1998) [Per *J.* Panganiban, First Division].

Tieng on the proceeds of the sales. William Tieng should also receive the sum of at least ₱26M.

4. William Tieng acknowledges that VTV had made payments in the total sum of TEN MILLION TWO HUNDRED SEVENTY[-]FIVE THOUSAND FIVE HUNDRED FORTY[-]SEVEN AND 48/100 PESOS (10,275,547[.]48) Philippine Currency, from the contracts with VTV for the airing over IBC-13 of the TV programs/materials belonging to either Solar Entertainment Corporation, or Solar Films, Inc., or Solar Team Entertainment, Inc., out of which, TWO MILLION EIGHT HUNDRED NINETY[-]ONE THOUSAND TWO HUNDRED TWENTY[-]SIX AND 97/100 (₱2,891,226.97) was collected and paid to Ma. Fe Barriero as what she represented to be marketing commissions, thus leaving a balance of SEVEN MILLION THREE HUNDRED EIGHTY[-]FOUR THOUSAND THREE HUNDRED TWENTY AND 51/100 (₱7,384,320.51). An accounting shall be made by VTV to determine how much of this amount of ₱7,384,320.51, pertain to programs/materials owned by [Solar Team]. Upon such determination, the amount pertaining to the programs/materials owned by [Solar Team] (which company is owned 50/50 by Felix Co and William Tieng) shall be credited to it and shall be credited to William Tieng as part of the amount he is entitled to receive stated and referred to in paragraph 3 hereof.

5. William Tieng represents and warrants that the aforesaid sum of ₱2,891,226.97 which is charged as marketing commissions are unauthorized collections which, did not redound to the benefit of the parties from their joint operation as stated in the paragraph immediately preceding, but to the personal gain and advantage of their marketing agent, Maria Fe Barriero, hence, earnest efforts shall be exerted by said William Tieng to collect the same from the offending party. After said collection or in the event that said amount shall be proved to have redounded to the benefit of said William Tieng, then William Tieng shall turn-over the said amount to [Solar Team] and thereafter SGV shall determine the share of Felix S. Co thereon which shall be paid immediately to the latter.[102]

Under paragraphs 4 and 5 of the Compromise Agreement, there must first be an audit and accounting by SGV and Co.

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[102] *Rollo* (G.R. No. 191652), pp. 104–105 and *rollo* (G.R. No. 191658), pp. 86–87.

before there can be a final determination of the share of Team Image from the collectibles from VTV Corporation. There is no showing that SGV and Co. had already completed its audit and accounting when Team Image filed a motion for the issuance of a writ of execution.

The supposed admission of Tieng in Civil Case No. 05-603 that he received ₱22,971,572.03 is not a judicial admission contemplated under Rule 129, Section 4 of the Rules of Court.[103] Rule 129, Section 4 requires that the admission be made in the same case. The admission of Tieng was made in a different case. Therefore, the admission in Civil Case No. 05-603 cannot be made basis to contend that Tieng misrepresented the amounts he stated in paragraph 4 of the Compromise Agreement. The Court of Appeals correctly held that it was premature for Team Image to claim overpayments.

V

Paragraph 24 of the Compromise Agreement is reiterated below:

> 24. In the event SGV shall have made a final determination of the respective accountability of the parties and any of the parties fail to comply with the same, or in the event any of the parties is remiss or reneges from [its] commitment/s as specified in this Agreement or breaches the warranties and/or representation as contained herein, then the aggrieved party shall be entitled to an immediate issuance of a writ of execution to enforce compliance thereof and the guilty party shall pay the innocent party the sum of ₱2 Million Pesos by way of liquidated damages and/or penalty and shall, likewise, shoulder all the expenses in enforcing this compromise agreement by a writ of execution. Moreover, the innocent party shall have the right to

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[103] RULES OF COURT, Rule 129, Sec. 4 provides:

> Section 4. *Judicial admissions*. — An admission, verbal or written, made by the 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.

invoke the principle of reciprocity of obligations in contracts as provided for by law.[104]

Paragraph 24 of the Compromise Agreement gives two (2) classifications of the possible violations of the Compromise Agreement. The first is "in the event" where the appointed auditing firm, SGV and Co., would have made a final determination of the accountabilities of the parties and any of the parties fails to pay its respective accountabilities based on the audit. The second is "in the event" where "any of the parties is remiss or reneges from [its] commitment/s as specified in this Agreement or breaches the warranties and/or representation as contained herein." That these are the only two (2) classifications of violations is inferable from the use of the phrase "in the event," a comma, and the word "or" to separate these two (2) instances. In other words, all obligations that require SGV and Co.'s final accounting fall under the first classification. All other obligations fall under the second classification.

Given the foregoing, the payment of liquidated damages is based on these two (2) "events" or classifications of violation. Since there are only two (2) classifications of violations immediately preceding the provision on the payment of ₱2,000,000.00 liquidated damages, only a maximum of ₱4,000,000.00 may be paid under paragraph 24.

The obligations under the Compromise Agreement that require SGV and Co.'s final determination are found in paragraphs 9,[105]

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[104] *Rollo* (G.R. No. 191652), p. 111 and *rollo* (G.R. No. 191658), p. 93.

[105] Paragraph 9 of the Compromise Agreement provides:

9. Felix Co further agrees to recompense William Tieng the amount of ₱600,000.00, subject matters of I.S. No. 99-F-3526 and ₱2,225,244.59, subject matter of I.S. No. 99-F-3525, both of the Office of the City Prosecutor, Parañaque City, Metro Manila, or the total amount of ₱2,825,244.59 by way of postdated checks in five (5) equal monthly installments of ₱565,048.92 each installment, the same to commence on 15 July 2003 and every 15th day of the month thereafter, Provided, That, the parties agree to submit these accounts to SGV for the final determination of the nature of the consideration of these checks, *i.e.*, whether or not the same represent over-payment on the capital contribution of Felix S. Co into Solar Team

13,[106] 15,[107] 16,[108] 17,[109] 19,[110] 22,[111] and 24.[112] Violations of these paragraphs fall under the first "event" or classification.

Entertainment, Inc. (STEI) to purchase TV programs/materials owned by Solar Entertainment Corporation and/or from other suppliers and/or personal indebtedness of Felix S. Co to William Tieng, Provided, That, SGV shall finish said accounting on or before 01 July 2003, and, Provided, Finally, that, in the event SGV shall determine before the due date of any of the five (5) postdated checks herein mentioned, that said amounts of the two (2) aforementioned checks are over-payment on the capital contribution of Felix Co, then Felix S. Co shall have the right to stop the payment of the checks which have not been presented for payment and William Tieng shall immediately return to Felix S. Co the amount/s of the check/s so far encashed.

[106] Paragraph 13 of the Compromise Agreement provides:

13. Felix Co [and/or Team Image], likewise, confirm that, to the best of their information and subject to confirmation by SGV, [Solar Team] has a receivable of ₱4,147,501.64 more or less arising out of their operation in Radio Philippines Network, Inc., (unless otherwise already collected by SGV under prior arrangement with the latter).

[107] Paragraph 15 of the Compromise Agreement provides:

15. The parties agree that William Tieng and Felix Co, shall jointly collect the said amount stated in the paragraph immediately preceding and any amount so collected shall pertain to them also on a 50/50 sharing scheme, less expenses if any, subject to the final accounting of SGV; any collection made shall be deposited in the joint account of William Tieng and Felix [S]. Co with Philippine Bank of Communication.

[108] Paragraph 16 of the Compromise Agreement provides:

16. The parties hereby warrant unto each other that the aforesaid receivables are outstanding and unpaid and they shall proceed with the accounting of all monies received by said parties and their respective accountabilities with SGV in accordance with the generally accepted accounting principles, taking into consideration, among others, the amount of sales, collection and such other expense/s related thereto, if any, whose decision shall be final, binding and conclusive between them and that any or all collections shall pertain to Felix S. Co and William Tieng under a 50/50 sharing arrangement; *Provided, That,* if after final accounting by SGV of all the receivables, any party suffers an imbalance, then said party shall have a right of first call on said receivables.

[109] Paragraph 17 of the Compromise Agreement provides:

17. The parties agree to authorize SGV to undertake an accounting in respect of other business ventures they may have jointly undertaken and wherein each of them is entitled to a share in the profits.

Violations of all other paragraphs fall under the second "event" or classification.

As previously discussed, Team Image violated paragraphs 6 and 7 of the Compromise Agreement by failing to pay its monetary obligations under these paragraphs. For these violations, Team Image must pay Solar Team ₱2,000,000.00 in liquidated damages. As for Solar Team, it violated paragraph 22 of the Compromise Agreement for failure to withdraw the complaint-in-intervention it had earlier filed against Team Image. Hence, Solar Team must pay Team Image ₱2,000,000.00 in liquidated damages.

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[110] Paragraph 19 of the Compromise Agreement provides:

19. After SGV shall have finally completed the audit and accounting which are hereinbefore tasked upon them to perform, the parties agree that all remaining assets and collections, if any, as may be established by said SGV, shall pertain to Felix S. Co and William Tieng on a 50/50 sharing scheme and that they shall, within a reasonable period of time, undertake the appropriate steps for the dissolution of [Solar Team].

[111] Paragraph 22 of the Compromise Agreement provides:

22. By virtue hereof, the parties have agreed, as they hereby agree to immediately provisionally dismiss all actions, whether civil or criminal, they may have filed against the other, and after SGV shall have finally completed the audit and accounting tasked upon it, the results of which is final and binding upon the parties, all said civil and/or criminal actions shall be permanently dismissed by the parties.

[112] Paragraph 24 of the Compromise Agreement provides:

24. In the event SGV shall have made a final determination of the respective accountability of the parties and any of the parties fail to comply with the same, or in the event any of the parties is remiss or reneges from [its] commitment/s as specified in this Agreement or breaches the warranties and/or representation as contained herein, then the aggrieved party shall be entitled to an immediate issuance of a writ of execution to enforce compliance thereof and the guilty party shall pay the innocent party the sum of ₱2 Million Pesos by way of liquidated damages and/or penalty and shall, likewise, shoulder all the expenses in enforcing this compromise agreement by a writ of execution. Moreover, the innocent party shall have the right to invoke the principle of reciprocity of obligations in contracts as provided for by law.

VI

Articles 1279 and 1281 of the Civil Code provide:

Article 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

. . . . . .

Article 1281. Compensation may be total or partial. When the two debts are of the same amount, there is a total compensation.

Considering that the parties are equally liable to each other in the amount of ₱2,000,000.00, this Court confirms that the amounts are set off by operation of law.[113]

VII

However, this Court recalls that in the May 19, 2008 Omnibus Order, Judge Dumayas directed Solar Team to deposit with Office of the Clerk of Court-Regional Trial Court of Makati City the amount of ₱2,000,000.00 representing liquidated damages for Solar Team's failure to withdraw the complaint-

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[113] CIVIL CODE, Art. 1290 provides:

Article 1290. When all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation.

in-intervention it had filed against Team Image. Judge Dumayas added that the amount "will be released only after final determination of the obligations of [Team Image and Co] pursuant to the compromise agreement and after the issue on the violation of the same agreement by [Solar Team] for its failure to [withdraw the complaint-in-intervention] has been resolved with finality."[114]

As held by the Court of Appeals, it was grave abuse of discretion for Judge Dumayas to keep the ₱2,000,000.00 in *custodia legis*. Upon approval, a judgment upon a compromise is immediately executory, not even subject to appeal.[115] Ordering the deposit of the ₱2,000,000.00 with the Office of the Clerk of Court effectively stayed the execution of an immediately executory judgment. It is highly irregular. Nowhere in the law or the Rules of Court is such deposit allowed.

Additionally, the complexity of resolving the present petitions could have been avoided had Judge Dumayas properly managed the case for accounting. For this reason, adding the highly irregular order of deposit, this matter is referred to the Office of the Court Administrator to be docketed as a separate administrative matter against Judge Dumayas. Judge Dumayas is to show cause why he should not be disciplinarily dealt with for: first, in issuing the May 19, 2008 Omnibus Order which directed the deposit of ₱2,000,000.00 before the Office of the Clerk of Court-Regional Trial Court, Makati City; and, second, for reversing himself, on several occasions, on the issues of whether or not Team Image was entitled to suspend payments to Solar Team and whether or not the criminal cases may be dismissed based on the Compromise Agreement.

WHEREFORE, the Petitions for Review on Certiorari filed by Team Image Entertainment, Inc. and Solar Team Entertainment, Inc. are **PARTIALLY GRANTED** and the Court

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[114] *Rollo* (G.R. No. 191652), p. 221 and *rollo* (G.R. No. 191658), p. 130.

[115] See *Magbanua v. Uy,* 497 Phil. 511, 518 (2005) [Per *J.* Panganiban, Third Division].

of Appeals December 10, 2009 Decision in CA-G.R. SP No. 104961 is **MODIFIED** as follows:

The implementation of the Writ of Execution dated January 10, 2008 is **AFFIRMED**;

Team Image Entertainment, Inc. is **LIABLE** to Solar Team Entertainment, Inc. in the amount of ₱2,000,000.00 pursuant to paragraph 24 of the Compromise Agreement for its failure to settle its obligation within the period from November 23, 2004 to November 3, 2005;

Solar Team Entertainment, Inc. is **LIABLE** to Team Image Entertainment, Inc. in the amount of ₱2,000,000.00 pursuant to paragraph 24 of the Compromise Agreement for its failure to withdraw earlier the complaint-in-intervention it filed in Civil Case No. 97-024 pending before Branch 137, Regional Trial Court of Makati City;

Considering that Team Image Entertainment, Inc. and Solar Team Entertainment, Inc. are concurrently liable to each other in equal amounts, the compensation of their liabilities takes effect by operation of law. The order for Solar Team Entertainment, Inc. to deposit the amount of ₱2,000,000.00 to the Office of the Clerk of Court – Regional Trial Court of Makati City is **REVERSED and SET ASIDE**. The garnished amount of ₱2,000,000.00 representing liquidated damages is ordered released from the custody of the Clerk of Court of the Regional Trial Court of Makati City and must be returned to Solar Team Entertainment, Inc.;

The reversal of the order which requires William Tieng to cause the dismissal of Criminal Case Nos. 07-1235 and 07-1236 is **AFFIRMED**;

The reversal of the order requiring William Tieng to pay the sum of ₱2,000,000.00 as liquidated damages on account of his failure to dismiss Criminal Case Nos. 07-1235 and 07-1236 is **AFFIRMED**;

The reversal of the order requiring William Tieng to return the sum of ₱25,862,750.00 on account of Solar Team Entertainment, Inc.'s alleged admission in its pleading in Civil Case No. 05-603 despite the pendency of the SyCip Gorres Velayo and Co. audit is **AFFIRMED**;

The reversal of the order requiring William Tieng to turn over the amount of ₱2,891,226.97 to Solar Team Entertainment, Inc. is **AFFIRMED**;

The reversal of the order requiring William Tieng to pay a total of ₱8,000,000.00 as liquidated damages for alleged breaches of warranty and representation is **AFFIRMED**; and

Finally, the issuance of the May 19, 2008 Omnibus Order is **REFERRED** to the Office of the Court Administrator to be docketed as a regular administrative matter against Presiding Judge Winlove M. Dumayas of Branch 59, Regional Trial Court, Makati City.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 192128 & 192135-36. September 13, 2017]

GMA NETWORK, INC., *petitioner, vs.* **NATIONAL TELECOMMUNICATIONS COMMISSION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC SERVICE ACT; THE 60-DAY PRESCRIPTIVE PERIOD FOR VIOLATIONS OF THE TERMS AND CONDITIONS OF ANY CERTIFICATE ISSUED BY THE NATIONAL TELECOMMUNICATIONS COMMISSION (NTC) CAN BE AVAILED OF AS A DEFENSE ONLY IN CRIMINAL PROCEEDINGS.— The *Sambrano* case, cited by petitioner GMA, has already settled that the 60-day prescriptive period under Section 28 of the Public Service Act can be availed of as a defense only in criminal proceedings filed under Chapter IV thereof and not in proceedings pertaining to the regulatory or administrative powers of the NTC over a public service utility's observance of the terms and conditions of its Provisional Authority[.] x x x In *Globe Telecom, Inc. v. The National Telecommunications Commission*, the Court ruled that the NTC's imposition of a fine pursuant to Section 21 of the Public Service Act is made in an administrative proceeding, and thus, must comply with the requirements of notice and hearing. The same ruling also categorized the fine imposed under Section 21 as a sanction, regulatory and punitive in character[.]

2. ID.; ID.; ID.; THE APPLICABLE PROVISION IN CASE AT BAR IS SECTION 21 THAT IMPOSES A FINE NOT EXCEEDING 200 PESOS PER DAY FOR EVERYDAY DURING WHICH PETITIONER'S VIOLATION OR NON-COMPLIANCE WITH THE LAW CONTINUES.— Contrary to the position taken by petitioner GMA, the ₱25,000.00 limit provided under Section 23 does not also apply in this case. x x x The case of *GMA Network, Inc. v. National Telecommunications Commission* (*GMA Network*) pertaining to petitioner GMA's failure to renew its Provisional Authority to operate a radio

station in Puerto Princesa, Palawan, is illustrative: x x x The applicable provision is Section 21 of the Public Service Act as it specifically governs the NTC's imposition of a fine not exceeding ₱200.00 per day for every day during which the public service utility's violation or non-compliance with the terms and conditions of the certificate/s issued by the NTC continues. x x x **the proceedings under Section 23 pertain to criminal proceedings conducted in court, whereby the fine imposed, if so determined, is made in the court's discretion, whereas Section 21 pertains to administrative proceedings conducted by the NTC on the grounds stated thereunder**. As the present case evidently involves the latter violation, Section 21 and not Section 23 of the Public Service Act applies. x x x The Court sees no reason here to deviate from the unequivocal clarifications made in *GMA Network.*

3. ID.; ID.; ID.; NTC'S INTERPRETATION OF ITS OWN RULES ACCORDED GREAT RESPECT; THE COURT AGREES WITH THE NTC THAT PETITIONER VIOLATED SECTION 21 OF THE PUBLIC SERVICE ACT BY OPERATING ON AN EXPIRED PROVISIONAL AUTHORITY.— The Court has held that the respondent NTC, being the government agency entrusted with the regulation of activities coming under its special and technical forte, and possessing the necessary rule-making power to implement its objectives, is in the best position to interpret its own rules, regulations and guidelines. The Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law. In fine, the Court agrees with respondent NTC that, notwithstanding the temporary permits issued in its favor, petitioner GMA was operating on an expired Provisional Authority, in violation of Section 21 of the Public Service Act.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion & Lucila for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assailing the Decision[2] of the Court of Appeals[3] (CA) dated April 29, 2010 in CA-G.R. SP Nos. 109954, 110145 and 110148, denying the petitions filed by petitioner GMA Network, Inc. (petitioner GMA), against the assailed Orders issued by the National Telecommunications Commission (respondent NTC) dated January 11, 2007, February 26, 2009 and May 25, 2009.

Facts

The Decision of the CA dated April 29, 2010 states the facts as follows:

> Petitioner GMA Network, Inc. (GMA), formerly known as Republic Broadcasting System, Inc., is a Filipino-owned domestic corporation engaged in the business of radio and television broadcasting as a grantee of a legislative franchise by virtue of Republic Act (R.A.) No. 7252 enacted on March 20, 1992, to construct, install, operate and maintain radio and television broadcasting stations in the Philippines for a period of 25 years.
>
> Respondent National Telecommunications Commission (NTC) is the government agency that exercises jurisdiction over the supervision, adjudication and control of all telecommunications and broadcast services in the country.
>
> Following the enactment of R.A. No. 7252 and pursuant to Section 3 thereof, GMA filed before the NTC three (3) applications for Certificate of Public Convenience respectively docketed and entitled as follows:

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[1] *Rollo*, pp. 36-344, including Annexes.

[2] *Id.* at 12-32. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Japar B. Dimaampao and Jane Aurora C. Lantion concurring.

[3] Second Division.

- BMC Case No. 91-336 : "In Re: Application for Certificate of Public Convenience to Install, Operate and Maintain a VHF-TV Station in Dumaguete City."
- NTC Case No. 96-038 : "In Re: Application for a Certificate of Public Convenience to Install, Operate and Maintain DXLA-TV Station in Zamboanga City."
- BMC Case No. 96-499 : "Re: CPC for a 10KW Radio Station in Zamboanga City."

Pending the resolution of these applications, NTC granted GMA three Provisional Authorities ([PA]) to install, operate and maintain DXRC-AM broadcasting station and DXLA-TV Station both in Zamboanga City and a VHF-TV station in Dumaguete City. The said [PAs] were issued on and valid until the following dates:

	Date issued	***Valid Until***
VHF-TV	September 16, 1996	November 16, 1998
DXRC-AM	December 9, 1996	June 9, 1998
DXLA-TV	January 27, 1997	July 27, 1998

Upon the lapse of their respective expiration dates, the [PAs] were not renewed and it took 4-5 years before GMA was able to file Ex-Parte Motions for Renewal of Provisional Authority – on September 29, 2003 for VHF-TV in BMC Case No. 91-336 and on September 3, 2003 for DXLA-TV in NTC Case No. 96-038. For its DXRC-AM broadcasting station, it filed an Ex-Parte Motion for the Issuance of a Certificate of Public Convenience (CPC) in BMC Case No. 93-499 on September 13, 2002[.]

Before acting on the motions in BMC Case No. 91-336 and NTC Case No. 96-038, the NTC scheduled the cases for clarificatory hearing and directed GMA to explain why it should not be administratively sanctioned for late filing and/or for operating with an expired [PA] No similar action was taken in BMC Case No. 93-499.

GMA filed two separate pleadings entitled *Compliance* containing substantially the same declarations in BMC Case No. 91-336 and NTC Case No. 96-038. GMA explained that its failure to renew the [PAs] on time was not done with deliberate intent but due to pure inadvertence in the maintenance of its records and confusion in the turn-over of documents from its previous handling lawyers. The delay

was also allegedly caused by the economic crisis that hit the Philippines in 1998 and the consequent downturn in the broadcast industry which adversely affected GMA's expansion plans and existing projects. GMA also alleged that it can no longer be sanctioned for the late filing of the *Motions* because its violation already prescribed pursuant to Sec. 28, Chapter IV of Commonwealth Act No. 146 (C.A. No. 146) or the Public Service Act.

In an Order dated May 25, 2009 in NTC Case No. 96-038, NTC issued a Certificate of Public Convenience (CPC) for the operation of GMA's DXLA-TV Station in Zamboanga City. With respect to BMC Case Nos. 93-499 and 91-336, NTC issued Orders dated January 11, 2007 and February 26, 2009 respectively renewing GMA's [PA] to install, operate and maintain DXRC-AM broadcasting station in Zamboanga City and VHF-TV Station in Dumaguete City.

The three Orders also fined GMA for operating with an expired [PA] at the rate of Php200 per day of violation for DXRC-AM and P100 per day of violation for VHF-TV and DXLA-TV computed from the date of expiration of [PA] until the date of filing of the Motions for Renewal of Provisional Authority/Issuance of CPC. The aggregate amount of the fine imposed for the three stations was Php 674,600.00 broken down as follows:

DXRC-AM Broadcasting Station, Zamboanga City:

06-09-98 (Date of expiration of [PA])
09-13-02 (Date when the Ex-Parte Motion for Issuance of Certificate of Public Convenience was filed.)

Computation:

06-09-98 to 12-31-98 (205 days x Php 200.00) =	Php41,000.00
01-01-99 to 12-31-99 (365 days x Php 200.00) =	Php73,000.00
01-01-00 to 12-31-00 (365 days x Php200.00) =	Php73,000.00
01-01-[01] to 12-31-01 (365 days x Php200.00)=	Php73,000.00
01-01-02 to 09-13-02 (257 days x Php200.00) =	Php51,400.00
	Php311,400.00

VHF-TV Station, Dumaguete City:

11-16-1998 (Date of Expiration of [PA])
09-29-2003 (Date when the Motion for Renewal of Provisional Authority and/or Certificate of Public Convenience was filed)

Computation:

DUE DATE	DATE SUBMITTED	NO. OF DAYS OF DELAY	FINE PER DAY	TOTAL (T) (T = D x F)
Nov. 17, 1998	September 29, 2003	1,770	₱100	**Php177,000.00**

DXLA-TV Station, Zamboanga City:

July 27, 1998 (Date of Expiration of [PA])
Sept. 3, 2003 (Date when the Motion was filed)

Computation:
7/27/98 to 9/2/2003 = 1,862 days x P100.00 = **₱186,200.00**

GMA moved for the partial reconsideration of the three Orders praying that the fine be lifted on the ground that GMA's violation already prescribed pursuant to Section 28 of C.A. No. 141 which states that violations of the terms and conditions of any certificate issued by the NTC shall prescribe after sixty (60) days. GMA also argued that the amount of fine imposed was [exorbitant] and contrary to Chapter IV of C.A. No. 141 which states that fines imposed against any public service corporation must not exceed the amount of ₱25,000.00. Finally, GMA maintained that although it operated with expired [PAs], it was granted the following temporary permits by the NTC during the period that the [PAs] for the subject stations were not renewed, viz:

For DXRC-AM Broadcasting Station, Zamboanga City:

Permit No.	Date issued	Period
BSD-0427-97 (NEW)	February 11, 1997	January 27, 1997 to January 29, 2000
BSD-0092-2000 (REN)	January 24, 2000	January 27, 2000 to January 29, 2003
BSD-0330-2003 (REN)	November 17, 2004	January 27, 2003 to January 26, 2006
BSD-0046-2006 (REN)	January 23, 2006	January 27, 2006 to January 26, 2009
BSD-0263-2009 (REN/MOD)	Apil 30, 2009	January 27, 2009 to January 26, 2012

For VHF-TV Station, Dumaguete City:

Permit No.	*Date issued*	*Period*
BSD-0388-96 (REN)	August 7, 1996	September 28, 1996 to September 27, 1999
BSD-0855-97 (MOD)	September 5, 1997	September 28, 1996 to September 27, 1999
BSD-0162-99 (REN)	September 21, 1999	September 28, 1999 to September 27, 2002
BSD-0236-2002	August 6, 2002	September 28, 2002 to September 27, 2005
BSD-0268-2005 (REN)	August 30, 2005	September 28, 2005 to September 27, 2008
BSD-0252-2008	August 27, 2008	September 28, 2008 to September 27, 2011

For DXLA-TV Station, Zamboanga City:

Permit	**Date issued**	**Period**
BSD-0835-97 (MOD)	September 5, 1997	January 1, 1997 to December 31, 1999
BSD-0167-99 (REN)	September 21, 1999	January 1, 2000 to December 31, 2002
BSD-0032-2003 (REN/MOD)	May 14, 2004	January 1, 2003 to December 31, 2005
BSD-0343-2005 (REN)	November 23, 2005	January 1, 2006 to December 31, 2008
BSD-0090-2009 (REN)	January 28, 2009	January 1, 2009 to December 31, 2011

The NTC partly granted GMA's motions for partial reconsideration by reducing the rate of the fine to Php50 per day of violation for each of the three stations. In BMC Case No. 93-499, the NTC Order was dated August 4, 2009. In BMC Case No. 91-336, the NTC Order was dated July 17, 2009. In NTC Case No. 96-038, the Order was dated August 4, 2009. The total reduced fine for all the stations was Php259,450.00, viz:

DXRC-AM Broadcasting Station, Zamboanga City:

DUE DATE	DATE SUBMITTED	NO. OF DAYS OF DELAY	FINE PER DAY	TOTAL (T) (T=DXF)
June 9, 1998	Sept. 13, 2002	1557	₱50	**Php77,850.00**

VHF-TV Station, Dumaguete City:

DUE DATE	DATE SUBMITTED	NO. OF DAYS OF DELAY	FINE PER DAY	Total (T) (T=DXF)
November 17, 1998	Sept. 29, 2003	1,770	₱50	**Php88,500.00**

DXLA-TV Station, Zamboanga City:

DUE DATE	DATE SUBMITTED	NO. OF DAYS OF DELAY	FINE PER DAY	TOTAL (T) (T=DXF)
July 27, 1998	Sept. 2, 2003	1862	₱50	**Php93,100.00**

Dissatisfied, GMA interposed the herein consolidated Petitions for Review respectively docketed as *C.A. G.R. SP. No. 110148* assailing NTC Orders dated January 11, 2007 and August 4, 2009 in BMC Case No. 93-499; *C.A. G.R. SP. No. 109954* assailing NTC Orders dated February 26, 2009 and July 17, 2009 in BMC Case No. 91-336; and *C.A. G.R. SP. No. 110145* assailing NTC Orders dated May 25, 2009 and August 4, 2009 in NTC Case No. 96-038.[4]

The petitions filed before the CA was anchored on the following grounds:

1. The NTC erred in imposing fines against petitioner GMA for allegedly operating with an expired Provisional Authority considering that the subject broadcasting stations were operated under temporary permits duly issued by the NTC.

[4] *Rollo*, pp. 13-20.

2. The NTC erred in imposing a penalty of fine against petitioner GMA in spite of the fact that its violation, if any, has long prescribed under Section 28, Chapter IV of Commonwealth Act No. 146,[5] otherwise known as the Public Service Act.

3. The imposition against petititoner GMA of a fine in an amount more than ₱25,000 is contrary to the policy implied in Chapter IV of the Public Service Act.[6]

The CA dismissed the petitions on the following disquisition:

The NTC proceedings in *Sambrano* and in the instant case are both administrative in nature as they involve the NTC's exercise of its regulatory powers over public service operators. Both cases entailed an examination of a public service operator's licenses and permits, the certificate of public convenience of PRBI and, in the present case, petitioner GMA's provisional authority to maintain and operate the subject broadcasting stations. Thus, the pronouncement in *Sambrano* in so far as Section 28 is concerned, is squarely applicable in the instant controversy. Hence, petitioner GMA cannot avoid payment of the fine, as the 60-day prescriptive period under Sec. 28 is available as a defense only in criminal or penal proceedings not in purely administrative proceedings, as in the case at bench.

x x x x x x x x x

In the present case, the fine imposed on GMA pursuant to Section 21 is an administrative fine because, as stated above, it involved the NTC's regulatory and supervisory powers over GMA's legislative franchise. The determinant factor in the application of Section 28 is the nature of the proceedings and the forum which imposed the fine and not the nature of the statute imposing it. The Orders imposing the fine stemmed from GMA's *Ex-Parte Motions to Renew Provisional*

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[5] AN ACT TO REORGANIZE THE PUBLIC SERVICE COMMISSION, PRESCRIBE ITS POWERS AND DUTIES, DEFINE AND REGULATE PUBLIC SERVICES, PROVIDE AND FIX THE RATES AND QUOTA OF EXPENSES TO BE PAID BY THE SAME AND FOR OTHER PURPOSES, otherwise known as the "Public Service Act," November 7, 1936.

[6] *Rollo*, pp. 20-21.

Authority and Certificate of Public Convenience and not from any criminal complaint or information seeking to prosecute GMA for violation of the penal provisions of the Public Service Law, specifically Sections 23, 24, 25 and 26 thereof.

x x x x x x x x x

Again, We disagree. A reading of the foregoing provisions readily shows that petitioner's interpretation is self-serving and misplaced. It is clear that Section 23 speaks of fine that is imposable by court as a criminal sanction and not the administrative fine imposed by Section 21. Hence the Php25,000.00 ceiling provided under Section 23 is not applicable to the fine imposed under Section 21.

We thus concur with the NTC in that the monetary fine imposed under Section 21 of the Public Service Act is an administrative sanction imposed by the NTC on a service provider on the latter's violation or failure to comply with the terms and conditions of its authorization, or any other order, decision or regulation. On the other hand, the ₱25,000.00 fine specified under Section 23 is a penal sanction imposed by the courts in addition to imprisonment of the responsible officer of the service provider when it fails to perform, commit, or do any act or thing forbidden or prohibited or shall neglect, fail or omit to do or perform any act or thing required by the Public Service Act to be done or performed.

x x x x x x x x x

The fine imposed on petitioner is also not exorbitant or unconscionable. As a matter of fact, We find the same to be rather conservative considering the prot[r]acted duration of petitioner's violation. The Php 674,600.00 original amount of fine imposed by NTC was in accordance with the ₱200 daily rate mandated by Section 21. This was even modified to Php 259,450.00 at the reduced rate of ₱50 per day of violation.

Finally, petitioner states that its operation of the subject broadcasting stations was authorized by the NTC thru Temporary Permits which covered the period during which GMA was operating on expired Provisional Authorities.

This argument deserves no consideration as it is inconsistent with GMA's admission that its failure to timely renew the Provisional Authorities was due to sheer inadvertence and confusion in the handling of its corporate documents, x x x:

x x x x x x x x x

As can be gleaned from the attached copies of petitioner's Provisional Authorities and Temporary Permits, their purposes and extent are different. A Provisional Authority is issued by the NTC to a franchise holder authorizing the latter to operate [as] a public utility for a limited period pending the issuance of its Certificate of Public Convenience (CPC). It is general in scope in contrast to a Temporary Permit which specifically contains the necessary particulars of a broadcasting station such as the call sign, authorized power, frequency/channel, class station, hours of operation, points of communication and equipments used together with their serial number and frequency range. Simply stated, a Provisional Authority is GMA's authority or license to operate a broadcasting station while a Temporary Permit pertains to the details and specifications under which GMA will undertake the operation of a broadcasting station. The concurrence of both is imperative for the lawful operation of the GMA broadcasting stations. In fact, in the Provisional Authorities initially issued, GMA was obligated to secure the necessary permits for its equipment and facilities, x x x[.][7]

The dispositive portion of the CA Decision states:

WHEREFORE, for lack of merit, the Petitions are hereby **DISMISSED.**

SO ORDERED.[8]

Petitioner GMA did not file a Motion for Reconsideration questioning the subject CA Decision. Instead, it directly filed this Petition for Review on Certiorari under Rule 45 of the Rules of Court.

Issues

1. Whether petitioner GMA violated Section 21 of the Public Service Act;
2. Whether the prescription set forth in Section 28 of the Public Service Act applies to administrative proceedings

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[7] *Id*. at 23-30.

[8] *Id*. at 31.

for violations of orders, decisions and regulations of respondent NTC or the terms and conditions of the certificate issued by the latter; and

3. Whether the ₱25,000.00 limit set under Section 23 of the Public Service Act shall apply to the fines that may be imposed by respondent NTC under Section 21.

The Court's Ruling

The petition is denied.

While petitioner GMA admits that it failed to file its Motion for Extension of Provisional Authority on time,[9] it argues that it should nonetheless not be sanctioned for operating without the authority of respondent NTC because respondent NTC allowed it to operate under the temporary permits it had issued in its favor.

Respondent NTC, on the other hand, anchors its imposition of fines against petitioner GMA on Section 21 of the Public Service Act, which states:

> Sec. 21. **Every public service violating or failing to comply with the terms and conditions of any certificate or any orders, decisions or regulations of the Commission shall be subject to a fine of not exceeding two hundred pesos per day for every day during which such default or violation continues; and the Commission is hereby authorized and empowered to impose such fine, after due notice and hearing.**
>
> The fines so imposed shall be paid to the Government of the Philippines through the Commission, and failure to pay the fine in any case within the time specified in the order or decision of the Commission shall be deemed good and sufficient reason for the suspension of the certificate of said public service until payment shall be made. Payment may also be enforced by appropriate action brought in a court of competent jurisdiction. The remedy provided in this section shall not be a bar to, or affect any other remedy provided in this Act but shall be cumulative and additional to such remedy or remedies. (Emphasis supplied)

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[9] *Id.* at 124.

Assuming arguendo that its failure to apply for an extension of its Provisional Authority is a violation of the terms and conditions of its previously issued Provisional Authority, petitioner GMA posits that such failure is within the ambit of the phrase "*violations of xxx the terms and conditions of any certificates issued by the Commission*" under Section 28 of the same law, and therefore subject to the prescriptive period set by the said provision.[10] Petitioner GMA asserts that the 60-day prescriptive period in Section 28 is available as their defense in administrative proceedings that may result into penal sanctions.[11]

Petitioner GMA maintains that Section 21 of the Public Service Act is expressly limited by Section 28 of the same chapter of the same law, which provides:

> Sec. 28. **Violations of the orders, decisions, and regulations of the Commission and of the terms and conditions of any certificates issued by the Commission shall prescribe after sixty days**, and violations of the provisions of this Act shall prescribe after one hundred and eighty days. (Emphasis supplied)

The Court disagrees.

The *Sambrano*[12] case, cited by petitioner GMA, has already settled that the 60-day prescriptive period under Section 28 of the Public Service Act can be availed of as defenses only in criminal proceedings filed under Chapter IV thereof and not in proceedings pertaining to the regulatory or administrative powers of the NTC over a public service utility's observance of the terms and conditions of its Provisional Authority:

> This Court has already held, in *Collector of Internal Revenue et al. vs. Buan*, G. R. L-11438; and *Sambrano vs. Public Service Commission*, G. R. L-11439 and L-11542, decided on July 31, 1958,

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[10] *Id.* at 61; italics supplied.

[11] *Id*.

[12] *Sambrano v. PSC and Phil. Rabbit Bus Lines, Inc.,* 116 Phil. 552 (1962).

that the 60-day prescriptive period fixed by section 28 of the Public Service Law is available as a defense only in criminal or penal proceedings filed under Chapter IV of the Act. Consequently, the Public Service Commission is not barred from receiving evidence of the prescribed violations for the purpose of determining whether an operator has or has not faithfully kept the conditions of his certificate of permit, whether he failed or not to render the services he is required to furnish to the customers, and whether or not the infractions are sufficient cause to cancel or modify the certificate. Proceedings of this kind are held primarily to ensure adequate and efficient service as well as to protect the public against the operator's malfeasances or abuses; they are not penal in character. True, the cancellation of the certificates may mean for an operator actual financial hardship; yet the latter is merely incidental to the protection of the traveling public. Hence, in refusing to admit evidence of prescribed violations as part of the complainant's case against the Philippine Rabbit Lines for a modification or cancellation of the latter's permit, we hold that the Commission committed error.[13] (Emphasis and italics supplied)

In *Globe Telecom, Inc. v. The National Telecommunications Commission*,[14] the Court ruled that the NTC's imposition of a fine pursuant to Section 21 of the Public Service Act is made in an administrative proceeding, and thus, must comply with the requirements of notice and hearing. The same ruling also categorized the fine imposed under Section 21 as a sanction, regulatory and punitive in character, *viz.*:

Section 21 requires notice and hearing because fine is a sanction, regulatory and even punitive in character. Indeed, the requirement is the essence of due process. Notice and hearing are the bulwark of administrative due process, the right to which is among the primary rights that must be respected even in administrative proceedings. The right is guaranteed by the Constitution itself and does not need legislative enactment. The statutory affirmation of the requirement serves merely to enhance the fundamental precept. The right to notice and hearing is essential to due process and its

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[13] *Id*. at 554-555.

[14] 479 Phil. 1 (2004).

non-observance will, as a rule, invalidate the administrative proceedings.

In citing Section 21 as the basis of the fine, NTC effectively concedes the necessity of prior notice and hearing. Yet the agency contends that the sanction was justified by arguing that when it took cognizance of Smart's complaint for interconnection, "it may very well look into the issue of whether the parties had the requisite authority to operate such services." As a result, both parties were sufficiently notified that this was a matter that NTC could look into in the course of the proceedings. The parties subsequently attended at least five hearings presided by NTC.

That particular argument of the NTC has been previously disposed of. **But it is essential to emphasize the need for a hearing before a fine may be imposed, as it is clearly a punitive measure undertaken by an administrative agency in the exercise of its quasi-judicial functions.** Inherently, notice and hearing are indispensable for the valid exercise by an administrative agency of its quasi-judicial functions. x x x[15] (Emphasis supplied)

Contrary to the position taken by petitioner GMA, the ₱25,000.00 limit provided under Section 23 does not also apply in this case. Section 23 of the Public Service Act provides:

Sec. 23. **Any public service corporation that shall perform, commit, or do any act or thing herein forbidden or prohibited or shall neglect, fail, or omit to do or perform any act or thing herein required to be done or performed, shall be punished by a fine not exceeding twenty-five thousand pesos**, or by imprisonment not exceeding five years, or both, in the discretion of the court. (Emphasis supplied)

Respondent NTC asseverated that a careful reading and comparison of Section 21 and Section 23 would clearly show that the monetary fine imposed under Section 21 at the rate of ₱100.00 per day is an administrative sanction imposed by respondent NTC on a service provider for the latter's violation or failure to comply with the terms and conditions of its authorization, or any other order, decision or regulation of

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

respondent NTC.[16] Respondent NTC explained that the ₱25,000.00 monetary fine specified under Section 23 of the same Public Service Act is a penal sanction imposed by the Court of Law in addition to imprisonment on the responsible officer of a service provider when it fails to perform, commit, or do any act or thing forbidden or prohibited or shall neglect, fail or omit to do or perform any act or thing required by the Public Service Act to be done or performed.[17]

The case of *GMA Network, Inc. v. National Telecommunications Commission*[18] (*GMA Network*) pertaining to petitioner GMA's failure to renew its Provisional Authority to operate a radio station in Puerto Princesa, Palawan, is illustrative:

> The argument is untenable.
>
> The applicable provision is Section 21 of the Public Service Act as it specifically governs the NTC's imposition of a fine not exceeding ₱200.00 per day for every day during which the public service utility's violation or non-compliance with the terms and conditions of the certificate/s issued by the NTC continues. On the other hand, Section 23 of the Public Service Act deals with a public service corporation's performance, commission or doing of any forbidden or prohibited act under the same law, as well as its neglect, failure or omission to do or perform an act or thing required thereunder. As earlier mentioned, **the proceedings under Section 23 pertain to criminal proceedings conducted in court, whereby the fine imposed, if so determined, is made in the court's discretion, whereas Section 21 pertains to administrative proceedings conducted by the NTC on the grounds stated thereunder**. As the present case evidently involves the latter violation, Section 21 and not Section 23 of the Public Service Act applies. Thus, finding that the fine imposed by the NTC at the reduced rate of ₱50.00 per day is consistent with the ₱200.00 per day limitation under Section 21 of the Public Service Act, the fine of ₱76,500.00 for GMA's failure to comply with the terms and conditions of its PA

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[16] *Rollo*, p. 143.

[17] *Id*.

[18] 728 Phil. 192 (2014).

for a period of 1,521 days was proper. The conscionability of the amount imposed should not be at issue as it is the law itself which had provided the allowable threshold for the amount therefor.[19] (Emphasis supplied)

The Court sees no reason here to deviate from the unequivocal clarifications made in *GMA Network*.[20]

Petitioner GMA finally insists that the subject broadcasting stations were operated with the knowledge and direct authority of respondent NTC, as evidenced by the temporary permits issued in their behalf. But this argument was likewise disregarded in *GMA Network* when the Court ruled that a temporary permit does not substitute for a Provisional Authority, *viz.*:

> [A] [Provisional Authority] refers to an authority given to an entity qualified to operate a public utility for a limited period during the pendency of its application for, or before the issuance of its Certificate of Public Convenience (CPC). It has a general scope because it is akin to a provisional CPC in that it gives a public utility provider power to operate as such and be bound by the laws and rules governing public utilities, pending issuance of its actual CPC.
>
> On the other hand, a [T]emporary [P]ermit is a document containing the call sign, authorized power, frequency/channel, class station, hours of operation, points of communication and equipment particulars granted to an authorized public utility. **Its scope is more specific than a [Provisional Authority] because it contains details and specifications under which a public utility [like petitioner] should operate [its tv/radio station] pursuant to a previously updated [Provisional Authority].** x x x[21] (Emphasis and underscoring in the original omitted; emphasis supplied)

The Court has held that the respondent NTC, being the government agency entrusted with the regulation of activities coming under its special and technical forte, and possessing

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[19] *Id*. at 206-207.

[20] *Supra* note 18.

[21] *Id*. at 207-208.

the necessary rule-making power to implement its objectives,[22] is in the best position to interpret its own rules, regulations and guidelines.[23] The Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.[24]

In fine, the Court agrees with respondent NTC that, notwithstanding the temporary permits issued in its favor, petitioner GMA was operating on an expired Provisional Authority, in violation of Section 21 of the Public Service Act.

WHEREFORE, the Petition is hereby **DENIED** for lack of merit.

SO ORDERED.

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

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[22] COM. ACT NO. 146, Sec. 11, as amended; EXECUTIVE ORDER NO. 546, Sec. 15.

[23] *Eastern Telecommunications Philippines, Inc. v. International Communication Corporation*, 516 Phil. 518, 521 (2006).

[24] *Id*., citing *Melendres, Jr. v. COMELEC*, 377 Phil. 275, 292 (1999).

THIRD DIVISION

[G.R. No. 213237. September 13, 2017]

CIVIL SERVICE COMMISSION, and the MUNICIPALITY OF MASIU, LANAO DEL SUR, represented by MAYOR NASSER P. PANGANDAMAN, JR., *petitioners, vs.* **SAMAD M. UNDA,** *respondent.*

[G.R. No. 213331. September 13, 2017]

THE MUNICIPALITY OF MASIU, PROVINCE OF LANAO DEL SUR, represented by NASSER P. PANGANDAMAN, JR., Municipal Mayor, *petitioner, vs.* **SAMAD M. UNDA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; OFFICIALS OF THE MUNICIPAL GOVERNMENT; MUNICIPAL ENVIRONMENT AND NATURAL RESOURCES OFFICER; THE APPOINTMENT THEREOF IS OPTIONAL ON THE PART OF THE MUNICIPAL GOVERNMENT AND SUCH APPOINTMENT REQUIRES THE CONCURRENCE OF THE *SANGGUNIANG BAYAN* AND THE ADOPTION OF THE APPROPRIATION ORDINANCE TO FUND THE SALARIES AND OTHER EMOLUMENTS.— A public office is created either by the Constitution, by law, or by authority of law. The legal basis for the appointment of the respondent as the MENRO of the Municipality of Masiu was Section 443 of the LGC x x x. [T]here ought to be no question that the appointment of the respondent as the MENRO was but optional on the part of the Municipality of Masiu, and that such appointment required the concurrence of the *Sangguniang Bayan*, as well as the adoption of the appropriation ordinance to fund the payment of his salaries and other emoluments. x x x [T]he Municipality of Masiu was x x x justified in construing the appointment of the MENRO as optional on its part. This is based on the usage in paragraph (b) of the term *may*, which means that the Municipal Mayor has been given the discretion

whether or not to appoint the MENRO and the other officers of the municipality listed in the provision. It is a basic postulate of statutory construction that the word *may* means a merely permissive act, and operates to confer upon a party discretion to do or not to do the act. Indeed, the second paragraph of Section 484(a) of the LGC expressly states that the appointment of the MENRO is optional on the part of the LGU.

2. ID.; ID.; ID.; ID.; ID.; THE APPROPRIATION FOR THE OFFICE OF THE MUNICIPAL ENVIRONMENT AND NATURAL RESOURCES OFFICER IS ONLY THROUGH AN ORDINANCE.— Section 443 of the LGC expressly includes the position of the MENRO in the municipality. Nonetheless, the provision subjects the appointment of the MENRO to several conditions, namely: (1) the concurrence by the majority of the *sangguniang bayan* as provided in its paragraph (d); and (2) the adoption of an ordinance setting the compensation, allowances and other emoluments conformably with its paragraph (e). The requirement for the appropriation ordinance is consistent with the fundamental principle of fiscal administration enunciated in Section 305 of the LGC that "[n]o money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law." Evidently, Section 443(b) of the LGC institutionalizes the office of the MENRO in local governments, while Section 443(e) sets the corresponding budgetary mechanism for the establishment of the position. In other words, the LGU must enact an ordinance allocating the budget for the office of the MENRO. x x x The fact that the *Sangguniang Bayan* of Masiu had no appropriation ordinances for the years 2006 and 2007 relative to the position of the MENRO belied the respondent's claim. His reliance on Resolution No. 29 dated October 24, 2005 did not suffice. Under Section 306(b) of the LGC, an *appropriation* is defined as the "authorization made **by ordinance**, directing the payment of goods and services from local government funds under specified conditions or for specific purposes." Also, Section 305 and Section 443(d) of the LGC specifically refer to an **ordinance**, not to a resolution. Thus, the appropriation for the office of the MENRO could have only been through an ordinance.

3. ID.; ID.; ID.; ID.; ID.; THE APPROVAL OF THE *SANGGUNIANG PANLALAWIGAN* OF THE RESOLUTION OF THE *SANGGUNIANG BAYAN* CONFIRMING THE

APPOINTMENT OF THE MUNICIPAL ENVIRONMENT AND NATURAL RESOURCES OFFICER IS UNNECESSARY FOR WHAT IS REQUIRED FOR THE APPOINTMENT IS AN APPROPRIATION ORDINANCE WHICH IS SUBJECT TO THE APPROVAL OF THE *SANGGUNIANG PANLALAWIGAN*; CASE AT BAR.— The supervisory function of the *sangguniang panlalawigan* over the enactment of municipal resolutions by the *sangguniang bayan* is limited only to those relating to local development plans and public investment programs formulated by the local development councils. Section 56(a) of the LGC clearly states so x x x. Hence, the approval by the *Sangguniang Panlalawigan* of Resolution No. 02-24, series of 2007 was unnecessary because the confirmation thereby made by the majority of the LGU's *sangguniang bayan* sufficed. Nonetheless, the purported confirmation by the *Sangguniang Bayan* of Masiu through Resolution No. 02-24, series of 2007 would not make a difference in the outcome of this case. The assailed appointment of the respondent as the MENRO was still ineffectual for lack of the requisite appropriation ordinance, and for lack of the approval thereof by the *Sangguniang Panlalawigan* of Lanao del Sur pursuant to Section 443 in relation to Section 56 of the LGC.

4. **ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; *DE FACTO* OFFICER; REFERS TO ONE WHO IS IN POSSESSION OF AN OFFICE, AND IS DISCHARGING HIS DUTIES UNDER COLOR OF AUTHORITY, BY WHICH IS MEANT AUTHORITY DERIVED FROM AN APPOINTMENT, HOWEVER IRREGULAR OR INFORMAL, SO THAT THE INCUMBENT IS NOT A MERE VOLUNTEER.—** With the respondent's appointment as the MENRO having been rendered ineffective by the lack of the appropriation ordinance, he was nonetheless a *de facto* officer whose acts were as valid as those performed by a *de jure* officer. A *de facto* officer is one who is in possession of an office, and is discharging his duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent is not a mere volunteer. Consequently, where there is no *de jure* officer, a *de facto* officer who, in good faith, has possession of the office and discharges the duties pertaining thereto, is legally entitled to the emoluments of the office, and may in an appropriate action recover the salary, fees and other compensations attached to the office.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Tingcap T. Mortaba for petitioner in G.R. No. 213331.
Daud R. Calala for respondent.

D E C I S I O N

BERSAMIN, *J.*:

An appointment to a position that is optional under the *Local Government Code* (LGC) but without the corresponding appropriation by the relevant *sanggunian* is ineffectual.

The Case

The petitioners in these consolidated cases assail the decision promulgated on January 23, 2014,[1] whereby the Court of Appeals (CA) reversed the decision of the Civil Service Commission (CSC) and upheld the appointment of the respondent as Municipal Environmental and Natural Resources Officer (MENRO) for the Municipality of Masiu in the Province of Lanao Del Sur,[2] disposing thus:

WHEREFORE, premises considered, the assailed Decision dated 15 March 2012 and the Resolution dated 16 October 2012 are REVERSED and SET ASIDE. The Orders dated 15 February 2010 and 2 June 2010 of the Civil Service Commission-Autonomous Region in Muslim Mindanao (CSC-ARMM) are hereby AFFIRMED. Petitioner Samad M. Unda's appointment as Municipal Environment and Natural Resources Officer is valid and in accordance with law.

SO ORDERED.[3]

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[1] *Rollo* (G.R. No. 213237), pp. 27-35; penned by CA Associate Justice Edgardo T. Lloren with the concurrence of Associate Justice Marie Christine Azcarraga-Jacob and Associate Justice Edward B. Contreras.

[2] *Rollo* (G.R. No. 213331), pp. 79-88.

[3] *Rollo* (G.R. No. 213237), p. 34.

Antecedents

Outgoing Mayor Aminullah D. Arimao of the Municipality of Masiu, Lanao del Norte had appointed respondent Samad M. Unda as the MENRO for the Municipality of Masiu in the Province of Lanao Del Sur on March 8, 2007. After the 2007 local elections, petitioner Nasser P. Pangandaman, Jr. assumed office as the newly-elected Municipal Mayor of Masiu.[4] He soon discovered that the local government unit (LGU) had not enacted any annual budget for the years 2006 and 2007, and had operated on the basis of the re-enacted 2005 annual budget; and that nine municipal employees,[5] including the respondent, had been midnight appointees whose appointments had been based on a non-existing budget. Inasmuch as said appointees were not reporting to work, Mayor Pangandaman ordered their salaries withheld.[6] Later on, he filed a petition for the annulment of the appointments by the Civil Service Commission (CSC),[7] and the case was referred to the CSC Regional Office-Autonomous Region in Muslim Mindanao (CSCRO-ARMM).

On February 15, 2010, the CSCRO-ARMM upheld the respondent's appointment for having satisfied the screening of the Personnel Screening Board (PSB) prior to the election ban.[8]

Dissatisfied, the Municipality of Masiu, represented by Mayor Pangandaman, sought reconsideration, but the motion was denied on June 2, 2010.[9] Thus, the LGU appealed to the CSC.

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[4] *Id*. at 27.

[5] *Id*. at 169 and 173 (the appointees were Naima U. Badarol (Human Resources Assistant), Nadja P. Mardan (Ticket Checker), Soraya M. Sharief (Municipal Accountant), Samad M. Unda (MENRO), Omar Arimao (Driver I) Caris Mamalo (Utility Worker I), Mariam M. Oranggaga (Clerk II), Amerhassan O. Unda (Driver I) and Juaida P. Usman (Utility Worker I).

[6] *Rollo* (G.R. No. 213331), p. 5 (the Municipality of Masiu also alleged that Unda was appointed to a non-vacant position and his appointment was ineffective for lack of attestation within 30 days from issuance).

[7] *Id*. at 58-65.

[8] *Id*. at 66-75.

[9] *Id*. at 76-78.

Ruling of the CSC

On March 15, 2012, the CSC promulgated its decision reversing the CSCRO-ARMM.[10] The CSC disapproved the respondent's appointment because the position of MENRO was only newly created under the 2006 annual budget that had not been approved,[11] and because the respondent had not passed the screening by the PSB.

The LGU and the respondent moved for the partial reconsideration of the decision, but the CSC denied their respective motions on October 16, 2012.[12]

Aggrieved, the respondent appealed to the CA.

Decision of the CA

On January 23, 2014, the CA promulgated its now assailed decision reversing the CSC and reinstating the decision of the CSCRO-ARMM.[13] The CA pointed out that Section 443 and Section 484 of the LGC had created the position of the MENRO, and, as such, the appointment of anyone as the MENRO would not be contingent on the resolution by the LGU, to wit:

> It is an elementary rule in administrative law and the law on public officers that a public office is either created by the Constitution (fundamental law), by law (statute duly enacted by Congress) or by authority of law.
>
> Here, the creation and establishment of the Municipal Environment and Natural Resources Office was made by law under Sections 443 and 484 of the Local Government Code of 1991, *viz*:
>
> > SEC. 443. Officials of the Municipal Government. — (a) a) There shall be in each municipality a municipal mayor, a municipal vice-mayor, *sangguniang bayan* members, a secretary to the sangguniang bayan, a municipal treasurer, a municipal

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[10] *Id*. at 79-88.

[11] *Id*. at 63.

[12] *Id*. at 89-94.

[13] *Id*. at 47-55.

assessor, a municipal accountant, a municipal budget officer, a municipal planning and development coordinator, a municipal engineer/building official, a municipal health officer and a municipal civil registrar.

(b) In addition thereto, the mayor may appoint a municipal administrator, a municipal legal officer, a municipal agriculturist, a **municipal environment and natural resources officer,** a municipal social welfare and development officer, a municipal architect, and a municipal information officer.

x x x x x x x x x

SEC 484. Qualifications, Powers and Duties. — (a) No person shall be appointed **environment and natural resources officer** unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in environment, forestry, agriculture or any related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in environmental and natural resources management, conservation, and utilization, of at least five (5) years in the case of the provincial or city environment and natural resources officer, and three (3) years in the case of the municipal environment and natural resources officer. The appointment of the environment and natural resources officer is optional for provincial, city, and municipal governments.

Notably, this office or position does not only exist in municipalities but also in the cities and provinces. Its creation does not depend on any Resolution issued by a local legislative body such as Resolution No. 29 Series of 2005, but by a law duly enacted by Congress which is the Local Government Code of 1991.[14]

The CA observed that the prohibition against midnight appointments did not extend to the respondent because his appointment had been made 22 days prior to the start of the election ban on March 30, 2007;[15] and that the PSB had screened his application for the position in compliance with CSC

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[14] *Rollo* (G.R. No. 213237), pp. 31-32.

[15] *Rollo* (G.R. No. 213331), p. 52.

Memorandum Circular No. 40 (*Revised Rules on Appointments and Other Personnel Actions*) as borne out by the certification to that effect by its chairman.[16]

On June 20, 2014, the CA denied the motions for reconsideration of the LGU and the CSC.[17]

Hence, the consolidated appeals.

Issues

In G.R. No. 213331, petitioner LGU submits:

I

THE HONORABLE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT THERETOFORE DECIDED BY THE SUPREME COURT, IN HOLDING THAT THE POSITION OF MUNICIPAL AND ENVIRONMENTAL OFFICER OF THE MUNICIPALITY OF MASIU, PROVINCE OF LANAO DEL SUR IS VALIDLY CREATED BASED SOLELY ON THE PROVISIONS OF SECTIONS 443 AND 484 OF THE LOCAL GOVERNMENT CODE AND ITS CREATION DOES NOT DEPEND UPON ANY RESOLUTION ISSUED BY A LOCAL LEGISLATIVE BODY SUCH AS RESOLUTION NO. 29, SERIES OF 2005.

II

THE HONORABLE COURT OF APPEALS HAS DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS WHEREBY A STATUTE IS CONSTRUED AS A WHOLE, AND NOT JUST A PARTICULAR PROVISION THEREOF, BY CONSTRUING SECTIONS 443 AND 484 OF THE LOCAL GOVERNMENT CODE AS SUFFICIENT BASIS FOR THE CREATION OF THE POSITION OF MENRO, IN WILLFUL AND DELIBERATE DISREGARD OF OTHER RELEVANT PROVISIONS GOVERNING THE CREATION, ORGANIZATION, COMPENSATION AND OTHER BENEFITS OF THE OFFICIALS AND PERSONNEL OF LOCAL GOVERNMENT UNITS.[18]

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[16] *Id*. at 53.

[17] *Id*. at 56-57.

[18] *Id*. at 32.

In G.R. No. 213237, petitioner LGU tenders the issue of:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN DECLARING PETITIONER'S APPOINTMENT AS VALID AND IN ACCORDANCE WITH LAW.[19]

The LGU argues that the appointment to the position of the MENRO could not be based solely on Section 443 and Section 484 of the LGC; that the appointment also required a budget or appropriations ordinance, pursuant to Section 443(e) of the LGC, which provides that elective and appointive municipal officials shall receive compensation, allowances and other emoluments based on a law or ordinance, as well as Section 305(a) of the LGC, which mandates that *"no money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law*;"[20] that the position of the MENRO was optional and not automatically institutionalized in every municipality, and, accordingly, there must still be a positive act by the *sangguniang bayan* to create the position and to provide the necessary appropriation for the position;[21] that Section 76 of the LGC empowers the LGU to design and implement its own organizational structure and staffing pattern, and to determine the compensations of its local officials and personnel; and that Section 447 grants to the LGU the power to approve the annual and supplemental budgets for its operations.[22]

On its part, the CSC shares the view of the Municipality of Masiu to the effect that the appointment of the respondent must be supported by the 2006 annual budget. Hence, the CSC contends that the appointment of the respondent was ineffectual

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[19] *Rollo* (G.R. No. 213237), p. 14.

[20] *Rollo* (G.R. No. 213331), pp. 36-37.

[21] *Id*. at 37-38.

[22] *Id*. at 42.

considering that the certification of the municipal budget officer, the joint affidavit of the members of the *Sangguniang Bayan* of Masiu, and the certification from the *Sangguniang Panlalawigan* of Lanao del Sur all showed that the Municipality of Masiu had no approved annual budget for 2006.[23]

Additionally, the CSC points out the lack of concurrence by the majority of the members of the *Sangguniang Bayan* of Masiu as required by Section 443 of the LGC; and that such concurrence of the *Sangguniang Bayan* in relation to the appointment of the "heads of departments and offices" under paragraph (d) of Section 443 of the LGC likewise referred to the officials mentioned in paragraphs (a) and (d) thereof, among them the MENRO.[24]

In refutation, the respondent counters that the LGC created the position of the MENRO; that the LGC validly enacted and adopted an appropriation ordinance (Resolution No. 29, series of 2005); that the *Sangguniang Bayan* of Masiu confirmed his appointment on February 7, 2007 through Resolution No. 02-24, series of 2007 (entitled *A Resolution Confirming the Appointment of Mr. Samad M. Unda as Municipal Environment and Natural Resources Officer-1*);[25] that the letter sent by the Provincial Government of Lanao del Sur could not be relied upon for being partial considering that the then incumbent Provincial Governor was the party-mate of the Representative of the First Congressional District of Lanao del Sur who was the brother of Mayor Pangandaman; that the power of the *Sangguniang Panlalawigan* over appropriation ordinances of the Municipality of Masiu was merely supervisory in character; that Resolution No. 29 dated October 24, 2005[26] could not be collaterally attacked; and that if there was no approved 2006 budget, it would have been improbable to pay the respondent his salaries and benefits for the months of May and June 2007.[27]

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[23] *Rollo* (G.R. No. 213327), pp. 18-19.

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

[25] *Id*. at 498.

[26] *Id*. at 485-492.

[27] *Rollo* (G.R. No. 213331), pp. 271-273.

The issues to be considered and resolved may be stated thusly: (1) Was the respondent validly appointed as the MENRO of the Municipality of Masiu?; and (2) Did the appointment of the respondent as the MENRO require a prior resolution by the *Sangguniang Bayan* creating the position, confirming the appointment, and appropriating funds for the salaries and benefits to be given to the appointee?

Ruling of the Court

The Court **GRANTS** the petitions for review on *certiorari*, and **REVERSES** the CA.

I
Municipal governments have the discretion to appoint their MENROs

A public office is created either by the Constitution, by law, or by authority of law.[28] The legal basis for the appointment of the respondent as the MENRO of the Municipality of Masiu was Section 443 of the LGC, which provides in full:

SECTION 443. Officials of the Municipal Government. —

(a) There shall be in each municipality a municipal mayor, a municipal vice-mayor, *sangguniang bayan* members, a secretary to the sangguniang bayan, municipal treasurer, a municipal assessor, a municipal accountant, a municipal budget officer, a municipal planning and development coordinator, a municipal engineer/building official, a municipal health officer and a municipal civil engineer.

(b) In addition thereto, **the mayor may appoint** a municipal administrator, a municipal legal officer, a municipal agriculturist, **a municipal environment and natural resources officer**, a municipal social welfare and development officer, a municipal architect, and a municipal information officer.

(c) The *sangguniang bayan* may:

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[28] *Malaria Employees and Workers Association of the Philippines, Inc. (MEWAP) v. Romulo*, G.R. No. 160093, July 31, 2007, 528 SCRA 673, 679; citing *Buklod ng Kawaning EIIB v. Zamora*, G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718, 726.

(1) Maintain existing offices not mentioned in subsections (a) and (b) hereof;

(2) Create such other offices as may be necessary to carry out the purposes of the municipal government; or

(3) Consolidate the functions of any office with those of another in the interest of efficiency and economy.

(d) Unless otherwise provided herein, **heads of departments and offices shall be appointed by the municipal mayor with the concurrence of the majority of all the *sangguniang bayan* members, subject to civil service law, rules and regulations.** The *sangguniang bayan* shall act on the appointment within fifteen (15) days from the date of its submission; otherwise, the same shall be deemed confirmed.

(e) **Elective and appointive municipal officials shall receive such compensation, allowances and other emoluments as may be determined by law or ordinance, subject to the budgetary limitations on personal services as prescribed in Title Five, Book II of this Code**: *Provided*, That no increase in compensation of the mayor, vice-mayor, and *sangguniang bayan* members shall take effect until after the expiration of the full term of all the elective local officials approving such increase. (Bold underscoring supplied for emphasis)

Pursuant to the foregoing, there ought to be no question that the appointment of the respondent as the MENRO was but optional on the part of the Municipality of Masiu, and that such appointment required the concurrence of the *Sangguniang Bayan*, as well as the adoption of the appropriation ordinance to fund the payment of his salaries and other emoluments.

The CA opined that Section 443 and Section 484 of the LGC institutionalized the position of MENRO in the LGUs; hence, no resolution of the *Sangguniang Bayan* was required to create the office. The CA was correct in light of paragraphs (a) and (b) of Section 443 of the LGC expressly creating and identifying the public offices of the municipalities.

Even so, the Municipality of Masiu was also justified in construing the appointment of the MENRO as optional on its part. This is based on the usage in paragraph (b) of the term *may*, which means that the Municipal Mayor has been given

the discretion whether or not to appoint the MENRO and the other officers of the municipality listed in the provision. It is a basic postulate of statutory construction that the word *may* means a merely permissive act, and operates to confer upon a party discretion to do or not to do the act.[29] Indeed, the second paragraph of Section 484(a) of the LGC expressly states that the appointment of the MENRO is optional on the part of the LGU.[30]

II

The appointment of the respondent as the MENRO further required the concurrence by the majority of the members of the *Sangguniang Bayan* as well as a validly enacted appropriation ordinance

Section 443 of the LGC expressly includes the position of the MENRO in the municipality. Nonetheless, the provision subjects the appointment of the MENRO to several conditions, namely: (1) the concurrence by the majority of the *sangguniang bayan* as provided in its paragraph (d); and (2) the adoption of an ordinance setting the compensation, allowances and other emoluments conformably with its paragraph (e). The requirement for the appropriation ordinance is consistent with the fundamental principle of fiscal administration enunciated in Section 305 of the LGC that "[n]o money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law."

Evidently, Section 443(b) of the LGC institutionalizes the office of the MENRO in local governments, while Section 443(e) sets the corresponding budgetary mechanism for the establishment of the position. In other words, the LGU must enact an ordinance allocating the budget for the office of the MENRO. Thus, the determination should be made whether or not the Municipality of Masiu enacted an appropriation ordinance for the position of the MENRO to which the respondent was appointed.

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[29] *Capati v. Ocampo*, G.R. No. L-28742, April 30, 1982, 113 SCRA 794, 796.

[30] The second paragraph reads: "The appointment of the environment and natural resources officer is optional for the provincial, city and municipal governments."

The petitioners insist that the *Sangguniang Bayan* of Masiu did not enact an appropriation ordinance for the years 2006 and 2007. On the other hand, the respondent claims that the appropriation for his position was embodied in Resolution No. 29 dated October 24, 2005.

The insistence of the petitioners is fully warranted. The fact that the *Sangguniang Bayan* of Masiu had no appropriation ordinances for the years 2006 and 2007 relative to the position of the MENRO belied the respondent's claim. His reliance on Resolution No. 29 dated October 24, 2005 did not suffice. Under Section 306(b) of the LGC, an *appropriation* is defined as the "authorization made **by ordinance**, directing the payment of goods and services from local government funds under specified conditions or for specific purposes." Also, Section 305 and Section 443(d) of the LGC specifically refer to an **ordinance**, not to a resolution. Thus, the appropriation for the office of the MENRO could have only been through an ordinance.

The adoption of Resolution No. 29 dated October 24, 2005 was inherently inadequate for the purpose. The distinctions between an ordinance and a resolution are significant, and cannot be ignored. The Court has pointed out such distinctions in *Municipality of Paranaque v. V.M. Realty Corporation*,[31] as follows:

> We are not convinced by petitioner's insistence that the terms "resolution" and "ordinance" are synonymous. **A municipal ordinance is different from a resolution. An ordinance is a law, but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter. An ordinance possesses a general and permanent character, but a resolution is temporary in nature.** Additionally, the two are enacted differently — a third reading is necessary for an ordinance, but not for a resolution, unless decided otherwise by a majority of all the Sanggunian members. (Bold underscoring supplied for emphasis)

The text of Resolution No. 29 dated October 24, 2005 reads:

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[31] G.R. No. 127820, July 20, 1998, 292 SCRA 678, 689.

RESOLUTION NO. 29
Series of 2005

A RESOLUTION APPROPRIATING THE AMOUNT OF TWENTY THREE MILLION NINE HUNDRED FORTY FIVE THOUSAND FOUR HUNDRED FORTY SIX (₱23,945,446.00) PESOS AS ANNUAL BUDGET FOR CALENDAR YEAR 2006 AND THE NEWLY CREATED POSITIONS.

WHEREAS, the Honorable members of the *Sangguniang Bayan* has lengthily deliberate the proposed Annual Budget Calendar Year 2006, and after thorough review of the itemized appropriate for Personal Services (PS), Maintenance and Other Operating Expenditures (MOOE) as well as the Capital Outlay (CO) and Non-Office Expenditures as the main body of the proposed annual budget which was prepared and submitted by the Honorable Mayor in compliance with Republic Act No. 7160, otherwise known as the Local Government Code for deliberation.

WHEREAS, the proposed Annual Budget for Calendar Year 2006 was formally presented to the Honorable August Body by the Local Finance Committee, this municipality and after careful analysis and matured deliberation, Honorable Sittie Naura Pangandamun formally put into motion that the proposed Annual Budget for Calendar Year 2006 be approved and it was duly seconded by all member present; it was

RESOLVED, as it hereby Resolved, enacted and adopt Appropriation Ordinance No. 01 series 2005 approving the General Fund Budget for Calendar Year 2006.

BE IT ORDAINED BY THE *Sangguniang Bayan* of this Municipality of Masiu, Lanao del Sur in session assembled that;

Section 1 — Title — This ordinance shall be known as the Appropriation Ordinance No. 01, series 2005.

Section 2 — Scope — The Annual Budget of the Municipal Government of Masiu, Lanao del Sur shall be as follows:

x x x x x x x x x

RESOLVED FURTHER, to furnish copy of this resolution to the Civil Service Commission, City Hall, Marawi City/Lanao del Sur and other concerned offices for information guidance and favorable action.

APPROVED UNANIMOUSLY.

I HEREBY CERTIFY to the correctness of the foregoing resolution.

Prepared by:

(sgd)
SOMERA M. MACADAAG
SB Secretary

ATTESTED:

(sgd)
Hon. USMAN P. URANGGAGA
Vice-Mayor/Presiding Officer

APPROVED:

(sgd)
HON. AMINULLAH D. ARIMAO
Municipal Mayor

As its text indicates, Resolution No. 29 dated October 24, 2005 embodied the sentiment of the members of the *Sanggunian Bayan* of Masiu to support the draft of the proposed appropriation for the LGU. There is no indication that Resolution No. 29 dated October 24, 2005 underwent three readings as required of an ordinance.[32] This was quite evident from the affidavit of Somera Macadaag, the Secretary of the *Sanggunian Bayan* of Masiu at the time, who thereby deposed that on October 24, 2005, Resolution No. 29 "was passed after a thorough discussion and deliberated upon by and among the members of the *Sangguniang Bayan* who were *then* present," thus:

2. That **on October 24 2005, the members of the *Sangguniang Bayan* of the Municipality of Masiu, Lanao del Sur had a regular session** at the Session Hall, Municipal Hall with Usman P. Uranggaga, then Municipal Vice Mayor as the Presiding Officer and attended by the following SB Members, to wit: (1) CAIRODEN S. MOTALIB;

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[32] See Article 107 (c) and (d) of the *Implementing Rules and Regulations of the Local Government Code*.

(2) HADJI SATAR M. SAMPORNA; (3) SITTIE NAURA PANGANDAMUN; (4) MANALAO S. MONTE; (5) MONER CASAD (ABC President); (6) SARIPIE H.R. MACABINTA (Women Sector); (7) USMAN ZAMAN (Agricultural Sector); and (8) USMAN M. NATANGCOP. Absent SB Members were the following: (1) ALINAIR M. PANGANDAMUN; (2) ANUAR P. SALIC; (3) ALIANAMARIE M. MACAALIN, and (4) MAYRANISA S. PANGANDAMUN (SK Federation President);

3. That during said session, **RESOLUTION NO. 29 Series 2005**, A RESOLUTION APPROPRIATING THE AMOUNT OF TWENTY THREE MILLION NINE HUNDRED FORTY FIVE THOUSAND FOUR HUNDRED FORTY SIX (₱23,945,446.00) PESOS AS ANNUAL BUDGET FOR CALENDAR YEAR 2006 AND THE NEWLY CREATED POSITIONS, was passed **after a thorough discussion and deliberation by and among the members of the *Sangguniang Bayan* who were then present.** In the same Resolution, a new position was created, *i.e*. MUNICIPAL ENVIRONMENT AND NATURAL RESOURCES OFFICER;

4. That it is not true that Resolution No. 29, Series of 2005 was not discussed and deliberated upon by the members of the Sangguniang Bayan, **the truth being that it was indeed thoroughly discussed and deliberated upon by the members of the *Sangguniang Bayan* who were then present**, as in fact, they even affixed their respective signatures thereon. Besides, I was then present being the SB Secretary, and witnessed the discussion and deliberation in the body. x x x.[33] (Bold underscoring supplied for emphasis)

Moreover, Section 56 of the LGC instructs that every ordinance enacted by the municipalities shall be forwarded to the *sangguniang panlalawigan* for review and approval in furtherance of the supervisory authority of the latter over municipal governments. Based on the certification[34] issued by Atty. Cosain M. Macarambon, the secretary of the *Sangguniang Panlalawigan* of Lanao del Sur, the LGU of Masiu did not submit its budget for the fiscal year of 2006 to the *Sangguniang Panlalawigan*. Hence, the *Sangguniang Panlalawigan* had no

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[33] *Rollo* (G.R. No. 213327), p. 213.

[34] *Id*. at 51.

opportunity to review and approve Resolution No. 29 dated October 24, 2005.

Lastly, Ms. Ragaintan T. Pangandaman, the municipal budget officer of the LGU of Masiu, certified that there was "no [a]pproved 2006 Annual Budget," and that the "last [a]pproved budget was on 2005 which does not include the MENRO position in the plantilla."[35]

III
Approval by the members of the *Sangguniang Panlalawigan* of the resolution by the *Sangguniang Bayan* confirming the appointment was unnecessary

The respondent insists that his appointment was confirmed by a majority of the members of the *sangguniang bayan* through Resolution No. 02-24, series of 2007;[36] but the CSC contends that the appointment was not confirmed because Resolution No. 02-24, series of 2007 required approval by the *Sangguniang Panlalawigan*.

The CSC was mistaken.[37]

The supervisory function of the *sangguniang panlalawigan* over the enactment of municipal resolutions by the *sangguniang bayan* is limited only to those relating to local development plans and public investment programs formulated by the local development councils. Section 56(a) of the LGC clearly states so, to wit:

> Section 56. *Review of Component City and Municipal Ordinances or Resolutions by the Sangguniang Panlalawigan.*— (a) Within three (3) days after approval, the secretary to the *sangguniang panlungsod* or *sangguniang bayan* shall forward to the *sangguniang panlalawigan* for review, copies of approved ordinances and the resolutions approving the local development plans and public investment programs formulated by the local development councils.

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[35] *Id.* at 53.

[36] *Id.* at 498.

[37] *Id.* at 14-18.

Hence, the approval by the *Sangguniang Panlalawigan* of Resolution No. 02-24, series of 2007 was unnecessary because the confirmation thereby made by the majority of the LGU's *sangguniang bayan* sufficed.

Nonetheless, the purported confirmation by the *Sangguniang Bayan* of Masiu through Resolution No. 02-24, series of 2007 would not make a difference in the outcome of this case. The assailed appointment of the respondent as the MENRO was still ineffectual for lack of the requisite appropriation ordinance, and for lack of the approval thereof by the *Sangguniang Panlalawigan* of Lanao del Sur pursuant to Section 443 in relation to Section 56 of the LGC.

IV

The respondent was a *de facto* officer

With the respondent's appointment as the MENRO having been rendered ineffective by the lack of the appropriation ordinance, he was nonetheless a *de facto* officer whose acts were as valid as those performed by a *de jure* officer. A *de facto* officer is one who is in possession of an office, and is discharging his duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent is not a mere volunteer.[38] Consequently, where there is no *de jure* officer, a *de facto* officer who, in good faith, has possession of the office and discharges the duties pertaining thereto, is legally entitled to the emoluments of the office, and may in an appropriate action recover the salary, fees and other compensations attached to the office.[39]

WHEREFORE, the Court **GRANTS** the petitions for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on January 23, 2014 by the Court of Appeals;

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[38] *Zoleta v. Sandiganbayan (Fourth Division)*, G.R. No. 185224, July 29, 2015, 764 SCRA 110, 120; *Topacio v. Ong*, 574 SCRA 817, 829.

[39] *Arimao v. Taher*, G.R. No. 152651, August 7, 2006, 498 SCRA 74, 91; citing *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1991, 194 SCRA 317, 340.

REINSTATES the decision rendered on March 15, 2012 by the Civil Service Commission; and **ORDERS** the respondent to pay the costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 225065. September 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARMANDO LABRAQUE *a.k.a.* "ARMAN",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT.— There is no reversible error in the factual findings and legal conclusions of the RTC, as affirmed by the CA. Similar to *People v. Alberca*, We rule: Time and again, this Court has held that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe the elusive and incommunicable evidence of witnesses' deportment on the stand while testifying which is denied to the appellate courts. x x x We are, thus, one with the RTC and CA in applying the jurisprudential principle that testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.

2. ID.; ID.; MEDICO-LEGAL REPORT IS NOT INDISPENSABLE TO THE PROSECUTION OF A RAPE CASE.— [E]ven if

We accept as a fact that AAA is no longer a virgin because the deeply-healed lacerations on her hymen was inflicted much earlier than the time of the alleged rape incident, such does not automatically result to Arman's acquittal. Suffice it to say that a medico-legal report is not indispensable to the prosecution of a rape case; it is an evidence that is merely corroborative in nature.

3. CRIMINAL LAW; REVISED PENAL CODE AS AMENDED BY REPUBLIC ACT NO. 8353 IN RELATION TO REPUBLIC ACT NO. 7610; RAPE; CIVIL LIABILITY.— As to the award for exemplary damages, it must be increased from ₱50,000.00 to ₱75,000.00. Consistent with *People v. Jugueta*, the awards for civil indemnity, moral damages, and exemplary damages should be ₱75,000.00 each. The CA correctly imposed interest at the rate of six percent (6%) *per annum* on all monetary awards.

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 May 22, 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 05269, which affirmed with modification the February 8, 2010 Decision[2] of the Regional Trial Court *(RTC)*, Branch 254, Las Piñas City, finding accused-appellant Armando Labraque *a.k.a.* "Arman" *(Arman)* guilty beyond reasonable doubt of the crime of rape[3] committed against AAA, a minor victim.

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[1] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison and Amy C. Lazaro-Javier concurring (*Rollo,* pp. 2-12; CA *rollo,* pp. 120-130).

[2] Penned by Presiding Judge Gloria Butay-Aglugub (CA *rollo,* pp. 28-37, 80-89; Records, pp. 117-126).

[3] Under Article 266-A Paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353 in relation to Section 5 (b) of Republic Act No. 7610.

The Information dated January 28, 2008 alleged:

> That on or about the **26th day of January, 2008**, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs, did then and there willfully, unlawfully and feloniously had carnal knowledge with one [AAA], a twelve (12)-year-old minor, through force, threat or intimidation, against her will and consent by twisting her arms and subjecting her to child abuse thereby debasing, demeaning and degrading her intrinsic worth and dignity as a human being.[4]

In his arraignment, Arman pleaded "Not Guilty."[5] Trial ensued while he was under detention.[6]

The prosecution presented five witnesses: AAA, her mother BBB, *barangay tanods* Edvic Ballescas and Felix Juera, case investigator PO1 Rhona Mea Padojinog, and medico-legal officer Dr. Jesille Baluyut. Only Arman testified for the defense.

AAA testified that she was raped *("kinantot")* by their neighbor Arman on January 26, 2008. She was sitting in a tricycle at the time when Arman approached her and inquired what her problem was. He then asked her to come with him to a place where she would sweep the floor. She agreed. When they arrived at the second floor of a building, he undressed himself and compelled her to remove her garments. Afraid since he was drunk, she did not oppose. He directed her to lie down on the floor and placed himself on top of her while he held her hands. He asked if he could sell her body ("*kung puwede bang ibenta ang katawan ko")*, but she remained silent. He then forcibly inserted his penis into her vagina *("Ipinasok po niya iyong tite niya sa belat ko. Pilit niyang pinasok")*. She shouted "*saklolo"* as she felt the pain in her bleeding vagina. However, an old woman vending at the ground floor exclaimed *"wag kaming maingay kasi nakakabulabog kami."* Moreover, Arman told her to shut up, otherwise, papers would be placed inside her

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[4] Records, p. 1.

[5] *Id*. at 23.

[6] *Id*. at 14.

mouth. After accomplishing the deed, he directed her to put on her clothes. He also got dressed and uttered *"ang sarap."* When she urinated at the comfort room of the second floor, she noticed blood stains in her underwear. After he left, she hurriedly went to her house and reported the incident to BBB. When her parents discussed whether to put Arman in jail, her father asserted, *"Ipakulong natin yan. Sinira niya ang kinabukasan ng anak natin."*

In her testimony before the court, BBB declared that AAA is her 14-year-old daughter and that, as proven by her birth certificate, she was 12 years old when Arman raped her. Around 12:00 p.m. on January 26, 2008, she was at home when AAA asked for her permission to watch television at a neighbor's house. When she returned by 3:00 p.m., she went straight to the comfort room. There was dust on her elbow and she was crying. When probed, AAA surprisingly disclosed, *"kinantot ako ng Tito ni Dave"* at the second floor of an unfinished house near the Christian Habitat. The next day, she went to the *barangay* hall to report the incident. Subsequently, she and the *barangay tanods* proceeded to the house of Dave where they found Arman. Based on what AAA told her, she pointed at him as the person who molested her daughter.

Ballescas testified that while he was on duty as a *barangay tanod* of Talon Uno, Las Piñas, BBB came to their office on January 27, 2008 to inform that AAA was sexually abused by Arman. A report was prepared and entered into the blotter book. Acting upon the order of the desk officer who conducted the inquiry, he, together with BBB and Juera, proceeded to Arman's residence to invite him for some questioning. Arman went with them to the *barangay* hall, where he was pointed by AAA as the one who raped her. In the presence of AAA, BBB, Ballescas, and Juera, he admitted the accusation claiming *"opo, isang beses ko lang po ginalaw."* Thereafter, he was brought to the district hospital to secure a medical certificate and then to the police station for investigation.

The prosecution and the defense agreed to stipulate on the supposed testimony of Juera, to wit:

1. That he is a Barangay Tanod and will corroborate the testimony of Barangay Tanod Edvic Ballescas;
2. That sometime on January 27, 2008 at around 5:30 in the afternoon, their office received an information that accused herein sexually abused private complainant [xxx] and pursuant to said information, he, together with Barangay Tanod Ballescas, went to the house of the accused and invited him to their office and upon arrival to their office, he admitted that he sexually molested the private complainant;
3. That he can identify the Salaysay ng Pagkahuli that he prepared as well as his signature affixed therein; and
4. That he has no personal knowledge on the alleged facts and circumstances surrounding the commission of the offense charged.[7]

Likewise, the testimony of PO1 Padojinog was dispensed with after the prosecution offered and the defense admitted on the following stipulation of facts:

1. that she is a police officer assigned at the Women & Children Protection Desk, Las Piñas City Police Station;
2. that on January 27, 2008 she conducted an investigation and the result of which was reduced into writing;
3. that she could identify the Investigation Report (Exh. "G") she prepared and her signature (Exh. "G-1"); and
4. that she has no personal knowledge on the actual alleged incident.[8]

PCI Baluyut, the Medico-Legal Officer of the Philippine National Police *(PNP)* Crime Laboratory in Camp Crame, Quezon City, was the one who conducted the genital examination of AAA pursuant to the request, dated January 27, 2008, issued by the Officer-in-Charge of the Women's Desk of Las Piñas City Police Station. As shown in her report, she noted the presence in AAA's hymen of a deep-healed laceration or tearing of the mucosa at 4 o'clock position, which was usually caused by a blunt force or penetrating trauma such as an erect penis. During her interview with AAA, the latter admitted that there was a

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[7] *Id*. at 106.

[8] *Id*. at 61.

penile penetration of her vagina. However, it was concluded that "there are no external signs of application of any form of trauma," *i.e.,* no external injuries like contusions or bruises, suffered by AAA.

On the other hand, Arman testified that he was 45 years old, single, and a fisherman residing in Yablong (Jiabong), Samar. In January 2008, he went to Las Piñas, together with his aunt Josie Hernandez, in order to see his sister Argene. He stayed with his cousins only for three days and there was no occasion that he got out of the house. He denied the allegations of AAA. He does not know her or a nephew by the name of Dave or a place called Christian Habitat. The first time he saw AAA was when she was at the videoke bar watching those who were singing. He was at the side of a street when he was arrested on a Sunday sometime in 2008. He did not know the persons who arrested him and they did not tell him why he was being apprehended. He did not talk to them and ask the reason therefor. At the police station, he was informed that somebody filed a complaint for rape against him. He was brought to the hospital where he was subjected to medical examination. After that, he was delivered to the Las Piñas City Prosecutor's Office for inquest proceedings.

On February 8, 2010, Arman was convicted by the RTC. The *fallo* of the Decision reads:

> WHEREFORE, finding accused ARMANDO LABRAQUE a.k.a. "ARMAN" GUILTY beyond reasonable doubt of the crime of Rape, as defined and penalized under Art. 266-A, paragraph 1 of the Revised Penal Code, as amended by R.A. 8353 in relation to Sec. 5 (b) R.A. 7610, the Court hereby sentences him to suffer the penalty of RECLUSION PERPETUA, and to pay the private complainant, AAA, the amount of ₱75,000.00 as civil liability; ₱75,000.00 as moral damages; ₱50,000.00 as exemplary damages, and to pay the costs.
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> SO ORDERED.[9]

For the trial court, AAA's narration of the sexual abuse committed by Arman was reflective of an honest and unrehearsed

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[9] *Id*. at 126; CA *rollo,* pp. 37, 89.

testimony, devoid of any hint of falsity or attempt to fabricate. Her simple and direct manner of describing her ordeal, which was corroborated by the police records and the testimony of the medico-legal officer, was a sign of truthfulness. The pattern of her behavior after the sexual assault was indicative of her resistance to Arman's monstrous acts and the steps she took were but a natural reaction of a rape victim. Her claim of sexual violence is more credible and real, because it is in accord with human experience. On the contrary, Arman's denial that he does not know AAA deserves scant consideration because the latter stated that she knew him and that his denial was not supported by any other evidence.

When the case was elevated to the CA, the appeal was dismissed. The judgment of conviction was sustained because the prosecution was able to establish that Arman had carnal knowledge with AAA against her will through force and intimidation. In reminding that there is no one standard reaction that could be expected from a rape victim, the appellate court noted that lack of resistance on the part of the victim does not make the sexual congress voluntary. In this case, AAA's minority and the physical differences between her and Arman are factors to consider. The alleged inconclusiveness of the medico-legal findings is of no moment, since it is not essential in proving rape cases. There is, likewise, no evidence to show any improper motive on the part of AAA to falsely charge Arman and testify against him. With regard to the penalty imposed, Arman was further ordered to pay legal interest on the civil indemnity and damages awarded to private complainant at the rate of six percent (6%) *per annum* from the date of finality of the Decision until fully paid.

Before Us, both the People, as represented by the Office of the Solicitor General, and Arman, through the Public Attorney's Office, manifested that they would dispense with the filing of a supplemental brief since there are no new issues material to the case that were not elaborated in their briefs filed before the CA.[10]

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[10] *Rollo,* pp. 20-24, 31-34.

The conviction is affirmed.

By and large, accused-appellant attacks AAA's credibility, averring that her testimony is incredulous and contrary to human nature and experience: *First,* despite not knowing Arman who also appeared to be intoxicated at the time, she willingly went with him to sweep or clean an unfinished building. *Second*, she did not attempt to call the attention of the old woman selling her wares at the ground floor. Her shout was even perceived as a natural part of their sexual congress and not a desperate call for help. She likewise did not approach or say anything to the old lady as she made her way out of the building. Instead, she simply went home as if nothing horrifying happened. *Third,* there was no testimony that Arman employed force, threat or intimidation before, during, and after the incident. AAA did not resist or attempt to escape but willingly consented to the copulation and embraced it as an adventure. Although stated in the affidavit and alleged in the Information, the fact that he employed force by twisting her arms was never testified to in open court. And *fourth,* the medico-legal findings show that AAA was clearly no longer in a virgin state given the presence of deeply-healed lacerations on her hymen, the cause of which was inflicted much earlier than the time of the alleged rape incident.

There is no reversible error in the factual findings and legal conclusions of the RTC, as affirmed by the CA. Similar to *People v. Alberca,*[11] We rule:

> Time and again, this Court has held that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe the elusive and incommunicable evidence of witnesses' deportment on the stand while testifying which is denied to the appellate courts. Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or

[11] G.R. No. 217459, June 7, 2017.

disregarded, the reviewing court is generally bound by the former's findings. The rule is even more strictly applied if the appellate court has concurred with the trial court as in this case.

We are, thus, one with the RTC and CA in applying the jurisprudential principle that testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Accused-appellant's imputation of ill-motive to the young victim deserves scant consideration. Indeed, no woman, least of a child, will concoct a story of defloration, allow an examination of her private parts, and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. As found by the RTC and CA, AAA's testimony was candid, spontaneous, and consistent. We find no cogent reason to deviate from such finding.

Besides, as can be gleaned from the records, the assailed findings and ruling were not solely based on AAA's testimony. The testimonies of the other prosecution witnesses, corroborating that of AAA's, were also considered. x x x Thus, while it has been held in the past that the accused in rape cases may be convicted solely on the basis of the victim's testimony which passed the test of credibility, in this case, there is more than sufficient evidence presented to arrive at such conclusion.

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Accused-appellant's argument that AAA's demeanor after the alleged rape incidents was unbelievable and contrary to human experience also could not sway Us. As already settled in jurisprudence, not all victims react the same way. Some people may cry out, some may faint, some may be shocked into insensibility, others may appear to yield to the intrusion. Some may offer strong resistance, while others may be too intimidated to offer any resistance at all. x x x

Lastly, pitted against AAA's clear, convincing, and straightforward testimony, accused-appellant's unsupported denial and alibi cannot prevail.

Denial and alibi are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. And as often stressed, a categorical and positive identification of an accused, without any showing of ill-motive on the part of the witness testifying on the matter, prevails

over denial, which is a negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence.[12]

Further, even if We accept as a fact that AAA is no longer a virgin because the deeply-healed lacerations on her hymen was inflicted much earlier than the time of the alleged rape incident, such does not automatically result to Arman's acquittal. Suffice it to say that a medico-legal report is not indispensable to the prosecution of a rape case; it is an evidence that is merely corroborative in nature.[13]

As to the award for exemplary damages, it must be increased from ₱50,000.00 to ₱75,000.00. Consistent with *People v. Jugueta*,[14] the awards for civil indemnity, moral damages, and exemplary damages should be ₱75,000.00 each. The CA correctly imposed interest at the rate of six percent (6%) *per annum* on all monetary awards.

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the May 22, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05269, finding accused-appellant Armando Labraque *a.k.a.* "Arman" guilty beyond reasonable doubt of the crime of rape and is hereby sentenced to suffer the penalty of *reclusion perpetua*, and to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. Further, six percent (6%) interest *per annum* is imposed on all the amounts awarded reckoned from the date of finality of this Decision until fully paid.

SO ORDERED.

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

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[12] *People v. Alberca, supra.* (Citations omitted)

[13] See *People v. Agudo,* G.R. No. 219615, June 7, 2017.

[14] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

SECOND DIVISION

[G.R. No. 225142. September 13, 2017]

NYK-FIL SHIP MANAGEMENT, INCORPORATED, *petitioner, vs.* **GENER G. DABU,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION; TEN-DAY PERIOD TO APPEAL; THE DECISION OF THE VOLUNTARY ARBITRATOR (VA) SHALL BE FINAL AND EXECUTORY AFTER TEN CALENDAR DAYS FROM RECEIPT OF THE DECISION BY THE PARTIES AND THE APPEAL OF THE VA DECISION TO THE COURT OF APPEALS MUST BE FILED WITHIN TEN DAYS.— [T]he decision of the voluntary arbitrator becomes final and executory after 10 days from receipt thereof. The proper remedy to reverse or modify a voluntary arbitrators' or panel of voluntary arbitrators' decision is to appeal the award or decision via a petition under Rule 43 of the 1997 Rules of Civil Procedure. And under Section 4 of Rule 43, the period to appeal to the CA is 15 days from receipt of the decision. Notwithstanding, since Article 262-A of the Labor Code expressly provides that the award or decision of the voluntary arbitrator shall be final and executory after ten (10) calendar days from receipt of the decision by the parties, the appeal of the VA decision to the CA must be filed within 10 days. x x x In this case, petitioner received the PVA decision on February 9, 2015, and filed the petition for review 15 days after receipt thereof, *i.e.*, on February 24, 2015. The CA, upon respondent's motion for reconsideration, rendered its Amended Decision dated March 3, 2016 dismissing the petition and vacating the earlier decision it made granting the petition. The CA dismissed the petition for being filed out of time x x x. We find no error committed by the CA in dismissing the petition for being filed out of time as the petition was not filed within the 10 day period. Since the timely perfection of an appeal is jurisdictional, the CA has no more authority to act on the appeal filed by petitioner. The CA correctly held that inasmuch as the PVA decision had lapsed into finality, the same may no longer be modified in

any respect. This is so because any amendment or alteration made which substantially affects the final and executory judgment would be null and void for lack of jurisdiction.

2. ID.; ID.; ID.; ID.; CANNOT BE DIMINISHED, INCREASED, OR MODIFIED THROUGH THE RULES OF COURT, IT BEING A SUBSTANTIVE RIGHT.— Article 262-A of the Labor Code provides for a period of ten days to appeal the PVA's decision. The 10-day period to appeal under the Labor Code being a substantive right cannot be diminished, increased, or modified through the Rules of Court. The PHILEC decision merely applies what is stated in the existing law. In fact, as correctly pointed out by the CA, in *Coca Cola Bottlers Philippines, Inc., Sales Force Union -PTGWO-Balais v. Coca Cola Bottlers Philippines, Inc.,* (*Coca Cola*) a 2005 case, we had already affirmed the CA's dismissal of the petition filed with it on the ground that the appeal of the PVA decision was not filed within the 10 day period so that the PVA decision had already attained finality. While there are decisions subsequent to the Coca Cola case stating that a petition for review assailing the PVA decision must be filed within 15 days from receipt of the PVA decision, however, we reiterate in the PHILEC decision, which is the recent decision, that the voluntary arbitrator's decision must be appealed before the CA within 10 calendar days from receipt of the decision as provided in the Labor Code. It bears stressing that the PHILEC case was decided on December 10, 2014, while the petition was filed with the CA only on February 24, 2014, consequently, the PHILEC decision applies to the instant case.

APPEARANCES OF COUNSEL

Retoriano & Olalia-Retoriano for petitioner.
Valmores & Valmores Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court which seeks to set aside the Amended

Decision[1] dated March 3, 2016 and the Resolution[2] dated June 9, 2016 of the Court of Appeals in CA-G.R. SP No. 139266.

The antecedent facts are as follows:

Petitioner NYK-Fil Ship Management, Inc., a local manning agent acting for and in behalf of its foreign principal NYK Ship Management Pte. Ltd. Singapore, hired respondent Gener G. Dabu to work as oiler for nine months on board the vessel M/V Hojin with a monthly basic salary of US$584.00, among others.[3] Their contract of employment was covered by a Collective Bargaining Agreement known as "IBF JSU/AMOSUP-IMMAJ CBA which was effective from January 1, 2012 to December 31, 2014.[4] Respondent underwent a pre-employment medical examination (*PEME*) on March 25, 2013 where he disclosed that he has diabetes mellitus. The doctor who conducted the PEME noted that respondent has diabetes mellitus type 2, controlled with medications.[5]

On April 6, 2013, respondent embarked the vessel and discharged his duty as oiler. On April 8, 2013, he had palpitations, pains all over the body, numbness of hands and legs, lack of sleep and nervousness. On April 10, 2013, he consulted a doctor in Sri Lanka who found him with elevated blood sugar level and was suffering from diabetes mellitus, and declared him unfit for sea duty.[6] He was repatriated to Manila on April 12, 2013.[7] Upon his arrival, he was immediately referred to the company-designated physician at NGC Medical Specialist Clinic,

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justices Priscilla J. Baltazar Padilla and Socorro B. Inting; *rollo,* pp. 49-51A.

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

[3] *Id.* at 95.

[4] *Id.* at 96-140.

[5] *Id.* at 141.

[6] *Id.* at 143.

[7] *Id.* at 144.

Inc. who examined him. Respondent was asked to undergo a series of laboratory tests where the results showed that he has diabetes mellitus, poorly controlled. Respondent had undergone many follow up examinations with corresponding laboratory tests as he continued to complain of palpitations, pains all over his body with easy fatigability, and was prescribed medicines and eventually placed on insulin treatment.[8]

On July 18, 2013, the company-designated physician declared that respondent's diabetes mellitus is not work-related.[9] However, respondent's treatment was continued for a maximum period of 130 days. Respondent continued his follow-up consultations as he still complained of body pains and weakness and was prescribed medicines.[10] On August 22, 2013, the company-designated physician reiterated her findings that respondent's diabetes mellitus is not work-related.[11] Respondent wrote letters to petitioner appealing for the continuation of his treatment since his sickness was work-related taking into account his 23 years of working in petitioner's various vessels.[12]

Respondent then consulted Dr. Efren R. Vicaldo of the Philippine Heart Center who found him suffering from diabetes mellitus, insulin requiring, Impediment Grade VII (41.80%) and declared him permanently unfit to resume work as a seaman in any capacity and his illness is considered work-aggravated/related.[13] He also consulted Dr. Czarina Sheherazade Mae A. Miguel, an Internal Medicine Specialist, whose finding was the same as with Dr. Vicaldo's.[14]

Respondent sought payment of disability benefits, damages and attorney's fees from petitioner, but was denied. He requested

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[8] *Id.* at 145-152.

[9] *Id.* at 153.

[10] *Id.* at 154-158.

[11] *Id.* at 159.

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

[13] *Id.* at 241-242.

[14] *Id.* at 243.

for a grievance proceedings in accordance with the CBA, however, the parties did not reach any settlement. He then filed a notice to arbitrate with the National Conciliation Mediation Board (*NCMB*), and the parties were required to submit their position papers.

On November 28, 2014, the NCMB-Panel of Voluntary Arbitrators (*PVA*) rendered a Decision, the decretal portion of which reads:

> WHEREFORE, ALL THE ABOVE CONSIDERED, a Decision is hereby rendered ORDERING the respondents, jointly and severally, to pay complainant the following amounts:
>
> (1) Disability compensation in the amount of US$60,000.00 or its Peso equivalent at the time of payment plus 12% interest thereon;
>
> (2) Attorney's fees equivalent to ten percent (10%) of the total monetary award.
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[15]

Petitioner received a copy of the PVA decision on February 9, 2015 and filed with the CA a petition for review under Rule 43 of the Rules of Court on February 24, 2015 alleging that the PVA committed serious errors in rendering its decision and sought to enjoin the PVA from enforcing its decision. Respondent filed its Comment and petitioner filed its Reply. The parties also filed their respective memoranda.

On April 27, 2015, the NCMB-PVA issued a Writ of Execution directing the satisfaction of the judgment award of the PVA, which petitioner had complied without prejudice to the outcome of their petition for review.

On September 15, 2015, the CA issued its Decision,[16] the dispositive portion of which reads:

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[15] *Id.* at 543-544.

[16] *Id.* at 543-554.

WHEREFORE, the petition is GRANTED. The assailed Decision of the NCMB-PVA dated November 28, 2014 in AC-971-RCMB-NCR- MVA-020-03-03-2014 is REVERSED and SET ASIDE, and a new one entered DISMISSING respondent Dabu's complaint for lack of merit.[17]

Aggrieved, respondent filed a motion for reconsideration wherein he reiterated his argument raised in his memorandum that the petition should be dismissed for being filed out of time.

On March 3, 2016, the CA issued its Amended Decision, the dispositive portion of which reads:

WHEREFORE, private respondent's motion for reconsideration is GRANTED. Accordingly, this Court's Decision dated September 15, 2015 is hereby RECALLED and SET ASIDE and a new one entered DISMISSING the petition for having been filed out of time.[18]

Petitioner moved for reconsideration, however, the CA denied the same in a Resolution dated June 9, 2016, the decretal portion of which states:

WHEREFORE, petitioner's motion for reconsideration of the Amended Decision dated March 3, 2016 [is] DENIED for lack of merit.[19]

Hence, this petition for review on the following argument, to wit:

The Honorable Court of Appeals committed SERIOUS, REVERSIBLE AND GROSS ERROR IN LAW AND IN FACT in rendering an amended judgment and dismissing the Petitioner's appeal on the ground that it was allegedly filed out of time.[20]

We find no merit in the petition.

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[17] *Id.* at 553.

[18] *Id.* at 51-A.

[19] *Id.* at 54.

[20] *Id.* at 12.

Art. 262-A of the Labor Code provides:

> Art. 262-A. Procedures. x x x
>
> x x x x x x x x x
>
> The award or decision of the Voluntary Arbitrator or Panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

and Section 6, Rule VII of the NCMB Procedural Guidelines in the conduct of voluntary arbitration proceedings provides:

> Section 6. *Finality of Award or Decisions.* — Awards or decisions of voluntary arbitrator become final and executory after ten (10) calendar days from receipt of copies of the award or decision by the parties.

Clearly, the decision of the voluntary arbitrator becomes final and executory after 10 days from receipt thereof. The proper remedy to reverse or modify a voluntary arbitrators' or panel of voluntary arbitrators' decision is to appeal the award or decision via a petition under Rule 43 of the 1997 Rules of Civil Procedure.[21] And under Section 4 of Rule 43, the period to appeal to the CA is 15 days from receipt of the decision. Notwithstanding, since Article 262-A of the Labor Code expressly provides that the award or decision of the voluntary arbitrator shall be final and executory after ten (10) calendar days from receipt of the decision by the parties, the appeal of the VA decision to the CA must be filed within 10 days. In *Philippine Electric Corporation (PHILEC) v. Court of Appeals,*[22] We held:

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[21] *Samahan ng mga Manggagawa sa Hyatt (SAMASAH NUWHRAIN) v. Magsalin,* 665 Phil. 584, 594 (2011), citing *Samahan ng mga Manggagawa sa Hyatt NUWHRAIN v. Bacungan,* 601 Phil. 365, 370 (2009), citing *Luzon Development Bank v. Association of Luzon Development Bank Employees,* 319 Phil. 262, 271 (1995)*; Alcantara, Jr. v. Court of Appeals,* 435 Phil. 395, 403 (2002)*;* and *Nippon Paint Employees Union-Olalia v. Court of Appeals,* 485 Phil. 675, 680 (2004).

[22] 749 Phil. 686 (2014).

It is true that Rule 43, Section 4 of the Rules of Court provides for a 15-day reglementary period for filing an appeal:

> 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.

The 15-day reglementary period has been upheld by this court in a long line of cases. In AMA Computer College-Santiago City, Inc. v. Nacino, Nippon Paint Employees Union-OLALIA v. Court of Appeals, Manila Midtown Hotel v. Borromeo, and Sevilla Trading Company v. Semana, this court denied petitioners' petitions for review on certiorari since petitioners failed to appeal the Voluntary Arbitrator's decision within the 15-day reglementary period under Rule 43. In these cases, the Court of Appeals had no jurisdiction to entertain the appeal assailing the Voluntary Arbitrator's decision.

Despite Rule 43 providing for a 15-day period to appeal, we rule that the Voluntary Arbitrator's decision must be appealed before the Court of Appeals within 10 calendar days from receipt of the decision as provided in the Labor Code.

Appeal is a "statutory privilege," which may be exercised "only in the manner and in accordance with the provisions of the law." "Perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional so that failure to do so rendered the decision final and executory, and deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal."

We ruled that Article 262-A of the Labor Code allows the appeal of decisions rendered by Voluntary Arbitrators. Statute provides that the Voluntary Arbitrator's decision "shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties." Being provided in the

statute, this 10-day period must be complied with; otherwise, no appellate court will have jurisdiction over the appeal. This absurd situation occurs when the decision is appealed on the 11th to 15th day from receipt as allowed under the Rules, but which decision, under the law, has already become final and executory.

Furthermore, under Article VIII, Section 5(5) of the Constitution, this court "shall not diminish, increase, or modify substantive rights" in promulgating rules of procedure in courts. The 10-day period to appeal under the Labor Code being a substantive right, this period cannot be diminished, increased, or modified through the Rules of Court.

In *Shioji v. Harvey*, this court held that the "rules of court, promulgated by authority of law, have the force and effect of law, if not in conflict with positive law." Rules of Court are "subordinate to the statute." In case of conflict between the law and the Rules of Court, "the statute will prevail."

The rule, therefore, is that a Voluntary Arbitrator's award or decision shall be appealed before the Court of Appeals within 10 days from receipt of the award or decision. Should the aggrieved party choose to file a motion for reconsideration with the Voluntary Arbitrator, the motion must be filed within the same 10-day period since a motion for reconsideration is filed "within the period for taking an appeal."[23]

In this case, petitioner received the PVA decision on February 9, 2015, and filed the petition for review 15 days after receipt thereof, *i.e.,* on February 24, 2015. The CA, upon respondent's motion for reconsideration, rendered its Amended Decision dated March 3, 2016 dismissing the petition and vacating the earlier decision it made granting the petition. The CA dismissed the petition for being filed out of time, citing the *PHILEC* case above-quoted. We find no error committed by the CA in dismissing the petition for being filed out of time as the petition was not filed within the 10 day period . Since the timely perfection of an appeal is jurisdictional, the CA has no more authority to act on the appeal filed by petitioner. The CA correctly held

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[23] *Philippine Electric Corporation (PHILEC) v. Court of Appeals, supra,* at 707-710. (Emphasis ours)

that inasmuch as the PVA decision had lapsed into finality, the same may no longer be modified in any respect. This is so because any amendment or alteration made which substantially affects the final and executory judgment would be null and void for lack of jurisdiction.[24]

In *Labao v. Flores, et al.*,[25] We held:

> Needless to stress, a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. All the issues between the parties are deemed resolved and laid to rest once a judgment becomes final and executory; execution of the decision proceeds as a matter of right as vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case. After all, a denial of a petition for being time-barred is tantamount to a decision on the merits. Otherwise, there will be no end to litigation, and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[26]

Petitioner contends that the PHILEC case finds no application in this case since at the time of the filing of the petition, the existing jurisprudence provides for 15 day period to appeal; that due to the proximity of time between the filing of the appeal on February 24, 2015 and the promulgation of the PHILEC decision on December 10, 2014, it had no opportunity to obtain knowledge, either actual or constructive, of the new prescriptive period established therein; and that judicial notice may be taken that the promulgated decision had to undergo a protracted process before it finally reached its finality and can be disseminated or published for public information.

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[24] *SGMC Realty Corporation v. Office of the President,* 393 Phil. 697, 704-705 (2000).

[25] 649 Phil. 213 (2010).

[26] *Labao v. Flores, et al., supra,* at 224-225.

We are not persuaded.

To stress, Article 262-A of the Labor Code provides for a period of ten days to appeal the PVA's decision. The 10-day period to appeal under the Labor Code being a substantive right cannot be diminished, increased, or modified through the Rules of Court.[27] The PHILEC decision merely applies what is stated in the existing law. In fact, as correctly pointed out by the CA, in *Coca Cola Bottlers Philippines, Inc., Sales Force Union - PTGWO-Balais v. Coca Cola Bottlers Philippines, Inc.*,[28] (*Coca Cola*) a 2005 case, we had already affirmed the CA's dismissal of the petition filed with it on the ground that the appeal of the PVA decision was not filed within the 10 day period so that the PVA decision had already attained finality. While there are decisions subsequent to the Coca Cola case stating that a petition for review assailing the PVA decision must be filed within 15 days from receipt of the PVA decision, however, we reiterate in the PHILEC decision, which is the recent decision, that the voluntary arbitrator's decision must be appealed before the CA within 10 calendar days from receipt of the decision as provided in the Labor Code. It bears stressing that the PHILEC case was decided on December 10, 2014, while the petition was filed with the CA only on February 24, 2014, consequently, the PHILEC decision applies to the instant case.

Anent petitioner's allegation that he had not obtained knowledge of the prescriptive period stated in the PHILEC decision because of the proximity of time from its promulgation to the filing of the petition with the CA, there was no proof presented that the decision had not yet been published in the court's website at the time of the filing of the petition with the CA.

As the PVA decision is already final and executory when petitioner filed the petition with the CA, the CA correctly dismissed the petition since it has no more appellate jurisdiction

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[27] *Philippine Electric Corporation (PHILEC) v. Court of Appeals, supra* note 22, at 709-710.

[28] 502 Phil. 749 (2005).

to review the decision. In *Aliviado, et al. v. Procter and Gamble Phils, Inc.*,[29] We held:

> The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law. The Supreme Court reiterated that the doctrine of immutability of final judgment is adhered to by necessity notwithstanding occasional errors that may result thereby, since litigations must somehow come to an end for otherwise, it would "be even more intolerable than the wrong and injustice it is designed to correct."

WHEREFORE, the petition for review is **DENIED**. The Amended Decision dated March 3, 2016 and the Resolution dated June 9, 2016 of the Court of Appeals in CA G.R. SP No. 139266 are hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 228112. September 13, 2017]

SPOUSES ROSALINO R. REYES, JR. and SYLVIA S. REYES, *petitioners, vs.* **SPOUSES HERBERT BUN HONG G. CHUNG and WIENNA T. CHUNG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING, DEFINED; THE TEST TO DETERMINE WHETHER A

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[29] 665 Phil. 542, 551 (2011). (Resolution)

PARTY VIOLATED THE RULE AGAINST FORUM SHOPPING IS WHETHER THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT, OR WHETHER A FINAL JUDGMENT IN ONE CASE WILL AMOUNT TO *RES JUDICATA* IN ANOTHER.— [F]orum shopping exists when a party avails himself 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 courts. The test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. Simply put, when *litis pendentia* or *res judicat*a does not exist, neither can forum shopping exist.

2. **ID.; ID.; *LITIS PENDENTIA*; REQUISITES.—** The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

3. **ID.; ID.; JUDGMENTS; *RES JUDICATA*; ELEMENTS.—** [T]he elements of *res judicata,* also known as bar by prior judgment, are: (a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and causes of action.

4. **ID.; ID.; EXECUTION OF JUDGMENTS; WRIT OF POSSESSION; WHEN ISSUED.—** A writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment. It may be issued under the following instances: (1) in land registration proceedings under Section 17 of Act 496; (2) in a judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (3) **in an extrajudicial foreclosure of a real estate mortgage under**

Section 7 of Act No. 3135, as amended; and (4) in execution sales (last paragraph of Section 33, Rule 39 of the Rules of Court).

5. MERCANTILE LAW; ACT NO. 3135 (REAL ESTATE MORTGAGE LAW); EXTRAJUDICIAL FORECLOSURE OF REAL PROPERTY; WRIT OF POSSESSION; THE REGIONAL TRIAL COURT HAS A MINISTERIAL DUTY TO ISSUE A WRIT OF POSSESSION TO THE NEW OWNER UPON A MERE *EX PARTE* MOTION.— In an extrajudicial foreclosure of real property, the purchaser becomes the absolute owner thereof if no redemption is made within one year from the registration of the certificate of sale by those entitled to redeem. Being the absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, not the least of which is possession, or *jus possidendi*. Possession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership, after consolidation of title, the purchaser in a foreclosure sale may demand possession as a matter of right. Thus, Section 7 of Act No. 3135, as amended, imposes upon the RTC a ministerial duty to issue a writ of possession to the new owner upon a mere *ex parte* motion.

6. ID.; ID.; ID.; ID.; THE ISSUANCE THEREOF IN FAVOR OF A SUBSEQUENT PURCHASER MUST BE MADE ONLY AFTER HEARING AND AFTER DETERMINING THAT THE SUBJECT PROPERTY IS STILL IN THE POSSESSION OF THE MORTGAGOR.— In the case under consideration, the original right to file a Petition for Issuance of Writ of Possession belonged to EIBI, being the mortgagee-- purchaser at the extrajudicial foreclosure sale. But, instead of seeking the issuance of a writ of possession, it sold the subject property to LNC, which, in turn, sold the same to the respondents. As such, by the sale, the respondents became the new owners of the subject property and were vested with all the rights and interests of their predecessors EIBI and LNC, including the right to the possession of the property. Undoubtedly, the respondents can apply for the issuance of a writ of possession even though they were not the purchasers at the foreclosure proceedings. However, unlike the original mortgagee-purchaser, the respondents' right to apply for the issuance of a writ of possession is circumscribed and cannot be made *ex parte*; the

issuance of a writ of possession in favor of a subsequent purchaser must be made only "after hearing and after determining that the subject property is still in the possession of the mortgagor."

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres Ibarra Sison & Damaso for petitioners.

Zamora Poblador Vazquez & Bretaña for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

Sought to be set aside in this Petition for Review on *Certiorari*[1] is the November 7, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 102760. The assailed decision dismissed the appeal filed by the petitioners and upheld the September 20, 2013 Decision of the Regional Trial Court of Quezon City, Branch 226 (RTC-Br. 226) in LRC Case No. Q-13-02781, which granted the respondents' "*Ex Parte* Petition for the Issuance of Writ of Possession under Act No. 3135," as well as the January 20, 2014[3] and April 28, 2014[4] Resolutions of the same court.

Antecedents

Reviewed, the records yield the following relevant facts:

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 34-49. Penned by Associate Justice Carmelita Salandanan Manahan with Associate Justices Japar B. Dimaampao and Franchito N. Diamante, concurring.

[3] *Id*. at 98-101. Penned by Presiding Judge Manuel B. Sta. Cruz, Jr.. In the Court of Appeals Decision dated November 7, 2016, the date stated was January **10**, 2014 but the correct date is January **20**, 2014, as evidenced by the copy of the Order itself that was attached in the *Rollo*.

[4] *Id*. at 103-105.

Petitioners spouses Rosalino Jr. and Sylvia Reyes obtained from Export and Industry Bank, Inc. (EIBI), formerly Urban Bank, Inc., a loan secured by a Deed of Real Estate Mortgage on a 1,202.60 square-meter lot at No. 59 Maranaw St., La Vista, Pansol, Quezon City (subject property). The subject property was registered in petitioners' name under Transfer Certificate of Title (TCT) No. RT-98958 (281043).

When the petitioners defaulted in the payment of their loan obligation, the subject property was extrajudicially foreclosed and sold at public auction, with EIBI as the highest bidder. The corresponding Certificate of Sale was then issued and registered with the Registry of Deeds.[5]

After the petitioners' failure to redeem the subject property within the one-year redemption period, the title thereto was consolidated in EIBI's name. The certificate of title in the petitioners' names was accordingly cancelled and a new certificate of title was issued to EIBI. Later, EIBI sold the subject property to LNC (SPV-AMC) Corporation (LNC). Thus, the certificate of title in the name of EIBI was likewise cancelled and a new one in the name of LNC was issued.[6]

In turn, by a Deed of Absolute Sale dated May 8, 2012 and a Deed of Assignment dated May 11, 2012, LNC sold and assigned to respondents spouses Herbert Bun Hong and Wienna Chung the subject property. Consequently, LNC's certificate of title was cancelled, and in lieu thereof, a new title, *i.e.*, TCT No. 004-2012005446, was issued in the respondents' names.

To acquire possession of the subject property, the respondents made several demands[7] on the petitioners to vacate the same and surrender its possession. The demands, however, went unheeded. Thus, on August 28, 2012, the respondents lodged a Complaint for Ejectment against the petitioners before the

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[5] *Id*. at 35.

[6] *Id*. at 35-36.

[7] The final demand was made on June 29, 2012; *id*. at 36.

Metropolitan Trial Court (MeTC) of Quezon City, Branch 42, docketed as Civil Case No. 41580.

However, in a Decision dated April 11, 2013, the Complaint for Ejectment was dismissed for insufficiency of evidence. The dismissal was appealed by the respondents to RTC-Quezon City, Branch 223 (RTC-Br. 223).[8]

Pending resolution of the appeal, the respondents filed on August 28, 2013 an "*Ex-Parte* Petition for Issuance of Writ of Possession under Act No. 3135" before the RTC-Br. 226, docketed as LRC Case No. Q13-02781. The RTC-Br. 226 found the petition sufficient both in form and in substance, setting it for hearing on September 13, 2012 and directing the respondents to appear and show cause why the petition should be granted.[9]

The following day, or on August 29, 2013, the respondents withdrew their appeal before RTC-Br. 223. The trial court allowed the withdrawal per its Order dated September 4, 2013.[10]

Thereafter, in its **September 20, 2013 Decision**, RTC-Br. 226 granted the respondents' *Ex-Parte* Petition for Issuance of Writ of Possession. Accordingly, a notice to vacate addressed to the petitioners and a writ of possession directing the sheriff to place the respondents in possession of the subject property were issued on September 24, 2013.

Nonetheless, upon the service of the writ of possession and the notice to vacate on the petitioners, the latter refused to sign them. Several efforts to implement the writ were made thereafter, but all to no avail.[11]

Thus, on September 26, 2013, the respondents filed an "Urgent *Ex-Parte* Omnibus Motion" praying for the issuance of a Break Open Order to properly implement the writ of possession and to place them in possession of the subject property.

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[8] *Id*.

[9] *Id*. at 36-37.

[10] *Id*. at 37.

[11] *Id*. at 37-38.

Conversely, the petitioners filed on October 22, 2013 a "Verified Urgent Motion to Quash Writ of Possession" (Motion to Quash) anchored on the following grounds: (1) RTC-Br. 226 has no jurisdiction to issue the writ of possession since the respondents did not purchase the subject property *via* a foreclosure sale under Act No. 3135; and (2) the respondents committed forum shopping.[12]

In a **Resolution dated January 20, 2014**, RTC-Br. 226 denied the motions of both parties for lack of merit and sufficient basis. In denying the petitioners' Motion to Quash, RTC-Br. 226 held that the respondents could validly file the "*Ex-Parte* Petition for Issuance of Writ of Possession" as, by their purchase of the subject property, the respondents were deemed to have stepped into the shoes of their predecessors-in-interest and so acquired all the rights of the previous owner/buyer in the foreclosure sale, including the right to ask for the writ of possession.

The trial court also declared that the respondents were not guilty of forum shopping in filing their "*Ex-Parte* Petition for Issuance of Writ of Possession" because an application for writ of possession is a mere incident in the registration proceeding. Though denominated as a "petition," in substance, it is but a mere "motion," so the lower court held.

In the meantime, in refusing to issue a Break Open Order in favor of the respondents, the trial court explained that the motion lacked sufficient basis considering that the petitioners were still occupying the subject property.[13]

On February 25, 2014, the respondents, once again, moved for the issuance of a Break Open Order in view of the Sheriff's Report stating that the gate of the subject property was already padlocked as of February 21, 2014. The petitioners, on the other hand, moved for the reconsideration of the January 20, 2014 Resolution and opposed the respondents' second motion praying for the issuance of a Break Open Order.[14]

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[12] *Id.* at 38.

[13] *Id.* at 100-101.

[14] *Id.* at 39-40.

In a **Resolution dated April 28, 2014**, the RTC-Br. 226 denied the petitioners' motion for reconsideration but granted the respondents' "Motion for Issuance of a Break Open Order." In so ruling, the trial court clarified that since the subject property was no longer occupied and its gate was already padlocked when the sheriff attempted to serve the notice to vacate on the petitioners, it is but proper to issue a Break Open Order to properly execute the writ of possession.[15]

On May 13, 2014, the writ of possession was finally implemented per the Certificate of Turn-Over of Possession issued by the sheriff.[16]

The Court of Appeals' Decision

On appeal to the CA, the appellate court in the now assailed November 7, 2016 Decision sustained the September 20, 2013 Decision and the January 20, 2014 and April 28, 2014 Resolutions of RTC-Br. 226.

In finding for the herein respondents, the CA pronounced that they rightfully availed of the remedy of applying for the issuance of a writ of possession even though they were not the actual purchaser in the foreclosure sale. For such an instance is very well sanctioned by Section 33, Rule 39 of the Rules of Court. By this rule, the remedy of a writ of possession of the mortgagee-purchaser to acquire possession of the foreclosed property from the mortgagor is made available to a subsequent purchaser.

The CA went on to stress that the respondents acquired the absolute right, as purchaser and successors-in-interest of EIBI and LNC, to apply for the issuance of a writ of possession pursuant to Section 7 of Act No. 3135,[17] as amended. As the owner of the subject property, the respondents are entitled to its possession as a matter of right. Moreover, the issuance of

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[15] *Id*. at 104.

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

[17] *Infra*.

a writ of possession over the subject property by the court is merely a ministerial function.

The CA similarly upheld the finding that the respondents committed no forum shopping. The appellate court took note of the fact that the respondents withdrew their appeal of the dismissal of their Complaint for Ejectment lodged with RTC-Br. 223 to avail of the proper legal remedy of filing an application for writ of possession, which was raffled to RTC-Br. 226.[18]

Still unfazed, the petitioners elevated the case to this Court advancing substantially the same arguments they broached before the lower courts.

In their Comment,[19] the respondents countered that they did not commit forum shopping and were entitled to the Writ of Possession and the Break Open Order issued by RTC-Br. 226.

The Issues

Stripped of non-essentials, the issues for the Court's resolution can be narrowed down to the following: (1) whether the respondents committed forum shopping; and (2) whether the trial court was correct in issuing the Writ of Possession and Break Open Order in the respondents' favour.

Our Ruling

Primarily, the parties' respective positions and arguments are a mere rehash of those presented and already passed upon by the CA. There being no cogent, much less compelling, reason to depart from the findings and conclusions made by the appellate court, the Court denies the petition.

No forum shopping

As aptly held by the lower courts, the respondents did not commit forum shopping in filing a Complaint for Ejectment and later an *Ex-Parte* Petition for Issuance of Writ of Possession.

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[18] *Id.* at 44-47.

[19] Dated April 6, 2017.

It has been jurisprudentially established that forum shopping exists when a party avails himself 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 courts.

The test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. Simply put, when *litis pendentia* or *res judicata* does not exist, neither can forum shopping exist.

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. On the other hand, the elements of *res judicata*, also known as bar by prior judgment, are: (a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and causes of action.[20]

In the case at bench, even granting that the MeTC ruling had attained finality, still, such will not amount to *res judicata* in the subsequent *Ex-Parte* Petition for Issuance of Writ of Possession, there being no identity or similarity of action between the two proceedings with the latter being just an incident in the transfer of title.[21]

In the same way, there is no forum shopping based on *litis pendentia.* In this we quote the pronouncements of the CA, thus:

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[20] *Dayot v. Shell Chemical Company (Phils.), Inc.*, G.R. No. 156542, June 26, 2007, 525 SCRA 535, 545-546.

[21] *Topacio v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 157644, November 17, 2010, 635 SCRA 50, 69.

x x x In the present case, one (1) day after the filing of the *Ex-Parte Petition for Issuance of Writ of Possession* on August 28, 2013, [herein respondents] **already moved for the withdrawal of their appeal** with [RTC-Quezon City], Branch 223 assailing the April 11, 2013 Decision in their Ejectment case of the MeTC. [Respondents] were still within their rights in availing themselves of the proper remedy, *i.e.*, to file the *Ex-Parte Petition* having realized their erroneous resort to the wrong remedy. Furthermore, forum shopping presupposes the availment of two or more simultaneous remedies, not to successive ones arising out of an error that may have been committed in good faith. Raising a matter to the correct forum employing the wrong mode or remedy, and then later resorting to the correct one, does not make an instance of forum shopping. **The remedies of appeal and *Ex-Parte Petition for Issuance of Writ of Possession* are mutually exclusive and not alternative or successive**.[22] (Emphases supplied.)

Since neither *litis pendentia* nor *res judicata* exists in the present case, respondents may not be held liable for forum shopping.

The remedy of a writ of possession is available to a subsequent purchaser but only after hearing

This Court also upholds the respondents' right to a writ of possession even though they were not the purchasers in the foreclosure proceedings.

A writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment.[23] It may be issued under the following instances: (1) in land registration proceedings under Section 17 of Act 496; (2) in a judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (3) **in an extrajudicial foreclosure of a real estate mortgage under**

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[22] *Rollo*, p. 46.

[23] *LZK Holdings and Development Corp. v. Planters Development Bank*, G.R. No. 167998, April 27, 2007, 522 SCRA 731, 738.

Section 7 of Act No. 3135, as amended; and (4) in execution sales (last paragraph of Section 33, Rule 39 of the Rules of Court).[24]

In an extrajudicial foreclosure of real property, the purchaser becomes the absolute owner thereof if no redemption is made within one year from the registration of the certificate of sale by those entitled to redeem. Being the absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428[25] of the New Civil Code, not the least of which is possession, or *jus possidendi*.

Possession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership, after consolidation of title, the purchaser in a foreclosure sale may demand possession as a matter of right. Thus, Section 7 of Act No. 3135, as amended, imposes upon the RTC a ministerial duty to issue a writ of possession to the new owner upon a mere *ex parte* motion.[26]

Section 7 of Act No. 3135, as amended, provides:

Section 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings

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[24] *Philippine National Bank v. Sanao Marketing Corporation*, G.R. No. 153951, July 29, 2005, 465 SCRA 287, 299-300.

[25] Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

[26] *Gallent, Sr. v. Velasquez*, G.R. Nos. 203949 and 205071, April 6, 2016, 788 SCRA 518, 530.

in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

In the case under consideration, the original right to file a Petition for Issuance of Writ of Possession belonged to EIBI, being the mortgagee-purchaser at the extrajudicial foreclosure sale. But, instead of seeking the issuance of a writ of possession, it sold the subject property to LNC, which, in turn, sold the same to the respondents. As such, by the sale, the respondents became the new owners of the subject property and were vested with all the rights and interests of their predecessors EIBI and LNC, including the right to the possession of the property. Undoubtedly, the respondents can apply for the issuance of a writ of possession even though they were not the purchasers at the foreclosure proceedings.

However, unlike the original mortgagee-purchaser, the respondents' right to apply for the issuance of a writ of possession is circumscribed and cannot be made *ex parte*; the issuance of a writ of possession in favor of a subsequent purchaser must be made only "after hearing and after determining that the subject property is still in the possession of the mortgagor." This Court elucidated in the seminal case of *Okabe v. Saturnino*, thus:

It is but logical that Section 33, Rule 39 of the Rules of Court be applied to cases involving extrajudicially foreclosed properties that were bought by a purchaser and later sold to third-party-purchasers after the lapse of the redemption period. **The remedy of a writ of possession, a remedy that is available to the mortgagee-purchaser to acquire possession of the foreclosed property from the mortgagor, is made available to a subsequent purchaser, but only after hearing and after determining that the subject property is still in the possession of the mortgagor**. Unlike if the purchaser

is the mortgagee or a third party during the redemption period, a writ of possession may issue *ex-parte* or without hearing. **In other words, if the purchaser is a third party who acquired the property after the redemption period, a hearing must be conducted to determine whether possession over the subject property is still with the mortgagor** or is already in the possession of a third party holding the same adversely to the defaulting debtor or mortgagor. **If the property is not in the possession of the mortgagor, a writ of possession could thus be issued**.[27] (Emphasis and underscoring supplied.)

It was error, therefore, for RTC-Br. 226 to issue the writ of possession to the respondents *ex parte*. The writ deviated from the ruling in *Okabe*.

Nonetheless, the Court is loath to abate the writ of possession already issued and implemented as the petitioners were eventually given their day in court and allowed to file their Motion to Quash. As this Court held in *Javate v. Tiotuico*,[28] 'to be heard' does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings. Furthermore, there is no quibble that the petitioners remained in possession of the subject property prior to the issuance of the writ of possession in favor of the respondents. Thus, to annul the writ of possession and require the respondents to petition for another one will only prolong the proceedings. Worse, such will unduly deny the respondents, as subsequent purchasers of the subject property, the possession of the property they now own. Withal, it must not be forgotten that the right to possess a property merely follows the right of ownership, and it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession thereof.[29]

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[27] G.R. No. 196040, August 26, 2014, 733 SCRA 652. See also *Gallent v. Velasquez*, *id*.

[28] *Javate v. Tiotuico*, G.R. No. 187606, March 9, 2015, 752 SCRA 128, 133.

[29] *Edralin v. Philippine Veterans Bank*, G.R. No. 168523, March 9, 2011, 645 SCRA 75, 90.

Lastly, the issue on whether or not the issuance of the writ of possession is proper and regular has been rendered moot and academic as petitioners voluntarily relinquish possession of the subject premises.

With respect to the aptness of the issuance of a Break Open Order to implement the writ of possession, this Court agrees with the trial court that:

> x x x since it was not disputed that no one was in the [subject property] and the "**gate was padlocked**" at the time the Sheriff went there to serve the Notice to Vacate. Needless to state, the character of the writ carries with it the authority to break open the [subject] property, if the Sheriff could not otherwise execute its command.[30]

WHEREFORE, the instant Petition is **DENIED.** The Court of Appeals' November 7, 2016 Decision in CA-G.R. CV No. 102760 is **AFFIRMED**.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

FIRST DIVISION

[G.R. No. 194189. September 14, 2017]

RAFAEL ALMEDA, EMERLINA ALMEDA-LIRIO, ALODIA ALMEDA-TAN, LETICIA ALMEDA-MAGNO, NORMA ALMEDA-MATIAS and PUBLIO TIBI, *petitioners, vs.* **HEIRS OF PONCIANO ALMEDA in substitution of original defendant PONCIANO ALMEDA, INTESTATE ESTATE OF SPOUSES PONCIANO and EUFEMIA PEREZ-ALMEDA and THE REGISTER OF DEEDS OF TAGAYTAY CITY,** *respondents*, **CESAR SANTOS, ROSANA SANTOS,**

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[30] *Rollo*, p. 149.

NORMAN SANTOS and FERDINAND SANTOS, *unwilling plaintiffs/petitioners.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIMITED TO REVIEWING OR REVERSING ERRORS OF LAW ALLEGEDLY COMMITTED BY THE APPELLATE COURT, AS THE SUPREME COURT IS NOT A TRIER OF FACTS.— Well-entrenched is the rule that the Supreme Court's role in a petition under Rule 45 is limited to reviewing or reversing errors of law allegedly committed by the appellate court. Equally settled is the rule that this Court is not a trier of facts. In *Spouses Villaceran, et al. v. De Guzman,* the Court held that: The issue of the genuineness of a deed of sale is essentially a question of fact. It is settled that this Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is especially true where the trial court's factual findings are adopted and affirmed by the CA as in the present case. Factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal.

2. ID.; EVIDENCE; PRESUMPTIONS AND BURDEN OF PROOF; A NOTARIZED DOCUMENT HAS IN ITS FAVOR THE PRESUMPTION OF REGULARITY, AND IT CARRIES THE EVIDENTIARY WEIGHT CONFERRED UPON IT WITH RESPECT TO ITS DUE EXECUTION; ABSENT EVIDENCE OF FALSITY SO CLEAR, STRONG AND CONVINCING, AND NOT MERELY PREPONDERANT, THE PRESUMPTION OF REGULARITY MUST BE UPHELD.— A notarized Deed of Absolute Sale has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face. Thus, a notarial document must be sustained in full force and effect so long as he who impugns it does not present strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects. Absent evidence of falsity so clear, strong and convincing, and not merely preponderant, the presumption of regularity must be upheld. The burden of proof to overcome the presumption

of due execution of a notarial document lies on the party contesting the same.

3. ID.; ID.; ID.; FORGERY CANNOT BE PRESUMED, BUT MUST BE PROVED BY CLEAR, POSITIVE AND CONVINCING EVIDENCE, AND THE BURDEN OF PROOF LIES ON THE PARTY ALLEGING FORGERY.— [A]s a rule, forgery cannot be presumed. An allegation of forgery must be proved by clear, positive and convincing evidence, and the burden of proof lies on the party alleging forgery. Since petitioners are assailing the genuineness of the 1978 Deed, they evidently have the burden of making out a clear-cut case that the questioned document is bogus. Both the trial and appellate courts concluded that petitioners failed to discharge this burden. We agree. The Complaint, at the outset, did not allege in definite terms that Venancio and Leonila's signatures on the 1978 Deed were forged. x x x. Likewise, Emerlina's testimony, upon which petitioners' case was built, is unclear and uncertain as to the supposed forgery. x x x. [S]he conceded to having two alternative answers to the question of forgery: first, that Venancio and Leonila did not sign the document, and second, that it is possible that they signed it but without knowing the consequences of their action. The uncertainty in petitioners' stance, as echoed in Emerlina's testimony, clearly militates against their claim of forgery.

4. ID.; ID.; ID.; ID.; SELF-SERVING STATEMENTS ARE INADEQUATE TO ESTABLISH ONE'S CLAIMS, AS PROOF MUST BE PRESENTED TO SUPPORT THE SAME.— It is undeniable that Emerlina stands to benefit from a judgment annulling the 1978 Deed. Her testimony denying the validity of the sale, having been made by a party who has an interest in the outcome of the case, is not as reliable as written or documentary evidence. Moreover, self-serving statements are inadequate to establish one's claims. Proof must be presented to support the same.

5. ID.; ID.; ID.; ID.; CRITERIA TO ESTABLISH FORGERY; ALLEGATION OF FORGERY NOT PROVED IN CASE AT BAR.— To establish forgery, the extent, kind and significance of the variation in the standard and disputed signatures must be demonstrated; it must be proved that the variation is due to the operation of a different personality and not merely an expected and inevitable variation found in the

genuine writing of the same writer; and it should be shown that the resemblance is a result of a more or less skillful imitation and not merely a habitual and characteristic resemblance which naturally appears in a genuine writing. Emerlina's uncorroborated testimony failed to demonstrate, based on the foregoing criteria, that the questioned signatures were forgeries. Indeed, petitioners failed to present the requisite proof of falsity and forgery of the notarized 1978 Deed to overcome the presumption of regularity and due execution.

6. ID.; ID.; ID.; AUTHENTICATION AND PROOF OF DOCUMENTS; HANDWRITING, HOW PROVED; THE COURT, BY ITSELF, IS AUTHORIZED TO MAKE A COMPARISON OF THE DISPUTED HANDWRITING 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; PETITIONERS FAILED TO OVERCOME THE PRESUMPTION OF VALIDITY IN FAVOR OF A NOTARIZED DOCUMENT, AS THE APPARENT DISSIMILARITIES IN THE SIGNATURES ARE OVERSHADOWED BY THE STRIKING SIMILARITIES.— Section 22, Rule 132 of the Rules of Court explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting 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. Petitioners assert that the 1976 Power of Attorney executed in favor of Ponciano, which bore the true and genuine signatures of Venancio and Leonila, could have been used as basis for comparison with the questioned signatures to determine their authenticity. Comparing these two sets of signatures, the Court finds prominent similarities as to indicate the habitual and characteristic writing of Venancio and Leonila. Leonila's signature on the 1978 Deed, in particular, appears almost the same as her signature on the 1976 Power of Attorney. Venancio's signature on the 1978 Deed was not as smooth as his signature on the 1976 Power of Attorney, but the similarities in the angles and slants cannot be ignored. To support their claim of forgery, petitioners described the questioned signatures as *"wiri-wiri,"* or containing "wild strokes." The Court, however, does not find such wild strokes in the questioned signatures. Leonila's was nearly as smooth as her signature on the 1976 Power of Attorney.

Venancio's signature gives the impression that it had been affixed by a less than steady but determined hand, and though not as fluid as his previous signature, reveals the characteristic imprint of his handwriting. Indeed, the resemblance in the questioned and standard signatures are more prominent or pronounced than the apparent variance which could be attributed to the signatories' old age. In fine, the apparent dissimilarities in the signatures are overshadowed by the striking similarities and, therefore, fail to overcome the presumption of validity in favor of a notarized document.

7. CIVIL LAW; CIVIL CODE; CONTRACTS; THE LAW PRESUMES THAT EVERY PERSON IS FULLY COMPETENT TO ENTER INTO A CONTRACT, AND THE PARTY CLAIMING ABSENCE OF CAPACITY TO CONTRACT HAS THE BURDEN OF PROOF AND DISCHARGING THIS BURDEN REQUIRES THAT CLEAR AND CONVINCING EVIDENCE BE ADDUCED.— "The law presumes that every person is fully competent to enter into a contract until satisfactory proof to the contrary is presented." The party claiming absence of capacity to contract has the burden of proof and discharging this burden requires that **clear and convincing evidence** be adduced. Petitioners have not satisfactorily shown that their parents' mental faculties were impaired as to deprive them of reason or hinder them from freely exercising their own will or from comprehending the provisions of the sale in favor of Ponciano.

8. ID.; ID.; ID.; ID.; MERE FORGETFULNESS WITHOUT EVIDENCE THAT THE SAME HAS REMOVED FROM A PERSON THE ABILITY TO INTELLIGENTLY AND FIRMLY PROTECT HIS PROPERTY RIGHTS, WILL NOT BY ITSELF, INCAPACITATE A PERSON FROM ENTERING INTO CONTRACTS.— Mere forgetfulness, however, without evidence that the same has removed from a person the ability to intelligently and firmly protect his property rights, will not by itself incapacitate a person from entering into contracts. In *Mendezona v. Ozamiz,* the Court affirmed a vendor's capacity to contract despite a doctor's revelation that the former was afflicted with certain infirmities and was, at times, forgetful.

9. ID.; ID.; ID.; ID.; A PERSON IS NOT INCAPACITATED TO ENTER INTO A CONTRACT MERELY BECAUSE

OF ADVANCED YEARS OR BY REASON OF PHYSICAL INFIRMITIES, UNLESS SUCH AGE AND INFIRMITIES IMPAIR HIS MENTAL FACULTIES TO THE EXTENT THAT HE IS UNABLE TO PROPERLY, INTELLIGENTLY AND FAIRLY UNDERSTAND THE PROVISIONS OF SAID CONTRACT, OR TO PROTECT HIS PROPERTY RIGHTS.— [P]etitioners' claim that Venancio and Leonila were forgetful and at times sickly was not even supported by medical evidence. It was based solely on Emerlina's testimony, which failed to demonstrate that Venancio and Leonila's mental state had prevented them from freely giving their consent to the 1978 Deed or from understanding the nature and effects of their disposition. It is settled that a person is not incapacitated to enter into a contract merely because of advanced years or by reason of physical infirmities, unless such age and infirmities impair his mental faculties to the extent that he is unable to properly, intelligently and fairly understand the provisions of said contract, or to protect his property rights.

10. ID.; ID.; ID.; ID.; A PERSON IS PRESUMED TO BE OF SOUND MIND AT ANY PARTICULAR TIME AND THE CONDITION IS PRESUMED TO EXIST, IN THE ABSENCE OF PROOF TO THE CONTRARY.— "A person is presumed to be of sound mind at any particular time and the condition is presumed to exist, in the absence of proof to the contrary." In this case, petitioners failed to discharge their burden of proving, by clear and convincing evidence, that their parents were mentally incompetent to execute the 1978 Deed in favor of Ponciano.

11. ID.; ID.; ID.; ID.; UNDUE INFLUENCE THAT VITIATED A PARTY'S CONSENT MUST BE ESTABLISHED BY FULL, CLEAR AND CONVINCING EVIDENCE; OTHERWISE, THE LATTER'S PRESUMED CONSENT TO THE CONTRACT PREVAILS.— There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice." Other than petitioners' general allegation that Ponciano unduly took advantage of his being the eldest child and his close relationship with their parents, no other circumstance or evidence has been presented to show how Ponciano exerted his undue influence or how Venancio and Leonila were thereby deprived of the freedom to exercise sufficient judgment in selling the subject properties to Ponciano. "[U]ndue influence that

vitiated a party's consent must be established by full, clear and convincing evidence, otherwise, the latter's presumed consent to the contract prevails."

12. ID.; ID.; ID.; SIMULATED CONTRACT; SIMULATION, DEFINED; REQUISITES; DISTINGUISHED FROM FORGERY.— Forgery suggests that no consent was given to the transaction, while simulation indicates a mutual agreement albeit to deceive third persons. Simulation has been defined as the declaration of a fictitious will, made deliberately by mutual agreement of the parties, in order to produce the appearances of a juridical act which does not exist or is different from that which was really executed, for the purpose of deceiving third persons. Accordingly, simulation exists when: (a) there is an outward declaration of will different from the will of the parties; (b) the false appearance was intended by mutual agreement of the parties; and (c) their purpose is to deceive third persons. None of the foregoing requisites have been shown to exist in this case.

13. ID.; ID.; ID.; ID.; A DULY EXECUTED CONTRACT ENJOYS THE PRESUMPTION OF VALIDITY, AND THE PARTY ASSAILING ITS REGULARITY HAS THE BURDEN TO PROVE ITS SIMULATION.— A contract or conduct apparently honest and lawful must be treated as such until it is shown to be otherwise by either positive or circumstantial evidence. A duly executed contract enjoys the presumption of validity, and the party assailing its regularity has the burden to prove its simulation. Indeed, it is settled that notarized documents carry the presumption of due execution, lending truth to the statements therein contained and to the authenticity of the signatures thereto affixed. Petitioners have failed to adduce the requisite clear and convincing evidence to overturn this presumption.

14. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES NOT RAISED IN THE COURT *A QUO* CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL IN THE SUPREME COURT WITHOUT VIOLATING THE BASIC RULES OF FAIR PLAY, JUSTICE AND DUE PROCESS.— "It is well-settled that issues not raised in the court *a quo* cannot be raised for the first time on appeal in the Supreme Court without violating the basic rules of fair play, justice and due process." Due process dictates that when a party who adopts

a certain theory upon which the case is tried and decided by the lower court, he should not be allowed to change his theory on appeal. The reviewing court will not consider a theory of the case which has not been brought to the lower court's attention; a new theory cannot be raised for the first time at such late stage. Thus, We cannot bend backwards to examine the issue belatedly raised by petitioners at this late stage in the proceedings.

15. ID.; EVIDENCE; PRESUMPTIONS AND BURDEN OF PROOF; A DEFECTIVE ACKNOWLEDGMENT MERELY STRIPS THE DOCUMENT OF ITS PUBLIC CHARACTER AND REDUCES IT TO A PRIVATE INSTRUMENT, BUT IT REMAINS INCUMBENT UPON PETITIONERS TO PROVE, BY PREPONDERANCE OF EVIDENCE, THEIR ALLEGATION THAT THE DEED OF SALE WAS FORGED EVEN THOUGH THAT DOCUMENT NO LONGER ENJOYS ANY SIGNIFICANTLY WEIGHTED PRESUMPTION AS TO ITS VALIDITY.— Granting the Acknowledgment was defective, the same will merely strip the document of its public character and reduce it to a private instrument. It remains incumbent upon petitioners to prove, by preponderance of evidence, their allegation that the deed of sale was forged even though that document no longer enjoys any significantly weighted presumption as to its validity. The Court has explained "preponderance of evidence" thus: "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." Preponderance of evidence is a phrase which, in the last analysis, means *probability of the truth.* It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

16. ID.; ID.; ID.; IF THE PLAINTIFF, UPON WHOM RESTS THE BURDEN OF PROVING HIS CAUSE OF ACTION, FAILS TO SHOW IN A SATISFACTORY MANNER FACTS ON WHICH HE BASES HIS CLAIM, THE DEFENDANT IS UNDER NO OBLIGATION TO PROVE HIS EXCEPTION OR DEFENSE.— Petitioners have argued that their evidence is of greater weight since private respondents did not at all present any evidence, particularly, to prove the notarization of the 1978 Deed and the genuineness of their

parents' signatures thereon. We are not convinced. Time and again, this Court has ruled that: In civil cases, **it is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence. The parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent. This rule holds true especially when the latter has had no opportunity to present evidence** because of a default order. Needless to say, **the extent of the relief that may be granted can only be so much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133.** The same principle applies here where private respondents were considered to have waived the presentation of their evidence at trial. *"Ei incumbit probatio qui dicit, non qui negat.* He who asserts, not he who denies, must prove." "We have consistently applied the ancient rule that if the plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner facts on which he bases his claim, the defendant is under no obligation to prove his exception or defense."

17. ID.; ID.; ID.; A PARTY'S EVIDENCE MUST STAND ON ITS OWN MERIT AND MUST BE SCRUTINIZED FOR VERACITY AND PROBATIVE VALUE; IT IS NOT RENDERED CONCLUSIVE SIMPLY BECAUSE IT WAS NOT MET WITH EVIDENCE FROM THE DEFENSE.— [P]etitioners' evidence must stand on its own merit and must be scrutinized for veracity and probative value. It is not rendered conclusive simply because it was not met with evidence from the defense. Section 1, Rule 133 of the Revised Rules of Court states how preponderance of evidence is determined, *viz:* In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider **all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which [they] are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility** so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. Considering all the circumstances of this case and all evidence adduced in support of the complaint, We find that even by the

standard of preponderance of evidence, petitioners have failed to establish the alleged simulation or forgery of the 1978 Deed.

APPEARANCES OF COUNSEL

Jacob and Associates for petitioners.

V.y. Eleazar and Associates for respondents Elenita, Susan, Edwin, Wenilda, Marlon and Carolyn all surnamed "Almeda."

Valdez & Valdez Law Office for respondents Florecita A. Datoc and Romel P. Almeda.

Romel Hermosura Fontanilla, collaborating counsel for respondents Elenita Almeda-Cervantes, Susan Almeda-Alcazar, Florecita Almeda-Datoc, Edwin P. Almeda, Wenilda Almeda-Diaz, Marlon P. Almeda and Carolyn Almeda-Santos.

Rivera Santos & Maranan for respondent Alan P. Almeda.

D E C I S I O N

TIJAM, *J.*:

This Petition for Review on *Certiorari*[1] assails the May 25, 2010 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 86953, denying Rafael Almeda (Rafael), Emerlina Almeda-Lirio (Emerlina), Alodia Almeda-Tan (Alodia), Leticia Almeda-Magno (Leticia), Norma Almeda-Matias (Norma) and Publio Tibi's (Publio) (collectively, the petitioners) appeal from the Order[3] dated September 2, 2004 of the Regional Trial Court (RTC) of Tagaytay City, Branch 18, in Civil Case No. TG-1643, which dismissed their Complaint for Nullity of Contracts, Partition of Properties and Reconveyance of Title with Damages, and the CA Resolution[4] dated October 13, 2010 denying petitioners' Motion for Reconsideration.

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[1] *Rollo,* pp. 13-36.

[2] Penned by Associate Justice Michael P. Elbinias, concurred in by Associate Justices Remedios A. Salazar-Fernando and Celia C. Librea-Leagogo; *id*. at 38-47.

[3] Penned by Assisting Judge Reuben P. De La Cruz; *id*. at 164-172.

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

The Facts

Spouses Venancio Almeda (Venancio) and Leonila Laurel-Almeda (Leonila) were the parents of nine children: Ponciano L. Almeda (Ponciano), Rafael, Emerlina, Alodia, Leticia, Norma, Benjamin Almeda and Severina Almeda-Santos (Severina) and Rosalina Almeda-Tibi (Rosalina), Publio's deceased wife.[5]

On May 19, 1976, a Power of Attorney[6] was executed by Venancio and Leonila, who were then 80 and 81 years old respectively,[7] granting Ponciano, among others, the authority to sell the parcels of land covered by Original Certificate of Title (OCT) Nos. O-197 and O-443 of the Office of the Register of Deeds for Tagaytay City, which Leonila inherited[8] from her parents.

OCT Nos. O-197 and O-443 were registered in the name of "Leonila L. Almeda married to Venancio Almeda." OCT No. O-197[9] embraced four (4) parcels of land with an aggregate area of 95,205 square meters more or less, to wit: Lot 10 (48,512 sq m), Lot 17 (37,931 sq m), Lot 30 (8,047 sq m) and Lot 32 (715 sq m); and OCT No. O-443[10] covered Lot 9 measuring 33,946 sq m, more or less.

Venancio died at the age of 90 on February 27, 1985; Leonila died eight years later on April 3, 1993, aged 97.[11] Within the year of Leonila's death on April 17, 1993,[12] Rafael, Emerlina, Alodia, Leticia and Norma filed a notice of adverse claim with the Register of Deeds of Tagaytay City over their parents' properties.[13]

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[5] *Id*. at 17, 39, 169 and 222-223.

[6] *Id*. at 75.

[7] *Id*. at 17 and 166.

[8] *Id*. at 102, 166 and 257.

[9] *Id*. at 77-82.

[10] *Id*. at 83-86.

[11] *Id*. at 16, 39, 169, and 224.

[12] *Id*. at 135.

[13] *Id*. at 167 and 225.

On October 10, 1996, a Complaint for Nullity of Contracts, Partition of Properties and Reconveyance of Titles with Damages,[14] docketed as Civil Case No. TG-1643, was filed before the RTC of Tagaytay City by the petitioners against Ponciano and his wife Eufemia Perez Almeda (Eufemia) and the Register of Deeds of Tagaytay City, with Severina's surviving spouse, Cesar Santos and children, Rosana, Norman and Ferdinand, as unwilling plaintiffs.[15] Petitioners alleged that the parties were the only heirs of the late spouses Venancio and Leonila who died without leaving any will and without any legal obligation.[16]

In support of their Complaint, petitioners claimed that Ponciano, taking advantage of his being the eldest child and his close relationship with their parents, caused the simulation and forgery of the following documents:[17]

> (1) Deed of Absolute Sale dated June 9, 1976, over Lot 30 under OCT No. O-197, executed by Ponciano as Venancio and Leonila's attorney-in-fact, in favor of Julian Y. Pabiloña, Virginia Go, Gemma Tan Ongking, Arthur C. Chua and Lee Hiong Wee (Pabiloña, et al.), for the price of ₱160,940.00;[18] and
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> (2) Deed of Absolute Sale dated October 3, 1978, executed by Venancio and Leonila in favor of Ponciano, over the remaining lots under OCT No. O-197 and Lot 9 under OCT No. O-443, and over Lots 6, 4 and 9-A with a total area 71,520 sq m which then had no technical description, for the total consideration of ₱704,243.77.[19]

By virtue of the aforesaid Deeds of Absolute Sale, OCT Nos. O-197 and O-443 were cancelled, the former with respect only

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[14] *Id.* at 40, 119-126, and 164.

[15] *Id.* at 40.

[16] *Id.* at 120.

[17] *Id.* at 121 and 164.

[18] *Id.* at 87-88.

[19] *Id.* at 102-106.

to Lots 10 and 17. Resultantly, Transfer Certificate of Title (TCT) Nos. T-15125, T-24806, T-24807, T-24808 and T-24809,[20] all of the Registry of Deeds for Tagaytay City, were issued to Ponciano,[21] while TCT No. T-10330 of the same Registry[22] was issued to Julian Y. Pabiloña, Virginia Go, Gemma Tan Ongking, Arthur C. Chua and Lee Hiong Wee.[23]

According to petitioners, their parents did not sign the October 3, 1978 Deed of Absolute Sale (1978 Deed) in favor of Ponciano and their signatures may have been forged. They also averred that their parents did not receive due consideration for the transaction, and if Ponciano succeeded in making them sign said 1978 Deed, they did so without knowledge of its import. Petitioners, however, would not claim rights and interest legally transferred to third parties.[24]

Petitioners further alleged that Ponciano withheld from them the existence of the 1978 Deed in his favor, and when they learned of it and demanded partition, Ponciano merely promised to cause the same at a proper time. When petitioners could no longer wait, they filed their notice of adverse claim with the Register of Deeds.[25]

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[20] Records show that Transfer Certificate of Title (TCT) No. T-15125 was issued over Lots 10 and 17. When Lot 10 was subsequently subdivided, TCT No. T-15125 was cancelled and TCT Nos. T-24806, T-24807, T-24808 and T-24809 were issued over the subdivided lots. TCT No. T-24806 was cancelled by virtue of a Deed of Absolute Sale dated May 25, 1992 in favor of Cariño & Sons Agri-Development Corp. Records also show that TCT No. 15126 was issued in lieu of OCT No. O-443. *Id*. at 77-86, 107-114 and 117-118.

[21] *Id*. at 40 and 169-170.

[22] Records show that TCT No. T-10330 was subsequently cancelled by reason of a 1977 Deed of Sale in favor of Nenita Chua So. TCT No. 12406 was subsequently issued over the same land in the names of Julian Y. Pabiloña, Virginia Go, Gemma Tan Ongking, Arthur C. Chua and Nenita Chua So. TCT No. T-12406 was in turn cancelled by virtue of a 1992 Deed of Absolute Sale in favor of Cityland, Inc. *Id*. at 89-90 and 115-116.

[23] *Id*. at 169-170

[24] *Id*. at 122.

[25] *Id*.

Petitioners, thus, prayed that the 1978 Deed in favor of Ponciano be declared null and void; that OCT No. O-197 be partitioned among the heirs of Venancio and Leonila; that the derivative titles obtained by Ponciano under his name be reconveyed to petitioners; that the Register of Deeds for Tagaytay City be ordered to cancel said derivative titles and to restore title to the property in the name of Venancio and Leonila; that the unwilling plaintiffs be ordered to share in the expenses of the suit; and that Ponciano and his wife be ordered to pay moral and exemplary damages, attorney's fees and the costs of litigation.[26]

In their Answer,[27] Ponciano and his wife, Eufemia, denied that the 1978 Deed was simulated or forged, asserting its genuineness and execution for valuable consideration from which some of the petitioners, including Rafael, received substantial pecuniary benefits. They asserted that Ponciano no longer participated in the division of the estate of Venancio and Leonila whose assets amounted to millions of pesos. They accused petitioners of not coming to court with clean hands, claiming the latter may have themselves resorted to falsification of documents to transfer said assets in their names and subsequently to other persons. Ponciano and Eufemia also averred that petitioners were guilty of laches.

Ponciano died on October 16, 1997 and was substituted by his wife and children.[28]

Petitioners presented the lone testimony of Emerlina.[29] After Ponciano's heirs/substitutes (private respondents) failed to present their evidence despite several opportunities given them, the RTC considered the case submitted for decision.[30]

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[26] *Id*. at 124-125.

[27] *Id*. at 156-160.

[28] Elenita P. Cervantes, Susana Almeda-Alcazar, Laurence P. Almeda, Florecita Almeda-Datoc, Romel P. Almeda, Edwin P. Almeda, Wenilda Almeda-Diaz, Marlon P. Almeda, Alan P. Almeda and Carolyn Almeda-Santos. *Id*. at 226.

[29] *Id*. at 166.

[30] *Id*. at 162-163 and 169.

In the course of the trial, two other documents figured in the dispute, which petitioners likewise impugned, showing:

> (1) an Agreement to Sell[31] dated November 9, 1976 whereby Venancio and Leonila agreed to sell to Ponciano the parcels of land covered by OCT Nos. O-197 and O-443, as well as Lots 6, 4 and 9-A, for the total price of ₱1 Million with ₱200,000.00 as down payment and the balance payable in one year without interest; and
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> (2) a Deed of Sale with Mortgage[32] (Deed with Mortgage) dated November 11, 1977, which expressly superseded the Agreement to Sell dated November 9, 1976, whereby Venancio and Leonila sold to Ponciano the parcels of land covered by OCT Nos. 0-197 and 0-443, as well as Lots 6, 4 and 9-A, for ₱1 Million, with the payment of the ₱700,000.00 balance secured by the said properties. This Deed wih Mortgage was expressly superseded by the 1978 Deed in favor of Ponciano.

On September 2, 2004, the RTC issued an Order[33] dismissing petitioners' complaint. The dispositive portion of the order reads:

> WHEREFORE, premises considered, the same is hereby ordered DISMISSED.
>
> SO ORDERED.[34]

The RTC held that the questioned documents, having been notarized and executed in the presence of two instrumental witnesses, enjoy the presumption of regularity, and petitioners failed to overcome this presumption by clear and convincing evidence. It stressed that petitioners failed to present any proof of simulation or forgery of the subject documents.

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[31] *Id*. at 91-95.

[32] *Id*. at 96-101.

[33] *Id*. at 164-172.

[34] *Id*. at 172.

In an Order[35] dated November 29, 2005, the RTC denied petitioners' Motion for Reconsideration.

Petitioners brought the case to the CA on appeal which was denied in the assailed Decision[36] dated May 25, 2010, the dispositive portion of which reads:

IN VIEW OF ALL THESE, the Appeal is **DENIED.** The Order *a quo* is **AFFIRMED.**

SO ORDERED.[37]

The CA held that petitioners failed to discharge their burden of proving the purported forgery with clear and convincing evidence. The CA stressed that such evidence was especially needed in this case given that the assailed documents, being notarized, enjoy the presumption of regularity and of due execution and authenticity. The CA noted that petitioners merely relied on Emerlina's testimony that the questioned signatures were forged.[38]

The CA further stressed that mere variance in the genuine and disputed signatures is not proof of forgery.[39] To establish forgery, said the appellate court, presentation of documents bearing the genuine signatures of Venancio and Leonila was required, for comparison with the alleged false signatures.[40] The CA held that petitioners' failure to submit such documents was fatal as it was necessary for petitioners to show not only the material differences between the signatures, but also (1) the extent, kind and significance of the variation; (2) that the variation was due to the operation of a different personality and not merely

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[35] *Id*. at 181.

[36] *Id*. at 38-47.

[37] *Id*. at 46.

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

[39] *Rivera v. Turiano,* 546 Phil. 495, 498 (2007).

[40] *Jimenez v. Commission on Ecumenical Mission, United Presbyterian Church, USA,* 432 Phil. 895, 909 (2002).

an expected and inevitable variation found in the genuine writing of the same writer; and (3) that the resemblance was the result of a more or less skillful imitation and not merely a habitual and characteristic resemblance which naturally appears in a genuine writing.[41]

Petitioners' Motion for Reconsideration[42] was subsequently denied in the Resolution[43] dated October 13, 2010.

Dissatisfied with the outcome of its appeal, petitioners filed the instant petition, asserting that the CA's ruling was contrary to the evidence, the law and existing jurisprudence.

The Court's Ruling

The petition lacks merit.

Factual findings of the RTC, as affirmed by the CA, deserve a high degree of respect

Well-entrenched is the rule that the Supreme Court's role in a petition under Rule 45 is limited to reviewing or reversing errors of law allegedly committed by the appellate court.[44] Equally settled is the rule that this Court is not a trier of facts.[45]

In *Spouses Villaceran, et al. v. De Guzman,*[46] the Court held that:

> The issue of the genuineness of a deed of sale is essentially a question of fact. It is settled that this Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is especially true where the trial court's factual findings are adopted and affirmed by the CA as in the present case. Factual

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[41] *Rivera v. Turiano, supra* note 39, at 502.

[42] *Rollo,* pp. 51-61.

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

[44] *Ceballos v. Intestate Estate of the Late Mercado,* 474 Phil. 363, 372 (2004).

[45] See *Sps. Bernales v. Heirs of Julian Sambaan,* 624 Phil. 88, 97 (2010).

[46] 682 Phil. 426 (2012).

findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal.[47]

At any rate, to remove any doubt as to the correctness of the assailed ruling, We have examined the records and, nonetheless, reached the same conclusion.[48]

Notarized documents enjoy the presumption of regularity

A notarized Deed of Absolute Sale has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution.[49] It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face.[50] Thus, a notarial document must be sustained in full force and effect so long as he who impugns it does not present strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects.[51]

Absent evidence of falsity so clear, strong and convincing, and not merely preponderant, the presumption of regularity must be upheld.[52] The burden of proof to overcome the presumption of due execution of a notarial document lies on the party contesting the same.[53]

Forgery is not presumed

Furthermore, as a rule, forgery cannot be presumed.[54] An a1legation of forgery must be proved by clear, positive and

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[47] *Id*. at 436.

[48] *Sps. Bernales v. Heirs of Julian Sambaan, supra* note 45, at 98.

[49] *Dr. Yason v. Arciaga,* 490 Phil. 338, 352 (2005), citing *Mendezona v. Ozamiz,* 426 Phil. 888, 903 (2002).

[50] *Mendezona v. Ozamiz, supra* note 49, at 903-904.

[51] *Dr. Yason v. Arciaga, supra* note 49.

[52] *Pan Pacific Industrial Sales Co, Inc. v. CA,* 517 Phil. 380, 388-389 (2006); *Ladignon v. CA,* 390 Phil. 1161, 1169 (2000).

[53] *Pan Pacific Industrial Sales Co., Inc. v. CA, supra* note at 389.

[54] *Ladignon v. CA, supra* note 52, at 1169.

convincing evidence, and the burden of proof lies on the party alleging forgery.[55]

Petitioners failed to overcome the presumption of due execution

Since petitioners are assailing the genuineness of the 1978 Deed, they evidently have the burden of making out a clear-cut case that the questioned document is bogus.[56] Both the trial and appellate courts concluded that petitioners failed to discharge this burden. We agree.

The Complaint, at the outset, did not allege in definite terms that Venancio and Leonila's signatures on the 1978 Deed were forged. It stated:

VIII

That [petitioners'] parents did not sign said documents of sale purportedly to transfer rights, titles and interest in favor of defendants, and, in fact their signatures thereon **may have been forged**, and, that they did not receive due consideration thereof, and, said documents are merely simulated **if ever defendant [Ponciano] succeeded in making them [sign] the same without knowledge of the import thereof**, likewise, in making them appear as having executed and affixed their signatures on said controversial documents although the transactions were inexistent.[57] (Emphasis ours)

Likewise, Emerlina's testimony, upon which petitioners' case was built, is unclear and uncertain as to the supposed forgery. Emerlina testified that the vendors' signatures appearing on the 1978 Deed did not belong to her parents, Venancio and Leonila.[58] Subsequently, however, she testified that if the latter did affix their signatures, they did not know what they signed.[59] Still further to her testimony, Emerlina declared that she could

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[55] *Id.*, *Pan Pacific Industrial Sales Co., Inc. v. CA, supra* note 52, at 389.

[56] *Pan Pacific Industrial Sales Co., Inc. v. CA, supra* note 52, at 389.

[57] *Rollo,* p. 122.

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

[59] *Id.* at 324.

not say if the signatures indeed belonged to her parents.[60] Eventually, she conceded to having two alternative answers to the question of forgery: first, that Venancio and Leonila did not sign the document, and second, that it is possible that they signed it but without knowing the consequences of their action.[61]

The uncertainty in petitioners' stance, as echoed in Emerlina's testimony, clearly militates against their claim of forgery.

Furthermore, it is undeniable that Emerlina stands to benefit from a judgment annulling the 1978 Deed. Her testimony denying the validity of the sale, having been made by a party who has an interest in the outcome of the case, is not as reliable as written or documentary evidence. Moreover, self-serving statements are inadequate to establish one's claims. Proof must be presented to support the same.[62]

To establish forgery, the extent, kind and significance of the variation in the standard and disputed signatures must be demonstrated; it must be proved that the variation is due to the operation of a different personality and not merely an expected and inevitable variation found in the genuine writing of the same writer; and it should be shown that the resemblance is a result of a more or less skillful imitation and not merely a habitual and characteristic resemblance which naturally appears in a genuine writing.[63] Emerlina's uncorroborated testimony failed to demonstrate, based on the foregoing criteria, that the questioned signatures were forgeries.

Indeed, petitioners failed to present the requisite proof of falsity and forgery of the notarized 1978 Deed to overcome the presumption of regularity and due execution.

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[60] *Id*. at 325.

[61] *Id*.

[62] *Ceballos v. Intestate Estate of the Late Mercado, supra* note 44, at 377.

[63] *Manzano, Jr. v. Garcia,* 677 Phil. 376, 385 (2011), citing *Rivera v. Turiano, supra* note 39, at 502, *Ladignon v. CA, supra* note 52, at 1171.

Visual comparison of the questioned and admittedly genuine signatures reveal prominent similarities

Section 22, Rule 132 of the Rules of Court explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting 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.[64]

Petitioners assert that the 1976 Power of Attorney[65] executed in favor of Ponciano, which bore the true and genuine signatures of Venancio and Leonila, could have been used as basis for comparison with the questioned signatures to determine their authenticity.[66]

Comparing these two sets of signatures, the Court finds prominent similarities as to indicate the habitual and characteristic writing of Venancio and Leonila. Leonila's signature on the 1978 Deed, in particular, appears almost the same as her signature on the 1976 Power of Attorney. Venancio's signature on the 1978 Deed was not as smooth as his signature on the 1976 Power of Attorney, but the similarities in the angles and slants cannot be ignored.

To support their claim of forgery, petitioners described the questioned signatures as *"wiri-wiri,"* or containing "wild strokes."[67] The Court, however, does not find such wild strokes in the questioned signatures. Leonila's was nearly as smooth as her signature on the 1976 Power of Attorney. Venancio's signature gives the impression that it had been affixed by a less than steady but determined hand, and though not as fluid as his previous signature, reveals the characteristic imprint of

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[64] *Manzano, Jr. v. Garcia, supra* note 63, at 384, citing *Sps. Estavio v. Dr. Jaranilla,* 462 Phil. 723, 733 (2003) and *Pontaoe, et al. v. Pontaoe, et al.,* 575 Phil. 283, 292 (2008).

[65] *Rollo,* pp. 75-76.

[66] *Id.* at 27.

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

his handwriting. Indeed, the resemblance in the questioned and standard signatures are more prominent or pronounced than the apparent variance which could be attributed to the signatories' old age.

In fine, the apparent dissimilarities in the signatures are overshadowed by the striking similarities and, therefore, fail to overcome the presumption of validity in favor of a notarized document.[68]

Presumption of competence was not adequately refuted

"The law presumes that every person is fully competent to enter into a contract until satisfactory proof to the contrary is presented."[69] The party claiming absence of capacity to contract has the burden of proof and discharging this burden requires that **clear and convincing evidence** be adduced.[70]

Petitioners have not satisfactorily shown that their parents' mental faculties were impaired as to deprive them of reason or hinder them from freely exercising their own will or from comprehending the provisions of the sale in favor of Ponciano.

Petitioners assert that their parents were *"uliyanin"* or forgetful, of advanced age and "at times" sickly during the time of the execution of the 1978 Deed in favor of Ponciano.[71]

Mere forgetfulness, however, without evidence that the same has removed from a person the ability to intelligently and firmly protect his property rights, will not by itself incapacitate a person from entering into contracts.

In *Mendezona v. Ozamiz,*[72] the Court affirmed a vendor's capacity to contract despite a doctor's revelation that the former

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[68] *Ceballos v. Intestate Estate of the Late Mercado, supra* note 44, at 373.

[69] *Dr. Yason v. Arciaga, supra* note 49, at 346.

[70] *Id*.

[71] *Rollo,* pp. 167, 176, 191, 192 and 195.

[72] *Supra* note 49.

was afflicted with certain infirmities and was, at times, forgetful, holding that:

> The revelation of Dr. Faith Go did not also shed light on the mental capacity of Carmen Ozamiz on the relevant day — April 28, 1989 when the Deed of Absolute Sale was executed and notarized. **At best, she merely revealed that Carmen Ozamiz was suffering from certain infirmities in her body and at times, she was forgetful, but there was no categorical statement that Carmen Ozamiz succumbed to what respondents suggest as her alleged "second childhood"** as early as 1987. The petitioners' rebuttal witness, Dr. William Buot, a doctor of neurology, testified that **no conclusion of mental incapacity at the time the said deed was executed can be inferred from Dr. Faith Go's clinical notes nor can such fact be deduced from the mere prescription of a medication for episodic memory loss.**[73] (Emphasis ours)

In this case, petitioners' claim that Venancio and Leonila were forgetful and at times sickly was not even supported by medical evidence. It was based solely on Emerlina's testimony, which failed to demonstrate that Venancio and Leonila's mental state had prevented them from freely giving their consent to the 1978 Deed or from understanding the nature and effects of their disposition.

It is settled that a person is not incapacitated to enter into a contract merely because of advanced years or by reason of physical infirmities, unless such age and infirmities impair his mental faculties to the extent that he is unable to properly, intelligently and fairly understand the provisions of said contract, or to protect his property rights.[74]

Petitioners' reliance on the case of *Domingo v. CA*[75] is misplaced. There, the Court declared a deed of sale null and void given that the seller was already of advanced age and senile at the time of its execution, thus:

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[73] *Id*. at 906.

[74] *Dr. Yason v. Arciaga, supra* note 49, at 350-351, *Mendezona v. Ozamiz, supra* note 49, at 906.

[75] 419 Phil. 651 (2001).

The unrebutted testimony of Zosima Domingo shows that at the time of the alleged execution of the deed, Paulina was already incapacitated physically and mentally. She narrated that Paulina played with her waste and urinated in bed. Given these circumstances, there is in our view sufficient reason to seriously doubt that she consented to the sale of and the price for her parcels of land. x x x.[76]

No similar circumstances, indicating senility and clear incapacity to contract, have been alleged or proved in the instant case.

"A person is presumed to be of sound mind at any particular time and the condition is presumed to exist, in the absence of proof to the contrary."[77] In this case, petitioners failed to discharge their burden of proving, by clear and convincing evidence, that their parents were mentally incompetent to execute the 1978 Deed in favor of Ponciano.

Undue influence was not proved

"There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice."[78]

Other than petitioners' general allegation that Ponciano unduly took advantage of his being the eldest child and his close relationship with their parents, no other circumstance or evidence has been presented to show how Ponciano exerted his undue influence or how Venancio and Leonila were thereby deprived of the freedom to exercise sufficient judgment in selling the subject properties to Ponciano.

"[U]ndue influence that vitiated a party's consent must be established by full, clear and convincing evidence, otherwise, the latter's presumed consent to the contract prevails."[79]

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[76] *Id*. at 664.

[77] *Mendezona v. Ozamiz, supra* note 49, at 907.

[78] *Heirs of Sevilla v. Sevilla,* 450 Phil. 598, 611 (2003).

[79] *Id*. at 612.

Lack or inadequacy of consideration was not established

While maintaining that the 1978 Deed was a forgery, petitioners also insist that the deed was simulated. The incompatibility of these two contentions does not help petitioners' case. Forgery suggests that no consent was given to the transaction, while simulation indicates a mutual agreement albeit to deceive third persons.

Simulation has been defined as the declaration of a fictitious will, made deliberately by mutual agreement of the parties, in order to produce the appearances of a juridical act which does not exist or is different from that which was really executed, for the purpose of deceiving third persons. Accordingly, simulation exists when: (a) there is an outward declaration of will different from the will of the parties; (b) the false appearance was intended by mutual agreement of the parties; and (c) their purpose is to deceive third persons.[80]

None of the foregoing requisites have been shown to exist in this case.

In claiming that the 1978 Deed was simulated, petitioners assert that there was no consideration and the vouchers supposedly showing Ponciano's payment of ₱704,243.77 should not be considered as evidence since private respondents failed to offer them, having been deemed to have waived their presentation of evidence. Petitioners likewise argue that the price, in said amount, was unconscionable.[81]

That the vouchers were not offered in evidence will not serve to strengthen petitioners' theory of simulation. The notarized 1978 Deed shows on its face that the properties were sold for the price of ₱704,243.77. The 1978 Deed also appears to have gone through the procedure of registration, leading to the issuance of TCT in Ponciano's name.

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[80] *Mendezona v. Ozamiz, supra* note 49, at 903.

[81] *Rollo,* p. 32.

In *Mendezona,*[82] the appellate court ruled that the assailed deed of absolute sale was a simulated contract since the petitioners therein, in whose favor the deed was executed, failed to prove that the consideration was actually paid. This Court disagreed with the CA's ruling, holding that:

> Contrary to the erroneous conclusions of the appellate court, **a simulated contract cannot be inferred from the mere non-production of the checks. It was not the burden of the petitioners to prove so.** It is significant to note that the Deed of Absolute Sale dated April 28, 1989 is a notarized document duly acknowledged before a notary public. As such, it has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence even without further proof of its authenticity and is entitled to full faith and credit upon its face.
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> **Payment is not merely presumed from the fact that the notarized Deed of Absolute Sale dated April 28, 1989 has gone through the regular procedure as evidenced by the transfer certificates of title issued in petitioners' names by the Register of Deeds.** In other words, whosoever alleges the fraud or invalidity of a notarized document has the burden of proving the same by evidence that is clear, convincing, and more than merely preponderant. Therefore, with this well-recognized statutory presumption, the burden fell upon the respondents to prove their allegations attacking the validity and due execution of the said Deed of Absolute Sale. Respondents failed to discharge that burden; hence, the presumption in favor of the said deed stands. **But more importantly, that notarized deed shows on its face that the consideration of One Million Forty Thousand Pesos (₱1,040,000.00) was acknowledged to have been received by Carmen Ozamiz.**
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> **Considering that Carmen Ozamiz acknowledged, on the face of the notarized deed, that she received the consideration at One Million Forty Thousand Pesos (₱1,040,000.00), the appellate court should not have placed too much emphasis on the checks, the presentation of which is not really necessary.** Besides, the burden

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[82] *Supra* note 49.

to prove alleged non-payment of the consideration of the sale was on the respondents, not on the petitioners. Also, between its conclusion based on inconsistent oral testimonies and a duly notarized document that enjoys presumption of regularity, the appellate court should have given more weight to the latter. **Spoken words could be notoriously unreliable as against a written document that speaks a uniform language.**[83] (Citations omitted and emphasis ours)

Contending that the price paid by Ponciano for the properties was unconscionably low, petitioners point to the alleged sale of Lot 30, measuring 8,047 sq m, by Pabiloña, *et al.*[84] to Cityland, Inc., on September 18, 1992 for ₱12,070,500.00.[85]

Petitioners, however, have not demonstrated how the alleged selling price for Lot 30 in 1992 proves that the price paid by Ponciano under the 1978 Deed was unconscionable.

Furthermore, it is beyond dispute that the Deed of Absolute Sale in favor of Ponciano was executed in 1978, or nearly 14 years before the alleged sale of Lot 30 to Cityland, Inc. Given the obvious difference in the time of transaction, the prevailing market conditions, and the size of the properties, petitioners cannot sweepingly conclude that the price paid by Ponciano in 1978 was unconscionable on the basis of the 1992 sale of Lot 30.

In *Ceballos v. Intestate Estate of the Late Mercado,*[86] the Court had occasion to rule:

Harping on the alleged unconscionably low selling price of the subject land, petitioner points out that it is located in a tourist area and golf haven in Cebu. Notably, she has failed to prove that on February 13, 1982, the date of the sale, the area was already the tourist spot and golf haven that she describes it to be. In 1990, the property might have been worth ten million pesos, as she claimed; however, at the time of the sale, the area was still undeveloped. Hence,

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[83] *Id.* at 903-905.

[84] See note 22.

[85] *Rollo,* p. 32.

[86] *Supra* note 44.

her contention that the selling price was unconscionably low lacks sufficient substantiation.[87] (Citations omitted)

With more reason should the Court, in this case, hold that petitioners failed to substantiate their claim of an unconscionable selling price, considering that they have not shown any evidence of either the condition of the subject properties in 1978 or other factors affecting their valuation, which may possibly indicate the gross inadequacy of the price paid by Ponciano.

Petitioners would have this Court appreciate, as additional indications of simulation of the 1978 Deed, the alleged late registration thereof in 1993 or 15 years after the sale, and the Tax Declarations that were allegedly still in Leonila's name up to the time the Complaint was filed.[88] These contentions, however, do not suffice to constitute the strong, positive and convincing evidence that will overcome the presumption of due execution of a notarized document.

In any event, records show that the 1978 Deed was in fact registered in 1984, during Venancio and Leonila's lifetime. Both OCT No. O-197[89] and OCT No. O-443[90] bear an annotation referring to the 1978 Deed, inscribed on November 12, 1984, and based on such annotation, new transfer certificates of title were issued in lieu of OCT No. O-197 and OCT No. O-443 in Ponciano's name; TCT No. 15125,[91] in particular, appears to have been issued on November 12, 1984. By such registration and by obtaining certificates of title in his name, Ponciano had clearly asserted his ownership over the properties. Thus, that the Tax Declarations were still in Leonila's name cannot be the basis to conclude that the 1978 Deed was a simulation.

A contract or conduct apparently honest and lawful must be treated as such until it is shown to be otherwise by either positive

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[87] *Id*. at 376.

[88] *Rollo,* pp. 31-32 and 177.

[89] *Id*. at 81.

[90] *Id*. at 84.

[91] *Id*. at 117-118.

or circumstantial evidence. A duly executed contract enjoys the presumption of validity, and the party assailing its regularity has the burden to prove its simulation. Indeed, it is settled that notarized documents carry the presumption of due execution, lending truth to the statements therein contained and to the authenticity of the signatures thereto affixed.[92] Petitioners have failed to adduce the requisite clear and convincing evidence to overturn this presumption.

Alleged defects in the notarization were raised only before this Court

Petitioners argue that the parties' Acknowledgment of the 1978 Deed before the Notary Public, Federico Magdangal, whose notarial commission was for Makati City, was done outside the latter's "territorial limits" because the property is in Tanauan, Batangas. Furthermore, while the Acknowledgment was done in Makati City, its printed text expressly states that the parties personally appeared before the Notary Public in Tanauan, Batangas.[93] Petitioners also assert that their parents were residents of Tanauan, Batangas, and given their advanced age, would not have gone to Makati on the same day that the 1978 Deed was executed, to have the same notarized.[94]

Petitioners further assert that while the Acknowledgment indicated that Ponciano exhibited his residence certificate to the Notary Public, it did not reflect any identification document from Venancio and Leonila. They argue that the absence of such document contravened the Notary Public's statement that Venancio and Leonila were known to him.[95]

As private respondents have pointed out, however, these claims were only raised for the first time before this Court.[96]

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[92] *Delfin v. Billones,* 519 Phil. 720, 732 (2006).

[93] *Rollo,* pp. 29-30.

[94] *Id*. at 354.

[95] *Id*. at 30.

[96] *Id*. at 334.

"It is well-settled that issues not raised in the court *a quo* cannot be raised for the first time on appeal in the Supreme Court without violating the basic rules of fair play, justice and due process."[97] Due process dictates that when a party who adopts a certain theory upon which the case is tried and decided by the lower court, he should not be allowed to change his theory on appeal. The reviewing court will not consider a theory of the case which has not been brought to the lower court's attention; a new theory cannot be raised for the first time at such late stage.[98] Thus, We cannot bend backwards to examine the issue belatedly raised by petitioners at this late stage in the proceedings.

Granting the Acknowledgment was defective, the same will merely strip the document of its public character and reduce it to a private instrument.[99] It remains incumbent upon petitioners to prove, by preponderance of evidence, their allegation that the deed of sale was forged even though that document no longer enjoys any significantly weighted presumption as to its validity.[100]

The Court has explained "preponderance of evidence" thus:

> "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." Preponderance of evidence is a phrase which, in the last analysis, means *probability of the truth.* It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[101] (Italics ours)

Petitioners have argued that their evidence is of greater weight since private respondents did not at all present any evidence,

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[97] *Pua v. CA,* 398 Phil. 1064, 1080 (2000).

[98] *Kings Properties Corp. v. Galido,* 621 Phil. 126, 144 (2009), citing *Philippine Ports Authority v. City of Iloilo,* 453 Phil. 927, 934 (2003).

[99] *Adelaida Meneses (deceased) v. Venturozo,* 675 Phil. 641, 652 (2011).

[100] *Id*., *Dela Rama, et al. v. Papa, et al.,* 597 Phil. 227, 244 (2009).

[101] *Rep. of the Phils. v. De Guzman,* 667 Phil. 229, 246 (2011), citing *Encinas v. National Bookstore, Inc.,* 485 Phil. 683, 695 (2004).

particularly, to prove the notarization of the 1978 Deed and the genuineness of their parents' signatures thereon.[102]

We are not convinced. Time and again, this Court has ruled that:

> In civil cases, **it is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence. The parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent. This rule holds true especially when the latter has had no opportunity to present evidence** because of a default order. Needless to say, **the extent of the relief that may be granted can only be so much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133.**[103] (Citations omitted and emphasis ours)

The same principle applies here where private respondents were considered to have waived the presentation of their evidence at trial. *"Ei incumbit probatio qui dicit, non qui negat.* He who asserts, not he who denies, must prove."[104] "We have consistently applied the ancient rule that if the plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner facts on which he bases his claim, the defendant is under no obligation to prove his exception or defense."[105]

Thus, petitioners' evidence must stand on its own merit and must be scrutinized for veracity and probative value. It is not rendered conclusive simply because it was not met with evidence from the defense.

Section 1, Rule 133 of the Revised Rules of Court states how preponderance of evidence is determined, *viz:*

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[102] *Rollo,* p. 175.

[103] *Otero v. Tan,* 692 Phil. 714, 729 (2012), *Gajudo v. Traders Royal Bank,* 519 Phil. 791, 803 (2006).

[104] *Heirs of Sevilla v. Sevilla, supra* note 78, at 612.

[105] *Id*.

In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider **all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which [they] are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility** so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (Emphasis ours)

Considering all the circumstances of this case and all evidence adduced in support of the complaint, We find that even by the standard of preponderance of evidence, petitioners have failed to establish the alleged simulation or forgery of the 1978 Deed.

As previously explained, petitioners' claim of forgery is built on Emerlina's testimony which we have found to be both uncertain and self-serving. More importantly, a visual comparison of the disputed and admittedly genuine signatures of Venancio and Leonila has led this Court to find striking similarities that negate petitioners' claim of forgery. Petitioners have likewise failed to substantiate their claims that their parents were mentally incapable of executing the 1978 Deed, that Ponciano exerted undue influence on their parents, and that there was no consideration for the sale or that it was unconscionable.

All told, We find that the CA did not err in upholding the RTC's decision to dismiss petitioners' complaint.

WHEREFORE, the petition is **DENIED.** The Decision dated May 25, 2010 and Resolution dated October 13, 2010 of the Court of Appeals in CA-G.R. CV No. 86953 are **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Jardeleza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 218830. September 14, 2017]

JESUS V. COSON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; FINDINGS OF FACT OF THE TRIAL COURT ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS ARE ACCORDED RESPECT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTIONS THERETO, ENUMERATED AND APPLIED.— While it is jurisprudentially settled that findings of fact of the trial court, especially when affirmed by the CA, are accorded great weight and respect and will not be disturbed on appeal, this rule admits of exceptions, as follows: (1) where the conclusion is a finding grounded on speculations, surmises and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) the findings of the trial court are premised on the absence of evidence and are contradicted by the evidence on record. The exceptions mentioned above are present here.

2. CRIMINAL LAW; REVISED PENAL CODE (RPC); ESTAFA; ESSENTIAL ELEMENTS.— The essential elements of estafa under Article 315, par. 1(b) are as follows: 1. [T]hat money, goods or other personal properties are received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; 2. [T]hat there is a misappropriation or conversion of such money or property by the offender or denial on his part of the receipt thereof; 3. [T]hat the misappropriation or conversion or denial is to the prejudice of another; and 4. [T]hat there is a demand made by the offended party on the offender.

3. ID.; ID.; ID.; THERE WAS NO MISAPPROPRIATION OR CONVERSION BY PETITIONER TO HIS OWN

PERSONAL USE, BENEFIT OR ADVANTAGE IN CASE AT BAR; THE OBLIGATION CONTRACTED BY PETITIONER ON BEHALF OF A CORPORATION IS PURELY CIVIL AND FOR WHICH NO CRIMINAL LIABILITY MAY ATTACH.— [T]his Court finds and so holds that no estafa under Article 315, par. 1(b) was committed by petitioner. There was no misappropriation or conversion of TCT No. 261204 or the proceeds of the PAG-IBIG Fund loan by petitioner to his own personal use, benefit or advantage. In all his dealings with private complainant, he acted for and in behalf of GGDC which owns the title and the loan proceeds. The purpose of the loan from private complainant and from the PAG-IBIG Fund was in pursuance of the housing business of GGDC, which is not totally unknown to private complainant. Moreover, the Promissory Note dated May 29, 2003 of petitioner acknowledging his indebtedness and the demand letters of private complainant to petitioner to pay his obligation clearly show that the obligation contracted by petitioner on behalf of GGDC is purely civil and for which no criminal liability may attach.

APPEARANCES OF COUNSEL

Lenito T. Serrano for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review under Rule 45 of the Rules of Court assails the January 30, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 35837 which affirmed *in toto* the February 27, 2013 Decision[2] of the Regional Trial Court (RTC) of Dagupan City, Branch 44, in Criminal Case No. 2005-0498-D

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[1] *Rollo*, pp. 41-57; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes.

[2] CA *rollo*, pp. 355-370; penned by Judge Genoveva Coching-Maramba.

finding Jesus V. Coson (petitioner) guilty beyond reasonable doubt of the crime of estafa. Also assailed is the June 4, 2015 CA Resolution[3] which denied petitioner's Motion for Reconsideration.

Factual Antecedents

Petitioner is the Chairman and Chief Executive Officer (CEO) of Good God Development Corporation (GGDC), a corporation engaged in the business of developing subdivisions and building houses/condominiums therein for sale to the general public.[4]

On December 21, 2001, GGDC, through its President Jack Christian Coson, borrowed ₱2,522,000.00 from private complainant Atty. Nolan Evangelista (hereinafter "private complainant"). The purpose of the loan was to buy the land owned by the First eBank Corporation ("First eBank") and covered by Transfer Certificate Title (TCT) No. 250201, which is adjacent to GGDC's property situated in Barrio Maningding, Sta. Barbara, Pangasinan and covered by Transfer Certificate of Title (TCT) No. 252245. A Deed of Real Estate Mortgage[5] was executed by the parties whereby the property owned by GGDC was put up as collateral for the loan.

After the sale of First eBank's property was consummated, title thereto was transferred in the name of GGDC under TCT No. 261204.[6]

On May 29, 2003, another Deed of Real Estate Mortgage[7] was executed by GGDC through petitioner by virtue of Board Resolution No. 0093, series of 2002,[8] in favor of private complainant for a loan of ₱4,784,000.00. The land covered by

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[3] *Id*. at 59-60.

[4] Records, Vol. II, pp. 369-381.

[5] *Id*. at 388-390.

[6] *Id.* at 366.

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

[8] *Id*. at 367.

TCT No. 261204 was given as security for the said loan. On the same date, petitioner executed a Promissory Note[9] acknowledging his indebtedness of ₱4,784,000.00 and promising to pay the said amount in accordance with the schedule mentioned in the Deed of Real Estate Mortgage dated May 29, 2003.

On July 29, 2003, petitioner and private complainant executed a Memorandum of Agreement[10] (MOA) stipulating, *inter alia,* that petitioner was desirous of borrowing the mortgaged TCT No. 261204 to be surrendered to the Home Development Mutual Fund or PAG-IBIG Fund[11] to obtain a loan the proceeds of which shall be paid to private complainant in satisfaction of petitioner's obligation; that the parties shall open a joint account with a reputable banking institution where the proceeds of the PAG-IBIG Fund loan shall be deposited; and that petitioner shall make 11 installment payments as per schedule set forth in the said MOA. Pursuant to the MOA, petitioner issued 11 postdated Banco de Oro checks, the first check for ₱3,000,000.00 and the other 10 checks, a uniform amount of ₱185,000.00 for each check.

On September 8, 2003, GGDC, through petitioner and PAG-IBIG Fund, executed a Loan Agreement[12] whereby GGDC, as borrower, was granted a developmental loan by PAG-IBIG Fund in an amount not exceeding ₱30,000,000.00 to finance the development of Carolina Homes subject of the MOA[13] of the same date (September 8, 2003) executed by the parties.

On October 7, 2003, the first tranche of the ₱30,000,000.00 loan in the amount of ₱9,000,000.00 was released by PAG-IBIG Fund to GGDC.[14] In view of the failure of petitioner to

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[9] *Id*. at 396.

[10] *Id*. at 397-399.

[11] Inadvertently referred to as PAG IBIG Loans, Inc. in the MOA.

[12] Records, Vol. II, pp. 369-382.

[13] *Id*. at 400-409.

[14] *Id*. at 383.

pay the loan of ₱4,784,000.00 to private complainant despite repeated demands therefor, or to return TCT No. 261204 as agreed upon in the MOA dated July 29, 2003, private complainant filed a complaint against petitioner for estafa under Article 315, paragraph 1(b) of the Revised Penal Code (RPC). Subsequently, on August 5, 2005, an Information[15] dated July 19, 2005 was filed by the City Prosecutor of Dagupan City with the RTC of Dagupan City, docketed as Criminal Case No. 2005-0498-D charging petitioner with the crime of estafa allegedly committed as follows:

> That on or about the 29th day of July 2003, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JESUS V. COSON, received in trust and confidence from one NOLAN R. EVANGELISTA the title of the land, TCT No. 261204 which he had given as a security to the ₱4,784,000.00 mortgage secured from the latter, alleging that he would use it in obtaining a loan from the [Home Development Mutual Fund (HDMF)] and promising the latter that he would pay him the mortgage consideration upon release of the proceeds of the loan by the said agency, but upon receipt of the proceeds, with intent to gain, by means of unfaithfulness or grave abuse of confidence, the herein accused, did then and there willfully, unlawfully and criminally, renege on his promise and refuse to perform his obligation to pay NOLAN [R.] EVANGELISTA despite demands made on him to do so, thereby misappropriating and converting the said amount for his own personal use and benefit, to the damage and prejudice of NOLAN R. EVANGELISTA, in the aforesaid amount of ₱4,784,000.00 and for other consequential damages sustained.
>
> Contrary to Article 315, par. 1(b) of the Revised Penal Code.[16]

Ruling of the Regional Trial Court

On February 27, 2013, the RTC rendered its Decision[17] in Criminal Case No. 2005-0498-D finding petitioner (accused therein) guilty as charged, ratiocinating as follows:

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[15] Records, Vol. I, p. 1.

[16] *Id*.

[17] *Rollo*, pp. 189-204; penned by Judge Genoveva Coching-Maramba.

The only issue to be resolved in the case at bench is whether accused Coson is guilty of the crime charged. As earlier stated, Coson is being charged and tried with the crime of Estafa defined and penalized under second element of estafa with abuse of confidence under paragraph (b), subdivision No. 1, Article 315. The elements of estafa under paragraph 1(b), Article 315 of the Revised Penal Code are:

(1) the offender receives the money, goods or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same;

(2) the offender misappropriates or converts such money or property or denies receiving such money or property;

(3) the misappropriation or conversion or denial is to the prejudice of another; and

(4) the offended party demands that the offender return the money or property.

The essence of this kind of estafa is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words '*convert*' and '*misappropriate*' connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.

In the case at bench, from the testimony and evidence on record, the prosecution was able to establish beyond reasonable doubt all the elements of the crime charged as shown by the following circumstances.

First, a loan in the amount of [₱4,750,000.00] secured by a real estate mortgage was constituted over a piece of land registered in the name of herein accused Coson covered by Transfer Certificate of Title No. 261204 was entered between him and Atty. Nolan Evangelista. Coson was not able to pay the loan but Evangelista did not foreclose the real estate mortgage.

Records of this case further show that Coson sought Evangelista thru a common-friend, Atty. Alejandro Fernandez, and made representation if Evangelista could lend the title to him as he was trying to find source of money to pay his loan from Evangelista and the title shall be used to secure a loan from the [Home Development Mutual Fund (HDMF)] from where [the] accused could realize loan releases sufficient to pay his obligation to Evangelista.

Evangelista agreed to the proposal of accused Coson and delivered to the former TCT No. 261204 to secure [the] loan from the [HDMF]. The proposal and the mechanics of their agreement are contained in a document designated as Memorandum of Agreement. Accused issued various checks in favor of Evangelista, to wit: Check No. 492550 for ₱3 million pesos; Check No. 492551 for ₱185,000.00 pesos; Check No. 492552 for ₱185,000.00 pesos; Check No. 492553 for ₱185,000.00 pesos; Check Nos. 492554 to 492560. These checks are supposed to be funded from the loan which Coson will be obtaining from the [HDMF].

It has been further established by the evidence on record that after sufficient time had lapsed, Evangelista asked Atty. Fernandez to deposit in the latter's account check No. 492551 in the amount of ₱185,000.00 but it was dishonored by the drawee bank. Evangelista and Atty. Fernandez tried to inform accused of the dishonor of his check but both could not locate his whereabouts until one time Atty. Fernandez chanced upon him somewhere in Quezon City where the former informed the latter of the dishonor of his check.

In the meantime, Evangelista was able to discover that Coson had obtained [a] loan from the [HDMF], La Union Branch, but accused used the loan [proceeds] to pay some of his obligations but did not fund the checks he issued in accordance with their memorandum of agreement or the purpose for which Evangelista entrusted TCT No. 261204.

In fact, a certain Mary Jane Laron, Officer-in-Charge, Loan and Contribution, Management Loan and Recovery Division, [HDMF], La Union Branch, testified that Coson was able to realize initial loan release in the amount of ₱9 million.

Nonetheless, as admitted by Jill Catherine Coson, witness for the defense, x x x the joint account of [the] accused and Evangelista was not funded contrary to the memorandum of agreement between the two despite the initial release of the nine (9) million pesos. Thus,

two (2) demand letters were sent to the accused either to return the title or pay the amount of ₱4,784,000.00 pesos. However, **Coson** can no longer return the title of the property as Arthur David, record custodian of the Register of Deeds, Lingayen, Pangasinan, testified that TCT No. 261204 has already been cancelled and a new title has already been issued covering the land described in said title.

[The a]ccused averred in his defense that Evangelista did not entrust the title to him to be used as collateral for a loan he filed with the [HDMF] but he asked Evangelista for the title to be submitted to the Land Registration Authority (LRA) for cancellation and re-distribution to the various lot purchasers.

He further averred that he was not able to settle his original obligation to Evangelista because he suffered business reverses and encountered personal problems.

Accused's defense of the need to submit the title to the Land Registration Authority for cancellation and distribution to the lot purchasers could not be taken seriously for the simple reason that accused did not present any document that would show that indeed the title has to be submitted to the LRA. Furthermore, accused had not presented [any] document that Evangelista is his partner in [the] housing business or has interest in accused's housing venture.

On the same breath, the averments of accused that he suffered business reverses and personal problems would not inure to [the] accused[']s] advantage. On the contrary, such declaration is equivalent to admission of liability.

The issuance of the checks in favor of Evangelista is not in payment of the original obligation accused contracted from the former but to assure Evangelista that he will not be holding an *"empty bag"* if and when accused reneged on his undertaking to use the title as collateral to secure [a] loan from the [HDMF] because if the checks were intended as payment for the original obligation, it would simply be an exchange of the title which is still in the name of the corporation of the accused and the checks accused issued in favor of Evangelista.

On his part, accused interjected transactions between him and Atty. Fernandez which pertained to a two million (₱2,000,000.00) peso loan extended by the latter to him. Nonetheless, he admitted that the Deed of Mortgage is four million and seven hundred fifty (₱4,750,000.00) pesos. He testified that he did not pay Evangelista from the first release of Nine Million (₱9,000,000.00) pesos because

he has to pay the Rural Bank of Sta. Barbara. He further averred that he did not inform Evangelista when he signed the memorandum of agreement that he still [had] some unpaid creditors.

In view of the admission of the accused himself that he reneged on his undertaking to use the title entrusted to him to secure a loan from [HDMF] to pay his obligation to Evangelista, his admission that he had received ₱9,000,000.00 million pesos from the [HDMF] but did not pay Evangelista, and instead paid other creditors like the Sta. Barbara Rural Bank, and the testimony of Arthur David that TCT No. 261204 [has] already been cancelled and a new title has been issued covering the land described in said title, the Court finds and so holds that he is liable for Estafa defined under Article 315 1(b) of the Revised Penal Code, penalized by Reclusion Temporal with a duration of Twelve (12) Years and One (1) Day to Twenty (20) Years considering that the amount is ₱4,784,000.00. Nonetheless, applying the Indeterminate Sentence Law, accused Coson should be sentenced to suffer an indeterminate penalty ranging from Ten (10) Years of Prision Mayor as minimum to Fourteen (14) Years, Eight (8) Months and One (1) Day of Reclusion Temporal as maximum.

It appearing that Evangelista had previously made reservation of filing an independent civil action arising from the incident subject matter of this case, this Court finds and holds that no pronouncement can be had as to the civil liability of the accused.

WHEREFORE, judgment is hereby rendered finding accused **Jess "Jesus" Coson guilty beyond reasonable doubt of the crime of Estafa defined and penalized under Article 315, 1(b) and is hereby sentenced to suffer an Indeterminate penalty of Ten (10) Years of Prision Mayor as minimum to Fourteen (14) Years, Eight (8) Months and One (1) Day of Reclusion Temporal as maximum.**

So ordered.[18]

Ruling of the Court of Appeals

The CA found no reversible error in the ruling of the RTC and affirmed it *in toto*. In its Decision[19] dated January 30,

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[18] *Id*. at 200-204. Emphasis in the original.

[19] *Id*. at 41-57.

2015, the CA held that the prosecution had proven all the elements of estafa under Article 315, par. 1(b) charged against petitioner. The CA ruling is as follows:

In this case, the prosecution has amply proven all the elements of estafa beyond moral certainty. Jesus acknowledged the receipt of the TCT No. 261204 from Nolan in trust for the latter. This act is evidenced by the Memorandum of Agreement, duly signed by the parties. The Memorandum of Agreement, shows that Jesus borrowed the TCT No. 261204 from Nolan for the purpose of using the same as collateral to his [HDMF] loan application, thus:

'Direct Examination of Nolan Evangelista conducted by Pros. Bayubay:

Q: Do you have a copy of a memorandum of agreement?
A: Yes, sir.

Q: Attached to the record is a copy of a memorandum of agreement consisting of two (2) pages already marked as Exhibit C, what is the relationship of this memorandum of agreement with the one that you entered with the accused?
A: This is the Memorandum of Agreement evidencing our agreement wherein I would lend him the title and he could offer it as collateral to the Pag-ibig for the purpose of raising funds to pay me by funding the checks he issued to me and in the event that he would be unable to borrow from the Pag-ibig this memorandum of agreement also shows that he had to return to me the title that he was borrowing.

x x x x x x x x x

Q: Now, was the accused able to secure [a] loan from the Pag-ibig as he proposed?
A: I have discovered that he was able to get a loan from the Pag-ibig.

Q: And did he pay his obligation to you as agreed upon?
A: He was not able to fund the checks that he issued to me as per agreement that he should fund it from the proceeds of his loan from the Pag-ibig.

Q: Why do you say that he did not fund the checks he issued to you Mr. Witness?
A: Because when the first check was deposited x x x that check bounced.'

Evidently, the testimony of Nolan shows the purpose of lending TCT No. 261204 to Jesus and the latter's obligation to return the same. Despite the agreement, Jesus failed to return TCT No. 261204 to Nolan. Considering the testimony of Nolan, Jesus' guilt for the crime of estafa was established beyond reasonable doubt.

x x x x x x x x x

Further, Jesus converted TCT No. 261204 for a purpose other than that agreed upon in the Memorandum of Agreement. Jesus allowed the construction and sale of 139 residential units built on smaller lots covered by TCT No. 261204. This misappropriation or conversion of TCT No. 261204 to the prejudice of the owner constitutes estafa under Article 315, par. 1(b) of the Revised Penal Code.[20]

Petitioner filed a Motion for Reconsideration, but it was denied in the CA's Resolution[21] dated June 4, 2015.

Hence, the instant Petition for Review under Rule 45 raising as ground for its allowance the following:

The questioned Decision and Resolution of the Honorable Court of Appeals are patently erroneous and contrary to law and jurisprudence.[22]

Petitioner argues that he could not be held liable for estafa. He claims that the obligation to return TCT No. 261204 to private complainant is not absolute but conditional; *i.e.*, if the PAG-IBIG Fund approves the application for loan, the obligation to return TCT No. 261204 is extinguished. And since the PAG-IBIG Fund approved the loan and in fact already released the proceeds of the first tranche, petitioner insists that he is no longer obliged to return TCT No. 261204 to the private complainant.

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[20] *Id*. at 51-54.

[21] *Id*. at 59-60.

[22] *Id*. at 26.

Petitioner also contends that the RTC and CA erred in finding that he misappropriated or converted another's property for his personal use. He asserts that the CA erred in its finding that the subject property covered by TCT No. 261204 is owned by private complainant; that GGDC or petitioner disposed of it for a purpose other than what was agreed upon; or that petitioner failed to return or account the proceeds thereof. Petitioner posits that the Deed of Real Estate Mortgage was novated by the subsequent execution of the MOA. As such, when petitioner failed to pay the private complainant, the latter could no longer demand the return of TCT No. 261204 which was already surrendered to the PAG-IBIG Fund.

Moreover, petitioner assails the CA ruling that he used the proceeds of the PAG-IBIG Fund loan for a purpose other than what was stated in the MOA, which supposedly amounted to misappropriation. Petitioner posits that the CA failed to take into account the primary purpose of the loan from the PAG-IBIG Fund, that is, to fund GGDC's development and construction of a subdivision or the Carolina Homes project. Likewise, petitioner avers that private complainant was fully aware of said purpose.

Finally, petitioner claims that the CA totally forgot that GGDC is the owner of the property covered by TCT No. 261204, and not private complainant. Thus, there is no factual basis to its pronouncement that the misappropriation or conversion of TCT No. 261204 resulted in the prejudice of the owner (referring to private complainant) and such constitutes estafa. Petitioner contends that without the obligation to return or deliver, the relationship between private complainant and petitioner becomes one of debtor and creditor. "And the obligation of GGDC or petitioner under the [MOA] is not to return or deliver the money loaned from him but to pay [private complainant] from the proceeds of the [PAG-IBIG Fund] loan in order to satisfy the obligation owing him."[23]

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[23] *Id*. at 33.

Respondent, on the other hand, argues that only questions of law may be raised in a petition filed under Rule 45 thus, the factual questions raised by petitioner should not be entertained by the Court. In any event, the respondent alleges that even if the factual issues were to be considered, the CA committed no reversible error in affirming the findings of the RTC.

The Issue

The issue to be resolved is whether or not the CA erred in affirming *in toto* the Decision of the RTC finding petitioner guilty beyond reasonable doubt of the crime of estafa defined and penalized under Article 315, par. 1(b) of the RPC.

Our Ruling

The Petition has merit.

While it is jurisprudentially settled that findings of fact of the trial court, especially when affirmed by the CA, are accorded great weight and respect and will not be disturbed on appeal,[24] this rule admits of exceptions, as follows:

(1) where the conclusion is a finding grounded on speculations, surmises and conjectures;

(2) where the inference made is manifestly mistaken;

(3) where there is grave abuse of discretion;

(4) where the judgment is based on misapprehension of facts; and

(5) the findings of the trial court are premised on the absence of evidence and are contradicted by the evidence on record.[25]

The exceptions mentioned above are present here.

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[24] *Plameras v. People,* 717 Phil. 303, 318 (2013); *Vergara v. People*, 491 Phil. 96, 102 (2005); *Tan v. People,* 542 Phil. 188, 196 (2007).

[25] *Pareño v. Sandiganbayan,* 326 Phil. 255, 279 (1996), cited in *Uyboco v. People,* 749 Phil. 987, 992 (2014).

The rulings of both the RTC and the CA are anchored on their findings that all the elements of estafa under Article 315, par. 1(b) of the RPC have been proven by the prosecution.

We disagree.

The essential elements of estafa under Article 315, par. 1(b) are as follows:

1. [T]hat money, goods or other personal properties are received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
2. [T]hat there is a misappropriation or conversion of such money or property by the offender or denial on his part of the receipt thereof;
3. [T]hat the misappropriation or conversion or denial is to the prejudice of another; and
4. [T]hat there is a demand made by the offended party on the offender.[26]

Citing the case of *Pamintuan v. People*,[27] both courts (RTC and CA) found and concluded that petitioner has misappropriated the proceeds of the PAG-IBIG Fund loan, or converted TCT No. 261204 to a purpose other than that agreed upon. These finding and conclusion are not in accord with the evidence on record.

It is clear from the evidence on record that the Deed of Real Estate Mortgage[28] dated May 29, 2003 and the MOA dated July 29, 2003[29] were both executed by petitioner, as the duly authorized officer of GGDC. GGDC is also the borrower from the PAG-IBIG Fund. The May 29, 2003 Real Estate Mortgage expressly stated that petitioner was authorized to enter into

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[26] *Gamaro v. People*, G.R. No. 211917, February 27, 2017.

[27] 635 Phil. 514 (2010).

[28] Records, Vol. II, pp. 394-395.

[29] *Id*. at 397-399.

such transaction by virtue of Board Resolution No. 0093, series of 2002[30] of GGDC; that GGDC is the registered owner of the property covered by TCT No. 261204; and, finally, petitioner signed said document as Chairman and CEO of GGDC, and not in his personal capacity. On the other hand, the first Whereas Clause of the MOA categorically stated that petitioner was expressly authorized by GGDC to enter into such transaction; and that GGDC, through petitioner, was desirous of borrowing TCT No. 261204 to be surrendered to PAG-IBIG Fund in support of its loan application.

The evidence on record also disclose that the loan granted by the PAG-IBIG Fund is a developmental loan to finance the housing project of GGDC on the two lots covered by TCT No. 252245 and TCT No. 261204 (the disputed title), both registered in the name of GGDC. Private complainant is not totally unaware of this fact as evidenced by the very MOA dated July 29, 2003 which was the basis of his complaint for estafa against petitioner. The pertinent provision of the said MOA reads:

> 5. In the event that after sixty (60) days of default, the FIRST PARTY shall not have paid the total accelerated amount, the FIRST PARTY shall surrender back Transfer Certificate of Title No. 261204 to the SECOND PARTY within a period of five (5) days after the aforementioned lapse of sixty (60) days. In the event further that the FIRST PARTY is unable to return Transfer Certificate of Title No. 261204 to the SECOND PARTY within the time prescribed, the FIRST PARTY shall within five (5) days therefrom execute and cause to be executed any and all documents assigning and conveying the property covered by Transfer Certificate of Title No. 261204 and the entire Good God Development Corporation Housing Project denominated as CAROLINA HOMES SUBDIVISION located at Barangay Maningding, Sta. Barbara, Pangasinan inclusive of all the project's appurtenants to the SECOND PARTY. For this purpose, the FIRST PARTY shall be obliged and hereby undertakes to execute and cause to be executed by the concerned entities and personalities all necessary documents, both principal and collateral, under the pain of fraudulent breach.[31]

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[30] *Id*. at 367.

[31] Records, Vol. I, p. 17.

Likewise on record are the letters of petitioner to private complainant updating the latter on the status or progress of the development of the subdivision project in Sta. Barbara, Pangasinan and his efforts at securing additional funding to settle his obligation with private complainant.[32]

Based thereon, there cannot be any misappropriation or conversion by petitioner to his own personal use, benefit or advantage, of TCT No. 261204 or the proceeds of the PAG-IBIG Fund loan granted to GGDC since private complainant is fully aware of the purpose of petitioner/GGDC for borrowing TCT No. 261204 and how the proceeds of the PAG-IBIG Fund loan should be applied. Moreover, TCT No. 261204 and the PAG-IBIG Fund loan proceeds are owned by GGDC and not by petitioner, and more so, not owned by private complainant. If there was any misappropriation or conversion of TCT No. 261204 or the PAG-IBIG Fund loan proceeds, the aggrieved party should be GGDC, and certainly not the private complainant. For his uncollected debt, private complainant's remedy is not a criminal action, but a civil action against petitioner. The MOA dated July 29, 2003 in fact clearly stipulates in Section 5 thereof[33] the remedy of private complainant in case of default by petitioner.

To stress, misappropriation or conversion refers to any disposition of another's property as if it were his own or devoting it to a purpose not agreed upon. It connotes disposition of one's property without any right.[34] As earlier stated, TCT No. 261204 and the PAG-IBIG Fund loan proceeds belong to and are owned by GGDC, and not by private complainant.

Other palpable mistakes or erroneous conclusions of fact of the RTC in its questioned Decision need be mentioned here:

In its Decision, the RTC erroneously stated that the loan "in the amount of [₱4,750,000.00 was] secured by a real estate

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[32] Records, Vol. II, pp. 385-387.

[33] Records, Vol. I, p. 17.

[34] *Murao v. People,* 501 Phil. 53, 66 (2005).

mortgage x x x constituted over a piece of land registered in the name of herein accused *Coson* covered by Transfer Certificate of Title No. 261204."[35] This is a manifest error since TCT No. 261204[36] as shown by the evidence on record is registered in the name of GGDC, and the amount of the mortgage loan is ₱4,784,000.00[37] and not "₱4,750,000.00".

Likewise the RTC stated in its Decision that "accused did not present any document that would show that indeed the title has to be submitted to the Land Registration Authority (LRA). Furthermore, the accused had not presented any document that Evangelista (herein private complainant) is his partner in the housing business or has interest in accused's housing venture."[38] This finding is contrary to the evidence on record. Accused (petitioner herein) submitted in evidence the Loan Agreement[39] and Memorandum of Agreement[40] both dated September 8, 2003 executed by the petitioner and the PAG-IBIG Fund which stipulate that the PAG-IBIG Fund "will lend said Certificate of Title to the BORROWER so that the same may be cancelled and replaced with the individual titles corresponding to the smaller lots into which the land shall have been subdivided in accordance with the approved subdivision plan of the land."[41] Prosecution witness Arthur David, Records Custodian of the Register of Deeds of Lingayen, Pangasinan testified to the effect that TCT No. 261204 had been cancelled and new titles had been issued covering the land.[42] This testimony corroborates the evidence of the petitioner.

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[35] *Rollo*, p. 201. Emphasis supplied.

[36] Records, Vol. II, p. 366.

[37] *Id*. at 394.

[38] *Rollo*, p. 203. Emphasis supplied.

[39] Records, Vol. II, pp. 369-382.

[40] *Id*. at 400-409.

[41] Section 3.02[a], Loan Agreement; *id*. at 374.

[42] TSN, July 11, 2007, pp. 3-4; *rollo*, p. 194.

Regarding the finding of the RTC that "accused had not presented the document that Evangelista is his partner in the housing business or has interest in accused's housing venture,"[43] the three letters[44] of petitioner to private complainant on the status of the housing project of GGDC present ample proof of private complainant's interest in the housing venture of GGDC.

Lastly, the conclusion of the RTC that the "issuance of the checks in favor of Evangelista is not in payment of the original obligation accused contracted from the former but to assure Evangelista that he will not be holding an '*empty bag*' if and when accused reneged on his undertaking to use the title as collateral to secure a loan from the MHDF [sic]"[45] is a finding grounded on speculations, surmises and conjectures. The checks issued were really intended for the payment of the loan obligation of petitioner to private complainant and not merely to assure the latter that he would not be holding an "empty bag". As per testimony of private complainant himself, when the first check became due, he deposited it but it was dishonored for lack of funds.[46]

In fine, based on all the foregoing, this Court finds and so holds that no estafa under Article 315, par. 1(b) was committed by petitioner. There was no misappropriation or conversion of TCT No. 261204 or the proceeds of the PAG-IBIG Fund loan by petitioner to his own personal use, benefit or advantage. In all his dealings with private complainant, he acted for and in behalf of GGDC which owns the title and the loan proceeds. The purpose of the loan from private complainant and from the PAG-IBIG Fund was in pursuance of the housing business of GGDC, which is not totally unknown to private complainant. Moreover, the Promissory Note dated May 29, 2003[47] of

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[43] *Rollo*, p. 203. Emphasis supplied.

[44] Records, Vol. II, pp. 385-387.

[45] *Rollo*, p. 203.

[46] TSN, August 1, 2006, pp. 11-19; *Rollo*, pp. 191, 289.

[47] Records, Vol. II, p. 396.

petitioner acknowledging his indebtedness and the demand letters of private complainant to petitioner to pay his obligation[48] clearly show that the obligation contracted by petitioner on behalf of GGDC is purely civil and for which no criminal liability may attach.

WHEREFORE, the Decision dated January 30, 2015 and Resolution dated June 4, 2015 of the Court of Appeals in CA-G.R. CR No. 35837 are **REVERSED** and **SET ASIDE**. A new judgment is hereby entered **ACQUITTING** petitioner Jesus V. Coson of the crime charged.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Peralta,[*] and *Tijam, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-13-3170. September 18, 2017]
(Formerly OCA I.P.I. No. 12-3931-P)

MA. ASUNCION SJ. SAMONTE, *complainant, vs.* **REY P. RODEN, LEGAL RESEARCHER, BRANCH 36, METROPOLITAN TRIAL COURT, QUEZON CITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; PERSONS INVOLVED IN THE ADMINISTRATION OF

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[48] *Rollo*, p. 191.

[*] Per Raffle dated September 6, 2017 vice Justice Francis H. Jardeleza who recused due to prior action as Solicitor General.

JUSTICE OUGHT TO LIVE UP TO THE STRICTEST STANDARDS OF HONESTY AND INTEGRITY.— The Court has repeatedly emphasized that everyone in the Judiciary, from the presiding judge to the clerk, must always be beyond reproach, free of any suspicion that may taint the Judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standards of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum, but must also be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness, and honesty.

2. **ID.; ID.; ID.; DAILY TIME RECORDS; THE PUNCHING IN OF ONE'S DAILY TIME RECORD IS A PERSONAL ACT AND IT SHOULD NOT BE DELEGATED TO ANYONE ELSE.—** By his own admission, Roden, purportedly out of pity, punched in Banaban's DTR card in the morning of July 24, 2012 after learning that the latter will be late because she was taking care of her sick child. However, despite his proffered justification for his action, We find that Roden violated OCA Circular No. 7-2003 dated January 9, 2003 x x x. [A]s provided by the x x x circular, every court official and employee must truthfully and accurately indicate the time of his or her arrival at and departure from the office. The failure of an employee to reflect in the DTR card the actual times of arrival and departure not only reveals the employee's lack of candor but it also shows his/her disregard of office rules. Equally important is the fact that this Court has already held that the punching in of one's daily time record is a personal act of the holder. It cannot and should not be delegated to anyone else. Thus, in this case, Roden's act of punching in another employee's DTR card was in violation of OCA Circular No. 7-2003.

3. **ID.; ID.; ID.; DISHONESTY; PUNCHING IN ANOTHER EMPLOYEE'S DAILY TIME RECORD CARD FALLS WITHIN THE AMBIT OF FALSIFICATION WHICH IS AN ACT OF DISHONESTY.—** [B]y Roden's act of punching

in Banaban's DTR card, he also, in effect, made it appear as though Banaban personally punched in her DTR card and, at the same time, made the card reflect a log-in time different from the actual time of arrival. The act of punching in another employee's DTR card falls within the ambit of falsification. It is patent dishonesty, which inevitably reflects on Roden's fitness as an employee to continue in office and on the level of discipline and morale in the service. More so, when Section 4, Rule XVII (on Government Office Hours) of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws also provides that falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable. We have repeatedly held that dishonesty is a malevolent act that has no place in the Judiciary. We have defined dishonesty as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Falsification of daily time records is an act of dishonesty, for which respondent must be held administratively liable.

4. **ID.; ID.; ID.; ID.; MAY BE METED WITH THE PENALTY OF DISMISSAL FROM SERVICE EVEN IF IT IS THE FIRST OFFENSE, BUT IT MAY NOT BE IMPOSED IN THE PRESENCE OF MITIGATING FACTORS.—** Under Section 22(a) Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, as amended by CSC Memorandum Circular No. 19, s. 1999, dishonesty may be meted with the penalty of dismissal from service even if it is their first offense. However, in several administrative cases, We refrained from imposing the actual penalties in the presence of mitigating factors considering Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service which provides that in the determination of penalties to be imposed, the extenuating, mitigating, aggravating or alternative circumstances may be considered. As the act constituting the charge was committed only at one instance and that respondents duly admitted the act being complained of, the same may be considered as a mitigating circumstance.

D E C I S I O N

PERALTA, *J.*:

Before us is the Affidavit-Complaint[1] of complainant Ma. Asuncion SJ. Samonte (*Samonte*), Legal Researcher, Metropolitan Trial Court (*MeTC*), Branch 38, Quezon City against Rey T. Roden (*Roden*), Legal Researcher, MeTC, Branch 36 of the same court for dishonesty.

In her Complaint, Samonte alleged that, on July 24, 2012, at around 8:00 a.m., she saw Roden punched in his Daily Time Record (*DTR*) card in the bundy clock located at Branch 38, MeTC, Quezon City. However, a few minutes later, she saw Roden punched in again his DTR card. Thereafter, Samonte approached Roden and asked him why he punched in his DTR card again and at the same time got hold of the DTR where she discovered that it belonged to Theresa T. Banaban, the clerk in charge of civil cases in Branch 36, MeTC, Quezon City. Samonte then inquired the reason why Roden punched in the DTR card of Banaban and the latter's whereabouts. Samonte alleged that Roden told her that Banaban was already on her way to work. Samonte then told Roden that what he did was illegal and unfair to other employees who rush to work to be able to come in on time, but the latter instead requested her not to inform Judge Fama anymore since they are colleagues anyway.

Samonte reported the incident to Judge Nadine Jessica Corazon J. Fama, Executive Judge, MeTC, Quezon City, who, thereafter, directed Roden to explain why he punched in the DTR card of Banaban in violation of the Civil Service Rules and Regulations and OCA Circular No. 7-2003. Similarly, Judge Fama also directed Banaban to explain why she was not the one and instead it was Roden who punched in her DTR card in violation of the same rules.

In their compliance, Roden explained that out of compassion, he punched in the DTR card of Banaban after learning that the

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[1] *Rollo*, p. 3.

latter will be coming in late as she would still have to attend to her sick daughter. Roden averred that he did said act on his own volition and that no one, even Banaban, ordered him to do it.

For her part, Banaban denied that she either requested or instructed Roden to punch in her DTR card on July 24, 2012. She claimed that even her officemates can attest that she and Roden are not in speaking terms, and that she had no idea as to Roden's intention for doing it. Finally, Banaban requested the Court's indulgence to spare her from any sanction as she never gave her consent to such unauthorized punching-in of her DTR card.

Thereafter, Judge Fama referred the matter to the Office of the Court Administrator (*OCA*) for further investigation.[2]

Thus, on September 3, 2012, the OCA directed Roden to comment on the complaint against him.[3]

In his Comment[4] dated September 26, 2012, Roden reiterated his earlier admission that he indeed punched in the DTR card of Banaban on July 24, 2012. He claimed that he did so out of pity because he overheard that Banaban will be coming in late that day as she was attending to her sick daughter. Roden expressed remorse for his action and begs the compassion of the Court. In seeking this Court's compassion and forgiveness, he cited his sixteen (16) years of unblemished service in the judiciary, and that this was his first infraction. He also promised not to commit the same mistake again, however, he will accept whatever sanction or penalty that may be meted against him.

On August 6, 2013, the OCA found Roden guilty of dishonesty and recommended that the instant administrative complaint be re-docketed as a regular administrative matter. It also recommended Roden be suspended from the service for six (6) months.[5]

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[2] *Id*. at 2.

[3] *Id.* at 5.

[4] *Id*. at 6.

[5] *Id*. at 12.

We adopt the findings of the OCA, except the recommended penalty.

The Court has repeatedly emphasized that everyone in the Judiciary, from the presiding judge to the clerk, must always be beyond reproach, free of any suspicion that may taint the Judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standards of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum, but must also be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness, and honesty.[6]

In the instant case, it is apparent that Roden miserably failed to live up to the above-mentioned standard. By his own admission, Roden, purportedly out of pity, punched in Banaban's DTR card in the morning of July 24, 2012 after learning that the latter will be late because she was taking care of her sick child. However, despite his proffered justification for his action, We find that Roden violated OCA Circular No. 7-2003 dated January 9, 2003, to wit:

> In the submission of Certificates of Service and Daily Time Records (DTRs)/Bundy Cards by Judges and court personnel, the following guidelines shall be observed:
>
> 1. After the end of each month, every official and employee of each court shall accomplish the Daily Time Record (Civil Service Form No. 48)/Bundy Card, indicating therein ***truthfully and accurately the time of arrival in and departure from the office***.
> x x x[7]

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[6] *Re: Report on the Irregularity in the Use of Bundy Clock by Alberto Salamat, Sheriff IV, RTC-Br. 80, Malolos City*, 592 Phil. 404, 414 (2008); *OCAD v. Isip*, 613 Phil. 32, 39 (2009).

[7] Emphasis ours.

Clearly, as provided by the above-mentioned circular, every court official and employee must truthfully and accurately indicate the time of his or her arrival at and departure from the office. The failure of an employee to reflect in the DTR card the actual times of arrival and departure not only reveals the employee's lack of candor but it also shows his/her disregard of office rules.[8]

Equally important is the fact that this Court has already held that the punching in of one's daily time record is a personal act of the holder. It cannot and should not be delegated to anyone else.[9] Thus, in this case, Roden's act of punching in another employee's DTR card was in violation of OCA Circular No. 7-2003.

Furthermore, by Roden's act of punching in Banaban's DTR card, he also, in effect, made it appear as though Banaban personally punched in her DTR card and, at the same time, made the card reflect a log-in time different from the actual time of arrival. The act of punching in another employee's DTR card falls within the ambit of falsification.[10] It is patent dishonesty, which inevitably reflects on Roden's fitness as an employee to continue in office and on the level of discipline and morale in the service.[11] More so, when Section 4, Rule XVII (on Government Office Hours) of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws also provides that falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable.[12]

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[8] *Absence Without Leave (AWOL) of Ms. Lydia A. Ramil, Court Stenographer III, RTC-Branch 14, Davao City*, 588 Phil. 1, 7 (2008).

[9] *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D. J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, MTC-OCC, Guagua, Pampanga*, 534 Phil. 139, 149 (2006).

[10] *Re: Report on the Irregularity in the Use of Bundy Clock by Alberto Salamat, Sheriff IV, RTC-Br. 80, Malolos City*, *supra* note 6, at 413.

[11] *Alabastro v. Moncada, Sr.*, 488 Phil. 43, 61 (2004); *Nera v. Garcia and Elicao*, 106 Phil. 1031, 1036 (1960).

[12] See also *Duque v. Aspiras*, 502 Phil. 15 (2005).

We have repeatedly held that dishonesty is a malevolent act that has no place in the Judiciary. We have defined dishonesty as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Falsification of daily time records is an act of dishonesty, for which respondent must be held administratively liable.[13]

PENALTY

Under Section 22(a) Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, as amended by CSC Memorandum Circular No. 19, s. 1999, dishonesty may be meted with the penalty of dismissal from service even if it is their first offense. However, in several administrative cases,[14] We refrained from imposing the actual penalties in the presence of mitigating factors considering Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service which provides that in the determination of penalties to be imposed, the extenuating, mitigating, aggravating or alternative circumstances may be considered. As the act constituting the charge was committed only at one instance and that respondents duly admitted the act being complained of, the same may be considered as a mitigating circumstance.

In a similar case, in *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, MTC-OCC, Guagua Pampanga,*[15] respondents were

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[13] *Re: Report on the Irregularity in the Use of Bundy Clock by Alberto Salamat, Sheriff IV, RTC, Branch 80, Malolos City*, *supra* note 6.

[14] *Geocadin v. Hon. Remigio Peña*, 195 Phil. 344 (1981); *In re: Delayed Remittance of Collections of Teresita Lydia Odtuhan,* 445 Phil. 220 (2003); *Sarenas-Ochagabia v. Atty. Balmes Ocampos*, 466 Phil. 1 (2004); *In Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag,* 465 Phil. 24 (2004); *In Re: Imposition of Corresponding Penalties For Habitual Tardiness Committed During the First and Second Semesters of 2002 by the Following Employees of this Court: Gerardo H. Alumbro, et al.*, 469 Phil. 534 (2004).

[15] *Supra* note 9, at 153.

found guilty of dishonesty for actually punching-in another employee's time card, and were merely imposed a penalty of a stern warning that a repetition of the same or similar act shall be dealt with a more severe sanction from the Court. The Court considered that that the case was respondents' first administrative offense in their 37 years and 9 years, respectively, in government service.

However, in *In Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I & Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*,[16] We did not impose the severe penalty of dismissal because the respondents acknowledged their infractions, demonstrated remorse, and had dedicated long years of service to the Judiciary. Instead, We imposed the penalty of suspension for six months on Ting, and the forfeiture of Esmerio's salary equivalent to six months on account of the latter's retirement. Also, in *In Re: Failure of Jose Dante E. Guerrero to Register his Time In and Out in the Chronolog Time Recorder Machine on Several Dates,*[17] the penalty meted was six months suspension on an employee found guilty of dishonesty for falsifying his time record, taking into account as mitigating circumstances such as good performance rating, 13 years of satisfactory service in the Judiciary, and his acknowledgment of, and remorse for, his infractions.

Thus, following the above-quoted jurisprudence, and considering that said circumstances are extant in the instant case, particularly: (1) respondent's 16 years of service in the Judiciary; (2) respondent's first infraction; and (3) respondent's acknowledgment of his infraction and feelings of remorse, We are also persuaded to exhibit a degree of leniency towards him. Thus, We deem the penalty of one-month suspension for Roden to be more appropriate.

WHEREFORE, respondent Rey P. Roden, Legal Researcher, Branch 36, Metropolitan Trial Court, Quezon City, is found

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[16] 502 Phil. 265 (2005).

[17] 521 Phil. 482 (2006).

GUILTY of **DISHONESTY** and is hereby **SUSPENDED** from service for one (1) month, effective immediately. He is further warned that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), *Caguioa,* and *Reyes, Jr., JJ.,* concur.

Perlas-Bernabe, J., on official leave.

THIRD DIVISION

[G.R. No. 170316. September 18, 2017]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES JOEL AND ANDREA NOVAL, ELLEN N. DELOS REYES, DALE Y. NOVAL, WINNIE T. REFI, ZENAIDA LAO, and DAISY N. MORALES,** *respondents.*

SYLLABUS

1. CIVIL LAW; PUBLIC LAND ACT (COMMONWEALTH ACT NO. 141); PUBLIC LANDS MAY BE DISPOSED OF THROUGH CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLES, WHICH MAY BE DONE JUDICIALLY OR THROUGH ISSUANCE OF A FREE PATENT; REQUIREMENTS FOR JUDICIAL CONFIRMATION OF TITLE.— Under the Public Land Act, public lands may be disposed of through confirmation of imperfect or incomplete titles. Confirmation of title may be done judicially or through the issuance of a free patent. The process for judicial confirmation of title is outlined in Section 48 of the Public Land Act, as amended by Presidential Decree No.

1073[.] x x x When a person applies for judicial confirmation of title, he or she already holds an incomplete or imperfect title over the property being applied for, after having been in open, continuous, exclusive, and notorious possession and occupation from June 12, 1945 or earlier. The date "June 12, 1945" is the reckoning date of the applicant's possession and occupation, and not the reckoning date of when the property was classified as alienable and disposable. x x x Thus, a property applied for judicial confirmation of title may be classified as alienable and disposable at any time. For the purposes of judicial confirmation of title, only possession and occupation must be reckoned from June 12, 1945.

2. ID.; ID.; PUBLIC LAND ACT APPLIES ONLY TO ALIENABLE AGRICULTURAL LANDS OF THE PUBLIC DOMAIN; TWO CATEGORIES OF ALIENABLE AND DISPOSABLE LANDS; REQUISITES FOR PUBLIC LAND ACT TO APPLY.— The Public Land Act is a special law that applies only to *alienable agricultural lands of the public domain*, and not to forests, mineral lands, and national parks. *Heirs of Malabanan v. Republic* categorized alienable and disposable lands into: "(a) patrimonial lands of the State, or those classified as lands of private ownership under Article 425 of the Civil Code, without limitation; and (b) lands of the public domain, or the public lands as provided by the Constitution, but with the limitation that the lands must only be agricultural." Thus, for Section 48(b) of the Public Land Act to apply, the property *first*, must be agricultural land of the public domain, and *second*, must have been declared as alienable and disposable.

3. ID.; ID.; APPLICANT HAS THE BURDEN OF PROVING THAT THE LAND IS ALIENABLE AND DISPOSABLE AND THE STATE HAS THE CORRELATIVE BURDEN TO ESTABLISH THE PUBLIC CHARACTER OF THE LAND; DECLARATION OF ALIENABILITY OF THE LAND MUST BE THROUGH A STATUTE OR EXECUTIVE FIAT.— The burden of proving that the property is an alienable and disposable agricultural land of the public domain falls on the applicant, not the State. The Office of the Solicitor General, however, has the correlative burden to present effective evidence of the public character of the land. In order to establish that an agricultural land of the public domain has become alienable and disposable, "an 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." It is settled that the declaration of alienability must be through executive fiat, as exercised by the Secretary of the Department of Environment and Natural Resources.

4. ID.; ID.; ID.; WHEN THE APPLICANT IS SHOWN TO HAVE BEEN IN OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION OF THE LAND FOR THE PERIOD REQUIRED BY LAW, IT IS UPON THE STATE TO PROVE THAT THE LAND IS NOT ALIENABLE AND DISPOSABLE.— [W]hen an applicant is shown to have been in open, continuous, exclusive, and notorious possession of a land for the period required by law, he or she has acquired an imperfect title that may be confirmed by the State. The State may not, for the simple reason that an applicant failed to show documents which the State is in the best position to acquire, indiscriminately take an occupied property and unjustly and self-servingly refuse to acknowledge legally recognized rights evidenced by possession, without violating due process. The burden of evidence lies on the party who asserts an affirmative allegation. Therefore, if the State alleges that lands belong to it, it is not excused from providing evidence to support this allegation. This specially applies when the land in question has no indication of being incapable of registration and has been exclusively occupied by an applicant or his or her predecessor-in-interest without opposition—not even from the State. Hence, when a land has been in the possession of the applicants and their predecessor-in-interest since time immemorial and there is no manifest indication that it is unregistrable, it is upon the State to demonstrate that the land is not alienable and disposable. "[A] mere formal opposition on the part of the [Solicitor General] . . ., unsupported by satisfactory evidence, will not stop the courts from giving title to the claimant."

5. ID.; ID.; ID.; ID.; WHERE RESPONDENTS' POSSESSION WAS NEVER OPPOSED BY THE GOVERNMENT AGENCY TASKED TO ENSURE THAT PUBLIC LANDS REMAIN PUBLIC AND THE STATE FAILED TO SHOW THE PUBLIC CHARACTER OF THE LAND AND IN FACT

CONTINUOUSLY ACCEPTED TAX PAYMENTS FROM RESPONDENTS WITHOUT QUESTION, THE COURT IS CONSTRAINED TO HOLD THAT RESPONDENTS HAVE COMPLIED WITH THE REQUIREMENTS OF THE LAW FOR JUDICIAL CONFIRMATION OF TITLE.— Respondents' and their predecessor-in-interest's possession was never opposed, even at the time of application, by the government agencies tasked to ensure that public lands remain public. There was neither indication nor mention that Lot 4287 was forest, timber land, or belonging to a reservation. The State also kept silent on respondents' and their predecessor-in-interest's continuously paid taxes. The burden to prove the public character of Lot 4287 becomes more pronounced when the State continuously accepts payment of real property taxes. This Court acknowledges its previous rulings that payment of taxes is not conclusive evidence of ownership. However, it is good indicia of possession in the concept of an owner, and when coupled with continuous possession, it constitutes strong evidence of title. No person in the right mind would pay taxes on real property over which he or she does not claim any title. Its declaration not only manifests a sincere desire to obtain title to a property; it may be considered as an announcement of an adverse claim against State ownership. It would be unjust for the State to take properties which have been continuously and exclusively held since time immemorial without showing any basis for the taking, especially when it has accepted tax payments without question. However, despite these circumstances, petitioner failed to show any evidence that Lot 4287 remained public land. Instead, it conveniently relied on the absence of a Department of Environment and Natural Resources certification. Therefore, this Court is constrained to hold that respondents' evidence, coupled with the absence of contradictory evidence from petitioner, substantially establishes that respondents have complied with the requisites of Section 48(b) of the Public Land Act and Section 14(1) of the Property Registration Decree.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Senining Belcina Atup Entise Limalima Jumao-as & Bantilan for respondents.

D E C I S I O N

LEONEN, *J.*:

When an applicant in the registration of property proves his or her open, continuous, exclusive, and notorious possession of a land for the period required by law, he or she has acquired an imperfect title that may be confirmed by the State. The State may not, in the absence of controverting evidence and in a pro forma opposition, indiscriminately take a property without violating due process.

This Petition for Review on Certiorari[1] seeks to reverse and set aside the August 5, 2005 Decision[2] and the October 28, 2005 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 76912. The Court of Appeals sustained the Municipal Trial Court April 19, 2002 Judgment in a land registration case granting the application for registration of title filed by Spouses Joel and Andrea Noval (the Spouses Noval), Ellen N. delos Reyes (delos Reyes), Zenaida Lao (Lao), Winnie T. Refi (Refi), Dale Y. Noval (Dale), and Daisy N. Morales (Morales) (collectively, applicants).

On September 8, 1999, the applicants sought the registration of their titles over the subdivided portions of a land in Barangay Casili, Consolacion, Cebu, designated as Lot 4287 of Consolacion Cadastre. They alleged to have acquired their respective portions of this land by "purchase, coupled with continuous, public, notorious, exclusive and peaceful possession in the concept of an owner for more than 30 years including [the possession] of

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[1] *Rollo*, pp. 22–77.

[2] *Id.* at 79–87. The Decision was penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Sesinando E. Villon and Enrico A. Lanzanas of the Nineteenth Division, Court of Appeals, Cebu City.

[3] *Id.* at 89-90. The Resolution was penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Vicente L. Yap and Enrico A. Lanzanas of the Special Former Nineteenth Division, Court of Appeals, Cebu City.

their predecessors-in-interest." They also alleged that they were in actual possession of their respective portions of the property.[4]

The Republic, through the Office of the Solicitor General, filed its Opposition on the ground that the applicants failed to prove open, continuous, exclusive, and notorious possession of the property since June 12, 1945.[5] It also argued that the property sought to be registered was part of the public domain.[6] It alleged that the tax declarations and tax payment receipts attached to the application were not competent to show *bona fide* acquisition or open and continuous possession of the land.[7]

The applicants' immediate predecessor-in-interest was Cecilia Alilin Quindao (Cecilia), who was already 73 years old when she testified before the trial court. She said that she was familiar with Lot 4287 since she was 15 years old. Her grandmother, Flaviana Seno Alilin (Flaviana), had already possessed and owned this property and enjoyed the fruits of 15 coconut trees already growing there. Her grandmother's possession was "peaceful, exclusive, adverse, public and in the concept of [an] owner."[8]

Cecilia's father, Miguel Alilin (Miguel), inherited the property when Flaviana died.[9] Cecilia was then 20 years old.[10] Miguel tilled and cultivated the land and planted root crops, corn, and other plants.[11] Their family enjoyed the fruits of his cultivation of the land.[12] When he died, Cecilia inherited the property.[13]

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[4] *Id.* at 11–12.

[5] *Id*. at 12, 32–33.

[6] *Id*. at 12 and 33.

[7] *Id*.

[8] *Id*. at 13 and 36.

[9] *Id*. at 13.

[10] *Id*.

[11] *Id*. at 13 and 36.

[12] *Id*. at 13.

[13] *Id*. at 13 and 36.

She also tilled the land and declared it in her name for taxation.[14] She even shared the produce of the land with her tenant.[15] Later, she sold the property to Joel Noval (Joel) and Elizabeth Messerli (Messerli).[16] Messerli sold her property to the Spouses Noval and Refi.[17] Soon the property was partitioned as follows: Lot 1 to the Spouses Noval; Lot 2 to Gertrudes Noval, who later donated his share to delos Reyes; Lot 3 to Lao; Lot 4 to Refi; Lot 5 to Dale; and Lot 7 to Dale and Morales.[18] All of them later on took possession of their respective portions and declared them in their respective names.[19]

The Municipal Trial Court granted their application for registration of title. It declared the applicants to be the absolute owners and possessors of their respective lots, having established conclusively that they are the exclusive owners and peaceful possessors of the properties. The trial court ordered the issuance of decrees of registration upon finality of its judgment.[20]

The Republic appealed the Decision of the trial court,[21] arguing that the applicants failed to show open, continuous, exclusive, and notorious possession of alienable and disposable lands for 30 years.[22] It reiterated that tax declarations may not be used as bases for the grant of the application.[23] It added that there was no Department of Environment and Natural Resources report submitted to show when the properties were declared alienable

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[14] *Id*. at 13.

[15] *Id*.

[16] *Id*. at 13 and 37–38.

[17] *Id*. at 13.

[18] Lot 6 remained in Cecilia's ownership and possession. (*Rollo*, pp. 38–39)

[19] *Rollo,* p. 13.

[20] *Id*. at 13–14 and 38–40.

[21] *Id*. at 40.

[22] *Id*. at 15

[23] *Id*.

and disposable, for the purpose of computing the 30-year period of possession required by law.[24]

The Court of Appeals, however, affirmed[25] the Decision of the Municipal Trial Court.[26]

The Court of Appeals found that the required period of possession in land registration cases was satisfied. It noted that Cecilia was already 73 years old when she testified in 2000 and that the property had already been owned and possessed by Cecilia's grandmother since Cecilia was 15 years old. It held that at 15 years of age, she was already competent to perceive that her grandmother's possession was in the concept of an owner.[27]

The Court of Appeals also found that while the applicants did not submit a Department of Environment and Natural Resources report showing that the property had been declared alienable and disposable, the Republic was not relieved of the duty to present evidence that the land belongs to the public domain. It ruled that the burden is upon the State to prove that land is public domain when it has been possessed and cultivated by an applicant and his or her predecessors-in-interest for a considerable number of years without action from the State. The Court of Appeals added that the open, continuous, adverse, and public possession of land from time immemorial confers an effective title to the possessor.[28]

The Court of Appeals likewise recognized that while tax declarations are not conclusive evidence of ownership, they may give weight to a claim of ownership when coupled with open, adverse, and continuous possession.[29]

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[24] *Id*.

[25] *Id*. at 79–87.

[26] *Id*. at 87.

[27] *Id*. at 16.

[28] *Id*. at 18.

[29] *Id*. at 17–18.

The Republic sought the reconsideration of the Court of Appeals Decision, but this was denied in a Resolution[30] dated October 28, 2005.[31]

Hence, this Petition[32] was filed.

Petitioner argues that respondents failed to show that they or their predecessor-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land for the period required by law.[33] It also contends that the tax declarations presented by respondents are not conclusive evidence of ownership and possession for at least 30 years.[34] It likewise asserts that the property may not be registered without a certification from the Department of Environment and Natural Resources that it has been declared alienable and disposable.[35] Failure to show such certification means that the land belongs to the State.[36] It submits that the burden of proof is upon respondents to show that Lot 4287 had already been declared alienable and disposable at the time of their application.[37]

Respondents, on the other hand, counter that Cecilia's testimony was sufficient to establish the nature of her possession and that of her predecessors-in-interest.[38] They submit that the property has been declared for tax purposes since 1945[39] and that while the Department of Environment and Natural Resources did not issue a certification, it did approve their survey plan when the property was partitioned.[40]

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[30] *Id*. at 89–90.

[31] *Id*. at 24 and 40.

[32] *Id*. at 22–77.

[33] *Id*. at 43–62.

[34] *Id*. at 62–65.

[35] *Id*. at 65–72.

[36] *Id*.

[37] *Id*. at 71.

[38] *Id*. at 223.

[39] *Id*. at 224.

[40] *Id*. at 225.

For this Court's resolution is the sole issue of whether or not the Court of Appeals erred in affirming the trial court decision to allow the Spouses Joel and Andrea Noval, Ellen N. delos Reyes, Dale Y. Noval, Winnie T. Refi, Zenaida Lao, and Daisy N. Morales to register their respective portions of Lot 4287.

I

Any person seeking relief under Commonwealth Act No. 141, or the Public Land Act, admits that the property being applied for is public land.

Under the Public Land Act, public lands may be disposed of through confirmation of imperfect or incomplete titles.[41] Confirmation of title may be done judicially or through the issuance of a free patent.[42] The process for judicial confirmation of title is outlined in Section 48 of the Public Land Act, as amended by Presidential Decree No. 1073:[43]

> Section 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
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> . . . .
>
> (b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession

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[41] Com. Act No. 141 (1936), Sec. 11 (4).

[42] Com. Act No. 141 (1936), Sec. 11 (4) (a) and (b).

[43] Pres. Decree No. 1073, Sec. 4 provides:

> Section 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a bona fide claim of acquisition of ownership, since June 12, 1945.

and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, except as against the government, since July twenty-sixth, eighteen hundred and ninety-four, 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.

When a person applies for judicial confirmation of title, he or she already holds an incomplete or imperfect title over the property being applied for, after having been in open, continuous, exclusive, and notorious possession and occupation from June 12, 1945 or earlier. The date "June 12, 1945" is the reckoning date of the applicant's possession and occupation, and not the reckoning date of when the property was classified as alienable and disposable.[44] In *Heirs of Malabanan v. Republic*:[45]

[T]he choice of June 12, 1945 as the reckoning point of the requisite possession and occupation was the sole prerogative of Congress, the determination of which should best be left to the wisdom of the lawmakers. Except that said date qualified the period of possession and occupation, no other legislative intent appears to be associated with the fixing of the date of June 12, 1945. Accordingly, the Court should interpret only the plain and literal meaning of the law as written by the legislators.

Moreover, an examination of Section 48 (b) of the Public Land Act indicates that Congress prescribed no requirement that the land subject of the registration should have been classified as agricultural since June 12, 1945, or earlier. As such, the applicant's imperfect or incomplete title is derived only from possession and occupation since June 12, 1945, or earlier. This means that the character of the property subject of the application as alienable and disposable agricultural land of the public domain determines its eligibility for land registration, not the ownership or title over it.[46]

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[44] *Heirs of Malabanan v. Republic,* 717 Phil. 141, 165 (2013) [Per *J.* Bersamin, *En Banc*].

[45] 717 Phil. 141 (2013) [Per *J.* Bersamin, *En Banc*].

[46] *Id.* at 165.

Thus, a property applied for judicial confirmation of title may be classified as alienable and disposable at any time. For the purposes of judicial confirmation of title, only possession and occupation must be reckoned from June 12, 1945.

II

The Public Land Act is a special law that applies only to *alienable agricultural lands of the public domain*, and not to forests, mineral lands, and national parks.[47] *Heirs of Malabanan v. Republic*[48] categorized alienable and disposable lands into: "(a) patrimonial lands of the State, or those classified as lands of private ownership under Article 425 of the Civil Code, without limitation; and (b) lands of the public domain, or the public lands as provided by the Constitution, but with the limitation that the lands must only be agricultural."[49] Thus, for Section 48(b) of the Public Land Act to apply, the property *first*, must be agricultural land of the public domain, and *second*, must have been declared as alienable and disposable.[50]

Parenthetically, not all lands and natural resources, by default, belong to the State.

The theory that all lands belong to the State was introduced in this jurisdiction during the Spanish colonization. When Spain transferred sovereignty of the Philippines to the United States in 1898 through the Treaty of Paris, the United States opted not to adopt this concept. Instead, it created new presumptions with respect to land ownership. This was thoroughly explained in *Carino v. Insular Government:*[51]

> It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown, . . . It is true

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[47] *Id*. at 164.

[48] 717 Phil. 141 (2013) [Per *J.* Bersamin, *En Banc*].

[49] *Id*. at 164.

[50] *Id*.

[51] 212 US 449 (1909).

also that, in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. *But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power.* When theory is left on one side, sovereignty is a question of strength, and may vary in degree. *How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.*

The Province of Benguet was inhabited by a tribe that the Solicitor General, in his argument, characterized as a savage tribe that never was brought under the civil or military government of the Spanish Crown. It seems probable, if not certain, that the Spanish officials would not have granted to anyone in that province the registration to which formerly the plaintiff was entitled by the Spanish laws, and which would have made his title beyond question good. *Whatever may have been the technical position of Spain, it does not follow that, in the view of the United States, he had lost all rights and was a mere trespasser when the present government seized his land.* The argument to that effect seems to amount to a denial of native titles throughout an important part of the island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.

The acquisition of the Philippines was not like the settlement of the white race in the United States. Whatever consideration may have been shown to the North American Indians, the dominant purpose of the whites in America was to occupy the land. It is obvious that, however stated, the reason for our taking over the Philippines was different. No one, we suppose, would deny that, so far as consistent with paramount necessities, *our first object in the internal administration of the islands is to do justice to the natives, not to exploit their country for private gain. By the Organic Act of July 1, 1902, c. 1369, § 12, 32 Stat. 691, all the property and rights acquired there by the United States are to be administered "for the benefit of the inhabitants thereof."* It is reasonable to suppose that the attitude thus assumed by the United States with regard to what was unquestionably its own is also its attitude in deciding what it will claim for its own. The same statute made a bill of rights, embodying the safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. It provides that *"no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal*

protection of the laws." § 5. In the light of the declaration that we have quoted from § 12, it is hard to believe that the United States was ready to declare in the next breath that "any person" did not embrace the inhabitants of Benguet, or that it meant by "property" only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association – one of the profoundest factors in human thought – regarded as their own.[52] (Emphasis supplied)

The United States chose to limit its sovereign exercise to the fiduciary administration of the Philippines. Instead of exercising absolute power with respect to property rights, it chose to adopt due process as embodied in the Bill of Rights. This due process clause is already found in our present Constitution. Thus, Article III, Section 1 of the Constitution states:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Most notably, however, *Carino* created a presumption against State ownership and recognized private property rights independent of State grant. Thus:

[E]very presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.[53]

Carino did not qualify that the existence of property rights independent of State grant and the presumptions on land registration apply only to the indigenous cultural communities. These principles can be seen in the present land registration laws.

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[52] *Id*. at 457–458.

[53] *Id*. at 460.

Under the Public Land Act, ownership is recognized if possession dates back since June 12, 1945 or earlier.[54] The law refers to this as "judicial legalization," which allows for agricultural public lands to be disposed of by the State and acquired by Filipino citizens.[55]

Presidential Decree No. 1529, or the Property Registration Decree, has a similar provision, but also recognizes ownership through prescription.[56] Section 14(1) of the Property Registration Decree provides:

> Section 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

Section 14(1) does not vest or create a title to public land.[57] The procedure of registering one's title "simply recognizes and

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[54] Com. Act, Sec. 48(b).

[55] Com. Act No. 141, Sec. 11 provides:

Section 11. Public lands suitable for agricultural purposes can be disposed of only as follows, and not otherwise:

(1) For homestead settlement;
(2) By sale;
(3) By lease; and
(4) By confirmation of imperfect or incomplete titles:
(a) By judicial legalization; or
(b) By administrative legalization (free patent).

[56] Presidential Decree No. 1529, Sec. 14(2).

[57] *See* Concurring and Dissenting Opinion of *J.* Leonen in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 207 (2013) [Per *J.* Bersamin, *En Banc*] and *Republic v. Bautista Jr.*, G.R. No. 166890, June 28, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/166890.pdf> 5 [Per *J.* Bersamin, First Division]).

documents ownership and provides for the consequences of issuing paper titles."[58]

These provisions are the latest versions of a catena of provisions on judicial confirmation of imperfect or incomplete titles.[59] All these laws recognize ownership acquired through possession and occupation in the concept of an owner.

That the law provides for confirmation of titles based on possession and occupation is an acknowledgment of the existence of property rights independent of State grants. It is an acknowledgment that registration is a means only to document ownership already acquired.

Be that as it may, applicants for judicial confirmation of title must still comply with the requisites stated in Section 48(b) of the Public Land Act and Section 14(1) of the Property Registration Decree:

1. The applicant, by himself or through his predecessor-in-interest, has been in possession and occupation of the property subject of the application;
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 acquisition of ownership;
4. The possession and occupation must have taken place since June 12, 1945, or earlier; and
5. The property subject of the application must be an agricultural land of the public domain.[60]

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[58] Concurring and Dissenting Opinion of *J.* Leonen in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 207 (2013) [Per *J.* Bersamin, *En Banc*].

[59] *See also* Act. Nos. 926, 2874, 3164, 3219, 3346 and 3517; Com. Act No. 141 (1936); Rep. Act No. 1942 (1957); Pres. Decree No. 1073 (1977).

[60] *La Tondeña, Inc. v. Republic*, 765 Phil. 795, 811 (2015) [Per *J.* Leonen, Second Division] citing *Heirs of Mario Malabanan v. Republic*, 717 Phil. 141 (2013) [Per *J.* Bersamin, *En Banc*].

III

Petitioner argues that respondents were unable to prove that they and their predecessor-in-interest were able to prove their open and continuous possession and occupation of the property for the period required by law. It describes respondents' and their predecessor-in-interest's possession as mere casual cultivation, which is not the possession contemplated by land registration laws.

Both the Municipal Trial Court and the Court of Appeals established that respondents and their predecessor-in-interest were the exclusive owners and possessors of the land. Both courts affirmed that respondents have met the required period of possession for land registration cases.[61] They acknowledged the credibility of the testimony of respondents' predecessor-in-interest, which established possession of Lot 4287 in the concept of an owner since 1942 or earlier.[62] This means that respondents and their predecessor-in-interest have already been in occupation and possession of the land for more than 50 years at the time of their application for registration.

Only questions of law may be raised in a petition for review on certiorari.[63] This Court has repeatedly said that findings of facts of the lower courts deserve high respect since they are in the best position to pass judgment on the credibility of the witnesses and their statements. This Court rarely questions facts as determined by the lower courts, especially when they are affirmed by the Court of Appeals. The findings of facts are often conclusive upon this Court, subject only to a few exceptions:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures . . .; (2) When the inference made is manifestly

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[61] *Rollo,* pp. 16–17.

[62] Respondents' predecessor-in-interest is Cecilia Alilin, whose first recollection of her grandmother's ownership and possession of Lot 4287 was when she was 15 years old. If she was 73 years old in 2000, the first recollection of her grandmother's possession was in 1942.

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

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 . . .[64]

This case does not fall under any of the exceptions. Since the Court of Appeals affirmed the findings of the trial court, and there is no showing that the conclusions made by both courts are either made with grave abuse of discretion or contrary to the evidence presented and the law, this Court will not disturb these findings.

Respondents' predecessor-in-interest recalled her grandmother to have already cultivated fruit-bearing trees on Lot 4287 when she was 15 years old. Possession prior to that "can hardly be estimated . . . the period of time being so long that it is beyond the reach of memory."[65]

Hence, respondents' and their predecessor-in-interest's possession is, with little doubt, more than 50 years at the time of respondents' application for registration in 1999. This is more than enough to satisfy the period of possession required by law for acquisition of ownership.

IV

The burden of proving that the property is an alienable and disposable agricultural land of the public domain falls on the

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[64] *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per *J*. Bidin, Third Division].

[65] *Susi v. Razon,* 48 Phil. 424, 427 (1925) [Per *J.* Villareal, *En Banc*].

applicant, not the State.[66] The Office of the Solicitor General, however, has the correlative burden to present effective evidence of the public character of the land.[67]

In order to establish that an agricultural land of the public domain has become alienable and disposable, "an 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."[68] It is settled that the declaration of alienability must be through executive fiat, as exercised by the Secretary of the Department of Environment and Natural Resources.[69] *Republic v. T.A.N. Properties*[70] provided further:

The applicant for land registration must prove that the [Department of Environment and Natural Resources] Secretary had approved the

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[66] See *Republic v. T.A.N. Properties, Inc*., 578 Phil. 441 (2008) [Per *J*. Carpio, First Division]; *Republic v. Naguiat*, 515 Phil. 560 (2006) [Per *J*. Garcia, Second Division].

[67] See *Republic v. Barandiaran*, 563 Phil. 1030 (2007) [Per *J*. Carpio Morales, Second Division].

[68] *Republic v. Court of Appeals*, 440 Phil. 697, 710 (2002) [Per *J*. Ynares-Santiago, First Division] citing *Republic v. Bacus*, 257 Phil. 387 (1989) [Per *J*. Cruz, First Division]; *Republic v. De Porkan*, 235 Phil. 93 (1987) [Per *J*. Fernan, Second Division]; and *International Hardwood and Veneer Co. of the Philippines v. University of the Philippines*, 277 Phil. 636 (1991) [Per *J*. Davide, Jr., Third Division].

[69] See *Republic v. T.A.N. Properties, Inc.,* 578 Phil. 441 (2008) [Per *J*. Carpio, First Division], *Republic v. Hanover Worldwide Trading Corp.*, 636 Phil. 739 (2010) [Per *J*. Peralta, Second Division], *Republic v. Sese*, G.R. No. 185092, June 4, 2014 [Per *J*. Mendoza, Third Division]*, Republic v. Vda. de Joson*, 728 Phil. 550 (2014) [Per *J*. Bersamin, First Division], *Republic v. Lualhati,* 757 Phil. 119 (2015) [Per *J*. Peralta, Third Division], *Republic v. Local Superior of the Institute of the Sisters of the Sacred Heart of Jesus of Ragusa*, G.R. No. 185603, February 10, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/185603.pdf> [Per *J*. Reyes, Third Division]; *Republic v. Vega,* 654 Phil. 511 (2011) [Per *J*. Sereno, Third Division].

[70] 578 Phil. 441 (2008) [Per *J*. Carpio, First Division].

land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the [Provincial Environment and Natural Resources Officer] or [City Environment and Natural Resources Officer]. In addition, the applicant for land registration must present a copy of the original classification approved by the [Department of Environment and Natural Resources] Secretary and certified as a true copy by the legal custodian of the official records.[71]

Admittedly, respondents have failed to present any document from the Secretary of the Department of Environment and Natural Resources certifying that the property is part of the alienable and disposable land of the public domain. On the other hand, the Court of Appeals observed, as this Court has, that the Office of the Solicitor General has failed to "present any evidence, testimonial or documentary evidence to support its opposition."[72]

When the State has no effective opposition, except for a pro forma opposition, to controvert an applicant's convincing evidence of possession and occupation, presumptions are tilted to this applicant's favor.[73] In *Republic v. Barandiaran*:[74]

"[W]here it appears that the evidence of ownership and possession are so significant and convincing, the government is not necessarily relieved of its duty from presenting proofs to show that the parcel of land sought to be registered is part of the public domain to enable [the courts] to evaluate the evidence of both sides." . . . [W]hen the records shows that a certain property, the registration of title to which is applied for has been possessed and cultivated by the applicant and his predecessors-in-interest for a long number of years without the government taking any action to dislodge the occupants from their holdings, and when the land has passed from one hand to another by inheritance or by purchase, the government is duty bound to prove

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[71] *Id*. at 452–453.

[72] *Rollo*, p. 87.

[73] See *Republic v. Vega*, 654 Phil. 511 (2011) [Per *J*. Sereno, Third Division].

[74] 563 Phil. 1030 (2007) [Per *J*. Carpio Morales, Second Division].

that the land which it avers to be of public domain is really of such nature.[75] (Citations omitted)

Indeed, the Public Land Act itself establishes a conclusive presumption in favor of the possessor that all conditions essential to a State grant, including the conversion of a land in the public domain to a private property, have been performed, entitling him or her to a certificate of title.[76]

Therefore, when an applicant is shown to have been in open, continuous, exclusive, and notorious possession of a land for the period required by law, he or she has acquired an imperfect title that may be confirmed by the State. The State may not, for the simple reason that an applicant failed to show documents which the State is in the best position to acquire, indiscriminately take an occupied property and unjustly and self-servingly refuse to acknowledge legally recognized rights evidenced by possession, without violating due process.[77]

The burden of evidence lies on the party who asserts an affirmative allegation.[78] Therefore, if the State alleges that lands belong to it, it is not excused from providing evidence to support this allegation.[79] This specially applies when the land in question has no indication of being incapable of registration[80] and has

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[75] *Id*. at 1036 citing *Guido Sinsuat v. Director of Lands, et al.*, 56 O.G. No. 42, 6487, 6489-6490, October 17, 1960 and *Raymundo v. Bureau of Forestry and Diaz*, 58 O.G. No. 37, 6019, 6021.

[76] Com. Act No. 141 (1936), Sec. 48 (b); *See* also *Susi v. Razon,* G.R. No. 24066, 48 Phil. 424, 427 (1925) [Per *J.* Villareal, *En Banc*].

[77] CONST., Art. III, Sec. 1.

[78] See *Clado-Reyes v. Limpe,* 579 Phil. 669 (2008) [Per *J.* Quisumbing, Second Division].

[79] See *Republic v. Barandiaran*, 563 Phil. 1030 (2007) [Per *J.* Carpio Morales, Second Division].

[80] *Rollo,* pp. 169 and 193. On cross-examination, respondent-applicants testified that they bought the property for residential purposes, and that Barangay Casili is already populated with so many houses. *See* Memorandum of petitioner.

been exclusively occupied by an applicant or his or her predecessor-in-interest without opposition—not even from the State.

Hence, when a land has been in the possession of the applicants and their predecessor-in-interest since time immemorial and there is no manifest indication that it is unregistrable, it is upon the State to demonstrate that the land is not alienable and disposable. "[A] mere formal opposition on the part of the [Solicitor General] . . . , unsupported by satisfactory evidence, will not stop the courts from giving title to the claimant."[81]

This Court's previous rulings imposing the burden of overcoming the presumption that a land is public should only be strictly applied when a manifestly unregistrable land is in danger of fraudulent titling—not when it will promote unfairness and violation of due process rights.

Respondents' and their predecessor-in-interest's possession was never opposed, even at the time of application, by the government agencies tasked to ensure that public lands remain public. There was neither indication nor mention that Lot 4287 was forest, timber land, or belonging to a reservation.

The State also kept silent on respondents' and their predecessor-in-interest's continuously paid taxes. The burden to prove the public character of Lot 4287 becomes more pronounced when the State continuously accepts payment of real property taxes. This Court acknowledges its previous rulings that payment of taxes is not conclusive evidence of ownership.[82] However, it is good indicia of possession in the concept of an owner, and when coupled with continuous possession, it constitutes strong evidence of title.

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[81] *Republic v. Court of Appeals and Arquillo*, 261 Phil. 393, 408 (1990) [Per *J*. Medialdea, First Division] citing *Ramos v. Director of Lands*, 39 Phil. 175, 186 (1918) [Per *J*. Malcolm, *En Banc*] and *Republic v. Court of Appeals*, 250 Phil. 82 (1988) [Per *J.* Regalado, Second Division].

[82] See *Republic v. Court of Appeals,* 328 Phil. 238 (1996) [Per *J*. Torres, Jr., Second Division]; *Clado-Reyes v. Limpe,* 579 Phil. 669 (2008) [Per *J.* Quisumbing, Second Division].

No person in the right mind would pay taxes on real property over which he or she does not claim any title.[83] Its declaration not only manifests a sincere desire to obtain title to a property; it may be considered as an announcement of an adverse claim against State ownership.[84] It would be unjust for the State to take properties which have been continuously and exclusively held since time immemorial without showing any basis for the taking, especially when it has accepted tax payments without question.

However, despite these circumstances, petitioner failed to show any evidence that Lot 4287 remained public land. Instead, it conveniently relied on the absence of a Department of Environment and Natural Resources certification.

Therefore, this Court is constrained to hold that respondents' evidence, coupled with the absence of contradictory evidence from petitioner, substantially establishes that respondents have complied with the requisites of Section 48(b) of the Public Land Act and Section 14(1) of the Property Registration Decree. The Municipal Trial Court and the Court of Appeals did not err in approving the registration of the property.

WHEREFORE, the Petition is **DENIED.** The Decision dated August 5, 2005 of the Court of Appeals in CA-G.R. CV No. 76912 is **AFFIRMED.**

SO ORDERED.

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

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[83] See *Clado-Reyes v. Limpe,* 479 Phil. 669 (2008) [Per *J.* Quisumbing, Second Division].

[84] *Republic v. Court of Appeals,* 328 Phil. 238 (1996) [Per *J.* Torres, Jr., Second Division].

FIRST DIVISION

[G.R. No. 194944. September 18, 2017]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **TERESITA FE A. GREGORIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PROPER REMEDY TO ASSAIL THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) DECISIONS WHEN THERE IS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— We held in *St. Martin Funeral Home v. NLRC* (*St. Martin*) that the decision of the NLRC may be reviewed by the CA through a special civil action for *certiorari* under Rule 65 of the Rules of Court. While we stated in this case that the courts, particularly the CA, possess jurisdiction to review the rulings of the NLRC, our existing laws and rules limit a resort to the courts through a petition for *certiorari*. In ruling that a special civil action for *certiorari* is the proper remedy to assail NLRC decisions, we specified in St. Martin the parameters of the judiciary's review powers over the rulings of the NLRC. In particular, the CA may review NLRC decisions only when there is grave abuse of discretion amounting to lack or excess of jurisdiction. x x x [W]hile we said in *St. Martin* that a special civil action under Rule 65 is proper to seek the review of an NLRC decision, this remedy is, by no means, intended to be an alternative to an appeal. It is not a substitute for an appeal that was devised to circumvent the absence of a statutory basis for the remedy of appeal of NLRC decisions. It is not a means to review the entire decision of the NLRC for reversible errors on questions of fact and law.

2. ID.; ID.; ID.; ID.; NOT AN APPEAL BUT A SPECIAL CIVIL ACTION WHERE THE REVIEWING COURT HAS JURISDICTION ONLY OVER ERRORS OF JURISDICTION.— A special civil action for *certiorari* under Rule 65 is not the same as an appeal. In an appeal, the appellate

court reviews errors of judgment. On the other hand, a petition for *certiorari* under Rule 65 is not an appeal but a special civil action, where the reviewing court has jurisdiction only over errors of jurisdiction. We have consistently emphasized that a special civil action for *certiorari* and an appeal are "mutually exclusive and not alternative or successive." A petition filed under Rule 65 cannot serve as a substitute for an appeal.

3. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; WHEN BROUGHT BEFORE THE SUPREME COURT TO CHALLENGE THE DECISION OF THE COURT OF APPEALS (CA) IN A PETITION UNDER RULE 65 CHALLENGING THE NLRC'S DECISION, THE QUESTION OF LAW THAT MUST BE RESOLVED IS WHETHER THE CA CORRECTLY RULED ON THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC.— The focus of a special civil action under Rule 65 also affects the scope of our review when we are presented with a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the ruling of the CA in cases involving alleged grave abuse of discretion by the NLRC. An appeal through a petition for review on *certiorari* under Rule 45 is limited to questions of law. Thus, when a petition under Rule 45 is brought before us challenging the decision of the CA in a petition under Rule 65 challenging an NLRC Decision, the question of law we must resolve is this—whether the CA correctly ruled on the presence or absence of grave abuse of discretion on the part of the NLRC.

4. ID.; ID.; ID.; THE DECISION OF THE NLRC IS FINAL AND NOT SUBJECT TO APPEAL OR REVIEW BY THE COURTS; EXCEPTION.— [A]n appeal is a statutory right. This means that there is no remedy of appeal unless there is a law expressly granting it. In the case of the decisions of the NLRC, there is no law stating that the aggrieved party may appeal the decision before the court. Our ruling in *St. Martin*, however, explained that while there is no appeal from an NLRC decision, this does not mean that NLRC decisions are absolutely beyond the powers of review of the court. In fact, NLRC decisions may be reviewed by the CA through a petition for *certiorari* under Rule 65. Pertinent here is the use of the word "review"

and not "appeal." Also relevant is the use of the remedy of a petition under Rule 65, which is a special civil action for *certiorari* on the basis of grave abuse of discretion. The implication of this is that an NLRC decision is final and not subject to appeal or review by the courts. There is an exception to this, which is a review by the CA only in cases where there is grave abuse of discretion. When the CA reviews an NLRC decision, it is necessarily limited to the question of whether the NLRC acted arbitrarily, whimsically, or capriciously, in the sense that grave abuse of discretion is understood under the law, the rules, and jurisprudence. It does not entail looking into the correctness of the judgment of the NLRC on the merits.

5. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PETITION MUST RAISE NOT ERRORS OF JUDGMENT BUT THE ACTS AND CIRCUMSTANCES SHOWING GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; GRAVE ABUSE OF DISCRETION, DEFINED.— The nature of the judiciary's review of NLRC decisions also prescribe specific allegations in the petition filed by the party seeking the review. As the petition is filed under Rule 65, it must raise not errors of judgment but the acts and circumstances showing grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion is defined as "an act too patent and gross as to amount to an evasion of a duty, or to a virtual refusal to perform the duty enjoined or act in contemplation of law" or that the tribunal, board or officer with judicial or quasi-judicial powers "exercised its power in an arbitrary and despotic manner by reason of passion or personal hostility." Without these allegations, the petition should not be given due course.

6. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; THE QUANTUM OF PROOF REQUIRED TO PROVE THE EXISTENCE OF A JUST CAUSE FOR TERMINATION IN AN ILLEGAL DISMISSAL CASE.— When a complaint for illegal dismissal is filed, the complainant has the duty to prove that he or she was dismissed and that this dismissal is not legal because there is no valid cause or no compliance with due process. Corollarily, it is incumbent upon the respondent to prove that the dismissal was legal by establishing the valid

> cause and compliance with due process. In a case such as the one before us, where the question presented is whether there was a ground to dismiss Gregorio for a just cause, the burden of PNB is to prove that it had, in fact, sufficient basis to find Gregorio guilty of gross dishonesty, gross misconduct and willful breach of trust or duty. This entails the presentation of evidence showing that Gregorio indeed performed the acts imputed against her. x x x PNB charged Gregorio with gross dishonesty, gross misconduct, and willful breach of trust. All these qualify as just causes for termination. Hence, the next logical question is whether PNB presented sufficient evidence to prove that Gregorio indeed committed these acts. In cases filed before quasi-judicial bodies, the quantum of proof required is substantial evidence. This means that "amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

APPEARANCES OF COUNSEL

Antonio M. Elicaño and *Mary Ann B. Del Prado-Arañas* for petitioner.

Allan S. Montaño for respondent.

D E C I S I O N

JARDELEZA, *J.*:

Petitioner Philippine National Bank (PNB) filed this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court challenging the Decision[2] of the Court of Appeals (CA) dated July 15, 2010 in CA-G.R. SP No. 110045 and its Resolution[3] dated December 21, 2010 which denied PNB's motion for reconsideration. The CA found that the National Labor Relations Commission (NLRC) committed grave abuse of discretion when

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[1] *Rollo*, pp. 9-26.

[2] *Id.* at 9-26. Penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Normandie B. Pizarro and Priscilla J. Baltazar-Padilla.

[3] *Id*. at 27-32.

it reversed the Labor Arbiter (LA) and ruled that PNB illegally dismissed respondent Teresita Fe A. Gregorio (Gregorio).[4]

Gregorio was initially hired by PNB as an apprentice teller in 1978. She rose through the ranks and eventually became the Branch Manager, with a level of Senior Manager, of PNB's Sucat, Parañaque Branch (PNB Sucat).[5]

Sometime in December 2002, a depositor requested confirmation that PNB Sucat offers a unique kind of high-return investment, as promised by branch officers and personnel.[6] Thus, from January 8 to 24, 2003, PNB's Internal Audit Group (IAG) conducted a credit review at PNB Sucat regarding its activities connected with loan against deposit hold-out transactions.[7]

On February 3, 2003, a certain Benita C. Rebollo (Rebollo) also executed an affidavit detailing her transactions with Gregorio.[8]

On February 18, 2003, the IAG submitted its evaluation, findings, and recommendation in a Memorandum[9] (IAG Memorandum) which essentially detailed how Gregorio authorized the conduct of irregular transactions in PNB Sucat. From its investigation and Rebollo's affidavit, the IAG discovered Gregorio's purported irregular lending activities: Gregorio, along with Gloria Miranda (Miranda), a customer relation specialist of PNB Sucat, allegedly convinced depositors to invest in a PNB product that had an above-market interest income yield. To avail of this product, Gregorio required depositors to avail of a loan secured by their deposits with PNB Sucat. The loan proceeds are thereafter loaned to other borrowers who undertook to pay a 5% monthly interest. Of the 5%, 3% will be paid to

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

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

[6] *Id*. at 99-A.

[7] *Id*. at 13.

[8] *Id*. at 104.

[9] *Id*. at 97-109.

them as income interest yield while the remaining 2% will go to PNB Sucat as commission. Parenthetically, the IAG found no records showing that PNB Sucat received any commission arising from these loan activities. To facilitate the loans, Gregorio required the depositors to accomplish loan documents such as the Application/Approval Form on Loans Against Deposit Hold-out, Promissory Notes, and Deposit Hold-out Agreements. The proceeds of the loans are then released through manager's checks. These checks, in turn, are credited to the savings accounts of persons other than the borrowers.[10]

The IAG Memorandum identified other irregular transactions within PNB Sucat to prove Gregorio's supposed *modus operandi*: Gregorio approved the application of loan proceeds of 25 borrowers to settle the outstanding loans covered by 44 promissory notes and bank charges of other borrowers.[11] Sampled bank transactions from the period of February 15 to August 29, 2001 show that Gregorio approved 21 manager's checks representing the proceeds of loans against deposit hold-outs. These were loan proceeds of 15 borrowers credited to the accounts of persons other than the borrowers. There were no documents showing the borrowers' written consent to the crediting of their loan proceeds to other people's accounts. Dollar loans against hold-out were granted to three borrowers which proceeds, however, were credited without written consent to the account of a third person.[12]

The IAG's investigation also revealed that there were two deposit hold-out borrowers who received the monthly 3% interest income yield through their savings accounts. This was paid either in cash or fund transfer from the account of a certain Grace de Guia Brozas (Brozas). The IAG asserted that this is the dummy account of Miranda, who worked with Gregorio in the conduct of these irregular lending activities,[13] on the basis

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[10] *Id.* at 99-100.

[11] *Id.* at 98.

[12] *Id.* at 100-101.

[13] *Id.* at 101.

of bank records showing several fund transfers of large amounts from Miranda's account to Brozas' account.

The IAG also noted in its Memorandum that tellers of PNB Sucat accepted for encashment eight managers' checks representing loan proceeds without the proper endorsement of the loan borrowers.[14] In other instances, the tellers paid managers' checks in cash even when it was not clear if the proper bank officer approved the checks for encashment or deposit.[15]

Further, the IAG found that the 3% interest was paid to the depositors who availed of the loan against hold-out transactions either: (1) to their savings or checking accounts with PNB Sucat or (2) by Gregorio in cash.[16]

Later on, two other depositors executed affidavits narrating their transactions with Gregorio. Specifically, Maxima Villar (Villar) and Virginia Pollard (Pollard) executed affidavits on May 19, 2003 and October 14, 2003, respectively, depicting essentially the same transaction that Rebollo stated in her affidavit. In sum, these depositors claimed in their affidavits that Gregorio convinced them to invest in a PNB product that had a high interest income yield. They were required to sign withdrawal slips and other loan documents. Later on, they claimed that, upon inquiry with PNB Sucat, they were surprised to learn that they have outstanding loans with the bank and that their deposits were subject of a hold-out agreement. They were presented with bank documents concerning their loans and hold-out agreements. They insisted in their affidavits that they never agreed to contract a loan with the bank.[17]

On May 30, 2003, the PNB Administrative Adjudication Panel (Panel) charged Gregorio with gross misconduct and dishonesty

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[14] *Id*. at 102.

[15] *Id*. at 103.

[16] *Id*. at 99-A.

[17] *Id*. at 141-143, 144-146.

based on Villar's affidavit.[18] On February 4, 2004, Gregorio was again charged with gross dishonesty and/or willful breach of trust and gross misconduct and/or negligence.[19] Gregorio filed separate answers to these charges on June 12, 2003[20] and February 16, 2004,[21] respectively. In her answer to the first charge, Gregorio submitted Villar's affidavit of retraction which she received on June 11, 2003. According to Villar's affidavit of retraction: (1) the loan against deposit hold-out transaction was a matter between PNB Sucat's depositors and their respective borrowers; (2) these loans "are [the depositors-borrowers'] private concern. Employees of the [b]ranch do not have to do anything with them (*sic*) and their business concerns;"[22] (3) Villar executed the earlier affidavit "out of [her] sincere fear and anxiety that [she] may not be able to get [her] money from PNB Sucat with interest, for reasons which [she] was (*sic*) not able to verify the facts first before executing the affidavit;"[23] (4) Gregorio never induced Villar to enter into any illegal activity or to sign any blank bank documents; (5) the hold-out of Villar's deposit was made upon her instructions.[24] Notably, Rebollo also executed an affidavit of retraction of her earlier affidavit.[25]

In her answer to the second charge, Gregorio denied Pollard's claim that she made the latter sign blank bank documents. Instead, according to Gregorio, Pollard was made to sign "documents with blank spaces on them that [Pollard], like other depositors, have (*sic*) to fill out."[26] Gregorio also stated that she never

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[18] *Id*. at 141-143.

[19] *Id*. at 144-146.

[20] *Id*. at 147-149.

[21] *Id*. at 150-152.

[22] *Id*. at 148.

[23] *Id*.

[24] *Id*.

[25] *Rollo*, pp. 427-428.

[26] *Id*. at 150.

borrowed money from Pollard nor induced her to invest money in high interest-yielding ventures. Rather, Pollard's loan activities were between her and her borrowers. Gregorio asserts that Pollard only complained because her borrower had failed to pay her. Nevertheless, whatever losses she may have incurred is her concern. Gregorio, as well as the staff of PNB Sucat, has nothing to do with this.[27]

On March 22, 2004, the Panel conducted a meeting on the charges which Gregorio attended.[28] On March 29, 2004, the Panel recommended Gregorio's dismissal[29] after taking into consideration the affidavits executed by Rebollo, Villar, and Pollard, as well as the results of the IAG investigation. Although the Panel noted the affidavits of retraction from Villar and Rebollo, it did not give credence to these later affidavits. As to Villar's affidavit of retraction, the decision stated that the original of the affidavit was never presented before the Panel and thus its authenticity was never established. It also cited jurisprudence stating that affidavits of retraction are generally unreliable. As to Rebollo's affidavit of retraction, the decision emphasized that this second affidavit even revealed Gregorio's active participation in the supposed irregular lending activities when Rebollo stated that:

> [***N***]***a ang mga pangyayari ay alam ko, at ang ginawa lamang ni Mrs. Gregorio ay tinulangan ako kung papaano kumita ang pera ko ng mas mataas kay sa binibigay na tubo ng bangko sa aking "time deposit"; na ang kanyang ginawa lamang ay ipinakilala ako kay Mrs. Realina Ty na siya raw ay "supplier" ng City Hall ng Parañaque at siya ang gagamit ng aking pera.*** x x x[30] (Emphasis and underscoring in the original.)

On May 4, 2004, PNB issued a memorandum dismissing Gregorio from service based on the Panel's recommendation.

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[27] *Id*. at 151.

[28] *Id*. at 156.

[29] *Id*. at 153-161.

[30] *Id*. at 159-160.

This prompted Gregorio to file before the NLRC an action for illegal dismissal, damages and attorney's fees, with prayer for reinstatement with full backwages against PNB. The LA found that Gregorio was illegally dismissed, rooting his finding on the insufficiency of PNB's bases in dismissing Gregorio. The LA asserted that as to the first charge, PNB based its decision solely on Villar's first affidavit which has since been successfully rebutted by Gregorio when she presented Villar's affidavit of retraction. There was thus no basis for holding Gregorio guilty on the first charge.[31]

As to the second charge, the LA found that PNB based its decision solely on Pollard's affidavit, which Gregorio was again able to refute. Moreover, since Gregorio was never given the opportunity to confront Pollard, the LA concluded that Pollard's affidavit simply cannot suffice to warrant a finding of Gregorio's guilt on the second charge.[32] It also found that the consistent high performance ratings previously given by PNB to Gregorio militate against PNB's position.[33] The LA thus held:

WHEREFORE, all foregoing premises considered, judgment is hereby rendered:

1. Declaring complainant **TERESITA FE A. GREGORIO** to have been illegally dismissed from her employment and ordering respondent **PHILIPPINE NATIONAL BANK** to immediately reinstate her to her former or substantially equivalent position without loss of seniority rights and other privileges; and

2. Further ordering respondent **PHILIPPINE NATIONAL BANK** to pay **complainant TERESITA FE A. GREGORIO** the amount of **P1,554,247.75** representing the monetary awards granted the latter as initially computed above.

For being a mere nominal party, Mr. Lorenzo V. Tan is hereby ordered dropped as party-respondent in this case.

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[31] *Id*. at 241-243.

[32] *Id*. at 244-245.

[33] *Id*. at 247-248.

SO ORDERED.[34] (Emphasis in the original.)

PNB appealed to the NLRC which reversed the LA's Decision in a Decision[35] promulgated on September 26, 2008. The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the appeal of respondent Philippine National Bank is GRANTED. The Decision of Labor Arbiter Napoleon M. Menese dated December 8, 2005 is REVERSED and SET ASIDE, and a new one is hereby rendered DISMISSING the above-entitled [complaint] for lack of merit.

SO ORDERED.[36] (Emphasis in the original.)

The NLRC held that PNB met the required burden of proof. According to the NLRC, PNB used the affidavits of Rebollo, Villar, and Pollard as well as the result of the IAG's investigation as bases for its findings. It agreed with PNB that Rebollo and Villar's affidavits of retraction did not necessarily make their earlier statements false as recantations are generally looked upon with disfavor as they can be easily fabricated. It added that the LA erred in holding that Gregorio should have been given the opportunity to confront Pollard. According to the NLRC, the confrontation of a witness is not required in company investigations for administrative liability of the employee. Further, the NLRC highlighted that Gregorio's supposed evidence consisted of nothing more than mere denials. Finally, it held that Gregorio's previous commendations did not necessarily mean that she could not have committed the charges against her.[37]

Gregorio filed a motion for reconsideration[38] of the NLRC's Decision. This, however, was denied.[39] Thus, Gregorio filed a

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

[35] *Id*. at 313-328.

[36] *Id*. at 327-328.

[37] *Id*. at 323-324.

[38] *Id*. at 329-359.

[39] *Id*. at 360-361.

special civil action for *certiorari*[40] under Rule 65 of the Rules of Court before the CA, alleging that the NLRC, in reversing the LA, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its Decision dated July 15, 2010, the CA granted Gregorio's petition, reversed the NLRC, and reinstated the LA's Decision. Agreeing with Gregorio that PNB presented no sufficient evidence to warrant her dismissal, the CA found no factual or legal basis for the charges of gross misconduct and willful breach of trust and confidence. It found all the questioned bank transactions to be well documented and the loan against hold-out agreements to be regular transactions of PNB Sucat. The CA added that while Villar and Pollard legitimately availed of this loan arrangement, they suffered losses because their borrowers failed to pay the promised interest. For the CA, this was neither Gregorio's fault nor within her control. It also highlighted that PNB based its decision to terminate Gregorio on the three affidavits, two of which were recanted by Villar and Rebollo.[41] As to Pollard's affidavit which was never recanted, the CA found that: (1) PNB never gave Gregorio the opportunity to confront Pollard; and (2) Pollard's allegations were unsubstantiated.[42] Aside from stressing that there was also no evidence that PNB incurred losses or damages because of Gregorio's activities, the CA also found relevant the fact that Gregorio has consistently received high performance ratings.

PNB is now before this Court challenging the CA's ruling. It asserts that the CA erred in finding that it acted solely on the basis of the three (3) affidavits. In truth, PNB based its decision on the IAG Memorandum, the affidavits executed by Rebollo, Villar, and Pollard, the affidavits of retraction subsequently executed by Villar and Pollard, and Gregorio's answers to the two charges against her.[43] PNB maintains that these altogether

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[40] *Id.* at 362-399.

[41] *Id.* at 82-83.

[42] *Id.* at 86.

[43] *Id.* at 49, 57.

provide substantial evidence to establish Gregorio's irregular transactions as manager of PNB Sucat.[44] These irregular transactions, in turn, amount to gross misconduct, gross dishonesty and willful breach of trust and confidence.[45]

In her comment, Gregorio insists that there was no factual basis for her dismissal.[46] Further, she challenges the purported new allegation in PNB's petition that she ran "a bank within [a] [b]ank."[47] Since this was never raised in any of the proceedings below, Gregorio claims that raising it now on a petition for review before this Court is a breach of her right to due process.[48]

At the onset, we must emphasize that decisions of the NLRC are reviewable by the CA through a special civil action for *certiorari* under Rule 65 of the Rules of Court. This means that the CA must look at an NLRC Decision and ascertain if it merits a reversal exclusively on the basis of one ground—the presence of grave abuse of discretion amounting to lack or excess of jurisdiction. Necessarily then, when a CA decision is brought before us through a petition for review on *certiorari* under Rule 45, the question of law presented before us is this—whether the CA correctly found that the NLRC acted with grave abuse of discretion in rendering its challenged Decision.

We grant the petition.

I.

We held in *St. Martin Funeral Home v. NLRC*[49] (*St. Martin*) that the decision of the NLRC may be reviewed by the CA through a special civil action for *certiorari* under Rule 65 of the Rules of Court. While we stated in this case that the courts,

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[44] *Id*. at 64.

[45] *Id*. at 87.

[46] *Id*. at 438-439.

[47] *Id*. at 454-455.

[48] *Id*. at 456.

[49] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

particularly the CA, possess jurisdiction to review the rulings of the NLRC, our existing laws and rules limit a resort to the courts through a petition for *certiorari.* In ruling that a special civil action for *certiorari* is the proper remedy to assail NLRC decisions, we specified in *St. Martin* the parameters of the judiciary's review powers over the rulings of the NLRC. In particular, the CA may review NLRC decisions only when there is grave abuse of discretion amounting to lack or excess of jurisdiction.

A special civil action for *certiorari* under Rule 65 is not the same as an appeal. In an appeal, the appellate court reviews errors of judgment. On the other hand, a petition for *certiorari* under Rule 65 is not an appeal but a special civil action, where the reviewing court has jurisdiction only over errors of jurisdiction. We have consistently emphasized that a special civil action for *certiorari* and an appeal are "mutually exclusive and not alternative or successive."[50] A petition filed under Rule 65 cannot serve as a substitute for an appeal.[51]

Thus, while we said in *St. Martin* that a special civil action under Rule 65 is proper to seek the review of an NLRC decision, this remedy is, by no means, intended to be an alternative to an appeal. It is not a substitute for an appeal that was devised to circumvent the absence of a statutory basis for the remedy of appeal of NLRC decisions. It is not a means to review the entire decision of the NLRC for reversible errors on questions of fact and law.

In *Leonis Navigation Co., Inc.v. Villamater*,[52] we explained that:

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[50] *Bernardo v. Court of Appeals (Special Sixth Division)*, G.R. No. 106153, July 14, 1997, 275 SCRA 413, 426. Citation omitted.

[51] *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, August 17, 2011, 655 SCRA 580, 590.

[52] G.R. No. 179169, March 3, 2010, 614 SCRA 182.

[A] petition for *certiorari* does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is, thus, incumbent upon petitioners to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of *certiorari* will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically.[53]

These parameters of the review powers of the courts in decisions coming from the NLRC find more meaning when seen in the context of the authority of quasi-judicial bodies and the binding effect of their rulings. In *Hagonoy Rural Bank, Inc. v. NLRC*,[54] we explained that quasi-judicial agencies, like the NLRC, have acquired expertise in the specific matters entrusted to their jurisdiction. Thus, their findings of facts are accorded not only respect but even finality if they are supported by substantial evidence.[55]

The focus of a special civil action under Rule 65 also affects the scope of our review when we are presented with a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the ruling of the CA in cases involving alleged grave abuse of discretion by the NLRC. An appeal through a petition for review on *certiorari* under Rule 45 is limited to questions of law.[56] Thus, when a petition under Rule 45 is brought before us challenging the decision of the CA in a petition under Rule 65 challenging an NLRC Decision, the question of law we must resolve is this—whether the CA correctly ruled on the presence or absence of grave abuse of discretion on the part of the NLRC.[57]

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[53] *Id*. at 192.

[54] G.R. No. 122075, January 28, 1998, 285 SCRA 297.

[55] *Id*. at 308.

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

[57] *Fuji Television Network, Inc. v. Espiritu*, G.R. Nos. 204944-45, December 3,

In *Career Philippines Shipmanagement, Inc. v. Serna*,[58] we said:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.**[59] (Citation omitted; emphasis and underscoring supplied.)

To summarize, an appeal is a statutory right. This means that there is no remedy of appeal unless there is a law expressly granting it. In the case of the decisions of the NLRC, there is no law stating that the aggrieved party may appeal the decision before the court. Our ruling in *St. Martin*, however, explained that while there is no appeal from an NLRC decision, this does not mean that NLRC decisions are absolutely beyond the powers of review of the court. In fact, NLRC decisions may be reviewed by the CA through a petition for *certiorari* under Rule 65. Pertinent here is the use of the word "review" and not "appeal." Also relevant is the use of the remedy of a petition under Rule 65, which is a special civil action for *certiorari* on the basis of grave abuse of discretion. The implication of this is that an NLRC decision is final and not subject to appeal or review by the courts. There is an exception to this, which is a review by the CA only in cases where there is grave abuse of discretion.

2014, 744 SCRA 31, 63; *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 684.

[58] *Supra*.

[59] *Id.* at 684.

When the CA reviews an NLRC decision, it is necessarily limited to the question of whether the NLRC acted arbitrarily, whimsically, or capriciously, in the sense that grave abuse of discretion is understood under the law, the rules, and jurisprudence. It does not entail looking into the correctness of the judgment of the NLRC on the merits.

The nature of the judiciary's review of NLRC decisions also prescribe specific allegations in the petition filed by the party seeking the review. As the petition is filed under Rule 65, it must raise not errors of judgment but the acts and circumstances showing grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion is defined as "an act too patent and gross as to amount to an evasion of a duty, or to a virtual refusal to perform the duty enjoined or act in contemplation of law"[60] or that the tribunal, board or officer with judicial or quasi-judicial powers "exercised its power in an arbitrary and despotic manner by reason of passion or personal hostility."[61]

Without these allegations, the petition should not be given due course. At the risk of repetition, the presence of grave abuse of discretion must be alleged lest a special civil action under Rule 65 become a mere substitute for an appeal.

We apply these pronouncements in resolving the case before us.

II.

The NLRC reversed the LA's Decision and ruled that Gregorio was properly dismissed. It held that PNB had sufficient basis in its finding that Gregorio committed acts amounting to gross dishonesty, gross misconduct and willful breach of trust. The CA, in a petition for *certiorari* under Rule 65, reversed the NLRC's finding that "PNB has met the required burden of proof to support its allegation."[62] The CA found that the NLRC's

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[60] *Triplex Enterprises, Inc. v. PNB-Republic Bank*, G.R. No. 151007, July 17, 2006, 495 SCRA 362, 365.

[61] *Id*. Citation omitted.

[62] *Rollo*, p. 20.

finding is "hollow and finds no evidential support as against the findings of the [LA]."[63] The meat of the CA Decision is that the NLRC was in error when it held that there was substantial evidence for Gregorio's dismissal. In other words, the CA corrected the NLRC's error in *appreciating the evidence presented before it*. Assuming that there was, indeed, such an error, it is an error in judgment and not the error in jurisdiction that characterizes grave abuse of discretion.

Relatedly, Gregorio's petition for *certiorari* filed before the CA raises the argument that the NLRC acted with grave abuse of discretion because:

A). PRIVATE RESPONDENT HAS MISERABLY FAILED TO ESTABLISH A VALID GROUND FOR THE DISMISSAL OF HEREIN PETITIONER.

B). THE CHARGE OF GROSS MISCONDUCT AND WILLFUL BREACH OF TRUST AND CONFIDENCE HAS NO FACTUAL AND LEGAL BASIS.

C). THERE WAS NO SINGLE INCIDENT THAT HAS GIVEN RISE TO THE ALLEGED WILLFUL BREACH OF TRUST AND CONFIDENCE AS WELL AS [THE] ALLEGED GROSS MISCONDUCT.

D). ON THE CONTRARY, AS BRANCH MANAGER, PETITIONER PERFORMED HER DUTIES AND FUNCTIONS EXEMPLARILY:

1. NOT ONLY AS EVIDENCED BY THE "COMMENDATIONS" SHE RECEIVED, AND "OUTSTANDING" RATINGS ACCORDED IN HER PERFORMANCE APPRAISAL;
2. MORE IMPORTANTLY – BEING IN THE WORLD OF BUSINESS – PETITIONER HAS BROUGHT SUBSTANTIAL INCOME TO HEREIN PRIVATE RESPONDENT BANK.
3. THE BANK INCURRED NO LOSS IN ITS OPERATIONS PARTICULARLY INVOLVED IN THE TRANSACTIONS

[63] *Id*.

> IN QUESTION, BUT ON THE CONTRARY, HUGELY [PROFITED THEREFROM].[64] (Emphasis in the original; citations omitted.)

None of these allegations shows that the NLRC was capricious, whimsical or arbitrary in issuing its Decision. The tenor of Gregorio's pleading, in truth, seeks a review of the merits of the case. This can only be properly done in an appeal which, as we have constantly repeated, is not available to challenge the decision of the NLRC. It is only in special cases where there is grave, and not mere abuse of discretion, when the CA may interfere in the exercise of its review power.

The proceedings in question here are those that transpired at the level of the NLRC. When a complaint for illegal dismissal is filed, the complainant has the duty to prove that he or she was dismissed and that this dismissal is not legal because there is no valid cause or no compliance with due process. Corollarily, it is incumbent upon the respondent to prove that the dismissal was legal by establishing the valid cause and compliance with due process. In a case such as the one before us, where the question presented is whether there was a ground to dismiss Gregorio for a just cause, the burden of PNB is to prove that it had, in fact, sufficient basis to find Gregorio guilty of gross dishonesty, gross misconduct and willful breach of trust or duty. This entails the presentation of evidence showing that Gregorio indeed performed the acts imputed against her.

Under the Labor Code, an employee may be dismissed for a just or authorized cause. Notably, the PNB invokes just cause in dismissing Gregorio from service. Article 297 [282] enumerates the acts considered as just cause for the valid termination of an employee:

> Art. 297 [282]. *Termination by Employer* – An employer may terminate an employment for any of the following causes:
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

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

(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
(e) Other causes analogous to the following.

In this case, PNB charged Gregorio with gross dishonesty, gross misconduct, and willful breach of trust. All these qualify as just causes for termination. Hence, the next logical question is whether PNB presented sufficient evidence to prove that Gregorio indeed committed these acts.

In cases filed before quasi-judicial bodies, the quantum of proof required is substantial evidence. This means that "amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[65]

The CA found that PNB failed to prove by substantial evidence that Gregorio committed the acts imputed against her. According to the CA, PNB based its decision to terminate Gregorio on the basis of three affidavits, two of which have been retracted. As to the remaining Pollard affidavit, the CA ruled that this does not merit consideration because Gregorio was never given the opportunity to confront Pollard.

We disagree.

The evidence available before the NLRC to establish that Gregorio indeed committed the acts which became the basis for her dismissal are the following: the IAG Memorandum, which was the result of the investigation of the IAG, the charges against Gregorio, Gregorio's answers to these charges, the three affidavits, the affidavits of retraction, the testimonies of the tellers of PNB Sucat, and Gregorio's own testimony at the PNB meetings.[66]

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[65] RULES OF COURT, Rule 133, Sec. 5.

[66] *Rollo*, p. 159.

We agree with the NLRC that all these, taken together, are adequate to convince a reasonable mind that Gregorio engaged in an unauthorized lending business within PNB Sucat.

The evidence presented before the NLRC painted a clear picture of Gregorio's irregular loan activities: Gregorio facilitated the application for loans secured by deposit hold-outs of some of PNB Sucat's depositors. These depositors agreed to invest in this scheme on the promise that they will earn a 5% interest, although 2% of this will supposedly go to the bank as commission. The proceeds of these loans were lent to other people. The 3% interest which the depositors were promised were transferred to their accounts under Gregorio's authority, supervision, and direction. Notably, the supposed 2% commission that ought to go to the bank are not reflected in any of the records of PNB Sucat. We note that Gregorio's allegation in her comment that PNB raised a new theory when it said that Gregorio "ran a bank within [a] [b]ank"[67] is incorrect. PNB merely described Gregorio's irregular transactions.

We also agree with the NLRC that there was no need for Gregorio to confront Pollard. Confronting a witness is not a matter of right in company investigations as in the one undertaken by PNB.[68] To meet the requirements of due process, it is sufficient that Gregorio had the opportunity to be heard and to refute the allegations in Pollard's affidavit.[69]

We also highlight that the CA erroneously harped on PNB's alleged refusal to take into consideration the affidavits of retraction subsequently executed by Rebollo and Villar. A reading of the PNB's decision to terminate Gregorio clearly shows that it took the affidavits into consideration but ultimately found them unreliable. The NLRC agreed with this appreciation of the affidavits of retraction. Citing jurisprudence, the NLRC

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[67] *Id*. at 455.

[68] *Muaje-Tuazon v. Wenphil Corporation*, G.R. No. 162447, December 27, 2006, 511 SCRA 521, 531.

[69] *Samalio v. Court of Appeals*, G.R. No. 140079, March 31, 2005, 454 SCRA 462, 472-473.

held that retractions are "generally unreliable and looked upon with considerable disfavor by the courts as they can easily be fabricated."[70]

We concur with the NLRC's appreciation of the affidavits of retraction. We have often repeated that "[j]ust because one has executed an affidavit of retraction does not imply that what has been previously said is false or that the latter is true."[71] The reliability of an affidavit of retraction is determined in the same manner that the reliability of any other documentary evidence is ascertained. In particular, it is necessary to examine the circumstances surrounding it. In the case of Villar's affidavit of retraction, we note that this has never been identified and authenticated. Thus, its weight as evidence is highly suspect. As to Rebollo's alleged affidavit of retraction, a reading of its contents, as correctly pointed out by the NLRC, reveals that Rebollo in fact affirmed Gregorio's participation in the lending activities within PNB Sucat when she said in this affidavit that Gregorio introduced her to a certain Realina Ty who became her borrower.

Moreover, the NLRC ruled that even if it gave credence to the retraction, the IAG Memorandum nevertheless established that Gregorio enticed clients to loan money from PNB Sucat secured by their deposits to be lent out to other borrowers.[72]

Meanwhile, the NLRC found that Gregorio merely made general denials of the allegations against her. While she may have presented affidavits from other borrowers stating that Gregorio never induced them to invest in any high yield PNB product, this, by no means, explained the paper trail which the IAG found showing the peculiar transactions authorized or participated in by Gregorio in PNB Sucat. While she may have

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[70] *Rollo*, p. 324.

[71] *Solid Development Corporation Workers Association (SDCWA-UWP) v. Solid Development Corporation*, G.R. No. 165995, August 14, 2007, 530 SCRA 132, 139. Citation omitted.

[72] *Rollo*, pp. 323-324.

presented affidavits from other borrowers of the bank stating that she did not convince them to invest in the loan against hold-out scheme as well as Rebollo and Villar's affidavits of retraction, the NLRC did not consider these sufficient to rule that she did not commit the acts imputed against her. There is no showing that the NLRC acted arbitrarily, whimsically or capriciously in its appreciation of the evidence on record.

In sum, the NLRC arrived at its Decision based on an appreciation of the evidence presented before it. It made its conclusions based on law and prevailing jurisprudence. We cannot agree with the CA that the challenged NLRC Decision is tainted with grave abuse of discretion. As we have stated above, there is a patent lack of any allegation in Gregorio's petition for *certiorari* filed before the CA as to any conduct by the NLRC that can amount to grave abuse of discretion. Neither does the CA's Decision make any clear finding as to which act of the NLRC constitutes grave abuse of discretion. Our own scrutiny of the decisions, pleadings, and records of this case reveal no grave abuse of discretion on the part of the NLRC. Its decision was based on substantial evidence and rooted in law. We must perforce grant PNB's petition.

WHEREFORE, in view of the foregoing, the Philippine National Bank's petition for review on *certiorari* is **GRANTED**. The Decision of the Court of Appeals dated July 15, 2010 and Resolution dated December 21, 2010 in CA-G.R. SP No. 110045 are **REVERSED.** The NLRC Decision dated September 26, 2008 is **REINSTATED**.

SO ORDERED.

Leonardo-de Castro[*] *(Acting Chairperson)*, *del Castillo,* and *Tijam, JJ.,* concur.

Sereno, C.J., on official leave.

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[*] Designated Acting Chairperson per Special Order No. 2484 dated September 14, 2017.

EN BANC

[A.M. No. 17-08-01-SC. September 19, 2017]

RE: REQUESTS FOR SURVIVORSHIP PENSION BENEFITS OF SPOUSES OF JUSTICES AND JUDGES WHO DIED PRIOR TO THE EFFECTIVITY OF REPUBLIC ACT NO. 9946.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 9946; SURVIVORSHIP BENEFITS; GRANTED TO SURVIVING SPOUSES OF JUDGES AND JUSTICES WHO DIED PRIOR TO THE EFFECTIVITY OF THE LAW IN CONFORMITY WITH THE DOCTRINE THAT RETIREMENT LAWS ARE LIBERALLY CONSTRUED IN FAVOR OF THE RETIREE.— We rule that the surviving spouses of justices and judges who died prior to the effectivity of R.A. No. 9946 are entitled to survivorship benefits. We stress that this will not be the first time that the Court has been asked to interpret the provisions contained in R.A. No. 9946. The Court had the occasion to extensively pass upon the meaning of the words and phrases found in the text of the law in the case of *Re: Application for Survivorship Pension Benefits under Republic Act No. 9946 of Mrs. Pacita A. Gruba, Surviving Spouse of the Late Manuel K. Gruba, Former CTA Associate Judge Gruba (Gruba case)* promulgated on 19 November 2013. x x x The Court is mindful that R.A. No. 9946 is a retirement law and a social legislation enacted under the policy of the State to promote social justice, thus, its interpretation must be liberal in keeping with its purposes. As the Court explained in *Gruba*, retirement laws are liberally construed in order to achieve the humanitarian purposes of the law x x x. Beginning 11 February 2010, or upon the effectivity of R.A. No. 9946, the benefits under the old law had been upgraded while at the same time the age and length of service requirements were reduced. Likewise, pro rata monthly pension benefit was introduced for the first time in favor of justices or judges with less than 15 years of government service who retire due to age or incapacity

to discharge his or her duties. More importantly, the new law provided for survivorship benefits in favor of the surviving spouses of justices and judges who were "retired" or eligible for optional retirement and died after the effectivity of R.A. No. 9946. By virtue of the retroactivity clause in Section 3-B, the "benefits" under R.A. No. 9946 are made to apply to justices and judges who died ***prior*** to the effectivity of R.A. No. 9946. x x x Thus, there is no question that the benefits under R.A. No. 9946 extend to those who had died before 11 February 2010. This would include the survivorship benefits in favor of surviving spouses of such deceased justices and judges. The Court sees no compelling reason at this point to revisit this ruling.

2. ID.; ID.; ID.; THE BENEFITS OF THE LAW ARE ALSO EXTENDED TO LEGITIMATE SURVIVING SPOUSES OF JUSTICES OR JUDGES WHO RETIRED DUE TO PERMANENT DISABILITY OR PARTIAL PERMANENT DISABILITY AS WELL AS TO JUSTICES OR JUDGES WHO DIED OR WERE KILLED IN ACTIVE SERVICE.— It is clear that the benefits of the law, effective 11 February 2010, are granted to a surviving legitimate spouse of a justice or judge who: 1. had retired; or 2. was eligible to retire optionally at the time of death. The Guidelines (RAC 81-2010) also describes the beneficiaries of the law to be the surviving legitimate spouse of a justice or judge who: 1. had retired and was receiving a monthly pension; or 2. was eligible to retire optionally at the time of death and would have been entitled to receive a monthly pension. x x x. It is imperative, at this juncture, to clarify the meaning of the term "*retired*" as appearing in Section 3, paragraph 2, of R.A. No. 9946. In *Gruba*, the Court elucidated that the term "retirement" may be understood either in its strict sense or broad sense. When used in a strict legal sense, the term refers to mandatory or optional retirement. However, when used in a more general sense, "retire" may encompass the concepts of both disability retirement and death. It seems from the position taken by the TWG that the term "*retired*" under Section 3, paragraph 2, of R.A. No. 9946 is used in its strict sense, i.e., the justice or judge who is considered "retired" must be one who had reached certain age and length of service conditions only, just like a justice or judge who is eligible to retire optionally. A reading of the entire law, however,

reveals that it also refers to justices and judges who "retire" due to **permanent disability**, whether total or partial, and justices or judges who **died** or were **killed while in actual service**.

3. ID.; ID.; ID.; APPLICABLE TO MEMBERS OF THE JUDICIARY AND ALSO TO COURT ADMINISTRATORS OR DEPUTY COURT ADMINISTRATORS, PROVIDED THEY HAD SERVED AS JUSTICES AND JUDGES BEFORE THEIR APPOINTMENT AS SUCH COURT ADMINISTRATORS OR DEPUTY COURT ADMINISTRATORS.— The benefits granted by R.A. No. 9946 are applicable to "members of the Judiciary" only. The phrase "members of the Judiciary" had been interpreted in many cases to mean justices of the Supreme Court or lower collegiate courts and judges of lower courts. However, as correctly pointed out by the TWG, statutes may carve an exception as in the case of justices or judges who are later on appointed as Court Administrators or Deputy Court Administrators. P.D. No. 828, as amended by P.D. No. 842, is one such law that expressly recognizes that the judicial rank, privileges and other benefits of a member of the judiciary are not lost by his/her appointment to the position of Court Administrator or Deputy Court Administrator.

4. ID.; ID.; ID.; THE LEGITIMATE SURVIVING SPOUSE OF A JUSTICE OR JUDGE WHO, BY REASON OF HIS DEATH WHILE IN ACTUAL SERVICE, IS CONSIDERED RETIRED DUE TO PERMANENT DISABILITY, IS ENTITLED TO SURVIVORSHIP BENEFIT, THE AMOUNT OF WHICH SHALL BE DETERMINED BY THE LENGTH OF SERVICE OF THE DECEASED JUSTICE OR JUDGE; CONDITION.— [T]he surviving spouses of justices and judges who died or were killed while in actual service are entitled to survivorship benefits based on ***total permanent disability***. Had the justice or judge not died, but merely became incapacitated to discharge the duties of his/her office, he/she would have been entitled to a full monthly pension after the 10-year gratuity period if the length of service is at least 15 years, or *pro rata* monthly pension if otherwise. In case of subsequent death, he/she would have been substituted by the surviving spouse who will receive the same amount as survivorship benefit. For purposes of survivorship benefits, it

is more consistent with logic and reason that we read into the law the inclusion of such benefits in favor of the surviving spouses of justices or judges who, regardless of age, died while in service. In so holding, we recognize that the dire situation of the surviving spouses of justices or judges who were retired due to permanent disability is no different from those whose spouses were retired due to death. Thus, in the case of a justice or judge who, by reason of his death while in actual service, is considered retired due to permanent disability, his/her legitimate surviving spouse is entitled to survivorship benefit, the amount of which shall be determined by the length of service of the deceased justice or judge: that is, full monthly pension if the length of service is at least 15 years, or *pro rata* monthly pension if less than 15 years. It must be clarified, however, that the survivorship benefit, which is on top of the death benefits granted under Section 2 of R.A. No. 9946, is conditioned on the survival by the surviving spouse of the gratuity period of *10 years* provided for total permanent disability. This should cover those who died in service but with less than 15 years of service. That is, even though the lump sum gratuity is equivalent to 5 years of salary, the payment of survivorship pension should commence only after the lapse of 10 years, not 5 years. Otherwise, with a shorter waiting period of only 5 years, the surviving spouses of justices or judges who died in service but with less than 15 years of service would be placed in a more advantageous position compared to those whose deceased spouses were retired due to disability but with at least 15 years of service.

5. ID.; ID.; ID.; AUTOMATIC ADJUSTMENT OF SURVIVORSHIP BENEFITS; SINCE SURVIVORSHIP PENSION BENEFIT EMANATES FROM THE PENSION BENEFIT DUE THE JUSTICE OR JUDGE, IT FOLLOWS NECESSARILY THAT THE SURVIVING LEGITIMATE SPOUSE IS ENTITLED TO THE ADJUSTMENT PURSUANT TO THE PROVISION ON AUTOMATIC INCREASE.— The basic provision on automatic increase in the pension of justices and judges is found in Section 3-A x x x. On the other hand, paragraph 2, Section 3 provides that "[u]pon the death of a Justice or Judge of any court in the Judiciary, if such Justice or Judge has retired, or was eligible to retire optionally at the time of death, the surviving legitimate spouse shall be entitled to receive **all the retirement benefits** that the

deceased Justice or Judge would have received had the Justice or Judge not died." Section 3-A should not be read in isolation, but in conjunction with paragraph 2, Section 3. x x x [T]he phrase "all the retirement benefits" appearing in paragraph 2, Section 3 must be understood as subject to, rather than exclusive of, the adjustment for increases referred to in Section 3-A. The retirement benefits referred to under the law include pension benefits. The phrase "all the retirement benefits" is unqualified. *Ubi lex non distinguit nec nos distinguire debemus.* When the law does not distinguish, we must not distinguish. Had the justice or judge not died, the automatic increase in the pension benefit would have been applied in favor of the justice or judge. And since survivorship pension benefit emanates from the pension benefit due the justice or judge, it follows necessarily that the surviving legitimate spouse is entitled to the adjustment pursuant to the provision on automatic increase. Such interpretation is more in keeping with the beneficent purposes of R.A. No. 9946 which, in the first place, was enacted to benefit the surviving legitimate spouses of justices and judges.

R E S O L U T I O N

MARTIRES, *J.*:

For resolution are the applications for survivorship benefits of spouses of justices and judges who died prior to the effectivity[1] of Republic Act *(R.A.)* No. 9946, which introduced substantial amendments to the benefits provided in R.A. No. 910.

In a Memorandum, dated 11 July 2017, the Special Committee on Retirement and Civil Service Benefits (SC-RCSB) submitted for this Court's consideration the respective positions of the members of the Committee on the matter regarding the survivorship pension benefits. The first position paper, labeled as Memorandum A, dated 23 June 2017, recommends the approval of the applications; whereas, the second position paper, labeled as Memorandum B, dated 6 July 2017, recommends their denial. Memorandum B adopted the position and arguments

[1] 11 February 2010.

of the SC-RCSB Technical Working Group (TWG) contained in the latter's Memorandum, dated 24 February 2017.

We now determine whether the applicants are entitled to the survivorship pension benefits and automatic pension adjustment under R.A. No. 9946.

Background

Enacted in 1954, R.A. No. 910 is the law on retirement benefits for the justices of the Supreme Court and the Court of Appeals. It provides for two kinds of benefits: *(1)* **retirement** and *(2)* **death benefits**.[2]

The retirement benefits granted under R.A. No. 910 may be **compulsory** or **optional**, subject to certain age and length of service requirements. For compulsory retirement, a justice must have reached the age of 70 years and must have rendered service in the Judiciary or any other government branch for at least 20 years; for optional retirement, 57 years of age and 20 years in government service, the last 10 of which must be continuously rendered in the Judiciary. Compulsory retirement also applies when the justice, regardless of age, is forced to resign by reason of incapacity to discharge the duties of the office.

The death benefits, on the other hand, are given to the heirs of the justice who dies while in actual service. The benefits are equivalent to a five-year lump sum of the salary the justice

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[2] Section 1. When a Justice of the Supreme Court or of the Court of Appeals who has rendered at least twenty years' service either in the judiciary or in any other branch of the Government, or in both, (a) retires for having attained the age of seventy years, or (b) resigns by reason of his incapacity to discharge the duties of his office, he shall receive during the residue of his natural life, in the manner hereinafter provided, the salary which he was receiving at the time of his retirement or resignation. And when a Justice of the Supreme Court or of the Court of Appeals has attained the age of fifty-seven years and has rendered at least twenty-years' service in the Government, ten or more of which have been continuously rendered as such justice or as judge of a court of record, he shall be likewise entitled to retire and receive during the residue of his natural life, in the manner also hereinafter prescribed, the salary which he was then receiving. x x x

was receiving during the period of death, provided the justice had reached the minimum 20 years of government service; and only two-year lump sum of the salary, if service rendered was less than 20 years. The same benefits are granted as to justices who have not attained the 20-year service requirement but are compulsorily retired upon reaching the age of 70 years, or were forced to retire due to illness or other causes beyond their control.

Under R.A. No. 910, the retirement benefits were granted the *justice*; the death benefits to the *heirs*. ***No benefits were granted to the surviving legitimate spouse of the retired justice*** except for the death benefit which is paid to the surviving spouse as a rightful heir.

Subsequent legislations expanded the coverage of R.A. No. 910 to include justices or judges of other courts, such as the Sandiganbayan, the Court of Tax Appeals (CTA), the Regional Trial Court (RTC), the Metropolitan Trial Court, the Municipal Trial Court (MTC), the Municipal Circuit Trial Court, the Shari'a District Court, the Shari'a Circuit Court, and any other court.[3] The qualifications for entitlement to the benefits were likewise amended. Thus, in 1959, R.A. No. 2614 adjusted the minimum age for optional retirement of justices and judges to 65 years.

The enactment of R.A. No. 9946 in 2010 introduced more changes to R.A. No. 910, more importantly the amendments to benefits granted to the surviving spouses of justices and judges: (*1*) Retirement Benefits; (*2*) Death Benefits; (*3*) Lump Sum Retirement Benefits; (*4*) Survivorship Pension Benefits; and (*5*) Automatic Pension Adjustment. The following Table of Retirement Benefits[4] prepared by the TWG shows a summary of the benefits and salient changes under R.A. No. 9946:

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[3] The first of such expansion in coverage was made under R.A. No. 2614 (Approved on 1 August 1959); later R.A. No. 9946 which took effect on 11 February 2010.

[4] *Rollo*, pp. 182-183; TWG Memorandum dated 24 February 2017.

Eligibility Qualifications	**Mode**	**Retirement Benefits (under RA 910, as amended by RA 9946)**
Age 70; with 15 years of government service (Section 1)	Mandatory retirement; Full pension	For living Justice or Judge: 1) Lump Sum Gratuity of 5 years (Sec. 3); 2) Lifetime pension upon survival of 5 years (Sec. 3); 3) Automatic increase of pension benefits (Sec. 3A) For surviving spouse: 1) Lifetime Survivorship Pension Benefits (Sec. 3)
Age 70; with 15 years of government service (Sec. 1); with partial permanent disability (Secion 3)	Mandatory retirement; Full pension; with full partial permanent disability	For living Justice or Judge: 1) Lump Sum Gratuity of 7 years (Sec. 3); 2) Lifetime pension upon survival of 7 years (Sec. 3); 3) Automatic increase of pension benefits (Sec. 3) For surviving spouse: Lifetime Survivorship Pension Benefits (Sec. 3)
Age 70, with less than 15 years of government service (Section 1)	Mandatory retirement, Pro-rata pension;	For living Justice or Judge: 1) Lump Sum Gratuity of 5 years (Sec. 3) 2) Lifetime pro-rata pension upon survival of 5 years (Sec. 3) 3) Automatic increase of pension benefits (Sec. 3) For surviving spouse: Lifetime Survivorship Pension Benefits (Sec. 3)
Age 70, with less than 15 years of government service (Sec. 1); with partial permanent disability (Sec. 3)	Mandatory retirement; Pro-rata pension; with partial permanent disability	For living Justice or Judge: 1) Lump Sum Gratuity of 7 years (Sec. 3) 2) Lifetime pro-rata pension upon survival of 7 years (Sec. 3) 3) Automatic increase of pension benefits (Sec. 3A) For surviving spouse: Lifetime Survivorship Pension Benefits (Sec. 3)

Total Permanent Disability (Incapacity to discharge functions of office), regardless of age, with 15 years of government service (Sec. 1)	Disability Retirement (regardless of age)	For living Justice or Judge: 1) Lump Sum Gratuity of 10 years (Sec. 3); 2) Lifetime pension upon survival of 10 years (Sec. 3); 3) Automatic increase of pension benefits (Sec. 3A) For surviving spouse: Lifetime Survivorship Pension Benefits (Sec. 3)
Total Permanent Disability (Incapacity to discharge functions of office), regardless of age, with less than 15 years of government service (Sec. 1)	Disability Retirement; pro-rata pension (regardless of age)	For living Justice or Judge: 1) Lump Sum Gratuity of 10 years (Sec. 3); 2) Lifetime pro-rata pension upon survival after 10 years (Sec. 3); 3) Automatic increase of pension benefits (Sec. 3A) For surviving spouse: Lifetime Survivorship Pension Benefits (Sec. 3)
At least age 60, with 15 years of government service, the last 3 [of which shall have been] continuously [rendered] in the judiciary (Sec. 1)	Optional Retirement	For living Justice or Judge: 1) Lump Sum Gratuity of 5 years (Sec. 3); 2) Lifetime pension upon survival of 5 years (Sec. 3); 3) Automatic increase of pension benefits (Sec. 3A) For surviving spouse: Lifetime Survivorship Pension Benefits (Sec. 3)
Killed because of work, regardless of age, with at least 5 years of government service, e.g. killed intentionally (Section 2)	Death Benefits (regardless of age)	For the Heirs: 1) Lump Sum Gratuity of 10 years (Section 2)
Died in service, regardless of age, with 15 years of government service (Section 2)	Death Benefits (regardless of age)	For the Heirs: Lump Sum Gratuity of 10 years (Sec. 2)

Died in service, regardless of age or length with [less than 15 years] of government service (Sec. 2)	Death Benefits (regardless of age)	For the Heirs: 1) Lump Sum Gratuity of 5 years (Section 2)

The benefits granted to the surviving legitimate spouses of justices and judges are encapsulated in paragraph 2, Section 3, of R.A. No. 910, as amended by R.A. No. 9946, viz:

Upon the death of a Justice or Judge of any court in the Judiciary, if such Justice or Judge had retired, or was eligible to retire optionally at the time of death, the surviving legitimate spouse shall be entitled to receive all the retirement benefits that the deceased Justice or Judge would have received had the Justice or Judge not died. The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.

Also inserted in the new law are Sections 3-A and 3-B which provide:

Sec. 3-A. All pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired.

Sec. 3-B. The benefits under this Act shall be granted to all those who have retired prior to the effectivity of this Act: *Provided*, that the benefits shall be applicable only to members of the Judiciary: *Provided, further*, That the benefits to be granted shall be prospective.

On 6 September 2010, the Court issued Revised Administrative Circular No. 81-2010 (*RAC 81-2010*), or the Guidelines on the Implementation of R.A. No. 9946, which provide, among others:

E. Survivorship Pension Benefits

The legitimate surviving spouse of a Justice or Judge who (1) has retired or was eligible to retire optionally at the time of death, and (2) was receiving or would have been entitled to receive a monthly pension, shall be entitled to receive the said benefits that the deceased Justice or Judge would have received had the Justice or Judge not

died. The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.

F. Other Entitlements

1. All pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired.

2. The benefits under R.A. No. 9946 shall be granted to all those who have retired prior to its effectivity, provided that the benefits shall be applicable only to members of the Judiciary and the benefits to be granted shall be prospective, beginning February 11, 2010, the date of effectivity of R.A. No. 9946.

3. The implementing guidelines provided herein shall be applicable to officials of the Judiciary who have been granted the rank, salary and privileges of a member of the Judiciary subject to the conditions set forth in the resolutions, dated December 9, 2008, and February 17, 2009, in A.M. No. 11838-Ret.

PROHIBITIONS TO ENTITLEMENT TO PENSION

1. A retired Justice of the SC, CA, SB, CTA or a Judge of the RTC, MeTC, MTCC, MTC, MCTC, SDC, SCC or his/her surviving spouse receiving the benefits of R.A. No. 9946 during the time that he/she is receiving said pension shall not appear as counsel before any court in any civil case wherein the government or any subdivision or instrumentality thereof is the adverse party, or in any criminal case wherein an incumbent or former office or employee of the government is accused of an offense committed in relation to his/her office, or collect any fee for his/her appearance in any administrative proceedings to maintain an interest to the Government, National, Provincial or municipal, or to any of its legally constituted offices.

2. The member of the Judiciary or his/her surviving spouse who assumes an elective public office shall not, upon assumption of office and during his/her term, receive the monthly pension due to him/her.

3. The surviving spouse who remarries shall no longer be entitled to the survivorship benefit.

Related Cases

Since the passage of R.A. No. 9946, a great number of applications for survivorship benefits had been filed by surviving spouses of justices and judges, presumably on account of the retroactivity provision in Section 3-B thereof. The Court had approved many of such applications. As reported by the TWG, there are now 307 spouses of justices and judges who had died prior to the effectivity of R.A. No. 9946 and who are receiving pension benefits. There are also 29 pending requests with the TWG, and more than 100 applications more before the Office of the Court Administrator waiting clarification of deemed inconsistent grants of survivorship benefits.

The apparently inconsistent rulings of the Court refer to the cases of Deputy Court Administrator Nimfa Vilches (*Vilches*),[5] CTA Judge Manuel Gruba (*Gruba*),[6] and MTC Judge Galo Alvor, Jr. (*Alvor*)[7] In *Vilches* and *Gruba*, the Court granted 10-year lump sum gratuities under Section 2 in favor of the surviving spouses of Vilches and Gruba but ***denied the claim for survivorship pension benefits*** for the reason that the latter were not eligible to retire and, thus, not entitled to the benefits under Section 3. However, in *Alvor*, the Court ***granted*** Mrs. Alvor ***pro rata survivorship pension benefits*** even though Judge Alvor was not eligible to retire at the time of his death. The following table presented by the TWG shows the comparative data of the three cases:

TABLE A	DCA Vilches Case	CTA Judge GRUBA Case	MTC Judge ALVOR Case
Court En Banc	Supreme Court En Banc	Supreme Court En Banc	Supreme Court Third Division

[5] A.M. No. 14158-Ret., 9 October 2012.

[6] *Re: Application for Survivorship Pension Benefits under R.A. No. 9946 of Mrs. Gruba*, 721 Phil. 330 (2013).

[7] A.M. No. 14231-Ret., 2 October 2013.

Case No.	AM-14158-Ret	AM-14155-Ret	AM-14231-Ret
Date Decided	9 October 2012	19 November 2013	2 October 2013
Name of Judge	DCA Nimfa Vilches	CTA Judge Gruba	MTC Judge Alvor (Samar)
Died in Service	15 December 2011	Illness, 25 June 1996	Illness, 13 May 1991
Age at Death	55 Y	55Y 2M 6D	56Y 11M 14D
Years of Government Service (Judiciary)	22 Y (about)	16Y 6M 21D(3Y 9M 8D)	5 . 4 2 8 7 6 Y (1.55594Y)
Court Actions	Heirs were granted only the 10-year lump sum gratuity under Section 2 of RA 910, as amended by RA 9946 No survivorship pension benefits were granted to the surviving widower, as DCA Vilches was not eligible to retire and was thus not entitled to the benefits under Section 3.	In 1996, the heirs were granted the 5-year lump sum gratuity under Section 2 of RA 910, prior to RA 9946. In January 2012, Mrs. Gruba was initially granted full survivorship pension benefits, applying the reduced 15 years service requirement under R.A. No. 9946. In November 2013, the Court revoked the grant of survivorship pension benefits to Mrs. Gruba. Judge Gruba was found ineligible to retire at the time of his death, for reason of age. Instead, the heirs were granted the increased 10-year lump sum gratuity under Section 2 of RA 9946.	In 1991, the heirs were granted the 5-year lump sum gratuity under Section 2 of RA 910, prior to RA 9946. In October 2013, Mrs. Alvor was granted pro-rata survivorship pension benefits, extending further the liberal application of R.A. No. 9946.

In view of the Court's varying rulings on the grant of survivorship benefits in the three cases, the Office of the Court Administrator (OCA), through its Memorandum[8] dated 26 October 2015, recommended a revisit of RAC 81-2010 to adopt *Alvor*.[9]

It is also noted that in the approved applications for survivorship pension benefits, the amounts are exclusive of adjustments of pension benefits by virtue of the 1st and 2nd tranche salary increases under Executive Order *(E.O.)* No. 201, series of 2016, effective 1 January 2016.

The Issues

In resolving this matter, the Court takes note of the issues presented by the TWG in their Memorandum, to wit:

1. Who are the surviving spouses entitled to the benefits under Section 3, paragraph 2;
2. What are the benefits that a qualified surviving spouse is entitled to receive;
3. Are qualified surviving spouses entitled to the automatic increase under Section 3-A;
4. Does Section 3-B, in providing for the retroactive application of R.A. No. 9946, entitle the surviving spouses of justices or judges who died prior to the effectivity of said Act to the same benefits as those of justices or judges who died on or after the effectivity of R.A. No. 9946 on 11 February 2010.[10]

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[8] Re: Request to Revisit Revised Administrative Circular No. 81-2010 (Re: Guidelines on the Implementation of Republic Act No. 9946 [***An Act Granting Additional Retirement, Survivorship, and Other Benefits to Members of the Judiciary, Amending for the purpose Republic Act No. 910, as amended, Providing Funds therefor and for Other Purposes***] to include survivorship pension benefit for the surviving spouse of a deceased retired Member of the Bench under permanent total disability).

[9] *Rollo*, p. 148; TWG Memorandum dated 24 February 2017.

[10] *Id*. at 145.

OUR RULING

We rule that the surviving spouses of justices and judges who died prior to the effectivity of R.A. No. 9946 are entitled to survivorship benefits.

We stress that this will not be the first time that the Court has been asked to interpret the provisions contained in R.A. No. 9946. The Court had the occasion to extensively pass upon the meaning of the words and phrases found in the text of the law in the case of *Re: Application for Survivorship Pension Benefits under Republic Act No. 9946 of Mrs. Pacita A. Gruba, Surviving Spouse of the Late Manuel K. Gruba, Former CTA Associate Judge Gruba*[11] *(Gruba case)* promulgated on 19 November 2013.

In *Gruba*, Manuel Gruba died on 25 June 1996 while he was a judge of the CTA. He was 55 years old and had rendered government service for about 16 years, the last 3 years and 9 months of which were served in the Judiciary. His heirs were paid a five-year lump sum gratuity. After the effectivity of R.A. No. 9946, Mrs. Gruba applied for survivorship pension benefits which the Court initially approved but later on revoked.

On the issue whether R.A. No. 9946 applies to the heirs of Judge Gruba being entitled to the increased 10-year lump sum gratuity benefits, the Court answered in the affirmative. But on whether Mrs. Gruba is entitled to receive survivorship pension benefits, the Court ruled to deny her such because Judge Gruba was not eligible to retire optionally (lack in age requirement) at the time of his death.

The Court is mindful that R.A. No. 9946 is a retirement law and a social legislation enacted under the policy of the State to promote social justice,[12] thus, its interpretation must be liberal in keeping with its purposes. As the Court explained in *Gruba*,

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[11] *Supra* note 6.

[12] Philippine Constitution, Article II, Section 10.

retirement laws are liberally construed in order to achieve the humanitarian purposes of the law, thus -

> Retirement laws, in particular, are liberally construed in favor of the retiree because their objective is to provide for the retiree's sustenance and, hopefully, even comfort, when he no longer has the capability to earn a livelihood. The liberal approach aims to achieve the humanitarian purposes of the law in order that efficiency, security, and well-being of government employees may be enhanced. Indeed, retirement laws are liberally construed and administered in favor of the persons intended to be benefited, and all doubts are resolved in favor of the retiree to achieve their humanitarian purpose.[13]

R.A No. 9946 covers justices and judges who dies prior to its effectivity.

Beginning 11 February 2010, or upon the effectivity of R.A. No. 9946, the benefits under the old law had been upgraded while at the same time the age and length of service requirements were reduced. Likewise, pro rata monthly pension benefit was introduced for the first time in favor of justices or judges with less than 15 years of government service who retire due to age or incapacity to discharge his or her duties. More importantly, the new law provided for survivorship benefits in favor of the surviving spouses of justices and judges who were "retired" or eligible for optional retirement and died after the effectivity of R.A. No. 9946.

By virtue of the retroactivity clause in Section 3-B, the "benefits" under R.A. No. 9946 are made to apply to justices and judges who died ***prior*** to the effectivity of R.A. No. 9946.

The TWG suggests that "the benefits of R.A. No. 9946 are available retroactively, only to those who retired prior to ***and are still alive upon*** its effectivity and not necessarily to those who [had] retired and died prior thereto or to those who had not retired but died prior to R.A. No. 9946." The TWG is incorrect.

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[13] *Re: Application for Survivorship Pension Benefits under R.A. No. 9946 of Mrs. Gruba, supra* note 6, citing *Government Service Insurance System v. De Leon*, 649 Phil. 610, 622 (2010).

Even in *Gruba*, the Court recognized the entitlement to survivorship benefits of surviving spouses of justices and judges who died prior to the effectivity of R.A. No. 9946. There was no express mention that the coverage of the law includes only those who have retired prior to and are still alive upon its effectivity. Thus, the Court held that Judge Gruba, who passed away prior to the effectivity of R.A. No. 9946, is still covered by the law by virtue of Section 3-B. The Court then went on to state that Mrs. Gruba would have been entitled to the claimed survivorship benefits had Judge Gruba complied with the minimum age requirement to become eligible for retirement at the time of his death. Citing established jurisprudence, the Court ratiocinated:

> Providing retroactivity to judges and justices who died while in service conforms with the doctrine that retirement laws should be liberally construed and administered in favor of persons intended to be benefited." [T]he liberal approach aims to achieve the humanitarian purposes of the law in order that the efficiency, security, and well-being of government employees may be enhanced. Ensuring the welfare of families dependent on government employees is achieved in the changes made in Republic Act No. 9946. It will be consistent with the humanitarian purposes of the law if the law is made retroactive to benefit the heirs of judges and justices who passed away prior to the effectivity of Republic Act No. 9946.[14]

Thus, there is no question that the benefits under R.A. No. 9946 extend to those who had died before 11 February 2010. This would include the survivorship benefits in favor of surviving spouses of such deceased justices and judges. The Court sees no compelling reason at this point to revisit this ruling.

Who are the "surviving spouses" referred to under Section 3, paragraph 2?

We restate Section 3, paragraph 2, of R.A. No. 9946:

> Upon the death of a Justice or Judge of any court in the Judiciary, if such Justice or Judge has ***retired***, or was ***eligible to retire optionally*** at the time of death, the surviving legitimate spouse shall be entitled

[14] *Id.* at 345-346.

to receive all the retirement benefits that the deceased Justice or Judge would have received had the Justice or Judge not died. The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage, (emphasis supplied)

It is clear that the benefits of the law, effective 11 February 2010, are granted to a surviving legitimate spouse of a justice or judge who:

1. had retired; or
2. was eligible to retire optionally at the time of death.

The Guidelines (RAC 81-2010) also describes the beneficiaries of the law to be the surviving legitimate spouse of a justice or judge who:

1. had retired and was receiving a monthly pension; or
2. was eligible to retire optionally at the time of death and would have been entitled to receive a monthly pension.

The TWG, thus, posits that the surviving spouse of a justice or judge, who had not retired but died while in actual service, is not eligible to receive the survivorship benefit (monthly pension) under Section 3 of R.A. No. 9946, unless said justice or judge was eligible to retire optionally at the time of death. The TWG, however, notes that the surviving spouse is entitled to the death benefit under Section 2, along with the other heirs of the deceased justice or judge.

It is imperative, at this juncture, to clarify the meaning of the term "*retired*" as appearing in Section 3, paragraph 2, of R.A. No. 9946.

In *Gruba*, the Court elucidated that the term "retirement" may be understood either in its strict sense or broad sense. When used in a strict legal sense, the term refers to mandatory or optional retirement. However, when used in a more general sense, "retire" may encompass the concepts of both disability retirement and death.[15]

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[15] *Id*. at 341.

It seems from the position taken by the TWG that the term *"retired"* under Section 3, paragraph 2, of R.A. No. 9946 is used in its strict sense, i.e., the justice or judge who is considered "retired" must be one who had reached certain age and length of service conditions only, just like a justice or judge who is eligible to retire optionally. A reading of the entire law, however, reveals that it also refers to justices and judges who "retire" due to **permanent disability**, whether total or partial, and justices or judges who **died** or were **killed while in actual service**.

Particularly significant for the present purposes is the discussion in *Gruba* of the meaning of the term "*retired*" found in the retroactivity clause, Section 3-B, that was added to R.A. No. 910. The material portion of the resolution is reproduced, thus -

> Republic Act No. 9946 provides for a retroactivity clause Section 4, adding Section 3-B to Republic Act No. 910:
>
> > SEC. 3-B. The benefits under this Act shall be granted to all those who have **retired** prior to the effectivity of this Act: *Provided*, That the benefits shall be applicable only to the members of the Judiciary: *Provided, further,* That the benefits to be granted shall be prospective. (emphasis supplied)
>
> An initial look at the law might suggest that the retroactivity of Republic Act No. 9946 is limited to those who retired prior to the effectivity of the law. However, a holistic treatment of the law will show that the set of amendments provided by Republic Act No. 9946 is not limited to justices or judges who retired after reaching a certain age and a certain number of years in service. The changes in the law also refer to justices or judges who "retired" due to permanent disability or partial permanent disability as well as justices or judges who died while in active service.
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> In the light of these innovations provided in the law, the word "retired" in Section 3-B should be construed to include not only those who already retired under Republic Act No. 910 but also those who retired due to permanent disability. It also includes judges and justices who died or were killed while in service.
>
> Providing retroactivity to judges and justices who died while in service conforms with the doctrine that retirement laws should be liberally construed and administered in favor of persons intended to be benefited.

[T]he liberal approach aims to achieve the humanitarian purposes of the law in order that the efficiency, security, and well-being of government employees may be enhanced. Ensuring the welfare of families dependent on government employees is achieved in the changes made in Republic Act No. 9946. It will be consistent with the humanitarian purposes of the law if the law is made retroactive to benefit the heirs of judges and justices who passed away prior to the effectivity of Republic Act No. 9946.[16]

Even if the discussion by the Court on the interpretation of the term "*retired*" is in reference to Section 3-B, it is reasonable to apply the same interpretation in the construction of the same term found in Section 3, paragraph 2. It should be stressed that the said term qualifies the words "justices or judges" to whom the benefits under the law are granted. In turn, such benefits referred to under the said provision of law are the same benefits as elsewhere mentioned. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible.[17] There would be more confusion rather than harmony in the provisions if the meaning of the same term in one paragraph should be different from that found in another.

To reiterate, Section 3, paragraph 2, of R.A. No. 9946 also refers to the legitimate surviving spouses of justices or judges who "retired" due to permanent disability or partial permanent disability as well as to justices or judges who died or were killed while in active service.

The benefits under R.A. No. 9946 also extend to Court Administrators or Deputy Court Administrators.

The TWG posits that the justices or judges who "retired" or "eligible to retire optionally" referred to in Section 3, paragraph 2 of R.A. No. 9946 also include those who became Court Administrators and Deputy Court Administrators (DCAs).[18] Its

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[16] *Id*. at 345-346. (emphasis in the original)

[17] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 200 (2012).

[18] *Rollo*, p. 152; TWG Memorandum dated 24 February 2017.

basis is Section 3 of Presidential Decree No. 828 (P.D. No. 828), as amended by P.D. No. 842, which provides:

Section 3. *Qualifications, appointment and tenure*. The Court Administrator and the Deputy Court Administrators shall have the same qualifications as Justices of the Court of Appeals. They shall be appointed by the Supreme Court and shall serve until they reach the age of sixty-five (65) years or become incapacitated to discharge the duties of their office, but may be removed or relieved for just cause by a vote of not less than eight (8) Justices of the Supreme Court; provided that **a member of the Judiciary appointed to any of the positions, shall not be deemed thereby to have lost the rank, seniority, precedence, benefits, and other privileges appertaining to his judicial position**, and his service in the Judiciary, to all intents and purposes, shall be considered as continuous and uninterrupted. (emphasis supplied)

The TWG clarifies that survivorship benefits shall be available to the legitimate spouse if it is shown that the deceased, at the time of his/her death, was *(1)* a justice or judge, *or (2)* a justice or judge who was appointed as a Court Administrator or DCA.[19] Deducing the view of the TWG, the legitimate surviving spouse of a Court Administrator or DCA who has not previously served as a justice or judge cannot be entitled to survivorship benefits under Section 3, paragraph 2 of R.A. No. 9946.

We agree.

The benefits granted by R.A. No. 9946 are applicable to "members of the Judiciary"[20] only. The phrase "members of the Judiciary"[21]

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[19] *Id*. at 151.

[20] The phrase "members of the Judiciary" appears in three separate parts of R.A. No. 9946: in the title, in Section 3-A and in Section 3-B.

[21] Section 7, Article VIII of the 1987 Constitution describes a Member of the Judiciary. It provides:

(1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more, a judge of a lower court or engaged in the practice of law in the Philippines.

had been interpreted in many cases[22] to mean justices of the Supreme Court or lower collegiate courts and judges of lower courts. However, as correctly pointed out by the TWG, statutes may carve an exception as in the case of justices or judges who are later on appointed as Court Administrators or Deputy Court Administrators.[23] P.D. No. 828, as amended by P.D. No. 842, is one such law that expressly recognizes that the judicial rank, privileges and other benefits of a member of the judiciary are not lost by his/her appointment to the position of Court Administrator or Deputy Court Administrator. Such was our holding in *Re: Application for Survivorship Pension Benefits under R.A. No. 9946 of Court Administrator Ernani Cruz Paño [Mrs. Estrella C. Paño] (Paño)*.[24]

As narrated in *Paño*, Ernani Cruz Paño served as District Judge and RTC Judge before his appointments as DCA and later as Court Administrator. His application for disability retirement under R.A. No. 910 was approved on 7 May 1996. Ten years after his disability retirement, the Court granted him a monthly pension based on R.A. 910. He died on 6 December 2011, or after the passage of R.A. No. 9946. His surviving spouse, Mrs. Paño, applied for survivorship benefits. Even if he retired as a Court Administrator, we considered Paño a "member of the Judiciary" for purposes of R.A. No. 9946 because he is deemed to have maintained his service as such member of the Judiciary pursuant to Section 3 of P.D. No. 828, as amended by P.D. No. 842.[25] This was the same reason why his

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(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

(3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

[22] *Chavez v. Judicial and Bar Council, supra* note 17; *Nitafan v. Commissioner of Internal Revenue*, 236 Phil. 307 (1987); *Aquino v. COMELEC*, 159 Phil. 328 (1975).

[23] *Rollo*, p. 166; TWG Memorandum dated 24 February 2017.

[24] Extended Resolution, A.M. No. 14198-Ret., 9 October 2012.

[25] *Id*.

application for disability retirement, and later monthly pension, under R.A. No. 910 was approved by this Court in the first place. We said:

> [T]he law creating the Office of the Court Administrator in the Supreme Court specifically provides that when "a member of the Judiciary," i.e., a Justice or a Judge, is appointed as either Court Administrator or Deputy Court Administrator, he/she "shall not be deemed to have lost the rank, seniority, precedence, benefits and other privileges appertaining to his judicial position, and his service in the Judiciary, to all intents and purposes, shall be considered continuous and uninterrupted." This makes such a Deputy Court Administrator or Court Administrator eligible to the retirement benefits under Republic Act No. 910, as amended by Republic Act No. 9946, which provides that the benefits under the said law "shall be applicable only to members of the Judiciary."
>
> For purposes of pension and other benefits granted under Republic Act No. 9946, this Court finds it reasonable that Section 3 of Presidential Decree No. 828, as amended, also covers members of the Judiciary who have been appointed to the position of Assistant Court Administrator and, subsequently, to the position of Deputy Court Administrator, at least. This is so because it is axiomatic that retirement or pension laws are liberally construed and administered in favour of the persons intended to be benefitted. All doubts as to the intent of the law should be resolved in favour of the retiree to achieve its humanitarian purposes. The liberal approach aims to achieve the humanitarian purposes of the law in order that efficiency, security and well-being of government employees may be enhanced.[26]

Thus, we granted Mrs. Paño's application for survivorship benefits. We further explained:

> Going back to the case of Court Administrator Paño, by nature of the above-quoted provision of Section 3 of Presidential Decree No. 828, as amended, Court Administrator Paño who was a Regional Trial Court Judge when he was appointed Deputy Court Administrator in September 1990 (and subsequently promoted as Court Administrator in March 1992) is deemed to have maintained his service as a member of the Judiciary during his tenure as Deputy Court Administrator and later Court

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[26] *Id*.

Administrator. He was entitled to and granted a 10-year lump sum gratuity retirement benefits as he had rendered more than fifteen (15) years of service in the Judiciary when he retired due to disability on July 1, 1996.

As a consequence, the application of the spouse of Court Administrator Paño should be GRANTED as she is entitled to the survivorship benefits granted in Section 3 of Republic Act No. 9946 to the surviving spouse of a deceased "Justice or Judge of any court in the Judiciary" who "has retired, or was eligible to retire optionally at the time of his death," although her spouse retired as Court Administrator.[27]

We applied the same principle in *A.M. No. 14082-Ret*., entitled *Re: Application for Survivorship Pension Benefits under Republic Act No. 9946 filed by Mr. Salvador C. Vilches, surviving spouse of the late Deputy Court Administrator Nimfa C. Vilches*.[28] We considered DCA Vilches as covered by R.A. No. 9946 as she was formerly a Municipal Trial Court Judge and RTC Judge before her promotion as Assistant Court Administrator and later as DCA. Consequently, we granted a 10-year lump sum gratuity in favor of the heirs of DCA Vilches.[29]

On the other hand, we denied survivorship benefits to the surviving spouse of DCA Juanito C. Ranjo in *Re: Application for Survivorship Pension Benefits of Hon. Juanito C. Ranjo, Former Deputy Court Administrator*.[30] There, we found that DCA Ranjo did not serve as a justice or judge prior to his appointment as DCA, thus -

The service records of Deputy Court Administrator Ranjo show that he was Clerk of Court I prior to his appointment as Deputy Court Administrator. He is not covered by Section 3 of Presidential Decree

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[27] *Id*.

[28] *Id*.

[29] The Court, however, denied the application for survivorship benefits because DCA Vilches did not retire but died while in service. At the time of her death, DCA Vilches was only 55 years old, thus, not eligible to retire optionally. This was the Court's basis in denying Mr. Vilches the claimed survivorship benefits. As will be discussed subsequently, survivorship benefits should be granted under any of the modes of retirement, including death.

[30] Extended Resolution, A.M. No. 14082-Ret., 9 October 2012.

No. 828, as amended, as he is not a member of the Judiciary appointed to the position of Deputy Court Administrator or Court Administrator. He could not have been entitled to the benefits under Republic Act No. 9946 and his widow is not entitled to survivorship pension benefits.[31]

Unmistakably, the phrase "members of the Judiciary," which appears in the title, Section 3-A and Section 3-B of R.A. No. 9946, should be read as to include Court Administrators or DCAs, provided they had served as justices and judges before their appointment as such Court Administrators or DCAs.

Surviving spouses of justices and judges who died in actual service are entitled to survivorship benefits.

There is no question that even *prior* to R.A. No. 9946, justices or judges who are considered retired due to disability are granted lump sum retirement pay as gratuity benefits. They are further entitled to a lifetime monthly pension if they survive the gratuity period. Likewise, the heirs of justices or judges who died while in actual service are, subject to other qualifications, entitled to death benefits:

(a) 10-year lump sum gratuity if the deceased had rendered at least 20 years of government service;

(b) 5-year lump sum gratuity if government service is less than 20 years.

The law did not provide for monthly pension in case of death while in actual service.

The retirement benefits by reason of disability, as well as death benefits, had been retained in R.A. No. 9946. However, the new law, aside from reducing the length of service from 20 years to 15 years, grants full monthly pension benefits in favor of retirees, regardless of age, due to permanent disability with 15 years of service; whereas, *pro-rata* monthly pension benefits are given to those with less than 15 years of service. In case of their death, the surviving legitimate spouses substitute them

[31] *Id*.

and are entitled to survivorship pension benefits equivalent to the same amount that their spouses are receiving or would have received (full or *pro-rata*, as the case may be) had they not died. There is likewise no express mention of monthly pension benefits, even *pro rata*, to be given to the legitimate surviving spouse or heirs of the justices or judges who died while in actual service.

In *Gruba*, the Court recognized that "death," in the spirit of liberal construction of retirement laws, is construed as a disability retirement. Citing *Re: Retirement Benefits of the late City Judge Galang, Jr. (Galang)*, the Court said that "there is no more permanent or total physical disability than death."[32] The Court said:

> Disability retirement is conditioned on the incapacity of the employee to continue his or her employment due to involuntary causes such as illness or accident. The social justice principle behind retirement benefits also applies to those who are forced to cease from service due to disabilities beyond their control.
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> Retiring due to physical disabilities is not far removed from the situation involving death of a judge or justice. This explains why retirement laws necessarily include death benefits.[33]

In the earlier case of *Alvor*, the Court likewise treated death as a permanent disability under R.A. No. 9946 for the purpose of granting pro-rated survivorship benefits. The Court also quoted *Galang* that "there is no more permanent or total disability than death" in justifying the treatment of death as a disability retirement. It was obviously for the very same social justice principle that moved the lawmakers to upgrade and enhance the retirement benefits of justices and judges that the Court resolved *Alvor* in favor of granting survivorship benefits.

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[32] *Re: Application for Survivorship Pension Benefits under R.A. No. 9946 of Mrs. Gruba*, *supra* note 6 at 341, citing *Re: Retirement Benefits of the Late City Judge Galang, Jr.*, 194 Phil. 14, 21 (1981).

[33] *Id*. at 341-342.

We hold that the surviving spouses of justices and judges who died or were killed while in actual service are entitled to survivorship benefits based on ***total permanent disability***. Had the justice or judge not died, but merely became incapacitated to discharge the duties of his/her office, he/she would have been entitled to a full monthly pension after the 10-year gratuity period if the length of service is at least 15 years, or *pro rata* monthly pension if otherwise. In case of subsequent death, he/she would have been substituted by the surviving spouse who will receive the same amount as survivorship benefit.

For purposes of survivorship benefits, it is more consistent with logic and reason that we read into the law the inclusion of such benefits in favor of the surviving spouses of justices or judges who, regardless of age, died while in service. In so holding, we recognize that the dire situation of the surviving spouses of justices or judges who were retired due to permanent disability is no different from those whose spouses were retired due to death.

Thus, in the case of a justice or judge who, by reason of his death while in actual service, is considered retired due to permanent disability, his/her legitimate surviving spouse is entitled to survivorship benefit, the amount of which shall be determined by the length of service of the deceased justice or judge: that is, full monthly pension if the length of service is at least 15 years, or *pro rata* monthly pension if less than 15 years.

It must be clarified, however, that the survivorship benefit, which is on top of the death benefits granted under Section 2 of R.A. No. 9946, is conditioned on the survival by the surviving spouse of the gratuity period of *10 years* provided for total permanent disability. This should cover those who died in service but with less than 15 years of service. That is, even though the lump sum gratuity is equivalent to 5 years of salary, the payment of survivorship pension should commence only after the lapse of 10 years, not 5 years. Otherwise, with a shorter waiting period of only 5 years, the surviving spouses of justices or judges who died in service but with less than 15 years of service would

be placed in a more advantageous position compared to those whose deceased spouses were retired due to disability but with at least 15 years of service.

Accordingly, we adopt the ruling in *Alvor*. The case of *Gruba* is not controlling in respect to survivorship pension benefits in favor of the surviving spouses of the justices or judges who died or were killed while in service. This ruling also applies to justices or judges who, as previously explained, were appointed as Court Administrator or Deputy Court Administrator pursuant to Section 3 of Presidential Decree No. 828, as amended.

Surviving legitimate spouses entitled to the automatic adjustment of survivorship benefits

The basic provision on automatic increase in the pension of justices and judges is found in Section 3-A, which we reproduce:

> Sec. 3-A. **All pension benefits** of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired. (emphasis supplied)

On the other hand, paragraph 2, Section 3 provides that "[u]pon the death of a Justice or Judge of any court in the Judiciary, if such Justice or Judge has retired, or was eligible to retire optionally at the time of death, the surviving legitimate spouse shall be entitled to receive **all the retirement benefits** that the deceased Justice or Judge would have received had the Justice or Judge not died."[34]

Section 3-A should not be read in isolation, but in conjunction with paragraph 2, Section 3. The particular words, clauses, and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.[35] In short, every meaning

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[34] Emphasis supplied.

[35] *Chavez v. Judicial and Bar Council, supra* note 17.

to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[36]

Consistent with the foregoing principle, the phrase "all the retirement benefits" appearing in paragraph 2, Section 3 must be understood as subject to, rather than exclusive of, the adjustment for increases referred to in Section 3-A. The retirement benefits referred to under the law include pension benefits. The phrase "all the retirement benefits" is unqualified. *Ubi lex non distinguit nec nos distinguire debemus.* When the law does not distinguish, we must not distinguish.[37] Had the justice or judge not died, the automatic increase in the pension benefit would have been applied in favor of the justice or judge. And since survivorship pension benefit emanates from the pension benefit due the justice or judge, it follows necessarily that the surviving legitimate spouse is entitled to the adjustment pursuant to the provision on automatic increase. Such interpretation is more in keeping with the beneficent purposes of R.A. No. 9946 which, in the first place, was enacted to benefit the surviving legitimate spouses of justices and judges.[38] In his Explanatory Note to Senate Bill No. 121,[39] Senator Juan Ponce Enrile explained:

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[36] *Id.*

[37] *Milagros Amores v. House of Representatives Electoral Tribunal*, 636 Phil. 600, 609 (2010).

[38] It is not suggested that the words and phrases of R.A. No. 9946 as interpreted in this case are ambiguous. It is a basic canon of interpretation that one need not go outside of the text of the statute when the terms thereof are clear. A look into the records of Congress in this case is made only for the purpose of fortifying the Court's interpretation.

[39] Senate Bill No. 121, along with Senate Bills Nos. 1400 (introduced by Sen. Pangilinan), 1415 (Sen. Pia Cayetano) and 1597 (Sen. Villar) were substituted by Senate Bill No. 1620 (co-sponsored by Sen. Escudero) which became R.A. No. 9946, as per Committee Report No. 1, Fourteenth Congress, First Regular Session. See https://www.senate.gov.ph/lisdata/42193603!.pdf. Last visited 14 August 2017.

The compulsory retirement age of a Justice and Judge is seventy (70) years old. Most of the retirees, more often than not, within a few years after retirement, spend their benefits and pension on medications and hospital bills. When they pass away, there will be nothing left for their family, especially their spouse, who supported the deceased in choosing a career in public service. The upgrading and enhancement of retirement benefits of qualified Justices and Judges, which will now include survivorship benefits for their spouses, is a fitting way to give appreciation to these members of the judiciary for their length of service in the government, devoting their minds and talents for justice to prevail in our land.

Given, however, that the salaries of justices and judges had since been increased by virtue of the 1st and 2nd tranches of salary increases under EO No. 201, series of 2016, effective 1 January 2016, the corresponding survivorship pension benefits of all those who are entitled must also be increased pursuant to Section 3-A of R.A. No. 9946. As noted above, there were applications for survivorship benefits by surviving spouses that were approved but without the adjustment of salary increases directed by EO No. 201. These approved applications include those of the surviving spouses of justices and judges who died prior to the effectivity of R.A. No. 9946 who are the subjects of this case.

Consistent with the ruling laid down in the present case, beneficiaries of survivorship pension benefits who are presently receiving amounts which are not yet adjusted by the latest salary increases must be paid the differential equivalent to the excess of the adjusted amount over the amount actually received effective 1 January 2016, to be charged against the amounts allotted for pension benefits under the General Appropriations Act.

Gruba case abandoned by the ruling in this case; resolution in Vilches also modified

To the extent affecting justices and judges who died prior to the effectivity of R.A. No. 9946 but who did not possess the requirements of eligibility for optional retirement, the Court

hereby declares as abandoned the doctrine that their legitimate surviving spouses are not entitled to survivorship benefits.

We clarify, on the basis of the foregoing discussion, that the legitimate surviving spouses of justices and judges who, regardless of age, died while in service, before and after the effectivity of R.A. No. 9946, and with at least 15 years of service, are entitled to full monthly survivorship pension; and those whose deceased spouses had less than 15 years of service shall be entitled to *pro rata* monthly pension, subject to the automatic increase as provided in Section 3-A of R.A. No. 9946.

Consequently, our Resolution in *Gruba* must be modified so as to entitle the applicant surviving spouse, Mrs. Gruba, survivorship benefits even though Judge Gruba was only 55 years old at the time of his death. Likewise, our Resolution in *AM-14158-Ret*. in the case of DCA Vilches is also modified so that Mr. Vilches is also granted survivorship benefits even though DCA Vilches was also only 55 years old at the time of her death. Considering that both Judge Gruba and DCA Vilches had rendered government service for at least 15 years, their legitimate surviving spouses are entitled to full pension benefits. The survivorship benefits herein granted shall be subject to the automatic increase as directed by Section 3-A of R.A. No. 9946.

Summary of Rules on the entitlement to Survivorship Pension Benefits

Based on the discussions in this case, the retirement benefits arising from permanent disability of the justice or judge, are summed up as follows:

A. In case of permanent disability due to incapacity to discharge the duties of office, the living justice or judge shall be entitled to:

A.1 Where government service is at least 15 years, regardless of age-

(1) Lump sum gratuity of 10 years (*Section 3, first paragraph*);

(2) Full pension benefits upon survival of the gratuity period of 10 years (*Section 3, first paragraph*);

(3) Automatic increase of pension benefits (*Section 3-A*).

A.2 Where government service is less than 15 years, regardless of age -

(1) Lump sum gratuity of 10 years (*Section 3, first paragraph*);

(2) Pro rata monthly pension benefits (*Section 1*) upon survival of the gratuity period of 10 years (*Section 3, first paragraph*);

(3) Automatic increase of pension benefits (*Section 3-A*).

Upon death of the retired justice or judge, ***whether before or after the effectivity of R.A. No. 9946***, his/her surviving legitimate spouse shall receive all of the foregoing benefits until the surviving spouse's death or remarriage.

B. In case of permanent disability due to death while in actual service, **whether before or after the effectivity of R.A. No. 9946**:

B.1 Where government service is at least 15 years, regardless of age-

(1) Lump sum gratuity of 10 years, to be received by the heirs (*Section 2*);

(2) Full survivorship pension benefits (*Section 1*), to be received by the surviving legitimate spouse upon survival of the gratuity period of 10 years (*Section 3, first paragraph*);

(3) Automatic increase of survivorship pension benefits (*Section 3-A*).

Provided, The same benefits shall apply in respect to a justice or judge who, with at least 5 years of government service, was killed due to his/her work as such.

B.2 Where government service is less than 15 years, regardless of age -

(1) Lump sum gratuity of 5 years, to be received by the heirs (*Section 2*);

(2) Pro-rated pension benefits (*Section 1*), to be received by the surviving legitimate spouse upon survival of the gratuity period of 10 years (*Section 3, first paragraph*);

(3) Automatic increase of pension benefits (*Section 3-A*).

It must be noted that in the Table of Retirement Benefits prepared by the TWG, only a lump sum of five (5) or ten (10) years gratuity shall be granted as death benefit to the heirs of a justice or judge who died while in service or was killed due to work. According to the TWG, no survivorship benefit is to be paid to the legitimate surviving spouse of the deceased justice or judge. This should be corrected as discussed herein.

RAC 81-2010, or the Guidelines, amended accordingly

In line with our holding in this case, and as recommended by the OCA, the pertinent text of RAC 81-2010 should be correspondingly amended to incorporate the *Alvor* ruling which we had adopted in this resolution. Section E of RAC 81-2010, which contains the provision on survivorship benefits, should now read as follows:

E. Survivorship Pension Benefits

The legitimate surviving spouse of a Justice or Judge who (1) has retired or was eligible to retire optionally at the time of death, and (2) was receiving or would have been entitled to receive a monthly pension, shall be entitled to receive the said benefits that the deceased Justice or Judge would have received had the Justice or Judge not

died. ***Provided*, That the justice or judge who, regardless of age, died or was killed while in actual service shall be considered as retired due to permanent disability. *Provided, further*, That the survivorship benefit shall be pro-rated if the deceased justice or judge had rendered government service for less than 15 years.** The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage. (emphasis added)

CONCLUSION

In fine, the Court rules that the beneficiaries of R.A. No. 9946, particularly in respect to survivorship pension benefits and their automatic increases, include the surviving legitimate spouses of justices and judges who had retired by any of the modes recognized in the law, that is, including those who were retired due to disability and those who, regardless of age and length of service, died while in actual service. The same rule applies in favor of surviving spouses of justices or judges who died prior to the effectivity of R.A. No. 9946 by virtue of the retroactivity clause under Section 3-B.

Our ruling today would go a long way in ensuring that the families left behind by justices and judges, who had chosen a career in the judiciary, are amply protected consistent with the aims and purposes that impelled Congress to introduce the changes in the old law. By the amendments in R.A. No. 9946, no longer would present members feel the insecurity of leaving their loved ones with little means to survive when they have gone. We likewise see it a significant factor to be considered by those who are able and competent in entering and devoting a life of service in the judiciary. This is the unmistaken intent of the lawmakers when they enacted R.A. No. 9946. We all support efforts to fulfill the salutary purposes of the law.

The Ponente's personal note

The *ponente* deeply acknowledges the highly commendable efforts of Justice Antonio T. Carpio who made possible the passage of R.A. No. 9946 for the betterment of the welfare of the members of the judiciary and their families.

IN VIEW OF THE FOREGOING, we resolve to:

1. **NOTE** the Memoranda dated 11 July 2017, 23 June 2017 (Memorandum A), and 6 July 2017 (Memorandum B) of the Special Committee on Retirement and Civil Service Benefits;

2. **GRANT** the applications for survivorship pension benefits of the legitimate spouses of justices and judges, who retired or were eligible to retire optionally and died prior to the effectivity of Republic Act No. 9946, subject to adjustment by virtue of the 1st and 2nd tranche salary increases under Executive Order No. 201, series of 2016, effective 1 January 2016, chargeable against the amount allotted for pension benefits under the General Appropriations Act;

3. **GRANT** pro rata pension benefits to surviving spouses of justices and judges who died in actual service, but were not eligible to retire due to lack in length of service, prior to the effectivity of Republic Act No. 9946, subject to adjustment, by virtue of the 1st and 2nd tranche salary increases under Executive Order No. 201, series of 2016, effective 1 January 2016, chargeable against the amount allotted for pension benefits under the General Appropriations Act; and

4. **DIRECT** the payment of adjustments in the pension benefits of the surviving spouses of justices and judges who presently receive survivorship pension benefits, by virtue of the 1st and 2nd tranche salary increases under Executive Order No. 201, series 2016, effective 1 January 2016, chargeable against the amount allotted for pension benefits under the General Appropriations Act.

5. **MODIFY** the 19 November 2013 Resolution in *A.M. No. 14155-Ret.* entitled *Re: Application for Survivorship Pension Benefits under Republic Act No. 9946 of Mrs. Pacita A. Gruba, Surviving Spouse of the Late Manuel K. Gruba, Former CTA Associate Judge*, and the 9

October 2012 Resolution in *AM-14158-Ret*. entitled *Re: Application for Survivorship Pension Benefits under Republic Act No. 9946 filed by Mr. Salvador C. Vilches,* surviving spouse of the late Deputy Court Administrator Nimfa C. Vilches to the extent that the applicants, Mrs. Gruba and Mr. Vilches, respectively, are entitled to survivorship benefits equivalent to full monthly pensions.

6. **DIRECT** the amendment of Section E of Revised Administrative Circular No. 81-2010, which should now read as follows:

E. Survivorship Pension Benefits

The legitimate surviving spouse of a Justice or Judge who (1) has retired or was eligible to retire optionally at the time of death, and (2) was receiving or would have been entitled to receive a monthly pension, shall be entitled to receive the said benefits that the deceased Justice or Judge would have received had the Justice or Judge not died; ***Provided*, That the justice or judge who, regardless of age, died or was killed while in actual service shall be considered as retired due to permanent disability. *Provided, further*, That the survivorship benefit shall be pro-rated if the deceased justice or judge had rendered government service for less than 15 years.** The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.

SO ORDERED.

Carpio, Acting C. J., Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Jardeleza, and *Reyes, Jr., JJ*., concur.

Sereno, C.J., on official leave. *J*. Carpio certifies that *C.J.* Sereno left her vote concurring with the *ponencia.*

Perlas-Bernabe, Tijam, and *Gesmundo, JJ.,* on official business. *J*. Carpio certifies that they left their votes concurring with the *ponencia*.

Peralta, Leonen, and *Caguioa, JJ.,* no part.

EN BANC

[G.R. No. 210571. September 19, 2017]

ORESTES S. MIRALLES, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); THE COURT CAN ONLY INTERVENE TO CORRECT THE COA'S DECISIONS OR RESOLUTIONS WHEN IT HAS CLEARLY ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— The Constitution vests the broadest latitude in the COA in discharging its role as the guardian of public funds and properties by granting it "exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties." In recognition of such constitutional empowerment of the COA, the Court has generally sustained the COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce. Only when the COA has clearly acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction has the Court intervened to correct the COA's decisions or resolutions. For this purpose, *grave abuse of discretion* means that there is on the part of the COA an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.

2. ID.; ID.; ID.; POWER TO DISALLOW UPON AUDIT; CAN ONLY BE EXERCISED OVER TRANSACTIONS DEEMED AS IRREGULAR, UNNECESSARY, EXCESSIVE,

EXTRAVAGANT, ILLEGAL OR UNCONSCIONABLE EXPENDITURES OR USES OF GOVERNMENT FUNDS AND PROPERTY.— Section 2, Part D (Commission on Audit), of Article IX of the 1987 Constitution expressly provides the power, authority and duty of the COA to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities x x x. In furtherance of the exercise of the COA's power, authority and duty, Section 4 of Presidential Decree No. 1445 (*Government Auditing Code of the Philippines*) lays down the fundamental principles to guide the COA in discharging its power, authority and duty x x x. Accordingly, the COA's power and authority to disallow upon audit can only be exercised over transactions deemed as irregular, unnecessary, excessive, extravagant, illegal or unconscionable expenditures or uses of government funds and property. Otherwise put, NDs should issue only for these kinds of transactions.

3. ID.; ID.; ID.; ID.; NOTICE OF DISALLOWANCE; THE BASIS FOR THE ISSUANCE THEREOF MUST FALL WITHIN THE RECOGNIZED GROUNDS FOR A VALID DISALLOWANCE AND IT CANNOT BE ISSUED TO INSURE COMPLIANCE WITH THE COA'S DIRECTIVES; CASE AT BAR.— ND No. RLAO-2005-052 dated April 7, 2005 shows that the COA referred to the 2nd Indorsement letter dated April 5, 2005 from the Legal Adjudication Office of its Region III, which stated that the disallowance was intended to insure the collection or settlement of the delinquent loan accounts granted through QUEDANCOR's SFM Program x x x. Thus, it is clear that the disallowance was issued by the COA only because of its concern about the failure of the QUEDANCOR Management to take appropriate legal action for the collection of the delinquent accounts. Such ground could not validly justify the disallowance, however, considering that the NDs were not meant to be tools "to insure compliance" with the COA's directives, and further considering that there was no antecedent finding that the disallowed transactions had been irregular, unnecessary, excessive, extravagant, illegal or unconscionable. In short, the basis for the issuance of ND No. RLAO-2005-052 did not fall within the recognized grounds for a valid disallowance.

4. ID.; ID.; ID.; ID.; LIABILITY OF PUBLIC OFFICERS AND OTHER PERSONS FOR AUDIT DISALLOWANCE, HOW DETERMINED.— Section 19.1 of COA Circular No. 94-001 dated January 20, 1994, which prescribes the use of the Manual of Certificate of Settlement and Balances, provides that the liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties and responsibilities of the officers/employees concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the Government. Based on such guidance, we see no reason why the petitioner was declared and held liable under ND No. RLAO-2005-052 despite his responsibilities as the Regional Assistant Vice-President not having included the filing of foreclosure proceedings or collection suits against the defaulting borrowers. Verily, the extent of his participation in relation to the disallowed transactions had been limited to the approval of the loan applications, which he had done in faithful compliance with QUEDANCOR's program policies and guidelines. We note that the COA did not present any findings of irregularity in the approval of the disallowed SFM Program loans.

5. ID.; ID.; ID.; NOTICE OF CHARGE AND NOTICE OF DISALLOWANCE, DISTINGUISHED.— As matters stood, it was probably more fitting had the COA issued a Notice of Charge (NC) instead of the ND. *Charge*s are defined as inclusions or additions to an accountability pertaining to the assessment, appraisal or collection of revenues, receipts and other incomes such as those arising from under-appraisal, under-assessment or under-collection. The NC applies to the audit of revenues or receipts of a government agency; the ND applies to the audit of disbursements. The two kinds of disapprovals by the COA also differ as to the persons liable therein. The liability under the ND is based on the participation of the persons involved in the disbursement of the disallowed amount, but the liability for audit charges is measured by the individual participation or involvement of persons in the charged transaction such as public officers whose duties require the appraisal, assessment or collection of government revenues and receipts and are therefore liable for under-appraisal, under-assessment, and under-collection thereof.

6. ID.; ADMINISTRATIVE LAW; GOVERNMENT AGENCIES; HEADS OF OFFICES; CAN RELY TO A REASONABLE EXTENT ON THE FINDINGS AND RECOMMENDATIONS OF THEIR SUBORDINATES PROVIDED THERE WAS NO REASON FOR THEM TO GO BEYOND THE RECOMMENDATIONS OF THEIR SUBORDINATES.— [T]he Court sustains the validity of ND No. RLAO-2005-055 for being factually and legally warranted. The validity of ND No. RLAO-2005-055 notwithstanding, the fact that the petitioner was the final approving authority for the grant of the loans under the FARE Program did not necessarily mean that he should be held personally liable for the disallowed transactions. Considering that he has shown herein that there were about 11,152 beneficiaries of loan releases in his department for the year 2002 alone, We should not ignore that it would have been impracticable, although not physically impossible, for him to have checked all the details and to have conducted the necessary physical inspections and verifications of the merits of all the loan applications because of the voluminous paperwork and legwork attendant to such undertaking. In discharging his task of approving the loan applications, his relying largely on the certifications and recommendations of his subordinates was unavoidable, and could not be wrong, unreasonable or unwarranted due to the applications having already undergone processing, review and evaluation by two QOOs. The petitioner consistently invoked the *Arias* doctrine, which the Court announced in its ruling in *Arias v. Sandiganbayan*, whereby heads of offices could rely to a reasonable extent on the findings and recommendations of their subordinates provided there was no reason for them to go beyond the recommendations of their subordinates. x x x The COA's refusal to apply the *Arias* doctrine was arbitrary because the refusal stood on highly speculative grounds. x x x We find that the petitioner should have instead been presumed to have acted in the regular performance of his official duty because no evidence had been presented to show his having acted in bad faith and with gross negligence. We should remind the COA that it could not justly execute its constitutional function of disallowing expenditures unless it accurately but fairly identified the persons liable for the disallowances. This the COA could do only if it had the adequate factual basis for identifying the persons liable. In our view, the petitioner's invocation of the *Arias* doctrine in his favor was appropriate.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The power of the Commission on Audit (COA) to disallow expenditures or uses of government funds can only be exercised as to transactions thereon that are deemed irregular, unnecessary, excessive, extravagant, illegal, or unconscionable. Otherwise, the disallowance is whimsical, capricious, or arbitrary. A disallowance based solely on the delinquency of loans extended by the Quedan and Rural Credit Guarantee Corporation (QUEDANCOR) to boost countryside investments and credit resources constitutes grave abuse of discretion amounting to lack or excess of jurisdiction.

The Case

This recourse seeks to nullify and set aside the decision rendered on November 20, 2013,[1] whereby the COA held the petitioner personally liable under two notices of disallowance (NDs) for having approved the loan applications of borrowers of QUEDANCOR who later turned delinquent.

Antecedents

QUEDANCOR, formerly a subsidiary corporation of the National Food Authority, was a government financing institution created, organized and established under Republic Act No. 7393.[2] Its mandate was to accelerate the flow of investment and credit resources into the countryside in order to trigger the growth

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[1] *Rollo,* pp. 348-359.

[2] Entitled *Quedan and Rural Credit Guarantee Corporation Act*, enacted on April 13, 1992.

and development of rural productivity, employment and enterprises through various credit and guarantee programs, and thereby generate more livelihood and income opportunities. It primarily acted to guarantee lending activities, although in previous years it performed direct lending activities through financing programs and schemes such as the Food and Agricultural Retail Enterprises (FARE) Program, and the Sugar Farm Modernization (SFM) Program.[3]

In the conceptualization and implementation of different financing programs, schemes and projects, QUEDANCOR's Governing Board issued corresponding policies, implementing guidelines and standard operating procedures for each program, scheme or project in order to cater to the actual needs of its clientele – the individual farmers, farmers' organizations and consumers' cooperatives, as well as the rural populace in general.[4] The implementation of the SFM Program was outlined in Circular No. 102, Series of 1999,[5] which enunciated the primary purpose for the loans to finance the purchase of brand-new or second-hand tractors and implements.[6] Circular No. 079, Series of 1997 covered the FARE Program,[7] stating the purpose for the loans as the augmentation of the working capital of retailers, specifically those selling raw, semi-processed or fully processed agricultural, aquatic, poultry, livestock and other agri-related commodities.[8] The policies, implementing guidelines and standard operating procedures thus served as directives for all Quedan Operations Officers (QOOs) and the supervisors

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[3] *Rollo,* pp. 398-A-399.

[4] *Id*. at 399.

[5] Entitled *AMENDED DA-QUEDANCOR-SRA AGRIKULTURANG MakaMASA SUGAR FARM MODERNIZATION PROGRAM*.

[6] *Rollo,* p. 191.

[7] *Id*. at 79-97.

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

assigned in the various regional and provincial field offices nationwide.[9]

On September 24, 2003, the Audit Team Leader assigned to QUEDANCOR issued an Audit Observation Memorandum (AOM) relative to the loans granted by QUEDANCOR under the SFM Program for failure of the QUEDANCOR Management to collect on the loans.

Regional Cluster Director Horacio An. Oida of the COA Regional Legal Adjudication Office for Region III concurred in the AOM and issued Notice of Disallowance (ND) No. RLAO-2005-052 dated April 7, 2005 for the total amount of ₱3,092,900.00 representing the uncollected loan amounts granted to several loan applicants, and held the petitioner personally liable for having approved the loan transactions, and other officers for having failed to verify the veracity of the financial documents submitted by the loan applicants.[10]

Subsequently, the COA Legal Adjudication Office for Region III created a Special Audit Team (SAT) with the task of validating the observations embodied in the AOMs relating to uncollected or unsettled accounts of various QUEDANCOR debtors. On January 14, 2005, the SAT found that the QUEDANCOR Management had not adequately verified the existence of viable businesses or projects of the concerned borrowers, a requirement for qualification under the FARE Program; and that some borrowers had never engaged in retail business at the time their loan applications were processed and approved, contrary to their representations in their applications.[11]

Based on the findings of the SAT, Regional Cluster Director Oida issued ND No. RLAO-2005-055 dated June 6, 2005 disallowing the total amount of ₱4,450,000.00 representing the loans granted to various borrowers who had no viable businesses

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[9] *Id*. at 399.

[10] *Id*. at 300.

[11] *Id*. at 253-269.

or projects as required under the FARE Program, and again holding the petitioner personally liable as the authority approving or recommending the approval of the delinquent loans.[12]

The petitioner appealed the NDs, maintaining that he was not personally liable under ND No. RLAO-2005-055 inasmuch as his approval of the FARE Program loans had been based on the review and recommendation of the QOOs; and that he should be excluded from liability under ND No. RLAO-2005-052 considering that his approval of the SFM Program loans had been in faithful compliance with the requirements of applicable rules, particularly Circular 102, Series of 1999, and only after rigid credit and background investigations and upon favorable recommendations from the Credit Guarantee Committee and Sugar Regulatory Administration.[13]

The COA's Legal Services Sector (LSS) denied the petitioner's appeal through LSS Decision No. 2010-022 dated June 4, 2010 on the ground of negligence on the part of the QOOs in recommending approval of the loan applications and on the part of the petitioner for approving the loan applications despite the absence of viable businesses or projects as required under the FARE Program. The LSS observed that the function of the petitioner was crucial because it eventually led to the release of government funds. Although the LSS did not expound on the petitioner's liability for the SFM Program delinquent loans,[14] it still upheld the petitioner's liability under the two NDs, to wit:

WHEREFORE, in view of the foregoing, the instant Request for Exclusion from Liability is hereby **DENIED** for lack of merit. Accordingly, Notice of Disallowance Nos. RLAO-2005-52 dated April 7, 2005 and RLAO-2005-55 dated June 6, 2005, are hereby **AFFIRMED.**[15]

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[12] *Id*. at 251-252.

[13] *Id*. at 349.

[14] *Id*. at 300-305.

[15] *Id*. at 305.

The petitioner further appealed to the COA Proper, which denied the recourse through the now-assailed decision issued on November 20, 2013, disposing thusly:

WHEREFORE, in view of the foregoing, the request for exclusion from liability is hereby **DENIED.** Accordingly, Legal Services Sector Decision No. 2010-022 dated June 4, 2010 sustaining Notice of Disallowance No. RLAO-2005-055 dated June 6, 2005 in the amount of ₱4,450,000.00 and Notice of Disallowance No. RLAO-2005-052 dated April 7, 2005 in the amount of ₱3,092,900.00 is hereby **AFFIRMED.**[16]

Hence, this review by petition for *certiorari* under Rule 64, in relation to Rule 65, both of the *Rules of Court*.

Issues

The petitioner submits herein that:

I

The Commission on Audit gravely abused its discretion amounting to lack or excess of jurisdiction when it upheld the ruling of its subordinates by refusing to reconsider the finding and conclusion that the "*Management granted loans to borrowers without adequately verifying the existence of viable businesses, projects that were validly covered by the Food and Agricultural Retail Enterprises (FARE) Program*."

II

The Commission on Audit gravely abused its discretion amounting to lack or excess of jurisdiction by ultimately upholding the Notice of Disallowance coded as ND-RLAO 205-055 (sic) dated June 6, 2005 with respect to nine borrowers in Bataan under the FARE program.

III

The Commission on Audit gravely abused its discretion amounting to lack or excess of jurisdiction by ultimately upholding the Notice of Disallowance coded as ND-RLAO-2005-052 dated April 7, 2005 with respect to two borrowers in Tarlac under the SFM program.

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[16] *Id.* at 353.

IV

The Commission on Audit gravely abused its discretion amounting to lack or excess of jurisdiction when it stubbornly refused to absolve herein petitioner from civil liability under the principle of ARIAS DOCTRINE.[17]

In short, the Court has now to determine whether or not the COA gravely abused its discretion amounting to lack or excess of jurisdiction in affirming ND No. RLAO-2005-052 and ND No. RLAO-2005-055, and in holding the petitioner personally liable for the disallowances.

Ruling of the Court

The petition for *certiorari* is meritorious.

The Constitution vests the broadest latitude in the COA in discharging its role as the guardian of public funds and properties by granting it "exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties."[18] In recognition of such constitutional empowerment of the COA, the Court has generally sustained the COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce. Only when the COA has clearly acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction has the Court intervened to correct the COA's decisions or resolutions. For this purpose, *grave abuse of discretion* means that there is on the part of the COA an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the

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

[18] Section 2(2), Commission on Audit, Article IX, 1987 Constitution.

assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.[19]

Section 2, Part D (Commission on Audit), of Article IX of the 1987 Constitution expressly provides the power, authority and duty of the COA to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, to wit:

> Section 2.(1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
>
> (2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of **irregular,**

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[19] *Development Bank of the Philippines v. Commission on Audit,* G.R. Nos. 216538 & 216954, April 18, 2017; citing *Technical Education and Skills Development Authority (TESDA) v. Commission on Audit,* G.R. No. 204869, March 11, 2014, 718 SCRA 402, 417.

unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.[20]

In furtherance of the exercise of the COA's power, authority and duty, Section 4 of Presidential Decree No. 1445 (*Government Auditing Code of the Philippines*) lays down the fundamental principles to guide the COA in discharging its power, authority and duty, *viz.*:

Section 4. Fundamental Principles. — Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

(1) No money shall be paid out of any public treasury of depository except in pursuance of an appropriation law or other specific statutory authority.

(2) Government funds or property shall be spent or used solely for public purposes.

(3) Trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received.

(4) Fiscal responsibility shall, to the greatest extent, be shared by all those exercising authority over the financial affairs, transactions, and operations of the government agency.

(5) Disbursements or disposition of government funds or property shall invariably bear the approval of the proper officials.

(6) Claims against government funds shall be supported with complete documentation.

(7) All laws and regulations applicable to financial transactions shall be faithfully adhered to.

(8) Generally accepted principles and practices of accounting as well as of sound management and fiscal administration shall be observed, provided that they do not contravene existing laws and regulations.

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[20] Section 1, Rule II of the *1997 Revised Rules of Procedure of the Commission on Audit* reiterates the COA's exclusive authority to disallow "expenditures or uses of government funds and properties found to be irregular, unnecessary, excessive, extravagant or unconscionable."

Accordingly, the COA's power and authority to disallow upon audit can only be exercised over transactions deemed as irregular, unnecessary, excessive, extravagant, illegal or unconscionable expenditures or uses of government funds and property. Otherwise put, NDs should issue only for these kinds of transactions.

There is no difficulty identifying the *illegal* transactions because they are simply transactions that are contrary to law.[21] However, the other transactions – those that are *irregular*, *unnecessary*, *excessive*, *extravagant*, or *unconscionable*[22] – may not be as easily identified. For convenience, therefore, we restate what such other transactions may consist of, as reflected in the various issuances of the COA itself, as follows:

"IRREGULAR" EXPENDITURES

The term "irregular expenditure" signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws. Irregular expenditures are incurred if funds are disbursed without conforming with prescribed usages and rules of disciplines. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. A transaction which fails to follow or violates appropriate rules of procedure is, likewise, irregular.[23]

"UNNECESSARY" EXPENDITURES

The term pertains to expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service. Unnecessary

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[21] Section 3.1, COA Circular No. 85-55-A dated September 8, 1985; Section 10.1.1, Chapter III, COA Circular No. 2009-006 (*Prescribing the Use of the Rules and Regulations on Settlement of Accounts*).

[22] The COA has referred to these classifications of disallowable transactions by the acronym "IUEEU".

[23] Section 3.1, COA Circular No. 85-55-A dated September 8, 1985; Section 3.1, COA Circular No. 2012-003 dated October 29, 2012.

expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This would also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which cannot be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditures must be considered in determining whether or not an expenditure is necessary.[24]

"EXCESSIVE" EXPENDITURES

The term "excessive expenditures" signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper, as well as expenses which are unreasonably high and beyond just measure or amount. They also include expenses in excess of reasonable limits.[25]

"EXTRAVAGANT" EXPENDITURES

The term "extravagant expenditure" signifies those incurred without restraint, judiciousness and economy. Extravagant expenditures exceed the bound of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, grossly excessive, and injudicious.[26]

"UNCONSCIONABLE" EXPENDITURES

The term "unconscionable expenditures" pertains to expenditures which are unreasonable and immoderate, and which no man in his right sense would make, nor a fair and honest man would accept as reasonable, and those incurred in violation of ethical and moral standards.[27]

I.
The COA gravely abused its discretion in affirming ND

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[24] Section 3.2, COA Circular No. 85-55-A dated September 8, 1985; Section 4.1, COA Circular No. 2012-003 dated October 29, 2012.

[25] Section 3.3, COA Circular No. 85-55-A dated September 8, 1985; Section 5.1, COA Circular No. 2012-003 dated October 29, 2012.

[26] Section 3.4, COA Circular No. 85-55-A dated September 8, 1985; Section 6.1, COA Circular No. 2012-003 dated October 29, 2012.

[27] Section 7.1, COA Circular No. 2012-003 dated October 29, 2012.

No. RLAO-2005-052, and in refusing to exclude the petitioner from liability

The petitioner argues that the COA gravely abused its discretion in affirming ND No. RLAO-2005-052 dated April 7, 2005 because he had approved the loans under the SFM Program in accordance with and pursuant to the guidelines and policies formulated by QUEDANCOR; and because the COA's audit findings lacked factual and legal support.[28]

The COA counters that the petitioner has not established its grave abuse of discretion in affirming ND No. RLAO-2005-052 dated April 7, 2005.

The petitioner's argument is valid and warranted.

ND No. RLAO-2005-052 dated April 7, 2005 shows that the COA referred to the 2nd Indorsement letter dated April 5, 2005 from the Legal Adjudication Office of its Region III,[29] which stated that the disallowance was intended to insure the collection or settlement of the delinquent loan accounts granted through QUEDANCOR's SFM Program, to wit:

> Considering that the loans remained unsettled and/or unpaid despite numerous demands, **QUEDANCOR Management should now foreclose the equipment attached as collateral/security for these loans**, and in case the collateral is not enough to satisfy the indebtedness, to enforce the stipulation of the contract, as stated above.
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> **To insure compliance with the preceding, we are issuing this Notice of Disallowance (ND) on the unpaid balance of the loan releases**, granted to Mr. Severo Robles and Atty. Gaudencio Dizon, with the condition that **the same may be lifted if and when QUEDANCOR Management shall take appropriate action to collect the deficiency by means of a collection suit filed in an appropriate court.**[30] (Bold underscoring supplied for emphasis

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[28] *Rollo*, pp. 51-55.

[29] *Id.* at 249.

[30] Certified Copy on File, COA Decision 13-207, Vol. 4 of 4, 2nd Indorsement dated April 5, 2005, Annex C.

Thus, it is clear that the disallowance was issued by the COA only because of its concern about the failure of the QUEDANCOR Management to take appropriate legal action for the collection of the delinquent accounts. Such ground could not validly justify the disallowance, however, considering that the NDs were not meant to be tools "to insure compliance" with the COA's directives, and further considering that there was no antecedent finding that the disallowed transactions had been irregular, unnecessary, excessive, extravagant, illegal or unconscionable. In short, the basis for the issuance of ND No. RLAO-2005-052 did not fall within the recognized grounds for a valid disallowance.

It is further worthy to point out that there was palpable incongruity between the stated basis for issuing ND No. RLAO-2005-052, on one hand, and the identification of the QUEDANCOR personnel deemed as accountable for the disallowed amounts, on the other. If the ostensible objective of the disallowance was solely to insure compliance by the QUEDANCOR Management with the COA's directive to collect on the delinquent loans, it would not be easy to understand why ND No. RLAO-2005-052 still listed the persons deemed personally liable, including the petitioner, simply because they had approved the loan applications of the borrowers who later on defaulted.

The persons deemed personally liable are as follows:[31]

PAYEE	AMOUNT DISALLOWED	AUDIT REMARKS AND/OR REQUIREMENTS	PERSONS LIABLE
Mr. Severo Robles	Php 1,641,900.00	-See attached RLAO 2nd Indorsement dated April 5, 2005.	**Mr. Orestes S. Miralles –** for approving the loan transactions. **Ms. Eliza Nefulda-Tayag and Mr. Arnold**

[31] Certified Copy on File, COA Decision 13-207, Vol. 1 of 4, Notice of Disallowance dated April 7, 2007, Annex C.

			B. Lumibao – for failing to verify the veracity of the submitted financial documents of Mr. Robles during review and evaluation- **–all those who has direct participation/ involvement in the granting of the said Loans.**
Mr. Gaudencio Dizon	Php 1,451,000.00	-See attached RLAO 2nd Indorsement dated April 5, 2005.	**Mr. Orestes S. Miralles –** for approving the loan transaction- **–all those who had direct participation/ involvement in the granting of the said Loans.**

The impression is that there was lack of clarity even on the part of the COA on the cause underlying the disallowances – whether it was the approval of the loans or the non-collection of the delinquent accounts. Such impression could not be entirely dismissed because the following pronouncements of the COA itself, through its responsible officials, were revealing enough, thus:

a) Letter dated November 7, 2005 issued by the COA in response to the petitioner's letter-appeal dated September 27, 2005 appealing ND No. RLAO-2005-052:

This Office may reconsider its earlier disallowance, provided that **QUEDANCOR Legal Division** should have filed the civil cases for collection in the appropriate judicial court.[32] (Bold underscoring for emphasis)

[32] Certified Copy on File, COA Decision 13-207, Vol. 1 of 4, Annex E.

b) LSS Decision No. 2010-022 dated June 4, 2010:

The issue in point is whether or not the appellant may be held liable **based on the extent of his participation as then RVP QUEDANCOR who approved the loan applications subject of the assailed NDs**.[33] (Bold underscoring for emphasis)

c) COA Proper Decision No. 2013-207 dated November 20, 2013:

Records show that the Regional Cluster Director (RCD), Regional Legal and Adjudication Office (RLAO), COA R.O. No. III, City of San Fernando, Pampanga, issued ND No. RLAO-2005-052 dated April 7, 2005 in the total amount of ₱3,092,900.00 in connection with the loans granted under QUEDANCOR's Sugar Farm Modernization Program (SFMP). **Said ND was issued on the finding that the security arrangements for certain loans granted under this program were grossly disadvantageous to the government. The persons named liable were the Petitioner, for approving the loans transactions, and Ms. Eliza N. Tayag and Mr. Arnold Lumibao, for failing to verify the veracity of the financial documents submitted by the loan applicants.**

x x x x x x x x x

Anent the issue on ND No.RLAO-2005-052 dated April 7, 2005, a careful reading of the reference of the disallowance, which is the 2nd Indorsement letter dated April 5, 2005 of LAO-Region 3, shows that **the core reason for the disallowance is the seemingly inaction of QUEDANCOR management in pursuing the collection of the unpaid loans** of Mr. Severo P. Robles and Atty. Gaudencio Dizon in the total amount of ₱3,092,900.00. **The Management failed to institute a foreclosure proceeding on the mortgaged property and the appropriate collection suit for the deficiency.** The Petitioner, in the instant appeal, did not present any statement or documentation to show that QUEDANCOR had already taken action on the matter.[34] (Bold underscoring supplied for emphasis)

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[33] *Rollo,* p. 303.

[34] *Id*. at 348 and 352.

Given the foregoing, the Court is easily justified in holding that the COA effectively denied to the petitioner the opportunity to be informed precisely on the issue being raised against him regarding the issuance of ND No.RLAO-2005-052, and thus be enabled to meet the issue fully. For sure, the denial was a serious matter if it deprived him of his right to administrative due process, whose essence was the opportunity to be heard. It cannot be gainsaid that one is heard in administrative proceedings only when he is accorded a fair and reasonable opportunity to explain his case or is given the chance to have the ruling complained of reconsidered.[35] That chance was not extended to him herein.

Likewise, it was blatantly unfair to hold the petitioner personally liable for the disallowance if the COA's justification for issuing ND No. RLAO-2005-052 was the "inaction of QUEDANCOR Management in pursuing the collection of the unpaid loans," as stated in the assailed decision. The unfairness rested on his not being directly involved in the task of collection. He has pointed out herein that the responsibility for taking legal actions against the delinquent borrowers pertained to the Legal Affairs Department (LEAD) of QUEDANCOR, not to its Operations Department where he then worked.[36] His responsibility at that juncture was limited to the endorsement of the delinquent accounts to the LEAD for legal action.[37] Nothing more. And, this fact was known to the COA itself, which expressly acknowledged the distinction of responsibilities of the LEAD for the other departments of QUEDANCOR through its letter dated November 7, 2005 wherein it said that "[t]his Office may reconsider its earlier disallowance, provided that

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[35] *Fontanilla v. The Commissioner Proper, Commission on Audit,* G.R. No. 209714, June 21, 2016, 794 SCRA 213, 226; *Besaga v. Acosta*, G.R. No. 194061, April 20, 2015, 756 SCRA 93; *Vivo v. Philippine Amusement and Gaming Corporation (PAGCOR)*, G.R. No. 187854, November 12, 2013, 709 SCRA 276, 281.

[36] *Rollo,* pp. 35-36, 323.

[37] *Id.* at 36, 362, 366.

QUEDANCOR Legal Division should have filed the civil cases for collection in the appropriate judicial court."[38]

Section 19.1 of COA Circular No. 94-001 dated January 20, 1994, which prescribes the use of the Manual of Certificate of Settlement and Balances, provides that the liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties and responsibilities of the officers/employees concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the Government. Based on such guidance, we see no reason why the petitioner was declared and held liable under ND No. RLAO-2005-052 despite his responsibilities as the Regional Assistant Vice-President not having included the filing of foreclosure proceedings or collection suits against the defaulting borrowers.[39] Verily, the extent of his participation in relation to the disallowed transactions had been limited to the approval of the loan applications, which he had done in faithful compliance with QUEDANCOR's program policies and guidelines. We note that the COA did not present any findings of irregularity in the approval of the disallowed SFM Program loans.

As matters stood, it was probably more fitting had the COA issued a Notice of Charge (NC) instead of the ND. *Charges* are defined as inclusions or additions to an accountability pertaining to the assessment, appraisal or collection of revenues, receipts and other incomes such as those arising from under-appraisal, under-assessment or under-collection.[40] The NC applies to the audit of revenues or receipts of a government agency; the ND applies to the audit of disbursements. The two kinds of disapprovals by the COA also differ as to the persons liable

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[38] *Certified Copy on File, COA Decision 13-207,* Vol. 1 of 4, Annex E.

[39] *Rollo,* pp. 76-77.

[40] Section 4, 1997 Revised Rules of Procedure of the Commission on Audit.

therein. The liability under the ND is based on the participation of the persons involved in the disbursement of the disallowed amount, but the liability for audit charges is measured by the individual participation or involvement of persons in the charged transaction such as public officers whose duties require the appraisal, assessment or collection of government revenues and receipts and are therefore liable for under-appraisal, under-assessment, and under-collection thereof.[41]

In view of the foregoing, the COA clearly acted arbitrarily when it upheld ND No. RLAO-2005-052, and when it refused to lift the petitioner's personal liability under ND No. RLAO-2005-052. Such act constituted grave abuse of discretion amounting to lack or excess of jurisdiction, and warranted the setting aside of ND No. RLAO-2005-052, and the lifting of his personal liability for the disallowance.

II.
The COA validly issued ND No. RLAO-2005-055, but the petitioner's civil liability should be lifted

The petitioner contends that the COA further committed grave abuse of discretion in refusing to reconsider its conclusion that the loans under the FARE Program had been granted to borrowers without adequately verifying the existence of the latter's viable businesses; that the COA should not have ultimately upheld ND No. RLAO-2005-055 dated June 6, 2005 with respect to nine borrowers in Bataan under the FARE Program; and that the COA gravely abused its discretion in stubbornly refusing to absolve him from personal liability in accordance with the *Arias* doctrine.[42]

The COA counters that it correctly affirmed ND No. RLAO-2005-055 dated June 6, 2005; that the *Arias* doctrine was not applicable because there were peculiar circumstances that should have prompted the petitioner to exercise a higher degree of

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[41] Section 19, Manual on Certificate of Settlement and Balance (Revised 1993).

[42] *Rollo,* pp. 59-60.

circumspection; that he was negligent in discharging his duty as the final reviewer of the loan documents because he failed to notice the notable deficiencies and inconsistencies in the loan folders of the borrowers; and that the deficiencies and inconsistencies should have alerted him to potential irregularities during the evaluation of the loan applications conducted by his subordinates.[43]

The petitioner's contention is partly meritorious.

The disallowance of the transactions worth ₱4,450,000.00 under ND No. RLAO-2005-055 was based on the COA's finding of "absence of viable business qualified under the loan program availed of," referring to the FARE Program loans involving nine borrowers whose loan applications had been approved or recommended by the petitioner. The COA arrived at the finding after the Operations Audit Division of QUEDANCOR and the SAT had conducted separate investigations that revealed that the borrowers involved had never engaged in the food or agricultural retail business as required under the FARE Program.[44] The QUEDANCOR Management even conceded that their QOOs could have been guilty of fraud or negligence in the discharge of their duties to verify the qualifications of the borrowers; thus, the QUEDANCOR Management guaranteed the filing of appropriate charges against the erring QOOs.[45]

Under the circumstances, the Court sustains the validity of ND No. RLAO-2005-055 for being factually and legally warranted.

The validity of ND No. RLAO-2005-055 notwithstanding, the fact that the petitioner was the final approving authority for the grant of the loans under the FARE Program did not necessarily mean that he should be held personally liable for the disallowed transactions. Considering that he has shown herein that there were about 11,152 beneficiaries of loan releases in his department for the year 2002 alone,[46] We should not ignore

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[43] *Id*. at 419-422.

[44] *Id*. at 350.

[45] *Id*. at 261.

[46] *Id*. at 233.

that it would have been impracticable, although not physically impossible, for him to have checked all the details and to have conducted the necessary physical inspections and verifications of the merits of all the loan applications because of the voluminous paperwork and legwork attendant to such undertaking. In discharging his task of approving the loan applications, his relying largely on the certifications and recommendations of his subordinates was unavoidable, and could not be wrong, unreasonable or unwarranted due to the applications having already undergone processing, review and evaluation by two QOOs.

The petitioner consistently invoked the *Arias* doctrine, which the Court announced in its ruling in *Arias v. Sandiganbayan*,[47] whereby heads of offices could rely to a reasonable extent on the findings and recommendations of their subordinates provided there was no reason for them to go beyond the recommendations of their subordinates.

In refusing to extend the *Arias* doctrine to the petitioner's case, the COA observed:

> On the other hand, the invocation of Mr. Miralles of the Arias Doctrine to avoid liability cannot hold water. Contrary to the assertion of Mr. Miralles that he had no iota of doubt as to the actual existence of the businesses, **it is very unlikely for a supervisor like him not to know of the anomalous activities that were happening in the area under his responsibility.** A reading of the OAD Investigation Report showed that it was of public knowledge in Bataan that delinquent borrower Rowena Fernandez served as a "processor" of loan applications due to her close connections with the officials of QUEDANCOR. As reported, Rowena Fernandez had been collecting the amount ranging from ₱6,000.00 to ₱8,000.00 as "processing fee" per loan applicant with the promise that she will facilitate the release of their loans. Considering the fact that ordinary people knew about this lending scheme, **it would seem highly improbable that a regional supervisor like Mr. Miralles had no knowledge about such activity.** In fact, the statement of QOO Manahan in his affidavit confirmed that Mr. Miralles was aware of the illegal activities in Bataan. x x x

[47] G.R. No. 81563 and G.R. No. 82512, December 19, 1989, 180 SCRA 309.

Mr. Miralles cannot escape liability by taking refuge in the Arias Doctrine and passing the blame to his QOOs. The Arias Doctrine cannot be made to apply to him because he had foreknowledge of facts and circumstances that suggested irregularity pertaining to the transactions. x x x (Bold underscoring supplied for emphasis)[48]

The COA's refusal to apply the *Arias* doctrine was arbitrary because the refusal stood on highly speculative grounds. First of all, the COA made no definitive finding about the petitioner having been aware of the illegal activities involving the loan applications committed by his subordinates in the area under his responsibility. And, secondly, even QOO Manahan's affidavit,[49] which the COA cited as its basis for stating the petitioner's awareness of the illegal activities going on in Bataan, did not at all show that the petitioner had been aware of such activities as to have been prompted to go beyond the recommendations of his subordinates, and to inquire more deeply into the borrowers' applications and supporting documents.

The COA's submission that the petitioner was negligent in discharging his duty as the final reviewer of the loan documents because he did not notice the deficiencies and inconsistencies noted in the loan folders of the borrowers was similarly unwarranted. The supposed deficiencies and inconsistencies included home addresses indicated by the borrowers, non-submission of ITRs by some borrowers, and the amounts of declared business capitalizations. However, the borrowers' ITRs and information on their "initial capitalization(s)" were not required under the guidelines of the FARE program.[50] Also, the discrepancy in the declarations of home addresses by two borrowers did not denote the absence of viable businesses required under the FARE Program, which was the stated basis for the issuance of ND No. RLAO-2005-055.

We find that the petitioner should have instead been presumed to have acted in the regular performance of his official duty

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[48] *Rollo,* pp. 351-352.

[49] *Id*. at 358.

[50] *Id*. at 81.

because no evidence had been presented to show his having acted in bad faith and with gross negligence. We should remind the COA that it could not justly execute its constitutional function of disallowing expenditures unless it accurately but fairly identified the persons liable for the disallowances. This the COA could do only if it had the adequate factual basis for identifying the persons liable.[51]

In our view, the petitioner's invocation of the *Arias* doctrine in his favor was appropriate. The circumstances of his case came within the ambit of the following pronouncement made in *Arias v. Sandiganbayan*, to wit:

> We would be setting a bad precedent if a head of office plagued by all too common problems — dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence — is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.
>
> x x x x x x x x x
>
> We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office *could personally* do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions

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[51] *Albert v. Gangan,* G.R. No. 126557, March 6, 2001, 353 SCRA 673, 684-685.

can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.[52]

WHEREFORE, the Court **PARTLY GRANTS** the petition for *certiorari*; **NULLIFIES** and **SETS ASIDE** Notice of Disallowance No. RLAO-2005-052 dated April 7, 2005 for being issued with grave abuse of discretion; and **AFFIRMS** Notice of Disallowance No. RLAO-2005-055 dated June 6, 2005 subject to the **MODIFICATION** that petitioner Orestes S. Miralles is not personally liable for the disallowed amount.

No pronouncement on costs of suit.

SO ORDERED.

Carpio,[*] *Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Leonen, Caguioa, Martires,* and *Reyes, Jr., JJ.,* concur.

Jardeleza, J., no part.

Sereno, C.J., on official leave.

Perlas-Bernabe, *Tijam,* and *Gesmundo, JJ.*, on official business.

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[52] *Supra* note 47, at 315-316.

[*] Acting Chief Justice per Special Order No. 2483 dated September 14, 2017.

EN BANC

[G.R. No. 213200. September 19, 2017]

NAYONG PILIPINO FOUNDATION, INC., *petitioner, vs.* **CHAIRPERSON MA. GRACIA M. PULIDO TAN, COMMISSIONER HEIDI L. MENDOZA, COMMISSIONER ROWENA V. GUANZON, THE COMMISSIONERS, COMMISSION ON AUDIT (COA),** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); POWERS; THE COURT HAS ACCORDED NOT ONLY RESPECT BUT ALSO FINALITY TO COA'S FINDINGS PARTICULARLY IF NOT TAINTED WITH ARBITRARINESS THAT WOULD AMOUNT TO GRAVE ABUSE OF DISCRETION.— The COA, by mandate of the 1987 Constitution, is the guardian of public funds, vested of broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, to establish the techniques and methods for such review, and to promulgate accounting and auditing rules and regulations. In the exercise of its constitutional duty, the COA is given a wide latitude of discretion "to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds" and has the power to ascertain whether public funds were utilized for the purpose for which they had been intended by law. In the performance of COA's functions, x x x the Court has accorded not only respect but also finality to COA's findings particularly when their decisions are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.

2. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO WARRANT THE ISSUANCE OF A WRIT OF *CERTIORARI* TO SET ASIDE THE DECISION OF THE COMMISSION ON AUDIT, THE

PETITIONER MUST SHOW THAT THE LATTER ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— To warrant the issuance of the extraordinary writ of *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court and set aside the Decision of the COA, the petitioner must show that the latter acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Mere abuse of discretion is not enough. The abuse of discretion must be grave in that there is a capricious and whimsical exercise of judgment which is equivalent to lack of jurisdiction. Abuse of discretion is grave when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISALLOWANCE OF BENEFITS; THE REFUND OF THE DISALLOWED PAYMENT OF A BENEFIT GRANTED BY LAW TO A COVERED PERSON, AGENCY OR OFFICE OF THE GOVERNMENT MAY BE BARRED BY THE GOOD FAITH OF THE APPROVING OFFICIAL AND OF THE RECIPIENT.— A.O. No. 263, issued on March 28, 1996 provides for general authority to Government-owned and controlled corporations (GOCCs), Government Financial Institutions (GFIs), and national government agencies to commemorate milestone anniversaries through the grant of anniversary bonus to their employees in an amount not exceeding Php 3,000.00. To amplify and clarify the implementation of the order, the DBM issued NBC No. 452-96 on May 20, 1996. x x x Applied in this case, considering that the grant specifically covers government entities and commemorates their creation as such, the DBM and COA are correct in that for the purpose of determining entitlement to Anniversary Bonus, NPFI's milestone year should be reckoned from the date it was incorporated as a public corporation by virtue of Presidential Decree No. 37 or on November 6, 1972 instead of June 11, 1969 when it was then incorporated as a private corporation. It follows therefore, that NPFI is entitled to Anniversary Bonus in 1997 for its 25th Anniversary, 2002 for its 30th and 2007 for

its 35th Anniversary. Clearly, the payment of Anniversary Bonus in 2000 and 2004 is therefore unauthorized. That notwithstanding, as NPFI granted the Anniversary Bonus and the recipients received the same in good faith, acting on the honest belief based on NPFI's articles of incorporation that its founding anniversary is reckoned from May 7, 1969 and traditionally observed on June 11, 1969, no refund is necessary consistent with the Court's ruling in the case of *Nazareth* that "the refund of the disallowed payment of a benefit granted by law to a covered person, agency or office of the Government may be barred by the good faith of the approving official and of the recipient." In so ruling, the Court in *Nazareth* followed the doctrine laid down in *Blaquera v. Alcala* and *De Jesus v. Commission on Audit.*

4. ID.; ID.; ID.; ID.; MANIFESTATION OF GROSS NEGLIGENCE; THE OFFICERS WHO PARTICIPATED IN THE APPROVAL OF THE DISALLOWED BENEFITS ARE GUILTY OF GROSS NEGLIGENCE WHEN IN SO GRANTING AN EXPLICIT PROVISION OF LAW, RULE OR REGULATION HAS BEEN VIOLATED.— The Court in *Sison, et al. v. Tablang, et al.*, ruled that x x x [Section 15, Article V of R.A. No. 9184] itself cannot serve as basis for the grant of honoraria to the members of the BAC without an enabling rule or guideline from the DBM; and compliance therewith is necessary for the right to accrue. x x x [S]ince the payments of the *honoraria* to the members of the BAC and TWG by NPFI were made on January 16, 2014, February 10, 2004, and March 9, 2004, prior to the issuance on March 23, 2004 of DBM Circular No. 2004-5 which sets forth the guidelines on the grant of *honoraria* to government personnel involved in procurement, and absent proof of completed procurement projects in accordance with the circular, the disallowance is proper. x x x [J]urisprudence settled that insofar as the disallowance of benefits and allowances of government employees, recipients or payees need not refund these disallowed amounts in the absence of proof to rebut the presumption that they received the same in good faith. However, officers who participated in the approval of the disallowed allowances or benefits are required to refund the disallowed benefits when in so granting, they acted in bad faith or are grossly negligent tantamount to bad faith, as when an explicit provision of law, rule or regulation has been violated.

The liability of the "participating" public officers in this instance stands whether or not they received the disallowed benefit.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
The Solicitor General for respondents.

D E C I S I O N

REYES, JR., *J.*:

This is a petition for *certiorari*[1] under Rule 64 and Rule 65 of the Rules of Court filed by petitioner Nayong Pilipino Foundation, Inc. (NPFI), seeking to annul respondent Commission on Audit's (COA) Decision dated November 20, 2013, and Resolution dated April 4, 2014.

The Decision dated November 20, 2013 affirmed Decision No. 2011-074 dated June 7, 2011 of the Adjudication and Settlement Board (ASB) and Decision No. 2007-031 dated May 25, 2007 of the Legal and Adjudication Office (LAO)-Corporate, both of which sustained Notice of Disallowance (ND) No. 2007-001 dated June 14, 2007 relating to the payments of Anniversary Bonus and Extra Cash Gift to NPFI's officers and employees amounting to Php 108,000.00 and Php 90,500.00, respectively, and excess *honoraria* to the members of the Bids and Awards Committee (BAC) and Technical Working Group (TWG) in the amount of Php 132,000.00.

The Facts

On June 6, 2000, in commemoration of NPFI's 30th Founding Anniversary, NPFI Board of Trustees, through Board Resolution No. 63-0606000, authorized the grant to its officers and employees who have rendered services for at least one (1) year, an Anniversary Bonus amounting to Php 3,000.00 each.

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[1] *Rollo*, pp. 3-17.

In May 2004, NPFI's Board of Trustees issued Board Resolution No. 82-052104, where on the occasion of NPFI's 35th Founding Anniversary, it authorized the grant of Anniversary Bonus amounting to a total of Php 108,000.00 to its trustees, employees, and Job Order personnel.[2] On even date, Board Resolution No. 95-120804 was passed authorizing the release to the same recipients, Extra Cash Gift in the total amount of Php 90,500.00.[3]

For 2004, NPFI paid a total of Php 132,000.00 as *honoraria* to the members of its BAC and TWG.

On February 4, 2005, COA issued Audit Observation Memorandum (AOM) No. 2004-002, finding that the grant of NPFI in May 2004 of Anniversary Bonus and Extra Cash Gift amounting to Php 108,000.00 and Php 90,500.00, respectively have no legal basis nor approval of the President;[4] and AOM No. 2004-003, stating that NPFI did not submit the required exemption from the Department of Budget and Management (DBM) for the payment of *honoraria* to its BAC and TWG members.

In response to AOM No. 2004-002, on April 28, 2005, NPFI sent separate letters to the Office of the President[5] (OP) and DBM[6] requesting approval of the grant of Anniversary Bonus and Extra Cash Gift to NPFI officials and employees on the basis of Administrative Order No. 263 dated March 28, 1996 and National Budget Circular No. 452 dated May 20, 1996 and Budget Circular No. 2002-4 dated November 28, 2002.

On September 30, 2005, acting on the referral for comment and/or recommendation by the OP, the DBM issued a letter-resolution.[7] Therein, DBM Secretary Romulo L. Neri concluded

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[2] *Id*. at 53.

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

[4] *Id.* at 56-58.

[5] *Id*. at 59-60.

[6] *Id*. at 61.

[7] *Id*. at 62-63.

that the payment to NPFI personnel of Anniversary Bonus for the years 2000 and 2004 is unauthorized and contrary to existing policy, as the reckoning date of the NPFI's anniversary is November 6, 1972, the date of its establishment as a public corporation under Presidential Decree (P.D.) No. 37, instead of June 11, 1969, when it was a private corporation. Thus, NPFI's entitlement to Anniversary Bonus shall be in 1987 on its 15th anniversary, 1992 on its 20th, 1997 on its 25th, 2002 on its 30th and 2007 on its 35th anniversary.

Similarly, the DBM found the grant of Extra Cash Gift for the year 2004 to be improper, considering that it was not specifically authorized by law or approved by the President.

NPFI sought reconsideration[8] of the DBM Letter-Resolution but the same remain unresolved.

On July 28, 2005, COA LAO-Corporate issued Notice of Suspension No. NPFI-05-001-(04)[9] dated July 28, 2005, suspending the subject disbursements and requiring NPFI to submit the required documents. On reconsideration, COA LAO-Corporate found the documents submitted by NPFI in its letter manifestation insufficient; thus on May 25, 2007, it issued Notice of Disallowance No. NPFI 2007-001[10] and Decision No. 2007-031, the dispositive portion of which reads:

> WHEREFORE, the premises considered, and in view of Management's compliance with our requirements on the allowances granted to OGCC lawyers charged to NPFI, this Office LIFTS the suspension thereon and accordingly allows the same in audit. However, as regard the other suspended payments for anniversary bonus and Christmas cash gift as well as the excessive honoraria to BAC members under the same NS, said payments have matured into disallowance for non-compliance of the audit requirements. Accordingly, Notice of Disallowance No. 2007-001 is hereby issued by this Office.[11]

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

[9] *Id.* at 66-71.

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

[11] *Id*. at 9, 48.

On appeal, the Adjudication and Settlement Board (ASB) dismissed the appeal and affirmed the Decision of the LAO-Corporate through its Decision No. 2011-074 dated June 7, 2011.[12]

NPFI filed a Petition for Review before the COA but the same was denied by the Commission proper *en banc* in its Decision No. 2013-206 dated November 20, 2013.[13] Motion for Reconsideration[14] of the said Decision was denied in a Resolution dated April 4, 2014,[15] prompting NPFI to file the instant petition for *certiorari.*

NPFI maintains in this petition that the COA gravely abused its discretion when it disallowed the payment of the total aggregate amount of Php 330,500.00 comprising of Anniversary Bonus, Extra Cash Gift, to its trustees, officials, and personnel; and *honoraria* to the members of its BAC and TWG.

NPFI argues that Administrative Order (A.O.) No. 263 dated March 28, 1996 and DBM National Budget Circular No. 452 dated May 20, 1996 explicitly authorize the grant of Anniversary Bonus to agencies in celebration of their milestone year in the amount of Php 3,000.00, as in the case at bar where it was granted in celebration of NPFI's 30th and 35th anniversary. Further, NPFI argues that COA should have allowed the 35th Anniversary Bonus given in 2004 to be applied in 2007 considering that the pronouncement that NPFI's anniversary should be reckoned from November 6, 1972 instead of June 11, 1969, was made only on September 11, 2005.

Anent the allowance of Extra Cash Gift, NPFI claims that same is supported by DBM Budget Circular No. 2002-04 dated November 28, 2002, which then President Gloria Macapagal-Arroyo approved.

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[12] *Id.* at 47-52.

[13] *Id.* at 24-30.

[14] *Id.* at 32-40.

[15] *Id.* at 31.

All told, NPFI points out that COA should not have disallowed the grant of Anniversary Bonus and Extra Cash Gift as it is still the subject of a Motion for Reconsideration pending before the OP through the DBM.

On the matter of *honoraria* given to its BAC and TWG members, NPFI alleges that COA erred in making a sweeping disallowance absent any evidence that the same is in excess of the 25% (of the basic salary) ceiling set forth under Section 15 of Republic Act (R.A.) No. 9184.

Finally, NPFI, citing good faith at the time the disallowed benefits were granted and received, seeks this Court's consideration to rule in its favor.

On the other hand, the respondents claim, in sum, that no grave abuse of discretion may be attributed to them in affirming the disallowance of the Anniversary Bonus and Extra Cash Gift granted to NPFI's trustees, officials and personnel; and *honoraria* to its BAC and TWG members, as the same is supported by pertinent laws, circulars, and orders.

The Issue

The lone issue presented for resolution in this case is whether the COA gravely abused its discretion when it disallowed NPFI's payment of Anniversary Bonus and Extra Cash Gift to its trustees, officials and personnel; and *honoraria* to its BAC and TWG members.

Ruling of the Court

The petition is partly meritorious.

The COA, by mandate of the 1987 Constitution, is the guardian of public funds, vested of broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, to establish the techniques and methods for such review, and to promulgate accounting and auditing rules and regulations.[16]

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[16] *Yap v. Commission on Audit*, 633 Phil. 174 (2010).

In the exercise of its constitutional duty, the COA is given a wide latitude of discretion "to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds"[17] and has the power to ascertain whether public funds were utilized for the purpose for which they had been intended by law.[18]

In the performance of COA's functions, the Court has been consistent with its policy enunciated in the case of *Nazareth v. Hon. Villar, et al.*:[19]

> Verily, the Court has sustained the decisions of administrative authorities like the COA as a matter of general policy, not only on the basis of the doctrine of separation of powers but also upon the recognition that such administrative authorities held the expertise as to the laws they are entrusted to enforce.[20]

Thus, the Court has accorded not only respect but also finality to COA's findings particularly when their decisions are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[21]

To warrant the issuance of the extraordinary writ of *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court and set aside the Decision of the COA, the petitioner must show that the latter acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Mere abuse of discretion is not enough. The abuse of discretion must be grave in that there is a capricious and whimsical exercise of judgment which is equivalent to lack of jurisdiction. Abuse of discretion is grave when there is an evasion of a positive

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[17] *Technical Education and Skills Development Authority v. The Commission on Audit, et al.*, 753 Phil. 434 (2015).

[18] *Nazareth v. Villar*, 702 Phil. 319 (2013).

[19] *Id.*

[20] *Id.* at 324.

[21] *Id.*

duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.[22]

In this case, the Court finds that the petitioner NPFI failed to discharge this burden. The respondents did not commit any grave abuse of discretion as their concurrence to the decisions of the LAO-Corporate and ASB is based on cogent legal grounds.

First, the Court agrees with the COA in that the award of Anniversary Bonus for the year 2004 is unwarranted for failure to comply with the requirements set forth under A.O. No. 263 and DBM NBC No. 452-96.

A.O. No. 263,[23] issued on March 28, 1996 provides for general authority to Government-owned and controlled corporations

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[22] *Espinas, et al. v. Commission on Audit*, 731 Phil. 67 (2014).

[23] AUTHORIZING THE GRANT OF ANNIVERSARY BONUS TO OFFICIALS AND EMPLOYEES OF GOVERNMENT ENTITIES

WHEREAS, certain Government Financial Institutions (GFIs) have been authorized to celebrate and commemorate milestone anniversaries with the traditional grant of Anniversary Bonus to their officials and employees;

WHEREAS, the government deems it desirable and fitting to commemorate milestone anniversaries of GOCCs, GFIs, and national government agencies as well by way of granting anniversary bonus to their employees;

WHEREAS, the grant of anniversary bonus on the occasion of milestone years of government agencies will directly improve and enhance employee morale consistent with Section 36(2), Chapter 5, Subtitle A, Title I, Book V of Executive Order No. 292, the Administrative Code of 1987;

WHEREAS, there is a need to regulate the grant of such benefit by adopting a uniform scheme for its implementation to ensure fairness and equity and to conform with the policy of standardization of compensation enunciated under Republic Act No. 6758;

WHEREAS, Section 17 Article VII of the 1987 Constitution vests in the President of the Philippines prerogatives which include, among others the determination of the rates, timing and schedule of payment, and final authority to commit limited resources of government for the payment of personnel incentives, cash rewards, bonuses and other forms of additional compensation and fringe benefits to government personnel.

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby order the grant of Anniversary Bonus in accordance with the rules prescribed hereunder:

(GOCCs), Government Financial Institutions (GFIs), and national government agencies to commemorate milestone anniversaries

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1.0 Coverage/Exemption.

1.1 All government personnel whether employed on a full-time or regular, part-time basis or under permanent, temporary or casual status, and contractual personnel whose employment is in the nature of a regular employee, who have been appointed as such in a specific government entity by virtue of a valid appointment and continue to be employed in the same government entity as of the occasion of its milestone anniversary, shall be entitled to the anniversary bonus.

1.2 Government personnel who have been found guilty of any offense in connection with their work during the five-year interval between milestone years, as defined in 2.5 herein, shall not be entitled to the immediately succeeding anniversary bonus.

2.0 Rules and Regulations.

2.1 "Government entities" shall refer to department, bureaus, offices, commissions and similar bodies of the national government, including GOCCs and GFIs; provided that staff bureaus or entities which form part of the organization structure of departments or offices shall be deemed absorbed by the latter and shall not be treated as a separate agency.

2.2 A frontline bureau or entity created as such under a distinct enabling act or law and, thus, deemed as an institution in its own right shall be considered a distinct and separate agency for purposes of this benefit notwithstanding that fact that it had since been organizationally integrated with a department or office.

2.3 The Anniversary Bonus authorized under this Order shall be granted only during milestone years.

2.4 A milestone year refers to the 15th anniversary and to every fifth year thereafter.

2.5 Payment of the Anniversary Bonus shall be in an amount not exceeding ₱3,000.00 each employee provided that the employee has rendered at least one (1) year service in the same agency as of the date of the milestone year.

2.5.1 In case of insufficiency of funds, the government entity concerned may grant the benefit at a rate lower than that prescribed herein, provided that such rate shall be uniformly applied to all its officials and employees.

2.6 An employee may receive Anniversary Bonus only once every five years, regardless of transfers from one government entity to another.

2.7 Government entities which have already passed a milestone year as defined herein prior to the effectivity of this Order without previously granting an anniversary bonus or a similar incentive may grant the Anniversary Bonus therefor in 1996 subject to the same conditions specified herein.

2.8 No other bonus or allowance or whatever name it may be called of similar nature which relate to or in connection with an entity's anniversary shall be granted.

through the grant of anniversary bonus to their employees in an amount not exceeding Php 3,000.00. To amplify and clarify the implementation of the order, the DBM issued NBC No. 452-96[24] on May 20, 1996.

2.9 Existing administrative authorizations granting similar benefits to specific government entities are hereby revoked and superseded by this authorization.

3.0 Funding Source.

The cost of implementing the benefit under this Order shall be sourced strictly from savings from released allotment for current operating expenditures provided that all authorized mandatory expenses shall have been paid first. For government-owned and/or -controlled corporations and government financial institutions the amount shall be charged against their respective corporate funds.

4.0 Responsibility of the Agency Head.

The heads of concerned government entities shall be held responsible and personally liable for any payment of Anniversary Bonus not in accordance with the provisions of this Order, without prejudice to the refund of any excess payment by the employee concerned.

5.0 Savings Clause.

Cases not covered by the provisions of this order shall be submitted to the Secretary of Budget and Management for appropriate evaluation and recommendation to the Office of the President.

6.0 Effectivity.

This Order shall take effect immediately.

DONE in the City of Manila, this 28th day of March in the year of Our Lord, Nineteen Hundred and Ninety-Six.

(Sgd.) FIDEL V. RAMOS
President of the Philippines
By the President:
(Sgd.) RUBEN D. TORRES
Executive Secretary

[24] Amplifying and Clarifying the Implementation of the Grant of Anniversary Bonus to Officials and Employees of Government Entities

1. Purpose

The Circular is issued to amplify and clarify the implementation of the grant of Anniversary Bonus to officials and employees of government entities as authorized under the Administrative Order No. 263 dated March 28, 1996.

From these guidelines, the Court can infer the following rules relative to the grant of Anniversary Bonus and pertinent to the issue at hand:

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2. The exemption on the grant of Anniversary Bonus as provided under Administrative Order No. 263 is hereby expanded to include government personnel under the following circumstances:

2.1.1. Those who are on absence without leave (AWOL) as of the date of the milestone year for which the Anniversary Bonus is being paid;

2.2 Those who are no longer in service in the same government entity as of the date of the milestone year;

2.3 Those who are not hired as part of the organic manpower of government entities but as consultant or experts for a limited period to perform specific activities or services with expected outputs; student laborers; apprentices; laborers of contracted projects; mail contractors, including those paid by piecework basis; and others similarly situated.

3. The following are additional rules and regulations relative to the grant of Anniversary Bonus

3.1 Officials and employees may be granted Anniversary Bonus only if the government entity where they are employed has been in existence for at least fifteen (15) years and has not yet granted any Anniversary Bonus as of FY 1996, and have rendered at least one (1) year service in the same government entity as of the date of the milestone year (See Illustrative Example 1, Annex A)

3.2 The counting of milestone years shall start from the year the government entity was created regardless of whether it was subsequently renamed/ reorganized provided that its original primary functions have not substantially changed. Otherwise, the counting shall start from the date the functions were substantially changed.

3.3 The counting of the milestone years of merged government entities shall start from the date they were merged.

3.4 The initial grant of Anniversary Bonus in 1996 shall be for the latest milestone only, regardless of whether the government entity has existed for 30, 35, 50, or 60 or more years. There shall be no retroactive payment of milestone years.

3.5 A government entity which is now, for example, on its 18th anniversary but has not granted any Anniversary Bonus may grant the same for its 15th milestone year I in FY 1996. Two years hence, or in FY 1998, Anniversary Bonus for the next milestone year - the 20th anniversary - may be granted.

3.6 An official or employee of a government entity in the example in 3.5 above, who was hired after the government entity's 15th milestone year shall not qualify to receive the Anniversary Bonus in FY 1996, but only to the Anniversary Bonus that will be granted in FY 1998. (See Illustrative Example 2, Annex A)

3.7 Officials and employees in government entities attached to or are

a) All government personnel whether employed on a regular or part-time basis, or under permanent, temporary or casual status, and contractual personnel whose employment is in the nature of a regular employee, who have been appointed as such in a specific government entity by virtue of a valid appointment and continue to be employed in the same government entity as of the occasion of its milestone anniversary, shall be entitled to the Anniversary Bonus;

b) The Anniversary Bonus may only be granted in celebration of milestone year or the 15th anniversary and to every fifth year thereafter; and

c) The counting of milestone year shall start from the year the government entity was created regardless of whether it was

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placed directly under a department/department level government entity and whose creation is not through charter may be considered as organic personnel of the mother department for purposes of availment of the Anniversary Bonus due the officials and employees of the department.

3.8 A government entity which attained its latest milestone year in FY 1996 and has granted Anniversary Bonus that is less than ₱3,000 per official and employee prior to the issuance of Administrative Order No. 263 may grant the difference between the actual amount granted and ₱3,000.Where the amount granted is more than ₱3,000, the excess amount shall be refunded.

4. Funding Source

The cost to implement the Anniversary Bonus shall be solely charged from savings from released allotment for Current Operating Expenses (COE) without the need for prior authority from the Department of Budget and Management, provided that all authorized mandatory expenses shall have been paid first. Requests for augmentation of such savings shall not be allowed.

5. Responsibility of the Head of Entity

The head of entity shall be held responsible and personally liable for any payment of Anniversary Bonus not in accordance with the provisions of Administrative Order No. 263 and this Circular without prejudice, however, to refund any excess payment by the official or employee concerned.

6. Saving Clause

Appropriate cases not covered by the provisions of this Circular shall be submitted to the Secretary of Budget and Management for appropriate resolution.

7. Effectivity

This Circular shall take effect immediately.

subsequently renamed or reorganized provided that its original primary functions have not substantially changed.

Applied in this case, considering that the grant specifically covers government entities and commemorates their creation as such, the DBM and COA are correct in that for the purpose of determining entitlement to Anniversary Bonus, NPFI's milestone year should be reckoned from the date it was incorporated as a public corporation by virtue of Presidential Decree No. 37 or on November 6, 1972 instead of June 11, 1969 when it was then incorporated as a private corporation. It follows therefore, that NPFI is entitled to Anniversary Bonus in 1997 for its 25th Anniversary, 2002 for its 30th and 2007 for its 35th Anniversary. Clearly, the payment of Anniversary Bonus in 2000 and 2004 is therefore unauthorized.

That notwithstanding, as NPFI granted the Anniversary Bonus and the recipients received the same in good faith, acting on the honest belief based on NPFI's articles of incorporation that its founding anniversary is reckoned from May 7, 1969 and traditionally observed on June 11, 1969, no refund is necessary consistent with the Court's ruling in the case of *Nazareth*[25] that "the refund of the disallowed payment of a benefit granted by law to a covered person, agency or office of the Government may be barred by the good faith of the approving official and of the recipient." In so ruling, the Court in *Nazareth* followed the doctrine laid down in *Blaquera v. Alcala*[26] and *De Jesus v. Commission on Audit.*[27]

In *Blaquera*,[28] the Petition assailed the constitutionality of Administrative Order (A.O.) Nos. 29 and 268, issued on January 19, 1993 and February 21, 1992, respectively. The subject

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[25] *Nazareth v. Villar*, 702 Phil. 319 (2013).

[26] 356 Phil. 678 (1998).

[27] 451 Phil. 814 (2003).

[28] *Supra* note 26.

A.O.s grant officials and employees of the government Productivity Incentive Benefits (PIB) and prohibit at the same time the grant of similar benefit in the future without prior approval from the President. A.O. No. 29 further orders the refund of any amount granted as PIB for the year 1992 in excess of Php 1,000.00. The Court upheld the validity of the subject A.O.s as valid exercise of the President's power of control. Nonetheless, it saw no need to order the refund of the excessive PIB paid on account of good faith of the parties, *viz.*:

> Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.[29]

The ruling in *Blaquera* was reiterated and applied in the case of *De Jesus.*[30] In *De Jesus,* the petitioners assail the Decision of the COA which affirmed the disallowance of payment of allowances and bonuses to members of the interim Board of Directors of the Catbalogan Water District. The Court speaking through Justice Carpio, held that the members of the board of water districts cannot receive allowances and benefits in excess of that allowed by Presidential Decree No. 198, citing the then recently decided case of *Baybay Water District v. Commission on Audit.*[31] Similar to the ruling in *Blaquera* however, the Court did not order the refund of the disallowed benefits, explaining that:

> Petitioners here received the additional allowances and bonuses in good faith under the honest belief that LWUA Board Resolution No. 313 authorized such payment. At the time petitioners received the additional allowances and bonuses, the Court had not yet decided Baybay Water District. Petitioners had no knowledge that such payment

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[29] *Id.* at 765-766.

[30] *Supra* note 27.

[31] 425 Phil. 326 (2002).

was without legal basis. Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.[32] (Citation omitted)

Indeed, akin to the foregoing cases, no bad faith may be attributed to NPFI. Jurisprudence defines good faith in relation to the requirement of refund of disallowed benefits or allowances, *to wit*:

> Good faith, in relation to the requirement of refund of disallowed benefits or allowances, is that state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transactions unconscientious.[33]

In this case, the reckoning point for the counting of the milestone year insofar as agencies such as NPFI which is first brought to existence as a private corporation has not been expressly provided in A.O. No. 263 nor clearly specified under DBM NBC No. 452-96. Simply, NPFI's Board of Trustees, officials, and employees have no way of knowing that they are mistaken in following the traditional celebration of NPFI's anniversary on June 11, 1969. With this, it can be concluded that the NPFI Board of Trustees, officials, and employees are in good faith more so that the disallowed Anniversary Bonus was granted prior to the pronouncement of the OP through the DBM and the COA as to the proper counting of its milestone year. The Court is therefore of the belief that the Board of Trustees of NPFI in granting such Anniversary Bonus were impelled by the honest belief that they are due, and the employees in receiving the same acted in good faith that they are entitled to such benefit, thus barring any need for refund.[34]

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[32] *De Jesus v. COA*, *supra* note 27, at 824.

[33] *Zamboanga City Water District, et al. v. COA*, G.R. No. 213472, January 26, 2016, 782 SCRA 78, 80, citing *Philippine Economic Zone Authority v. Commission on Audit*, 690 Phil. 104 (2012).

[34] *Zamboanga City Water District, et al. v. COA*, G.R. No. 213472, January 26, 2016, 782 SCRA 78.

The same principle of good faith cannot however be applied insofar as the grant of NPFI in 2004 of Extra Cash Gift in favor of its officials and employees and of *honoraria* to the members of the BAC and the TWG.

NPFI based its grant of Extra Cash Gift pursuant to DBM Budget Circular 2002-4 dated November 28, 2002, which then President Gloria Macapagal-Arroyo approved. As NPFI itself stated in its Letter[35] dated April 28, 2005 to the OP, the said Budget circular authorizes the grant of Extra Cash Gifts only for the year 2002. In light of its explicit language, it cannot therefore be simply implied that the Circular provides sufficient authority for the grant of similar benefit for the succeeding years without the need of approval by the President.

Similarly, the Court finds no error on the part of COA in disallowing the grant of *honoraria* to the members of the BAC and TWG of NPFI.

NPFI argues that its grant of *honoraria* is supported by Section 15 Article V of R.A. No. 9184 otherwise known as the Government Procurement Reform Act, which provides:

SEC. 15. Honoraria of BAC Members. – The Procuring Entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds. For this purpose, the Department of Budget and Management (DBM) shall promulgate the necessary guidelines.

In effect, NPFI claims that even in the absence of a DBM Circular at the time of payment, the law offers sufficient basis for the allowance of the *honoraria* in an amount not exceeding 25% of the basic salary. NPFI is mistaken.

The Court in *Sison, et al. v. Tablang, et al.*,[36] ruled that the provision of itself cannot serve as basis for the grant of honoraria

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[35] Re: Confirming approval of the grant of Anniversary Bonus and Extra Cash Gift for NFP Officials and Workers; *rollo,* pp. 59-60.

[36] 606 Phil. 740 (2009).

to the members of the BAC without an enabling rule or guideline from the DBM; and compliance therewith is necessary for the right to accrue. We quote:

An honorarium is defined as something given not as a matter of obligation but in appreciation for services rendered, a voluntary donation in consideration of services which admit of no compensation in money. Section 15 of R.A. No. 9184 uses the word "may" which signifies that the honorarium cannot be demanded as a matter of right.

The government is not unmindful of the tasks that may be required of government employees outside of their regular functions. It agrees that they ought to be compensated; thus, honoraria are given as a recompense for their efforts and performance of substantially similar duties, with substantially similar degrees of responsibility and accountability. However, the payment of honoraria to the members of the BAC and the TWG must be circumscribed by applicable rules and guidelines prescribed by the DBM, as provided by law. Section 15 of R.A. No. 9185 is explicit as it states: "For this purpose, the DBM shall promulgate the necessary guidelines." The word "shall" has always been deemed mandatory, and not merely directory. **Thus, in this case, petitioners should have first waited for the rules and guidelines of the DBM before payment of the honoraria**. As the rules and guidelines were still forthcoming, petitioners could not just award themselves the straight amount of 25% of their monthly basic salaries as honoraria. This is not the intendment of the law.

Furthermore, albeit in hindsight, the DBM Budget Circular provides that the payment of honoraria should be made only for "successfully completed procurement projects." This phrase was clarified in DBM Budget Circular No. 2004-5A dated October 7, 2005, to wit:

> 5.1 The chairs and members of the Bids and Awards Committee (BAC) and the Technical Working Group (TWG) may be paid honoraria only for successfully completed procurement projects. In accordance with Section 7 of the Implementing Rules and Regulations Part A (IRR-A) of RA No. 9184, a procurement project refers to the entire project identified, described, detailed, scheduled and budgeted for in the Project Procurement Management Plan prepared by the agency.

A procurement project shall be considered successfully completed once the contract has been awarded to the winning bidder.

No interpretation is needed for a law that is clear, plain and free from ambiguity. Now, the DBM has already set the guidelines for the payment of honoraria as required by law. Since the payment of honoraria to petitioners did not comply with the law and the applicable rules and guidelines of the DBM, the notices of disallowance are hereby upheld.[37] (Citations omitted, emphasis and underscoring supplied)

In light of the aforesaid ruling therefore, since the payments of the *honoraria* to the members of the BAC and TWG by NPFI were made on January 16, 2014, February 10, 2004, and March 9, 2004, prior to the issuance on March 23, 2004 of DBM Circular No. 2004-5 which sets forth the guidelines on the grant of *honoraria* to government personnel involved in procurement, and absent proof of completed procurement projects in accordance with the circular, the disallowance is proper.

Liability in cases of refund for unlawful expenditures of government funds is governed by Section 103 of Presidential Decree No. 1445, which states:

Section 103. General liability for unlawful expenditures. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

The provision is read in relation to Section 19 of the Manual of Certificate of Settlement and Balances, COA Circular No. 94-001, *to wit*:

19.1. The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties, responsibilities or obligations of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby.

19.1.3. Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties

[37] *Id*. at 750-751.

shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

Interpreting the foregoing provisions, jurisprudence settled that insofar as the disallowance of benefits and allowances of government employees, recipients or payees need not refund these disallowed amounts in the absence of proof to rebut the presumption that they received the same in good faith. However, officers who participated in the approval of the disallowed allowances or benefits are required to refund the disallowed benefits when in so granting, they acted in bad faith or are grossly negligent tantamount to bad faith, as when an explicit provision of law, rule or regulation has been violated.[38] The liability of the "participating" public officers in this instance stands whether or not they received the disallowed benefit.[39]

In fine, while NPFI's Board of Trustees and officers, as public officials, hold in their favor the presumption of regularity in the performance of their official duties, the same must fail in the presence of an explicit law, rule or regulation that have been violated.[40] On the grant of Extra Cash Gift, NPFI's Board of Trustees are armed with the knowledge of the existence and of the particulars of DBM Budget Circular 2002-4, which by explicit language provides authority for the release of Extra Cash Gift only for the year 2002. Similarly, Section 15, Article V of R.A. No. 9184, which served as the basis for NPFI's grant of *honoraria* to the members of its BAC and TWG is clear and unambiguous in that the same is circumscribed by the guidelines to be set by the DBM, and may therefore be granted only after the promulgation thereof.[41] In view of the foregoing transgressions

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[38] *Rhodelia L. Sambo and Loryl J. Avila v. COA*, G.R. No. 223244, June 20, 2017; *Maritime Industry Authority (MIA) v. COA*, 750 Phil. 288 (2015).

[39] *Silang v. COA*, 769 Phil. 327 (2015).

[40] *Rhodelia L. Sambo and Loryl J. Avila v. COA*, *supra* note 38.

[41] *Rollo,* pp. 59-60.

therefore, NPFI cannot claim good faith and the disallowed Extra Cash Gift and *honoraria* are due for refund.

Noteworthy, following the aforecited provisions which deal with the liability of public officers for unlawful expenditures, the Court cannot subscribe and limit the imposition of solidary liability to refund the disallowed benefits to the persons enumerated by the COA LAO-Corporate in Notice of Disallowance No. NPFI-2007-001[42] and Notice of Suspension No. NPFI-05-001-(04).[43]

In Notice of Disallowance NPFI-2007-001, the Audit Team Leader after evaluation found the following persons liable for the grant of Extra Cash Gift and *honoraria*: Atty. Charito L. Planas, Executive Director - for approving the transactions; Jonas Ma. Serrano, Administrative Officer IV - for certifying the expenses as lawful; Lucy Q. Lapinig, Accountant I - for certifying that adequate funds are available and the expenditures as proper.[44] The same persons were adjudged to be liable in Notice of Suspension No. NPFI-05-001-(04).[45] However, as explained by the Court in the recent case of *Rhodelia L. Sambo and Loryl J. Avila v. COA,*[46] pursuant to Book VI, Chapter V, Section 43[47] of the Administrative Code, "public officials who are directly responsible for, or participated in

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

[43] *Id.* at 66-71.

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

[45] *Id*. at 66-71.

[46] G.R. No. 223244, June 20, 2017.

[47] Book VI, Chapter V, Section 43 of the Administrative Code, provides:

Liability for Illegal Expenditures. - Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

making the illegal expenditures as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement."

As previously discussed, considering that the employee-recipients are in good faith, they are absolved from the liability to refund. In contrast, on account of bad faith and clear transgression of R.A. No. 9184 and DBM Budget Circular No. 2002-4, apart from the persons enumerated in the subject Notices of disallowance and suspension, NPFI's Board of Trustees and officers who approved and authorized the release of the disallowed Extra Cash Gift and *honorarium* are likewise adjudged to be solidarily liable to refund the same.

WHEREFORE, in light of the disquisitions, the Court **AFFIRMS** the Decision of Commission on Audit proper *en banc* dated November 20, 2013, and Resolution dated April 4, 2014 subject to the **MODIFICATION** in that the trustees, officials, and personnel of Petitioner Nayong Pilipino Foundation, Inc. (NPFI) who received the Anniversary Bonus in 2004 need not refund the same.

However, with respect to the Extra Cash Gift and *honorarium* in the amount of Php 90,500.00 and Php 132,000.00, respectively, NPFI's Board of Trustees and officers who participated in the approval and authorized the release of the same are hereby adjudged to be solidarily liable for their refund.

SO ORDERED.

Carpio,[*] *Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Leonen, Jardeleza, Caguioa,* and *Martires, JJ.,* concur.

Sereno, C.J., on leave.

Perlas-Bernabe, Tijam, and *Gesmundo, JJ.,* on official leave.

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[*] Designated Acting Chief Justice per Special Order No. 2483 dated September 14, 2017.

EN BANC

[G.R. No. 213581. September 19, 2017]

BANGKO SENTRAL NG PILIPINAS, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; MUST FOLLOW ITS OWN RULES OF PROCEDURE AND COMPLY WITH THE BASIC TENETS OF DUE PROCESS.— Respondent Commission on Audit is the guardian of public funds and the Constitution has vested it with the mandate to "examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned and held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters[.]" x x x While this Court has time and again recognized respondent's mandate, this does not give it the authority to disregard the basic tenets of due process or brush aside its own rules of procedure. The request for opinion was dated March 24, 2008; hence, the 1997 Commission on Audit Rules of Procedure (1997 Rules) apply. Rule VIII, Section 1 of the 1997 Rules recognizes a money claim as the only original case that may be directly filed with the Commission Proper x x x. Rule VIII of the 1997 Rules then lays out in detail the pleadings to be submitted to support a money claim, with their corresponding periods for compliance. Under the 1997 Rules, the following pleadings are to be submitted for the proper resolution of an original case filed directly with the Commission Proper; petition, answer, and reply. Respondent does not deny that it treated the request for opinion from Bangko Sentral ng Pilipinas as a request for relief from accountability for losses, which it avers falls under its original jurisdiction in its 2009 Revised Rules of Procedure (2009 Rules) x x x. However, to reiterate, the applicable rules in the case at bar are the 1997 Rules, not the 2009 Rules. The 1997 Rules do not provide a procedure for the filing of a request for relief from accountability; instead, the procedure for a request for relief from accountability can

be found in Commission on Audit Resolution No. 2001-010 dated June 21, 2001 x x x. Respondent itself prescribed the documentary requirements which should accompany a request for relief from accountability. x x x None of these documents accompanied petitioner's request for opinion. x x x Clearly, respondent erred in treating the request for opinion as a request for relief from accountability. Even if this Court agrees with respondent that its 2009 Rules apply in the case at bar and not its 1997 Rules, its arguments still fail to convince. The 2009 Rules have expanded the Commission Proper's original jurisdiction provided for under the 1997 Rules by authorizing it to act not only on money claims but also on several kinds of request. x x x Nonetheless, despite the Commission Proper's expanded jurisdiction, the Commission on Audit's 2009 Rules still prescribe the proper procedure to be followed for the resolution of the original case.

2. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; SATISFIED IF THE PARTY IS DULY NOTIFIED OF THE ALLEGATIONS AGAINST HIM AND IS GIVEN A CHANCE TO PRESENT HIS DEFENSE.— Due process in administrative proceedings does not require the submission of pleadings or a trial-type of hearing. Due process is satisfied if the party is duly notified of the allegations against him or her and is given a chance to present his or her defense. Furthermore, due process requires that the proffered defense should have been considered by the tribunal in arriving at its decision. x x x It is beyond dispute that Yap, Dequita, and the other bank officials of the Bangko Sentral ng Pilipinas, Cotabato Branch were denied due process with the issuance of the assailed Commission on Audit Decision. Respondent rendered its assailed Decision in blatant disregard to its own rules, treating the request for opinion as a request for relief from accountability even if the former did not include the required documents and comments or recommendations needed under either the 1997 Rules or 2009 Rules. Furthermore, the request for opinion was filed by petitioner alone, yet the assailed Decision found Yap, Dequita, and other bank officers of the Cotabato Branch jointly and solidarily liable, even if they were never parties to the request for opinion or request for relief from accountability. It was an error amounting to grave abuse of discretion to hold Yap liable, and Dequita and the other bank officers of the Cotabato Branch jointly and

solidarily liable with Yap for the cash shortage without an actual complaint being filed and without giving them the chance to defend themselves.

APPEARANCES OF COUNSEL

BSP Office of the General Counsel and Legal Services for petitioner.

The Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Due process in administrative proceedings does not require the submission of pleadings or a trial-type of hearing. However, due process requires that a party is duly notified of the allegations against him or her and is given a chance to present his or her defense.

This reviews the Decision[1] dated April 12, 2013 and Resolution[2] dated May 6, 2014 of the Commission on Audit, finding Evelyn T. Yap (Yap) and Perry B. Dequita (Dequita) and other officers of the Bangko Sentral ng Pilipinas, Cotabato Branch jointly and solidarily liable for cash shortage in the amount of ₱32,701,600.00

The facts as established by the parties are as follows:

On May 27, 2005, Mariam Gayak (Gayak), Bank Officer III of the Bangko Sentral ng Pilipinas, Cotabato Branch was assigned to the Davao Regional Office. In light of Gayak's transfer, Verlina Silo (Silo) and Yap were designated as Acting Bank Officer III and Bank Officer II, respectively.[3]

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[1] *Rollo,* pp. 21–30. The Decision was signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioner Heidi L. Mendoza.

[2] *Id*. at 31.

[3] *Id*. at 34.

On June 7, 2005, Silo transferred her cash accountabilities in the amount of ₱988,105,695.00 to Yap. Six (6) months later, Gayak returned to the Cotabato Branch and Yap had to turn over her cash accountability back to Silo.[4]

From December 5, 2005 to January 6, 2006, the Commission on Audit audited and examined Yap's cash accountability.[5] The audit was needed before Yap could transfer her cash accountability back to Silo.[6]

The Commission on Audit stated that in the morning of December 22, 2005, its Audit Team finished auditing Silo's accountability and proceeded to audit Yap's cash accountability. Later that day, the Audit Team could no longer locate Silo.[7]

That same day, Silo sent Dequita, Manager of Bangko Sentral ng Pilipinas, Cotabato Branch, a text message where she admitted misappropriating a portion of Yap's accountability when she still had custody over it.[8] Dequita immediately informed the Audit Team of Silo's text message. This prompted the Audit Team to conduct a piece-by-piece cash count, not just a random sampling count. The Audit Team discovered the irregularity when they counted the ₱1,000.00 notes[9] and found shortage in the amount of ₱32,701,600.00 from Yap's cash accountabilities.[10]

On December 23, 2005, Silo executed an affidavit where she admitted sole responsibility for the cash shortage.[11]

Bangko Sentral ng Pilipinas formed a Fact Finding Task Force to investigate the matter and Silo appeared before it.[12] In the

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[4] *Id.* at 34–35.

[5] *Id*. at 6.

[6] *Id*. at 34–35, Ombudsman Decision.

[7] *Id.*

[8] *Id*.

[9] *Id*. at 35.

[10] *Id*. at 6, Petition.

[11] *Id.* at 33.

[12] *Id*. at 43, Ombudsman Decision.

presence of the Fact Finding Task Force, Yap, and Dequita, Silo executed another affidavit[13] where she again admitted repeatedly stealing cash from her accountabilities for a period of about five (5) years.

Silo then assigned to Bangko Sentral ng Pilipinas all the benefits she would receive from the Bangko Sentral ng Pilipinas Provident Fund, her retirement benefits from the Government Service Insurance System, and the cash equivalent of her leave credits to pay for the amount she misappropriated.[14]

On January 18, 2006, the Commission on Audit directed Yap to explain and return the cash shortage. Yap denied responsibility over the cash shortage and attached Silo's affidavit where she admitted sole liability over the missing cash.[15]

The Commission on Audit filed administrative charges of dishonesty and grave misconduct, and criminal charges of malversation and violation of Section 3(E) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act against Dequita, Silo, and Yap before the Office of the Ombudsman.[16]

On April 5, 2006, the Office of the Ombudsman directed Yap, Silo, and Dequita to submit their respective counter-affidavits for the administrative complaint. But the order sent to Silo at her office and home addresses were both returned unserved.[17]

On July 31, 2006, the Office of the Ombudsman[18] found Silo liable of the administrative charge against her but dismissed the administrative charges against Dequita and Yap.

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[13] *Id*. at 43–46, Ombudsman Decision.

[14] *Id*. at 46.

[15] *Id.* at 33.

[16] *Id*. at 7, Petition.

[17] *Id.* at 34.

[18] *Id.* at 32–55.

With Silo's admission of repeatedly misappropriating the cash under her custody and control for her personal use, the Office of the Ombudsman found her solely liable for dishonesty and grave misconduct.[19] It held:

> Since all evidence points to respondent Silo as the sole perpetrator of the acts herein complained of, there is no basis to hold respondents Yap and Dequita administratively liable for the shortage, notwithstanding the fact that the accountability was under respondent Yap at the time of audit. Important emphasis should be made that respondent Silo assumed full responsibility of the cash shortage and totally absolved respondents Yap and Dequita of any involvement or participation in the loss of the funds.[20]

The Office of the Ombudsman also took note that Silo's illegal activities took place before Dequita became Branch Manager and long before Silo turned over her cash accountabilities to Yap.[21]

The Office of the Ombudsman likewise absolved Yap and Dequita from negligence in the performance of their duties. It held that Yap's only lapse was her failure to conduct a piece-by-piece count of the ₱988,105,695.00 that Silo turned over to her on June 7, 2005. However, the Office of the Ombudsman stated that it was physically impossible for Yap to do a piece-by-piece count of the staggering amount of cash under her custody and to insist on a piece-by-piece count would disturb normal banking operations.[22]

The dispositive portion of the Office of the Ombudsman July 31, 2006 Decision read:

> **WHEREFORE, PREMISES CONSIDERED,** there being insufficient evidence against respondents Perry B. Dequita and Evelyn T. Yap, the case as against them is hereby ordered **DISMISSED.**

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[19] *Id.* at 47.

[20] *Id.* at 48.

[21] *Id.* at 49.

[22] *Id.* at 52–53.

On the other hand, there being substantial evidence against respondent Verlina B. Silo, this Office finds her guilty of Dishonesty and Grave Misconduct. Pursuant to Section 52(1) & (3) in relation to Section 57, Rule IV, of CSC Resolution No. 991936 dated August 31, 1999, respondent Verlina B. Silo is hereby meted the penalty of **DISMISSAL FROM PUBLIC SERVICE** together with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for reemployment in the government service. The Honorable Amando M. Tetangco, Jr., Governor of the Banko Sentral ng Pilipinas, A. Mabini Street, Malate, Manila, is hereby directed to implement this Decision immediately upon receipt hereof and to submit to this Office a compliance report within ten (10) days from its implementation.

SO DECREED.[23]

The Commission on Audit moved for the partial reconsideration of the Ombudsman's dismissal of the administrative charges against Dequita and Yap.[24]

On July 4, 2008, the Office of the Ombudsman denied[25] the Commission on Audit's motion for partial reconsideration. The Commission on Audit did not appeal the denial of its motion.

On July 28, 2006, the Office of the Ombudsman[26] found probable cause in the criminal case against Silo, but none against Dequita or Yap. The dispositive portion of the Ombudsman Resolution read:

WHEREFORE, all the foregoing premises considered, and finding probable cause against respondent Verlina B. Silo, let the enclosed Informations for Malversation and Violation of Section 3(e) of RA 3019 be filed with the Regional Trial Court of Cotabato City and preferably to be prosecuted by the Special Prosecution Bureau of this Area Office. Finding no probable cause against respondents Perry B. Dequita and Evelyn T. Yap, the criminal case as against them is hereby ordered **DISMISSED.**

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[23] *Id.* at 53–54.

[24] *Id*. at 56.

[25] *Id*. at 56–60, Ombudsman Order.

[26] *Id*. at 61–87, Ombudsman Resolution.

SO RESOLVED.[27]

The Commission on Audit moved for the partial reconsideration of the dismissal of the criminal case against Dequita and Yap.[28]

Due to the dismissal of the administrative case against Yap and Dequita, the Bangko Sentral ng Pilipinas Office of the General Counsel and Legal Services opined that Yap's liability to restitute the cash shortage under her accountability had been extinguished. However, it declined to comment on the status of Yap's accounts receivables which were booked on December 29, 2005. Instead, it recommended that the matter be referred to the Commission on Audit for its proper evaluation.[29]

On March 24, 2008, Pedro P. Tordilla, Managing Director of Bangko Sentral ng Pilipinas Regional Monetary Affairs Sub-Sector, sent the Commission on Audit a request for an evaluation of the status of Yap's liability, considering the dismissal of the administrative case against her.[30]

The Assistant Commissioner of the Corporate Government Sector of the Commission on Audit opined that any action on the request for opinion should be subject to the final outcome of the criminal case against Yap, Silo, and Dequita.[31]

On July 18, 2008, the Office of the Ombudsman[32] denied the Commission on Audit's motion for partial reconsideration of the Resolution dated July 28, 2006. The Commission on Audit did not appeal the denial of its motion.

On April 12, 2013, instead of providing an opinion regarding Yap's liability, the Commission on Audit issued a Decision[33]

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[27] *Id*. at 86.

[28] *Id*. at 88.

[29] *Id*. at 22–23.

[30] *Id*. at 23.

[31] *Id.*

[32] *Id*. at 88–92, Ombudsman Order.

[33] *Id.* at 21–30.

denying the request to extinguish Yap's liability in the cash shortage and holding her liable for it. Furthermore, the Commission on Audit held Dequita, as well as the other Cotabato Branch Managers for the period of March 1996 to 2000, and the responsible officer/s who designated Silo to two (2) separate positions at the Cash Operations Unit to be jointly and solidarily liable with Yap.

The Commission on Audit held that while Silo had already admitted causing the cash shortage of ₱32,701,600.00, her admission of guilt did not automatically release Yap and Dequita from their responsibility over the funds entrusted to them. They still needed to "prove that they exercised the highest degree of care in performing their job in order to protect and safeguard their accountabilities."[34]

The dispositive portion of the Commission on Audit Decision read:

> **WHEREFORE,** premises considered, the request to extinguish the receivable from Ms. Yap arising from her shortage in the amount of [₱]32,701,600.00 is **DENIED.** Moreover, Mr. Dequita and the other branch managers for the period March 1996 to year 2000, as well as the responsible officer/s designating Ms. Silo with two (2) positions at the [Cash Operations Units], in violation of the dual control policy, are also held jointly and solidarily liable for the lost amount. For this purpose, the Supervising Auditor, [Bangko Sentral ng Pilipinas] is directed to identify and notify these bank officers of their liability, and ensure that they are also included in the receivable account as persons jointly and solidarily liable with Ms. Yap.[35]

On May 6, 2014, the Commission on Audit[36] denied Bangko Sentral ng Pilipinas' Consolidated Motion for Reconsideration.

On July 28, 2014, petitioner Bangko Sentral ng Pilipinas filed a Petition for Certiorari,[37] where it asserts that Silo has

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[34] *Id.* at 25.

[35] *Id.* at 29.

[36] *Id*. at 31.

[37] *Id*. at 102–118.

assumed full responsibility of the cash shortage by admitting that she repeatedly took cash from her accountabilities for five (5) years without anyone's assistance.[38]

Silo's affidavit read:

> At the [Bangko Sentral ng Pilipinas] for lack of manpower, there was a time that started in March 1996 that I held two (2) positions at the Cash Operations Unit. One was as a Currency Operations Officer and at the same time as Assistant Cashier. I held the said positions for about four (4) years.
>
> I took advantage of the said situation by unlawfully taking part of my cash accountabilities for my personal use. I started embezzling the [Bangko Sentral ng Pilipinas]'s funds in my cash accountabilities from 1996 continuously until 2000 while we were still at the former [Bangko Sentral ng Pilipinas] Office situated at Don Rufino Alonzo St., Cotabato City which I made alone or without the knowledge or participation of any of my officemates in the Bank.
>
> I started by taking one wrapper of [₱]1000 ([₱]100,000.00) a day from my cash accountabilities kept inside the Cash Vault which I first placed inside a green metal cash box which I could carry outside the Cash Vault without anybody noticing or minding what the contents thereof were. Thereafter, from the said box I transferred the wrapper of [₱]1000 into my bag. I was able to take out about five (5) wrappers of [₱]1000 a week or 20 wrappers or [₱]2 million a month using the same procedure mostly to fund the checks that I issued in payment of interests of my loans/obligations from the banks and individual creditors and accounts payable to all my suppliers of merchandise for my businesses.
>
> I also used the [Bangko Sentral ng Pilipinas]'s funds which I took from my cash accountabilities to pay for the medical expenses incurred successively and/or simultaneously due to the illnesses suffered by my sister, mother and brother. My sister had cancer and my mother had a unique kind of decease (sic) before they eventually died. My son Daniel was electrocuted in 2000. I had to assist them financially as they ha[d] no enough money to pay for huge amount of medical expenses. My financial obligations increased as I was swindled in connection with my jewelry business, my receivables from government

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[38] *Id.* at 107.

agencies (ARMM-Maguindanao offices) were not collected and I received death threats from my creditors and debtors to the point that my eldest son was abducted to serve as a warning to me and my family so as not to pursue collecting my receivables from them.

There was a time when my shortage which then already consisting of five (5) bundles of [₱]1,000 currency notes or a total of [₱]5 million were not discovered by those who audited my cash accountabilities. I hid them at the back of the currency stockpiles inside the Cash Vault.

Little by little, I replaced the [₱]1000 bundles of currency notes with [₱]100 currency notes by exchanging some of the [₱]1000 currency notes in my cash accountabilities with any of the tellers while we were still at the old [Bangko Sentral ng Pilipinas] Office and even at the present [Bangko Sentral ng Pilipinas] Office site until I was able to turn the 37 bundles of [₱]1000 notes which I took for my personal use into 37 bundles of [₱]100 currency notes with insertions of few pieces of [₱]1000 without any auditor/head of the branch discovering the said shortage except on December 23, 2005 by the [Commission on Audit] Auditors from Manila.

My cash accountabilities had been audited or supposedly physically or actually counted by the [Internal Audit Office] Auditors, Branch Special Services Staff Auditors, [Commission on Audit] Auditors and Heads of Cotabato branch without finding or discovering any shortage therefrom.

I am executing this affidavit to attest to the truth of the foregoing facts, to relieve all my officemates from any responsibility, obligation or damage that may have been caused the [Bangko Sentral ng Pilipinas] due to the shortage in my cash accountabilities which I admit to be taken by me for my personal use.

I truly and sincerely regret what I have done. I apologize for all the damages and inconveniences that I have caused my officemates and the management.[39] (Emphasis in the original)

Petitioner points out that the Office of the Ombudsman has dismissed both administrative and criminal charges against Yap and Dequita, finding only Silo responsible for the cash shortage.[40]

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[39] *Id*. at 43–46.

[40] *Id*. at 107.

Additionally, it emphasizes that the dismissal of the administrative and criminal charges against Yap and Dequita has become final and executory, since the Commission on Audit did not elevate them for appeal. Thus, there was no basis for the Commission on Audit's denial of Yap's request for relief from accountability. Neither is there any basis to hold Dequita or any other officers from the Bangko Sentral ng Pilipinas, Cotabato Branch jointly and solidarily liable with Yap for the shortage.[41]

In its Supplemental Petition,[42] petitioner underscores that the assailed Decision was issued in response to its request for opinion on the extinguishment of Yap's liability on the cash shortage. It reiterates that it never filed a case against Yap before respondent, neither did respondent require the filing of any pleadings or motions before it rendered the assailed Decision.[43]

Petitioner maintains that it was only allowed an opportunity to be heard when it filed its Motion for Reconsideration, which respondent denied, while Yap, Dequita, and the other bank officers were never given the opportunity to present their own evidence.[44]

Petitioner asserts that with the Office of the Ombudsman's dismissal of the administrative and criminal charges against Yap and Dequita, the proper remedy was to appeal the dismissals and not for respondent to render the assailed Decision.[45]

In its Resolution[46] dated August 5, 2014, this Court required the Commission on Audit to comment on the petition.

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[41] *Id*. at 109–110.

[42] *Id*. at 195–211.

[43] *Id*. at 196–197.

[44] *Id*. at 197.

[45] *Id.* at 204–205.

[46] *Id*. at 191-A–191-B.

In its Comment,[47] respondent Commission on Audit insists that the principle of *res judicata* is inapplicable in the case at bar because jurisprudence has consistently held that *res judicata* does not attach to decisions rendered by the Office of the Ombudsman.[48]

Respondent likewise declares that the administrative and criminal charges before the Office of the Ombudsman are distinct from its audit proceedings.[49]

Respondent states that as public officials, Yap and Dequita should be held accountable for the cash shortage because of their negligence that emboldened Silo to brazenly steal money.[50]

Respondent further argues that it observed due process because Yap, Dequita, and Bangko Sentral ng Pilipinas were able to present their side during the proceedings before the Office of the Ombudsman.[51]

In its Resolution[52] dated November 18, 2014, this Court directed petitioner to file a reply. Petitioner then filed its Reply[53] on February 24, 2015, where it denies that it invoked the principle of *res judicata* as its defense. It clarifies that what it disputes is the lack of due process with respondent's issuance of the assailed Decision in response to petitioner's request for opinion:[54]

5. Public Respondent [Commission on Audit] failed to afford Mr. Dequita and Ms. Yap a reasonable opportunity to address the "case" against them prior to the issuance of the Assailed Decision. Public Respondent [Commission on Audit]'s allegations that it afforded

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[47] *Id*. at 245–275.

[48] *Id*. at 251–252.

[49] *Id.* at 256–257.

[50] *Id*. at 259–261.

[51] *Id*. at 266–268.

[52] *Id*. at 276.

[53] *Id.* at 317–331.

[54] *Id*. at 317–318.

Mr. Dequita and Ms. Yap due process since they "considered their defenses" in their pleadings filed before the Ombudsman, and that Mr. Dequita and Ms. Yap were later allowed to file their "comprehensive Motion for Reconsideration" (of the Assailed Decision), do not hold water. It begs the question on how Mr. Dequita and Ms. Yap could have filed a "comprehensive Motion for Reconsideration" when they were not parties to the Request for Opinion in the first place, since it was the [Bangko Sentral ng Pilipinas] that prepared and filed said request. Simply, these allegations are mere afterthoughts that do not cure the fact that due process was not afforded to Mr. Dequita and Ms. Yap.[55]

Petitioner insists that the Commission on Audit erred in treating its request for opinion as a complaint against Yap and Dequita.[56] Furthermore, petitioner underscores that respondent failed to follow its own rules when it issued the assailed Decision.[57]

In its Resolution[58] dated March 17, 2015, this Court directed the parties to file their respective memoranda.

In its Memorandum,[59] respondent posits that it is irrelevant if it construed the request for opinion from petitioner as a complaint because petitioner cannot limit or control respondent's constitutional mandate to audit and settle government accounts.[60]

Respondent asserts that a formal hearing or presentation of pleadings is not required in exercising its jurisdiction to act on requests for losses.[61] It claims that it followed the requirements of due process because it studied the records and evidence submitted during the audit proceedings and in the proceedings before the Office of the Ombudsman.[62]

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[55] *Id*. at 318.

[56] *Id*. at 319–320.

[57] *Id*. at 320–321.

[58] *Id*. at 345–346.

[59] *Id*. at 381–415.

[60] *Id*. at 394.

[61] *Id.* at 395.

[62] *Id*. at 396–397.

Respondent also questions why petitioner is representing Yap, stating, "[Bangko Sentral ng Pilipinas] is bereft of *locus standi* to claim non-observance of due process rights. Violation of due process is a personal defense that can only be asserted by the persons whose rights have been allegedly violated."[63]

In its Memorandum,[64] petitioner reiterates that the assailed Decision was issued in response to a request for opinion and not a complaint. Moreover, respondent resorted to *ex parte* proceedings because Yap, Dequita, and the other bank officers of the Cotabato Branch were denied the chance to present evidence in their behalf and to refute the allegations against them.[65]

Petitioner likewise highlights that it took respondent five (5) years to issue its Decision on the request for opinion, violating the constitutional rights of Yap, Dequita, and the other bank officials to a speedy disposition of cases.[66]

The only issue for this Court's resolution is whether or not the Commission on Audit committed grave abuse of discretion in issuing its assailed April 12, 2013 Decision.

I

Respondent Commission on Audit is the guardian of public funds and the Constitution has vested it with the mandate to "examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned and held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters[.]"[67]

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[63] *Id*. at 398.

[64] *Id*. at 353–380.

[65] *Id*. at 360.

[66] *Id*. at 360–361.

[67] CONST., Art. IX-D, Sec. 2(1).

Respondent refers to its constitutional mandate to support its claim that it was well within its power to treat the request for opinion from the Bangko Sentral ng Pilipinas as a request for relief from accountability:

> 31. Indubitably, as a specialized constitutional body, the [Commission on Audit] is effectively clothed with ample knowledge on auditing and settlement accounts of government funds and properties. How respondent [Commission on Audit] construed the alleged letter request is a trivial matter, for as long as it performed its mandated duty of judiciously examining documents and records prior to arriving at its decision. The authority of the [Commission on Audit] could not be limited or controlled by petitioner which insists that it was simply seeking guidance on booking of Yap's accounts receivable.[68]

While this Court has time and again recognized respondent's mandate,[69] this does not give it the authority to disregard the basic tenets of due process or brush aside its own rules of procedure.

The request for opinion was dated March 24, 2008;[70] hence, the 1997 Commission on Audit Rules of Procedure (1997 Rules) apply. Rule VIII, Section 1 of the 1997 Rules recognizes a money claim as the only original case that may be directly filed with the Commission Proper:

> RULE VIII
> Original Cases Filed Directly with the Commission Proper
>
> Section 1. Money Claim. — Cases involving money claim against the Government cognizable by the Commission Proper may be filed directly with the Commission Secretary.

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[68] *Rollo,* p. 394.

[69] *Technical Education and Skills Development Authority (TESDA) v. Commission on Audit*, 753 Phil. 434, 441 (2015) [Per *J.* Bersamin, *En Banc*]; *Granada v. People of the Philippines,*G.R. Nos. 184092, 186084, 186272, 186488, and 186570, February 22, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/184092.pdf> [Per *J.* Leonen, Second Division].

[70] *Rollo,* p. 318.

Rule VIII of the 1997 Rules then lays out in detail the pleadings to be submitted to support a money claim, with their corresponding periods for compliance. Under the 1997 Rules, the following pleadings are to be submitted for the proper resolution of an original case filed directly with the Commission Proper: petition,[71] answer,[72] and reply.[73]

Respondent does not deny that it treated the request for opinion from Bangko Sentral ng Pilipinas as a request for relief from

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[71] 1997 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule VIII , Secs. 2, 3 and 4 provide:

Section 2. Petition. — A claimant for money against the Government, whose claim is cognizable by the Commission Proper, may file a petition. The party seeking relief shall be referred to as "Petitioner" and the government agency or instrumentality against whom a claim is directed shall be referred to as "Respondent".

Section 3. Contents of Petition. — The petition shall contain the personal circumstances or juridical personality of the petitioner, a concise statement of the ultimate facts constituting his cause of action, a citation of the law and jurisprudence upon which the petition is based and the relief sought. The petition shall be accompanied by certified true copies of documents as are referred to therein and other supporting papers.

Section 4. Filing of Petition. — The petition shall be filed with the Commission Secretary, a copy of which shall be served on the respondent. Proof of service of the petition on the respondent shall be attached to the petition.

[72] 1997 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule VIII, Sec. 6 provides:

Section 6. Answer. — Within the said fifteen (15) days from receipt of the Order, the respondent shall file with the Commission Secretary an answer to the petition. The answer shall be accompanied by certified true copies of documents referred to therein together with other supporting papers. The answer shall (a) point out insufficiencies or inaccuracies in the petitioner's statement of facts and issues and (b) state the reasons why the petition should be denied or dismissed. Copy of the answer shall be served on the petitioner and the proof of service thereof shall be attached to the answer.

[73] 1997 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule VIII, Sec. 7 provides:

Section 7. Reply. — Petitioner may file a reply within ten (10) days from receipt of the answer.

accountability for losses,[74] which it avers falls under its original jurisdiction in its 2009 Revised Rules of Procedure (2009 Rules):

> RULE VIII
> Original Cases Filed Directly with the Commission Proper
>
> Section 1. ***Original Jurisdiction.*** – The Commission Proper shall have original jurisdiction over: a) money claim against the Government; b) request for concurrence in the hiring of legal retainers by government agency; c) write off of unliquidated cash advances and dormant accounts receivable in amounts exceeding one million pesos (₱1,000,000.00*); d) request for relief from accountability for los[s]es due to acts of man, i.e., theft, robbery, arson, etc., in amounts in excess of Five Million pesos (₱5,000,000.00).* (Emphasis supplied)

However, to reiterate, the applicable rules in the case at bar are the 1997 Rules, not the 2009 Rules. The 1997 Rules do not provide a procedure for the filing of a request for relief from accountability; instead, the procedure for a request for relief from accountability can be found in Commission on Audit Resolution No. 2001-010 dated June 21, 2001, the pertinent portions of which state:

> SUBJECT: Amendment of [Commission on Audit] Resolution No. 93-605, dated August 3, 1993, on the delegation of authority of [Commission on Audit] officials to decide on requests for relief from money and/or property accountability.
>
> **WHEREAS,** under [Commission on Audit] Resolution No. 93-605, dated August 3, 1993, this Commission delegated to certain [Commission on Audit] officials the authority to decide/act on request for relief from money and/or property accountability;
>
> . . . . . .
>
> **BE IT RESOLVED,** that all requests for relief from money and/or property accountability shall be treated like any ordinary case under the jurisdiction and authority of the Central and Regional Directors or the Unit Auditors to decide.

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[74] *Rollo,* pp. 394–395.

BE IT RESOLVED FURTHER, that *such request for relief shall be accompanied by the documents required* under [Commission on Audit] Circular No. 92-386 for accountable officers of local government units and those required *under [Commission on Audit] Memorandum No. 92-751 for accountable officers in the corporate and national sectors.*

BE IT RESOLVED FINALLY, that the Chairman of this Commission be authorized to disseminate this Resolution for the guidance of all concerned.

This Resolution shall take effect immediately.[75] (Emphasis supplied)

Commission on Audit Memorandum No. 92-751 dated February 24, 1992, in turn, provides:

TO	:	*All [Commission on Audit] Directors/ Officers-in-Charge, Department Auditors, Heads of Auditing Units and All Others Concerned.*
SUBJECT	:	*Documentation on Petitions/Requests for Relief from Accountability.*

. . . . . .

In order, therefore, to ensure or facilitate the evaluation and resolution of applications for relief from accountability with utmost accuracy and dispatch, and if only to correct or put an end to the commission of the afore-cited deficiencies, *the [Commission on Audit] Director/Officer-in-Charge and/or Unit Head concerned should, henceforth, see that the following requirements are first duly complied with and that the documents called for thereunder accompany the pertinent requests for relief to be submitted to the Commission,* to wit:

1. The basic notice of loss to be filed immediately after the discovery of the loss and the request for relief from accountability which should be filed by the proper accountable officer within the reglementary period of 30 days from the occurrence of the loss, with the Auditor concerned or the Commission, as the case may be.

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[75] *Id*. at 332–333.

1.1 In case of delay in the filing of the aforesaid notice and request, satisfactory explanation or the reason(s) for such delay should be submitted, after which the reasons/ explanation given should be verified or confirmed by the Auditor concerned.

1.2 If the occurrence of the loss has also been reported to other police agencies, like the [National Bureau of Investigation],[Criminal Investigation Service], etc., the progress/final investigation report thereon should be submitted.

2. Copy of the Investigation, Inventory and Inspection report of the proper [Commission on Audit] personnel on the facts and circumstances surrounding the loss;

3. Affidavit or Sworn Statement of the proper accountable officer on the facts and circumstances surrounding the said loss, supported by the Affidavit of two (2) disinterested persons who have personal knowledge of such fact of loss;

4. Comment and/or recommendation of the Agency Head concerned on the request;

5. Comment and/or recommendation of the [Commission on Audit] Director/[Officer-in-Charge] and/or Unit Head on the propriety of the request, together with a full statement of material facts;

6. Exact or accurate amount of government cash or book value of the property, subject of the request for relief;

7. Memorandum Receipts covering the properties subject of the request, if any; and

8. A categorical determination by the Director/Auditor concerned on the absence of fault or negligence on the part of the accountable officer in the handling, safekeeping, etc. of the funds and properties under his custody as evidenced by a recital of the precautionary/security measures adopted to protect or safeguard them and the like.[76] (Emphasis supplied)

Respondent itself prescribed the documentary requirements which should accompany a request for relief from accountability.

[76] *Id.* at 340–341.

Commission on Audit Memorandum No. 92-751 requires the submission of a basic notice of loss "with the Auditor concerned or the Commission" and a copy of the investigation report by the proper Commission on Audit Personnel. The accountable officer is also required to submit a sworn statement, while the agency head and Commission on Audit Director are expected to submit their respective comment or recommendation on the request for relief. Likewise, documentary evidence on the total missing amount and a categorical determination from the director or auditor concerned on the lack of negligence on the part of the accountable officer should accompany the request for relief.

None of these documents accompanied petitioner's request for opinion. Instead, the request for opinion was meant "to seek guidance from Public Respondent [Commission on Audit], with regard to the proper booking of the Accounts Receivable by Ms. Yap, in relation to [the Office of] the Ombudsman's dismissal of the administrative case against her."[77]

Clearly, respondent erred in treating the request for opinion as a request for relief from accountability.

II

Even if this Court agrees with respondent that its 2009 Rules apply in the case at bar and not its 1997 Rules, its arguments still fail to convince.

The 2009 Rules have expanded the Commission Proper's original jurisdiction provided for under the 1997 Rules by authorizing it to act not only on money claims but also on several kinds of request. These requests are (a) for hiring of legal retainers, (b) for write-offs of unliquidated cash advances and dormant amounts, and (c) for relief from accountability for losses due to acts of man.[78] Nonetheless, despite the Commission Proper's expanded jurisdiction, the Commission on Audit's 2009

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[77] *Id*. at 318.

[78] 2009 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule VIII, Sec. 1.

Rules still prescribe the proper procedure to be followed for the resolution of the original case.

Money claims against the government continue to require the submission of a petition and an answer, with the petitioner having the option to file a reply at his or her discretion.[79] On the other hand, a request of a government agency to hire a legal retainer is to be filed with the Commission on Audit Office of the General Counsel, who shall then act on the request in respondent's behalf.[80]

The procedure for requests for write-offs of unliquidated cash advances and dormant accounts and for relief from accountability for losses due to acts of man can be found in Rule VIII, Section 4, which states:

> Section 4. ***Other Cases.*** – Requests for write off of accounts receivable or unliquidated cash advances exceeding ₱1 million; or relief from accountability for acts of man such as robbery, theft, arson in excess of ₱5 million; or approval of private sale of government property; or other matters within the original jurisdiction of the [Commission Proper], shall be filed with the Commission Secretary. *The Commission Secretary shall refer the case to the Central/Regional Office concerned for comment and recommendation and thereafter to the Legal Services Sector, for preparation of the draft decision for consideration of the Commission Proper.* (Emphasis supplied)

Respondent claims that there is nothing in Rule VIII, Section 4 of the 2009 Rules that directs it to conduct adversarial proceedings with the submission of a request for relief from accountability.[81] It further claims that its assailed Decision was arrived at after a careful evaluation of the evidence submitted by the parties in the audit proceedings and the proceedings before the Office of the Ombudsman.[82]

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[79] 2009 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule VIII, Sec. 2.

[80] 2009 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule VIII, Sec. 3.

[81] *Rollo,* pp. 395–396.

[82] *Id.* at 396–397.

Nonetheless, this still does not cure the glaring defect that Yap and Dequita were not parties to the request for opinion or request for relief from accountability, yet respondent found them liable for the cash shortage. Much worse, respondent also tried to pin liability on other bank officers who were never part of the request for opinion or of any of the proceedings before the Office of the Ombudsman.

Respondent insists that Yap and Dequita were not deprived of their right to due process since they filed their counter-affidavits in the administrative proceedings before the Office of the Ombudsman, while Yap even filed a reply to respondent's demand letter after the audit was conducted.[83] Respondent also highlights that petitioner filed a "comprehensive Motion for Reconsideration"[84] on the assailed Decision. But as respondent itself pointed out, administrative and criminal proceedings before the Office of the Ombudsman are different from the audit proceedings before it:

> 16. There is another reason why the dismissal of administrative and criminal charges against Yap and Dequita by the Office of the Ombudsman does not necessarily foreclose the possibility of them being held accountable by the [Commission on Audit]. The administrative and criminal charges before the Office of the Ombudsman and the [Commission on Audit] audit are distinct proceedings. The first involves the determination of (1) administrative liability of public officers and (2) the fact of the commission of a crime. On the other hand, the second relates to the administrative aspect of the expenditure or use of public funds. As distinct proceedings, they can proceed independently of each other.[85]

Yet despite admitting the independent nature of the proceedings before the Office of the Ombudsman from its own audit proceedings, respondent still contends that its review and evaluation of the counter-affidavits filed by Yap and Dequita before the Office of the Ombudsman already satisfied the requirements of due process.

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[83] *Id*. at 397.

[84] *Id*. at 399.

[85] *Id*. at 256–257.

This Court is not convinced.

Due process in administrative proceedings does not require the submission of pleadings or a trial-type of hearing. Due process is satisfied if the party is duly notified of the allegations against him or her and is given a chance to present his or her defense. Furthermore, due process requires that the proffered defense should have been considered by the tribunal in arriving at its decision.[86]

This finds basis in *Ang Tibay v. Court of Industrial Relations,*[87] which ruled that administrative due process only requires the following:

(a) The party should be allowed to present his or her own case and submit supporting evidence;
(b) The deciding tribunal must consider the party's evidence;
(c) There is evidence to support the tribunal's decision;
(d) The evidence supporting the tribunal's decision must be substantial or such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion";
(e) The tribunal's decision was based on the evidence presented or the records of the case disclosed to the parties;
(f) The tribunal's decision must be based on the judges' independent consideration of the facts and law governing the case; and
(g) The tribunal's decision must be rendered such that the issues of the case and the reasons for the decisions are known to the parties.[88]

It is beyond dispute that Yap, Dequita, and the other bank officials of the Bangko Sentral ng Pilipinas, Cotabato Branch were denied due process with the issuance of the assailed Commission on Audit Decision.

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[86] *Gutierrez v. Commission on Audit,* 750 Phil. 413, 430 (2015) [Per *J.* Leonen, *En Banc*].

[87] 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

[88] *Gutierrez v. Commission on Audit,* 750 Phil. 413, 429–430 (2014) [Per *J.* Leonen, *En Banc*] citing *Ang Tibay v. Court of Industrial Relations,* 69 Phil. 635, 642–644 (1940) [Per *J.* Laurel, *En Banc*].

Respondent rendered its assailed Decision in blatant disregard to its own rules, treating the request for opinion as a request for relief from accountability even if the former did not include the required documents and comments or recommendations needed under either the 1997 Rules or 2009 Rules. Furthermore, the request for opinion was filed by petitioner alone, yet the assailed Decision found Yap, Dequita, and other bank officers of the Cotabato Branch jointly and solidarily liable, even if they were never parties to the request for opinion or request for relief from accountability.

It was an error amounting to grave abuse of discretion to hold Yap liable, and Dequita and the other bank officers of the Cotabato Branch jointly and solidarily liable with Yap for the cash shortage without an actual complaint being filed and without giving them the chance to defend themselves. Thus, the assailed Decision violated the basic tenets of due process and must be annulled and set aside. However, in the absence of a complaint, this Court cannot grant petitioner's prayer for this Court to render judgment relieving Yap, Dequita, and the other bank officers from accountability over the cash shortage. Nonetheless, the Office of the Ombudsman has already rendered judgment on Yap and Dequita's liability by dismissing the administrative and criminal charges against them.

WHEREFORE, the Petition is **GRANTED**. The Commission on Audit Decision No. 2013-064 dated April 12, 2013 and its *En Banc* Resolution dated May 6, 2014, holding Evelyn T. Yap, Perry B. Dequita, and the other bank officers of Bangko Sentral ng Pilipinas, Cotabato Branch jointly and solidarily liable for the cash shortage, are **REVERSED** and **SET ASIDE.**

SO ORDERED.

Carpio, Acting C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Jardeleza, Caguioa, Martires, and *Reyes, Jr., JJ.,* concur.

Sereno, C.J., on official leave.

Perlas-Bernabe, Tijam, and *Gesmundo, JJ.,* on official business.

EN BANC

[G.R. No. 230324. September 19, 2017]

LORIE MARIE TOMAS CALLO, *petitioner, vs.* **COMMISSIONER JAIME H. MORENTE, BUREAU OF IMMIGRATION, OIC ASSOCIATES COMMISSIONERS, BUREAU OF IMMIGRATION, and BRIAN ALAS, BUREAU OF IMMIGRATION,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; A.M. No. 07-9-12-SC (THE RULE ON THE WRIT OF *AMPARO*); WRIT OF *AMPARO*; COVERS EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES OR THREATS THEREOF.—** The protective writ of *amparo* is a judicial remedy to expeditiously provide relief to violations of a person's constitutional right to life, liberty, and security, and more specifically, to address the problem of extralegal killings and enforced disappearances or threats thereof. x x x [T]he writ of *amparo* covers extralegal killings and enforced disappearances or threats thereof.

2. **POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 9851 (PHILIPPINE ACT ON CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE, AND OTHER CRIMES AGAINST HUMANITY); ENFORCED DISAPPEARANCE; ELEMENTS.—** [E]lements constituting enforced disappearance as defined under RA No. 9851 were clearly laid down by this Court, *viz*: "(a) that there be an arrest, detention, abduction or any form of deprivation of liberty; (b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization; (c) that it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the *amparo* petition; and, (d) that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time."

3. **REMEDIAL LAW; A.M. NO. 07-9-12-SC (THE RULE ON THE WRIT OF *AMPARO*); WRIT OF *AMPARO*; FOR THE**

ISSUANCE THEREOF, IT MUST BE SHOWN BY THE REQUIRED QUANTUM OF PROOF THAT THE DISAPPEARANCE WAS CARRIED OUT BY, OR WITH THE AUTHORIZATION, SUPPORT OR ACQUIESCENCE OF THE GOVERNMENT OR A POLITICAL ORGANIZATION, AND THAT THERE IS A REFUSAL TO ACKNOWLEDGE THE SAME OR TO GIVE INFORMATION ON THE FATE OR WHEREABOUTS OF THE MISSING PERSONS.— For the issuance of the writ, it is not sufficient that a person's life is endangered. It is even not sufficient to allege and prove that a person has disappeared. It has to be shown by the required quantum of proof that the disappearance was carried out by, or with the authorization, support or acquiescence of the government or a political organization, and that there is a refusal to acknowledge the same or to give information on the fate or whereabouts of the missing persons. In this case, Parker has not disappeared. Her detention has been sufficiently justified by the Bureau of Immigration, given that there is an SDO and a pending criminal case against her.

4. ID.; ID.; ID.; IN A PETITION FOR THE WRIT OF AMPARO, THE ORDER OF PRIORITY ON WHO CAN FILE THE PETITION SHOULD BE STRICTLY FOLLOWED.— [W]e note that the petition for the writ of *amparo* was filed by Callo. However, there was no allegation of her relationship to Parker. In *Boac v. Cadapan*, we emphasized the importance of the exclusive and successive order of who can file a petition for a writ of *amparo*. x x x [W]hile "any person" may file a petition for the writ of *habeas corpus*, in a petition for the writ of *amparo*, the order of priority on who can file the petition should be strictly followed. In this case, there was no allegation nor proof that Parker had no immediate family members or any ascendant, descendant, or collateral relative within the fourth civil degree of consanguinity or affinity. In fact, no allegation was made on any of the familial relationship of Parker as only her whereabouts from 2011 were alleged and discussed. Therefore, based on the order of priority, Callo had no legal standing to file this petition.

APPEARANCES OF COUNSEL

Guzman & Coronacion Law Firm for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CARPIO,[*] ***Acting C.J.*:**

The Case

This is a petition for a writ of *amparo* (with Prayer to Issue Interim Reliefs of Immediate Release of Danielle Tan Parker from Detention) under A.M. No. 07-9-12-SC (The Rule on the Writ of *Amparo*). Petitioner Lorie Marie Tomas Callo (Callo) seeks the immediate release of Danielle Tan Parker from the Immigration Detention Facility, Camp Bagong Diwa in Bicutan, Taguig City.

The Facts

Danielle Tan Parker (Parker) is a holder of Philippine Passport No. XX5678508 issued by the Department of Foreign Affairs (DFA) on 5 March 2010 and valid until 4 March 2015.

On 15 January 2013, Parker was charged for deportation for being an undesirable, undocumented, and overstaying alien, in violation of Section 37(a)(7) of the Philippine Immigration Act of 1940, as amended, in relation to Rule XVI, Office Memorandum No. ADD-01-004. It was alleged that Danielle Nopuente was a fugitive from justice in the United States of America with an outstanding arrest warrant issued against her. Subsequently, on 24 January 2013, a Summary Deportation Order (SDO) was issued against *Danielle Nopuente,* also known as *Isabelita Nopuente* and *Danielle Tan Parker,* upon verification that she arrived in the Philippines on 23 March 2011 under the Balikbayan Program, with an authorized stay of a period of one year. Parker was not in the list of approved applications of the DFA for dual citizenship and her American Passport

[*] Acting Chief Justice per Special Order No. 2483 dated 14 September 2017.

had been revoked by the United States Department of State. Thus, she was considered an undocumented, undesirable, and overstaying alien, in violation of the Philippine Immigration Act of 1940.

On 5 June 2014, pursuant to the SDO issued by the Bureau of Immigration, Parker was arrested in Tagaytay City on the premise that Danielle Nopuente and Danielle Tan Parker are one and the same person. She was then taken to the Immigration Detention Facility in Bicutan, Taguig City. She is still currently detained in the Immigration Detention Facility as the deportation was not carried out due to the fact that Parker is charged with falsification and use of falsified documents before Branch 4, Municipal Trial Court in Cities, Davao City.

On 12 September 2014, Parker, as petitioner, filed a Petition for *Habeas Corpus* before Branch 266, Regional Trial Court (RTC) of Pasig City. The Bureau of Immigration was able to produce the body of Parker before the RTC. The Bureau of Immigration then alleged that as the SDO had become final and executory, it served as the legal authority to detain Parker. The Bureau of Immigration also argued that Parker cannot be released or deported without the final disposition of her pending criminal case in Davao City.

The RTC dismissed the petition, finding that the detention of Parker was legal.[1] Parker then appealed the case to the Court of Appeals (CA). The CA affirmed the RTC and found that Parker failed to prove that she was a Filipino citizen to warrant judicial intervention through *habeas corpus*.[2] The CA gave weight to the Certification dated 20 June 2015 issued by the Office of the Consular Affairs of the DFA that there is "no available data" regarding any record/information from the year 1990 onwards of Philippine Passport No. XX5678508. Parker no longer appealed the denial of the issuance of the writ of *habeas corpus* and the decision of the CA became final and executory on 5 January 2016.[3]

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[1] *Rollo*, pp. 273-281.

[2] *Id.* at 344-352.

[3] *Id.* at 353.

On 23 March 2017, Callo filed this petition for a writ of *amparo* with prayer to issue Interim Reliefs of Immediate Release of Danielle Tan Parker from Detention. Callo argues that Parker is a natural-born Filipino citizen and thus, there is no reason for her to be detained by the Bureau of Immigration.

The Issue

The only issue in this case is whether or not the right to life, liberty, and security of Parker is threatened by the respondents to warrant the issuance of the writ of *amparo* and subsequently the award of the interim reliefs.

The Ruling of the Court

The petition has no merit.

Callo seeks the issuance of the writ of *amparo* and the interim reliefs available under A.M. No. 07-9-12-SC for the immediate release of Parker. Callo alleges that Parker is a natural-born Filipino citizen and thus should not have been detained by the Bureau of Immigration. Moreover, Callo alleges that the life of Parker is endangered in the detention center; and thus, a writ of *amparo* with the interim reliefs prayed for should be issued by this Court.

We disagree.

The protective writ of *amparo* is a judicial remedy to expeditiously provide relief to violations of a person's constitutional right to life, liberty, and security, and more specifically, to address the problem of extralegal killings and enforced disappearances or threats thereof. Section 1 of A.M. No. 07-9-12-SC provides:

> Sec. 1. *Petition*. — The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.
>
> The writ shall cover **extralegal killings** and **enforced disappearances** or **threats** thereof. (Emphasis supplied)

It is clear from the above-quoted provision that the writ of *amparo* covers extralegal killings and enforced disappearances or threats

thereof.[4] Enforced disappearance is defined under Republic Act (RA) No. 9851,[5] Section 3(g) of which provides:

> (g) "Enforced or involuntary disappearance of persons" means the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing from the protection of the law for a prolonged period of time.

This Court also had the opportunity to define extralegal killings and enforced disappearance:

> Extralegal killings are killings committed without due process of law, i.e., without legal safeguards or judicial proceedings. On the other hand, enforced disappearance has been defined by the Court as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.[6]

In *Navia v. Pardico*,[7] this Court clarified that with the enactment of RA No. 9851, the Rule on the Writ of Amparo is now a procedural law anchored, not only on the constitutional right to life, liberty, and security, but also on a concrete statutory definition of "enforced or involuntary disappearance." Further, elements constituting enforced disappearance as defined under RA No. 9851 were clearly laid down by this Court, *viz*:

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[4] *Lozada, Jr. v. Macapagal-Arroyo*, 686 Phil. 536 (2012).

[5] Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, Approved on 11 December 2009.

[6] *Mamba v. Bueno*, G.R. No. 191416, 7 February 2017.

[7] 688 Phil. 266 (2012).

(a) that there be an arrest, detention, abduction or any form of deprivation of liberty;

(b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;

(c) that it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the *amparo* petition; and,

(d) that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time.[8]

It is clear that the elements of enforced disappearance are not attendant in this case. There is also no threat of such enforced disappearance. While there is indeed a detention carried out by the State through the Bureau of Immigration, the third and fourth elements are not present. There is no refusal to acknowledge the deprivation of freedom or refusal to give information on the whereabouts of Parker because as Callo admits, Parker is detained in the Immigration Detention Facility of the Bureau of Immigration. The Bureau of Immigration also does not deny this. In fact, the Bureau of Immigration had produced the body of Parker before the RTC in the proceedings for the writ of *habeas corpus* previously initiated by Parkerherself.[9] Similarly, there is no intention to remove Parker from the protection of the law for a prolonged period of time. As the Bureau of Immigration explained, Parker has a pending criminal case against her in Davao City, which prevents the Bureau of Immigration from deporting her from the country.

Simply put, we see no enforced or involuntary disappearance, or any threats thereof, that would warrant the issuance of the writ of *amparo*. For the issuance of the writ, it is not sufficient that a person's life is endangered. It is even not sufficient to allege and prove that a person has disappeared. It has to be shown by the required quantum of proof that the disappearance

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[8] *Id*. at 279.

[9] *Rollo*, p. 274.

was carried out by, or with the authorization, support or acquiescence of the government or a political organization, and that there is a refusal to acknowledge the same or to give information on the fate or whereabouts of the missing persons.[10] In this case, Parker has not disappeared. Her detention has been sufficiently justified by the Bureau of Immigration, given that there is an SDO and a pending criminal case against her.

Callo contends that there is no cause to detain Parker because Parker, a natural-born Filipino citizen, is a different person from Danielle Nopuente, the person against whom the SDO was issued.

We disagree.

Callo has failed to prove that Danielle Tan Parker and Danielle Nopuente are two different persons. In particular, we give weight to the fact that the DFA issued a certificate verifying that there is no available data on Passport No. XX5678508, which was the Philippine passport used by Parker.[11] Moreover, the Certificate of Live Birth,[12] which purportedly shows that Parker was born in the Philippines on 21 March 1975 of Filipino parents, was only registered on 4 January 2010. There was no explanation given as to why Parker's birth was registered only after almost 35 years. Moreover, Callo only alleges facts from the year 2005, allegedly for purposes of brevity.[13] We do not see any reason why facts surrounding the existence of Parker should only be presented from 2005. In fact, the only period that is thoroughly discussed about her is from 2010 to 2011. To prove that Parker and Nopuente are two different persons, the life and existence of Parker should have been alleged and proven since birth. In this case, there is no allegation nor any proof as to who Parker was, or what she had been doing, before 2011.

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[10] *Supra* note 7, citing Section 3(g), RA No. 9851.

[11] *Rollo*, p. 196.

[12] *Id.* at 62.

[13] *Id.* at 10.

Taking all these circumstances into perspective, Parker had failed to sufficiently prove that she is a different person from Danielle Nopuente.

Callo contends that Parker's life is endangered in the Immigration Detention Facility because of the threats against her by her co-detainees and the living conditions of the facility which pose health problems for Parker. Unfortunately, these allegations – even if proven – will not support the issuance of a writ of *amparo*. To repeat, the remedy of a writ of *amparo* is an extraordinary remedy that is meant to balance the government's awesome power and to curtail human rights abuses.[14] The writ covers extralegal killings and enforced disappearances or threats thereof as specifically defined under RA No. 9851. The circumstances of Parker, as alleged by Callo, do not meet the requirements for the issuance of the writ of *amparo*.

Finally, we note that the petition for the writ of *amparo* was filed by Callo. However, there was no allegation of her relationship to Parker.[15] In *Boac v. Cadapan*,[16] we emphasized the importance of the exclusive and successive order of who can file a petition for a writ of *amparo*. We held:

> Petitioners finally point out that the parents of Sherlyn and Karen do not have the requisite standing to file the *amparo* petition on behalf of Merino. They call attention to the fact that in the *amparo* petition, the parents of Sherlyn and Karen merely indicated that they were "concerned with Manuel Merino" as basis for filing the petition on his behalf.
>
> Section 2 of the Rule on the *Writ of Amparo* provides:
>
> > The petition may be filed by the aggrieved party or by any qualified person or entity in the following order:

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[14] *Spouses Santiago v. Tulfo*, 772 Phil. 203 (2015).

[15] *Rollo*, p. 9.

[16] 665 Phil. 84, 107-108 (2011).

> (a) Any member of the immediate family, namely: the spouse, children and parents of the aggrieved party;
>
> (b) Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph; or
>
> (c) Any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party.

Indeed, the parents of Sherlyn and Karen failed to allege that there were no known members of the immediate family or relatives of Merino. The exclusive and successive order mandated by the above-quoted provision must be followed. **The order of priority is not without reason — "to prevent the indiscriminate and groundless filing of petitions for *amparo* which may even prejudice the right to life, liberty or security of the aggrieved party."**

The Court notes that the parents of Sherlyn and Karen also filed the petition for *habeas corpus* on Merino's behalf. No objection was raised therein for, in a *habeas corpus* proceeding, any person may apply for the writ on behalf of the aggrieved party.

It is thus only with respect to the *amparo* petition that the parents of Sherlyn and Karen are precluded from filing the application on Merino's behalf as they are not authorized parties under the Rule. (Emphasis supplied)

Thus, while "any person" may file a petition for the writ of *habeas corpus*, in a petition for the writ of *amparo*, the order of priority on who can file the petition should be strictly followed. In this case, there was no allegation nor proof that Parker had no immediate family members or any ascendant, descendant, or collateral relative within the fourth civil degree of consanguinity or affinity. In fact, no allegation was made on any of the familial relationship of Parker as only her whereabouts from 2011 were alleged and discussed. Therefore, based on the order of priority, Callo had no legal standing to file this petition.

Given that there is no basis for the issuance of the writ of *amparo*, the interim reliefs sought for are also denied. Moreover, we see no need to address the other issues raised by Callo in this petition, specifically, the condition of the Immigration Detention Facility and the treatment of Parker in said detention center. A petition for the writ of *amparo* is not the proper action to resolve such issues.

WHEREFORE, the petition is hereby **DENIED.**

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Leonen, Jardeleza, Caguioa, Martires, and *Reyes, Jr., JJ.,* concur.

Sereno, C.J., on official leave.

Perlas-Bernabe, Tijam, and *Gesmundo, JJ.,* on official business.

THIRD DIVISION

[G.R. No. 196072. September 20, 2017]

STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LIMITED, *petitioner, vs.* **SULPICIO LINES, INC.,** *respondent.*

[G.R. No. 208603. September 20, 2017]

SULPICIO LINES, INC., *petitioner, vs.* **STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LIMITED,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; ISSUES RAISED IN THE PRESENT PETITION ARE QUESTIONS OF LAW PROPERLY COGNIZABLE IN A RULE 45 PETITION.—** A Rule 45 petition is the proper remedy to reverse a decision or resolution of the Court of Appeals even if the error assigned is grave abuse of discretion in the findings of fact or of law. "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." x x x In this case, what Steamship seeks to rectify may be construed as errors of judgment of the Court of Appeals. These errors pertain to Steamship's allegations of the Court of Appeals' failure to rule that a valid arbitration agreement existed between the parties and to refer the case to arbitration. It does not impute error with respect to the Court of Appeals' exercise of jurisdiction. As such, the Petition is simply a continuation of the appellate process where a case is elevated from the trial court of origin, to the Court of Appeals, and to this Court via Rule 45. The basic issues raised in the Petition for Review are: (1) whether or not an arbitration agreement may be validly incorporated by reference to a contract; and (2) how the trial court should proceed to trial upon its finding "that only some and not all of the defendants are bound by an arbitration agreement[.]" These are questions of law properly cognizable in a Rule 45 petition.

2. **ID.; ID.; CERTIFICATION AND VERIFICATION AGAINST FORUM SHOPPING; REQUIREMENTS THEREOF, EXPLAINED.—** "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 [or her] personal knowledge or based on authentic records." On the other hand, a certification against forum shopping is a petitioner's statement "under oath that he [or she] has not . . . commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions, or any other tribunal or agency[.]" In this certification, the petitioner must state the status of any other action or proceeding, if there is any, and undertakes to report to the courts and other tribunal within five (5) days from learning of any similar action or proceeding. x x x In case the petitioner

is a private corporation, the verification and certification may be signed, for and on behalf of this corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents.

3. ID.; ID.; ID.; THE CERTIFICATION AND VERIFICATION AGAINST FORUM SHOPPING SIGNED BY STEAMSHIP'S COUNSEL SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF THE RULES OF COURT.— [T]his Court holds that there is substantial compliance with the rules on verification and certification against forum shopping. Steamship's subsequent submission of the Secretary's Certificates showing Davis' authority to execute the Power of Attorney in favor of Del Rosario & Del Rosario cured the defect in the verification and certification appended to the petition. Under the circumstances of this case, Steamship's counsel would be in the best position to determine the truthfulness of the allegations in the petition and certify on non-forum shopping considering that "it has handled the case for . . . Steamship since its inception." This Court also considers Steamship's allegations that the same Power of Attorney was used in its Answer Ad Cautelam filed on August 12, 2008 before the Regional Trial Court and in its Petition for Certiorari before the Court of Appeals on November 12, 2008. Significantly, Sulpicio never questioned the authority of Del Rosario & Del Rosario to represent Steamship in the proceedings before the lower courts.

4. ID.; ID.; ID.; RATIONALE BEHIND THE RULES ON FORUM-SHOPPING.— The rules on forum-shopping are "designed . . . to promote and facilitate the orderly administration of justice." They are not to be interpreted with "absolute literalness" as to subvert the procedural rules' ultimate objective of achieving substantial justice as expeditiously as possible. These goals would not be circumvented by this Court's recognition of the authorized counsel's signature in the verification and certification of non-forum shopping.

5. CIVIL LAW; CIVIL CODE; CONTRACTS; FREEDOM OF CONTRACT PRINCIPLE, EXPLAINED AND APPLIED; EVERY REASONABLE INTERPRETATION IS INDULGED TO GIVE EFFECT TO ARBITRATION

AGREEMENTS.— It is the State's policy to promote party autonomy in the mode of resolving disputes. Under the freedom of contract principle, parties to a contract may stipulate on a particular method of settling any conflict between them. Arbitration and other alternative dispute resolution methods like mediation, negotiation, and conciliation are favored over court action. x x x Arbitration, as a mode of settling disputes, was already recognized in the Civil Code. In 1953, Republic Act No. 876 was passed, which reinforced domestic arbitration as a process of dispute resolution. Foreign arbitration was likewise recognized through the Philippines' adherence to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, otherwise known as the New York Convention. Republic Act No. 9285 sets the basic principles in the enforcement of foreign arbitral awards in the Philippines. Consistent with State policy, "arbitration agreements are liberally construed in favor of proceeding to arbitration." Every reasonable interpretation is indulged to give effect to arbitration agreements. Thus, courts must give effect to the arbitration clause as much as the terms of the agreement would allow. "Any doubt should be resolved in favor of arbitration."

6. **ID.; ID.; ID.; THE SUBJECT CONTRACT IS MORE THAN A CONTRACT OF INSURANCE BETWEEN A MARINE INSURER AND SHIPOWNER; SULPICIO'S ACCEPTANCE OF THE CERTIFICATE OF ENTRY AND ACCEPTANCE OPERATED AS AN ACCEPTANCE OF THE ENTIRE PROVISIONS OF THE CLUB RULES ALTHOUGH EMBODIED IN DIFFERENT WRITINGS.—** The contract between Sulpicio and Steamship is more than a contract of insurance between a marine insurer and a shipowner. By entering its vessels in Steamship, Sulpicio not only obtains insurance coverage for its vessels but also becomes a member of Steamship. A protection and indemnity club, like Steamship, is an association composed of shipowners generally formed for the specific purpose of providing insurance cover against third-party liabilities of its members. x x x The Certificate of Entry and Acceptance plainly provides that the Class I protection and indemnity coverage would be to the extent specified and in accordance with the Act, the By-Laws, and the Rules of the Club in force at the time of the coverage. The "Notes" in the bottom portion of the Certificate states that these Rules "are

printed annually in book form" and disseminated to all members. M/V Princess of the World was insured from February 20, 2005 to February 20, 2006. Hence, the 2005/2006 Club Rules apply. x x x Sulpicio's acceptance of the Certificate of Entry and Acceptance manifests its acquiescence to all its provisions. There is no showing in the records or in Sulpicio's contentions that it objected to any of the terms in this Certificate. Its acceptance, likewise, operated as an acceptance of the entire provisions of the Club Rules. When a contract is embodied in two (2) or more writings, the writings of the parties should be read and interpreted together in such a way as to render their intention effective.

7. ID.; ID.; ID.; ID.; ID.; THE ARBITRATION AGREEMENT AS CONTAINED IN THE CLUB RULES IS VALID AND BINDING UPON THE PARTIES ALTHOUGH IT IS EMBODIED IN ANOTHER DOCUMENT NOT SIGNED BY THE PARTIES; CASE AT BAR.— In this case, by its act of entering its fleet of vessels to Steamship and accepting without objection the Certificate of Entry and Acceptance covering its vessels, Sulpicio manifests its consent to be bound by the Club Rules. The contract between Sulpicio and Steamship gives rise to reciprocal rights and obligations. Steamship undertakes to provide protection and indemnity cover to Sulpicio's fleet. On the other hand, Sulpicio, as a member, agrees to observe Steamship's rules and regulations, including its provisions on arbitration.

8. ID.; ID.; ID.; ID.; ID.; SULPICIO IS ESTOPPED FROM DENYING KNOWLEDGE OF THE PROVISION ON ARBITRATION.— The agreement to submit all disputes to arbitration is a long standing provision in the Club Rules. It was incumbent upon Sulpicio to familiarize itself with the Club Rules, under the presumption that a person takes due care of its concerns. Being a member of Steamship for 20 years, it has been bound by its Rules and has been expected to abide by them in good faith. x x x Sulpicio is estopped from denying knowledge of the Rulebook by its own acts and representations, as evidenced by its various letters to Steamship, showing its familiarity with the Rulebook and its provisions. "In estoppel, a person, who by his [or her] deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude or course of conduct that thereby

causes loss or injury to another." It further bars a party from denying or disproving a fact, which has become settled by its acts.

9. ID.; REPUBLIC ACT NO. (RA) 9285 OR THE ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004 (ADR LAW); MANDATES THAT THE DISPUTE SHALL BE REFERRED TO ARBITRATION; THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING THE MOTION TO REFER THE CASE TO ARBITRATION.— This Court finds that the Regional Trial Court acted in excess of its jurisdiction. Where a motion is filed in court for the referral of a dispute to arbitration, Section 24 of Republic Act No. 9285 ordains that the dispute shall be referred "to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed." Thus, the Regional Trial Court went beyond its authority of determining only the issue of whether or not there was a valid arbitration agreement between the parties when it denied Steamship's Motion to Dismiss and/or to Refer Case to Arbitration solely on the ground that it would not be the most prudent action under the circumstances of the case. The Regional Trial Court went against the express mandate of Republic Act No. 9285. Consequently, the Court of Appeals erred in finding no grave abuse of discretion on the part of the trial court in denying referral to arbitration.

10. ID.; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT, NOT A CASE OF; STEAMSHIP'S INITIATION OF ARBITRATION PROCEEDINGS EVEN BEFORE THE TRIAL COURT HAD RULED ON THE MOTION TO DISMISS AND SUSPEND PROCEEDINGS DOES NOT CONSTITUTE CONTUMACIOUS CONDUCT THAT COULD WARRANT THE COURT'S EXERCISE OF CONTEMPT POWER.— Steamship's commencement of arbitration even before the Regional Trial Court had ruled on its motion to dismiss and suspend proceedings does not constitute an "improper conduct" that "impede[s], obstruct[s] or degrade[s] the administration of justice." x x x The court's contempt power should be exercised with restraint and for a preservative, and not a vindictive, purpose. "Only in cases of clear and contumacious refusal to obey should the power be exercised." x x x This Court finds no clear and contumacious conduct on

the part of Steamship. It does not appear that Steamship was motivated by bad faith in initiating the arbitration proceedings. Rather, its act of commencing arbitration in London is but a bona fide attempt to preserve and enforce its rights under the Club Rules. There was no legal impediment at the time Steamship initiated London arbitration proceedings. Steamship commenced arbitration on July 31, 2007 even before the Regional Trial Court denied its Motion to Dismiss and/or Refer Case to Arbitration on July 11, 2008. There was no order from the Regional Trial Court enjoining Steamship from initiating arbitration proceedings in London. Besides, the 2009 Special ADR Rules specifically provided that arbitration proceedings may be commenced or continued and an award may be made, while the motion for the stay of civil action and for referral to arbitration is pending resolution by the court.

11. ID.; ID.; ID.; PETITION FOR INDIRECT CONTEMPT IS NOT THE PROPER REMEDY TO DETERMINE THE CLAIM FOR DAMAGES.— [T]his Court finds Sulpicio's claim for damages to be improperly raised. It should be addressed in an ordinary civil action. Its petition for indirect contempt is not the proper action to determine the validity of the set-off and to make a factual determination relating to the propriety of ordering restitution.

APPEARANCES OF COUNSEL

Del Rosario and Del Rosario for Steamship Mutual.

Astorga & Repol Law Office for Seaboard-Eastern Insurance Co., Inc.

Medialdea Bello & Guevarra for Pioneer Insurance and Surety Corporation.

Roland B. Inting for Sulpicio Lines, Inc.

D E C I S I O N

LEONEN, *J.*:

An insured member may be compelled to arbitration pursuant to the Rules of the Protection and Indemnity Club, which were

incorporated in the insurance policy by reference. Where there are multiple parties, the court must refer to arbitration the parties covered by the agreement while proceeding with the civil action against those who were not bound by the arbitration agreement.

G.R. No. 196072 is a Petition for Review[1] seeking to set aside the November 26, 2010 Decision[2] and March 10, 2011 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 106103.

G.R. No. 208603 is a Petition for Indirect Contempt[4] filed by Sulpicio Lines, Inc. (Sulpicio) against Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship). It prays, among others, that Steamship be (a) declared guilty of indirect contempt; (b) imposed a fine of ₱30,000.00; and (c) ordered to restitute to Sulpicio the amount of US$69,570.99 or its equivalent in Philippine currency plus interest, computed from December 3, 2012 until fully restituted.[5]

Steamship was a Bermuda-based Protection and Indemnity Club, managed outside London, England.[6] It insures its members-shipowners against "third party risks and liabilities" for claims arising from (a) death or injury to passengers; (b) loss or damage to cargoes; and (c) loss or damage from collisions.[7]

Sulpicio insured its fleet of inter-island vessels with Steamship for Protection & Indemnity risks through local insurance agents, Pioneer Insurance and Surety Corporation (Pioneer Insurance)

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[1] *Rollo* (G.R. No. 196072), pp. 35–90.

[2] *Id*. at 93–108. The Decision was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino of the Sixth Division, Court of Appeals, Manila.

[3] *Id*. at 111–112. The Resolution was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino of the Sixth Division, Court of Appeals, Manila.

[4] *Rollo* (G.R. No. 208603), pp. 3–12.

[5] *Id*. at 9.

[6] *Rollo* (G.R. No. 196072), pp. 93–94.

[7] *Id*. at 117.

or Seaboard-Eastern Insurance Co., Inc. (Seaboard-Eastern).[8] One (1) of these vessels was the M/V Princess of the World, evidenced by a Certificate of Entry and Acceptance issued by Steamship, which provided:

CERTIFICATE OF ENTRY AND ACCEPTANCE

by the Club of your proposal for entering the ship(s) specified below, and of the tonnage set out against each, in:

Class 1 PROTECTION AND INDEMNITY
of the Club from
Noon 20th February 2005 to Noon 20th February 2006

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or until sold, lost, withdrawn or the entry is terminated in accordance with the rules, to the extent specified and in accordance with the Act, By(e)-Laws and the Rules from time to time in force and the special terms specified overleaf.

Your name has been entered in the Register of Members of the Club as a Member.

FOR ACCOUNT OF Sulpicio Lines Inc., 1st Floor, Reclamation Area, P.O. Box No. 137 Cebu City, Philippines			CERTIFICATE NUMBER 155,534	
NAME OF SHIP	BUILT	ENTERED GROSS TONNAGE	CLASS	PORT OF REGISTRY
"PRINCESS OF THE OCEAN"	1975	Cebu City	B.V.	6,150

[8] *Id*.

"PRINCESS OF THE UNIVERSE"	1983	Cebu City	B.V.	13,526
"PRINCESS OF THE CARIBBEAN"	1979	Cebu City	B.V.	3,768
"PRINCESS OF THE WORLD"	1972	Cebu City	B.V.	9,627
"PRINCESS OF THE STARS"	1984 (Rebuilt 1990)	Cebu City	X.X.	19,329
. . .	. . .			. . .

NOTES

1. REFERENCE IS REQUESTED TO THE RULES AS TO THE CIRCUMSTANCES OF ENTRY BEING CANCELLED AND AS TO THE CIRCUMSTANCES OF AN ALTERATION IN THE RULES OR BY(E)-LAWS.

2. THE RULES ARE PRINTED ANNUALLY IN BOOK FORM, INCORPORATING ALL PREVIOUS ALTERATIONS AND A COPY IS SENT TO EACH MEMBER. ALTERATIONS CAN BE MADE BY ORDINARY RESOLUTION FOLLOWING A GENERAL MEETING NOTIFIED TO ALL MEMBERS.[9]

On July 7, 2005, M/V Princess of the World was gutted by fire while on voyage from Iloilo to Zamboanga City, resulting in total loss of its cargoes. The fire incident was found by the Department of Interior and Local Government to be "accidental" in nature.[10]

Sulpicio claimed indemnity from Steamship under the Protection & Indemnity insurance policy. Steamship denied the claim and subsequently rescinded the insurance coverage of Sulpicio's other vessels on the ground that "Sulpicio was

[9] *Id*. at 130.

[10] *Id.* at 94.

grossly negligent in conducting its business regarding safety, maintaining the seaworthiness of its vessels as well as proper training of its crew."[11]

On June 28, 2007, Sulpicio filed a Complaint[12] with the Regional Trial Court of Makati City against Steamship; one (1) of its directors, Gary Rynsard; and its local insurance agents Pioneer Insurance and Seaboard-Eastern for specific performance and damages. This Complaint was docketed as Civil Case No. 07-577, was amended on August 10, 2007,[13] and further amended on September 11, 2007.[14]

Steamship filed its Motion to Dismiss and/or to Refer Case to Arbitration[15] pursuant to Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004 (ADR Law), and to Rule 47[16] of the 2005/2006 Club Rules, which supposedly

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[11] *Id*.

[12] *Id*. at 116–128.

[13] *Id.* at 561–574.

[14] *Id*. at 95–97.

[15] *Id*. at 529–541.

[16] *Id*. at 542 and 1592. Rule 47 of the 2005/2006 Club Rules provides:

47 Dispute resolution, Adjudication

i. In the event of any difference or dispute whatsoever, between or affecting a Member and the Club and concerning the insurance afforded by the Club under these rules or any amounts due from the Club to the Member or the Member to the Club, such difference or dispute shall in the first instance be referred to adjudication by the Directors. That adjudication shall be on the basis of documents and written submissions alone. Notwithstanding the terms of this Rule **47i**, the Managers shall be entitled to refer any difference or dispute to arbitration in accordance with sub-paragraph **ii** below without prior adjudication by the Directors.

ii. If the Member does not accept the decision of the Directors, or if the Managers, in their absolute discretion, so decide, the difference or dispute shall be referred to the arbitration of three arbitrators, one to be appointed by each of the parties and the third by the two arbitrators so chosen, in London. The submission to arbitration and all the proceedings therein shall be subject to the provisions of the English

provided for arbitration in London of disputes between Steamship and its members.[17] The other defendants filed separate motions to dismiss.[18]

Arbitration Act, 1996 and the schedules thereto or any statutory modifications or re-enactment thereof.

iii. No Member shall be entitled to maintain any action, suit or other legal proceedings against the Club upon any such difference or dispute unless and until the same has been submitted to the Directors and they shall have given their decision thereon, or shall have made default for three months in so doing; and, if such decision be not accepted by the Member or such default be made, unless and until the difference or dispute shall have been referred to arbitration in the manner provided in this Rule, and the Award shall have been published; and then only for such sum as the Award may direct to be paid by the Club. And the sole obligation of the Club to the Member under these Rules or otherwise howsoever in respect of any disputed claim made by the Member shall be to pay such sum as may be directed by such an Award.

iv. In any event no request for adjudication by the Member shall be made to the Directors in respect of any difference or dispute between, or matter affecting, the Member and the Club more than two years from the date when that dispute, difference or matter arose unless, prior to the expiry of this limitation period, the Managers have agreed in writing to extend the same.

v. Nothing in this Rule **47** including paragraph **i**, or in any other Rule or otherwise shall preclude the Club from taking any legal action of whatsoever nature in any jurisdiction at its absolute discretion in order to pursue or enforce any of its rights whatsoever and howsoever arising including but not limited to:

   a. Recovering sums it considers to be due from the Member to the Club;

   b. Obtaining security for such sums; and/or

   c. Enforcement of its rights of lien whether arising by law or under these rules.

vi. These rules and any contract of insurance between the Club and the Member shall be governed by and construed in accordance with English law. (Emphasis in the original)

[17] *Id*. at 97–98.

[18] *Id*. at 98.

Branch 149, Regional Trial Court, Makati City denied the motions to dismiss. In its July 11, 2008 Order,[19] denying Steamship's motion and supplemental motion to dismiss and citing[20] *European Resources and Technologies, Inc. v. Ingenieuburo Birkhann + Nolte, Ingeniurgesellschaft Gmbh,*[21] the Regional Trial Court held that "arbitration [did] not appear to be the most prudent action, . . . considering that the other defendants . . . ha[d] already filed their [respective] [a]nswers."[22] Steamship filed its Motion for Reconsideration,[23] but it was likewise denied in the Order[24] dated September 24, 2008.

Steamship assailed the trial court orders before the Court of Appeals through a Rule 65 Petition, docketed as CA-G.R. SP No. 106103.[25] The Court of Appeals dismissed the petition in its November 26, 2010 Decision.[26] It found no grave abuse of discretion on the part of the trial court in denying Steamship's Motion to Dismiss and/or to Refer Case to Arbitration[27] or any convincing evidence to show that a valid arbitration agreement existed between the parties.[28] Steamship's Motion for Reconsideration of this Decision was likewise denied in the Resolution[29] dated March 10, 2011.

On April 29, 2011, Steamship filed before this Court this Petition for Review, docketed as **G.R. No. 196072.** In compliance

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[19] *Id*. at 300–302. The Order was issued by Presiding Judge Cesar O. Untalan.

[20] *Id*. at 301.

[21] 479 Phil. 114 (2004) [Per *J*. Ynares-Santiago, First Division].

[22] *Rollo* (G.R. No. 196072), p. 99.

[23] *Id*. at 304–320.

[24] *Id*. at 303. The Order was issued by Presiding Judge Cesar O. Untalan.

[25] *Id*. at 93.

[26] *Id*. at 93–108.

[27] *Id*. at 107.

[28] *Id.* at 105.

[29] *Id*. at 111–112.

with this Court's June 13, 2011 Resolution,[30] Sulpicio filed its Comment[31] on August 31, 2011 and Steamship filed its Reply[32] on October 20, 2011.

On September 6, 2013, Sulpicio filed with this Court a Petition for Indirect Contempt[33] under Rule 71 of the Rules of Court against Steamship. This Petition was docketed as **G.R. No. 208603**.

Sulpicio alleges that sometime in September 2012, it settled its judgment liability of ₱4,121,600.00 in Civil Case No. CEB-24783, entitled *Verna Unabia v. Sulpicio Lines, Inc*.[34] However, the actual amount reimbursed by Steamship was not ₱4,121,600.00, equivalent to US$96,958.47, but only US$27,387.48.[35] Steamship deducted US$69,570.99, which allegedly represented Sulpicio's share in the arbitration costs for the arbitration in London of the dispute in Civil Case No. 07-577.[36]

Sulpicio accuses Steamship of indirect contempt for its "improper conduct tending directly, or indirectly, to impede, obstruct, or degrade the administration of justice"[37] consisting of the following acts:

(a) Without Sulpicio's knowledge or consent, Steamship initiated and "concluded" during the pendency of this case an alleged "arbitration proceeding" in London for the "Arbitrator" there to "resolve" the very dispute involved in this case;

(b) Without Sulpicio's knowledge or consent, Steamship proclaimed itself the "victor" entitled to arbitration costs from Sulpicio;

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[30] *Id*. at 2161.

[31] *Id*. at 2169–2198.

[32] *Id*. at 2212–2233.

[33] *Rollo* (G.R. No. 208603), pp. 3–12.

[34] *Id*. at 6.

[35] *Id*.

[36] *Id.* at 6–7.

[37] *Id*. at 4.

(c) Without Sulpicio's knowledge or consent, Steamship unceremoniously deducted from the refund due to Sulpicio in the separate "Unabia Case" the huge amount of **U.S.$69,570.99** despite the fact that: (a) Said "Unabia Case" is unrelated to the instant case; (b) The propriety of a London arbitration is still to be resolved in this case by this Honorable Court; (c) Steamship "enforced" by itself said "arbitration costs" against Sulpicio without the courtesy of even informing this Honorable Court about it[; and]

(d) Without Sulpicio's knowledge or consent, and more importantly, without the prior approval of this Honorable Court, Steamship initiated and "concluded" said London "arbitration" during the pendency of this G.R. No. 196072 and **before** this Honorable Court could render its ruling or decision.[38] (Emphasis in the original)

Steamship filed its Comment/Opposition[39] on January 30, 2014, to which Sulpicio filed its Reply[40] on July 2, 2014.

In its Resolution[41] dated January 15, 2014, this Court resolved to consolidate G.R. Nos. 208603 and 196072.

The issues for this Court's resolution are:

First, whether or not the petition in G.R. No. 196072 is proper under the Rules of Court;

Second, whether or not there is a valid and binding arbitration agreement between Steamship Mutual Underwriting (Bermuda) Limited and Sulpicio Lines, Inc.;

Third, whether or not the Court of Appeals gravely erred in affirming the Regional Trial Court Order denying referral of Sulpicio Lines, Inc.'s complaint to arbitration in London in accordance with the 2005/2006 Club Rules; and

Finally, whether or not Steamship Mutual Underwriting (Bermuda) Limited is guilty of indirect contempt.

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[38] *Id*. at 8.

[39] *Id.* at 42–61.

[40] *Id.* at 363–373.

[41] *Id*. at 186.

This Court addresses first the procedural issue raised by Sulpicio.

I.A

Sulpicio contends that Steamship's Petition for Review should be dismissed outright on procedural grounds.[42]

First, this Petition, couched as a Rule 45 Petition, is actually a Rule 65 Petition because it contained arguments dealing with "grave abuse of discretion" allegedly committed by the Court of Appeals.[43]

Second, the Petition's Verification and Certification Against Forum Shopping is defective because it was signed and executed by Steamship's lawyer. Additionally, the Power of Attorney appended to the Petition did not indicate its signatory's name and authority.[44]

Third, the issue of whether or not Sulpicio has been furnished with the Club's Rulebook, which contained the arbitration clause, is factual and beyond the realm of a Rule 45 petition.[45]

In its Reply, Steamship avers that its counsel's law firm was duly authorized to sign its Verification and Certification against Forum Shopping. Moreover, Sulpicio never assailed this law firm's authority to represent Steamship before the Regional Trial Court, and therefore, is estopped to deny its authority before this Court.[46] Together with its Reply, Steamship submitted a copy of the Secretary's Certificate[47] to the July 24, 2007 Board of Directors' resolution authorizing Scott Davis (Davis) or his Assistant Secretaries to sign a Power of Attorney on behalf of

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[42] *Rollo* (G.R. No. 196072), p. 2183.

[43] *Id*. at 2182–2183.

[44] *Id.* at 2169–2171.

[45] *Id*. at 2173.

[46] *Id.* at 2215–2216.

[47] *Id*. at 2234–2236.

Steamship. It also appended a Secretary's Certificate[48] to the July 26, 2011 Board of Directors' resolution re-appointing Davis and John Charles Ross Collis[49] to their current positions as Secretary and Assistant Secretary, respectively.

Steamship further contends that the basic issues raised in the petition are questions of law that are cognizable by this Court.[50] It adds that a reversal of some factual findings is warranted because the Court of Appeals committed a grave abuse of discretion in concluding that Sulpicio was ignorant of the 2005/2006 Club Rules and its arbitration clause, when Steamship had presented ample evidence to establish otherwise.[51] Steamship submits that this Court may exercise its power of review to reverse errors committed by the lower courts including grave abuse of discretion of the Court of Appeals.[52]

This Court finds for Steamship.

The appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65.[53] Rule 45, Section 1 is clear that:

> 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.

A Rule 45 petition is the proper remedy to reverse a decision or resolution of the Court of Appeals even if the error assigned

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[48] *Id.* at 2237–2239.

[49] The Secretary's Certificate refers to "J.C.R. Collis" whose full name is found in *rollo* (G.R. No. 196072), p. 2242.

[50] *Rollo*, pp. 2218–2220.

[51] *Id*. at 2219.

[52] *Id.* at 2219–2220.

[53] *Office of the Ombudsman v. Court of Appeals*, 493 Phil. 63, 74 (2005) [Per *J*. Chico-Nazario, Second Division].

is grave abuse of discretion in the findings of fact or of law. "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."[54]

Allegations in the petition of grave abuse of discretion on the part of the Court of Appeals do not *ipso facto* render the intended remedy that of *certiorari* under Rule 65 of the Rules of Court. In *Microsoft Corporation v. Best Deal Computer Center Corporation,*[55] this Court discussed the distinction between a Petition for Certiorari under Rule 65 and a Petition for Review on Certiorari under Rule 45:

> Significantly, even assuming that the orders were erroneous, such error would merely be deemed as an error of judgment that cannot be remedied by certiorari. As long as the respondent acted with jurisdiction, any error committed by him or it in the exercise thereof will amount to nothing more than an error of judgment which may be reviewed or corrected only by appeal. The distinction is clear: A petition for certiorari seeks to correct errors of jurisdiction while a petition for review seeks to correct errors of judgment committed by the court. Errors of judgment include errors of procedure or mistakes in the court's findings. Where a court has jurisdiction over the person and subject matter, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of such jurisdiction are merely errors of judgment. Certiorari under Rule 65 is a remedy designed for the correction of errors of jurisdiction and not errors of judgment.[56] (Citations omitted)

In this case, what Steamship seeks to rectify may be construed as errors of judgment of the Court of Appeals. These errors

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[54] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission,* 716 Phil. 500, 513 (2013) [Per *J.* Leonardo-de Castro, First Division] citing *Bugarin v. Palisoc,* 513 Phil. 59 (2005) [Per *J.* Quisumbing, First Division]; *Mercado v. Court of Appeals,* 245 Phil. 49 (1988) [Per *J.* Narvasa, First Division].

[55] 438 Phil. 408 (2002) [Per *J.* Bellosillo, Second Division].

[56] *Id*. at 415.

pertain to Steamship's allegations of the Court of Appeals' failure to rule that a valid arbitration agreement existed between the parties and to refer the case to arbitration. It does not impute any error with respect to the Court of Appeals' exercise of jurisdiction. As such, the Petition is simply a continuation of the appellate process where a case is elevated from the trial court of origin, to the Court of Appeals, and to this Court via Rule 45.

The basic issues raised in the Petition for Review are: (1) whether or not an arbitration agreement may be validly incorporated by reference to a contract; and (2) how the trial court should proceed to trial upon its finding "that only some and not all of the defendants are bound by an arbitration agreement[.]"[57] These are questions of law properly cognizable in a Rule 45 petition.

In *BCDA v. DMCI Project Developers, Inc.*,[58] citing *Villamor v. Balmores*[59]:

> [T]here is a question of law "when there is doubt or controversy as to what the law is on a certain [set] of facts." The test is "whether the appellate court can determine the issue raised without reviewing or evaluating the evidence." Meanwhile, there is a question of fact when there is "doubt . . . as to the truth or falsehood of facts." The question must involve the examination of probative value of the evidence presented.[60]

Sulpicio denies being bound by the arbitration clause in the Club Rules since neither the Certificate of Entry and Acceptance,

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[57] *Rollo* (G.R. No. 196072), p. 2218.

[58] G.R. Nos. 173137 & 173170, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/173137.pdf> [Per *J.* Leonen, Second Division].

[59] G.R. No. 172843, September 24, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/172843.pdf> [Per *J.* Leonen, Second Division].

[60] *Id.* at 8.

which covers M/V Princess of the World, mentioned this arbitration agreement, nor was it given a copy of the Club Rulebook.

In sustaining the denial of Steamship's Motion to Dismiss and/or to Refer Case to Arbitration, the Court of Appeals ruled:

> Unfortunately, the Court is not convinced that a valid and binding arbitration agreement exists between the Steamship and Sulpicio. And even assuming that there is such an agreement, it does not comply with Section 4 of the Arbitration Law which provides that "a contract to arbitrate a controversy thereafter arising between the parties, as well as a submission to arbitrate an existing controversy shall be in writing and subscribed by the party sought to be charged, or by his lawful agent."
>
> *As correctly pointed out by Sulpicio, there is no proof that it was served a copy of the Club Rules in question and that it signed therein.*[61] (Emphasis supplied)

A factual question on whether or not Sulpicio was given a copy of the Club Rulebook must be resolved because it has a bearing on the legal issue of whether or not a binding arbitration agreement existed between the parties. Factual review, nonetheless, may be justified: (1) when there is a grave abuse of discretion in the appreciation of facts;[62] (2) when the judgment of the Court of Appeals is premised on a misapprehension of facts;[63] and (3) when the Court of Appeals' findings of fact are premised on the absence of evidence but such findings are contradicted by the evidence on record.[64]

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[61] *Rollo* (G.R. No. 196072), p. 105.

[62] *Microsoft Corp. v. Farajallah,* 742 Phil. 775, 785 (2014) [Per Acting *C.J*. Carpio, Second Division].

[63] *Chan v. Maceda,* 450 Phil. 416–431 (2003) [Per *J*. Sandoval-Gutierrez, Third Division]; *Verendia v. Court of Appeals,* 291 Phil. 439–448 (1993) [Per *J.* Melo, Third Division].

[64] *Insular Life Assurance Company, Ltd. v. Court of Appeals*, 472 Phil. 11–36 (2004) [Per *J*. Austria-Martinez, Second Division].

Here, this Court finds grave abuse of discretion by the Court of Appeals in its appreciation of facts. As will be discussed later, the evidence on record shows that Sulpicio was furnished a copy of the Club Rulebook and was aware of its provisions. Other pieces of evidence were Sulpicio's letters[65] to Steamship and the affidavits of Director and Head of Underwriting of the Club and In-Charge of Far East membership including the Philippines, Jonathan Andrews;[66] Vice-President of Pioneer Insurance who was in charge of Sulpicio's account, Roderick Gil Narvacan;[67] and Manager of Seaboard-Eastern's Marine Department who was in charge of Sulpicio's account, Elmer Felipe.[68]

I.B

The Verification and Certification against Forum Shopping signed by Steamship's counsel substantially complied with the requirements of the Rules of Court.

Under Rule 45 of the Rules of Court, a petition for review must be verified[69] and must contain a sworn certification against forum shopping.[70]

"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 [or her] personal knowledge or based on authentic records."[71]

On the other hand, a certification against forum shopping is a petitioner's statement "under oath that he [or she] has not . . . commenced any other action involving the same issues in

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[65] *Rollo* (G.R. No. 196072), pp. 863–865; 923–932; 937–940.

[66] *Id*. at 797–807.

[67] *Id*. at 914–915.

[68] *Id*. at 933–935.

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

[70] RULES OF COURT, Rule 45, Sec. 4(e).

[71] RULES OF COURT, Rule 7, Sec. 4.

the Supreme Court, the Court of Appeals or different divisions, or any other tribunal or agency[.]"[72] In this certification, the petitioner must state the status of any other action or proceeding, if there is any, and undertakes to report to the courts and other tribunal within five (5) days from learning of any similar action or proceeding.[73]

Failure to comply with the foregoing mandates constitutes a sufficient ground for the denial of the petition.[74]

In case the petitioner is a private corporation, the verification and certification may be signed, for and on behalf of this corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents.[75] The reason is that:

> A corporation, such as the petitioner, has no powers except those expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board of directors. "All acts within the powers of a corporation may be performed by agents of its selection; and, except so far as limitations or restrictions which may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons."

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[72] RULES OF COURT, Rule 42, Sec. 2.

[73] RULES OF COURT, Rule 42, Sec. 2.

[74] RULES OF COURT, Rule 45, Sec. 5.

[75] *BA Savings Bank v. Sia,* 391 Phil. 370, 377–378 (2000) [Per *J.* Panganiban, Third Division]; *Ty-de Zuzuarregui v. Villarosa,* 631 Phil. 375, 384 (2010) [Per *J.* Villarama, Jr., First Division].

. . . . . .

For who else knows of the circumstances required in the Certificate but its own retained counsel. Its regular officers, like its board chairman and president, may not even know the details required therein.[76]

In this case, Steamship's Petition's Verification and Certification against forum shopping was signed by its counsel. A Power of Attorney[77] dated August 1, 2007 was appended to the Petition, which purportedly authorized "Atty. Charles Jay D. Dela Cruz or any of the partners of Del Rosario & Del Rosario . . . to sign the verification or certification"[78] against forum shopping of petitions and appeals in appellate courts necessary in representing and defending Steamship. It was notarized, apostilled in accordance with the law of Bermuda and authenticated by the Philippine consulate in London, United Kingdom. However, a closer look into the Power of Attorney reveals that the signatory of the document was not identified. This was pointed out by Sulpicio in its Comment.[79]

Nonetheless, Steamship subsequently filed its Reply,[80] to which it attached two (2) Secretary's Certificates[81] signed by Davis containing excerpts of the July 24, 2007 and July 26, 2011 board resolutions showing Davis' authority to execute the Power of Attorney on its behalf, and Davis' reappointment as Corporate Secretary, respectively. The signature in the Power of Attorney was similar in form and appearance to Davis' signature in the Secretary's Certificates, which lends credence to Steamship's submission that the Power of Attorney was executed and signed by Davis.[82]

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[76] *BA Savings Bank v. Sia,* 391 Phil. 370, 377–378 (2000) [Per *J.* Panganiban, Third Division].

[77] *Rollo* (G.R. No. 196072), pp. 83–87.

[78] *Id.* at 87.

[79] *Id.* at 2169–2170.

[80] *Id.* at 2212–2233.

[81] *Id.* at 2236 & 2239.

[82] *Id.* at 2215.

The rule on verification of a pleading is a formal, not jurisdictional, requirement.[83] This Court has held that:

> Non-compliance with the verification requirement does not necessarily render the pleading fatally defective, and is substantially complied with when signed by one who has ample knowledge of the truth of the allegations in the complaint or petition, and when matters alleged in the petition have been made in good faith or are true and correct.[84] (Citation omitted)

On the other hand, a certification not signed by a duly authorized person renders the petition subject to dismissal.[85] Moreover, the lack of or defect in the certification is not generally curable by its subsequent submission or correction.[86] However, there are cases where this Court exercised leniency due to the presence of special circumstances or compelling reasons, such as the *prima facie* merits of the petition.[87] In some cases, the subsequent submission of proof of authority of the party signing the certification on behalf of the corporation was considered as substantial compliance with the rules and the petition was given due course.[88]

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[83] *Uy v. Land Bank of the Phils.,* 391 Phil. 303, 312 (2000) [Per *J*. Kapunan, First Division].

[84] *Spouses Lim v. Court of Appeals,* 702 Phil. 634, 642–643 (2013) [Per *J.* Brion, Second Division].

[85] *Gonzales v. Climax Mining Ltd.,* 492 Phil. 682, 691 (2005) [Per *J.* Tinga, Second Division]; *BPI Leasing Corporation v. Court of Appeals,* 461 Phil. 451, 457 (2003) [Per *J.* Azcuna, First Division].

[86] *Uy v. Court of Appeals,* 769 Phil. 705, 716–717 (2015) [Per *J.* Jardeleza, Third Division].

[87] *Id*. citing *Far Eastern Shipping Company v. Court of Appeals*, 357 Phil. 703 (1998) [Per *J*. Regalado, *En Banc*], *Sy Chin v. Court of Appeals*,399 Phil. 442 (2000) [Per *J*. Kapunan, First Division], *LDP Marketing, Inc. v. Monter,* 515 Phil. 768 (2006) [Per *J*. Carpio Morales, Third Division]*; Uy v. Land Bank of the Phils.,* 391 Phil. 303 (2000) [Per *J*. Kapunan, First Division].

[88] *Pascual and Santos, Inc. v. The Members of the Tramo Wakas Neighborhood Association, Inc.,* 485 Phil. 113, 122 (2004) [Per *J*. Carpio Morales, Third Division] citing *Novelty Philippines, Inc. v. Court of Appeals*,

In *Shipside Incorporated v. Court of Appeals*,[89] this Court held:

> Moreover, in *Loyola*, *Roadway*, and *Uy*, the Court excused non-compliance with the requirement as to the certificate of non-forum shopping. With more reason should we allow the instant petition since petitioner herein did submit a certification on non-forum shopping, failing only to show proof that the signatory was authorized to do so. That petitioner subsequently submitted a secretary's certificate attesting that Balbin was authorized to file an action on behalf of petitioner likewise mitigates this oversight.[90]

Likewise, this Court holds that there is substantial compliance with the rules on verification and certification against forum shopping. Steamship's subsequent submission of the Secretary's Certificates showing Davis' authority to execute the Power of Attorney in favor of Del Rosario & Del Rosario cured the defect in the verification and certification appended to the petition. Under the circumstances of this case, Steamship's counsel would be in the best position to determine the truthfulness of the allegations in the petition and certify on non-forum shopping considering that "it has handled the case for . . . Steamship since its inception."[91] This Court also considers Steamship's allegations that the same Power of Attorney was used in its Answer Ad Cautelam filed on August 12, 2008 before the Regional Trial Court and in its Petition for Certiorari before the Court of Appeals on November 12, 2008. Significantly, Sulpicio never questioned the authority of Del Rosario & Del Rosario to represent Steamship in the proceedings before the lower courts.[92]

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458 Phil. 36 (2003) [Per *J*. Panganiban, Third Division], *National Steel Corporation v. Court of Appeals,* 436 Phil. 656 (2002) [Per *J*. Austria-Martinez, First Division], *BA Savings Bank v. Sia,* 391 Phil. 370 (2000) [Per *J*. Panganiban, Third Division].

[89] 404 Phil. 981 (2001) [Per *J*. Melo, Third Division].

[90] *Id*. at 996.

[91] *Rollo* (G.R. No. 196072), p. 2215.

[92] *Id*. at 2216.

The rules on forum-shopping are "designed . . . to promote and facilitate the orderly administration of justice." They are not to be interpreted with "absolute literalness" as to subvert the procedural rules' ultimate objective of achieving substantial justice as expeditiously as possible.[93] These goals would not be circumvented by this Court's recognition of the authorized counsel's signature in the verification and certification of non-forum shopping.

This Court now proceeds to the substantive issues of whether or not there was a valid arbitration agreement between the parties and whether or not referral to arbitration was imperative.

II

Steamship contends that the arbitration agreement set forth in its Club Rules, which in turn is incorporated by reference in the Certificate of Entry and Acceptance of M/V Princess of the World,[94] is valid and binding upon Sulpicio,[95] pursuant to this Court's ruling in *BF Corporation v. Court of Appeals.*[96]

Steamship further avers that the Court of Appeals' finding that there was no proof that Sulpicio was given a copy of the Club Rules was incorrect and contradicted by the evidence on record.[97] Steamship adds that by Sulpicio's own declarations in its letter-application[98] for membership of its vessels, Sulpicio acknowledged that it had received a copy of the Club Rules and that its membership in Steamship is subject to them.[99] It contends that Sulpicio was "provided with copies of the Club's

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[93] *National Steel Corporation v. Court of Appeals,* 436 Phil. 656, 667 (2002) [Per *J.* Austria-Martinez, First Division].

[94] *Rollo* (G.R. No. 196072), pp. 51–54.

[95] *Id*. at 48–51.

[96] 351 Phil. 507 (1998) [Per *J.* Romero, Third Division].

[97] *Rollo* (G.R. No. 196072), pp. 67–68.

[98] *Id*. at 789–793.

[99] *Id*. at 54–55.

Rule books on an annual basis by Pioneer Insurance and Seaboard-Eastern who acted as brokers [for Sulpicio's] entry."[100] Moreover, throughout Sulpicio's almost 20 years of membership,[101] it has been aware of, and relied upon, the terms of the Club Rules, as revealed in its various correspondences through its brokers with Steamship.[102] Thus, Sulpicio is estopped to deny that it was aware of, and agreed to be bound by, the Club Rules and their provisions.[103]

Steamship argues that a referral of the case to arbitration is imperative pursuant to the mandates of Republic Act No. 9285 or the ADR Law.[104] It adds that the trial court's reliance on the ruling in *European Resources and Technologies, Inc. v. Ingenieuburo Birkhann + Nolte, Ingeniurgesellschaft Gmbh*[105] was misplaced. That case was decided on the basis of Republic Act 876 or the Old Arbitration Law, which did not provide for instances where some of the multiple impleaded parties were not covered by an arbitration agreement.[106] It adds that now, Section 25 of the ADR Law specifically provides that "the court shall refer to arbitration those parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement."[107] Even from a procedural standpoint, Steamship contends that the claim against it may be separated from Pioneer Insurance and Seaboard-Eastern as these local insurance companies were impleaded as solidary obligors/debtors.[108]

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[100] *Id*. at 59.

[101] *Id*. at 56.

[102] *Id*. at 59–60, 62–66.

[103] *Id*. at 56.

[104] *Id*. at 70–71.

[105] 479 Phil. 114 (2004) [Per *J*. Ynares-Santiago, First Division].

[106] *Rollo* (G.R. No. 196072), pp. 72–73.

[107] *Id*. at 74.

[108] *Id*. at 77–78.

Steamship further submits that "a Philippine court is an inconvenient forum to thresh out the issues involved in Sulpicio's claim."[109] First, Sulpicio's claim is governed by the English Law, as expressly stated in the 2005/2006 Club Rules.[110] Second, a Philippine court would be "an ineffective venue" to enforce any judgment that may be obtained against Steamship, a foreign corporation.[111] Thus, on the basis of the doctrine of *forum non conveniens* alone, Steamship contends that the claim against it should be referred to arbitration in London.[112]

Finally, Steamship holds that "Sulpicio should participate in the London Arbitration as [it] is already progressing . . . [i]nstead of wasting its time on prosecuting its claim before a Philippine court that is devoid of jurisdiction[.]"[113]

Sulpicio counters that the Court of Appeals was correct in ruling that there was no arbitration agreement between the parties.[114] The arbitration clause in the 2005/2006 Club Rules is not valid and binding for failure to comply with Section 4 of the ADR Law, which requires that an arbitration agreement be in writing and subscribed by the parties or their lawful agent.[115] Sulpicio adds that "[i]n *White Gold Marine Services, Inc. vs. Pioneer Insurance and Surety Corporation, . . .* Steamship did not invoke arbitration but filed suit before a Philippine court, which . . . proves that [the 2005/2006 Club Rules' arbitration clause] is neither mandatory nor binding" upon the parties.[116]

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[109] *Id*. at 80.

[110] *Id*. at 78.

[111] *Id.* at 80.

[112] *Id*.

[113] *Id*. It appears that Steamship had already initiated arbitration proceedings in London per its letter dated July 31, 2007 to Sulpicio, which gave notice of its appointment of an arbitrator and for Sulpicio to appoint its own arbitrator. (*rollo*, pp. 432–433).

[114] *Id*. at 2184–2185.

[115] *Id*. at 2173–2176.

[116] *Id*. at 2185.

Sulpicio further contends that the Certificate of Entry and Acceptance did not provide for arbitration as a mode of dispute resolution, that the rules referred to was not particularly identified or described, and that it never received a copy of the Club Rules.[117]

Assuming there was a valid arbitration agreement between them, Sulpicio submits that the trial court correctly relied on the ruling in *European Resources* in denying the referral of the case to arbitration.[118] Arbitration in London would not be the "most prudent action" because the arbitral decision will not be binding on Pioneer Insurance and Seaboard-Eastern and it would result in a "split jurisdiction."[119] Sulpicio further contends that the exception laid down in *European Resources* still applies because the ADR Law was already in effect when the case was decided by this Court.[120]

In its Reply, Steamship maintains that there is a valid arbitration clause between them and that Sulpicio was well aware of its Club Rules. It adds that Sulpicio is merely feigning ignorance of the Club Rules to escape the obligatory nature of the arbitration agreement. Steamship further reiterates that Section 25 of the ADR Law is plain and clear that when there are multiple parties in an action, the court must "refer to arbitration those parties bound by the arbitration agreement and let the action remain as to those who are not bound."[121] "Moreover, as the relationship between . . . Steamship and . . . Sulpicio are governed by English Law[,] it may be more prudent to refer the dispute to arbitration in London under the doctrine of *forum non conveniens*."[122]

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[117] *Id.* at 2186.

[118] *Id*. at 2189.

[119] *Id*. at 2193.

[120] *Id*. at 2193–2194.

[121] *Id*. at 2227–2228.

[122] *Id*. at 2228.

Finally, Steamship avers that under Rule 47 of the 2005/2006 Club Rules, it has "the right to pursue legal action against a [m]ember before any jurisdiction at its sole discretion."[123] Even if there is no such provision, Steamship contends that it may waive its rights to compel arbitration in individual cases.[124] It adds that the waiver of such right in *White Gold* has no effect to this case because Sulpicio is not a party in that case.[125]

II.A

It is the State's policy to promote party autonomy in the mode of resolving disputes.[126] Under the freedom of contract principle, parties to a contract may stipulate on a particular method of settling any conflict between them.[127] Arbitration and other alternative dispute resolution methods like mediation, negotiation, and conciliation are favored over court action. Republic Act No. 9285[128] expresses this policy:

> Section 2. *Declaration of Policy.* — It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. *Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets.* As such, the State shall provide means for the

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[123] *Id*. at 2229.

[124] *Id*. at 2230.

[125] *Id*. at 2230.

[126] *Bases Conversion Development Authority v. DMCI Project Developers, Inc.,* G.R. Nos. 173137 & 173170, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/173137.pdf> 9 [Per *J.* Leonen, Second Division].

[127] *Chung Fu Industries (Philippines), Inc. v. Court of Appe*als, 283 Phil. 474, 483 (1992) [Per *J.* Romero, Third Division] *citing* CIVIL CODE, Art. 1306.

[128] An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes, known as the Alternative Dispute Resolution Act of 2004.

use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time. (Emphasis supplied)

Arbitration, as a mode of settling disputes, was already recognized in the Civil Code.[129] In 1953, Republic Act No. 876 was passed, which reinforced domestic arbitration as a process of dispute resolution. Foreign arbitration was likewise recognized through the Philippines' adherence to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, otherwise known as the New York Convention.[130] Republic Act No. 9285 sets the basic principles in the enforcement of foreign arbitral awards in the Philippines.[131]

Consistent with State policy, "arbitration agreements are liberally construed in favor of proceeding to arbitration."[132] Every reasonable interpretation is indulged to give effect to arbitration agreements. Thus, courts must give effect to the arbitration clause as much as the terms of the agreement would allow.[133] "Any doubt should be resolved in favor of arbitration."[134]

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[129] CIVIL CODE, Title XIV, Chapter 2.

[130] See *National Union Fire Insurance Company of Pittsburg v. Stolt-Nielsen Philippines, Inc.*, 263 Phil. 634 (1990) [Per *J.* Melencio-Herrera, Second Division].

[131] Rep. Act No. 9285, Secs. 43 and 42, par. 1 and 2.

[132] *Bases Conversion Development Authority v. DMCI Project Developers, Inc.*, G.R. Nos. 173137 and 173170, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/173137.pdf> 9 [Per *J.* Leonen, Second Division].

[133] *Id*. at 10.

[134] *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.,* 447 Phil. 705, 714 (2003) [Per *J.* Panganiban, Third Division].

II.B

Sulpicio contends that there was no valid arbitration agreement between them, and if there were, it was not aware of it.

This Court rules against Sulpicio's submission.

The contract between Sulpicio and Steamship is more than a contract of insurance between a marine insurer and a shipowner. By entering its vessels in Steamship, Sulpicio not only obtains insurance coverage for its vessels but also becomes a member of Steamship.

A protection and indemnity club, like Steamship, is an association composed of shipowners generally formed for the specific purpose of providing insurance cover against third-party liabilities of its members.[135] A protection and indemnity club is a mutual insurance association, described in *White Gold Marine Services, Inc. v. Pioneer Insurance and Surety Corp.*[136] as follows:

> [A] mutual insurance company is a cooperative enterprise where the members are both the insurer and insured. In it, the members all contribute, by a system of premiums or assessments, to the creation of a fund from which all losses and liabilities are paid, and where the profits are divided among themselves, in proportion to their interest. Additionally, mutual insurance associations, or clubs, provide three types of coverage, namely, protection and indemnity, war risks, and defense costs.[137]

A shipowner wishing to enter its fleet of vessels to Steamship must fill in an application for entry form, which states:

> PLEASE ENTER IN THE ASSOCIATION, SUBJECT TO THE RULES, RECEIPT OF WHICH WE ACKNOWLEDGE, THE UNDERMENTIONED VESSEL(S).[138]

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[135] *Hyopsung Maritime Co., Ltd. v. Court of Appeals*, 247-A Phil. 350, 351 (1988) [Per *J.* Sarmiento, Second Division].

[136] 502 Phil. 692 (2005) [Per *J.* Quisumbing, First Division].

[137] *Id*. at 699–700.

[138] *Rollo* (G.R. No. 196072), p. 809.

The application form is signed by the shipowner or its authorized representative.

Steamship then issues a Certificate of Entry and Acceptance of the vessels, showing its acceptance of the entry. The Certificate of Entry and Acceptance for M/V Princess of the World states:

CERTIFICATE OF ENTRY AND ACCEPTANCE

by the Club of your proposal for entering the ship(s) specified below, and of the tonnage set out against each, in:

Class 1 PROTECTION AND INDEMNITY
of the Club from
Noon 20th February 2005 to Noon 20th February 2006

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or until sold, lost, withdrawn or the entry is terminated in accordance with the rules, to the extent specified and in accordance with the Act, By(e)-Laws and the Rules from time to time in force and the special terms specified overleaf.

Your name has been entered in the Register of Members of the Club as a Member.

FOR ACCOUNT OF Sulpicio Lines Inc., 1st Floor, Reclamation Area, P.O. Box No. 137 Cebu City, Philippines			CERTIFICATE NUMBER 155,534	
NAME OF SHIP	BUILT	ENTERED GROSS TONNAGE	CLASS	PORT OF REGISTRY
"PRINCESS OF THE OCEAN"	1975	Cebu City	B.V.	6,150

"PRINCESS OF THE UNIVERSE"	1983	Cebu City	B.V.	13,526
"PRINCESS OF THE CARIBBEAN"	1979	Cebu City	B.V.	3,768
"PRINCESS OF THE WORLD"	1972	Cebu City	B.V.	9,627
"PRINCESS OF THE STARS"	1984 (Rebuilt 1990)	Cebu City	X.X.	19,329
. . .	. . .			. . .

NOTES

1. REFERENCE IS REQUESTED TO THE RULES AS TO THE CIRCUMSTANCES OF ENTRY BEING CANCELLED AND AS TO THE CIRCUMSTANCES OF AN ALTERATION IN THE RULES OR BY(E)-LAWS.

2. THE RULES ARE PRINTED ANNUALLY IN BOOK FORM, INCORPORATING ALL PREVIOUS ALTERATIONS AND A COPY IS SENT TO EACH MEMBER. ALTERATIONS CAN BE MADE BY ORDINARY RESOLUTION FOLLOWING A GENERAL MEETING NOTIFIED TO ALL MEMBERS.[139]

Thus, a contract of insurance is perfected between the parties upon Steamship's issuance of the Certificate of Entry and Acceptance.

> [A] contract of insurance, like other contracts, must be assented to by both parties either in person or by their agents. So long as an application for insurance has not been either accepted or rejected, it is merely an offer or proposal to make a contract. The contract, to be binding from the date of application, must have been a completed contract, one that leaves nothing to be done, nothing to be completed, nothing to be passed upon, or determined, before it shall take effect.

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[139] *Id*. at 130.

There can be no contract of insurance unless the minds of the parties have met in agreement.[140]

Title VI, Section 49 of Presidential Decree No. 612[141] or the Insurance Code defines an insurance policy as "the written instrument in which a contract of insurance is set forth." Section 50 of this Code provides that the policy, which is required to be in printed form, "may contain blank spaces; and any word, phrase, clause, mark, sign, symbol, signature, number, or word necessary to complete the contract of insurance shall be written on the blank spaces." Any rider, clause, warranty, or endorsement attached and referred to in the policy by its descriptive title or name is considered part of this policy or contract of insurance and binds the insured.

Section 51 of the Insurance Code prescribes the information that must be stated in the policy, namely: the parties in the insurance contract, amount insured, premium, property or life insured, risks insured against, and period of insurance. However, there is nothing in the law that prohibits the parties from agreeing to other terms and conditions that would govern their relationship, in which case the general rules of the Civil Code regulating contracts will apply.[142]

The Certificate of Entry and Acceptance plainly provides that the Class 1 protection and indemnity coverage would be to the extent specified and in accordance with the Act, the By-Laws, and the Rules of the Club in force at the time of the coverage. The "Notes" in the bottom portion of the Certificate states that these Rules "are printed annually in book form" and disseminated to all members. M/V Princess of the World was insured from February 20, 2005 to February 20, 2006. Hence, the 2005/2006 Club Rules apply.

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[140] *Perez v. Court of Appeals,* 380 Phil. 592, 600–601 (2000) [Per *J.* Ynares-Santiago, First Division].

[141] Several amendments to Presidential Decree No. 612 (1974) were consolidated and codified into a single Code by virtue of Presidential Decree No. 1460, to be known as the Insurance Code of 1978.

[142] CIVIL CODE, Art. 2011.

Moreover, attached to the Certificate of Entry and Acceptance is a War Risk Extension clause and Bio-Chem clause, which refer to Rule 21 of the 2005/2006 Club Rules relating to war risk insurance.

WAR RISK EXTENSION

Cover excluded under Rule 21 is hereby reinstated subject to the terms set out in this Certificate of Entry and any Endorsement thereto, and to the following conditions.

. . . . . .

At any time or times before, or at the commencement of, or during the currency of any Policy Year of the Club, the Directors may in their discretion determine that any ports, places, countries, zones or areas (whether of land or sea) be excluded from the insurance provided by this [Protection and Indemnity] war risks cover. Save as otherwise provided by the Directors, this [Protection and Indemnity] war risks cover shall cease in respect of such ports, places, countries, zones or areas at midnight on the seventh day following the issue to the Members of notice of such determination in accordance with the terms of the cover provided pursuant to Rule 21 of the Club's Rules . . .

. . . . . .

Notwithstanding any other term or condition of this insurance, the Directors may in their discretion cancel this special cover giving 7 days' notice to the Members (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by the Club and the Directors may at any time after the issue of notice of such cancellation resolve to reinstate special cover pursuant to the proviso to the terms of the cover issued pursuant to Rule 21 on such terms and conditions and subject to such limit as the Directors in their discretion may determine.

When either a Demise, Time, Voyage, Space or Slot Charterer and/or the Owner of the Entered Ship are separately insured for losses, liabilities, or the costs and expenses incidental thereto covered under Rule 21 of the Club and/or the equivalent Rule of any other Association which participates in the Pooling Agreement and General Excess Loss Reinsurance Contract, the aggregate of claims in respect of such losses, liabilities, or the costs and expenses incidental thereto

covered under Rule 21 of the Club and/or the equivalent Rule of such other Association(s), shall be limited to the amount set out in the Certificate of Entry in respect of any one ship, any one incident or occurrence.[143]

Sulpicio's acceptance of the Certificate of Entry and Acceptance manifests its acquiescence to all its provisions. There is no showing in the records or in Sulpicio's contentions that it objected to any of the terms in this Certificate. Its acceptance, likewise, operated as an acceptance of the entire provisions of the Club Rules.

When a contract is embodied in two (2) or more writings, the writings of the parties should be read and interpreted together in such a way as to render their intention effective.[144]

With the exception of the War Risk Extension clause, the Bio-chem clause, and a succinct statement of the limits of liability, warranties, exclusion, and deductibles, the Certificate of Entry and Acceptance does not contain the details of the insurance coverage. A person would have to refer to the Club Rules to have a complete understanding of the contract between the parties.

The Club Rules contain the terms and conditions of the relationship between the Steamship and its members including the scope, nature, and extent of insurance coverage of its members' vessels. The 2005/2006 Club Rules[145] of Class 1, which cover protection and indemnity risks provide, insofar as relevant:

3 Scope of Cover

i. The terms upon which a Member is entered in the Club are set out in the Rules and any Certificate of Entry for that Member.

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[143] *Rollo* (G.R. No. 196072), p. 133.

[144] *Valdez v. Court of Appeals,* 482 Phil. 250, 271 (2004) [Per *J.* Callejo, Sr., Second Division].

[145] *Rollo*, pp. 813–855.

ii. The risks against which a Member is insured by entry in the Club are set out in Rule 25 and are always subject to the conditions, exceptions, limitations and other terms set out in the remainder of these Rules and any Certificate of Entry for that Member.

. . . . . .

6 Entry

. . . . . .

iv. The provisions of this Rule apply throughout the period of entry of the Ship in the Club . . .

. . . . . .

8 Members

i. Every Owner who enters any ship in the Club shall (if not already a Member) be and become a Member of the Club as from the date of the commencement of such entry. Each Member is bound by the Act and By(e)-Laws of the Club and by these Rules.

. . . . . .

iv. All contracts of insurance with the Club shall be deemed to be subject to and incorporate all the provisions of these Rules except to the extent otherwise expressly agreed in writing with the Managers.

v. Each Member or other person whose application for insurance or reinsurance is accepted shall be deemed to have agreed both for itself and its successors and each of them that both it and they and each and all of them will be subject to and bound by and will perform their obligations under the Rules, Act and By(e)-Laws of the Club and any contract of insurance with the Club.

. . . . . .

45 Amendments to Rules

The Rules of this Class may be altered or added to by Ordinary Resolution passed at a separate meeting of the Members of this Class provided that no such alterations shall be effective unless and until the same shall be sanctioned by the Directors.[146]

[146] *Id*. at 828–854.

The 2005/2006 Club Rules also provide the nature of Steamship's Protection and Indemnity cover and the terms on which it is provided. In particular, Rule 25(i) to (xxi) identify a member's liabilities, costs, and expenses covered by the insurance, Rules 18 to 24 set out the general exclusions and limitations, Rule 26 provides the requirements for classification and condition surveys, and Rule 28 addresses general terms and conditions for recovery of claims. The 2005/2006 Club Rules also contain provisions on double insurance (Rule 23), claims handling (Rules 30 and 31), cessation of membership (Rule 35), cessation of insurance of individual vessels (Rule 36), deduction and set-off (Rule 40), and assignment and subrogation (Rules 41 and 42).

The arbitration clause is found in Rule 47 of the 2005/2006 Club Rules:

47 Dispute resolution, Adjudication

i. in the event of any difference or dispute whatsoever, between or affecting a Member and the Club and concerning the insurance afforded by the Club under these rules or any amounts due from the Club to the Member or the Member to the Club, such difference or dispute shall in the first instance be referred to adjudication by the Directors. That adjudication shall be on the basis of documents and written submissions alone. Notwithstanding the terms of this Rule **47i,** the Managers shall be entitled to refer any difference or dispute to arbitration in accordance with sub-paragraph **ii** below without prior adjudication by the Directors.

ii. If the Member does not accept the decision of the Directors, or if the Managers, in their absolute discretion, so decide, the difference or dispute shall be referred to the arbitration of three arbitrators, one to be appointed by each of the parties and the third by the two arbitrators so chosen, in London. The submission to arbitration and all the proceedings therein shall be subject to the provisions of the English Arbitration Act, 1996 and the schedules thereto or any statutory modifications or re-enactment thereof.

iii. No Member shall be entitled to maintain any action, suit or other legal proceedings against the Club upon any such

difference or dispute unless and until the same has been submitted to the Directors and they shall have given their decision thereon, or shall have made default for three months in so doing; and, if such decision be not accepted by the Member or such default be made, unless and until the difference or dispute shall have been referred to arbitration in the manner provided in this Rule, and the Award shall have been published; and then only for such sum as the Award may direct to be paid by the Club. And the sole obligation of the Club to the Member under these Rules or otherwise howsoever in respect of any disputed claim made by the Member shall be to pay such sum as may be directed by such an Award.

iv. In any event no request for adjudication by the Member shall be made to the Directors in respect of any difference or dispute between, or matter affecting, the Member and the Club more than two years from the date when that dispute, difference or matter arose unless, prior to the expiry of this limitation period, the Managers have agreed in writing to extend the same.

v. Nothing in this Rule **47** including paragraph **i**, or in any other Rule or otherwise shall preclude the Club from taking any legal action of whatsoever nature in any jurisdiction at its absolute discretion in order to pursue or enforce any of its rights whatsoever and howsoever arising including but not limited to: -

a. Recovering sums it considers to be due from the Member to the Club;
b. Obtaining security for such sums; and/or
c. Enforcement of its right of lien whether arising by law or under these rules.

vi. These rules and any contract of insurance between the Club and the Member shall be governed by and construed in accordance with English law.[147] (Emphasis in the original)

Under Rule 47, any dispute concerning the insurance afforded by Steamship must first be brought by a claiming member to

[147] *Id*. at 855 and 1592.

the Directors for adjudication. If this member disagrees with the decision of the Director, the dispute must be referred to arbitration in London. Despite the member's disagreement, the Managers of Steamship may refer the dispute to arbitration without adjudication of the Directors. This procedure must be complied with before the member can pursue legal proceedings against Steamship.

There is no ambiguity in the terms and clauses of the Certificate of Entry Acceptance. Contrary to the ruling of the Court of Appeals, the Certificate clearly incorporates the entire Club Rules—not only those provisions relating to cancellation and alteration of the policy.[148]

"[W]hen the text of a contract is explicit and leaves no doubt as to its intention, the court may not read into it any other intention that would contradict its plain import."[149]

The incorporation of the Club Rules in the insurance policy is without any qualification. This includes the arbitration clause even if not particularly stipulated. A basic rule in construction is that the entire contract, and each and all of its parts, must be read together and given effect, with all its clauses and provisions harmonized with one another.[150]

II.C

The Court of Appeals ruled that the arbitration agreement in the 2005/2006 Club Rules is not valid because it was not signed by the parties.

In domestic arbitration, the formal requirements of an arbitration agreement are that it must "be in writing and subscribed by the party sought to be charged, or by his lawful

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[148] *Id*. at 106.

[149] *Sea-Land Service, Inc. v. Court of Appeals,* 383 Phil. 887, 896 (2000) [Per *J*. Ynares-Santiago, First Division] citing *Cruz v. Court of Appeals*, 354 Phil. 1036 (1998) [Per *J*. Panganiban, First Division].

[150] *National Union Fire Insurance Co. of Pittsburg v. Stolt-Nielsen Phil., Inc.,* 263 Phil. 634, 640 (1990) [Per *J*. Melencio-Herrera, Second Division].

agent."[151] In international commercial arbitration,[152] it is likewise required that the arbitration agreement must be in writing.

An arbitration agreement is in writing if it is contained (1) in a document signed by the parties, (2) in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or (3) in an exchange of statements of claim and defense in which the existence of an agreement is alleged by a party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.[153]

In *BF Corp. v. Court of Appeals,*[154] one (1) of the parties denied the existence of the arbitration clause on the ground that it did not sign the Conditions of Contract that contained the clause. This Court held that the arbitration clause was nonetheless binding because the Conditions of Contract were expressly made an integral part of the principal contract between the parties. The formal requirements of the law were deemed

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[151] Rep. Act No. 876, Sec. 4 in relation to Rep. Act No. 9285, Sec. 32.

[152] UNCITRAL Model Law on International Commercial Arbitration, Chapter I, Art. 1(3) provides:

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

[153] UNCITRAL Model Law on International Commercial Arbitration, Chapter II, Art. 7.

[154] 351 Phil. 507 (1998) [Per *J.* Romero, Third Division].

complied with because "the subscription of the principal agreement effectively covered the other documents incorporated by reference [to them]."[155] In arriving at this ruling, this Court explained:

> 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.[156] (Emphasis supplied)

Thus, an arbitration agreement that was not embodied in the main agreement but set forth in another document is binding upon the parties, where the document was incorporated by reference to the main agreement. The arbitration agreement contained in the Club Rules, which in turn was referred to in the Certificate of Entry and Acceptance, is binding upon Sulpicio even though there was no specific stipulation on dispute resolution in this Certificate.

Furthermore, as stated earlier, Sulpicio became a member of Steamship by the very act of making a contract of insurance with it. The Certificate of Entry and Acceptance issued by Steamship states that "[its] name has been entered in the Register of Members of the Club as a Member."[157] Sulpicio admits its membership and the entry of its vessels to Steamship.

Rule 8(v) of the 2005/2006 Club Rules provides that:

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[155] *Id*. at 524.

[156] *Id*. at 523.

[157] *Rollo* (G.R. No. 196072), p. 130.

Each Member or other person whose application for insurance or reinsurance is accepted shall be deemed to have agreed both for itself and its successors and each of them that both it and they and each and all of them will be subject to and bound by and will perform their obligations under the Rules, Act and By(e)-Laws of the Club and any contract of insurance with the Club.

Sulpicio's agreement to abide by Steamship's Club Rules, including its arbitration clause, can be reasonably inferred from its submission of an application for entry of its vessels to Steamship "subject to the Rules, receipt of which we acknowledge."[158]

The ruling of this Court in *Associated Bank v. Court of Appeals*[159] is applicable by analogy to this case.

In that case, plaintiffs sought to recover the amount of 16 checks that were honored by Associated Bank despite the apparent alterations in the name of the payee. Associated Bank filed a Third-Party Complaint against Philippine Commercial International Bank, Far East Bank & Trust Company, Security Bank and Trust Company, and Citytrust Banking Corporation for reimbursement, contribution, and indemnity. This Complaint was based on their being the collecting banks and by virtue of their bank guarantee for all checks sent for clearing to the Philippine Clearing House Corporation (PCHC). The trial court dismissed the Third-Party Complaint for lack of jurisdiction, citing Section 36 of the Clearing House Rules and Regulations of the PCHC, which provides for arbitration. This Court, in affirming the dismissal, held:

Under the rules and regulations of the Philippine Clearing House Corporation (PCHC), *the mere act of participation of the parties concerned in its operations in effect amounts to a manifestation of agreement by the parties to abide by its rules and regulations. As a consequence of such participation, a party cannot invoke the jurisdiction of the courts over disputes and controversies which fall under the PCHC Rules and Regulations without first going through*

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[158] *Id*. at 809.

[159] 343 Phil. 145 (1994) [Per *J*. Kapunan, First Division].

the arbitration processes laid out by the body. Since claims relating to the regularity of checks cleared by banking institutions are among those claims which should first be submitted for resolution by the PCHC's Arbitration Committee, petitioner Associated Bank, having voluntarily bound itself to abide by such rules and regulations, is estopped from seeking relief from the Regional Trial Court on the coattails of a private claim and in the guise of a third party complaint without first having obtained a decision adverse to its claim from the said body. It cannot bypass the arbitration process on the basis of its averment that its third party complaint is inextricably linked to the original complaint in the Regional Trial Court.

. . . . . .

Section 36.6 is even more emphatic:

> 36.6 The fact that a bank participates in the clearing operations of PCHC shall be deemed its written and subscribed consent to the binding effect of this arbitration agreement as if it had done so in accordance with Section 4 of the Republic Act No. 876 otherwise known as the Arbitration Law.

Thus, not only do the parties manifest by mere participation their consent to these rules, but such participation is deemed (their) written and subscribed consent to the binding effect of arbitration agreements under the PCHC rules. Moreover, a participant subject to the Clearing House Rules and Regulations of the PCHC may go on appeal to any of the Regional Trial Courts in the National Capital Region where the head office of any of the parties is located only after a decision or award has been rendered by the arbitration committee or arbitrator on questions of law.[160] (Emphasis supplied, citation omitted)

This Court held that mere participation by the banks in the clearing operations of the PCHC manifest their consent to the PCHC Rules, including the binding effect of the arbitration agreements under these Rules.

In this case, by its act of entering its fleet of vessels to Steamship and accepting without objection the Certificate of Entry and Acceptance covering its vessels, Sulpicio manifests its consent to be bound by the Club Rules. The contract between

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[160] *Id*. at 152–154.

Sulpicio and Steamship gives rise to reciprocal rights and obligations. Steamship undertakes to provide protection and indemnity cover to Sulpicio's fleet. On the other hand, Sulpicio, as a member, agrees to observe Steamship's rules and regulations, including its provisions on arbitration.

III.A

The Court of Appeals' finding that there was no proof that Sulpicio was given a copy of the 2005/2006 Club Rules is contradicted by the evidence on record.

In its Comment, Sulpicio contends that it "was never given or sent a copy" of the Rulebook as stated in the affidavits of its Executive Vice President, Atty. Eusebio S. Go and its Safety and Quality Assurance Manager, Engr. Ernelson P. Morales.[161] It also quoted a portion of the Affidavit of its Executive Vice President and Chief Executive Officer, Carlos S. Go, who declared that "[Sulpicio] and Steamship have not signed any arbitration agreement" and "[n]o such agreement exists."[162]

Sulpicio cannot feign ignorance of the arbitration clause since it was already charged with notice of the Club Rules due to an appropriate reference to it in the Certificate of Entry and Acceptance. Assuming its contentions were true that it was not furnished a copy of the 2005/2006 Club Rules, by the exercise of ordinary diligence, it could have easily obtained a copy of them from Pioneer Insurance or Seaboard-Eastern.

In any case, Sulpicio's bare denials cannot succeed in light of the preponderance of evidence submitted by Steamship.

The Affidavit[163] dated August 29, 2007 of Jonathan Andrews, Director and Head of Underwriting of the Eastern Syndicate of the Managers of Steamship and in charge of Steamship's Far East membership, including the Philippines, stated:

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[161] *Rollo* (G.R. No. 196072), pp. 2186–2188.

[162] *Id.* at 2188.

[163] *Id*. at 797–807.

4. The contract of insurance between the Club and a Member is contained in, and evidenced by:

   a) The Rules of the Club for whichever Class or Classes the vessel is entered, for the time being in force; and

   b) A Certificate of Entry.

. . . . . .

5. The Club's policy year runs from noon on 20th February of each year until noon on 20th February of the year following . . . The Rule book is published on an annual basis prior to the commencement of the Policy year to which it applies. Although the Rules can be amended pursuant to Rule 45, the dispute resolution provisions of the Rules have provided for arbitration in London since well before the Plaintiff's entry in the Club.

. . . . . .

10. In addition, it is quite clear that throughout their lengthy membership of the Club, the Plaintiffs were aware of, and relied upon, the terms of the Club's Rules. Produced and shown to me, marked "JHDA 4", is a copy of a letter[164] from the Plaintiffs, dated 4th June, 1993, seeking a refund of premium for the "SURIGAO PRINCESS" on the grounds that the vessel was laid up. That letter's enclosures consist of:

    (a) The Club's printed form for returns of premium when a vessel is laid-up . . . signed by Mr. Carlos S. Go on behalf of the Plaintiffs;

    (b) A photocopy of the relevant provision in the Club's Rules dealing with laid-up returns, Rule 29; and

    (c) A Certificate from the Philippines Port Authority . . .

The fact that Sulpicio's application for a laid-up return attached a photocopy of the Club's Rule book demonstrates both that this was physically in their possession and that they were familiar with its contents.

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[164] *Id*. at 863–866.

> 11. Throughout the lengthy period of this entry, as might be anticipated, there was a considerable volume of correspondence between the Plaintiffs and the Club via the former's brokers. Examples of that correspondence are produced and shown to me, marked "JHDA 5". As the Court will note from that correspondence, it contains numerous and frequent references to various of the Club's Rules, e.g.:
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> • Rule 22, dealing with double insurance
>
> • Rule 25 xix, dealing with towage
>
> • Rule 23 i, dealing with classification
>
> • Rule 23 v b and c, dealing with defect warranties
>
> • Rule 23 iv, dealing with safety audits.
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> . . . . . .
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> 12. The fact that Plaintiffs possessed and were fully conversant with the Club's Rules is most clearly demonstrated by the correspondence provided and shown to me, marked "JHDA 6". After the grounding of the "PRINCESS OF THE PACIFIC", due to the concerns arising out of this casualty, the Club initially reserved cover pending further investigation and required an independent audit of the Plaintiff's Safety Management System. When this decision was conveyed to the Plaintiffs via their brokers, Seaboard-Eastern, they replied:
>
> As expected, Carlos Go was so upset and expressed disappointment when the undersigned spoke to him about the report of Noble Denton and the club's decision to suspend any action on the claim especially so since owners believe the findings of the surveyors to the club are inaccurate and after relating such findings to the club rules owners find no basis for club's decision to suspend action on the claim.[165]

Roderick Gil Narvacan, Vice-President of the Hull Unit of Pioneer Insurance which handled Sulpicio's account, also narrated in his Affidavit[166] dated September 4, 2007:

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[165] *Id*. at 798–802.

[166] *Id*. at 914–915.

7. I know for a fact that Sulpicio received a copy of the Club's Rule Book and had full knowledge of the Club's Rules during the length of time that it was a member of the Club.

8. [I]n all Entry Forms signed and submitted by Sulpicio to the Club throughout its years of membership in the Club, Sulpicio always acknowledged that it received a copy of Club's Rule Book. A sample of Sulpicio's duly signed Entry Form submitted to the Club on 6 February 1997 is hereto attached as Annex "1."

9. The Company, through my department, also makes it a point to remind all the Club's Members including Sulpicio to familiarize themselves with the Club's Rulebook as the rules therein provided are applied to all Club related matters including claims procedures. A copy of Ms. May Valles' email[167] to Sulpicio dated 27 August 2002 is hereto attached as Annex "2" and her letter[168] to Sulpicio dated 17 October 2002 is hereto attached as Annex "3." Ms. Valles was a former member of the Company's Hull Department and in both written communications, she reminded Sulpicio through its Executive Vice-President and CFO Mr. Carlos S. Go of certain Club Rules such as the prescriptive period to claim for lay-up premium refund.

10. In reply to the 27 August 2002 email, Mr. Carlos S. Go, by a 28 August 2002 email[169] to Ms. Valles, explained his understanding of the provision on the prescriptive period to claim for lay-up premium refund under the Club's Rules, thereby clearly showing that Sulpicio was aware of the Club's Rules. A copy of the 28 August 2002 email of Mr. Go is hereto attached as Annex "4."

11. To further prove Sulpicio's knowledge of Club's Rules, I hereto attach the following copies of letters from Sulpicio addressed to the Company with attached letter by Sulpicio to the Club:

- Letter-request[170] for refund of lay-up premiums for the vessel M/V Surigao Princess dated 4 June 1993 as Annex "5";

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[167] *Id*. at 921.

[168] *Id*. at 922.

[169] *Id*. at 923.

[170] *Id*. at 924–925.

- Letter-request[171] for refund of lay-up premiums for the vessel M/V Manila Princess dated 10 June 1998 as Annex "6";
- Letter-request[172] for refund of lay-up premiums for the vessel M/V Filipina Princess dated 21 June 1999 as Annex "7";
- Letter-request[173] for refund of lay-up premiums for the vessel M/V Manila Princess dated 17 May 2001 as Annex "8"; and
- Letter-request[174] for refund of lay-up premiums for the vessel M/V Nasipit Princess dated 16 August 2002 as Annex "9";

In each of the above letters, Sulpicio declared to both the Company and the Club that "(w)e shall therefore be glad to receive a credit note for the return of premium under the Rules of the Association."[175] (Emphasis in the original)

Finally, Elmer Felipe, Manager of Marine Department of Seaboard-Eastern in charge of Sulpicio's account, also narrated:

11. As insurers for the Hull & Machinery of Sulpicio's Fleet, the Company, through my department, assisted Sulpicio in regard to its [Protection and Indemnity] cover by sending copy of the Club's Rulebook while it was an active Member of the Club.

12. By way of example, in the year 2002, the Company sent five (5) copies of the Club's Rulebook to Mr. Carlos S. Go, Executive Vice-President and CEO of Sulpicio as evidenced by a transmittal letter dated 11 April 2002 duly signed by the Company's First Vice-President Joli Co-Wu. A copy of said transmittal letter[176] dated 11 April 2002 is hereto attached as Annex "1."

13. The other transmittal letters proving distribution of the Club's Rulebook to Sulpicio in its other years of membership with the Club

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[171] *Id*. at 926–927.

[172] *Id*. at 928–929.

[173] *Id*. at 930.

[174] *Id.* at 931–932.

[175] *Id*. at 914–915.

[176] *Id.* at 936.

were among those discarded by the Company when it moved . . . to a smaller office . . .

14. [Sulpicio is presumed to] know the Club's Rules as it was provided with copies of the Rulebook on an annual basis.

15. In fact, in a 8 May 2004 letter addressed to the Company, Sulpicio claimed for refund of lay-up premiums from the Club in connection with the vessel M/V Princess of the World and in Sulpicio's letter to the Club attached to the said 8 May 2004 letter, Sulpicio declared that "(w)e shall therefore be glad to receive a credit note for the return of premium under the Rules of the Association." This was followed by a 8 December 2004 letter for refund of lay-up returns for the vessel M/V Princess of the World where Sulpicio also invoked the Club Rules. A copy of the 8 May 2004 letter[177] with attachment is hereto attached as Annex "2" and a copy of the 8 December 2004 letter[178] is hereto attached as Annex "3."

. . . . . .

18. More importantly, after the Club denied cover for the vessel M/V Princess of the World and prior to the date when the termination of Sulpicio's entry in the Club took effect, our EVP, Mr. Jose G. Banzon, Jr. sent an email[179] dated 30 November 2005 to Mr. Carlos Go reminding Sulpicio of the remedy of voluntary arbitration under Rule 47 of the Club's Rulebook and attaching a copy of Rule 47. Copies of these documents are attached as Annex "4."[180]

These foregoing affidavits and the attached supporting documents consistently declared that Sulpicio was given copies of the Rulebook on an annual basis and had even invoked its provisions in making a claim from Steamship. Sulpicio's previous letters to Steamship referring to provisions of the Club Rules show its knowledge. Sulpicio was also reminded of the

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[177] *Id*. at 937–938.

[178] *Id*. at 939–940.

[179] *Id*. at 941–942.

[180] *Id*. at 933–935.

arbitration clause during the negotiations preceding the institution of the present case.

"[A] party is not relieved of the duty to exercise the ordinary care and prudence that would be exacted in relation to other contracts. The conformity of the insured to the terms of the policy is implied from [its] failure to express any disagreement with what is provided for."[181] The agreement to submit all disputes to arbitration is a long standing provision in the Club Rules. It was incumbent upon Sulpicio to familiarize itself with the Club Rules, under the presumption that a person takes due care of its concerns. Being a member of Steamship for 20 years,[182] it has been bound by its Rules and has been expected to abide by them in good faith.

In *Development Bank of the Philippines v. National Merchandising Corp.*,[183] the parties, who were acute businessmen of experience, were presumed to have assented to the assailed documents with full knowledge:

> The principal stockholders and officers of NAMERCO, particularly the Sycips who co-signed the promissory notes in question, were, as the lower court found, businessmen of experience and intelligence . . . We might say — paraphrasing *Tin Tua Sia vs. Yu Biao Sontua*, 56 Phil. 707 — that they being of age and businessmen of experience, it must be presumed that they had acted with due care and to have signed the documents in question with full knowledge of their import and the obligations they were assuming thereby; that this presumption of law may not be overcome by the mere testimony of the obligor or obligors; that, to permit a party, when, sued upon a contract, to admit that he signed it but to deny that it expresses the agreement he had made, or to allow him to admit that he signed it solely on the verbal assurance given by one party, however high his station may be, that he would not be held liable thereon, would destroy the value of all contracts. Indeed, it would be disastrous to give more weight and

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[181] *New Life Enterprises v. Court of Appeals,* G.R. No. 94071, March 31, 1992, 207 SCRA 669, 676 [Per *J*. Regalado, Second Division].

[182] *Rollo* (G.R. No. 196072), p. 958.

[183] 148-B Phil. 310 (1971) [Per *J*. Dizon, First Division].

reliability to the self-serving testimony of a party bound by the contract than to the contents thereof. *Verba volant, scripta manent*.[184]

Sulpicio is estopped from denying knowledge of the Rulebook by its own acts and representations, as evidenced by its various letters to Steamship, showing its familiarity with the Rulebook and its provisions.

"In estoppel, a person, who by his [or her] deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude or course of conduct that thereby causes loss or injury to another."[185] It further bars a party from denying or disproving a fact, which has become settled by its acts.[186]

Hence, this Court finds a preponderance of evidence showing that Sulpicio was given a copy and had knowledge of the 2005/2006 Club Rules. Moreover, the 2005/2006 Club Rules' provision on arbitration is valid and binding upon Sulpicio.

III.B

The Regional Trial Court should suspend proceedings to give way to arbitration. Even if there are other defendants who are not parties to the arbitration agreement, arbitration is still proper.

Republic Act No. 9285 was approved on April 2, 2004 and was the controlling law at the time the original and amended complaints were filed.

Section 25 of Republic Act No. 9285 is explicit that:

> [W]here action is commenced by or against multiple parties, one or more of whom are parties to an arbitration agreement, the court shall refer to arbitration those parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement.

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[184] *Id*. at 331–332.

[185] *Cruz v. Court of Appeals,* 354 Phil. 1036, 1054 (1998) [Per *J*. Panganiban, First Division].

[186] *Roblett Industrial Construction Corporation v. Court of Appeals*, 334 Phil. 62 (1997) [Per *J*. Bellosillo, First Division].

Rule 4.7 of the Special Rules on Alternative Dispute Resolution[187] (2009 Special ADR Rules) further expresses:

> The court shall not decline to refer some or all of the parties to arbitration for any of the following reasons:
>
> a. Not all of the disputes subject of the civil action may be referred to arbitration;
>
> b. Not all of the parties to the civil action are bound by the arbitration agreement and referral to arbitration would result in multiplicity of suits;
>
> c. The issues raised in the civil action could be speedily and efficiently resolved in its entirety by the court rather than in arbitration;
>
> d. Referral to arbitration does not appear to be the most prudent action; or
>
> e. The stay of the action would prejudice the rights of the parties to the civil action who are not bound by the arbitration agreement.

The present rule on multiple parties manifests due regard to the policy of the law in favor of arbitration. In light of the express mandate of Republic Act No. 9285 and the subsequent 2009 Special ADR Rules, this Court's ruling in *European Resources and Technologies, Inc. v. Ingenieuburo Birkhann + Nolte, Ingeniurgesellschaft Gmbh*[188] is deemed abrogated.

Notably, the Regional Trial Court did not rule on whether or not a valid and existing arbitration agreement existed between the parties. It merely stated in its Order, citing *European Resources*, that:

> ["]Even if there is an arbitration clause, there are instances when referral to arbitration does not appear to be the most prudent action. The object of arbitration is to allow the expeditious determination of a dispute. Clearly, the issue before us could not be speedily and

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[187] A.M. No. 07-11-08-SC (2009).

[188] 479 Phil. 114 (2004) [Per *J.* Ynares-Santiago, First Division].

efficiently resolved in its entirety if we allow simultaneous arbitration proceedings and trial, or suspension of trial pending arbitration."

Moreover, it is noted that defendants Seaboard-Eastern Insurance Co. Inc. and Pioneer Insurance and Surety Corporation already filed their respective Answers to the second amended complaint.[189]

On this basis, the Regional Trial Court denied Steamship's Motion to Dismiss and/or to Refer Case to Arbitration and directed it to file an answer.

This Court finds that the Regional Trial Court acted in excess of its jurisdiction.

Where a motion is filed in court for the referral of a dispute to arbitration, Section 24 of Republic Act No. 9285 ordains that the dispute shall be referred "to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed."

Thus, the Regional Trial Court went beyond its authority of determining only the issue of whether or not there was a valid arbitration agreement between the parties when it denied Steamship's Motion to Dismiss and/or to Refer Case to Arbitration solely on the ground that it would not be the most prudent action under the circumstances of the case. The Regional Trial Court went against the express mandate of Republic Act No. 9285. Consequently, the Court of Appeals erred in finding no grave abuse of discretion on the part of the trial court in denying referral to arbitration.

IV

In G.R. No. 208603, Sulpicio contends that Steamship's acts were contumacious because they were intended to defeat Civil Case No. 07-577 and oust the Regional Trial Court of its jurisdiction, without the approval of this Court.

Sulpicio further contends that there was no valid off-setting of the amount of US$69,570.99 from the refund payable to it

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[189] *Rollo* (G.R. No. 196072), p. 301.

in the *Unabia* case because the issue on the propriety of the referral to arbitration had yet to be resolved by this Court.[190] It adds that the "arbitration – anti-suit injuction" cost was not a debt of Sulpicio but a unilateral charge arising from an arbitration that it had not participated in, or was enforceable in the Philippines.[191]

In its Comment/Opposition[192] to the Petition for Indirect Contempt, Steamship contends that it "exercised its right to set-off in good faith"[193] and that the amount set-off represents costs of obtaining the Anti-Suit Injunction awarded to it by the English Commercial Court and are not arbitration costs as contended by Sulpicio.[194] It also holds that Sulpicio's prayer for restitution of the offset amount was improper in a petition for indirect contempt.[195]

Steamship emphasizes that even before the denial of its Motion to Dismiss in Civil Case No. 07-577 on July 11, 2008, it already commenced arbitration in London[196] on July 31, 2007.[197] It had also "obtained a permanent Anti-Suit Injunction [with interim award for costs][198] from the English Commercial Court on 4th April 2008[.]"[199] The April 4, 2008 Order enjoined Sulpicio from proceeding with Civil Case No. 07-577 and to refer the dispute to arbitration in London.[200]

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[190] *Rollo* (G.R. No. 208603), p. 365.

[191] *Id*. at 370.

[192] *Id*. at 42–61.

[193] *Id*. at 42.

[194] *Id*. at 45.

[195] *Id*. at 57–58.

[196] *Id*. at 55.

[197] *Id*. at 43.

[198] *Id*. at 44.

[199] *Id*. at 43.

[200] *Id*. at 92–93.

Steamship further avers that "Sulpicio was served a copy of an Order to file Claims Submissions in the London arbitration and a copy of the Anti-Suit Injunction but it refused to participate in the London Arbitration."[201] It also did not pay the costs of the Anti-Suit Injunction. Sulpicio refused "service of all orders, notices, pleadings and documents related to the London arbitration and the Commercial Court proceedings."[202]

Steamship adds that in 2012, Sulpicio filed a claim for reimbursement of US$96,958.47 representing passenger liabilities arising from the capsizing of one (1) of Sulpicio's fleet in 1998.[203] Pursuant to Rule 32 of the Club Rules for the 1998 policy, which gave Steamship "the right to make deduction 'from any claims . . . due to a Member' of 'any liabilities of such Member to the Club,'"[204] Steamship set-off the costs awarded by the English Commercial Court from the amount reimbursed to Sulpicio. Sulpicio's brokers and lawyers were informed of the set-off through an email dated December 3, 2012.[205]

Steamship contends that there was no legal impediment when it initiated arbitration proceedings in London.[206] The action was taken in good faith to preserve its rights while defending its position that Sulpicio's filing of Civil Case No. 07-577 constituted a breach of the Club Rules.[207] On the other hand, Sulpicio's acts were far from desirable for it did not only fail to participate in the London arbitration proceedings but also evaded service of all notices "so that it could feign ignorance of the existence of arbitration proceedings."[208]

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[201] *Id*. at 43–44.

[202] *Id*. at 44.

[203] *Id*.

[204] *Id*. at 44–45.

[205] *Id*. at 45.

[206] *Id*. at 55.

[207] *Id*. at 57.

[208] *Id*. at 53.

This Court finds Sulpicio's arguments to be untenable.

Steamship's commencement of arbitration even before the Regional Trial Court had ruled on its motion to dismiss and suspend proceedings does not constitute an "improper conduct" that "impede[s], obstruct[s] or degrade[s] the administration of justice."[209]

In *Heirs of Trinidad de Leon vda. de Roxas v. Court of Appeals*,[210] this Court explained the concept of contempt of court:

> Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigant or their witnesses during litigation . . .
>
> Contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice . . .
>
> This Court has thus repeatedly declared that the power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice . . . [211]

The court's contempt power should be exercised with restraint and for a preservative, and not a vindictive, purpose. "Only in cases of clear and contumacious refusal to obey should the power be exercised."[212]

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[209] *Id*. at 4.

[210] 466 Phil. 697 (2004) [Per *J*. Carpio, First Division] citing *Halili v. CIR,* 220 Phil. 507 (1985).

[211] *Id*. at 711–712.

[212] *Bank of the Philippine Islands v. Calanza,* 647 Phil. 507-517 (2010) [Per *J*. Nachura, Second Division].

In *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*,[213] this Court held that:

> There is no question that in contempt the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered. Where the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character. A person should not be condemned for contempt where he contends for what he believes to be right and in good faith institutes proceedings for the purpose, however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.[214] (Citations omitted)

In *Lim-Lua v. Lua,*[215] the father's deferral in giving monthly support *pendente lite* granted by the trial court was held not contumacious, considering that "he had not been remiss in actually providing for the needs of his children." It was also taken into account that he "believed in good faith that the trial and appellate courts, upon equitable grounds, would allow him to offset the substantial amounts he had spent or paid directly to his children." This Court explained:

> Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose. The good faith, or lack of it, of the alleged contemnor should be considered. [216]

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[213] 672 Phil. 1 (2011) [Per *J.* Bersamin, First Division].

[214] *Id*. at 16.

[215] 710 Phil. 211 (2013) [Per *J.* Villarama, Jr., First Division].

[216] *Id.* at 232–233.

This Court finds no clear and contumacious conduct on the part of Steamship. It does not appear that Steamship was motivated by bad faith in initiating the arbitration proceedings. Rather, its act of commencing arbitration in London is but a bona fide attempt to preserve and enforce its rights under the Club Rules.

There was no legal impediment at the time Steamship initiated London arbitration proceedings. Steamship commenced arbitration on July 31, 2007 even before the Regional Trial Court denied its Motion to Dismiss and/or Refer Case to Arbitration on July 11, 2008. There was no order from the Regional Trial Court enjoining Steamship from initiating arbitration proceedings in London. Besides, the 2009 Special ADR Rules specifically provided that arbitration proceedings may be commenced or continued and an award may be made, while the motion for the stay of civil action and for referral to arbitration is pending resolution by the court.[217]

This Court notes that while the arbitration proceeding was commenced as early as July 31, 2007, it is only six (6) years later that Sulpicio filed its Petition[218] to cite Steamship for indirect contempt. Sulpicio cannot invoke lack of knowledge of the London arbitration proceedings due to several reasons. First, it received and replied[219] to the notice of commencement of arbitration proceedings[220] dated July 31, 2007. Second, Steamship presented evidence showing Sulpicio's refusal to receive any notices, orders, or communications related to the arbitration proceedings. Lastly, the pendency of the London arbitration was made known to the Court of Appeals and this Court through Steamship's petitions. Sulpicio's belated filing of its Petition, only after Steamship has deducted from the refund due it the alleged "arbitration costs," indicates its lack of sincerity and good faith.

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[217] A.M. No. 07-11-08-SC, Rule 4.8.

[218] The petition was received by the Court on September 6, 2013.

[219] *Rollo* (G.R. No. 196072), pp. 434–435.

[220] *Id*. at 432–433.

Finally, this Court finds Sulpicio's claim for damages to be improperly raised. It should be addressed in an ordinary civil action. Its petition for indirect contempt is not the proper action to determine the validity of the set-off and to make a factual determination relating to the propriety of ordering restitution.

WHEREFORE, the Petition for Review in **G.R. No. 196072** is **GRANTED.** The Decision dated November 26, 2010 of the Court of Appeals in CA-G.R. SP No. 106103 and the Order dated July 11, 2008 of the Regional Trial Court, Branch 149, Makati City in Civil Case No. 07-577 are **SET ASIDE.** The dispute between Sulpicio Lines, Inc. and Steamship Mutual Underwriting (Bermuda) Limited is referred to arbitration in London in accordance with Rule 47 of the 2005/2006 Club Rules.

The Petition for Indirect Contempt in **G.R. No. 208603** is **DISMISSED** for lack of merit**.**

SO ORDERED.

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

Gesmundo, J., on official leave.

FIRST DIVISION

[G.R. No. 201271. September 20, 2017]

ROBERTO A. TORRES, IMMACULADA TORRES-ALANON, AGUSTIN TORRES, and JUSTO TORRES, JR., *petitioners, vs.* **ANTONIA F. ARUEGO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; ONCE A DECISION HAS ATTAINED FINALITY, NOT EVEN THE SUPREME COURT CAN CHANGE THE TRIAL COURT'S DISPOSITION ABSENT ANY SHOWING THAT THE CASE FALLS UNDER ONE OF THE RECOGNIZED EXCEPTIONS; CASE AT BAR.— [W]hat petitioners in the present case seek is an order from the court to allow them to present evidence with regard to the properties comprising the estate of Aruego and the heirs who are to share in the inheritance. This is, in effect, an appeal from the June 15, 1992 Decision which has long become final and executory, and not from an order of execution which is yet to be carried out, thru a Project of Partition still to be submitted to and approved by the court. x x x Jurisprudence holds that it is the dispositive portion of the decision that controls for purposes of execution. If petitioners believed that the dispositive portion of the June 15, 1992 Decision is questionable, they should have filed a motion for reconsideration or appeal before the said Decision became final and executory. But x x x, while petitioners filed a Motion for Partial Reconsideration, they did not raise therein the supposed error of the court in declaring the properties enumerated in the dispositive portion of the Decision as comprising the estate of Aruego. They also failed to appeal the Decision and thereby lost the chance to question the Decision and seek a modification or amendment thereof. The inevitable result of their failure to timely question the Decision is for them to be bound by the pronouncements therein. To reiterate, once a decision has attained finality, "not even this Court could have changed the trial court's disposition absent any showing that the case fell under one of the recognized exceptions." x x x [T]his case does not fall under any of the recognized exceptions.

2. ID.; ID.; JURISDICTION; THE ACTIVE PARTICIPATION OF A PARTY BEFORE A COURT IS TANTAMOUNT TO RECOGNITION OF THAT COURT'S JURISDICTION AND WILLINGNESS TO ABIDE BY THE COURT'S RESOLUTION OF THE CASE.— The records x x x disclose that petitioners actively participated in the trial of the case. They presented and formally offered their own evidence but nothing was presented to rebut respondent's evidence on the properties comprising the estate of Aruego. In short, petitioners

had ample opportunity to present their countervailing evidence during trial and it is now much too late in the day to present the evidence that they should have presented way back then. It is settled that the active participation of a party before a court is tantamount to recognition of that court's jurisdiction and willingness to abide by the court's resolution of the case.

3. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; THE NEGLIGENCE AND MISTAKES OF COUNSEL ARE BINDING ON THE CLIENT; RATIONALE.— Petitioners pass the blame to their counsels of record in the court below for their lost appeal. This is unacceptable. Nothing is more settled than the rule that the negligence and mistakes of counsel are binding on the client. We explained in *Bejarasco, Jr. v. People* that "[t]he rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself."

4. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; IT IS NOT THE CAPTION OF THE PLEADING BUT THE ALLEGATIONS THEREIN THAT DETERMINE THE NATURE OF THE ACTION.— Although the Complaint of respondent is captioned "For: Compulsory Recognition and Enforcement of Successional Rights", a close reading of the averments therein would indubitably show that the determination of the estate of Aruego and the participation of respondent in the inheritance are among the issues raised in her Complaint. x x x It has been consistently held that it is not the caption of the pleading but the allegations therein that are controlling. In *Leonardo v. Court of Appeals*, the Court said: "it is not the caption of the pleading but the allegations that determine the nature of the action. The court should grant the relief warranted by the allegations and the proof even if no such relief is prayed for."

APPEARANCES OF COUNSEL

Leonard Peejay V. Jurado Law Office for petitioners.
Terence John G. Dawang for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] under Rules 45 of the Rules of Court seeks to annul and set aside the September 12, 2011 Resolution[2] and March 26, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 113405 which dismissed petitioners' Roberto A. Torres, Immaculada Torres-Alanon, Agustin Torres and Justo Torres, Jr. (petitioners) Petition for *Certiorari* for lack of merit and denied their Motion for Reconsideration, respectively.

The Factual Antecedents

On March 7, 1983, Antonia F. Aruego (Antonia) and Evelyn F. Aruego (Evelyn), represented by their mother and guardian *ad litem* Luz M. Fabian, filed a Complaint[4] with the Regional Trial Court (RTC) of Manila for "Compulsory Recognition and Enforcement of Successional Rights" against Jose E. Aruego, Jr. and the five minor children of Gloria A. Torres, represented by their father and guardian *ad litem* Justo M. Torres, Jr. (collectively defendants). The Complaint was docketed as Civil Case No. 83-16093.

In their Complaint, Antonia and Evelyn alleged that they are the illegitimate children of the deceased Jose M. Aruego (Aruego) who had and maintained an amorous relationship with Luz Fabian, their mother, up to the demise of Aruego on March 30, 1982.

Alleging further that they are in continuous possession of the status of children of the deceased Aruego and not being aware of any intestate proceeding having been filed in court

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[1] *Rollo*, pp. 18-77.

[2] *Id*. 78-82; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Amelita G. Tolentino and Rodil V. Zalameda.

[3] *Id*. 83-84.

[4] *Id*. at 91-97.

for the settlement of the estate of Aruego, they have thus filed this complex action for compulsory acknowledgment and participation in said inheritance. In paragraph 10 of their Complaint, they enumerated the following properties left by the deceased Aruego, so far as known to them:

> 10. The deceased Jose M. Aruego left, among other things, so far as known to the plaintiffs, the following properties:
>
> (a) Undivided one-third (1/3) share to a parcel of land covered by T.C.T. No. 30770 of the Registry of Deeds of Quezon City, Metro Manila, with an area of 797 square meters, more or less.
>
> (b) Undivided one-half (½) share to the parcels of land covered by:
>
> T.C.T. No. 48618 of the Registry of Deeds for the Province of Pangasinan, with an area of 68,365 square meters, more or less.
>
> T.C.T. No. 18683 of the Registry of Deeds for the Province of Pangasinan, with an area of 23,131 square meters, more or less.
>
> T.C.T. No. 21319 of the Registry of Deeds for the Province of Pangasinan, with an area of 12,956 square meters, more or less.
>
> T.C.T. No. 21317 of the Registry of Deeds for the Province of Pangasinan, with an area of 7,776 square meters, more or less.
>
> T.C.T. No. 21315 of the Registry of Deeds for the Province of Pangasinan, with an area of 34,889 square meters, more or less.
>
> T.C.T. No. 21316 of the Registry of Deeds for the Province of Pangasinan, with an area of 6,083 square meters, more or less.
>
> T.C.T. No. 127154 of the Registry of Deeds for the Province of Pangasinan, with an area of 757 square meters, more or less.
>
> T.C.T. No. 9598 of the Registry of Deeds for the Province of Pangasinan, with an area of 1,167 square meters, more or less.
>
> T.C.T. No. 1060 of the Registry of Deeds for the Province of Pangasinan, with an area of 44,602 square meters, more or less.
>
> (c) Undivided one-half share of whatever rights, interests and participation the deceased Jose M. Aruego has on the University Stock Supply, Inc., a corporation organized and existing under Philippine laws.[5]

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

In their Answer,[6] defendants denied the allegations of the Complaint and set forth affirmative defenses to dispute the claim of Antonia and Evelyn that they are the illegitimate children of the deceased Aruego.

After trial on the merits, the court rendered a Decision[7] on June 15, 1992, disposing as follows:

WHEREFORE, judgment is rendered -

1. Declaring Antonia Aruego as illegitimate daughter of Jose Aruego and Luz Fabian;

2. Evelyn Fabian is not an illegitimate daughter of Jose Aruego with Luz Fabian;

3. Declaring that the estate of deceased Jose Aruego are the following:

    1. Real [Estate] Properties covered by TCT No. 48680, exh "K";
    2. TCT No. 18683, exh "K-1";
    3. TCT No. 12150, exh "K-2";
    4. TCT No. 21316, exh "K-3";
    5. TCT No. 21317, exh "K-4";
    6. TCT No. 21318, exh "K-5";
    7. TCT No. 127154, exh "K-6";
    8. TCT No. 9598, exh "K-7";
    9. TCT No. 1060, exh "K-8";
    10. TCT No. 30730, exh "K-9";
    11. share in the University Book Store.

4. Antonia Aruego is entitled to a share equal to ½ portion of share of the legitimate children of Jose Aruego;

5. Defendants are hereby ordered to recognize Antonia Aruego as the illegitimate daughter of Jose Aruego;

6. Defendants are hereby ordered to deliver to Antonia Aruego's share in the estate of Jose Aruego, Sr.;

7. Defendants to pay plaintiff (Antonia Aruego) counsel the Sum of ₱10,000.00 as Atty's. fee.

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[6] *Id.* at 98-104.

[7] *Id.* at 112-118; penned by Presiding Judge Modesto C. Juanson.

8. Cost against the defendants.

SO ORDERED.[8]

Defendants filed a Motion for Partial Reconsideration[9] but it was denied by the lower court in its Order[10] dated January 14, 1983. They filed a Notice of Appeal[11] on February 12, 1993 but it was denied due course by the lower court in its Order[12] dated February 26, 1993 on the ground that it was filed out of time.

Subsequently, defendants (now petitioners) filed with the CA a Petition for Prohibition and *Certiorari* with Prayer for a Writ of Preliminary Injunction.[13] On August 31, 1993, the CA dismissed the Petition for lack of merit,[14] denied petitioners Motion for Reconsideration in a Minute Resolution dated October 13, 1993.[15]

On December 3, 1993, petitioners appealed the CA's Decision dated August 31, 1993 to this Court through a Petition for Review on *Certiorari*.[16] In a Decision[17] dated March 13, 1996, this Court denied the Petition and affirmed the CA's Decision dated August 31, 1993 and Resolution dated October 13, 1993.

On December 4, 1996, the court *a quo* issued a Writ of Execution[18] to execute its Decision dated June 15, 1992.

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[8] *Id.* at 118.

[9] *Id*. at 119-131.

[10] *Id*. at 132; penned by Judge Senecio O. Ortile.

[11] *Id*. at 133.

[12] Records, Vol. I, p. 312.

[13] *Rollo*, pp. 134-158.

[14] Records, Vol. I, pp. 326-329.

[15] See March 13, 1996 Decision in G.R. No. 112193; *id*. at 330-338 at 333.

[16] *Rollo*, pp. 169-206.

[17] Records, Vol. I, pp. 330-338.

[18] Records, Vol. II, pp. 447-448.

On August 15, 1997, plaintiff Antonia (now respondent) filed a Motion for Partition[19] with the court *a quo* alleging that its June 15, 1992 Decision became final and executory in view of the denial of the notice of appeal filed by petitioners and the dismissal of their Petition for Prohibition and *Certiorari* by the CA and the subsequent denial of their appeal to the Supreme Court on March 13, 1996.

On November 6, 1997, respondent filed a Motion to Implement Decision[20] dated June 15, 1992 which was granted by the court *a quo* in its Order[21] dated December 5, 1997.

On December 12, 1998, petitioners filed a Verified Complaint[22] with the RTC of Quezon City docketed as Civil Case No. Q-98-36300, seeking to nullify the Deed of Absolute Sale[23] dated May 14, 1998 and the corresponding titles (TCT No. 188200[24] and TCT. No. 191257[25]) issued in relation thereto, which was executed by respondent in favor of Sharon Cuneta, Inc. covering the ½ portion of the lot covered by TCT No. 30730, one of the enumerated properties comprising the estate of the deceased Aruego as declared in the June 15, 1992 Decision of the lower court.

On July 1, 1999, respondent filed anew a Motion for Partition[26] dated June 28, 1999 praying for the implementation of the June 15, 1992 Decision of the court *a quo*.

In view of the pendency of Civil Case No. Q-98-36300, the court *a quo* in its Order[27] dated November 8, 1999 resolved to

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[19] *Rollo*, pp. 217-220.

[20] *Id*. at 220-223.

[21] *Id*. at 224-227.

[22] *Id*. at 234-245.

[23] *Id*. at 231-232.

[24] *Id*. at 230.

[25] *Id.* at 233.

[26] Records, Vol. II, pp. 518-522.

[27] *Rollo*, pp. 254-256.

defer the resolution of respondent's Motion for Partition dated June 28, 1999 on the ground that the controversy involved in the Quezon City RTC case would constitute a prejudicial question to the issue involved in the Motion for Partition. Respondent's motion for reconsideration having been denied by the court *a quo* in its Order[28] dated March 21, 2000, she filed a Petition for *Certiorari*[29] in the CA. It was docketed as CA-G.R. SP No. 58587.

Finding that no prejudicial question existed between the two cases involved, the CA granted the Petition for *Certiorari* on March 23, 2004.[30] The CAs' Decision became final and executory for failure of petitioners to appeal therefrom. Thereupon, respondent moved that her Motion for Partition be given due course.

Petitioners opposed the motion arguing in the main that the partition of the estate of Aruego could not take place by virtue of respondent's mere motion considering that there was no conclusive adjudication of the ownership of the properties declared as constituting the estate of Jose M. Aruego and that all the identities of his heirs had yet to be determined.[31]

Unconvinced, the lower court rejected the arguments of petitioner and granted respondent's motion in its Order[32] dated July 23, 2009 disposing as follows:

> WHEREFORE, the motion is hereby GRANTED. The court orders:
>
> 1. The Defendants to submit, within 30 days from notice of this order, an accounting of all the fruits, rents, profits, and income from the properties belonging to the estate of Jose M. Aruego from the time of his death until the actual division thereof among his heirs;

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[28] *Id*. at 256.

[29] *Id.* at 257-273.

[30] *Id.* at 274-284.

[31] *Id*. at 285-293.

[32] Records, Vol. III, pp. 1030-1033.

2. Each [party] to nominate three (3) competent and disinterested persons and submit, within 15 days from notice of this Order, the names of said persons from which this court shall choose three (3) commissioners who will be tasked to perform the following:

   a) To make an updated project of partition specifying the metes and bounds of the particular portion of the property assigned to plaintiff; and,

   b) Upon approval by the court of the project of partition, to effect the same and deliver to plaintiff her share thereon.

   SO ORDERED.[33]

Petitioners filed a Motion for Reconsideration[34] but it was denied by the court *a quo*.[35]

Unsatisfied, petitioners filed a Petition for *Certiorari*[36] with the CA. It was docketed as CA-G.R. SP No. 113405. In a Resolution[37] promulgated on September 12, 2011, the CA dismissed the petition for lack of merit[38] and later denied petitioners' Motion for Reconsideration in its Resolution[39] dated March 26, 2012.

Hence, this Petition for Review on *Certiorari* under Rule 45[40] filed by petitioners anchored on the following grounds:

I

THE ASSAILED RESOLUTIONS ERRED IN DENYING PETITIONERS-APPELLANTS' PETITION FOR CERTIORARI CONSIDERING THAT:

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[33] *Id*. at 1032-1033.

[34] *Rollo*, pp. 296-301.

[35] Records, Vol. III, pp. 1067-1068.

[36] *Rollo*, pp. 314-370.

[37] *Id*. at 78-82.

[38] *Id*. at 82.

[39] *Id*. at 83-84.

[40] *Id*. at 18-77.

A. THE ASSAILED RESOLUTION ERRONEOUSLY APPLIED THE DOCTRINE OF IMMUTABILITY OF FINAL JUDGMENTS AND THE EXCEPTIONS THERETO.

B. IN LIGHT OF *HEIRS OF JUAN D. FRANCISCO v. MUNOZ-PALMA*, THE ASSAILED RESOLUTIONS ERRED IN FAILING TO FIND NO COMPELLING CIRCUMSTANCE THAT WARRANTS A REVIEW AND/OR MODIFICATION OF THE [15] JUNE 1992 DECISION OF THE REGIONAL TRIAL COURT CONSIDERING THAT:

   a. THE [15] JUNE [1992] DECISION (OF THE COURT *A QUO*) IS NOT CONCLUSIVE WITH RESPECT TO THE PROPERTIES COMPRISING THE ESTATE OF MR. JOSE M. ARGUEGO, SR. AS THE SAME IS NOT AN ISSUE IN RESPONDENT-APPELLEE'S COMPLAINT FOR COMPULSORY RECOGNITION AND ENFORCEMENT OF SUCCESSIONAL RIGHTS.

   b. THE DOCTRINE OF *RES JUDICATA* DOES NOT APPLY IN THE CASE AT BAR DUE TO THE ABSENCE OF SOME OF ITS ELEMENTS.

   c. EVEN ASSUMING ARGUENDO THAT THE ISSUE REGARDING THE PROPERTIES COMPRISING THE ESTATE OF MR. JOSE M. ARUEGO, SR. HAS ATTAINED FINALITY, THE SAME MAY STILL BE MODIFIED AS THE TERMS THEREOF ARE PATENTLY UNCLEAR AT LEAST WITH RESPECT TO THE SHARE OF MS. SIMEONA SAN JUAN ARGUEGO, AS WELL AS THE SHARES OF THE PETITIONERS-APPELLANTS AND/OR THIRD PARTIES THAT EXIST PRIOR TO THE DEATH OF MR. JOSE M. ARUEGO, SR.[41]

Petitioners' Arguments

Petitioners assail the September 12, 2011 and March 26, 2012 Resolutions of the CA on the principal ground that the Court erred in applying the doctrine of immutability of final judgments and the exceptions thereto. Citing the case of *Heirs of Francisco v. Hon. Muñoz-Palma,*[42] petitioners contend "that the doctrine

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

[42] 147 Phil. 721 (1971).

of immutability of judgments admits of exceptions, x x x [as] when the terms of the judgment are not clear enough that there remains room for interpretation thereof, [in which case,] the judgment may still be appealed even when the same has already attained finality."[43] Petitioners cited and quoted the following portion from the Decision in the aforementioned case of *Heirs of Francisco v. Hon. Muñoz-Palma*[44] to prove their point:

> It may be well to remember, that the fact that the decision in the case has long become final and executory, and that the order in dispute was issued merely in execution thereof, does not necessarily imply the non-existence of an appeal therefrom. For while it is true that, as a general rule, an order of execution of a final judgment is not appealable, it also recognized that the rule is subject to two exceptions, viz., (1) when the order of execution varies or tends to vary the tenor of the judgment, and (2) when the terms of the judgment are not clear enough that there remains room for interpretation thereof by the trial court.[45]

Petitioners assert that the terms of the June 15, 1992 Decision of the court *a quo* "are obviously unclear as it admits of different interpretations"[46] which, in fact, account for the remaining conflict between the parties herein. Respondent believes that the "½ portion" should be taken from the "whole estate," contrary to their interpretation that the "½ portion" refers to "½ of the share of each legitimate descendant of Aruego."[47] Acting on her erroneous belief, she had, in fact, caused the subdivision of the property covered by TCT No. 30730, now the subject of the pending annulment case before the RTC of Quezon City docketed as Civil Case No. Q-98-36300.

Likewise relying on the case of *Heirs of Francisco v. Hon. Muñoz-Palma,*[48] petitioners fault the CA in failing to find no

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[43] *Rollo*, p. 50.

[44] *Supra* note 42 at 727-728.

[45] *Rollo*, p. 50.

[46] *Id*. at 51.

[47] *Id.*

[48] *Supra* note 42.

compelling circumstance that warrants a review and/or modification of the June 15, 1992 Decision of the court *a quo*. According to them, the June 15, 1992 Decision is not conclusive with respect to the properties comprising the estate of Aruego as the same is not an issue in respondent's complaint for compulsory recognition and enforcement of successional rights.

Petitioners also dispute the ruling of the court *a quo* in its February 26, 2010 Order[49] (one of the assailed Orders in their petition for *certiorari* before the CA) that it was forced to grant respondent's motion because the June 15, 1992 Decision had already attained finality and the necessity of giving finality to judgments that are not void is self-evident. According to petitioners, the court *a quo* in effect is saying that they are now barred by the doctrine of *res judicata*. They do not agree, as the elements of *res judicata* are absent in this case. They insist, *first*, that the June 15, 1992 Decision is not a judgment on the merits regarding the extent of the estate of Aruego. It "was rendered without any presentation of evidence during trial, much less argued by the respective parties;"[50] *second*, that it is not a final judgment, but a mere interlocutory order, as it leaves something more to be done which is the partition of Aruego's estate; and *third*, there is no identity of subject matters, parties and causes of action between the case adjudicated in the June 15, 1992 Decision and the present controversy.

Even assuming that the June 15, 1992 Decision has attained finality, petitioners still maintain that it may still be modified because its terms are patently unclear. There is ambiguity in the manner the estate of Aruego should be divided as it admits of various interpretations.

All said, petitioners pray that the instant Petition be given due course —

a) by declaring that the June 15, 1992 Decision is erroneous at least with respect to the properties comprising the estate of Aruego;

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[49] Records, Vol. III, pp. 1067-1068.

[50] *Rollo*, p. 58.

b) by declaring that the terms thereof, with respect to the estate of x x x Aruego, are unclear and ambiguous;

c) by allowing the parties to present evidence to determine the properties and/or property interests of Aruego which are to be properly included in his estate; and

d) to issue an Order annulling and setting aside the assailed Resolutions of the CA.[51]

Respondent's Arguments

Respondent's arguments are anchored principally on the finality of the June 12, 1992 Decision of the court *a quo*. She points out that the said Decision has attained finality more than 20 years ago for failure of petitioners to timely appeal therefrom. Their subsequent actions before the CA and the Supreme Court questioning the validity of the said Decision all proved futile as the appellate courts sustained its validity and denied their petitions.

Respondent contends that there is no ambiguity in the terms of the June 15, 1992 Decision. Its dispositive portion clearly identified the properties of the estate and the share of respondent therein. Moreover, petitioners could have raised their objections on these matters in their Motion for Partial Reconsideration or on appeal, or *certiorari* in said case, but did not.

According to respondent, the Order[52] dated July 23, 2009 of the court *a quo* giving due course to the Motion for Partition[53] dated July 28, 1999 merely implements the final and executory Decision dated June 15, 1992 giving respondent "1/2 share of the share of legitimate child in the estate of Jose Aruego, Sr. enumerated therein."[54] The CA in CA-G.R. SP No. 113405 did not err in dismissing the petition to set aside the said Order.[55]

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[51] *Id*. at 66.

[52] Records, Vol. III, pp. 1030-1033.

[53] Records, Vol. II, pp. 518-522.

[54] *Rollo*, p. 380.

[55] *Id*. at 381.

The Principal Issue

The principal issue to be resolved in this Petition is whether or not the June 15, 1992 Decision of the court *a quo*, which attained finality more than 20 years ago, may still be subject to review and modification by the Court.

Our Ruling

The Petition is not meritorious.

The first assailed Resolution dated September 12, 2011 of the CA in CA-G.R. SP No. 113405 dismissed petitioners' Petition for *Certiorari* for lack of merit. The CA ruled that it cannot issue a writ of certiorari to allow parties to present evidence in a case that has long attained finality. It held:

> Asking this Court to issue a writ of certiorari to enable a party, in this instance the Petitioners, to present evidence after a decision has long-attained finality is no different from praying that an already executory decision be reviewed. More certainly, such strat[e]gem cannot be allowed as it will contravene the doctrine of finality of judgments. Instructive on this point is the Supreme Court's pronouncement in *PCI Leasing and Finance, Inc. v. Milan*, *viz*[.]:
>
> > A judgment becomes 'final and executory' by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period. As a consequence, **no court (not even this Court) can exercise appellate jurisdiction to review a case or modify a decision that has became final**.
> >
> > When a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that, **at the risk of occasional errors, judgments must become final at some definite point in time**. x x x
> >
> > x x x Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time. x x x

True, the doctrine on immutability of final judgments admits of exceptions such as the correction of clerical errors or the making of

so-called *nunc pro tunc* entries in which case there is no prejudice to any party, and where the judgment is void. These exceptions, however, are not obtaining at bench. Hence, there is no ground to justify the modification of the Respondent RTC's June 15, 1992 Decision.

To stress, the Court finds, after a thorough review of the records, no compelling circumstance extant in this case that would warrant a departure from the doctrine of immutability of judgments. Most certainly, We cannot issue a writ so as to allow the Petitioners to present evidence as the same should have been raised by them during trial. x x x[56] (Emphasis in the original)

Denying petitioners' Motion for Reconsideration, the CA ruled in its second assailed Resolution dated March 26, 2012, *viz.*:

At the risk of being repetitious, it bears reiterating, therefore, that this Court cannot and will not issue a writ of certiorari to enable the Petitioners to present evidence in a case where a decision has been rendered as far back as June 15, 1992, for doing so will contravene the doctrine of finality of judgments.[57]

We affirm the assailed Resolutions of the CA.

Nothing is more settled in the law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it was made by the court that rendered it or by the highest court of the land.[58] The only recognized exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[59]

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[56] *Id.* at 79-81.

[57] *Id*. at 84.

[58] *Spouses Genato v. Viola,* 625 Phil. 514, 528-529 (2010); *Hulst v. PR Builders, Inc*., 558 Phil. 683, 703 (2007).

[59] *Id*.

In arguing that the assailed Resolutions erroneously applied the doctrine of immutability of final judgments and the exceptions thereto, petitioners relied heavily on the case of *Heirs of Francisco v. Hon. Muñoz-Palma*.[60] Petitioners insist that the terms of the June 15, 1992 Decision of the court *a quo* are not clear enough, as there remains room for interpretation thereof, hence, the judgment may still be appealed even when the same has already attained finality.

Petitioners' reliance on the case of *Heirs of Francisco v. Hon. Muñoz-Palma*[61] is misplaced. It should be stressed that in the *Heirs of Francisco* case, on appeal was an order of execution, which although generally not appealable, was allowed because the Court found that the Project of Partition submitted to implement the decision was not in accordance with the final decision in the case. The Order approving the Project of Partition becomes subject to review and whatever error may have been committed in arriving thereat is correctible by appeal. In the earlier case of *Castro v. Surtida*,[62] it was held that an appeal from an order of execution would be allowed as an exception to the general rule so that the appellate tribunal might pass upon the legality and the correctness of the said order.[63] In contrast, what petitioners in the present case seek is an order from the court to allow them to present evidence with regard to the properties comprising the estate of Aruego and the heirs who are to share in the inheritance. This is, in effect, an appeal from the June 15, 1992 Decision which has long become final and executory, and not from an order of execution which is yet to be carried out, thru a Project of Partition still to be submitted to and approved by the court.

As correctly held by the court *a quo* in its Order dated July 23, 2009, "[t]he question as to what properties have been deemed included in the estate of Jose Aruego, Sr. has already been settled

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[60] *Supra* note 42.

[61] *Id.*

[62] 87 Phil. 166 (1950).

[63] *Id*. at 169.

when the court finally resolved the main controversy on June 15, 1992 and declared, *inter alia*, that plaintiff, Antonia Aruego, is entitled to one-half of the share of the legitimate children of Jose Aruego, Sr. x x x."[64] The court directed the parties to submit the names of their nominees from among whom the court shall choose three commissioners to submit an updated Project of Partition for the approval of the court.

Worthy to note also is the ruling of the CA in its assailed Resolution dated September 12, 2011 that said court "cannot issue a writ so as to allow the [p]etitioners to present evidence as the same should have been raised by them during trial."[65]

We have perused the records and found that respondent offered in evidence the certificates of title to the properties allegedly comprising the estate of Aruego.[66] There is nothing in the records to show that petitioners opposed the said offer of evidence. They also lost the chance to dispute the evidence presented by respondent when they failed to raise the issue in their Motion for Partial Reconsideration of the June 15, 1992 Decision and more so when they failed to appeal therefrom.

The records also disclose that petitioners actively participated in the trial of the case. They presented and formally offered their own evidence[67] but nothing was presented to rebut respondent's evidence on the properties comprising the estate of Aruego. In short, petitioners had ample opportunity to present their countervailing evidence during trial and it is now much too late in the day to present the evidence that they should have presented way back then. It is settled that the active participation of a party before a court is tantamount to recognition of that court's jurisdiction and willingness to abide by the court's resolution of the case.[68]

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[64] Records, Vol. III, p. 1031.

[65] *Rollo*, p. 81.

[66] Records, Vol. I, p. 112 and its dorsal page.

[67] *Id*. at 180-185.

[68] *Butiong v. Plazo*, G.R. No. 187524, August 5, 2015, 765 SCRA 227, 252-253.

Petitioners pass the blame to their counsels of record in the court below for their lost appeal. This is unacceptable. Nothing is more settled than the rule that the negligence and mistakes of counsel are binding on the client.[69] We explained in *Bejarasco, Jr. v. People*[70] that "[t]he rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself."

Petitioners next contend that the June 15, 1992 Decision of the court *a quo* is not conclusive with respect to the properties comprising the estate of Aruego, as the same is not an issue in respondent's Complaint[71] for compulsory recognition and enforcement of successional rights.

This contention is specious.

Although the Complaint of respondent is captioned "For: Compulsory Recognition and Enforcement of Successional Rights", a close reading of the averments therein would indubitably show that the determination of the estate of Aruego and the participation of respondent in the inheritance are among the issues raised in her Complaint. Paragraph 9 of her complaint stated:

> 9. To the best knowledge of the plaintiffs, no intestate proceeding has been filed in court for the settlement of the estate of the deceased Jose M. Aruego, thus this complex action for compulsory acknowledgement and participation in said inheritance.[72]

On the other hand, in paragraph 10 of the Complaint, respondent enumerated the properties left by Aruego, so far as known to her.[73]

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[69] *Sapad v. Court of Appeals*, 401 Phil. 478, 483 (2000).

[70] 656 Phil. 337, 340 (2011).

[71] *Rollo*, pp. 91-97.

[72] *Id.* at 93.

[73] *Id.* at 93-94; see par. 10 quoted, *supra* note 5.

Consistent with her averments in paragraphs 9 and 10, respondent prayed that:

> 4. The share and participation of the plaintiffs in the estate of their deceased father be determined, and the defendants ordered to deliver such share unto the plaintiffs.[74]

It has been consistently held that it is not the caption of the pleading but the allegations therein that are controlling.[75] In *Leonardo v. Court of Appeals*,[76] the Court said: "it is not the caption of the pleading but the allegations that determine the nature of the action. The court should grant the relief warranted by the allegations and the proof even if no such relief is prayed for."

Petitioners assail the dispositive portion of the June 15, 1992 Decision insofar as it declares the properties enumerated therein as comprising the estate of Aruego. They point out that such declaration in the dispositive portion is bereft of any discussion in the body of the decision.

They are mistaken. "To understand the dispositive portion of a decision, one has only to ascertain the issues of the action."[77] As shown above, the determination of the estate of Aruego is one of the issues raised in the Complaint of respondent. In support thereof, respondent submitted in evidence the certificates of title covering the properties claimed to be part of the state of Aruego, as well as the By-Laws of the University Bookstore.[78] No countervailing evidence having been presented by petitioners, the court *a quo* declared these properties as comprising the estate of Aruego in the dispositive portion of this Decision.

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[74] *Id*. at 96.

[75] *Vlason Enterprises Corporation v. Court of Appeals*, 369 Phil. 269, 304 (1999).

[76] 481 Phil. 520, 539 (2004).

[77] *Espiritu v. Court of First Instance of Cavite*, 248 Phil. 623, 629 (1988).

[78] Records, Vol. I, p. 94 – dorsal page.

Jurisprudence holds that it is the dispositive portion of the decision that controls for purposes of execution.[79] If petitioners believed that the dispositive portion of the June 15, 1992 Decision is questionable, they should have filed a motion for reconsideration or appeal before the said Decision became final and executory. But as pointed out earlier, while petitioners filed a Motion for Partial Reconsideration, they did not raise therein the supposed error of the court in declaring the properties enumerated in the dispositive portion of the Decision as comprising the estate of Aruego. They also failed to appeal the Decision and thereby lost the chance to question the Decision and seek a modification or amendment thereof. The inevitable result of their failure to timely question the Decision is for them to be bound by the pronouncements therein. To reiterate, once a decision has attained finality, "not even this Court could have changed the trial court's disposition absent any showing that the case fell under one of the recognized exceptions."[80] As amply discussed above, this case does not fall under any of the recognized exceptions.

WHEREFORE, the Petition for Review on Certiorari is **DENIED** and the assailed September 12, 2011 and March 26, 2012 Resolutions of the Court of Appeals in CA-G.R. SP No. 113405 are **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro,[*] *Jardeleza,* and *Tijam, JJ.,* concur.

Sereno, C.J., on official leave.

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[79] *Budget Investment & Financing, Inc. v. Mangoma*, 237 Phil. 613, 621 (1987).

[80] *Teh v. Teh Tan*, 650 Phil. 130, 142 (2010).

[*] Acting Chairperson per Special Order No. 2484 dated September 14, 2017.

THIRD DIVISION

[G.R. No. 204412. September 20, 2017]

VICENTE L. LUNTAO and NANETTE L. LUNTAO, *petitioners, vs.* **BAP CREDIT GUARANTY CORPORATION and EFREN M. PINEDA,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LOAN CONTRACTS; A MORTGAGE CONTRACT, AS AN ACCESSORY CONTRACT, DEPENDS ON THE LOAN CONTRACT'S VALIDITY.— As an accessory contract, a mortgage contract's validity depends on the loan contract's validity. It is, thus, imperative for this Court to determine if the contract of loan between petitioners and private respondent is valid. This Court held in *Pentacapital Investment Corporation v. Mahinay* that "[l]ike any other contract, a contract of loan is subject to the rules governing the requisites and validity of contracts in general." The elements of a valid contract are enumerated in Article 1318 of the Civil Code: ARTICLE 1318. There is no contract unless the following requisites concur: (1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; (3) Cause of the obligation which is established. All elements should be present in a contract; otherwise, it cannot be perfected.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DETERMINATION OF FACTS NOT PROPER IN AN APPEAL.— The determination of whether or not petitioners received the loan proceeds involves a review of the facts already adjudged by the lower courts. This Court has consistently ruled that a determination of facts is not proper in a Rule 45 petition.

APPEARANCES OF COUNSEL

Alabastro & Olaguer Law Offices for petitioners.
Cesar M. Dureza for respondents.

D E C I S I O N

LEONEN, *J.*:

The validity of accessory contracts mainly flows from the validity of the principal contracts. A real estate mortgage is in the nature of an accessory contract. Thus, the validity of a mortgage contract that was constituted to secure a loan obligation is affected by the validity of the loan contract.

This is a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the August 9, 2011 Decision[2] and October 17, 2012 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 72586-MIN be reversed and set aside.[4] The Court of Appeals affirmed the April 18, 2001 Decision[5] of the Regional Trial Court, which denied Vicente L. Luntao and Nanette L. Luntao's (petitioners) prayers for the declaration of nullity of real estate mortgage and for the issuance of a writ of preliminary injunction.[6]

This case involves the validity of the real estate mortgage of petitioner Vicente L. Luntao's (Vicente) property in favor of respondent BAP Credit Guaranty Corporation (BAP). The mortgage was executed by petitioner Nanette L. Luntao (Nanette) by virtue of a Special Power of Attorney that Vicente issued in her favor.

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[1] *Rollo*, pp. 8–37.

[2] *Id.* at 39–45. The Decision was penned by Associate Justice Abraham B. Borreta and concurred in by Associate Justices Romulo V. Borja and Melchor Quirino C. Sadang, of the Special Twenty-Second Division, Court of Appeals, Cagayan de Oro City.

[3] *Id*. at 57–60. The Resolution was penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Ma. Luisa C. Quijano-Padilla and Jhosep Y. Lopez of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

[4] *Id*. at 32-A, Petition for Review.

[5] *Id*. at 147–155. The Decision was penned by Judge Jesus V. Quitain of Branch 15, Regional Trial Court, Davao City.

[6] *Id*. at 147 and 155, Regional Trial Court Decision.

Vicente was the owner of a real property covered by TCT No. T-111128 in Davao City.[7] He executed a Special Power of Attorney in favor of his sister Nanette.[8] As his attorney-in-fact, she was authorized:

> (1) to mortgage his real property covered by Transfer Certificate of Title No. T-111128 of the Registry of Deeds of Davao City; (2) to apply for any commercial loan with any bank in the Philippines or any agency either private or government under such terms and conditions as she may deem proper using the aforesaid property as collateral for the loan; (3) to receive the proceeds of the loan to be used in the improvements of her business; and (4) to sign, execute and deliver any documents to effect the purposes aforestated.[9]

Using the authorization given to her, Nanette applied for a loan with BAP and used Vicente's property as collateral.[10] The loan was for the improvement of the facilities of her business, the Holy Infant Medical Clinic.[11] According to Nanette, she was introduced to the lending institution by her sister Eleanor Luntao (Eleanor), who allegedly had a personal loan with it and whose office was located in the same building where BAP's office was.[12]

Upon approval of the loan, the amount of ₱900,000.00, representing the loan proceeds, was ordered to be released to the clinic through Security Bank.[13] When the loan obligation

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[7] *Id*. at 152, Regional Trial Court Decision.

[8] *Id*. at 39, Court of Appeals Decision, and 152, Regional Trial Court Decision.

[9] *Id*. at 12, Petition for Review.

[10] *Id*. at 40, Court of Appeals Decision, and 152, Regional Trial Court Decision.

[11] *Id*. at 153, Regional Trial Court Decision. The trial court erroneously cited the clinic's name as "Holy Name Medical Clinic" instead of "Holy Infant Medical Clinic".

[12] *Id*. at 13 and 16, Petition for Review.

[13] *Id.* at 152, Regional Trial Court Decision, and 42, Court of Appeals Decision.

became due, BAP sent demand letters.[14] In a letter[15] dated October 14, 1997, Nanette and Eleanor's brother Jesus Luntao (Jesus) wrote BAP, asking for additional time to settle his sisters' accounts. He cited cash leakages and pending accreditation with life insurers as reasons for the clinic's substantial losses.[16]

However, Nanette's loan was still left unpaid. As a result, BAP applied for Extra-Judicial Foreclosure of Vicente's property. On November 27, 1997, the Regional Trial Court issued a Notice of Foreclosure and a Notice of Extra-Judicial Sale.[17]

Subsequently, Vicente and Nanette filed a Complaint for Declaration of Nullity of Real Estate Mortgage with a prayer for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction against BAP. They also prayed for the award of damages and attorney's fees in their favor. The case was docketed as Civil Case No. 25-962-98.[18]

Nanette narrated that upon filing her loan application, BAP appraised the collateral to determine the loanable amount. They told her that she could borrow ₱900,000.00. Thereafter, a BAP personnel visited her to get her signature on the real estate mortgage, promissory note, and disclosure statement. The documents brought to her were all blank forms. She alleged that she signed the forms on the understanding that it was part of the bank's standard operating procedure.[19]

According to Nanette, she was surprised to receive the notice of foreclosure since she did not receive the proceeds of the loan.[20] She also noticed that the documents attached to the

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[14] *Id*. at 40, Court of Appeals Decision.

[15] *Id*. at 146.

[16] *Id*.

[17] *Id*. at 40, Court of Appeals Decision.

[18] *Id*. at 40, Court of Appeals Decision, and 147, Regional Trial Court Decision.

[19] *Id*. at 13, Petition for Review.

[20] *Id*. at 17.

notice of foreclosure were the blank documents she signed earlier.[21] Upon checking, she was shocked to see that Eleanor's name was included in the loan documents.[22] It was Nanette's position to obtain the principal loan as stated in the Special Power of Attorney as she was the only person authorized to mortgage Vicente's property.[23]

Nanette stated that before she received the notice of foreclosure, she had received four (4) letters from BAP, all addressed to Eleanor.[24] She gave the letters to Eleanor since the letters were about Eleanor's alleged loan with BAP and the post-dated checks she issued to secure it.[25]

Vicente and Nanette claimed that Eleanor's alleged debt with BAP was separate from Nanette's debt and was not secured by Vicente's property, which should not be foreclosed if Eleanor failed to pay her alleged debt.[26]

BAP presented BAP employees Raymond Bato (Bato) and Veronica Aguilo (Aguilo), and Security Bank employees Benjie Dimaunahan (Dimaunahan) and Belinda Yap (Yap) as witnesses.[27]

Bato was an account assistant of BAP. He testified that upon approval by the BAP Credit Committee of the Loan Release Ticket and the Promissory Note, Security Bank released the loan proceeds and credited it to the clinic's account. Security Bank also debited the amount released from BAP's account with it. When he tried to collect from Nanette, no payment

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[21] *Id*. at 14.

[22] *Id*. at 15, Petition for Review, and 148, Regional Trial Court Decision.

[23] *Id*. at 15, Petition for Review.

[24] *Id.* at 148, Regional Trial Court Decision.

[25] *Id.* at 15–17, Petition for Review.

[26] *Id.* at 147.

[27] *Id.* at 149–151. The trial court erroneously also referred to Aguilo as "Aguito."

was given. Thus, he sent the account to their Legal Department, which foreclosed the mortgage.[28]

Bato also stated that there was no document showing that the money was received by either Nanette or Vicente. In addition, the borrowers in the promissory notes were Nanette and Eleanor, not Holy Infant Medical Clinic, but the borrower in the mortgage contract was this clinic.[29] He also testified that Eleanor "did not sign the Real Estate [M]ortgage."[30]

Aguilo was BAP's assistant manager. She testified that Nanette and Eleanor met with her to borrow money from BAP. As evidence, she presented the promissory notes that they all had signed.[31] She also stated that Nanette was the only attorney-in-fact of Vicente as indicated in the Special Power of Attorney and that Nanette "did not authorize anyone to credit the loan to the account of Nanette Luntao under Holy Infant Medical Clinic."[32] Aguilo likewise stated that it was Eleanor, not Nanette, who issued several checks.[33]

Dimaunahan testified that the bank's Credit Memos and ledger showed that the account was under the name of the clinic with Nanette and Eleanor as its signatories.[34] Meanwhile, Yap testified that the bank credited a sum of money to the clinic's account and debited it from BAP's account.[35]

On April 18, 2001, the Regional Trial Court rendered a Decision,[36] dismissing the complaint for lack of merit. It found

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[28] *Id.* at 149–150.

[29] *Id*. at 150.

[30] *Id.*

[31] *Id.* at 151.

[32] *Id*.

[33] *Id*.

[34] *Id*. at 150.

[35] *Id.* at 150–151.

[36] *Id.* at 147–155.

that Nanette and Eleanor filed a loan application with BAP on behalf of the clinic. The sisters also signed three (3) promissory notes showing that the money would be used to acquire assets and as additional working capital. The promissory notes were secured by a mortgage contract, executed by Nanette as Vicente's attorney-in-fact. It also found that upon approval of the loan, the proceeds were given to the clinic through Security Bank. BAP's account was also debited.[37]

The trial court gave weight to Jesus' October 14, 1997 letter. It held that Jesus admitted the existence of the debt, that the loan was obtained in behalf of the clinic, and that the money was used according to its intended purpose. The statements of Jesus were not rebutted by Vicente or Eleanor. The trial court also found that Vicente and Nanette failed to present evidence that Eleanor used the loan proceeds for her personal use or that the foreclosure was because of Eleanor's non-payment of her separate debt. The alleged blank forms were also not presented in court.[38]

Finally, the trial court held that there was no evidence presented to support the allegation that the mortgage was void.[39] The dispositive portion of the decision stated:

> WHEREFORE, judgment is rendered as follows:
>
> 1. The prayer for the issuance of a Writ of Preliminary Injunction is denied for lack of merit.
>
> 2. The prayer that the Real [E]state [M]ortgage be declared void is denied for lack of merit.
>
> CASE DISMISSED.
>
> SO ORDERED.[40]

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[37] *Id*. at 152–154.

[38] *Id.* at 153–154.

[39] *Id*. at 154.

[40] *Id*. at 155.

Vicente and Nanette elevated the case to the Court of Appeals. They impleaded Efren M. Pineda (Pineda), Sheriff IV of the Regional Trial Court of Davao City as an additional respondent. The case was docketed as CA-G.R. CV No. 72586-MIN.[41]

On August 9, 2011, the Court of Appeals rendered a Decision[42] denying the appeal. It found that the elements of a valid contract are present in the case. There was consent on the part of Nanette when she signed the mortgage contract as Vicente's attorney-in-fact. Moreover, Vicente did not assail the Special Power of Attorney's validity or the loan application of Nanette with his lot as collateral. The object of the contract, which was Vicente's property covered by TCT No. T-111128, and the cause of obligation, which was to secure a loan, were also established.[43]

On Vicente and Nanette's allegation that they did not receive the loan proceeds, the Court of Appeals held that the records of the case show otherwise:

> After the loan application was approved, the BAP issued Loan Release Tickets and Debit Memos for each promissory note. Raymond Bato, BAP's account assistant testified that the Loan Release Tickets are proof that they [would] release the amount loaned to the client. Upon approval of these loan release tickets, these [would] also be forwarded to the Security Bank which [would] issue the debit memos and [would] eventually debit the respective amount from the BAP's account, in favor of the client, which, in this case is Holy Infant Clinic/Nanette Luntao.[44] (Citations omitted)

The Court of Appeals also noted that Jesus' October 14, 1997 letter disclosed that Nanette and Eleanor received the loan proceeds.[45] Furthermore, Nanette's admission that she applied for a loan with Vicente's property as collateral "estopped [them]

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[41] *Id*. at 39 and 41, Court of Appeals Decision.

[42] *Id*. at 39–45.

[43] *Id*. at 42.

[44] *Id.* at 43.

[45] *Id*. at 43–44.

from assailing the validity and due execution of that mortgage deed."[46]

The dispositive portion of the Court of Appeals Decision stated:

> **WHEREFORE**, premises considered, the appeal is **DENIED** for utter lack of merit. The Decision dated 18 April 2001 of the Regional Trial Court of Davao City, Branch 15, in *Civil Case No. 25-962-98* is hereby **AFFIRMED**.
>
> SO ORDERED.[47] (Emphasis in the original)

Vicente and Nanette moved for reconsideration, which was denied by the Court of Appeals in its October 17, 2012 Resolution.[48]

On December 6, 2012, Vicente and Nanette filed this Petition for Review[49] against BAP and Pineda before this Court. Petitioners pray for the nullification of the Real Estate Mortgage and the award of actual, moral, and exemplary damages, and attorney's fees in their favor.[50]

Petitioners allege that they did not receive the loan proceeds or that they allowed any other person to receive the proceeds for them. They also insist that respondent BAP defrauded petitioner Nanette by inserting Eleanor's name on the blank forms she signed earlier. BAP's action facilitated the release of the loan proceeds to a person other than petitioners.[51]

Petitioners argue that since they did not receive any amount from the allegedly approved loan application, they should not be held liable for its payment. They contend that it was

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[46] *Id*. at 44.

[47] *Id*. at 45.

[48] *Id*. at 57–60.

[49] *Id*. at 8–37.

[50] *Id*. at 32-A.

[51] *Id*. at 21–25, Petition for Review.

respondent BAP's negligence that caused the release of the loan proceeds to a person not authorized by petitioners.[52] Petitioners add that neither of them gave authorization for BAP to release the loan proceeds through Security Bank. There was also no evidence showing that the power and authority to receive the loan proceeds under the Special Power of Attorney were delegated to Eleanor.[53] On Jesus' October 14, 1997 letter, petitioners argue that it "has not been authenticated."[54]

According to petitioners, the contract was not consummated since they did not receive the loan proceeds, and therefore, null and void. The principal contract being void, the accessory contract of mortgage was also null and void.[55] Petitioners add that the mortgage contract also contained a *pactum commissorium* provision,[56] which states:

> In case of the sale pursuant to the provisions of the this (sic) paragraph, such sale, whether made to mortgagee or to any other person or persons **shall be made free from any right of redemption on the part of the mortgagor, the right of redemption granted by Section 8 of said Act No. 3135 being herein expressly waived by the mortgagor**.[57] (Emphasis supplied, citation omitted)

On May 7, 2013, respondent BAP filed its Comment.[58] It counters that the loan proceeds "were duly received, credited and transferred to the Holy Infant Medical Clinic/Nanette L. Luntao/Eleonor L. Luntao under Security Bank and Trust Company Account No. 10048[.]"[59] It presents the Credit Memos

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[52] *Id*. at 25–26.

[53] *Id*. at 26–27.

[54] *Id*. at 27.

[55] *Id*. at 28–29.

[56] *Id*. at 29.

[57] *Id*.

[58] *Id*. at 113–132.

[59] *Id.* at 120, Comment.

and the Computerized Bank Account Ledger issued by the bank as proof of credit.[60]

Respondent BAP also maintains that Eleanor has no separate personal loan with them.[61] It gave emphasis on Jesus' October 14, 1997 letter admitting the loan of his sisters.[62] It reiterated Bato's testimony that Nanette promised to pay her account when he tried to collect the loan payment from her.[63]

Finally, respondent BAP contends that the assailed mortgage provision is not *pactum commissorium* since it does not "automatically allow the mortgagee to appropriate or own the mortgage property without the need of . . . foreclosure proceedings."[64]

On September 27, 2013, petitioners filed their Reply.[65] They argue that respondent BAP was the one that opened the account with Security Bank under the name of Holy Infant Medical Clinic. Respondent BAP also failed to present a witness to testify on who withdrew the loan proceeds.[66] Additionally, petitioner Nanette denied authorizing Jesus to represent her.[67]

On November 20, 2013, this Court issued a Resolution,[68] giving due course to the petition and requiring the parties to file their respective memoranda.

Petitioners submitted their Memorandum[69] on February 19, 2014. Respondent BAP submitted its Memorandum[70] on

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[60] *Id.*

[61] *Id.* at 121.

[62] *Id*. at 124–126.

[63] *Id*. at 126–127.

[64] *Id.* at 127.

[65] *Id*. at 167–172.

[66] *Id*. at 168–169, Reply.

[67] *Id*. at 169.

[68] *Id*. at 174–174-A.

[69] *Id*. at 175–198.

[70] *Id*. at 200–223.

February 25, 2014. It adds that Nanette and Eleanor's obligations are "joint and several or solidary" under the promissory notes that they executed.[71]

This Court resolves the sole issue of whether or not the Real Estate Mortgage executed by Vicente L. Luntao and Nanette L. Luntao should be nullified.

Petitioners' main argument in asking for the nullification of the mortgage is the absence of consideration in the principal contract of loan. Without any consideration, the loan contract is void. According to petitioners, the void loan contract will necessarily result to the nullification of the mortgage contract, which is merely an accessory contract to the loan.

Petitioners' contention has no merit.

As an accessory contract, a mortgage contract's validity depends on the loan contract's validity.[72] It is, thus, imperative for this Court to determine if the contract of loan between petitioners and private respondent is valid. This Court held in *Pentacapital Investment Corporation v. Mahinay*[73] that "[l]ike any other contract, a contract of loan is subject to the rules governing the requisites and validity of contracts in general."[74]

The elements of a valid contract are enumerated in Article 1318 of the Civil Code:

ARTICLE 1318. There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;
(2) Object certain which is the subject matter of the contract;
(3) Cause of the obligation which is established.

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[71] *Id*. at 219, BAP Credit Guaranty Corporation's Memorandum.

[72] *Naguiat v. Court of Appeals*, 459 Phil. 237, 246 (2003) [Per *J*. Tinga, Second Division].

[73] 637 Phil. 283 (2010) [Per *J*. Nachura, Second Division].

[74] *Id*. at 301.

All elements should be present in a contract; otherwise, it cannot be perfected.[75] In this case, petitioners insist that they did not receive the loan proceeds, which is the object of the loan contract.[76]

The determination of whether or not petitioners received the loan proceeds involves a review of the facts already adjudged by the lower courts. This Court has consistently ruled that a determination of facts is not proper in a Rule 45 petition.[77]

Rule 45, Section 1 of the Rules of Court states:

RULE 45
APPEAL BY CERTIORARI TO THE SUPREME COURT

SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the 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. (Emphasis supplied)

Clearly, in a Rule 45 petition, this Court may only entertain cases involving questions of law. In *Century Iron Works, Inc., et al. v. Bañas*:[78]

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[75] *Limso v. Philippine National Bank*, G.R. No. 158622, January 27, 2016, 782 SCRA 137, 221 [Per *J.* Leonen, Second Division].

[76] *Naguiat v. Court of Appeals*, 459 Phil. 237, 243–244 (2003) [Per *J.* Tinga, Second Division].

[77] See *Limso v. Philippine National Bank*, G.R. No. 158622, January 27, 2016, 782 SCRA 137, 239–240 [Per *J.* Leonen, Second Division], citing *Land Bank of the Philippines v. Yatco Agricultural Enterprises*, 724 Phil. 276, 284–285 (2014) [Per *J.* Brion, Second Division]. See also *DST Movers Corporation v. People's General Insurance Corporation*, G.R. No. 198627, January 13, 2016, 780 SCRA 498, 507–508 [Per *J.* Leonen, Second Division].

[78] 711 Phil. 576 (2013) [Per *J.* Brion, Second Division].

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[79] (Citations omitted)

In *Naguiat v. Court of Appeals*:[80]

Under Rule 45 which governs appeal by *certiorari*, only questions of law may be raised as the Supreme Court is not a trier of facts. The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect and are in fact generally binding on the Supreme Court. A question of law which the Court may pass upon must not involve an examination of the probative value of the evidence presented by the litigants. There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.[81] (Citations omitted)

Here, both the trial court and the Court of Appeals found that petitioners received the proceeds of the loan through the account under the name of Holy Infant Medical Clinic/Nanette Luntao/Eleanor Luntao. This finding was supported by evidence presented by the parties. Both courts also gave weight to Jesus' October 14, 1997 letter, which read:

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[79] *Id.* at 585–586.

[80] 459 Phil. 237 (2003) [Per *J*. Tinga, Second Division].

[81] *Id*. at 241–242.

99 Kanlaon Street
Central Park Subdivision
Bangkal, Davao City
October 14, 1997

BAP Credit Guaranty Corporation
R. Magsaysay Avenue, Davao City

Attention: Ms. Veronica A. Aguilo
Manager

Gentlemen:

With reference to the loans of my sisters, Nanette and Eleanor Luntao, under the name of Holy Infant Medical Clinic, please be advised that due to some business reverses experienced for the last several months, substantial losses were incurred that greatly affected our capacity to service the loans. Perhaps, it could be recalled that in the past, we have been meeting religiously the installments due.

One cause was the fraud committed by some personnel that resulted to substantial cash leakages. Necessary internal controls were already instituted to forestall repetition of similar incident in the future.

Another are changes in the medical system of our major clientele, Tadeco, a major banana plantation, and Milsi, a lone stevedoring company operating at the Port of Panabo. These major customers have changed their group life insurers. Unfortunately, Holy Infant Medical Clinic is not among the accredited hospitals. We are still working for accreditation with these insurers which takes time. Meantime we suffer. Their workers and families cannot avail of our services due to non-accreditation.

Conscious of our obligation with you, we have already decided to dispose some of our properties to update our loans. However, disposal at the moment may take time due to economic condition prevailing in the country.

In view of the above, we highly appeal to your compassion to give us due consideration and ample time to update our account. Rest assured that priority is given to you as soon as funds are available.

Again, thank you for your valued understanding and consideration.

Yours very truly,
(signed)
JESUS L. LUNTAO[82]
(Emphasis supplied)

Despite having the opportunity to prove that the admission of Jesus is false, petitioners failed to present rebuttal evidence. They also failed to present evidence to support their allegation that Eleanor received the loan proceeds or that Eleanor's non-payment of her alleged personal loan with BAP caused the foreclosure of the mortgage. What petitioners presented were mere denials.

Although the general rule that resolution of Rule 45 petitions is limited to questions of law, it admits of certain exceptions.[83] Nonetheless, petitioners failed to convince this Court to re-examine the facts already considered by both the trial court and the Court of Appeals.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals Decision dated August 9, 2011 and Resolution dated October 17, 2012 in CA-G.R. CV No. 72586-MIN are **AFFIRMED**.

SO ORDERED.

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

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[82] *Rollo*, p. 146.

[83] See *Benito v. People*, 753 Phil. 616, 625–626 (2015) [Per *J*. Leonen, Second Division], which enumerates the exceptions to the rule: (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

THIRD DIVISION

[G.R. No. 207229. September 20, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SIEGFRED CABELLON *y* CABAÑERO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to sustain a conviction for the illegal sale of dangerous drugs, these two (2) elements must be established by the prosecution: "(1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence."

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS; STRICT COMPLIANCE WITH THE PROCEDURE THEREON MAY BE EXCUSED UNDER JUSTIFIABLE GROUNDS, PROVIDED THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED.— Section 21 of Republic Act No. 9165 provides the manner by which law enforcement officers should handle seized dangerous drugs x x x. While it may be true that strict compliance with Section 21 of Republic Act No. 9165 may be excused under justifiable grounds, the integrity and evidentiary value of the seized items must still be preserved by the apprehending officer. This Court is not convinced that the prosecution was able to prove the identity of the shabu supposedly seized from the accused. x x x Undeniably, a noticeable gap exists in the chain of custody with the prosecution's failure to present evidence that the seized sachet was actually marked by any of the three (3) apprehending officers. The prosecution likewise did not present evidence that the seized sachet was inventoried and photographed in the presence of the accused or his representative, a representative from the media or the Department of Justice, and an elected public official. Neither did it provide an explanation as to why

the police officers did not follow the requirements provided under the law. x x x The prosecution utterly failed to proffer evidence on who placed the markings on the sachet. Furthermore, it also failed to account for the seized sachet's transfer from PO3 Bucao to the Philippine National Police Crime Laboratory for laboratory examination, creating another gap in the chain of custody. This blatant lack of compliance with the safeguards established in Republic Act No. 9165 is made even more egregious by the fact that the seized sachet only contained 0.03 grams of shabu, no more than a grain of rice. The danger of tampering and planting of evidence was, thus, heightened, which should have put the lower courts on guard and not have so easily relied on the presumption of regularity accorded to police officers in the performance of their official acts.

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.*:

The marking and identification of the seized dangerous drug is an essential part of the chain of custody. Absent this step, a gap is created which casts a shadow of doubt on the identity and integrity of the dangerous drug presented as evidence, creating reasonable doubt, which must be resolved in favor of the accused.

This reviews the August 30, 2012 Decision[1] of the Court of Appeals in CA-G.R. No. CEB-CR HC No. 01081, affirming the conviction of accused-appellant Siegfred Cabellon y Cabañero (Cabellon) for violation of Section 5 of Republic Act No. 9165,

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[1] CA *rollo,* pp. 92–105. The Decision was penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Edgardo L. Delos Reyes and Zenaida T. Galapate-Laguilles of the Nineteenth Division, Court of Appeals, Cebu City.

otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

This Court restates the facts as found by the lower courts.

In an Information[2] dated April 28, 2006, Cabellon was charged with violation of Section 5 of Republic Act No. 9165:

> That on or about the 13th day of April 2006 at about 7:30 P.M. more or less, in Bulacao, City of Talisay, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there sell and dispose One (1) heat-sealed plastic packet of white crystalline substance containing Methylamphetamine (sic) hydrochloride locally known as "SHABU", weighing 0.03 gram, a dangerous drugs.
>
> CONTRARY TO LAW.[3]

Upon arraignment, Cabellon pleaded not guilty.[4] Trial on the merits ensued.

Evidence for the prosecution showed that on April 13, 2006, a buy-bust operation was planned to capture Cabellon in the act of selling drugs. At 7:30 p.m., PO2 Junar Rey Barangan (PO2 Barangan), PO3 Rey Bucao (PO3 Bucao), and PO3 Reynato Abellar (PO3 Abellar) went to Sitio Jawod, Barangay Bulacao, Talisay City to commence the buy-bust operation. The police officers had a poseur-buyer with them.[5]

The asset poseur-buyer transacted with Cabellon in an alley, while the police officers observed them from a distance. Once they saw the poseur-buyer scratch his head, their pre-approved signal, the police officers descended upon Cabellon, who then ran away upon noticing the approaching officers.[6]

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[2] *Id*. at 10–11.

[3] *Id.* at 10.

[4] *Id*. at 51, RTC Decision.

[5] *Id*. at 52, RTC Decision.

[6] *Id*.

Cabellon ran and hid inside a nearby house and the police officers followed him. The police officers stumbled upon three (3) men sniffing shabu inside the house, one (1) of whom they apprehended while the other two (2) managed to escape. The police officers caught up with Cabellon inside the house, whom they thereafter frisked. They recovered the marked ₱100.00 and ₱50.00 bills from him.[7]

After Cabellon's arrest, the poseur-buyer handed over the sachet of shabu he purchased from Cabellon to PO3 Bucao.[8]

That same date, a sachet marked with "SCC 04/13/06" was turned over to the Philippine National Police Crime Laboratory for examination. The Request for Laboratory Examination was received by a certain PO1 Domael.[9]

P/S Insp. Mutchit G. Salinas (P/S Insp. Salinas), a forensic chemist, confirmed executing Chemistry Report No. D-698-2006. She testified that she had examined a heat-sealed plastic sachet of white crystalline substance labelled with "SCC 04/13/06." The chemistry report bore the signatures of P/S Insp. Salinas and P/Supt. Myrna P. Areola. The specimen weighed 0.03 grams and tested positive for methamphetamine hydrochloride (shabu).[10]

Cabellon was the only defense witness and he denied selling shabu to the poseur-buyer.[11]

He claimed that on April 13, 2006, at about 3:30 p.m., he was buying barbecue when he saw his aunt, Jane Cabellon, crying. He asked her why she was crying and he told her that she had a fight with someone. He approached and slapped the lady his aunt had a fight with. The lady then warned him that he would be arrested for what he had done to her.[12]

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[7] *Id.*

[8] *Id.* at 53, RTC Decision.

[9] *Id.* at 51–52.

[10] *Id.* at 51 and 53. RTC referred to the substance as "methylamphetamine hydrochloride."

[11] *Id.* at 53–54, RTC Decision.

[12] *Id.*

Later that evening, at the barbecue station,[13] he was arrested and bodily searched by some police officers; however, nothing was recovered from him. He claimed that he was not informed by the arresting officers of the offense he supposedly violated.[14]

Cabellon was then brought to the police station and was asked to call somebody. He was also asked to pay for his release and for the settlement of the case filed against him. He was unable to pay or give a gift and declined to make the phone call; hence, he was charged and a case was filed against him.[15]

On October 27, 2008, the Regional Trial Court[16] found that the prosecution was able to prove all the elements for the illegal sale of shabu.[17] Furthermore, PO3 Bucao and PO2 Barangan identified the sachet sold by Cabellon to the poseur-buyer. The seized sachet's chain of custody from the time Cabellon was arrested until it was presented as evidence to the court was accounted for.[18] The *fallo* of the trial court Decision read:

> ACCORDINGLY, this court finds the accused GUILTY as charged and sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of [₱]500,000.00.
>
> Exhibit "B" is forfeited in favor of the State for proper disposition.
>
> SO ORDERED.[19]

Cabellon filed an appeal before the Court of Appeals and raised several errors. He claimed that the trial court erred in

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[13] TSN dated September 23, 2008, p. 4. TSN also refers to the date as "September 23, 2007."

[14] *Id.* at 54.

[15] *Id*.

[16] *Id.* at 51–58. The Decision, docketed as Criminal Case No. CBU-76737, was penned by Presiding Judge Gabriel T. Ingles of Branch 58, Regional Trial Court, Cebu City.

[17] *Id*. at 55–57.

[18] *Id.* at 57.

[19] *Id*. at 58.

upholding the validity of his arrest despite the blatant violation of his right against unreasonable searches and when it relied on the weakness of the defense evidence rather than on the strength of the prosecution evidence. Additionally, he averred that the prosecution failed to prove his guilt beyond reasonable doubt.[20]

On August 30, 2012, the Court of Appeals[21] dismissed the appeal and upheld the trial court decision.

The Court of Appeals held that the elements for the illegal sale of shabu were duly proven by the prosecution.[22]

The Court of Appeals also downplayed the supposed necessity of presenting the poseur-buyer as a witness in court since the testimonies of the members of the apprehending team had already sufficiently established the illegal sale between Cabellon and the poseur-buyer.[23]

The Court of Appeals likewise waived the stringent application of Section 21 of Republic Act No. 9165, considering the circumstances obtaining in the case. The Court of Appeals emphasized that the defense never questioned the integrity of the evidence during trial and only did so upon appeal.[24] The *fallo* of the Court of Appeals Decision read:

> IN LIGHT OF THE FOREGOING, the appeal is DENIED. The decision dated October 27, 2008 of the Regional Trial Court (RTC), Branch 58, Cebu City in Criminal Case No. CBU-76737 convicting Siegfred Cabellon y Cabañero for the crime of Sale of Dangerous Drugs penalized under Section 5 of Republic Act No. 9165 is AFFIRMED in *toto.*
>
> SO ORDERED.[25]

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[20] *Id*. at 31.

[21] *Id*. at 92–105.

[22] *Id.* at 95–99.

[23] *Id*. at 100–101.

[24] *Id*. at 101–104.

[25] *Id*. at 105.

Cabellon filed a Notice of Appeal[26] on October 4, 2012, which was noted and given due course by the Court of Appeals in its April 29, 2013 Resolution.[27]

In its August 7, 2013 Resolution,[28] this Court notified the parties that they may file their respective supplemental briefs. Both parties manifested[29] that they were dispensing with the filing of a supplemental brief.

Cabellon alleges that the supposed illegal sale was never proven because the poseur-buyer was not presented to attest to the alleged sale. Furthermore, the police officers were positioned at a distance where they could not have seen the sale and could merely rely on the poseur-buyer's signal. Cabellon insisted that the fact of the sale was not proven beyond reasonable doubt.[30]

Cabellon also emphasizes that the police officers did not comply with the mandatory requirements under Section 21, paragraph 1 of Republic Act No. 9165, requiring the apprehending team to immediately physically inventory and photograph the seized drugs in the presence of the accused, a representative from media or the Department of Justice, and any elected official.[31]

Cabellon then points out that the prosecution was unable to show an unbroken chain of custody. PO3 Bucao testified that the poseur-buyer handed him the sachet after Cabellon was arrested, but he never testified as to whom he gave it next or who marked it.[32] Lastly, Cabellon asserts that he was not informed either of his constitutional rights upon his arrest or the reason for his arrest or detention.[33]

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[26] *Id*. at 106–107.

[27] *Id*. at 111.

[28] *Rollo,* p. 22.

[29] *Id*. at 23–26 and 27–28.

[30] CA *rollo,* pp. 37–38.

[31] *Id*. at 38–39.

[32] *Id*. at 39–42.

[33] *Id*. at 48–49.

On the other hand, the prosecution claims that the poseur-buyer's failure to testify was not fatal to the case since PO3 Bucao testified that he saw the sale.[34]

The prosecution argues that there was substantial compliance with Section 21 of Republic Act No. 9165 because the integrity and evidentiary value of the seized item was properly preserved. The prosecution maintains that the circumstances surrounding the arrest, where he was arrested in a house with three (3) persons high on drugs, made it impossible to mark and inventory the sachet on the spot.[35] The prosecution also avers that the supposed violations of Section 21 of Republic Act No. 9165 were only raised for the first time on appeal.[36]

Finally, the prosecution denies that Cabellon was found guilty based on his weak defense and holds that it has proven the evidentiary integrity of the seized sachet proving Cabellon's guilt beyond reasonable doubt. It asserts that the prosecution witnesses have established Cabellon's guilt with their straightforward and candid testimonies.[37]

The only issue for this Court's resolution is whether or not accused-appellant Siegfred Cabellon's guilt was proven beyond reasonable doubt despite the non-observance of the required procedure under Section 21 of Republic Act No. 9165.

This Court grants the appeal and acquits Siegfred Cabellon *y* Cabañero.

In order to sustain a conviction for the illegal sale of dangerous drugs, these two (2) elements must be established by the prosecution: "(1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence."[38]

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[34] *Id.* at 74.

[35] *Id.* at 76–77.

[36] *Id*. at 78–79.

[37] *Id*. at 79–81.

[38] *People v. Morales,* 630 Phil. 215, 228 (2010) [Per *J.* Del Castillo, Second Division] citing *People v. Darisan,* 597 Phil. 479 (2009) [Per *J.* Corona, First Division].

To prove that the illegal sale of shabu took place, the prosecution presented PO3 Bucao and PO2 Barangan, two (2) of the police officers who were part of the buy-bust operation team which apprehended the accused.

Both PO3 Bucao[39] and PO2 Barangan[40] testified that they had seen the accused talk with the poseur-buyer before the latter scratched his head, signalling that the transaction had taken place. The marked money was recovered from the accused,[41] while the poseur-buyer turned over the sachet with shabu he had bought from the accused to PO3 Bucao.[42]

While the prosecution may have proven that a transaction took place, it was not as convincing in its presentation of the alleged *corpus delicti* as evidence.

People v. Jaafar[43] underscored the importance of presenting the actual illicit drug or *corpus delicti* recovered as evidence since its existence is essential to convict the accused. Thus:

> In all prosecutions for violations of Republic Act No. 9165, the *corpus delicti* is the dangerous drug itself. Its existence is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established.
>
> Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. *It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence.* The chain of custody, as a method of authentication, ensures that

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[39] TSN dated April 24, 2007, p. 4.

[40] TSN dated February 13, 2007, pp. 5–6.

[41] *Id*. at 7.

[42] TSN dated April 24, 2007, pp. 5–6.

[43] 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].

unnecessary doubts involving the identity of seized drugs are removed.[44] (Emphasis supplied)

Section 21 of Republic Act No. 9165 provides the manner by which law enforcement officers should handle seized dangerous drugs:

> 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[.] (Emphasis supplied)

Section 21 of the Implementing Rules and Regulations of Republic Act No. 9165 further 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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[44] *Id*. at 7, citing *People v. Simbahon,* 449 Phil. 74 (2003) [Per *J*. Ynares-Santiago, First Division] and *Mallillin v. People,*576 Phil. 576 (2008) [Per *J*. Tinga, Second Division].

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

While it may be true that strict compliance with Section 21 of Republic Act No. 9165 may be excused under justifiable grounds, the integrity and evidentiary value of the seized items must still be preserved by the apprehending officer.

This Court is not convinced that the prosecution was able to prove the identity of the shabu supposedly seized from the accused.

PO3 Bucao claimed that the poseur-buyer turned over to him the sachet purchased from the accused and that he had custody of the sachet until he reached the police station. He then handed the sachet to PO3 Abellar, who supposedly prepared the request for the chemical analysis of the seized item. However, PO3 Bucao failed to identify who placed the markings on the sachet:

> (Pros. Canta) Q: How many packs of shabu did your poseur[-] buyer handed it (sic) to you?
>
> (PO3 Bucao) A: Only one.
>
> Q: Who kept this pack of shabu from the place of the arrest to the police station?
>
> A: Myself.

Q: What did you do with this pack of shabu that you get (sic) from the accused?

A: After we reach in (sic) our station I gave it to PO3 Abellar the one pack of shabu.

Q: What did PO3 Abellar do with this one pack of shabu?

A: He made a request to the PNP Crime Lab for chemical analysis.

. . . . . .

Q: I am showing to you this one pack of white crystalline substance with labeling "SCC" the date thereon, is that the evidence you are referring to?

A: Yes[,] sir.

Q: Who then made the marking "SCC" and the date?

A: I am not sure who made the marking.[45]

Even PO2 Barangan could not confirm who placed the markings on the sachet:

(PROS. CANTA) Q: I am showing to you this one pack of white crystalline substance marked as Exhibit B, with markings SCC with a date, can you tell us if this is the same evidence that your (sic) recovered from the accused?

A: Yes, sir.

Q: Why are you sure?

A: Because this is the one PO3 Bucao showed to me.

Q: And there are markings in this plastic pack containing this small plastic pack of shabu SCC and the date 04/13/06, who made that marking if you know?

A: I do not know[,] sir.[46]

People v. Nandi[47] expounded on the four (4) links that should be established by the prosecution to constitute an unbroken chain of custody:

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[45] TSN dated April 24, 2007, p. 6.

[46] TSN dated February 13, 2007, p. 9.

[47] 639 Phil. 134 (2010) [Per *J.* Mendoza, Second Division].

[F]irst, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second,* the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third,* the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth,* the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[48]

Undeniably, a noticeable gap exists in the chain of custody with the prosecution's failure to present evidence that the seized sachet was actually marked by any of the three (3) apprehending officers.

The prosecution likewise did not present evidence that the seized sachet was inventoried and photographed in the presence of the accused or his representative, a representative from the media or the Department of Justice, and an elected public official. Neither did it provide an explanation as to why the police officers did not follow the requirements provided under the law.

PO3 Bucao also testified that he turned over the unmarked seized sachet to PO3 Abellar, who then prepared the request to the Philippine National Police for chemical analysis.[49] However, a careful review of the Request for Laboratory Examination[50] dated April 13, 2006 shows that not only did it refer to a marked sachet, it was also signed by P/Superintendent Romeo Pagal Perigo, not PO3 Abellar, who supposedly prepared it.

The prosecution utterly failed to proffer evidence on who placed the markings on the sachet. Furthermore, it also failed to account for the seized sachet's transfer from PO3 Bucao to the Philippine National Police Crime Laboratory for laboratory examination, creating another gap in the chain of custody.

This blatant lack of compliance with the safeguards established in Republic Act No. 9165 is made even more egregious by the

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[48] *Id*. at 144-145, citing *People v. Kamad,* 624 Phil. 289 (2010) [Per *J.* Brion, Second Division].

[49] TSN dated April 24, 2007, p. 6.

[50] RTC *records,* p. 8.

fact that the seized sachet only contained 0.03 grams[51] of shabu, no more than a grain of rice. The danger of tampering and planting of evidence was, thus, heightened, which should have put the lower courts on guard and not have so easily relied on the presumption of regularity accorded to police officers in the performance of their official acts. As this Court stated in *People v. Holgado:*[52]

> While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Mallillin v. People,* this court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives."[53]

WHEREFORE, premises considered, the Decision dated August 30, 2012 of the Court of Appeals in CA-G.R. No. CEB-CR HC No. 01081 is **REVERSED and SET ASIDE.** Accused-appellant Siegfred Cabellon y Cabañero 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.

The Regional Trial Court is directed to turn over the seized sachet of methamphetamine hydrochloride to the Dangerous Drugs Board for destruction in accordance with law.

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[51] *Id.* at 9.

[52] 741 Phil. 78 (2014) [Per *J.* Leonen].

[53] *Id.* at 99, citing *Mallillin v. People,* 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

Let entry of judgment be issued immediately.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 208095. September 20, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEFFERSON DEL MUNDO *y* ABAC and MITOS LACSON-DEL MUNDO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE FACT THAT THE DANGEROUS DRUG ILLEGALLY POSSESSED AND SOLD IS THE SAME DRUG OFFERED IN COURT AS EXHIBIT MUST BE ESTABLISHED, APART FROM SHOWING THAT THE ELEMENTS OF POSSESSION OR SALE ARE PRESENT.— In prosecuting both illegal sale and illegal possession of dangerous drugs, conviction cannot be sustained if doubt persists on the identity of said drugs. The identity of the dangerous drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the dangerous drug illegally possessed and sold is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; DEFINED; THE CHAIN OF CUSTODY IS ESTABLISHED BY TESTIMONY ABOUT EVERY LINK IN THE CHAIN, FROM THE MOMENT THE ITEM WAS PICKED UP TO THE TIME IT IS OFFERED IN EVIDENCE.— Because it is indispensable that the substance confiscated from the accused be the very same substance offered in court, the Court has adopted the chain of custody rule, a method of authenticating evidence which requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would be able to describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

3. ID.; ID.; ID.; ID.; LINKS TO BE ESTABLISHED.— As a general rule, the prosecution must endeavour to establish four links in the chain of custody of the confiscated item: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

4. ID.; ID.; ID.; THE FAILURE TO FAITHFULLY OBSERVE THE PROCEDURAL REQUIREMENTS THEREON WOULD NOT NECESSARILY RESULT IN THE ACQUITTAL OF THE ACCUSED, PROVIDED THE CHAIN OF CUSTODY REMAINS UNBROKEN.— [T]he Court notes that the buy-bust team failed to observe the proper procedure in taking custody

of confiscated dangerous drugs. x x x. While the prosecution was able to present the inventory of the confiscated items, which was apparently prepared by PO3 Rodil, and attested to by Ocampo, Sr., of *Kill Droga*, the Court opines that the same could not be given any credence. Readily apparent from the said inventory is the fact that it is undated. Hence, the requirement that the inventory must be made immediately after seizure was not satisfied. Further, none of the persons required to sign the inventory, as enumerated under the law, were made to sign the same. x x x PO3 Rodil further testified that photographs were taken of the accused-appellants and of the items confiscated from them. Not one of the alleged photographs, however, was presented in court as part of the evidence for the prosecution and no explanation was offered to explain why. x x x Indeed, the prosecution's failure to show that the police officers did the required physical inventory and to present any photograph of the evidence confiscated pursuant to the said guidelines is not fatal and does not automatically render accused's arrest illegal or the items seized/confiscated from him inadmissible. Nonetheless, it is well to stress that such liberality could only be applied for justifiable grounds and only when the evidentiary value and integrity of the illegal drug are properly preserved. In this case, x x x the prosecution failed to sufficiently establish an unbroken chain of custody.

5. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In criminal prosecution for illegal sale of dangerous drugs, the prosecution must prove the following essential elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material, therefore, is proof that the accused peddled illicit drugs, coupled with the presentation in court of the *corpus delicti.*

6. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— To ensure conviction in illegal possession of dangerous drugs, the following elements must be established: (1) the accused was in possession of the dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the dangerous drugs. x x x [T]he dangerous drug illegally possessed by and confiscated from the accused constitutes the *corpus delicti* of the offense.

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

MARTIRES, *J.*:

This is an appeal from the 30 January 2013 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 05114, which affirmed the 17 May 2011 Joint Decision[2] of the Regional Trial Court, Branch 39, Calapan City, Oriental Mindoro (*RTC*), in Criminal Case Nos. CR-05-8045 and CR-05-8046, convicting accused-appellant Jefferson Del Mundo y Abac (*Jefferson*) for illegal sale and illegal possession of dangerous drugs and accused-appellant Mitos Lacson-Del Mundo (*Mitos*) for illegal sale of dangerous drugs.

THE FACTS

Jefferson and Mitos were similarly indicted for the crime of illegal sale of prohibited drugs, while Jefferson was additionally charged with illegal possession of drugs, both under Republic Act *(R.A.)* No. 9165 or the "Comprehensive Dangerous Drugs Act of 2002" in Criminal Case Nos. CR-05-8045 and CR-05-8046. The accusatory portions of the said Informations read:

Criminal Case No. CR-05-8045

That on or about the **10**th of May 2005, at around **2:15** o'clock in the **afternoon**, more or less, at Barangay **Calero**, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating[,] and mutually helping one another, without any legal authority nor[sic] corresponding license or prescription, did[,] then and there[,] willfully, unlawfully[,] and feloniously sell, deliver, transport[,] or distribute to a **poseur-**

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[1] *Rollo*, pp. 2-16.

[2] Records (Crim. Case No. CR-05-8045) pp. 211-219.

buyer methamphetamine hydrochloride (*shabu*), a dangerous drug, weighing 0.03 gram, more or less.[3]

Criminal Case No. CR-05-8046

That on or about the **10**th of May 2005, at around **2:15** o'clock in the **afternoon**, more or less, at Barangay **Calero**, City of Calapan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any legal authority nor[sic] corresponding license or prescription, did[,] then and there[,] willfully, unlawfully[,] and feloniously have in his possession, custody[,] and control four (4) pieces of heat-sealed transparent plastic sachets containing **methamphetamine hydrochloride (*shabu*)**, a dangerous drug, with a total weight of 0.14 gram, more or less.[4]

When arraigned, Jefferson pleaded "Not Guilty" to both charges; Mitos similarly entered a "Not Guilty" plea in Criminal Case No. CR-05-8045.[5]

After pre-trial, the two (2) cases were consolidated and thus tried jointly.

Evidence for the Prosecution

The prosecution presented four (4) witnesses, namely: Senior Police Officer 2 Eduardo Espiritu *(SPO2 Espiritu)*, the leader of the buy-bust team; Police Inspector Rhea Fe Dela Cruz-Alviar *(PI Alviar)*, the forensic chemist; Police Officer 3 Mariel D. Rodil *(PO3 Rodil)*, the poseur-buyer; and SPO1 Noel Buhay *(SPO1 Buhay)*. Their combined testimonies tended to establish the following:

Sometime in early May of 2005, the Calapan City Police Station Intelligence Team conducted surveillance on the accused-appellants after receiving information that they were selling dangerous drugs in Barangay Calero, Calapan City.[6]

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[3] *Rollo*, p. 3.

[4] *Id.* at 4.

[5] Records, p. 29.

[6] TSN, 12 May 2008, p. 4.

The surveillance confirmed that the accused-appellants were indeed engaged in the business of selling dangerous drugs. Consequently, a buy-bust operation was planned with PO3 Rodil designated as the poseur-buyer; while SPO2 Espiritu, SPO1 Buhay, and at least two other unnamed police officers were tasked as backups.[7] Two (2) ₱100.00 bills, supplied by Chief of Police P/Supt. Alexander Aceveda, were prepared as buy-bust money and were marked with "MDR," PO3 Rodil's initials.[8]

On 10 May 2005, at around two o'clock in the afternoon, PO3 Rodil, accompanied by a confidential informant, proceeded to the house of the accused-appellants in Barangay Calero, Calapan City. SPO2 Espiritu and SPO1 Buhay strategically positioned themselves near the target area, while the other backups were far from the house.[9]

The informant knocked on the door of the accused-appellants. After a few moments, a woman, later identified as Mitos, opened the door. The informant introduced PO3 Rodil to Mitos as a buyer of *shabu*. Mitos hesitated for a while as she doubted PO3 Rodil's identity. After the asset assured Mitos that PO3 Rodil was a legitimate buyer, the latter handed to her the marked bills. Upon receipt of the money, Mitos turned her head towards a man inside the house, later identified as Jefferson, and said "*Pahingi ng halagang dalawang piso*." Thereafter, Jefferson handed to PO3 Rodil a plastic sachet containing white crystalline substances. At this point, PO3 Rodil gave the pre-arranged signal to call SPO2 Espiritu. PO3 Rodil then immediately apprehended Mitos and seized the marked money in her possession.[10]

Meanwhile, upon getting the signal, SPO2 Espiritu and SPO1 Buhay immediately rushed to the crime scene to arrest Jefferson, but the latter fought back and even tried to stab the head of

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[7] *Id.* at 5-7.

[8] Records (Crim. Case No. CR-05-8045), p. 40.

[9] TSN, 24 October 2005, pp. 4-7.

[10] TSN, 12 May 2008, pp. 8-10; TSN, 16 June 2008, pp. 7-13.

SPO1 Buhay with a ballpen. Jefferson then ran inside the house but SPO2 Espiritu and SPO1 Buhay gave chase and caught him inside the toilet where he was seen throwing something into the toilet bowl. Using a broomstick, the police officers retrieved four (4) plastic sachets containing white crystalline substances from the toilet bowl. After the sachets were wiped clean, SPO2 Espiritu turned these over to PO3 Rodil.[11]

After informing them of their constitutional rights, the accused-appellants were brought to the Calapan City Police Station for booking and further investigation. At the police station, the seized items were photographed, inventoried,[12] and marked by PO3 Rodil with her initials, in the presence of the accused-appellants, Romeo Gargullo (*Gargullo*), a *barangay kagawad*, and Nicanor Ocampo, Sr. (*Ocampo, Sr.*), the president of Kill Droga movement in the area.[13] The plastic sachet seized by PO3 Rodil was marked with the initial "YEL" while the 4 plastic sachets recovered by SPO2 Espiritu were marked with the initials *MDR1*, *MDR2*, *MDR3*, and *MDR4*. Letter-requests for laboratory examination were then prepared and delivered to the crime laboratory, together with the seized items, by PO3 Rodil. The accused-appellants were also brought to the crime laboratory for mandatory drug testing.[14]

On 10 May 2005, at about 4:55 p.m., the criminal laboratory received the letter-requests for laboratory examination[15] and the five (5) heat-sealed transparent sachets. After a qualitative examination, the substances inside the subject sachets yielded positive results for methamphetamine hydrochloride or shabu.[16] Urine samples from both Jefferson and Mitos also yielded positive for the presence of shabu.[17]

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[11] TSN, 24 October 2005, pp. 7-10.

[12] TSN, 12 May 2008, pp. 17-18.

[13] Records (Crim. Case No. CR-05-8045) p. 19.

[14] *Id*. p. 14.

[15] Records (Crim. Case No. CR-05-8045), pp. 16 and 181.

[16] *Id*. at 20 and 182.

[17] *Id*. at 179-180.

Evidence for the Defense

The defense presented accused-appellants Jefferson and Mitos as witnesses. Their combined testimonies tended to establish their innocence, as follows:

On 10 May 2005, at about 2:15 p.m., Jefferson was inside the comfort room when he heard banging sounds on the front door of their house. When he went out of the comfort room to check who was banging on their door, he saw five (5) to six (6) police officers already inside their house. He noticed that their door knob and wooden lock had been destroyed. Thereafter, the police officers approached his wife Mitos and frisked her. They then proceeded to search the house for about half an hour. Jefferson asked them what they were searching for, but he was ignored and held. After the search, the police officers told them that they found shabu inside their house. When Jefferson denied it, they punched and kicked him, dragged him outside the house, and brought him to the police station.[18]

The RTC Ruling

In its 17 May 2011 Joint Decision, the RTC found Jefferson guilty of the crimes of illegal sale and illegal possession of prohibited drugs in Criminal Case Nos. CR-05-8045 to 8046; while Mitos was found guilty of the crime of illegal sale of prohibited drugs in Criminal Case No. CR-05-8045, the dispositive portion of which reads:

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered as follows:

1. In CR-05-8045, this Court finds the accused JEFFERSON DEL MUNDO y ABAC and MITOS LACSON-DEL MUNDO **GUILTY** beyond reasonable doubt as principal[s] of the crime charged in the aforequoted Information and in default of any modifying circumstances attendant, hereby sentences them to suffer the penalty of **LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND**

[18] TSN, 13 September 2010, pp. 5-8.

(₱500,000.00) PESOS, with the accessories provided by law and with credit for preventive imprisonment undergone, if any. The 0.03 gram of *methamphetamine hydrochloride* (shabu) subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with law.

2. In CR-05-8046, this Court finds the accused JEFFERSON DEL MUNDO y ABAC **GUILTY** beyond reasonable doubt as principal in the crime charged in the aforequoted information and in default of any modifying circumstances attendant, hereby sentences him to suffer the indeterminate penalty of imprisonment ranging **from TWELVE (12) YEARS and ONE (1) DAY as MINIMUM to FIFTEEN (15) YEARS and ONE (1) DAY as MAXIMUM and to pay a fine in the amount of ₱300,000.00.** The 0.14 gram of *methamphetamine hydrochloride* (shabu) subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with law.[19]

The RTC observed that the defense offered by the accused-appellants merely revolved around denial and an insinuation of "frame-up" and "planting of evidence" committed by the police officers. However, the RTC did not give any credence to such defense, stating that mere denial could not prevail over the positive and steadfast testimonies and sworn affidavits of the police officers.

Aggrieved, the accused-appellants appealed before the CA.[20]

The CA Ruling

In its assailed Decision, dated 30 January 2013,[21] the CA affirmed the 17 May 2011 RTC Joint Decision. The dispositive portion of the assailed decision reads:

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[19] Records (Crim. Case No. CR-05-8045), pp. 218-219.

[20] *Id*. at 225 and 227.

[21] *Rollo*, pp. 2-16.

WHEREFORE, the appeal is **DENIED**. The ***Joint Decision*** of the Regional Trial Court of Calapan City, Oriental Mindoro, Br. 39, in Crim. Case Nos. CR-05-8045 and CR-05-8046 is **AFFIRMED**.[22]

The appellate court ratiocinated that the trial court correctly convicted the accused-appellants as the prosecution was able to sufficiently prove the essential elements of both illegal sale and illegal possession of dangerous drugs. Also, the CA was convinced that the prosecution had properly established the unbroken chain of custody resulting in the preservation of the integrity and evidentiary value of the seized items.

THE ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

THE COURT'S RULING

The appeal is meritorious.

As a general rule, the trial court's findings of fact, especially when affirmed by the CA, are entitled to great weight, and will not be disturbed on appeal.[23] This rule, however, does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.[24] The Court opines that the trial and appellate court misapprehended material facts in this case.

Chain of Custody in Illegal Sale and Illegal Possession of Dangerous Drugs

In prosecuting both illegal sale and illegal possession of dangerous drugs, conviction cannot be sustained if doubt persists

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[22] *Rollo*, p. 15.

[23] *People v. Pepino-Consulta*, 716 Phil. 733, 753 (2013), citing *People v. Kamad*, 624 Phil. 289, 299 (2010).

[24] *Catuiran v. People*, 605 Phil. 646, 655 (2009).

on the identity of said drugs. The identity of the dangerous drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the dangerous drug illegally possessed and sold is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[25]

Because it is indispensable that the substance confiscated from the accused be the very same substance offered in court, the Court has adopted the chain of custody rule, a method of authenticating evidence which requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[26]

The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would be able to describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[27]

As a general rule, the prosecution must endeavour to establish four links in the chain of custody of the confiscated item: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory

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[25] *People v. Gayoso*, G.R. No. 206590, 27 March 2017, citing *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

[26] *Mallillin v. People,* 576 Phil. 576, 587 (2008).

[27] *Id*.

examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[28]

Non-Observance of the Procedural Requirements under Section 21 of R.A. No. 9165

At the outset, the Court notes that the buy-bust team failed to observe the proper procedure in taking custody of confiscated dangerous drugs. Section 21, Article II of R.A. No. 9165 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. –
>
> x x x x x x x x x
>
> **(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. (emphasis supplied)

While the prosecution was able to present the inventory of the confiscated items, which was apparently prepared by PO3 Rodil, and attested to by Ocampo, Sr., of *Kill Droga*, the Court opines that the same could not be given any credence. Readily apparent from the said inventory is the fact that it is undated. Hence, the requirement that the inventory must be made immediately after seizure was not satisfied.

Further, none of the persons required to sign the inventory, as enumerated under the law, were made to sign the same. The Court notes that while the prosecution witnesses testified that

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[28] *People v. Breis*, 766 Phil. 785, 803 (2015).

the seized items were physically inventoried and photographed in the presence of the accused-appellants and Gargullo, they were not made to sign the inventory. Instead, a certain Ocampo, Sr. was made to sign the inventory. It must be noted that Ocampo, Sr. is not among those persons required by the law to witness and sign the inventory as he did not represent the accused-appellants, the media, or the Department of Justice. Neither was he an elected public official.

PO3 Rodil further testified that photographs were taken of the accused-appellants and of the items confiscated from them. Not one of the alleged photographs, however, was presented in court as part of the evidence for the prosecution and no explanation was offered to explain why.

In the recent case of *People v. Jaafar*,[29] the prosecution and the buy-bust team committed lapses similar in this case. In that case, the buy-bust team conducted a physical inventory of the seized sachets of shabu. However, it was not shown that the physical inventory was done in the presence of the accused, his representative, representatives from the media and the Department of Justice, or an elected public official. Neither was any photograph of the alleged inventory presented by the prosecution. In ruling for the acquittal of the accused, the Court ratiocinated as follows:

> The prosecution established during trial and on appeal that the buy-bust operation had been carefully planned by narrating the events with intricate detail. However, at the same time, the prosecution relied heavily on the exception to the chain of custody rule. Worse, the prosecution did not even offer any explanation on why they failed to comply with what was mandated under the law. Indeed, if the police authorities had carefully planned the buy-bust operation, then there was no reason for them to neglect such important requirements. They cannot feign ignorance of the exacting standards under Section 21 of Republic Act No. 9165. Police officers are presumed and are required to know the laws they are charged with executing.

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[29] G.R. No. 219829, 18 January 2017.

This Court cannot merely gloss over the glaring procedural lapses committed by the police officers, especially when what had been allegedly seized from accused-appellant was only 0.0604 grams of shabu. Recent cases have highlighted the need to ensure the integrity of seized drugs in the chain of custody when only a miniscule amount of drugs had been allegedly seized from the accused.

In *People v. Holgado*, this Court held that "[c]ourts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving minuscule amounts of drugs . . . [as] they can be readily planted and tampered."

Non-observance of the mandatory requirements under Section 21 of Republic Act No. 9165 casts doubt on the integrity of the shabu supposedly seized from accused-appellant. This creates reasonable doubt in the conviction of accused-appellant for violation of Article II, Section 5 of Republic Act No. 9165.[30] (citations omitted)

The Court is not unmindful of the rule that the failure to faithfully observe the procedural requirements under Section 21 would not necessarily result in the acquittal of the accused, provided the chain of custody remains unbroken.[31] Indeed, the prosecution's failure to show that the police officers did the required physical inventory and to present any photograph of the evidence confiscated pursuant to the said guidelines is not fatal and does not automatically render accused's arrest illegal or the items seized/confiscated from him inadmissible.[32] Nonetheless, it is well to stress that such liberality could only be applied for justifiable grounds[33] and only when the evidentiary value and integrity of the illegal drug are properly preserved.[34]

In this case, no explanation was offered by the prosecution for failing to comply with the requirements in Section 21. There

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[30] *Id.*

[31] *People v. Manlangit*, 654 Phil. 427, 442 (2011).

[32] *Id.* at 441.

[33] *Id.*, Implementing Rules and Regulations of R.A. No. 9165, Section 21(a).

[34] *People v. Havana*, G.R. No. 198450, 11 January 2016, 778 SCRA 524, 538-539, citing *People v. Guru*, 698 Phil. 131 (2012).

is no justifiable ground for its failure to require the accused-appellants and the elected public official to sign the inventory if they were indeed present during the physical inventory. The absence of Gargullo and the accused-appellants' signatures on the inventory raises the suspicion that the physical inventory was made without their presence, in violation of the requirements under the law.

More importantly, the Court opines that the evidentiary value and integrity of the illegal drugs seized have been compromised. The prosecution failed to sufficiently establish an unbroken chain of custody.

The accused-appellants must be acquitted in Criminal Case No. CR-05-8045 (Illegal Sale of Drugs); the corpus delicti of the offense was not presented.

Accused-appellants insist that the charge of illegal sale of drugs must fail for the prosecution's failure to preserve the integrity and credibility of the evidence against them. They point out that the plastic sachet marked with the initials "YEL" which they allegedly gave to PO2 Rodil was never presented in court during trial.

In criminal prosecution for illegal sale of dangerous drugs, the prosecution must prove the following essential elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[35] What is material, therefore, is proof that the accused peddled illicit drugs, coupled with the presentation in court of the *corpus delicti*.[36]

After a thorough review of the records, the Court finds that the prosecution indeed failed to establish an unbroken chain of custody of the sachet marked with the initials "YEL." The

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[35] *People v. Tiu*, 460 Phil. 95, 103 (2003).

[36] *People v. Chua Tan Lee*, 457 Phil. 443, 449 (2003).

prosecution failed to establish the fourth link in the chain of custody because the *corpus delicti* in Criminal Case No. CR-05-8045 was not presented and offered in court in evidence.

In her testimony, PI Alviar admitted that their criminal laboratory office received from PO3 Rodil the subject five (5) plastic sachets, including the one marked "YEL," together with requests for their examination.

With respect to the sachet marked as "YEL," PI Alviar testified that after performing qualitative examination on its contents, she found out that the same yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. The said finding was written in Chemistry Report No. D-027-05[37] which the prosecution presented during PI Alviar's testimony. Interestingly, PI Alviar failed to produce before the court the specimen subjected to examination. Instead, she undertook to present the same on the next scheduled hearing and the prosecution reserved its right to recall her for the purpose of identifying the sachet marked as "YEL":

PROSECUTOR JOYA:

Q. Where is this specimen subject of this chemistry report now, Miss Witness?
A. It is in our office.

Q. Can you bring the specimen on the next scheduled date of hearing?
A. Yes, ma[a]m.

PROSECUTOR JOYA:

We are through with the witness, Your Honor, but we will be recalling this witness to identify the subject of Chemistry Report No. D-027-05. Perhaps before the cross-examination.[38]

The presentation of evidence for the prosecution was completed and yet they failed to present the sachet marked "YEL."

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[37] Records (Crim. Case No. CR-05-8045), p. 20.

[38] TSN, 12 September 2006, pp. 13-14.

Although the prosecution's Formal Offer of Exhibits[39] listed an Exhibit "F-1," purportedly referring to the confiscated five (5) sachets of shabu, the records do not show that the plastic sachet with the markings "YEL" was ever presented and identified in court by any of the prosecution witnesses. The parties merely stipulated that PO3 Rodil would be able to identify the specimen subject of this case which remained in the custody of the criminal laboratory.[40]

The prosecution's failure to present the sachet marked as "YEL" is crucial to their cause because it constitutes the *corpus delicti* of the offense. Thus, absent the said *corpus delicti*, the Court is unable to sustain the accused-appellants' conviction for illegal sale of dangerous drugs. Jefferson and Mitos must therefore be acquitted of the charges against them in Criminal Case No. CR-05-8045.

Accused-Appellant Jefferson must be acquitted in Criminal Case No. CR-05-8046 (Illegal Possession of Dangerous Drugs); Unbroken Chain of Custody was not established.

To ensure conviction in illegal possession of dangerous drugs, the following elements must be established: (1) the accused was in possession of the dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the dangerous drugs.[41]

As in illegal sale, the dangerous drug illegally possessed by and confiscated from the accused constitutes the *corpus delicti* of the offense.[42] Thus, the chain of custody rule takes primary

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[39] Records (Crim. Case No. CR-05-8045), pp. 174-178.

[40] TSN, 12 May 2008, p. 22.

[41] *People v. Dela Rosa*, 655 Phil. 630, 647 (2011).

[42] *People v. Alcuizar*, 662 Phil. 794, 801 (2011).

importance to ascertain that the integrity and identity of the seized item are preserved with moral certainty.[43]

In this case, the prosecution left serious gaps in the chain of custody of the sachets of shabu.

In his testimony, SPO2 Espiritu recalled having custody of the four (4) sachets of shabu from the time he retrieved the same from the toilet bowl until they arrived at the police station. He narrated that:

PROSECUTOR JOYA:

Q. What did you do with the thing thrown to the toilet bowl?
A. Since that toilet bowl was still dirty and full of human feces, I got a broom stick and took those sachets with it.

Q. What did you do with the 4 plastic sachets you took from the toilet bowl?
A. I place it near the bowl because they were still filled with some human feces.

x x x x x x x x x

Q. What did you do with the shabu after cleaning it?
A. **They were already in my custody.**

x x x x x x x x x

Q. **From the place where the incident happened in Calero up to your station who has custody of the 4 confiscated items?**
A. In my custody.[44] (emphases supplied]

SPO1 Buhay corroborated SPO2 Espiritu's account.[45]

However, PO3 Rodil's testimony contradicts the version of SPO2 Espiritu and SPO1 Buhay. According to PO3 Rodil, SPO2 Espiritu gave her the four sachets after their retrieval, thus:

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[43] *People v. Lorenzo*, *Supra* note 25 at 403.

[44] TSN, 24 October 2005, pp. 9-11.

[45] TSN, 16 June 2008, p. 11.

PROSECUTOR JOYA:

Q. What happened in the comfort room of the house, Madam Witness, if you know?

A. According to what they said, when they caught up with him at the comfort room, Jefferson was about to flush four more plastic sachets but they were able to confiscate the same, ma'am.

Q. And what did SPO2 Espiritu do with those four sachets which accused was about to flush?

A. After retrieving those four sachets of shabu, **they gave it to me together with the sachet that I was able to buy, ma'am.**

Q. And what did you do to the four sachet[s] of shabu which were confiscated from the possession of Jefferson del Mundo?

A. After that we already arrested them and brought them to the Calapan City Police Station and the four plastic sachets that [were] confiscated together with the one plastic sachet that I bought were all marked, ma'am.[46]

Evidently, there is confusion and uncertainty regarding the person who had custody of the sachets when they were brought to the police station. Worse, no attempt to reconcile this inconsistency was made by the prosecution. As a consequence, the identity and integrity of the items marked at the police station were placed in serious doubt.

Aside from the confusion, another matter that militates the cause of the prosecution is the doubt on the number of confiscated sachets which actually contained a white crystalline substance.

SPO2 Espiritu testified that he recovered four (4) plastic sachets, each containing a white crystalline substance, which Jefferson had thrown into the toilet bowl. That the plastic sachets contain white crystalline substances was supported by the Chemistry Report No. D-026-05,[47] which summarized the specimens received and examined by the forensic chemist, as follows:

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[46] TSN, 12 May 2008, p. 13.

[47] Records (Crim. Case No. CR-05-8045), p. 182.

SPECIMEN SUBMITTED:

A – Four (4) heat-sealed transparent plastic sachets each containing white crystalline substance with the following markings and recorded net weights:

A-1 (MDR-1)= 0.04 gram A-3 (MDR-3)= 0.03 gram

A-2 (MDR-2)= 0.04 gram A-4 (MDR-4)= 0.03 gram

x x x x x x x x x

These sachets were presented in court and identified by PI Alviar as the same ones that tested positive for *shabu*.

On the other hand, SPO1 Buhay testified that only one (1) out of several sachets retrieved from the toilet bowl contained a white crystalline substance. He even surmised that the substances from the other sachets may have been dissolved after being wet, thus:

PROSECUTOR JOYA:

Q. What shabu are you referring to that Jefferson threw at the toilet bowl?
A. Those who were left over shabu that he threw to the toilet, madam.

Q. How many sachets of shabu did Jefferson del Mundo throw at the toilet bowl?
A. SPO2 Espiritu was able to take **one sachet of shabu together with some empty plastic containers and maybe because the substance became wet and it dissolved, madam.**[48] (emphasis supplied)

Again, the prosecution did not attempt to clarify or rectify this discrepancy, a fatal mistake. This inconsistency could not be considered minor because it is crucial to establishing a reliable chain of custody of the drug specimens.

Indeed, SPO1 Buhay's testimony that only one of the four sachets contained a white crystalline substance casts reasonable

[48] TSN, 16 June 2008, p. 9.

doubt on the integrity and identity of the contents of the remaining sachets, if not on all of them. Thus, there is uncertainty on whether the four (4) plastic sachets presented in court and identified by PI Alviar were the same ones confiscated from Jefferson.

Reasonable doubt thus exists, as the quantum of proof required for the conviction of Jefferson for illegal possession of dangerous drugs was not met. His acquittal is, therefore, in order.

WHEREFORE, the assailed Decision dated 30 January 2013 of the Court of Appeals in CA-G.R. CR-HC No. 05114 is **REVERSED** and **SET ASIDE**. Accused-appellants Jefferson Del Mundo y Abac and Mitos Lacson-Del Mundo are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt in Criminal Case No. CR-05-8045. Further, accused-appellant Jefferson Del Mundo y Abac is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt in Criminal Case No. CR-05-8046. They are **ORDERED** immediately **RELEASED** from detention, unless they are detained for any other lawful cause.

SO ORDERED.

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

Gesmundo, J., on official leave.

THIRD DIVISION

[G.R. No. 208426. September 20, 2017]

SAMUEL M. ALVARADO, *petitioner, vs.* **AYALA LAND, INC., AYALA HILLSIDE ESTATES HOMEOWNERS' ASSOCIATION, INC., ALEXANDER P. AGUIRRE, HORACIO PAREDES, RICARDO F. DE LEON,**

REYNATO Y. SAWIT, AGUSTIN N. PEREZ, GERONIMO M. COLLADO, EMMANUEL C. CHING, MACABANGKIT LANTO, MANUEL DIZON, TARCISIO CALILUNG, IRINEO AGUIRRE, ERNESTO ORTIZ LUIS, BERNARDO JAMBALOS III, FRANCISCO ARCILLANA, LUIS S. TANJANGCO, AND PABLITO VILLEGAS, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; A MOTION TO DISMISS MAY BE FILED WITHIN THE TIME FOR BUT BEFORE FILING THE ANSWER.— A civil action is initiated by filing a complaint in the appropriate court. Within 15 days after the service of summons or as directed by the court, the defendant must file an answer. x x x The filing of a complaint is not in all cases followed by the filing of an answer. Upon any of the grounds recognized by Rule 16, Section 1 of the 1997 Rules of Civil Procedure, a defendant may instead seek the immediate dismissal of the complaint. x x x Rule 16, Section 1 is unequivocal: a motion to dismiss is filed "[w]ithin the time for but *before filing the answer*." Rule 16, Section 4 states that if a motion to dismiss is denied, the defendant shall then file an answer within the remaining period of the 15 days that he or she originally had to file it but in no case less than five (5) days.

2. ID.; ID.; ID.; THE GROUNDS PARTAKE OF THE NATURE OF DEFENSES WHICH MAY BE GRANTED WITHOUT TOUCHING ON THE MERITS OF THE CASE.— The 1997 Rules of Civil Procedure frame a procedure where only the merits of the issues of a case are to be the subject of trial. The issues, however, will be joined only after an answer is filed. In the answer, affirmative defenses, which take the form of "confession and avoidance" may also be raised. After the answer, no new defenses may be raised. As Rule 9, Section 1 stipulates "[d]efenses and objections not pleaded ... in the answer are deemed waived." It is during trial where evidence to prove the parties' respective positions on the substantive issues, as tendered in their pleadings, is received. Judgment on the questions of

fact, as well as law, on these substantive issues will then follow. However, prior to trial, there may be defenses which may be granted without touching on the merits of the case. Thus, Rule 16 provides for the vehicle called a Motion to Dismiss. The grounds under Rule 16 partake of the nature of defenses which can be considered with the hypothetical admission of the allegations in the complaint.

3. ID.; ID.; ID.; GROUNDS THAT SURVIVE THE FILING OF AN ANSWER: LACK OF JURISDICTION OVER THE SUBJECT MATTER, *LITIS PENDENTIA, RES JUDICATA*, PRESCRIPTION; ALSO, A GROUND WHICH ONLY BECAME KNOWN SUBSEQUENT TO THE FILING OF AN ANSWER, AND LACK OF CAUSE OF ACTION .— It is basic, then, that motions to dismiss are not to be entertained after an answer has been filed. This rule, however, admits of exceptions. x x x Out of Rule 16, Section 1's 10 grounds, four (4) survive the anterior filing of an answer: lack of jurisdiction over the subject matter, *litis pendentia, res judicata*, and prescription. x x x Common to all these four (4) grounds that survive the filing of an answer is that they persist no matter the resolution of the merits of the case by the court. A judgment issued by a court without jurisdiction is null and void. Judgments on a similar prior case will be redundant. Thus, *res judicata* and *litis pendencia* can be raised even after an answer has been filed. Prescription attaches regardless of the resolution of the case on the merits. Apart from the exceptions recognized in Rule 9, Section 1, jurisprudence has also clarified that, despite the prior filing of an answer, *an action may still be dismissed on a ground which only became known subsequent to the filing of an answer*. x x x In *Obando v. Figueras*, x x x a ground for dismissal that is equally availing, even after an answer has been filed, is a motion to dismiss on account of *lack of* cause of action. Lack of cause of action must be distinguished from *failure to state* a cause of action: while the lack of cause of action may be pleaded after an answer has been filed, failure to state a cause of action cannot.

4. ID.; ID.; ID.; PLEADING GROUNDS FOR DISMISSAL IN AN ANSWER SUFFICE TO EFFECT A SITUATION AS IF A MOTION TO DISMISS HAD BEEN FILED.— Rule 9, Section 1 considers as waived only those "[d]efenses and objections not pleaded ... in the answer." When defenses and

objections are pleaded in an answer and thereafter are restated in a motion to dismiss, the motion to dismiss' recital of grounds may be repetitive or superfluous, but no waiver ensues. It is not so much that the motion to dismiss is valid; rather, the answer is adequate. Pleading grounds for dismissal in an answer suffice to effect a situation "as if a motion to dismiss had been filed."

APPEARANCES OF COUNSEL

Palad Lauron Palad Law Firm for petitioner.

Aguirre Abano Pamfilo Paras Pineda & Agustin Law Offices for respondents Ayala Hillside Estates Homeowners' Association, Inc.

Nolledo Hermosura & Uriarte-Tan for respondent Ayala Land, Inc.

D E C I S I O N

LEONEN, *J.*:

Two (2) categories of motions to dismiss may be recognized under the 1997 Rules of Civil Procedure: first, those that must be filed ahead of an answer, and second, those that may be entertained even after an answer has been filed. Motions to dismiss under the first category may plead any of the 10 grounds under Rule 16, Section 1.[1] Those under the second category

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[1] RULES OF COURT, Rule 16, Sec. 1 provides:

Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(a) That the court has no jurisdiction over the person of the defending party;
(b) That the court has no jurisdiction over the subject matter of the claim;
(c) That venue is improperly laid;
(d) That the plaintiff has no legal capacity to sue;
(e) That there is another action pending between the same parties for the same cause;
(f) That the cause of action is barred by a prior judgment or by the statute of limitations;
(g) That the pleading asserting the claim states no cause of action;

may only plead four (4) of Rule 16, Section 1's 10 grounds: lack of jurisdiction over the subject matter, *litis pendentia*, *res judicata*, and prescription. In addition to these four (4) grounds, motions to dismiss under the second category may also plead lack of cause of action and other grounds that may only be made known after the answer was filed.[2]

The prior filing of an answer, therefore, serves as a bar to the consideration of Rule 16, Section 1's six (6) other grounds. However, the grounds stated in a belatedly filed motion to dismiss may still be considered provided that they were pleaded as affirmative defenses in an answer. There is then no waiver of the previously pleaded defenses. The complaint may be dismissed even for reasons other than lack of jurisdiction over the subject matter, *litis pendentia*, *res judicata*, prescription, lack of cause of action, or delayed discovery of a ground for dismissal. The belatedly filed motion to dismiss is not a useless superfluity. It is effectively a motion for the court to hear the grounds for dismissal previously pleaded as affirmative defenses in the answer, pursuant to Rule 16, Section 6.[3] Still, the continuing availability of grounds does not guarantee a dismissal. An allegation of non-compliance with a condition precedent may

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(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds;
(j) That a condition precedent for filing the claim has not been complied with.

[2] Cf. Failure to state a cause of action.

[3] RULES OF COURT, Rule 16, Sec. 6 provides:

Section 6. Pleading grounds as affirmative defenses. — If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer.

be belied by antecedent facts; a claim of failure to state a cause of action may be negated by sufficient allegations in the complaint.

This resolves a Petition for Review on Certiorari[4] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed April 17, 2013 Decision[5] and August 2, 2013 Resolution[6] of the Court of Appeals in CA-G.R. SP No. 123929 be reversed and set aside, and that the action assailing the validity of a tax sale initiated by respondents against petitioner Samuel M. Alvarado (Alvarado) before the Quezon City Regional Trial Court be dismissed.[7]

The assailed Court of Appeals April 17, 2013 Decision dismissed Alvarado's Petition for Certiorari and found no grave abuse of discretion on the part of Presiding Judge Tita Marilyn Payoyo-Villordon (Judge Payoyo-Villordon) of Branch 224, Regional Trial Court, Quezon City in issuing her September 6, 2011 and January 6, 2012 Orders.[8] The assailed Court of Appeals August 2, 2013 Resolution denied petitioner's Motion for Reconsideration.[9]

Judge Payoyo-Villordon's September 6, 2011 Order[10] denied petitioner's Motion to Dismiss the action assailing the validity of a tax sale initiated by herein respondents, Ayala Land, Inc.,

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[4] *Rollo*, pp. 22–43.

[5] *Id*. at 44–54. 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.

[6] *Id*. at 55–56. 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.

[7] *Id.* at 38.

[8] *Id*. at 44–45.

[9] *Id*. at 56.

[10] *Id*. at 157–159.

Ayala Hillside Estates Homeowners' Association, Inc. (Ayala Hillside), Alexander P. Aguirre, Horacio Paredes, Ricardo F. De Leon, Reynato Y. Sawit, Agustin N. Perez, Geronimo M. Collado, Emmanuel C. Ching, Macabangkit Lanto, Manuel Dizon, Tarcisio Calilung, Irineo Aguirre, Ernesto Ortiz Luis, Bernardo Jambalos III, Francisco Arcillana, Luis S. Tanjangco, and Pablito Villegas. Her January 6, 2012 Order[11] denied petitioner's Motion for Reconsideration.

Capitol Hills Golf and Country Club, Inc. (Capitol) owned a 15,598-square-meter parcel in Quezon City covered by Transfer Certificate of Title (TCT) No. N-253850.[12] As of the occurrence of the material incidents of this case, this parcel was alleged to have had an assessed value of ₱17,547,750.00 and a zonal value of ₱249,568,000.00.[13]

On November 16, 2007, this entire parcel was levied by the Quezon City Treasurer on account of unpaid real estate taxes amounting to ₱1,857,136.89 plus penalties of ₱668,569.28. On December 13, 2007, it was subjected to a tax delinquency sale. Alvarado was noted to have been the highest bidder for the amount of ₱2,600,000.00. Thereafter, a Certificate of Sale of Delinquent Property was issued in Alvarado's favor.[14]

On December 7, 2010, respondents filed with the Quezon City Regional Trial Court their Complaint[15] assailing the validity of the tax sale.[16] Alvarado, the Quezon City Treasurer, the Quezon City Register of Deeds, and several John and Jane Does who allegedly participated in the conduct of the levy and sale were impleaded as defendants.[17]

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[11] *Id*. at 182–183.

[12] *Id*. at 45.

[13] *Id*. at 70, Complaint.

[14] *Id*. at 62, Complaint.

[15] *Id*. at 60–82.

[16] *Id*. at 45.

[17] *Id*. at 61.

In their Complaint, individual respondents Alexander P. Aguirre, Horacio Paredes, Ricardo F. De Leon, Reynato Y. Sawit, Agustin N. Perez, Geronimo M. Collado, Emmanuel C. Ching, Macabangkit Lanto, Manuel Dizon, Tarcisio Calilung, Irineo Aguirre, Ernesto Ortiz Luis, Bernardo Jambalos III, Francisco Arcillana, Luis S. Tanjangco, and Pablito Villegas identified themselves as "members of Capitol Hills Golf [and] Country Club, Inc., who were each issued their corresponding Certificates of Shares of Stocks and/or Member's Identification (ID) Cards."[18] Ayala Hillside identified itself as "an association of lot owners residing in Ayala Hillside Estate who set up their homes in such a location primarily because of the green environment provided by the Capitol Golf Course."[19] Ayala Land, Inc. noted that it had an "Agreement [with Capitol] for a joint development of the Capitol Golf Course since [Ayala Land, Inc.]'s Ayala Hillside Estate . . . is located and situated inside the Capitol Golf Course."[20]

The Complaint alleged several anomalies in the sale. It assailed the sale of the entire parcel for ₱2,600,000.00, an amount that, as respondents alleged, equated to 14.41% of its assessed value, 6.48% of its market value, and 1.01% of its zonal value.[21] It asserted that the sale of the entire parcel instead of merely a usable portion of it that sufficed to cover the tax delinquency, net of penalties, of ₱2,528,992.48 violated Section 260 of the Local Government Code[22] and Chapter Two, Article 7, Section

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[18] *Id*. at 63.

[19] *Id*. at 64.

[20] *Id*.

[21] *Id*. at 70.

[22] LOCAL GOVT. CODE, Sec. 260 provides:

Section 260. Advertisement and Sale. – Within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a *usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale*. The advertisement shall be effected by posting a notice at the main entrance of the provincial, city or municipal building, and in a publicly accessible and conspicuous place in the barangay where the real property is located, and

14, paragraph 4 of the Quezon City Revenue Code.[23] It added that the Final Bill of Sale was issued to Alvarado "palpably way ahead before the expiration of the redemption period"[24] and that neither a notice of sale nor a notice of tax delinquency was posted in publicly accessible and conspicuous places,[25] contrary to the requirements of Section 254 of the Local Government Code.[26]

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by publication once a week for two (2) weeks in a newspaper of general circulation in the province, city or municipality where the property is located. The advertisement shall specify the amount of the delinquent tax, the interest due thereon and expenses of sale, the date and place of sale, the name of the owner of the real property or person having legal interest therein, and a description of the property to be sold. At any time before the date fixed for the sale, the owner of the real property or person having legal interest therein may stay the proceedings by paying the delinquent tax, the interest due thereon and the expenses of sale. The sale shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as specified in the notice of the sale.

Within thirty (30) days after the sale, the local treasurer or his deputy shall make a report of the sale to the sanggunian concerned, and which shall form part of his records. The local treasurer shall likewise prepare and deliver to the purchaser a certificate of sale which shall contain the name of the purchaser, a description of the property sold, the amount of the delinquent tax, the interest due thereon, the expenses of sale and a brief description of the proceedings: Provided, however, That proceeds of the sale in excess of the delinquent tax, the interest due thereon, and the expenses of sale shall be remitted to the owner of the real property or person having legal interest therein.

The local treasurer may, by ordinance duly approved, advance an amount sufficient to defray the costs of collection through the remedies provided for in this Title, including the expenses of advertisement and sale. (Emphasis supplied)

[23] *Rollo,* p. 68.

Within thirty (30) days after the service of warrant of levy, the City Treasurer shall advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sales[.]

[24] *Id*. at 70.

[25] *Id*. at 71–72.

[26] LOCAL GOVT. CODE, Sec. 254 provides:

In response to respondents' Complaint, Alvarado filed his Answer with Compulsory Counterclaim[27] dated April 4, 2011. This Answer asserted that the Complaint was "procedurally and fatally defective on its face"[28] for the following reasons:

I.

APPLYING SECTION 1 (J), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, THE HONORABLE COURT HAS NO JURISDICTION OVER THE CASE SINCE A CONDITION PRECEDENT FOR THE FILING OF THE CLAIM HAS NOT BEEN COMPLIED WITH I.E. THE MANDATORY JUDICIAL DEPOSIT AS PROVIDED FOR UNDER SEC. 267 OF THE LOCAL GOVERNMENT CODE.

II.

APPLYING SECTION 1 (G), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, [RESPONDENTS] FAILED TO STATE A

Section 254. Notice of Delinquency in the Payment of the Real Property Tax. – (a) When the real property tax or any other tax imposed under this Title becomes delinquent, the provincial, city or municipal treasurer shall immediately cause a notice of the delinquency to be posted at the main entrance of the provincial capitol, or city or municipal hall and in a publicly accessible and conspicuous place in each barangay of the local government unit concerned. The notice of delinquency shall also be published once a week for two (2) consecutive weeks, in a newspaper of general circulation in the province, city, or municipality.

(b) Such notice shall specify the date upon which the tax became delinquent and shall state that personal property may be distrained to effect payment. It shall likewise state that at any time before the distraint of personal property, payment of the tax with surcharges, interests and penalties may be made in accordance with the next following section, and unless the tax, surcharges and penalties are paid before the expiration of the year for which the tax is due, except when the notice of assessment or special levy is contested administratively or judicially pursuant to the provisions of Chapter 3, Title II, Book II of this Code, the delinquent real property will be sold at public auction, and the title to the property will be vested in the purchaser, subject, however, to the right of the delinquent owner of the property or any person having legal interest therein to redeem the property within one (1) year from the date of sale.

[27] *Rollo*, pp. 83–96.

[28] *Id*. at 87.

CAUSE OF ACTION AGAINST THE [PETITIONER] — [RESPONDENTS] NOT BEING THE REGISTERED OWNER OF THE AUCTIONED PROPERTY AND NOT HAVING ANY AUTHORITY FROM THE REGISTERED OWNER OF THE PROPERTY.

III.

APPLYING SECTION 1 (B), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, THE HONORABLE COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER OF THE CLAIM CONSIDERING THAT [RESPONDENTS] HAVE NOT SHOWN ANY REAL, ACTUAL, MATERIAL OR SUBSTANTIAL LEGAL RIGHTS OR INTEREST ON THE AUCTIONED PROPERTY. AS A MATTER OF FACT, [RESPONDENTS'] ALLEGED RIGHTS DO NOT APPEAR IN THE TITLE ITSELF. Thus, Section 267 of the Local Government Code provides that "Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired."[29]

After filing his Answer, Alvarado filed his Motion to Dismiss[30] dated April 14, 2011, substantially reiterating the same procedural defects he noted in his Answer:

1. The instant complaint filed by the [respondents] should be dismissed on the following grounds, as alleged in the special and affirmative defenses in the Answer with Compulsory Counterclaim filed by herein [petitioner]:

GROUNDS

I.

APPLYING SECTION 1 (J), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, THE HONORABLE COURT HAS NO JURISDICTION OVER THE CASE SINCE A CONDITION PRECEDENT FOR THE FILING OF THE CLAIM HAS NOT BEEN COMPLIED WITH I.E. THE MANDATORY JUDICIAL DEPOSIT AS PROVIDED FOR UNDER SEC. 267 OF THE LOCAL GOVERNMENT CODE.

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[29] *Id*. at 87–88.

[30] *Id*. at 117–125.

II.

APPLYING SECTION 1 (G), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, [RESPONDENTS] FAILED TO STATE A CAUSE OF ACTION AGAINST THE [PETITIONER] — [RESPONDENTS] NOT BEING THE REGISTERED OWNER OF THE AUCTIONED PROPERTY.

III.

APPLYING SECTION 1 (B), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, THE HONORABLE COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER OF THE CLAIM CONSIDERING THAT [RESPONDENTS] HAVE NOT SHOWN ANY REAL, ACTUAL, MATERIAL OR SUBSTANTIAL LEGAL RIGHTS OR INTEREST ON THE AUCTIONED PROPERTY. AS A MATTER OF FACT, [RESPONDENTS'] ALLEGED RIGHTS DO NOT APPEAR IN THE TITLE ITSELF. Thus, Section 267 of the Local Government Code provides that "Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired."[31]

In her Order[32] dated September 6, 2011, Judge Payoyo-Villordon denied Alvarado's Motion to Dismiss. She noted that the Motion was filed out of time as Alvarado already filed his Answer and that "Alvarado [was] considered [e]stopped from filing the subject Motion to Dismiss."[33] She conceded that the rule preventing the consideration of motions to dismiss filed after the filing of answers admitted exceptions[34] but noted

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[31] *Id*. at 117–118.

[32] *Id.* at 157–159.

[33] *Id*. at 158.

[34] *Id*. citing *Ruiz v. Court of Appeals*, 292-A Phil. 622 (1993) [Per *J.* Griño-Aquino, First Division], Presiding Judge Payoyo-Villordon noted these exceptions to be:

1. Where the ground raised is lack of jurisdiction of the Court over the subject matter;
2. Where the complaint does not state a cause of action;
3. Prescription; and,

that the grounds pleaded by Alvarado still did not warrant the dismissal of respondents' Complaint.[35]

In her Order[36] dated January 6, 2012, Judge Payoyo-Villordon denied Alvarado's Motion for Reconsideration.

Thereafter, Alvarado filed a Petition for Certiorari with the Court of Appeals.[37]

In its assailed April 17, 2013 Decision,[38] the Court of Appeals found no grave abuse of discretion on the part of Judge Payoyo-Villordon in issuing the September 6, 2011 and January 6, 2012 Orders.

In its assailed August 2, 2013 Resolution,[39] the Court of Appeals denied Alvarado's Motion for Reconsideration.

Hence, Alvarado filed this Petition.

For resolution is the sole issue of whether or not the Court of Appeals erred in not finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Quezon City Regional Trial Court Presiding Judge Tita Marilyn Payoyo-Villordon in issuing her September 6, 2011 and January 6, 2012 Orders.

Judge Payoyo-Villordon correctly observed that petitioner filed his Answer ahead of his Motion to Dismiss. The filing of an answer precludes a motion to dismiss. However, the grounds invoked by petitioner in his Motion to Dismiss had been previously pleaded in his Answer. The consideration of these grounds was, therefore, not forestalled by petitioner's belated filing of a motion to dismiss. These grounds are still

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4. Where the evidence would constitute a ground for dismissal of the complaint was discovered only during the trial.

[35] *Id*. at 158–159.

[36] *Id.* at 182–183. Through Presiding Judge Tita Marilyn Payoyo-Villordon.

[37] *Id.* at 44.

[38] *Id*. at 44–54.

[39] *Id.* at 55–56.

considered timely pleaded in his Answer and merely reiterated in his Motion to Dismiss.

Ultimately, however, Judge Payoyo-Villordon correctly found petitioner's pleaded grounds to be unavailing. Thus, this Court sustains her denial of petitioner's Motion to Dismiss.

I

A civil action is initiated by filing a complaint in the appropriate court.[40] Within 15 days after the service of summons or as directed by the court, the defendant must file an answer.[41] A defendant who fails to timely file an answer shall be held in default: "Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence."[42]

The filing of a complaint is not in all cases followed by the filing of an answer. Upon any of the grounds recognized by Rule 16, Section 1 of the 1997 Rules of Civil Procedure, a defendant may instead seek the immediate dismissal of the complaint. These grounds are:

(a) That the court has no jurisdiction over the person of the defending party;
(b) That the court has no jurisdiction over the subject matter of the claim;
(c) That venue is improperly laid;
(d) That the plaintiff has no legal capacity to sue;
(e) That there is another action pending between the same parties for the same cause;
(f) That the cause of action is barred by a prior judgment or by the statute of limitations;
(g) That the pleading asserting the claim states no cause of action;
(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

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[40] RULES OF COURT, Rule 1, Sec. 5.

[41] RULES OF COURT, Rule 11, Sec. 1.

[42] RULES OF COURT, Rule 9, Sec. 3.

(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds;
(j) That a condition precedent for filing the claim has not been complied with.

Rule 16, Section 1 is unequivocal: a motion to dismiss is filed "[w]ithin the time for but *before filing the answer*."[43] Rule 16, Section 4 states that if a motion to dismiss is denied, the defendant shall then file an answer within the remaining period of the 15 days that he or she originally had to file it but in no case less than five (5) days.[44]

The 1997 Rules of Civil Procedure frame a procedure where only the merits of the issues of a case are to be the subject of trial. The issues, however, will be joined only after an answer is filed. In the answer, affirmative defenses, which take the form of "confession and avoidance"[45] may also be raised. After the answer, no new defenses may be raised. As Rule 9, Section 1 stipulates "[d]efenses and objections not pleaded . . . in the answer are deemed waived."[46]

It is during trial where evidence to prove the parties' respective positions on the substantive issues, as tendered in their pleadings, is received. Judgment on the questions of fact, as well as law, on these substantive issues will then follow.

However, prior to trial, there may be defenses which may be granted without touching on the merits of the case. Thus, Rule 16 provides for the vehicle called a Motion to Dismiss. The grounds under Rule 16 partake of the nature of defenses which can be considered with the hypothetical admission of the allegations in the complaint. For instance, a claim that a complaint fails to state a cause of action asserts that even if the complaint's allegations were true, the plaintiff is still in no position to proceed against the defendant.

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[43] RULES OF COURT, Rule 16, Sec. 1.

[44] RULES OF COURT, Rule 16, Sec. 4.

[45] RULES OF COURT, Rule 6, Sec. 5(b).

[46] RULES OF COURT, Rule 9, Sec. 1.

It is basic, then, that motions to dismiss are not to be entertained after an answer has been filed.

This rule, however, admits of exceptions. While stating the general rule that "[d]efenses and objections not pleaded . . . in the answer are deemed waived," Rule 9, Section 1 adds:

> 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.

Out of Rule 16, Section 1's 10 grounds, four (4) survive the anterior filing of an answer: lack of jurisdiction over the subject matter, *litis pendentia*, *res judicata*, and prescription. Thus, as *Pacaña-Contreras v. Rovila Water Supply Inc.*[47] explained:

> The first paragraph of Section 1, Rule 16 of the Rules of Court provides for the period within which to file a motion to dismiss under the grounds enumerated. Specifically, the motion should be filed within the time for, but before the filing of, the answer to the complaint or pleading asserting a claim. Equally important to this provision is Section 1, Rule 9 of the Rules of Court which states that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except for the following grounds: 1) the court has no jurisdiction over the subject matter; 2) *litis pendencia*; 3) *res judicata*; and 4) prescription.
>
> Therefore, the grounds not falling under these four exceptions may be considered as waived in the event that they are not timely invoked.[48]

Common to all these four (4) grounds that survive the filing of an answer is that they persist no matter the resolution of the merits of the case by the court. A judgment issued by a court without jurisdiction is null and void. Judgments on a similar prior case will be redundant. Thus, *res judicata* and *litis*

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[47] 722 Phil. 460 (2013) [Per *J.* Brion, Second Division].

[48] *Id*. at 473–474.

pendencia can be raised even after an answer has been filed. Prescription attaches regardless of the resolution of the case on the merits.

Apart from the exceptions recognized in Rule 9, Section 1, jurisprudence has also clarified that, despite the prior filing of an answer, *an action may still be dismissed on a ground which only became known subsequent to the filing of an answer.*[49]

In *Obando v. Figueras,*[50] respondent Eduardo Figueras (Eduardo) initially served as the sole administrator of the joint estates of the deceased Jose and Alegria Figueras (Alegria). Upon the filing of a petition for probate and presentation of Alegria's alleged will, petitioner Felizardo Obando (Obando) was designated co-administrator. It turned out, however, that the will was a forgery, and Obando was indicted for and convicted of estafa through falsification of a public document. In the meantime, Eduardo proceeded to sell two (2) estate properties to respondent Amigo Realty Corporation (Amigo). This sale was made despite the probate court's denial of Eduardo's prayer for authority to sell. The sale prompted Obando to sue Eduardo and Amigo for the nullification of the sale. In the interim, the probate court removed Obando from his office as co-administrator. His removal prompted Eduardo and Amigo to file a motion to dismiss the nullification case, with them asserting that by the cessation of Obando's engagement as co-administrator, he lost legal standing to pursue the nullification case. The Regional Trial Court granted respondents' motion and dismissed the nullification case. The Court of Appeals affirmed the Regional Trial Court Decision. In sustaining the Court of Appeals and the Regional Trial Court Decisions, this Court explained:

The Rules provide that a motion to dismiss may be submitted only before the filing of a responsive pleading. Thus, petitioners complain

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[49] See *Obando v. Figueras*, 379 Phil. 150 (2000) [Per *J.* Panganiban, Third Division].

[50] 379 Phil. 150 (2000) [Per *J.* Panganiban, Third Division].

that it was already too late for Respondent Eduardo Figueras to file a Motion to Dismiss after Obando had finished presenting his evidence.

This is not so. *The period to file a motion to dismiss depends upon the circumstances of the case*. Section 1 of Rule 16 of the Rules of Court requires that, in general, a motion to dismiss should be filed within the reglementary period for filing a responsive pleading. Thus, a motion to dismiss alleging improper venue cannot be entertained unless made within that period.

However, even after an answer has been filed, the Court has allowed a defendant to file a motion to dismiss on the following grounds: (1) lack of jurisdiction, (2) *litis pendentia,*(3) lack of cause of action, and (4) discovery during trial of evidence that would constitute a ground for dismissal. Except for lack of cause of action or lack of jurisdiction, the grounds under Section 1 of Rule 16 may be waived. If a particular ground for dismissal is not raised or if no motion to dismiss is filed at all within the reglementary period, it is generally considered waived under Section 1, Rule 9 of the Rules.

Applying this principle to the case at bar, the respondents did not waive their right to move for the dismissal of the civil case based on Petitioner Obando's lack of legal capacity. It must be pointed out that *it was only after he had been convicted of estafa through falsification that the probate court divested him of his representation of the Figueras estates. It was only then that this ground became available to the respondents*. Hence, it could not be said that they waived it by raising it in a Motion to Dismiss filed after their Answer was submitted. Verily, if the plaintiff loses his capacity to sue during the pendency of the case, as in the present controversy, the defendant should be allowed to file a motion to dismiss, even after the lapse of the reglementary period for filing a responsive pleading.[51] (Emphasis supplied, citations omitted)

As *Obando*'s listing of exception indicates, a ground for dismissal that is equally availing, even after an answer has been filed, is a motion to dismiss on account of *lack of* cause of action. Lack of cause of action must be distinguished from *failure to state* a cause of action: while the lack of cause of action may be pleaded after an answer has been filed, failure to state a cause of action cannot. Thus,

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[51] *Id*. at 160–162.

Failure to state a cause of action and lack of cause of action are distinct grounds to dismiss a particular action. *The former refers to the insufficiency of the allegations in the pleading, while the latter to the insufficiency of the factual basis for the action.* Dismissal for failure to state a cause of action may be raised at the earliest stages of the proceedings through a motion to dismiss under Rule 16 of the Rules of Court, while dismissal for lack of cause of action may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions or evidence presented by the plaintiff.[52] (Emphasis supplied)

II

It is error to assume that the grounds pleaded by petitioner in his Motion to Dismiss deserved no consideration since it preceded his Answer.

Rule 9, Section 1 considers as waived only those "[d]efenses and objections not pleaded . . . in the answer."[53] When defenses and objections are pleaded in an answer and thereafter are restated in a motion to dismiss, the motion to dismiss' recital of grounds may be repetitive or superfluous, but no waiver ensues. It is not so much that the motion to dismiss is valid; rather, the answer is adequate. Pleading grounds for dismissal in an answer suffice to effect a situation "as if a motion to dismiss had been filed"[54]:

Section 6. Pleading grounds as affirmative defenses. — If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer.

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[52] *Zuniga-Santos v. Santos-Gran*, 745 Phil. 171, 177–178 (2014) [Per *J.* Bernabe, First Division].

[53] RULES OF COURT, Rule 9, Sec. 1.

[54] RULES OF COURT, Rule 16, Sec. 6.

While a belatedly filed motion to dismiss is not a valid independent plea for terminating the action, it still serves practical purposes. It emphasizes and aims attention at the need for immediately dismissing the complaint. It works as a reiterative manifestation with an accompanying prayer for a court to consider the wisdom of immediately dismissing the case. To this end, it should specifically be treated as a plea for a court to hear the grounds for dismissal, just as it would have had a proper motion to dismiss been filed.

In this case, with the exception of the Motion to Dismiss' deletion of the phrase "and not having any authority from the registered owner of the property" in the second ground for dismissal,[55] petitioner's pleaded grounds in his Motion to Dismiss are a restatement of previously pleaded grounds in his Answer:

Grounds in petitioner's Answer	Grounds in petitioner's Motion to Dismiss
I. APPLYING SECTION 1 (J), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, THE HONORABLE COURT HAS NO JURISDICTION OVER THE CASE SINCE A CONDITION PRECEDENT FOR THE FILING OF THE CLAIM HAS NOT BEEN COMPLIED WITH I.E. THE MANDATORY JUDICIAL DEPOSIT AS PROVIDED FOR UNDER SEC. 267 OF THE LOCAL GOVERNMENT CODE.	I. APPLYING SECTION 1 (J), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, THE HONORABLE COURT HAS NO JURISDICTION OVER THE CASE SINCE A CONDITION PRECEDENT FOR THE FILING OF THE CLAIM HAS NOT BEEN COMPLIED WITH I.E. THE MANDATORY JUDICIAL DEPOSIT AS PROVIDED FOR UNDER SEC. 267 OF THE LOCAL GOVERNMENT CODE.

[55] *Rollo*, pp. 87–88.

II. APPLYING SECTION 1 (G), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, [RESPONDENTS] FAILED TO STATE A CAUSE OF ACTION AGAINST THE [PETITIONER] — [RESPONDENTS] NOT BEING THE REGISTERED OWNER OF THE AUCTIONED PROPERTY AND NOT HAVING ANY AUTHORITY FROM THE REGISTERED OWNER OF THE PROPERTY.	II. APPLYING SECTION 1 (G), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, [RESPONDENTS] FAILED TO STATE A CAUSE OF ACTION AGAINST THE [PETITIONER] — [RESPONDENTS] NOT BEING THE REGISTERED OWNER OF THE AUCTIONED PROPERTY.
III. APPLYING SECTION 1 (B), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, THE HONORABLE COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER OF THE CLAIM CONSIDERING THAT [RESPONDENTS] HAVE NOT SHOWN ANY REAL, ACTUAL, MATERIAL OR SUBSTANTIAL LEGAL RIGHTS OR INTEREST ON THE AUCTIONED PROPERTY. AS A MATTER OF FACT, [RESPONDENTS'] ALLEGED RIGHTS DO NOT APPEAR IN THE TITLE ITSELF. Thus, Section 267 of the Local Government Code provides that "Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings	III. APPLYING SECTION 1 (B), RULE 16 OF THE 1997 RULES OF CIVIL PROCEDURE, THE HONORABLE COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER OF THE CLAIM CONSIDERING THAT [RESPONDENTS] HAVE NOT SHOWN ANY REAL, ACTUAL, MATERIAL OR SUBSTANTIAL LEGAL RIGHTS OR INTEREST ON THE AUCTIONED PROPERTY. AS A MATTER OF FACT, [RESPONDENTS'] ALLEGED RIGHTS DO NOT APPEAR IN THE TITLE ITSELF. Thus, Section 267 of the Local Government Code provides that "Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings

unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired."[56]	unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired."[57]

Petitioner's pleaded grounds for dismissal in his Answer sufficed for the Regional Trial Court to consider the propriety of dismissing the Complaint of the respondents. Their reiteration in petitioner's Motion to Dismiss did not amount to the negation of their prior expression. While nominally it was an independent motion to dismiss, it was more appropriately a reiterative manifestation and a prayer to hear grounds for dismissal which had previously been properly pleaded. The consideration of the propriety of dismissing respondents' Complaint was, thus, not limited to lack of jurisdiction over the subject matter, *litis pendentia*, *res judicata*, prescription, lack of cause of action, or subsequent discovery of a ground for dismissal.

III

Even as the resolution of petitioner's prayer to dismiss respondents' Complaint could have still delved into the full range of grounds permitted by Rule 16, Section 1, this Court still finds no merit in the grounds actually pleaded by petitioner. Thus, this Court sustains Judge Payoyo-Villordon's denial of petitioner's plea to dismiss respondents' Complaint.

III. A

Petitioner first asserts that respondents failed to comply with the condition precedent stipulated by Section 267 of the Local Government Code.[58] Section 267 requires a plaintiff to deposit

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[56] *Id.* at 87–88.

[57] *Id.* at 117–118.

[58] LOCAL GOVT. CODE, Sec. 267 provides:

Section 267. Action Assailing Validity of Tax Sale. — No court shall entertain any action assailing the validity of any sale at public auction of

"the amount for which the real property was sold, together with interest of 2% per month from the date of sale to the time of the institution of the action," before instituting an action assailing the validity of a tax sale.

Petitioner's assertion must crumble in light of the Regional Trial Court's definitive statement that respondents made the requisite deposit:

> The [respondents] have complied with the requirement of the Local Government Code pertaining to the deposit of the bid amount including interest thereof. In fact, the Court assessed the said amount and included the same in the payment of docket fee[s]. The [respondents'] compliance to (sic) the requirement of judicial deposit is further proven by the (sic) Official Receipts (sic) Nos. 0825495 and 0825496 duly attached in the records of the case.[59]

III. B

Petitioner's second and third grounds nominally plead different bases but are anchored on the same premise that respondents' suit was not brought in the name of the real party in interest. The second ground observes that respondents are not the owner of the auctioned property and claims that they have consequently failed to state a cause of action. The third ground claims that "[respondents] have not shown any real, actual, material or substantial legal rights or interest on the auctioned property"[60] and proceeds to assert that this bars the Regional Trial Court from exercising jurisdiction over the subject matter.

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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.

Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

[59] *Rollo*, p. 158.

[60] *Id*. at 117–118.

The logic of the third ground is seriously flawed. It is elementary that jurisdiction is a matter of substantive law. It is not contingent on the personal circumstances of the parties:

> [J]urisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong." Jurisdiction is a matter of substantive law. Thus, an action may be filed only with the court or tribunal where the Constitution or a statute says it can be brought.[61]

Thus, it is inconsequential to subject matter jurisdiction that respondents are allegedly bereft of "any real, actual, material or substantial legal rights or interest on the auctioned property."[62]

Petitioner's third ground wrongly invokes lack of subject matter jurisdiction. It is a mere reiteration of the second ground. It proceeds from and relies on the same premises as the second ground: first, the factual anchor that respondents are not the owners of the disputed property; and second, the assumption that only the owner of a property subjected to a tax delinquency sale may bring an action assailing the validity of its sale. Like the second ground, the third ground assumes that only the owner of the property is entitled to the avails of a suit to annul the validity of a tax sale. As with the second ground, it assumes that respondents are not real parties in interest.[63]

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[61] *City of Lapu-Lapu v. Phil. Economic Zone Authority*, 748 Phil. 473, 522 (2014) [Per *J.* Leonen, Second Division] citing *Villagracia v. Fifth (5th) Shari'a District Court*, 734 Phil. 239 (2014) [Per *J.* Leonen, Third Division]; and *Nocum v. Tan*, 507 Phil. 620, 626 (2005) [Per *J.* Chico-Nazario, Second Division].

[62] *Rollo*, pp. 117–118.

[63] As explained in *Lee v. Romillo*, 244 Phil. 606 (1988) [Per *J.* Gutierrez, Jr., Third Division]:

> By "real party in interest" is meant such party who would be benefited or injured by the judgment or entitled to the avails of the suit (*Subido v. City of Manila, et al.,* 108 Phil. 462 and *Subido v. Sarmiento, et al*., 108 Phil. 150, citing *Salonga v. Warner, Barnes & Co., Ltd.,* 88 Phil. 125). A real party in interest-plaintiff is one who has a legal right while a real party in interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal right of the former.

Their common claim that none of the respondents is a real party in interest makes them similar pleas for dismissal on account of failure to state a cause of action. As *Balagtas v. Court of Appeals*[64] explained, "If the suit is not brought in the name of or against the real party in interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action."[65] Also, in *Aguila, Jr. v. Court of Appeals*:[66]

> A real party in interest is one who would be benefited or injured by the judgment, or who is entitled to the avails of the suit. This ruling is now embodied in Rule 3, Section 2 of the 1997 Revised Rules of Civil Procedure. Any decision rendered against a person who is not a real party in interest in the case cannot be executed. Hence, a complaint filed against such a person should be dismissed for failure to state a cause of action.[67]

Contrary to petitioner's assertions, however, respondents are real parties in interest, who properly pleaded causes of action.

Petitioner's basic premise that only the owners of properties subjected to tax delinquency sales may file actions assailing the validity of tax sales is misguided. Section 267 of the Local Government Code constrains the invalidation of tax delinquency sales in two (2) respects:

> Section 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.

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[64] 375 Phil. 480 (1999) [Per *J.* Purisima, *En Banc*].

[65] *Id*. at 489.

[66] 377 Phil. 257 (1999), [Per *J.* Mendoza, Second Division].

[67] *Id*. at 266.

Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

The first paragraph pertains to the condition precedent of a deposit. The second paragraph limits the invalidation of tax delinquency sales on the basis of "irregularities or informalities in the proceedings." Section 267 permits such invalidations only when "substantive rights . . . have been impaired." These substantive rights may pertain to "the delinquent owner of the real property *or the person having legal interest therein.*" Stated otherwise, a person having legal interest over such property, even a non-owner, may bring an action under Section 267, for as long as his or her substantive rights have been impaired. The right to file an action under Section 267 is not barred merely on account of a plaintiff's not being the owner of the property sold.

Respondents have alleged substantive rights impaired by the sale of the subject property to petitioner. They have each averred the requisite legal interest for bringing an action under Section 267 of the Local Government Code.

Respondents represent different categories of plaintiffs, each with unique rights in relation to the lot put up for a tax delinquency sale. Their respective rights equally deserve protection and it is their Complaint's allegation that these rights were violated by the actions of the persons they impleaded as defendants: the Quezon City Treasurer; the Quezon City Register of Deeds; petitioner, the buyer; and other individuals who effected the assailed sale.

Capitol is a juridical entity with its own, distinct personality. Consistent with Article 46 of the Civil Code,[68] it may "acquire and possess property" such as the lot put up for a tax delinquency

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[68] CIVIL CODE, Art. 46 provides:

Article 46. Juridical persons may acquire and possess property of all kinds, as well as incur obligations and bring civil or criminal actions, in conformity with the laws and regulations of their organization.

sale. As owner, it exclusively enjoyed the entire bundle of rights associated with dominion over this parcel.[69]

Though having its own personality, as a golf and country club, Capitol primarily exists for the utility and benefit of its members. While legal title in its properties is vested in Capitol, beneficial use redounds to its membership. Apart from this, proprietary interest in Capitol is secured through club shares.

As members and shareholders, individual respondents Alexander P. Aguirre, Horacio Paredes, Ricardo F. De Leon, Reynato Y. Sawit, Agustin N. Perez, Geronimo M. Collado, Emmanuel C. Ching, Macabangkit Lanto, Manuel Dizon, Tarcisio Calilung, Irineo Aguirre, Ernesto Ortiz Luis, Bernardo Jambalos III, Francisco Arcillana, Luis S. Tanjangco, and Pablito Villegas held the right to use and enjoy, as well as the limited right to possess Capitol's premises and facilities. Any right of dominion that Capitol held over the parcel was ultimately for their and other members' benefit.

It was in this capacity as members that they initiated the Complaint assailing the validity of the tax delinquency sale. They did this because, by the transfer of ownership to petitioner, they stood to be deprived of the capacity to use and enjoy the entire 15,598-square-meter parcel which "covers the entire Hole No. 5 of the 18-Hole Capitol Golf Course and part of the road way called Mactan Road."[70] Capitol's loss of legal title was tantamount to the loss of the quintessence of their membership and holdings in Capitol. As they explained in their Complaint:

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[69] The attributes of ownership (the so-called seven "juses") have been identified as: the right to possess (*jus possidendi*), the right to use and enjoy (*jus utendi*), the right to the fruits (*jus fruendi*), the right to abuse or consume (*jus abutendi*), the right to dispose or alienate (*jus disponendi*), and the right to recover or vindicate (*jus vindicandi*). See *Samartino v. Raon*, 433 Phil. 173, 189 (2002) [Per *J.* Ynares-Santiago, First Division]; and *E. Rommel Realty and Development Corporation v. Sta. Lucia Development Corporation*, 537 Phil. 822 (2006) [Per *J.* Corona, Second Division].

[70] *Rollo*, p, 62.

21] The removal of Hole No. 5 from the golf course of Capitol Golf Club will be a dismemberment of the golf course and would render the latter as a d[y]sfunctional if not a worthless golf course: it would be incomplete, no natural access to Hole No. 6, and the right of way towards the other holes of the "front 9" would also be lost.[71]

Also in accordance with Article 46 of the Civil Code, Capitol is capacitated to incur obligations. This includes obligations voluntarily incurred through contracts, as well as encumbrances assumed or imposed as easements. It is in keeping with a contract entered into by Capitol and with easements in which Capitol was the subservient estate that respondents Ayala Land, Inc. and Ayala Hillside initiated the Complaint assailing the tax sale.

Respondents' Complaint made extensive allegations concerning the rights and concomitant injuries averred by respondents Ayala Land, Inc. and Ayala Hillside. With respect to Ayala Land, Inc., the allegations were not limited to its being a dominant estate to an easement of right of way but even included a claim of ownership to a smaller parcel that was alleged to have been previously consolidated with the 15,598-square-meter parcel purchased by petitioner:

26] The residents of Ayala Hillside Estate will lose their right of way over a portion of Mactan Road that is part of TCT No. N-253850. Mactan Road is their principal or direct access to the main road Tandang Sora/Katipunan Avenue. Worst, some residents of Ayala Hillside Estate located in the Pinnacle area of the subdivision and the "fairway lot" owners therein will have no access at all to the main road and are practically landlocked inside since the access road is covered in and part of TCT No. N-253850.

. . . . . .

28] As adverted to above, [Ayala Land, Inc.] and CAPITOL were co-developers of [Ayala Hillside Estates] and the Capitol Hills Executive Course (an 18-hole golf course of which, the subject

[71] *Id*. at 64.

auctioned lot is part of as Hole No. 5) and explicitly agreed in a Memorandum of Agreement dated 18 September 2002 that in projecting the [Ayala Hillside Estates] as high-end community, CAPITOL is bound to maintain and operate the Executive Course as a complementary development to [Ayala Hillside Estates], both [Ayala Hillside Estates] and the Executive Course being part of an integrated whole, viz -

. . . . . .

29] To provide a road right of way of access to and from Ayala Hillside Estates to the main roads, [Ayala Land, Inc.] acquired from CAPITOL several parcels of land through a Deed of Conveyance dated 21 November 1986, thus:

a. TCT No. 338521 consisting of 1,855 square meters;
b. TCT No. 338518 consisting of 6,930 square meters;
c. TCT No. 338517 consisting of 556 square meters;
d. TCT No. 338522 consisting of 8,834 square meters;
e. TCT No. 338526 consisting of 2,888 square meters; and
f Four Thousand One Hundred Eight (4,108) square meters portion of TCT No. 338515 "which will serve as two (2) access roads to and from the properties therein sold to AYALA.["]

. . . . . .

30] Thereafter, portions of TCT No. 338515 and portions of TCT No. 338516 in the name of CAPITOL were later consolidated and became TCT No. N-253850 (Hole No. 5) still in the name of CAPITOL, consisting of 15,598 square meters.

31] Unknown to [respondent Ayala Hillside Estates Homeowners' Association, Inc.], the consolidated TCT No. [N]-253850 still includes the 4,108 square meters portion of TCT No. 338515 subject of the Deed of Conveyance as an access road and which from the date of the Deed of Conveyance to this date is actually part of Mactan Road that serves as an access road to [[Ayala Hillside Estates] subdivision from Tandang Sora/Katipunan Avenue.

32] The said access road portion of TCT No. N-253850 was already acquired by [Ayala Land, Inc.] and was already being used by [Ayala Land, Inc.], all the members of the Homeowners' Association and the public as part of the road system long before the auction sale of TCT No. N-253850 was held on December 13, 2007.

The Four Thousand One Hundred Eight (4,108) square meters of TCT No. 338515 was already acquired by [Ayala Land, Inc.] for two (2) access roads to and from [Ayala Hillside Estates] subdivision long before the subject auction sale. Hence, defendant City Treasurer has no authority to auction this property and that defendant Alvarado has not and cannot acquire this portion of the auctioned lot.[72]

Alongside Capitol's rights of dominion to the parcel were the rights alleged by respondents in their respective capacities as members and shareholders, as co-developers and dominant estates to easements, or the real owner of a portion. Their rights made it so that they had an interest in seeing to the preservation of the integrity of this parcel, in maintaining it in the condition it was in prior to the levy and sale. They, however, stood to lose their rights as a consequence of Capitol's loss of ownership.

More particularly, respondents stood to lose their rights as a consequence of how the sale was allegedly tainted with anomalies: effected in violation of the requirements in the Local Government Code and the Quezon City Revenue Code, bypassed the requisite redemption period, avoided the posting of requisite notices, and made for a grossly inadequate price.

It was precisely respondents' contention that the sale's failure to adhere to legal requisites deprived them of the opportunity to protect their rights. Posting and service of requisite notices and observance of the proper duration for redemption could have given them a fair opportunity to maintain the integrity of the lot, even as the sale proceeded and Capitol's tax liability covered by its proceeds. So also, restricting the portion for sale to what was only enough to cover the tax liability could have minimized the consequences that respondents would have had to bear, enabling a resolution that was less prejudicial to their rights.

Although petitioner is the only defendant appealing before this Court, it should not be forgotten that respondents' action was brought not only against petitioner but also against officers

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[72] *Id*. at 65–67.

of the Quezon City local government. These officers were duty-bound to ensure that the requisites for tax levies and delinquency sales were satisfied and diligently heeded. Their failure to do so, whether deliberately or negligently, indicates an actionable act or omission impelling respondents' action. Thus, respondents came before the Regional Trial Court as real parties in interest, who satisfactorily alleged causes of action.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed April 17, 2013 Decision and August 2, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 123929 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 211721. September 20, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILLINGTON RODRIGUEZ *y* HERMOSA,** *accused-appellant.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; DEMANDED BY THE DUE PROCESS CLAUSE OF THE CONSTITUTION WHICH PROTECTS THE ACCUSED FROM CONVICTION EXCEPT UPON PROOF BEYOND REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME HE

IS CHARGED WITH.— It is a basic rule that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. This is premised on the constitutional presumption that the accused is innocent unless his guilt is proven beyond reasonable doubt. This standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime he is charged with. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, to produce absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. In other words, the conscience must be satisfied that the accused is responsible for the offense charged. Reasonable doubt does not refer to any doubt or a mere possible doubt because everything in human experience is subject to possible doubt. Rather, it is that state of the case which, after a comparison of all the evidence, does not lead the judge to have in his mind a moral certainty of the truth of the charge. Where there is reasonable doubt as to the guilt of the accused, there must be an acquittal.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9208 (THE ANTI-TRAFFICKING IN PERSONS ACT OF 2003); TRAFFICKING IN PERSONS; ELEMENTS.— Rodriguez was charged and convicted for qualified trafficking in persons under Section 4(a), in relation to Section 6(c), of R.A. No. 9208 x x x. Section 3(a) provides the elements of trafficking in persons: (1) the **act** of recruitment, transportation, transfer or harboring, or receipts of persons with or without the victim's consent or knowledge, within or across national borders; (2) the **means** used which include threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another; and (3) the **purpose** of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."

3. REMEDIAL LAW; EVIDENCE; EQUIPOISE RULE; IF THE EVIDENCE ADMITS TWO INTERPRETATIONS, ONE

OF WHICH IS CONSISTENT WITH GUILT, AND THE OTHER WITH INNOCENCE, THE ACCUSED MUST BE GIVEN THE BENEFIT OF THE DOUBT AND SHOULD BE ACQUITTED.— The exchanges between PO1 Escober and Rodriguez would suggest that PO1 Escober already knew what Rodriguez meant when he said "*Sir, sir, babae, sir*," and thus assumed that Rodriguez was offering women for sex. However, his testimony is bare as to the fact that the offer of women was explicitly for sexual purposes. It also lacked the necessary details on how Rodriguez allegedly called on the pickup girls to display them for PO1 Escober to choose from. We must remember that suspicion, no matter how strong, must never sway judgment. It is pivotal in criminal cases that we evaluate the evidence for the prosecution against the required quantum of evidence in criminal cases. When there is reasonable doubt, the evidence must be interpreted in favor of the accused. Under the equipoise rule, if the evidence admits two interpretations, one of which is consistent with guilt, and the other with innocence, the accused must be given the benefit of the doubt and should be acquitted.

4. ID.; ID.; CORROBORATIVE EVIDENCE; NECESSARY WHEN THERE ARE REASONS TO WARRANT THE SUSPICION THAT THE WITNESS FALSIFIED THE TRUTH OR THAT HIS OBSERVATION HAD BEEN INACCURATE.— Although the finding of guilt based on the testimony of a lone witness is not uncommon, the testimonies of P/Insp. Lopez and PO2 Bereber would have helped the prosecution prove the crime. Corroborative evidence is necessary when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate. Again, PO1 Escober's lone testimony lacked the material details to establish all the elements of the crime which the prosecution, unfortunately, only took cognizance of.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9208 (THE ANTI-TRAFFICKING IN PERSONS ACT OF 2003); TRAFFICKING IN PERSONS; THE GRAVAMEN OF THE CRIME OF HUMAN TRAFFICKING IS THE ACT OF RECRUITING OR USING, WITH OR WITHOUT CONSENT, A FELLOW HUMAN BEING FOR SEXUAL EXPLOITATION.— [A]bsent any direct or circumstantial evidence to prove with moral certainty that Rodriguez had offered

three (3) women to PO1 Escober, his appeal warrants an acquittal. The gravamen of the crime of human trafficking is not so much the offer of a woman or child; it is the act of recruiting or using, with or without consent, a fellow human being for sexual exploitation. In this case, the prosecution miserably failed to prove this.

6. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; WHERE THERE IS DOUBT AS TO THE GUILT OF THE ACCUSED, HE MUST BE ACQUITTED EVEN THOUGH HIS INNOCENCE MAY BE DOUBTED SINCE THE CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT UNTIL PROVEN GUILTY CAN ONLY BE OVERTHROWN BY PROOF BEYOND REASONABLE DOUBT.— We are reminded that the overriding consideration in criminal cases is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. Where there is reasonable doubt as to the guilt of the accused, he must be acquitted even though his innocence may be doubted since the constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt. To conclude, because of this doubt that lingers in our mind, Rodriguez must be acquitted. Pursuant to Rodriguez's guaranteed right to be presumed innocent under the Bill of Rights, it is our constitutional duty to free him.

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

MARTIRES, *J.*:

We resolve Willington Rodriguez y Hermosa's *(Rodriguez)* appeal assailing the 5 December 2013 Decision[1] of the Court

[1] *Rollo*, pp. 2-8.

of Appeals (*CA*) in CA-G.R. CR-HC No. 05335. The CA affirmed Rodriguez's conviction for qualified trafficking in persons, in violation of Republic Act *(R.A.)* No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003.

THE FACTS

Rodriguez was charged before the Regional Trial Court, Branch 81 of Quezon City *(RTC)*, in an information which reads:

> That on or about the 8th day of August 2006, in Quezon City, Philippines, the above-named accused, did then and there willfully, unlawfully and feloniously recruit, transport, harbor, provide, introduce or match for money for the purpose of prostitution, pornography or sexual exploitation, the following trafficked persons, namely [redacted] (sic) [redacted] and [redacted].
>
> The offense was committed in large scale as it was committed against three (3) or more trafficked persons, individually or as a group.[2]

During his arraignment, Rodriguez pleaded not guilty.[3]

The evidence for the prosecution is anchored solely on the testimony of Police Officer 1 Raymond Escober (*PO1 Escober*), on the joint sworn affidavit of the arresting officers dated 9 August 2006,[4] and on a photocopy of the pre-marked ₱500.00 bill.[5]

According to his testimony, at around 11:00 P.M. on 8 August 2006, PO1 Escober was at the police station preparing for the police operation called *Oplan Bugaw* for the purpose of eliminating prostitution on Quezon Avenue in Quezon City.[6] PO1 Escober, designated to pose as customer, was accompanied

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[2] Records, p. 1.

[3] *Id*. at 16.

[4] *Id.* at 4.

[5] *Id*. at 5.

[6] TSN, 20 February 2007, p. 4.

by PO2 Reynaldo Bereber (*PO2 Bereber*) as his backup, and Police Inspector Pruli James D. Lopez (*P/Insp. Lopez*).[7]

While parking their vehicles at the target area, PO1 Escober was flagged down by Rodriguez who allegedly offered the sexual services of three (3) pickup girls.[8] PO1 Escober readily gave Rodriguez the pre-marked ₱500.00 bill as payment.[9] This signaled his backup to enter the scene and aid in the arrest. PO1 Escober then retrieved the pre-marked bill.[10]

Thereafter, the officers brought Rodriguez and the three (3) pickup girls to the police station.

In his defense, Rodriguez denied that he had offered a girl for sexual purposes to PO1 Escober.[11] He said that he was only selling cigarettes on Quezon Avenue when he was arrested by the police officers.[12] He only found out that he was being accused of human trafficking after he was brought to the City Hall.[13]

The Ruling of the Trial Court

In its 18 October 2011 Decision,[14] the RTC found Rodriguez guilty beyond reasonable doubt of large-scale trafficking. The dispositive portion reads:

> WHEREFORE, premises considered, the Court finds accused WILLINGTON RODRIGUEZ y HERMOSA guilty beyond reasonable doubt of the offense as charged [Violation of Republic Act 9208 committed in a large scale] and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00.[15]

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[7] *Id*.

[8] TSN, 28 April 2010, pp. 7-9.

[9] *Id*. at 3.

[10] *Id*.

[11] TSN, 17 May 2011, p. 4.

[12] *Id*.

[13] *Id*. at 5.

[14] Records, pp. 175-178.

[15] *Id.* at 178.

The trial court held that Rodriguez's acts of offering sex to PO1 Escober, calling the three (3) pickup girls for him to choose from, and receiving money are clearly acts of human trafficking.[16] It gave more weight to the positive testimony of PO1 Escober over Rodriguez's unsubstantiated denial.[17] Likewise, the trial court noted that PO1 Escober had no improper motive to falsely testify against the accused.[18] Finally, it held that absent ill motive, the presumption of regularity in the performance of duty must prevail.[19]

The trial court explicitly said:

> The acts of the accused in offering sex to PO1 Escober, calling the three [3] pick-up girls so that he could choose from them and receiving money therefor are clearly acts of human trafficking or trafficking in persons defined and penalized under Sec. 10[c] of R.A. No. 9208.
>
> Accused denied the charge[s] by testifying that he was in front of McDonalds Restaurant in Quezon Avenue selling cigarettes.
>
> > Where there is positive identification of the accused as the perpetrators of the crime, their defense of denial and alibi cannot be sustained.
> >
> > Denial and alibi, unsubstantiated by clear and convincing evidence, are self-serving and hardly deserve greater evidentiary weight than the declaration of witnesses on affirmative defenses. (citations omitted)
>
> Accused likewise testified that while he was selling cigarettes, PO1 Escober grabbed him and together with his fellow police officer[s], they brought him to Police Station 2 where he was investigated and subsequently charged contrary to the testimony of PO1 Escober that it was the accused who flagged the vehicle they were riding in and offered sex.
>
> There is no improper motive that could be imputed to PO1 Escober that he would falsely testify against the accused. The absence of

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[16] *Id*. at 177.

[17] *Id*. at 178.

[18] *Id*.

[19] *Id.*

evidence as to an improper motive entitles PO1 Escober's testimony to full faith and credit.

The testimony of police officers carried with it the presumption of regularity in the performance of official functions.

In the absence of ill motive, the presumption of regularity in the performance of the policeman's official duty must prevail. (citations omitted)

The Arguments of the Accused

On appeal, Rodriguez anchored his defense on the failure of the prosecution to present any evidence that would establish that he recruited, transported, or transferred the alleged three (3) women for the purpose of prostitution.[20] These women, in fact, were not presented in court and neither did they execute any sworn statement.[21]

Rodriguez also faulted the prosecution for not presenting the original marked money despite the fact that it was in P/Insp. Lopez's possession.[22] In addition, the prosecution did not present any evidence of the alleged request from the barangay officials to get rid of prostitutes in the area.[23]

Finally, Rodriguez maintained that the testimony of PO1 Escober was not corroborated by any of his companions who allegedly took part in the operations.[24]

The Assailed CA Decision

Unmoved, the CA affirmed the trial court's decision and gave great weight to its factual findings. It likewise found no merit in the arguments raised by Rodriguez, to wit:

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[20] CA *rollo*, p. 44.

[21] *Id.*

[22] *Id*. at 46.

[23] *Id.*

[24] *Id.*

The non-presentation of the three women is not fatal to the prosecution. Unlike in illegal recruitment cases, where the victim will part money against the recruiter, [w]e cannot expect the three women to give something to herein accused-appellant. On the contrary, it may be accused-appellant who would have to give them their proportionate share for every successful transaction. Thus, they cannot be expected to take an active part in the case, since they are relatively not adversely affected. In other words, testifying or executing an affidavit against accused-appellant would be of no value to them. Accused-appellant himself admitted the presence of three women when he was being cross-examined, viz:

Q: [PROS. TORRALBA]: Did he also grab the three (3) women whom you introduced to him?

A: No, sir.

With respect to the non-presentation of the request of the barangay officials, the same is not a material element of the offense. Neither should the police operation depend on it. To think otherwise would open the floodgates of abuse as law enforcers will only move if there are requests from the people. They will become passive instead of becoming pro-active.

The non-presentation of the original of the marked money does not weaken the case, nor destroy the presumption of regularity of performance of duty. For one, it is also impossible that the crime of human trafficking be committed even without the money being paid, as when the potential customer did not proceed with the transaction or was not able to choose from among the girls presented to him. Secondly, PO1 Escober is categorical in his testimony that he prepared the same and had it initialed with "R" and "E" at the forehead of Ninoy Aquino [on the ₱500 peso bill], the letters being the initials of his name.

PO1 Escober positively identified accused-appellant. Neither could accused-appellant impute ill-motive against him. All that he could offer is his denial which is not corroborated by any other testimonial evidence. Following our "unbending" jurisprudence, such positive identification prevails over denial and is in fact sufficient for conviction.[25] (citations omitted)

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[25] *Id*. at 100-101.

Our Ruling

The appeal is meritorious.

It is a basic rule that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. This is premised on the constitutional presumption that the accused is innocent unless his guilt is proven beyond reasonable doubt. This standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime he is charged with.[26]

Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, to produce absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. In other words, the conscience must be satisfied that the accused is responsible for the offense charged.[27]

Reasonable doubt does not refer to any doubt or a mere possible doubt because everything in human experience is subject to possible doubt. Rather, it is that state of the case which, after a comparison of all the evidence, does not lead the judge to have in his mind a moral certainty of the truth of the charge. Where there is reasonable doubt as to the guilt of the accused, there must be an acquittal.[28]

Rodriguez was charged and convicted for qualified trafficking in persons under Section 4(a), in relation to Section 6(c), of R.A. No. 9208, which read:

Section 4. *Acts of Trafficking in Persons.* – It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

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[26] *Boac v. People*, 591 Phil. 508, 521-522 (2008), citing *People v. Ganguso*, 330 Phil. 324, 335 (1995).

[27] *Id.* at 522.

[28] *People v. Calma*, 356 Phil. 945, 974-975 (1998).

(a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

x x x x x x x x x

Section 6. *Qualified Trafficking in Persons.* – The following are considered qualified trafficking:

x x x x x x x x x

(c) *When the crime is committed by a syndicate, or in large scale.* Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;

x x x x x x x x x

Section 3(a)[29] provides the elements of trafficking in persons: (1) the **act** of recruitment, transportation, transfer or harboring, or receipts of persons with or without the victim's consent or knowledge, within or across national borders; (2) the **means** used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another; and (3)

[29] *Definition of Terms*.– As used in this Act: (a) Trafficking in Persons – refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. NOTE: This definition is the original definition, considering that the crime was committed prior to the enactment of R.A. No. 10364.

the **purpose** of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."[30]

A careful review of the records shows that the prosecution failed to prove the presence of these elements beyond reasonable doubt, nor did we find the second and third elements proven by the prosecution.

A review of emerging jurisprudence on human trafficking readily shows that a successful prosecution, to a certain extent, relies greatly on entrapment operations.[31] Thus, just like in any operation that involves capturing the perpetrator *in flagrante delicto*, the testimonies of the apprehending officers on what transpired are crucial for a conviction.

In *People v. Casio*,[32] having similar factual circumstances with the case at hand, the Court upheld the conviction of the accused for qualified human trafficking. In that case, the accused came up to the police officers and asked if they were interested in young girls. After receiving a positive response, the accused picked up two (2) minor girls and presented them to the police officers. Thereafter, they all proceeded to the motel room where the accused was arrested.

The case before us differs from the *Casio* case where more than one (1) credible witness, the minor victims, were presented in court by the prosecution, and allowed to testify on the circumstances on how they were recruited by the accused and later offered for sex in exchange for money. Significantly, the testimony of PO1 Escober in the case before us lacks the material details to convince us that Rodriguez had committed human trafficking.

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[30] *People v. Casio*, 749 Phil. 458, 472-473 (2014).

[31] See *People v. Hirang*, G.R. No. 223528, 11 January 2017; *Young v. People*, G.R. No. 213910, 3 February 2016, 783 SCRA 286; *People v. Casio, supra* note 30.

[32] *Id*.

In the instant case, only PO1 Escober testified as to the actual unfolding of circumstances which led him to believe that Rodriguez was committing human trafficking. On cross-examination, PO1 Escober testified that:

Q: And what was the accused doing at that time when you first saw [him]?
A: He stopped us and he offered us the services of prostitutes.

Q: To whom was this offered?
A: To me, sir.

x x x x x x x x x

Q: While on board the Toyota Revo, can you tell this [c]ourt how [did] the transaction transpire?
A: When we were flagged down, I opened [the] window of the car and he offered us a woman.

Q: And could you tell this Honorable Court what exactly the accused already told you?
A: "*Sir, sir, babae,sir.*"

Q: And what was your reaction, Mr. Witness?
A: I responded, "*Magkano ang ibabayad ko?*"

Q: So, it would be correct to state that when the accused [said], "*Sir, sir, babae, sir*," she was offering to you [a] woman?
A: Yes, sir.

Q: And because of that interpretation of yours, you asked him again the cost?
A: Yes, sir.[33] (italics supplied)

Surprisingly, the circumstances about the initial contact between PO1 Escober and Rodriguez and their negotiations came out only during cross-examination. PO1 Escober's direct testimony showed the fact that he had in his possession the pre-marked ₱500.00 bill and that he was able to retrieve it from Rodriguez after the arrest. There was no mention about how Rodriguez allegedly called on the three (3) pickup girls and offered them for sexual purposes.

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[33] TSN, 28 April 2010, pp. 8-9.

The exchanges between PO1 Escober and Rodriguez would suggest that PO1 Escober already knew what Rodriguez meant when he said "*Sir, sir, babae, sir*," and thus assumed that Rodriguez was offering women for sex. However, his testimony is bare as to the fact that the offer of women was explicitly for sexual purposes. It also lacked the necessary details on how Rodriguez allegedly called on the pickup girls to display them for PO1 Escober to choose from.

We must remember that suspicion, no matter how strong, must never sway judgment. It is pivotal in criminal cases that we evaluate the evidence for the prosecution against the required quantum of evidence in criminal cases. When there is reasonable doubt, the evidence must be interpreted in favor of the accused. Under the equipoise rule, if the evidence admits two interpretations, one of which is consistent with guilt, and the other with innocence, the accused must be given the benefit of the doubt and should be acquitted.[34]

Apart from the deficient testimony of PO1 Escober, the prosecution did not bother to present the testimonies of the alleged victims. It is grossly erroneous to say that "the non-presentation of the three women is not fatal to the prosecution." Their testimonies that they were sexually exploited against their will through force, threat or other means of coercion are material to the cause of the prosecution. These women would be in the best position to say that Rodriguez had recruited or used these women by giving them payments or benefits in exchange for sexual exploitation. To rely solely on the testimony of PO1 Escober as basis for convicting Rodriguez would run riot against logic and reason, and against the law. To sustain this whimsical reasoning would encourage anyone to accuse a person of "trafficking in persons" or of any other crime, without presenting the material testimony of the alleged victim. Given that PO1 Escober's testimony is missing on material details, the prosecution should have presented in court at least one of the

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[34] *Ubales v. People*, 491 Phil. 238, 257-258 (2008). See also *Mallillin v. People*, 576 Phil. 576, 593 (2008).

three (3) women that indeed they were sexually exploited or recruited by the accused for prostitution as alleged in the information. Even a neophyte police officer of the lowest rank would be stupefied why PO1 Escober and the two (2) other police officers allegedly with him failed to get the statements of the alleged victims while they were under police custody after the entrapment operation.

Although the finding of guilt based on the testimony of a lone witness is not uncommon, the testimonies of P/Insp. Lopez and PO2 Bereber would have helped the prosecution prove the crime. Corroborative evidence is necessary when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate.[35] Again, PO1 Escober's lone testimony lacked the material details to establish all the elements of the crime which the prosecution, unfortunately, only took cognizance of.

The only possible evidence that could explicitly prove the necessary elements of the offense charged would be the joint sworn affidavit executed by the arresting officers. Even if this document were to be considered, we remain unconvinced that the three (3) women were offered to PO1 Escober particularly for sexual purposes. Still, it would fail to convince us that this piece of evidence would not help the prosecution meet the degree of proof required in criminal cases because a sworn statement cannot be fully relied upon. We are not unmindful that affidavits are usually abbreviated and inaccurate; oftentimes, an affidavit is incomplete and results in inconsistencies with the declarant's testimony in court.[36]

All said, absent any direct or circumstantial evidence to prove with moral certainty that Rodriguez had offered three (3) women to PO1 Escober, his appeal warrants an acquittal. The gravamen of the crime of human trafficking is not so much the offer of

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[35] *Rabanal v. People*, 518 Phil. 734, 748 (2006), citing *Rivera v. People*, 501 Phil. 37, 49 (2006), further citing *People v. Manalad*, 436 Phil. 37 (2002).

[36] *Kummer v. People*, 717 Phil. 670, 679 (2013).

a woman or child; it is the act of recruiting or using, with or without consent, a fellow human being for sexual exploitation. In this case, the prosecution miserably failed to prove this.[37]

We are reminded that the overriding consideration in criminal cases is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.[38] Where there is reasonable doubt as to the guilt of the accused, he must be acquitted even though his innocence may be doubted since the constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt.[39] To conclude, because of this doubt that lingers in our mind, Rodriguez must be acquitted. Pursuant to Rodriguez's guaranteed right to be presumed innocent under the Bill of Rights, it is our constitutional duty to free him.

WHEREFORE, the appeal is **GRANTED**. The 5 December 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05335 is hereby **REVERSED** and **SET ASIDE**. For failure of the prosecution to prove his guilt beyond reasonable doubt, WILLINGTON RODRIGUEZ *y* HERMOSA is hereby **ACQUITTED** of the offense charged. His **IMMEDIATE RELEASE** from detention is hereby **ORDERED**, unless he is being held for another lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections in Muntinlupa City for immediate implementation. The Director shall submit to this Court, within five (5) days from receipt of the copy of the Decision, the action taken thereon.

SO ORDERED.

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

Gesmundo, J., on official leave.

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[37] See *People v. Villanueva*, G.R. No. 210798, 14 September 2016.

[38] *People v. Aspiras*, 427 Phil. 27, 41 (2002).

[39] *People v. Baulite*, 419 Phil. 191, 198-199 (2001).

THIRD DIVISION

[G.R. No. 214762. September 20, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMMEL RONQUILLO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS.—** The elements necessary in every prosecution for statutory rape are: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; QUESTIONS THEREON SHOULD BE BEST ADDRESSED TO THE TRIAL COURT BECAUSE OF ITS UNIQUE POSITION TO OBSERVE THE WITNESSES' DEPORTMENT ON THE STAND WHILE TESTIFYING.—** AAA's testimony is sufficient to convict accused-appellant of statutory rape. The nature of the crime of rape often entails reliance on the lone, uncorroborated testimony of the victim, which is sufficient for a conviction, provided that such testimony is clear, convincing, and otherwise consistent with human nature. The trial court found AAA's testimony to be detailed, credible, and unwavering. Jurisprudence is replete with cases where the Court ruled that "questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts. x x x The rule is even more stringently applied if the appellate court has concurred with the trial court." Here, both the RTC and the CA found AAA's testimony to be credible and convincing.

3. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; HYMENAL LACERATIONS, WHETHER HEALED OR FRESH, ARE THE BEST EVIDENCE OF FORCIBLE**

DEFLORATION.— Considering that it is undisputed that the incident happened on 3 October 2001 and the medical examination upon AAA was conducted on 5 October 2001, the fresh lacerations found, indicating penetration within the last 24 to 72 hours, were consistent with her testimony that she was raped on the said date. There is thus greater reason to believe the veracity of her statements, as to both the fact of rape and the identity of the assailant. The Court has held that "hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established."

4. REMEDIAL LAW; EVIDENCE; ALIBI; ELEMENTS.— For the alibi to prosper, it is imperative that the accused establishes two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission."

5. CRIMINAL LAW; REVISED PENAL CODE; RAPE; PENALTY; WHERE THE IMPOSABLE PENALTY IS *RECLUSION PERPETUA* TO DEATH, THE COURT GENERALLY AWARDS CIVIL INDEMNITY, MORAL DAMAGES, AND EXEMPLARY DAMAGES.— In rape cases where the imposable penalty is *reclusion perpetua* to death, the Court generally awards three kinds of damages: civil indemnity, moral damages, and exemplary damages. Civil indemnity proceeds from Article 100 of the RPC, which states that "every person criminally liable is also civilly liable." Its award is mandatory upon a finding that rape has taken place. Moral damages are awarded to "compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings, and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered." In rape cases, once the fact of rape is duly established, moral damages are awarded to the victim without need of proof, in recognition that the victim necessarily suffered moral injuries from her ordeal. Finally, exemplary damages may be awarded against a person

to punish him for his outrageous conduct. It serves to deter the wrongdoer and others like him from similar conduct in the future. The award of this kind of damages in criminal cases stems from Articles 2229 and 2230 of the Civil Code. While Article 2230 provides that they may be imposed when the crime was committed with one or more aggravating circumstances, the Court has held that being corrective in nature, exemplary damages can be awarded not only in the presence of aggravating circumstances but also where the circumstances of the case show the highly reprehensible conduct of the offender. In a number of cases, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

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

MARTIRES, *J.*:

"I don't even know her" is the usual excuse of a rapist who expects a reprieve from conviction, as if knowing the victim is a precondition to carnal desire. And while abhorrent in all instances, lust manifested through rape is especially reprehensible when committed against a child. Thus, our law on statutory rape demands only the requisite proof of the victim's age and of carnal knowledge with the accused to sustain his conviction.

For review is the Decision[1] dated 11 November 2013 of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 05077 affirming the Decision[2] dated 23 November 2010 of the Regional Trial Court (*RTC*) of Angeles City, Branch 60, in Criminal Case No.

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[1] *Rollo*, pp. 2-18; penned by Associate Justice Zenaida T. Galapate-Laguilles, and concurred in by Associate Justices Marlene Gonzales-Sison and Amy C. Lazaro-Javier.

[2] Records, pp. 407-422.

01-817, finding accused-appellant Rommel Ronquillo guilty of statutory rape under Article 266-A in relation to Article 266-B of the Revised Penal Code *(RPC)*, as amended by Republic Act *(R.A.)* No. 8353.

Consistent with prevailing jurisprudence,[3] the real name and identity of the victim in this case is withheld and fictitious initials are used to represent her. In this regard, the rape victim is referred to as "AAA."

THE FACTS

On 15 November 2001, accused-appellant was charged with statutory rape before the RTC. The accusatory portion of the Information reads:

> That on or about the 4th day of October 2001, in the Municipality of x x x, Province of x x x Philippines and within the jurisdiction of this Honorable Court, the above-named accused Rommel Ronquillo, did then and there wilfully, unlawfully and feloniously, with lewd design, by means of force, threat and intimidation, have carnal knowledge with "C,"[4] eleven (11) years old, a minor, by then and there inserting his penis into her vagina, against the latter's will and consent.[5]

On 9 August 2002, accused-appellant was arraigned and he pleaded not guilty. Thereafter, trial ensued with the prosecution presenting the testimonies of AAA and Dr. Stella Guerrero-Manalo (*Dr. Guerrero-Manalo*) of the Child Protection Unit of the University of the Philippines-Philippine General Hospital (*UP-PGH*) in Manila. The defense, on the other hand, presented the lone testimony of accused-appellant.

Version of the Prosecution

On 3 October 2001, at about 5:00 o'clock in the afternoon, AAA, then eleven (11) years old, watched, with her friend Minia

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[3] *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] While the Information refers to the minor using the initial "C," this decision designates said minor as "AAA" consistent with prevailing jurisprudence.

[5] Records, p. 2.

Antigo (*Minia*), an amateur singing contest held at the basketball court of Barangay XXX. When AAA and Minia parted ways at around 12:00 o'clock midnight, AAA proceeded to the house of her other friend, Jenny Sanchez (*Jenny*), as they had agreed that she would spend the night at Jenny's house. While about to cross the road towards Jenny's house, AAA noticed accused-appellant standing at a nearby waiting shed, fanning himself with a handkerchief and looking at her. AAA was familiar with accused-appellant because the latter had chased her several times, asking for her name, when AAA was still studying at an elementary school in her barangay. Accused-appellant then approached AAA, telling her that he would accompany her. AAA did not respond, prompting accused-appellant to follow her and ask where she was going. When AAA did not reply, he asked if she wanted him to escort her on her way home. AAA refused the offer and proceeded to Jenny's house. When she looked back at accused-appellant, she saw him return to the waiting shed.

After reaching Jenny's house, AAA waited for an hour for Jenny to come out; but Jenny did not awake, so she decided to head home. While walking home, she noticed that someone was following her. When she looked back, a man poked a gun at her and pushed her against a wall. AAA fought back and tried to wrestle the gun away from her attacker. She tried to shout, but the man choked her. The man then cocked his gun and told her to calm down, follow him, or he would shoot her. Afraid that the man would kill her, AAA told him that she would follow all his orders.

Thereafter, the attacker brought AAA to an isolated place and pressed her against a wall. The man then told her to remove her shorts and panty and to raise her blouse up to her head so that she would not be able to see him. Then he started kissing AAA all over her body and then told her to lie down. He parted her thighs, inserted his penis into her vagina, and made push and pull movements. AAA felt intense pain and cried. While she was being raped, AAA's hands were tucked inside her shirt which was raised over her head to prevent her from recognizing

the rapist. Her attacker, on the other hand, had covered his face with a red hankerchief.

Shortly, the man let AAA up and told her to get dressed. While the man himself was getting dressed, AAA noticed that the *maong* pants he was wearing were the same pants she saw worn by accused-appellant at the waiting shed earlier. She also recognized accused-appellant as her attacker when the red handkerchief covering his face fell off. AAA then rushed home and related the rape incident to her parents, who immediately reported it to the authorities.

On 5 October 2001, AAA was brought to the UP-PGH Child Protection Unit for medical examination. Dr. Guerrero-Manalo then issued a Provisional Medico-Legal Report, which showed that "physical findings of genital area are definitive for recent penetrating injury."[6]

Dr. Guerrero-Manalo testified that she observed some fresh lacerations on AAA's external genitalia which could have been inflicted within twenty-four (24) to seventy-two (72) hours prior to her examination. Further, she said she also found fresh lacerations at 6 o'clock position on AAA's hymen, consistent with a recent penetration injury caused by a pointed object or a penis.[7]

Version of the Defense

Accused-appellant claimed that on 3 October 2001, he attended a barrio fiesta at Barangay XXX, with six (6) friends. He and his friends sang at a videoke in a carnival and later watched an amateur singing contest at the basketball court. In both instances, accused-appellant saw AAA for short periods.[8] However, he claimed not to have known her name until the time he was charged in court.[9]

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[6] *Rollo*, pp. 6-7; records, p.19.

[7] *Id*.

[8] Records, pp. 412-413.

[9] *Id.* at 413.

The RTC Ruling

In its 23 November 2010 Decision,[10] the RTC found accused-appellant guilty beyond reasonable doubt of the crime of statutory rape. Accordingly, the trial court sentenced him to suffer the penalty of *reclusion perpetua* and to pay a fine of ₱75,000.00 as civil indemnity and another ₱75,000.00 as moral damages.[11]

The RTC held that AAA gave a detailed and credible narration of the incident, which positively identified the accused-appellant as the perpetrator and sufficiently established that the crime of rape was committed against her. The RTC further ruled that this prevails over the bare denial of accused-appellant. It also gave credence to the medical findings of Dr. Guerrero-Manalo, which confirmed that AAA was physically and sexually violated.

Aggrieved, accused-appellant appealed before the CA.

The CA Ruling

In its 11 November 2013 Decision,[12] the CA affirmed the conviction of the accused-appellant with modification as to the award of damages. It reduced the amount of civil indemnity and moral damages to ₱50,000.00, but it ordered the additional award of ₱30,000.00 as exemplary damages, as well as the imposition of interest at the legal rate of six percent (6%) from the date of finality of the decision until fully paid.[13] The CA held that accused-appellant did not present any evidence to substantiate his alibi and thus his defense of denial and alibi rests on shaky grounds, in stark contrast to the detailed declarations of AAA. It further held that there is sufficient foundation to conclude the existence of carnal knowledge since the victim's testimony is corroborated by the physician's finding of penetration.

Hence, this appeal.

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[10] *Id*. at 407-422.

[11] *Id*. at 422.

[12] *Rollo*, pp. 2-18.

[13] *Id*. at 17-18.

ISSUE

The essential issue for this Court's resolution is whether or not the accused-appellant's conviction should be upheld.

THE COURT'S RULING

The Court finds no reason to deviate from the findings and conclusions of the RTC, as affirmed by the CA. However, the amount of damages awarded should be modified, consistent with prevailing jurisprudence.

The prosecution was able to prove beyond reasonable doubt the existence of all the elements of statutory rape.

The elements necessary in every prosecution for statutory rape are: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.[14]

In *People v. Arpon,*[15] citing *People v. Macafe,*[16] the Court explained that consent is immaterial, and force and intimidation are not necessary in every prosecution for statutory rape, viz:

> Rape under paragraph 3 of [Article 335] is termed statutory rape as it departs from the usual modes of committing rape. **What the law punishes in statutory rape is carnal knowledge of a woman below twelve years old. Hence, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place**. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; **the child's consent is immaterial because of her presumed incapacity to discern evil from good**.[17] (emphasis in the original and underlining supplied)

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[14] *People v. Deliola*, G.R. No. 200157, 31 August 2016.

[15] 678 Phil. 752 (2011).

[16] 650 Phil. 580, 588 (2010).

[17] *People v. Arpon, supra* note 15 at 773.

The requisite elements were proven in the present case. As to the first element, AAA's age at the time of the commission of the offense is uncontroverted. Her birth certificate, which was duly presented and offered in evidence, shows that she was born on 9 November 1989.[18] Thus, AAA was only 11 years and 11 months old at the time she was raped.

Accordingly, this Court only needs to contend with the sufficient establishment of the second element—that is, whether accused-appellant had carnal knowledge of the victim.

Carnal knowledge was proven through AAA's categorical testimony, corroborated by medical findings.

AAA rendered a detailed narration of her ordeal. As found by the RTC and affirmed by the CA, she recounted, in a steadfast and unequivocal manner,[19] the circumstances clearly showing that accused-appellant had carnal knowledge of her: (1) she was followed by a man while she was walking home from her friend's house; (2) the man thereafter pointed a gun at her and told her that he would shoot her if she did not follow his orders; (3) she agreed to follow his orders out of fear for her life; (4) she was taken to an isolated place, where she was ordered to remove her clothing and to cover her face with her blouse to conceal the assailant's face from her view; and (5) she felt her thighs being parted, where the assailant then inserted his penis into her vagina, causing her intense pain. AAA also positively identified accused-appellant as her assailant by recounting that after the commission of the rape, she noticed that her attacker was wearing the same *maong* pants that accused-appellant wore when she saw him earlier. She further confirmed his identity when the handkerchief he used to cover his face fell off, giving AAA a clearer glimpse of his face.[20]

AAA's testimony is sufficient to convict accused-appellant of statutory rape. The nature of the crime of rape often entails

[18] Records, p. 236.

[19] *Rollo*, p. 10.

[20] *Id*. at 5.

reliance on the lone, uncorroborated testimony of the victim, which is sufficient for a conviction, provided that such testimony is clear, convincing, and otherwise consistent with human nature.[21]

The trial court found AAA's testimony to be detailed, credible, and unwavering.[22] Jurisprudence is replete with cases where the Court ruled that "questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts. x x x The rule is even more stringently applied if the appellate court has concurred with the trial court."[23] Here, both the RTC and the CA found AAA's testimony to be credible and convincing.

Nevertheless, the trial court's conviction resulted not only from AAA's testimony but was also based on the corroborative testimony of Dr. Guerrero-Manalo, who examined AAA after the commission of the rape. AAA's testimony relative to the sexual assault against her is consistent with Dr. Guerrero-Manalo's medical report and testimony that AAA's genitalia had some fresh lacerations which could have been inflicted by the penetration of a pointed object or a penis within twenty-four (24) to seventy-two (72) hours prior to examination.[24] Considering that it is undisputed that the incident happened on 3 October 2001 and the medical examination upon AAA was conducted on 5 October 2001, the fresh lacerations found, indicating penetration within the last 24 to 72 hours, were consistent with her testimony that she was raped on the said date. There is thus greater reason to believe the veracity of her statements, as to both the fact of rape and the identity of the assailant.

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[21] *People v. Olimba*, 645 Phil. 468, 480 (2010).

[22] Records, p. 419.

[23] *People v. Barcela*, 734 Phil. 332, 342-343 (2014).

[24] *Rollo*, p. 7.

The Court has held that "hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established."[25]

Accused-appellant attempts to cast aspersions on AAA's credibility and character by questioning her decision to stay out late at night by herself. Accused-appellant argues that no young Filipina would still be out alone on the streets in the middle of the night. He also questions AAA's failure to call out to her friend Jenny upon reaching the latter's house but, instead, chose to remain outside and do nothing.[26]

Accused-appellant's arguments are too flimsy to merit consideration. AAA's alleged series of unwise actuations on the night in question is an inconsequential matter that has no bearing on the elements of the crime of statutory rape. The decisive factor in the prosecution of rape is whether its commission has been sufficiently proven.[27] As previously discussed, the prosecution sufficiently established that accused-appellant had carnal knowledge of AAA, who was only eleven (11) years old at the time of commission.

Moreover, the Court has explained that the testimonies of young rape victims deserve full credence, to wit:

> This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. **Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed**

[25] *People v. Sabal*, 734 Phil. 742, 746 (2014), citing *People v. Perez,* 595 Phil. 1232, 1258 (2008).

[26] CA *rollo*, p. 55.

[27] *People v. Deliola*, *supra* note 14.

to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.[28] (emphasis and underlining supplied)

Notably, accused-appellant did not even establish any ill motive that could have compelled private complainant to falsely accuse him of rape.

Accused-appellant's defense of denial and alibi are inherently weak.

It is well-settled that denial is an "intrinsically weak defense which must be supported by strong evidence of non-culpability to merit credibility."[29] Alibi, on the other hand, is the "weakest of all defenses, for it is easy to contrive and difficult to disprove and for which reason it is generally rejected. For the alibi to prosper, it is imperative that the accused establishes two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission."[30]

Accused-appellant was unable to establish any of the foregoing elements to substantiate his alibi. He merely claimed that he could not have committed the offense because he was asleep at his house, with his friends, at the time of the commission. This testimony is uncorroborated. For some reason, he did not even present any of the six (6) friends who he claimed were with him at the time of the incident in question. In contrast to AAA's direct, positive, and categorical testimony, accused-appellant's testimony will not stand.

Based on the foregoing, it is clear that all the elements of statutory rape have been proven in the instant case. The conviction of accused-appellant must be upheld.

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[28] *People v. Closa*, 740 Phil. 777, 785 (2014), citing *People v. Pangilinan*, 547 Phil. 260, 285-286 (2007).

[29] *People v. Deliola*, *supra* note 14.

[30] *Id*.

Kinds and amount of damages

In rape cases where the imposable penalty is *reclusion perpetua* to death, the Court generally awards three kinds of damages: civil indemnity, moral damages, and exemplary damages.[31]

Civil indemnity proceeds from Article 100 of the RPC, which states that "every person criminally liable is also civilly liable." Its award is mandatory upon a finding that rape has taken place.

Moral damages are awarded to "compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings, and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered."[32] In rape cases, once the fact of rape is duly established, moral damages are awarded to the victim without need of proof, in recognition that the victim necessarily suffered moral injuries from her ordeal.[33]

Finally, exemplary damages may be awarded against a person to punish him for his outrageous conduct. It serves to deter the wrongdoer and others like him from similar conduct in the future. The award of this kind of damages in criminal cases stems from Articles 2229[34] and 2230[35] of the Civil Code. While Article 2230 provides that they may be imposed when the crime was committed with one or more aggravating circumstances, the Court has held that being corrective in nature, exemplary damages can be awarded not only in the presence of aggravating

[31] *People v. Jugueta*, G.R. No. 202124, 5 April 2016, 788 SCRA 331, 357.

[32] *Id*., citing *Del Mundo v. CA,* 310 Phil. 367, 376 (1995).

[33] *People v. Delabajan*, 685 Phil. 236, 245 (2012).

[34] ART. 2229. Exemplary 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.

[35] ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

circumstances but also where the circumstances of the case show the highly reprehensible conduct of the offender. In a number of cases, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.[36]

In *People v. Jugueta*,[37] the Court addressed in detail the award of damages in criminal cases where the imposable penalty is *reclusion perpetua* to death. It held that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the Court rules that the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 exemplary damages."

Thus, the Court increases the award of civil indemnity, moral damages, and exemplary damages to ₱75,000.00. In line with current policy,[38] the Court also imposes interest at the legal rate of six percent (6%) per annum on all monetary awards for damages, from date of finality of this Decision until fully paid.

WHEREFORE, the appeal is **DISMISSED.** The 11 November 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05077 is **AFFIRMED WITH MODIFICATION as to the amount of damages**. Accused-appellant Rommel Ronquillo is **GUILTY BEYOND REASONABLE DOUBT** of **STATUTORY RAPE** as defined in Article 266-A and penalized in Article 266-B of the Revised Penal Code. Appellant is ordered to pay AAA the following amounts: civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00. All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from date of finality of this Decision until fully paid.

SO ORDERED.

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

Gesmundo, J., on official leave.

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[36] *People v. Veloso*, 703 Phil. 541, 556 (2013).

[37] *Supra* note 31 at 373.

[38] *People v. Dion*, 668 Phil. 333 (2011).

SECOND DIVISION

[G.R. No. 224507. September 20, 2017]

PRIVATIZATION AND MANAGEMENT OFFICE, *petitioner, vs.* **EDGARDO V. QUESADA, MA. GRACIA QUESADA-MANALO, ELIZABETH QUESADA-JOSE, EUGENIO V. QUESADA, represented by their Attorney-in-fact, EUGENIO V. QUESADA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE TREATED AS AN ORDINARY APPEAL IF THE PETITION FOR *CERTIORARI* WAS FILED WITHIN THE REGLEMENTARY PERIOD WITHIN WHICH TO FILE AN APPEAL AND THE BROADER INTEREST OF JUSTICE JUSTIFIES THE RELAXATION OF THE RULES.—** While the Court concedes, as did the CA, that the RTC's Order dismissing the original petition of the Quesadas on the ground of lack of jurisdiction is a final order that is normally subject of an appeal, nevertheless the Court finds that the CA did not commit reversible error when it gave due course to the petition for *certiorari* and treated the same as an ordinary appeal. x x x [T]he Court agrees with the CA that there is sufficient justification that would merit a deviation from the strict rule of procedure that the special civil action of *certiorari* is not and cannot be a substitute for an appeal, where the latter remedy is available, as it was in this case. The petition for *certiorari* was filed within the reglementary period within which to file an appeal and the broader interests of justice justifies the relaxation of the rules.

2. **CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); SURRENDER OF WITHHELD DUPLICATE CERTIFICATES; PETITION FOR SURRENDER OF WITHHELD DUPLICATE CERTIFICATE OF TITLE; WHEN MAY BE AVAILED OF.—** Section 107 [of P.D. No. 1529] contemplates ONLY two situations when a petition for

surrender of withheld duplicate certificate of title may be availed of. These are: (1) where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent, and (2) where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title. Clearly, the original petition before the RTC does not allege an involuntary instrument which intends to divest the title of the registered owner against his consent. TCT No. 27090 is registered in the name of the Quesadas' predecessors-in-interest and the Quesadas are not divesting the title of their predecessors-in-interest against the latter's will. Rather, the Quesadas require the surrender of the owner's duplicate of TCT No. 27090 in the possession of PMO based on an alleged deed of donation in their favor x x x. Inasmuch as the original petition before the RTC seeks the surrender of the owner's duplicate copy of TCT No. 27090 in the possession of PMO so that a voluntary instrument — a Deed of Donation — can be registered but the registration cannot be made by reason of the refusal of PMO, the holder, to surrender the same, a cause of action under Section 107 of P.D. No. 1529 has been sufficiently alleged in the original petition. Thus, a dismissal of the said petition on the ground that it fails to state a cause of action is not warranted. Consequently, the RTC, as a land registration court, has jurisdiction over the original petition.

3. ID.; ID.; ID.; JURISDICTION OF COURTS; AFTER THE PARTIES HAVE BEEN DULY HEARD IN A FULL-BLOWN HEARING, THE REGIONAL TRIAL COURT, BEING A COURT OF GENERAL JURISDICTION, CAN ADDRESS ALL THE ISSUES TO BE RAISED BY THE PARTIES AND RESOLVE THEIR CONFLICTING CLAIMS, APPLYING SUBSTANTIVE LAW AND JURISPRUDENCE.— With respect to the power of the RTC to hear and decide contentious and substantial issues, x x x Section 2 of P.D. No. 1529 confers a broad jurisdiction upon the RTC "**with power to hear and determine all questions arising upon such [petition].**" x x x Verily, after the parties have been duly heard in a full-blown hearing, the RTC, being a court of general jurisdiction, can squarely address all the issues to be raised by the parties and resolve their conflicting claims, applying substantive law and jurisprudence. Indeed, this matter is procedural and not jurisdictional.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
The Law Firm of Israel P.J. Calderon for respondents.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] of the Court of Appeals[3] (CA) dated June 29, 2015 in CA-G.R. SP No. 135401 and the Resolution[4] dated May 2, 2016 denying the motion for reconsideration filed by petitioner, Privatization and Management Office (PMO), through the Office of the Solicitor General (OSG).

Facts and Antecedent Proceedings

The assailed CA Decision states the factual antecedents as follows:

> On December 8, 2011, herein [respondents Edgardo V. Quesada, Ma. Gracia Quesada-Manalo, Elizabeth Quesada-Jose, Eugenio V. Quesada, represented by their Attorney-in-Fact Eugenio v. Quesada (the Quesadas)] filed a Petition to Surrender [Transfer Certificate of Title (TCT)] No. 27090 pursuant to Section 107 of [Presidential Decree (P.D.)] No. 1529. The said petition was raffled to public respondent Hon. Judge Rosa M. Samson of the [Regional Trial Court] of Quezon City, Branch 105 [(RTC)].
>
> It was alleged in the Petition x x x that [the Quesadas] are the owners of a parcel of land situated in Quezon City under TCT No. 27090. TCT No. 27090 was originally registered in the name of [the Quesadas'] predecessors-in-interest and it was donated to them

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[1] *Rollo*, pp. 3-28, excluding Annexes.

[2] *Id*. at 29-35. Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr., concurring.

[3] Fifth Division.

[4] *Rollo*, pp. 36-37.

sometime in 1997 (See: Deed of Donation, Rollo, pp. 32-33). The original copy of TCT No. 27090, on file with the Register of Deeds of Quezon City, was destroyed when the interior of the Quezon City Hall was gutted by fire in 1998. This prompted [the Quesadas'] predecessors-in-interest to file a Petition for Reconstitution of Title under Civil Case No. Q-24149 (07).

The said original TCT, which has not been reconstructed, may be reconstituted on the basis of the [owner's] copy thereof. However, the said owner's copy of the TCT is presently in the possession of x x x [PMO], the government agency that took over the functions of the Asset Privatization Trust (APT). x x x PMO got hold of the said [owner's] copy of the TCT because it was delivered in 1983 to Golden Country Farms, a defunct private corporation, to secure the performance by [the Quesadas'] predecessors-in-interest[5] of their obligation in a contract designated as Growership Agreement which [the Quesadas'] predecessors-in-interest had entered into with Golden Country Farms. Golden Country Farms, however, was later considered a crony corporation and was sequestered by the APT.

[The Quesadas] also alleged that whatever obligation their predecessors-in-interest may have under the Growership Agreement, the same had already been extinguished by prescription. Furthermore, under Civil Case No. 8438, the RTC of Pasay City, Branch 113 issued a Decision dated August 23, 1999 x x x declaring that [the Quesadas'] predecessors-in-interest had no more liability to the corporation or that whatever liability there may be cannot anymore be enforced.

[The Quesadas] alleged that as far as they know, the said TCT No. 27090 has not been delivered to any person or entity to secure the payment or performance of any obligation whatsoever, nor any transaction or document relating to the same presented for or pending registration in the Office of the Register of Deeds of Quezon City. Thus, in order that [the Quesadas] may transfer the ownership of the property from their predecessors-in-interest to their name[s], they would need the duplicate certificate of title which is in the possession of x x x PMO. Several demands were made to x x x PMO to surrender the said title but the same were not favorably acted upon by the said

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[5] The Petition mentions Conrado Quesada as respondents' predecessor-in-interest, who used TCT No. 27090 to secure the performance of his obligation pursuant to a Growership Agreement dated April 4, 1983 with Golden Country Farms, Inc. *Rollo,* p. 7.

office. [The Quesadas] were constrained to file the instant petition to surrender the withheld duplicate certificates pursuant to Section 107 of P.D. No. 1529, otherwise known as the Property Registration Decree.

x x x PMO, through the Office of the Solicitor General [OSG], filed a Motion to Dismiss x x x on the following grounds: (i) the petition failed to state a cause of action; (ii) the RTC lacks jurisdiction over the petition because it involves an adverse claim to the land or controversial issue which should be properly threshed out in an ordinary case, and (iii) any action against the [APT] (now x x x PMO) is barred by res judicata. [The Quesadas], in their [C]omment/Opposition, moved for the denial of the Motion to Dismiss and reiterated that there is no annotation of the alleged right of x x x PMO on the subject title that would give it a right to hold the same. Neither did x x x PMO file an Opposition to the Petition for Reconstitution filed by [the Quesadas] which was already decided with finality in their favor.

On July 3, 2013, the RTC of Quezon City, Branch 105 issued an Order, [the] pertinent portion[s] of which are as follows:

> "In this case, taking into account the allegations of the Oppositor in its Motion to Dismiss which raise serious objection to the claim of the petitioners [the Quesadas], the issue becomes contentious, hence, there is a need for a full-blown trial whereby both parties are afforded the opportunity to present their evidence proving their respective claims.
>
> WHEREFORE, without necessarily giving due course to the petition and in order to avoid multiplicity of suit[s], the Motion to Dismiss filed by the Oppositor is DENIED it being possible to convert this case into an ordinary civil action.
>
> x x x x x x x x x."

x x x PMO filed a Motion for Reconsideration on the Order dated July 3, 2013 and Motion to Suspend Pre-Trial x x x. [PMO], among others, raised the question of whether or not the RTC sitting as land registration court should act on the instant petition taking into account its opposition that it has no jurisdiction over the subject matter of the case, as the issue mainly involves one that affects ownership of the property covered by TCT No. 27090.

On December 23, 2013, the RTC issued the x x x Order as follows:

> "WHEREFORE, in view of the foregoing, finding merit to the Motion for Reconsideration filed by the oppositor, the same is GRANTED. The Order dated [July 3, 2013] is hereby reconsidered and set aside.
>
> Accordingly, the instant petition is hereby ordered DISMISSED for lack of jurisdiction." x x x

[The Quesadas], for their part, filed a Motion for Reconsideration of the Order dated December 23, 2013 x x x. x x x PMO move[d] for the denial of the said Motion for Reconsideration x x x. However, in another x x x Order dated April 8, 2014, the RTC denied [the Quesadas'] Motion for Reconsideration ruling that the RTC indeed has no jurisdiction over the subject matter of the case as the issue involved therein must be threshed out in an ordinary proceeding.

Dissatisfied with the foregoing Orders, [the Quesadas] filed [a] Petition for Certiorari [with the CA], arguing[, among others, that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the case contrary to its Order dated July 3, 2013.][6]

The CA granted the petition of the Quesadas in its Decision dated June 29, 2015, the dispositive portion of which states:

WHEREFORE, the instant Petition for Certiorari is **GRANTED**. The assailed Orders dated December 23, 2013 and April 8, 2014 of the Regional Trial Court of Quezon City, Branch 105, in LRC Case No. 32715 (11) are hereby **SET ASIDE**. Accordingly, the Motion to Dismiss filed by x x x PMO is **DENIED**.

SO ORDERED.[7]

The CA justified the jurisdiction of the RTC, as a land registration court, over the present petition to surrender title pursuant to Section 107 of P.D. No. 1529 despite the contentious issues raised by the parties in this wise:

[Section 2] has eliminated the distinction between the general jurisdiction vested in the regional trial court and the limited jurisdiction

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[6] *Id*. at 29-32.

[7] *Id.* at 35.

conferred upon it by the former law when acting merely as a cadastral court (*Concepcion v. Concepcion*, 448 SCRA 31, 38 [2005]). Under the former law (Act No. 496 or the Land Registration Act), all summary reliefs such as the instant action to compel surrender of owner's duplicate of Title could only be filed with the RTC sitting as a land registration court only if there was unanimity among the parties or there was no adverse claim or serious objection on the part of any party in interest. Otherwise, if the case became contentious and controversial, it should be threshed out in an ordinary action or in the case where the incident properly belonged. Under the amended law, the court is now authorized to hear and decide not only such non-controversial cases but even the contentious and substantial issues (*Averia, Jr. v. Caguioa*, 146 SCRA 459, 462 [1986]).[8]

PMO filed a motion for reconsideration, raising as issues the propriety of a petition for *certiorari* as a remedy to question the denial of a motion for reconsideration of an order of dismissal and the failure of the Quesadas to state a cause of action.[9]

The CA denied PMO's motion for reconsideration in its Resolution[10] dated May 2, 2016. The CA pointed out that it was justified in giving due course to the petition and treating the same as an ordinary appeal because it was filed within the prescribed 15-day period.[11] It also invoked the liberal spirit pervading the Rules of Court and substantial justice to justify the granting of the petition for *certiorari* despite acknowledging that a decision dismissing the complaint for lack of jurisdiction is a final decision.[12] As to the issue on the alleged failure of the original petition to state a cause of action, the CA stated that this issue was impliedly ruled upon when the CA proceeded to resolve the petition.[13]

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[8] *Id.* at 33.

[9] *Id.* at 36.

[10] *Id.* at 36-37.

[11] *Id.* at 37.

[12] *Id.*

[13] *Id.*

Hence, this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. The Quesadas filed a Comment to the Petition[14] dated December 19, 2016.

Issues

Whether the CA erred in giving due course to the petition for *certiorari* when it is not the proper remedy to seek a review from an order of dismissal.

Whether the CA erred in ruling that the RTC can take cognizance of the petition to surrender the duplicate copy of TCT No. 27090 pursuant to Section 107[15] of P.D. No. 1529.[16]

The Court's Ruling

The petition is not impressed with merit. It is accordingly denied.

On the first issue, PMO insists that the RTC's Order denying the motion for the reconsideration of the Order dismissing the original petition was a final order and the remedy available to the Quesadas would have been to appeal the questioned Order and not to resort to petition for *certiorari*.[17]

The Quesadas contend that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the case, giving them the right to file a petition for *certiorari* under Rule 65 of the Rules of Court.[18]

While the Court concedes, as did the CA, that the RTC's Order dismissing the original petition of the Quesadas on the ground of lack of jurisdiction is a final order that is normally

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[14] *Id.* at 53-65.

[15] The Petition erroneously mentions Section 10 (General functions of Registers of Deeds) of P.D. No. 1529. *Id*. at 9 and 14.

[16] *Rollo,* p. 9.

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

[18] *Id*. at 59.

subject of an appeal, nevertheless the Court finds that the CA did not commit reversible error when it gave due course to the petition for *certiorari* and treated the same as an ordinary appeal.[19]

The Court in *China Banking Corp. v. Cebu Printing and Packaging Corp.*[20] cited the several instances when the Court has treated a petition for *certiorari* as a petition for review on *certiorari* and allowed the resort to the extraordinary remedy of *certiorari* despite the availability of an appeal, *viz.*:

> It is true that in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, this Court has, before, treated a petition for *certiorari* as a petition for review on *certiorari*, particularly **(1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.**

This Court was also liberal in its treatment of a wrong mode of appeal in *Land Bank of the Philippines v. CA*, wherein it was ruled that:

> x x x However, there are cases where the [*certiorari*] writ may still issue even if the aggrieved party has a remedy of appeal in the ordinary course of law. Thus, **where the exigencies of the case are such that the ordinary methods of appeal may not prove adequate either in point of promptness or completeness so that a partial or total failure of justice may result, a [*certiorari*] writ may issue.**

The same was also applied in *Leyte IV Electric Cooperative, Inc. v. LEYECO IV Employees Union-ALU*, thus:

> In addition, while the settled rule is that an independent action for *certiorari* may be availed of only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law and *certiorari* is not a substitute for the lapsed remedy of appeal, there are a few significant exceptions when the extraordinary remedy of *certiorari* may be resorted to despite

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[19] *Id.* at 37.

[20] 642 Phil. 308 (2010).

> the availability of an appeal, namely: **(a) when public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority**.[21] (Citations omitted)

Guided by these pronouncements, the Court agrees with the CA that there is sufficient justification that would merit a deviation from the strict rule of procedure that the special civil action of *certiorari* is not and cannot be a substitute for an appeal, where the latter remedy is available, as it was in this case.[22] The petition for *certiorari* was filed within the reglementary period within which to file an appeal and the broader interests of justice justifies the relaxation of the rules.[23]

On the second issue, PMO insists that the original petition failed to state a cause of action because the allegations therein do not fall under the two circumstances contemplated in Section 107 of P.D. No. 1529,[24] and that the summary proceedings under the said Section do not empower the RTC to resolve the conflicting claims of the parties.[25]

The Quesadas take the position that the CA was correct in declaring that the instant case could be converted into an ordinary action to avoid multiplicity of suits.[26]

Section 107 of P.D. No. 1529 provides:

> SEC. 107. *Surrender of withhold duplicate certificates*. – Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered

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[21] *Id*. at 322-323.

[22] See *id*. at 323.

[23] *Id*. at 322 and 323.

[24] *Rollo*, pp. 15-16.

[25] *Id*. at 19.

[26] *Id*. at 60.

by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not[27] any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

On the other hand, the jurisdiction of the RTC as a land registration court is provided in Section 2 of P.D. No. 1529, *viz.*:

SEC. 2. *Nature of registration proceedings; jurisdiction of courts.* – Judicial proceedings for the registration of lands throughout the Philippines shall be *in rem* and shall be based on the generally accepted principles underlying the Torrens system.

Courts of First Instance [now, Regional Trial Courts] shall have exclusive jurisdiction over all applications for original registration of title to lands, including improvements and interests therein, and **over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions**. The court through its clerk of court shall furnish the Land Registration Commission [now, Land Registration Authority] with two certified copies of all pleadings, exhibits, orders, and decisions filed or issued in applications or petitions for land registration, with the exception of stenographic notes, within five days from the filing or issuance thereof. (Emphasis and underscoring supplied)

As correctly observed by PMO, Section 107 contemplates ONLY two situations when a petition for surrender of withheld duplicate certificate of title may be availed of. These are: (1)

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[27] Should be "for".

where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent, and (2) where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title.

Clearly, the original petition before the RTC does not allege an involuntary instrument which intends to divest the title of the registered owner against his consent. TCT No. 27090 is registered in the name of the Quesadas' predecessors-in-interest and the Quesadas are not divesting the title of their predecessors-in-interest against the latter's will.

Rather, the Quesadas require the surrender of the owner's duplicate of TCT No. 27090 in the possession of PMO based on an alleged deed of donation in their favor, *viz.*:

> It was alleged in the Petition x x x that [the Quesadas] are the owners of a parcel of land situated in Quezon City under TCT No. 27090. TCT No. 27090 was originally registered in the name of [the Quesadas'] predecessors-in-interest and it was donated to them sometime in 1997 (**See: Deed of Donation, Rollo, pp. 32-33**). x x x.
>
> x x x x x x x x x
>
> x x x Thus, in order that [the Quesadas] may transfer the ownership of the property from their predecessors-in-interest to their name[s], they would need the duplicate certificate of title which is in the possession of x x x PMO.[28] (Emphasis supplied)

Inasmuch as the original petition before the RTC seeks the surrender of the owner's duplicate copy of TCT No. 27090 in the possession of PMO so that a voluntary instrument — a Deed of Donation — can be registered but the registration cannot be made by reason of the refusal of PMO, the holder, to surrender the same, a cause of action under Section 107 of P.D. No. 1529 has been sufficiently alleged in the original petition. Thus, a dismissal of the said petition on the ground that it fails to state

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[28] *Rollo*, pp. 29-30.

a cause of action is not warranted. Consequently, the RTC, as a land registration court, has jurisdiction over the original petition.

With respect to the power of the RTC to hear and decide contentious and substantial issues, such as, whether the obligation of the Quesadas' predecessors-in-interest under the Growership Agreement had already been extinguished by prescription and whether the Decision dated August 23, 1999 of the RTC of Pasay City, Branch 113 in Civil Case No. 8438, declaring that the Quesadas' predecessors-in-interest had no more liability to Golden Country Farms (now PMO) or that whatever liability there might be against them could no longer be enforced,[29] or those that affect the ownership of the property covered by TCT No. 27090,[30] Section 2 of P.D. No. 1529 confers a broad jurisdiction upon the RTC "**with power to hear and determine all questions arising upon such [petition]**."

As pointed by the Court in *Lozada v. Bracewell*,[31] it is settled that:

> x x x with the passage of PD 1529, the distinction between the general jurisdiction vested in the RTC and the limited jurisdiction conferred upon it as a cadastral court was eliminated. RTCs now have the power to hear and determine all questions, even contentious and substantial ones, arising from applications for original registration of titles to lands and petitions filed after such registration. x x x **[T]he matter of whether the RTC resolves an issue in the exercise of its general jurisdiction or of its limited jurisdiction as a special court is only a matter of procedure and has nothing to do with the question of jurisdiction** x x x.[32] (Emphasis in the original omitted; emphasis supplied; citations omitted)

As explained by the Court in *Ignacio v. CA*,[33]

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[29] *Id.* at 30.

[30] See *id.* at 30-31.

[31] 731 Phil. 128 (2014).

[32] *Id.* at 137-138.

[33] 316 Phil. 302 (1995).

x x x **This amendment was aimed at avoiding multiplicity of suits and at expediting the disposition of cases.** Regional Trial Courts now have the authority to act not only on applications for original registration but also over all petitions filed after the original registration of title, with power to hear and determine all questions arising from such applications or petitions. **Indeed, the land registration court can now hear and decide controversial and contentious cases and those involving substantial issues** x x x.

In the instant case, the trial court, although sitting as a land registration court, took cognizance of the petition as an ordinary civil action under its general jurisdiction. The court did not decide the case summarily, but afforded both petitioner and private respondents the opportunity to present their respective documentary and testimonial evidence. Ordinary pleadings and memoranda were likewise filed. The decision of the trial court squarely addressed all the issues raised by the parties and applied substantive law and jurisprudence.[34] (Emphasis supplied; citations omitted)

The CA, thus, correctly ruled, to wit:

x x x Since P.D. No. 1529 eliminated the distinction between the general jurisdiction vested in the [R]egional [T]rial [C]ourt and the limited jurisdiction conferred upon it by the former law [Act No. 496 or the Land Registration Act] when acting merely as a cadastral court, then public respondent RTC has overstepped its boundaries when it dismissed the instant petition for lack of jurisdiction. To echo the Supreme Court:

> "x x x doctrinal jurisprudence holds that the Court of First Instance (now the Regional Trial Court), as a Land Registration Court, can hear cases otherwise litigable only in ordinary civil actions, since the Court[s] of First Instance are at the same time, courts of general jurisdiction and could entertain and dispose of the validity or invalidity of respondent's adverse claim, with a view to determining whether petitioner is entitled or not to the relief that he seeks" (*Concepcion v. Concepcion*, 448 SCRA 31, 38 [2005]; cited case omitted).

Considering the serious objection raised by x x x PMO on [the Quesadas'] claim, the issue becomes contentious and the RTC albeit

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[34] *Id.* at 309.

sitting as a land registration court, has the authority not only to take cognizance of the said petition, but also to thresh out the issue in a full-blown hearing, to receive evidence of both parties and to determine whether or not [the Quesadas] are indeed entitled to the relief prayed for.[35]

Verily, after the parties have been duly heard in a full-blown hearing, the RTC, being a court of general jurisdiction, can squarely address all the issues to be raised by the parties and resolve their conflicting claims, applying substantive law and jurisprudence. Indeed, this matter is procedural and not jurisdictional.

WHEREFORE, the Petition is hereby **DENIED** for lack of merit. The Court of Appeals Decision dated June 29, 2015 and Resolution dated May 2, 2016 in CA-G.R. SP No. 135401 are hereby **AFFIRMED**. The petition in LRC Case No. 32715 (11) filed before the Regional Trial Court of Quezon City, Branch 105 is **REINSTATED** and the said Regional Trial Court is **DIRECTED** to conduct **with dispatch** a full-blown hearing and resolve accordingly all the issues pertinent to the said LRC Case.

SO ORDERED.

Carpio, Acting C. J. (Chairperson), Peralta, and *Reyes, Jr., JJ.*, concur.

Perlas-Bernabe, J., on official leave.

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[35] *Rollo*, pp. 34-35.

THIRD DIVISION

[G.R. No. 227863. September 20, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PEDRITO ORDONA *y* RENDON,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURTS, RESPECTED.— The determination of the credibility of witnesses is a function best left to the trial courts. Generally, their findings and conclusions on this matter are given great respect and weight. There are only a few instances when the trial court's findings and conclusions may be disregarded. The party seeking the exception must be able to allege and prove that the trial court either erred in appreciating the fact and circumstances of the case or made unsound inferences from the facts established.

2. ID.; ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCIES THAT DO NOT RELATE TO THE ESSENTIAL ELEMENTS OF THE CRIME.— In the present case, accused-appellant alleged that there were material inconsistencies in the testimonies of the prosecution's main witnesses. x x x The alleged inconsistencies were only minor. They do not relate to the essential elements of the crime of murder. Slight variances in the testimony of witnesses, especially if immaterial to the crime charged, do not affect a witness' credibility.

3. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES.— The crime of murder committed when a person is killed under any of the circumstances enumerated in Article 248 of the Revised Penal Code, thus: Article 248. Murder – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances: 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure

or afford impunity; 2. In consideration of a price, reward, or promise; 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin; 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity; 5. With evident premeditation; 6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

4. ID.; ID.; ID.; EVIDENT PREMEDITATION; HOW AND WHEN THE PLAN TO KILL WAS HATCHED OR HOW MUCH TIME HAD ELAPSED BEFORE IT WAS CARRIED OUT, MUST BE ESTABLISHED.— For evident premeditation to qualify the killing of a person to the crime of murder, the following must be established by the prosecution "with equal certainty as the criminal act itself": (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act. It is indispensable for the prosecution to establish "how and when the plan to kill was hatched or how much time had elapsed before it was carried out." In *People v. Abadies*, this Court underscored this requirement, thus: Evident premeditation must be based on external facts which are evident, not merely suspected, which indicate deliberate planning. *There must be direct evidence showing a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to kill the victim.* Criminal intent must be evidenced by notorious outward acts evidencing a determination to commit the crime. *In order to be considered an aggravation of the offense, the circumstance must not merely be "premeditation" but must be "evident premeditation." The date and, if possible, the time when the malefactor determined to commit the crime is essential, because the lapse of time for the purpose of the third requisite is computed from such date and time.*

5. ID.; ID.; ID.; TREACHERY REQUISITES.— The essence of treachery, as stated in *Abadies*, is "the swift and unexpected attack on the unarmed victim without the slightest provocation

on his part." Two (2) requisites must be established by the prosecution, namely: "(1) that at the time of the attack, the victim was not in a position to defend himself [or herself], and (2) that the offender consciously adopted the particular means, method or form of attack employed by him [or her]."

6. ID.; ID.; DAMAGES.— Accused-appellant's conviction for the crime of murder is affirmed. However, this Court modifies the award of civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each, in accordance with *People v. Jugueta*, where this Court clarified that "when the crime proven is consummated and the penalty imposed is death but reduced to *reclusion perpetua* because of [Republic Act No.] 9346 the civil indemnity and moral damages that should be awarded will each be ₱100,000.00 and another ₱100,000.00 for exemplary damages."

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.*:

To qualify the killing of a person to the crime of murder, evident premeditation must be proven with reasonable certainty. Facts regarding "how and when the plan to kill was hatched"[1] are indispensable. The requirement of deliberate planning should not be based merely on inferences and presumptions but on clear evidence.

For this Court's resolution is an Ordinary Appeal from the June 1, 2015 Decision[2] of the Court of Appeals in CA-G.R.

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[1] *People v. Borbon*, 469 Phil. 132, 145 (2004) [Per *J.* Callejo, Sr., Second Division].

[2] *Rollo*, pp. 2–10. The Decision was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy of the Fourteenth Division, Court of Appeals, Manila.

CR HC No. 06280, which affirmed the conviction of accused-appellant Pedrito Ordona y Rendon (Ordona) for the crime of murder.

In an Information, Ordona was charged of murder punished under Article 248 of the Revised Penal Code. The accusatory portion of the Information read:

> That on or about the 1st day of January, 2005, in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully and feloniously with intent to kill, taking advantage of superior strength, with evident premeditation and treachery, attack, assault and employ personal violence upon the person IRENEO A. HUBAY, by then and there stabbing him on the trunk with a bladed weapon thereby inflicting upon him serious and mortal wounds, which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Ireneo A. Hubay.
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> CONTRARY TO LAW.[3]

Ordona, assisted by counsel, pleaded not guilty during arraignment. Trial on the merits ensued.[4]

The prosecution presented three (3) witnesses, namely: (1) Samuel Cartagenas (Samuel); (2) Marissa Cartagenas (Marissa); and (3) PSI Dean Cabrera (PSI Cabrera). Their collective testimonies produced the prosecution's version of the incident.

Samuel personally knew Ordona and the victim, Ireneo A. Hubay (Hubay). Ordona was his neighbor while Hubay was a boarder of his mother.[5]

On the day of the alleged incident, Samuel and his wife Marissa were talking at the doorway of their house located along E. Rodriguez Avenue, Quezon City.[6] Samuel and Marissa saw Ordona loitering by the corner of their house. Ordona appeared

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[3] *Id*. at 3.

[4] *Id.*

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

[6] *Rollo*, pp. 3–4.

to be waiting for someone. After some time, he left but returned five (5) minutes later.[7]

Meanwhile, Hubay emerged from the house,[8] holding some food.[9] Ordona approached Hubay with a stainless knife, called his attention by saying *"Pare,"* and suddenly stabbed him in the left shoulder.[10] Samuel and Marissa stood two (2) feet away from them.[11]

Hubay managed to run away but Ordona gave chase and eventually caught up with him.[12] Despite Hubay's pleas for mercy, Ordona stabbed him[13] in the left torso.[14] Hubay's stab wounds proved to be fatal as he died immediately when he was brought to the hospital.[15]

PSI Cabrera, the representative of the Medico-Legal Officer who conducted the autopsy, testified that Hubay died of hemorrhage and shock from the second stab wound.[16]

The defense presented accused-appellant Ordona as its lone witness. Ordona testified that on the day of the alleged incident, he went to the house of his mother-in-law to fetch his wife. The house was located in the same barangay where the alleged incident took place. On his way there, he met a certain Cornelio de Leon who was running amok. This prevented him from reaching his destination.[17] After five (5) days, Ordona was

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[7] *Id*.

[8] *Id.*

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

[10] *Rollo*, p. 4.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 5.

[15] *Id.*

[16] CA *rollo*, pp. 42–43.

[17] *Rollo*, p. 5.

arrested by the authorities. However, they failed to recover any bladed weapon from him.[18] Ordona denied knowledge of Hubay's identity.[19]

In its Decision[20] dated May 20, 2013, the Regional Trial Court found Ordona guilty beyond reasonable doubt of murder. Accordingly, he was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay damages to the heirs of Hubay. The dispositive portion of this Decision stated:

> WHEREFORE, accused PEDRITO ORDONA y RENDON is hereby pronounced guilty beyond reasonable doubt of the crime of MURDER and sentenced to suffer the penalty of *reclusion perpetua*. Accused Ordona is further ordered to indemnify the Heirs of Ireneo Hubay the following: (a) ₱75,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; (c) ₱30,000.00 as exemplary damages and ([d]) interest on all damages awarded at the rate of 6% *per annum* from the date of finality of this judgment.
>
> SO ORDERED.[21]

Ordona appealed the Decision of the Regional Trial Court. In his Brief,[22] he alleged that there were material inconsistencies in the testimonies of the prosecution's witnesses.[23] Ordona argued, in the alternative, that assuming he may be held criminally liable, the trial court erred in appreciating the qualifying circumstances of evident premeditation and treachery.[24] Treachery cannot be appreciated as a qualifying circumstance because the purported attack was not sudden or unexpected.

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[18] *Id*.

[19] *Id*.

[20] CA *rollo*, pp. 39–48. The Decision, docketed as Criminal Case No. Q-05-131859, was penned by Presiding Judge Madonna C. Echiverri of Branch 81, Regional Trial Court, Quezon City.

[21] *Id.* at 48.

[22] *Id*. at 25–38.

[23] *Id.* at 31–33.

[24] *Id*. at 33–36.

Ordona pointed out that he called Hubay's attention before approaching him. Hubay "was aware of the imminent danger to his life."[25] Evident premeditation cannot likewise be appreciated as a qualifying circumstance because the prosecution failed to establish an overt act indicating his resolution to kill Hubay.[26]

In its Brief,[27] the Office of the Solicitor General, on behalf of the People of the Philippines, asserted that the alleged inconsistencies in the testimonies of the prosecution's witnesses neither pertain to nor involve the elements of murder.[28] The Office of the Solicitor General added that evident premeditation attended the commission of the crime.[29] Ordona's behavior clearly established his deliberate plan to kill Hubay.[30] There was also treachery because the attack was sudden and unexpected.[31]

In its Decision[32] dated June 1, 2015, the Court of Appeals affirmed the Decision of the Regional Trial Court *in toto*.

The Court of Appeals found the testimony of the prosecution's witnesses "credible, competent, and sufficient" to prove the treacherous killing of Hubay.[33] The alleged inconsistencies were only minor, which did not negate the commission of the crime.[34] The Court of Appeals agreed with the trial court that

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[25] *Id.* at 34.

[26] *Id.* at 34–36.

[27] *Id.* at 53–66.

[28] *Id.* at 60–61.

[29] *Id.* at 63.

[30] *Id.*

[31] *Id.*

[32] *Rollo*, pp. 2–10. The Decision was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy of the Fourteenth Division, Court of Appeals, Manila.

[33] *Id.* at 7.

[34] *Id.*

evident premeditation and treachery were both present in the commission of the crime.[35] Ordona's behavior established that "he was intentionally waiting for his victim to show up[.]"[36]

On July 9, 2015, Ordona filed his Notice of Appeal,[37] which was given due course by the Court of Appeals in its Resolution[38] dated July 27, 2015.

On November 17, 2016, the Court of Appeals elevated the records of the case to this Court.[39]

In its Resolution[40] dated January 16, 2017, this Court noted the records forwarded by the Court of Appeals and required the parties to submit their supplemental briefs if they so desired. However, both parties manifested that they would no longer file supplemental briefs.[41]

The sole issue for this Court's resolution is whether or not accused-appellant Pedrito Ordona is guilty beyond reasonable doubt of murder.

This Court affirms accused-appellant Pedrito Ordona's conviction.

The determination of the credibility of witnesses is a function best left to the trial courts.[44] Generally, their findings and conclusions on this matter are given great respect and weight.[45] There are only a few instances when the trial court's findings

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[35] *Id*. at 8–9.

[36] *Id.* at 9.

[37] *Id*. at 11–14.

[38] CA *rollo*, p. 92.

[39] *Rollo*, p. 1.

[40] *Id.* at 17–18.

[41] *Id*. at 19–22, Office of the Solicitor General's Manifestation and *rollo*, pp. 24–28, accused-appellant's Manifestation.

[44] *People v. Acuram*, 284-A Phil. 756, 765 (1992) [Per *J.* Romero, Third Division].

[45] *Id.*

and conclusions may be disregarded. The party seeking the exception must be able to allege and prove that the trial court either erred in appreciating the facts and circumstances of the case or made unsound inferences from the facts established.[46]

In the present case, accused-appellant alleged that there were material inconsistencies in the testimonies of the prosecution's main witnesses. According to him, Marissa did not testify that she saw him leave the house for a few minutes. In addition, Samuel and Marissa presented different accounts on how the crime scene was illuminated.[47]

Accused-appellant's assertion is unmeritorious. The alleged inconsistencies were only minor. They do not relate to the essential elements of the crime of murder. Slight variances in the testimony of witnesses, especially if immaterial to the crime charged, do not affect a witness' credibility.[48] What is material in this case is the act of stabbing. That the second witness did not see accused-appellant momentarily leave the place of the commission of the crime does not negate Hubay's killing. Also, both witnesses testified that the place was well-lit for them to see the incident.[49] Regardless of the source of illumination, both witnesses saw accused-appellant stab Hubay twice.

The crime of murder is committed when a person is killed under any of the circumstances enumerated in Article 248 of the Revised Penal Code, thus:

> Article 248. Murder – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusión perpetua*, to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

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[46] *Id*.

[47] CA *rollo*, pp. 31–32.

[48] *People v. Rabutin*, 338 Phil. 705, 713 (1997) [Per *J.* Melo, Third Division].

[49] *Rollo*, pp. 4–5.

2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

For evident premeditation to qualify the killing of a person to the crime of murder, the following must be established by the prosecution "with equal certainty as the criminal act itself"[50]:

(a) the time when the offender determined to commit the crime;

(b) an act manifestly indicating that the offender clung to his determination; and

(c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[51]

It is indispensable for the prosecution to establish "how and when the plan to kill was hatched or how much time had elapsed before it was carried out."[52] In *People v. Abadies*,[53] this Court underscored this requirement, thus:

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[50] *People v. Abadies*, 436 Phil. 98, 105 (2002) [Per *J.* Ynares-Santiago, *En Banc*].

[51] *People v. Balleras*, 432 Phil. 1018, 1026 (2002) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[52] *People v. Borbon*, 469 Phil. 132, 145 (2004) [Per *J.* Callejo, Sr., Second Division].

[53] 436 Phil. 98 (2002) [Per *J.* Ynares-Santiago, *En Banc*].

Evident premeditation must be based on external facts which are evident, not merely suspected, which indicate deliberate planning. *There must be direct evidence showing a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to kill the victim*. Criminal intent must be evidenced by notorious outward acts evidencing a determination to commit the crime. *In order to be considered an aggravation of the offense, the circumstance must not merely be "premeditation" but must be "evident premeditation."*

The date and, if possible, the time when the malefactor determined to commit the crime is essential, because the lapse of time for the purpose of the third requisite is computed from such date and time.[54] (Emphasis supplied, citations omitted)

In this regard, evident premeditation cannot be appreciated as a qualifying circumstance in the present case. The prosecution failed to establish the time when accused-appellant resolved to kill Hubay. There is no evidence on record to show the moment accused-appellant hatched his plan. In *People v. Borbon*:[55]

[Evident premeditation] must be based on external acts which must be notorious, manifest and evident—not merely suspecting—indicating deliberate planning. Evident premeditation, like other circumstances that would qualify a killing as murder, must be established by clear and positive evidence showing the planning and preparation stages prior to the killing. Without such evidence, mere presumptions and inferences, no matter how logical and probable, will not suffice.

It is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out.[56] (Emphasis supplied, citations omitted)

Accused-appellant's act of lurking outside the house can hardly be considered as an overt act indicating his resolution to kill Hubay.

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[54] *Id*. at 106.

[55] 469 Phil. 132 (2004) [Per *J.* Callejo, Sr., Second Division].

[56] *Id.* at 145.

However, accused-appellant is still liable for murder. The killing was attended with the qualifying circumstance of treachery.

The essence of treachery, as stated in *Abadies*, is "the swift and unexpected attack on the unarmed victim without the slightest provocation on his part."[57] Two (2) requisites must be established by the prosecution, namely: "(1) that at the time of the attack, the victim was not in a position to defend himself [or herself], and (2) that the offender consciously adopted the particular means, method or form of attack employed by him [or her]."[58]

Both elements are present in this case. Hubay, who was then unarmed, was casually outside of his residence when accused-appellant suddenly stabbed him. There was no opportunity for Hubay to retaliate or to parry accused-appellant's attack. The facts also establish that accused-appellant consciously and deliberately adopted the mode of attack. Accused-appellant lurked outside Hubay's residence and waited for him to appear. When Hubay emerged from the house, accused-appellant called him *"Pare"* while walking towards him with a bladed weapon and immediately stabbed him.[59] Although the attack was frontal, it was done suddenly and unexpectedly. A frontal attack, when made suddenly, leaving the victim without any means of defense, is treacherous.[60] The second stabbing also indicates treachery. At that time, Hubay was already wounded and was unprepared to put up a defense.

Accused-appellant's conviction for the crime of murder is affirmed. However, this Court modifies the award of civil indemnity, moral damages, and exemplary damages to

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[57] *People v. Abadies*, 469 Phil. 132, 105 (2002) [Per *J.* Callejo, Sr., Second Division].

[58] *Id.*

[59] *Rollo*, p. 4.

[60] *People v. Ablao*, 299 Phil. 276, 280 (1994) [Per *J.* Padilla, Second Division].

₱100,000.00 each, in accordance with *People v. Jugueta*,[61] where this Court clarified that "when the crime proven is consummated and the penalty imposed is death but reduced to *reclusion perpetua* because of [Republic Act No.] 9346, the civil indemnity and moral damages that should be awarded will each be ₱100,000.00 and another ₱100,000.00 for exemplary damages."[62]

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR HC No. 06280 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Pedrito Ordona y Rendon is found **GUILTY** beyond reasonable doubt of murder and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

Moreover, he is ordered to pay the heirs of Ireneo A. Hubay the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. In line with current jurisprudence, interest at the rate of six percent (6%) per annum should be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[63]

SO ORDERED.

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

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[61] G.R. No. 202124, April 5, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> 27 [Per *J.* Peralta, *En Banc*].

[62] *Id.* at 27.

[63] See *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 281–283 (2013) [Per *J.* Peralta, *En Banc*].

SECOND DIVISION

[G.R. No. 228617. September 20, 2017]

PLANTERS DEVELOPMENT BANK, *petitioner, vs.* **SPOUSES VICTORIANO and MELANIE RAMOS,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; VENUE OF ACTIONS; STIPULATIONS ON VENUE; MAY EITHER BE PERMISSIVE OR RESTRICTIVE, BUT CONSIDERING THE PREDILECTION TO VIEW A STIPULATION ON VENUE AS MERELY PERMISSIVE, THE PARTIES MUST EMPLOY WORDS IN THE CONTRACT THAT WOULD CLEARLY EVINCE A CONTRARY INTENTION; CASE AT BAR.— Rule 4 of the Rules of Civil Procedure provides the rules on venue in filing an action x x x. [T]he general rules on venue admit of exceptions in Section 4 thereof, *i.e.,* where a specific rule or law provides otherwise, or when the parties agreed in writing before the filing of the action on the exclusive venue thereof. Stipulations on venue, however, may either be permissive or restrictive. "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." x x x In view of the predilection to view a stipulation on venue as merely permissive, the parties must therefore employ words in the contract that would clearly evince a contrary intention. In *Spouses Lantin v. Judge Lantion*, the Court emphasized that "the mere stipulation on the venue of an action is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is *exclusive*. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place."

> x x x In this case, it was agreed that any suit or action that may arise from the mortgage contracts or the promissory notes must be filed and tried in Makati only. Not being contrary to law or public policy, the stipulation on venue, which PDB and Spouses Ramos freely and willingly agreed upon, has the force of law between them, and thus, should be complied with in good faith. x x x Spouses Ramos had validly waived their right to choose the venue for any suit or action arising from the mortgages or promissory notes when they agreed to limit the same to Makati City only and nowhere else. True enough, the stipulation on the venue was couched in a language showing the intention of the parties to restrict the filing of any suit or action to the designated place only. It is crystal clear that the intention was not just to make the said place an additional forum or venue but the only jurisdiction where any suit or action pertaining to the mortgage contracts may be filed. There being no showing that such waiver was invalid or that the stipulation on venue was against public policy, the agreement of the parties should be upheld.

APPEARANCES OF COUNSEL

Janda Asia & Associates for petitioner.
Renato Austria for respondents.

D E C I S I O N

REYES, JR., *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated July 5, 2016 and Resolution[2] dated December 7, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 140264.

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[1] Penned by Associate Justice Danton Q. Bueser with Associate Justices Apolinario D. Bruselas, Jr., and Renato C. Francisco, concurring; *rollo*, pp. 26-39.

[2] *Id.* at 40-44.

Antecedent Facts

The facts show that in July 2012, Spouses Victoriano and Melanie Ramos (Spouses Ramos) applied for several credit lines with Planters Development Bank (PDB) for the construction of a warehouse in Barangay Santo Tomas, Nueva Ecija.[3] The said application was approved for ₱40,000,000.00, secured by Real Estate Mortgage[4] dated July 25, 2012 over properties owned by the spouses, particularly covered by Transfer Certificate of Title (TCT) Nos. 048-2011000874 and 048-2011000875.

Subsequently, Spouses Ramos requested for additional loan and PDB allegedly promised to extend them a further loan of ₱140,000,000.00, the amount they supposed was necessary for the completion of the construction of the warehouse with a capacity of 250,000 cavans of palay.[5] Despite the assurance of the bank, only ₱25,000,000.00 in additional loan was approved and released by PDB, which was secured by a Real Estate Mortgage[6] over four (4) real properties covered by TCT Nos. 048-2012000909, 048-2012000443, 048-2012000445, and 048-2012000446.

Due to financial woes, Spouses Ramos were not able to pay their obligations as they fell due. They appealed to PDB for the deferment of debt servicing and requested for a restructuring scheme but the parties failed to reach an agreement.

On April 23, 2014, PDB filed a Petition for Extra-judicial Foreclosure of Real Estate Mortgage under Act 3135, as amended, before the Regional Trial Court of San Jose City, Nueva Ecija, which was docketed as EJF-2014-112-SJC. A Notice to Parties of Sheriff's Public Auction Sale dated May 7, 2014 was thereafter issued.[7]

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[3] *Id*. at 183.

[4] *Id*. at 72-74.

[5] *Id*. at 184.

[6] *Id*. at 76-80.

[7] *Id*. at 28.

On June 18, 2014, Spouses Ramos filed a Complaint[8] for Annulment of Real Estate Mortgages and Promissory Notes, Accounting and Application of Payments, Injunction with Preliminary Injunction and Temporary Restraining Order against PDB and its officers, namely, Ma. Agnes J. Angeles, Virgilio I. Libunao, Carmina S. Magallanes and Norberto P. Siega, also before the RTC of San Jose City, Nueva Ecija, which was docketed as Civil Case No. 2014-485-SJC.

Instead of filing an Answer, PDB filed an Urgent Motion[9] to Dismiss, alleging that the venue of the action was improperly laid considering that the real estate mortgages signed by the parties contained a stipulation that any suit arising therefrom shall be filed in Makati City only.[10] It further noted that the complaint failed to state a cause of action and must therefore be dismissed.[11]

Ruling of the RTC

In an Omnibus Order[12] dated November 17, 2014, the RTC denied the Urgent Motion to Dismiss, the pertinent portions of which read as follows:

I. The Venue is Improperly Laid

Pursuant to autonomy of contract, Venue can be waived. Rule 5, Section 4(d) of the 1997 Rules of Civil Procedure allows parties to validly agree in writing before the filing of the action on the exclusive venue thereof. Indeed, on the defendants they have the contract where the venue allegedly agreed upon by them with the plaintiffs in Makati City. However, one of the contentions of the plaintiffs is that the contracts between them and the defendants take the form of an adhesion contract (par. 20, Complaint). As such, this Court has to apply Section 1, Rule 4 of the 1997 Rules of Civil Procedure

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[8] *Id*. at 181-199.

[9] *Id*. at 50-65.

[10] *Id.* at 51.

[11] *Id*. at 54.

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

regarding the venue of real actions to avoid ruling on the merits without any evidence that would sufficiently support the same.

II. The Complaint Fails to State a Cause of Action.

With such an issue raised, the Court examined the records and it has to tell the defendants that in civil cases before the Court orders the issuance of summons, it looks on whether or not the facts alleged on the Complaint are sufficient to constitute a cause of action and not whether the allegations of fact are true. Hence, as summons were issued in this case, the Court had already found that the allegations in the Complaint are sufficient to constitute a cause of action.

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FOREGOING CONSIDERED, the Motion to Dismiss is hereby DENIED.

x x x x x x x x x

SO ORDERED.[13]

Unyielding, PDB filed a motion for reconsideration of the Omnibus Order dated November 17, 2014, instead of filing an answer to the complaint. This prompted Spouses Ramos to file a motion to declare PDB in default. Subsequently, in an Order[14] dated February 20, 2015, the RTC denied both motions, ratiocinating thus:

Necessarily, the defendants were allowed to file Motion to Dismiss before filing an Answer or responsive pleading. As a consequence of the Motion to Dismiss that the defendants filed, the running of the period during which the rules required her to file her Answer was deemed suspended. When the Court denied the Motion to Dismiss, therefore the defendants had the balance of the period for filing an Answer under Section 4, Rule 16 within which to file the same but in no case less than five days, computed from the receipt of the notice of denial of the Motion to Dismiss. x x x

x x x x x x x x x

However, after the Court denied the Motion to Dismiss, the defendants filed Motion for Reconsideration which is not precluded

[13] *Id*.

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

by the rules. Only after this Court shall have denied it would the defendants become bound to file the Answer to the Complaint. It is only if the defendants failed to file Answer after the period given by the foregoing rules would the plaintiff be entitled to have the defendants be declared in default. This was the same ruling of the Supreme Court in the case of Narciso v. Garcia, G.R. No. 196877, November 12, 2012.

With regard to the Motion for Reconsideration of the Omnibus Order dated November 17, 2014, there being no new arguments presented, the Court finds no cogent reason to reconsider and reverse the said Omnibus Order.

WHEREFORE, the Motion to Declare Defendants in Default and the Motion for Reconsideration are hereby DENIED.

SO ORDERED.[15]

Aggrieved, PDB filed a petition for *certiorari* with the CA, imputing grave abuse of discretion on the RTC for denying its motion to dismiss, despite the fact that the venue was clearly improperly laid.

Ruling of the CA

In a Decision[16] dated July 5, 2016, the CA denied the petition, the pertinent portion of which reads as follows:

The order of the public respondent in denying the motion to dismiss and the consequent denial of the motion for reconsideration is correct and judicious. Petitioner anchors its claim on the validity of the mortgage, and thereby the provision[s] therein on venue must be upheld. On the other hand, respondents anchor its claim on the invalidity of the mortgage, and thereby the complaint is filed in the proper venue. Clearly, no valid judgment can be passed upon the allegations of both parties.[17]

Thus, having found no grave abuse on the part of the public respondent in denying the motion to dismiss and the resulting denial of the motion for reconsideration, We find no cogent reason to disturb

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

[16] *Id*. at 26-39.

[17] *Id*. at 33.

or modify the assailed Decision. What the petitioners should have done was to file an answer to the petition filed in the trial court, proceed to the hearing and appeal the decision of the court if adverse to them.[18]

WHEREFORE, premises considered, the petition is **DENIED**. The Omnibus Order dated 17 November 2014 and the Order dated 20 February 2015 is hereby **AFFIRMED *in TOTO***.

IT IS SO ORDERED.[19]

PDB filed a motion for reconsideration but the CA denied the same in its Resolution dated December 7, 2016, the dispositive portion of which reads, thus:

WHEREFORE, in view of the foregoing, the motion for reconsideration is hereby DENIED.

IT IS SO ORDERED.[20]

Unyielding, PDB filed the present petition with this Court, reiterating its claim that the CA erred in affirming the order of the RTC, which denied the motion to dismiss despite the improper venue of the case. It argues that since there is a stipulation on venue, the same should govern the parties.

Ruling of this Court

The petition is meritorious.

Rule 4 of the Rules of Civil Procedure provides the rules on venue in filing an action, 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

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[18] *Id.* at 38.

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

[20] *Id*. at 44.

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.

x x x **x x x** **x x x**

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

Based on the foregoing, the general rules on venue admit of exceptions in Section 4 thereof, *i.e.*, where a specific rule or law provides otherwise, or when the parties agreed in writing before the filing of the action on the exclusive venue thereof.

Stipulations on venue, however, may either be permissive or restrictive. "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."[21]

Further, in *Unimasters Conglomeration, Inc. v. Court of Appeals*,[22] the Court elaborated, thus:

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[21] *Unimasters Conglomeration, Inc. v. Court of Appeals*, 335 Phil. 415 (1997).

[22] *Id.* at 424-425.

Since convenience is the *raison d'etre* of the rules of venue, it is easy to accept the proposition that normally, venue stipulations should be deemed permissive merely, and that interpretation should be adopted which most serves the parties' convenience. In other words, stipulations designating venues other than those assigned by Rule 4 should be interpreted as designed to make it more convenient for the parties to institute actions arising from or in relation to their agreements; that is to say, as simply adding to or expanding the venues indicated in said Rule 4.

On the other hand, because restrictive stipulations are in derogation of this general policy, the language of the parties must be so clear and categorical as to leave no doubt of their intention to limit the place or places, or to fix places other than those indicated in Rule 4, for their actions. x x x.[23]

In view of the predilection to view a stipulation on venue as merely permissive, the parties must therefore employ words in the contract that would clearly evince a contrary intention. In *Spouses Lantin v. Judge Lantion*,[24] the Court emphasized that "the mere stipulation on the venue of an action is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is *exclusive.* In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place."[25]

In the instant case, there is an identical stipulation in the real estate mortgages executed by the parties, pertaining to venue. It reads as follows:

18. In the event of suit arising from out of or in connection with this mortgage and/or the promissory note/s secured by this mortgage, the parties hereto agree to bring their causes of action **exclusively** in the proper court/s of Makati, Metro Manila, the **MORTGAGOR waiving for this purpose any other venue**.[26] (Emphasis ours)

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[23] *Id*.

[24] 531 Phil. 318, (2006).

[25] *Id*. at 322-323.

[26] *Rollo*, pp. 73, 77.

In *Spouses Lantin*, the Court ruled that "the words *exclusively* and *waiving for this purpose any other venue* are restrictive."[27] Therefore, the employment of the same language in the subject mortgages signifies the clear intention of the parties to restrict the venue of any action or suit that may arise out of the mortgage to a particular place, to the exclusion of all other jurisdictions.

In view of the foregoing, the RTC should have granted the Urgent Motion to Dismiss filed by PDB on the ground that the venue was improperly laid. The complaint being one for annulment of real estate mortgages and promissory notes is in the nature of a personal action, the venue of which may be fixed by the parties to the contract. In this case, it was agreed that any suit or action that may arise from the mortgage contracts or the promissory notes must be filed and tried in Makati only. Not being contrary to law or public policy, the stipulation on venue, which PDB and Spouses Ramos freely and willingly agreed upon, has the force of law between them, and thus, should be complied with in good faith.[28]

The CA, however, ruled that the RTC correctly denied the motion to dismiss in view of the contradicting claim of the parties on the validity of the mortgage contracts, which, in turn, affects the enforceability of the stipulation on venue. The CA agreed with the RTC that the ruling on the validity of the stipulation on venue depends on whether the mortgage is valid which means there has to be full-blown hearing and presentation of evidence. It added that what PDB should have done was to file an answer to the complaint, proceed to trial and appeal the decision, if adverse to them.[29]

The ruling of the CA renders meaningless the very purpose of the stipulation on venue. In *Unimasters*, the Court emphasized:

> Parties may by stipulation waive the legal venue and such waiver is valid and effective being merely a personal privilege, which is not contrary to public policy or prejudicial to third persons. It is a general

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[27] *Supra* note 24, at 323.

[28] Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

[29] *Rollo*, pp. 38-39.

principle that a person may renounce any right which the law gives unless such renunciation would be against public policy.[30]

In the present case, Spouses Ramos had validly waived their right to choose the venue for any suit or action arising from the mortgages or promissory notes when they agreed to limit the same to Makati City only and nowhere else. True enough, the stipulation on the venue was couched in a language showing the intention of the parties to restrict the filing of any suit or action to the designated place only. It is crystal clear that the intention was not just to make the said place an additional forum or venue but the only jurisdiction where any suit or action pertaining to the mortgage contracts may be filed. There being no showing that such waiver was invalid or that the stipulation on venue was against public policy, the agreement of the parties should be upheld. It is therefore a grave abuse of discretion on the part of the RTC to deny the motion to dismiss filed by PDB on the ground of improper venue, especially when the said issue had been raised at the most opportune time, that is, within the time for but before the filing an answer. The CA should have given this matter a more serious consideration and not simply brushed it aside.

Moreover, Spouses Ramos never really assailed the validity of the mortgage contracts and promissory notes. Apparently, what they were only claiming was that the said contracts contain stipulations which are illegal, immoral and otherwise contrary to customs or public policy.[31] For instance, they alleged that the interest was pegged at an excessive rate of 8% which the bank unilaterally increased to 9%. They likewise claimed that the penalty interest rate of 3% was unconscionable. Further, they claimed that the escalation clause provided in the mortgage contracts was violative of Presidential Decree No. 1684.[32] These

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[30] *Unimasters Conglomeration, Inc. v. Court of Appeals*, *supra* note 21, at 424.

[31] *Rollo*, p. 88.

[32] *Id*. at 89.

matters, however, do not affect the validity of the mortgage contracts. Thus, with all the more reason that the stipulation on venue should have been upheld pursuant to the ruling of the Court in *Briones v. Court of Appeals*,[33] *viz.*:

> [I]n cases where the complaint assails only the terms, conditions, and/or coverage of a written instrument and not its validity, the exclusive venue stipulation contained therein shall still be binding on the parties, and thus, the complaint may be properly dismissed on the ground of improper venue. Conversely, therefore, a complaint directly assailing the validity of the written instrument itself should not be bound by the exclusive venue stipulation contained therein and should be filed in accordance with the general rules on venue. To be sure, it would be inherently consistent for a complaint of this nature to recognize the exclusive venue stipulation when it, in fact, precisely assails the validity of the instrument in which such stipulation is contained.[34]

Spouses Ramos impliedly admitted the authenticity and due execution of the mortgage contracts. They do not claim to have been duped into signing the mortgage contracts or that the same was not their free and voluntary act. While they may have qualms over some of the terms stated therein, the same do not pertain to the lack of any of the essential elements of a contract that would render it void altogether. Such being the case, the stipulation on venue stands and should have been upheld by RTC and the CA.

WHEREFORE, the Decision dated July 5, 2016 and Resolution dated December 7, 2016 of the Court of Appeals in CA-G.R. SP No. 140264 are **REVERSED and SET ASIDE**. Civil Case No. 2014-485-SJC is hereby **DISMISSED** on the ground of improper venue.

SO ORDERED.

Carpio, Peralta, and *Caguioa, JJ.,* concur.

Perlas-Bernabe, J., on official leave.

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[33] 750 Phil. 891 (2015).

[34] *Id.* at 899.

THIRD DIVISION

[G.R. No. 177246. September 25, 2017]

ANTONIO A. SOMBILON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.—** The petitioner's admission of fatally shooting Amerilla required him to establish his plea of self-defense with clear and convincing evidence. This is because his admission of the killing required him to rely on the strength of his own evidence, not on the weakness of the Prosecution's evidence, which, even if it were weak, could not be disbelieved in view of his admission. Thus, the petitioner had to prove that the following elements of self-defense were present, namely: (1) the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person claiming self-defense; (2) there was reasonable necessity in the means employed to prevent or repel the unlawful aggression; and (3) there was lack of sufficient provocation on the part of the person claiming self-defense or at least any provocation executed by the person claiming self-defense was not the proximate and immediate cause of the victim's aggression.

2. **ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; MUST POSE A REAL PERIL ON THE LIFE OR PERSONAL SAFETY OF THE PERSON DEFENDING HIMSELF.—** In *People v. Nugas*, the Court discoursed on the need for unlawful aggression to pose a real peril on the life or personal safety of the person defending himself, and its indispensability as an element of self-defense x x x. The petitioner manifestly did not discharge his burden. He did not persuasively show that Amerilla had committed unlawful aggression against him as to endanger his life and limb. x x x Bereft of the proof of unlawful aggression on the part of Amerilla, the petitioner's plea for self-defense, complete or incomplete, could not be accorded credence and weight.

3. ID.; ID.; HOMICIDE; PENALTY; THE RULES FOR THE APPLICATION OF PENALTIES CONTAINING THREE PERIODS REQUIRE AN EXPLANATION FOR THE IMPOSITION OF THE CEILING OF THE MINIMUM PERIOD OF *RECLUSION TEMPORAL* AS THE MAXIMUM IN CASE AT BAR.— [B]oth lower courts appreciated the mitigating circumstance of voluntary surrender in favor of the petitioner. Their appreciation is upheld considering that the petitioner voluntarily surrendered himself to the police authorities in Looc, Romblon on the morning following the shooting. Voluntary surrender is a mitigating circumstance in his favor, and reduces the penalty to the minimum period. Accordingly, the penalty of *reclusion temporal*, which Article 249 of the *Revised Penal Code* prescribes for homicide, is imposed in its minimum period, which ranges from 12 years and one day to 14 years and eight months. In its decision, however, the CA meted the indeterminate sentence of eight years of *prision mayor*, as the minimum, to 14 years and eight months of *reclusion temporal*, as the maximum. Such imposition of the ceiling of the minimum period of *reclusion temporal* as the maximum without the CA explaining the reason why was unwarranted under the law. The explanation was necessary in order to comply with the *seventh rule* enunciated in Article 64 of the *Revised Penal Code* on the application of penalties containing three periods. x x x Accordingly, the correct indeterminate sentence to be meted on the petitioner should be eight years of *prision mayor*, as the minimum, to 12 years and one day of *reclusion temporal*, as the maximum.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; TEMPERATE DAMAGES; CAN BE RECOVERED WHEN SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT BE PROVED WITH CERTAINTY.— [T]he lower courts should have granted temperate damages in lieu of actual damages incurred for the burial of the victim in default of reliable proof of the actual expenses incurred. That the heirs of the victim sustained pecuniary loss from his death but the exact amount could not be proved entitled them to temperate damages, the amount for which shall be ₱25,000.00. Based on Article 2224 of the *Civil Code*, temperate damages can be recovered when some pecuniary loss has been suffered but its amount cannot be proved with certainty.

APPEARANCES OF COUNSEL

Andres Marcelo Padernal Guerrero & Paras for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

"The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat."[1]

The Case

Under review is the decision promulgated on March 28, 2007,[2] whereby the Court of Appeals (CA) affirmed the conviction of the petitioner for homicide by the Regional Trial Court (RTC), Branch 82, in Odiongan, Romblon in relation to the fatal shooting of the late Gerardo F. Amerilla on November 18, 1997.[3] The CA disposed as follows:

WHEREFORE, premises considered, the Appeal is hereby **DENIED** and the assailed Decision of the court a quo is **AFFIRMED** with **MODIFICATION,** imposing upon the Appellant, ANTONIO SOMBILON, the indeterminate prison term of **Eight (8) Years of Prision Mayor, as minimum, to Fourteen (14) Years and Eight (8) Months of Reclusion Temporal, as maximum.**

SO ORDERED.[4]

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[1] *People v. Nugas*, G.R. No. 172606, November 23, 2011, 661 SCRA 159.

[2] *Rollo*, pp. 25-45; penned by Associate Justice Myrna Dimaranan Vidal, with the concurrence of Associate Justice Jose L. Sabio, Jr. and Associate Justice Jose C. Reyes, Jr.

[3] *Id*. at 131-137; penned by Executive Judge B. Marco Vedasto.

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

Antecedents

On February 2, 1998, the Office of the Provincial Prosecutor of Romblon charged the petitioner with homicide under the following information, alleging:

> That on or about the 18th day of November, 1997, at around 7:30 o'clock in the evening, in barangay Lanas, municipality of San Jose, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot with a caliber .45 pistol, one GERARDO F. AMERILLA, inflicting upon the latter gunshot wounds in different parts of his body which caused his untimely death.
>
> Contrary to law.[5]

Version of the Prosecution

At around 7:00 p.m. in the evening of November 18, 1997, Nelson Andres (Andres) was resting in the terrace of his house in Lanas, San Jose, Romblon when he noticed somebody passing through the gate. Instantly, he was startled by a gunshot, and he got up to see what was happening. It was then when he saw the person who had passed through the gate, whom he recognized to be the petitioner. The latter was pointing a gun at him, forcing him to nervously enter his house, shut the door behind him, turn off the lights and go upstairs together with his wife and daughter. Once inside his upstairs room, he peeked through the window and saw the petitioner striding back and forth in front of his house, shouting and firing his gun every now and then.[6]

Meanwhile, the late SPO3 Gerardo Amerilla (Amerilla) and others, namely: Napoleon Martin (Martin), Jemuel[7] Agustin (Agustin), Quennie Sacapaño and Edmund Escalante, were in

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[5] *Id*. at 103.

[6] TSN dated September 8, 1998, pp. 5-8.

[7] Sometimes spelled as "Jemwel" or "Jimwel" in the transcript, TSN dated September 8, 1998, pp. 6-7.

the house of Martin also located in Lanas when they heard three gunshots being fired. Shortly thereafter, a certain Cris Cajilig came over to inform them that the petitioner was causing a commotion in the place of Andres.

Amerilla immediately left Martin's house,[8] and arrived in front of the house of Andres by around 7:30 p.m.[9] According to Andres, Amerilla, upon arriving at his house, asked the petitioner what his problem was all about, but the latter instantly fired his gun twice at Amerilla and the latter fell face down to the ground. Amerilla crawled towards the gate of Andres' house seeking his help, but no one could approach him because the petitioner stayed around for about 25 meters and prevented others from going to the victim's aid.[10] Andres had a clear view of what transpired because of the illumination from a fluorescent lamp about 12 meters from where the victim was shot.[11]

On his part, Agustin went to the house of Ulpiano Enrique right after Amerilla left the house of Martin. When Ulpiano told him that Amerilla had been shot, he returned to Martin's house and told the others about the shooting. On his way home, he found Amerilla lying in front of Andres' house. He approached Amerilla and held the latter's head and shoulder as he asked who had shot him. Amerilla pointed at the petitioner,[12] who was then around 12 meters away from them.[13] Realizing that Amerilla urgently needed medical help, he went back to Martin's house to tell the others that Amerilla must be brought to the hospital. Agustin and the others rushed to the house of Enrique to request his assistance in talking to the petitioner not to hurt them while they attempt to help Amerilla. Agustin recalled that when they were finally able to get near the fallen Amerilla,

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[8] Testimony of Jemuel Agustin, TSN dated September 8, 1998, pp. 3-5.

[9] Testimony of Nelson Andres, TSN dated September 8, 1998, p. 8.

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

[11] *Id*. at 18-20.

[12] Testimony of Jemuel Agustin, TSN dated September 8, 1998, pp. 15-17.

[13] Testimony of Jemuel Agustin, TSN dated October 15, 1998, p. 18.

they found that he had already expired. On his part, Agustin proceeded to the police station and reported the fatal incident.[14] Two police officers, PO2 Jose Sungcang, Jr. and PO2 Constantino Rufon, went to Lanas to investigate.[15] With the help of Gerardo Enrique, the police officers boarded the body of Amerilla into a vehicle and brought it to the hospital for autopsy.[16]

Dr. Ederlina Aguirre, the Chief of the San Jose District Hospital in San Jose, Romblon, conducted the autopsy. She found three gunshot wounds located at the victim's left ring finger, upper left part of the abdomen and lower part of his umbilical cord. She attested that a bullet had perforated the victim's large and small intestines,[17] but she opined that immediate medical attention could have saved his life.[18]

The State also presented Marlon Alam who claimed that he had been contracted by the petitioner to kill Amerilla and Mayor Filipino Tandog of San Jose, Romblon; that the petitioner had given to him for that purpose a .357 caliber revolver and promised to pay ₱20,000.00 for the killing of Amerilla; that because he had not brought the gun on the night of the shooting of Amerilla, the petitioner had directed him to just stay in front of his house and to look out for Amerilla; and that the petitioner had spent two magazines-full of bullets in shooting Amerilla.[19]

Version of the Defense

The petitioner, then the *barangay* chairman of Lanas, San Jose, Romblon, admitted shooting Amerilla but insisted that he had done so in self-defense. He narrated that upon arriving home in Lanas at around 7:20 p.m. on November 18, 1997, he

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[14] Testimony of Jemuel Agustin, TSN dated September 8, 1998, pp. 7-8.

[15] TSN dated March 9, 1999, p. 8.

[16] Testimony of PO2 Jose Sungcang, Jr., TSN dated March 8, 1999, p. 7.

[17] *Post-Mortem* Examination Report, Exhibit Folder for the Prosecution, p. 144.

[18] Testimony of Dr. Ederlina Aguirre, TSN dated July 19, 1999, p. 11.

[19] Testimony of Marlon Alam, TSN dated July 23, 1998, pp. 8-14.

found several of his constituents complaining about the selective lighting by the Tablas Island Electric Cooperative, Inc. (TIELCO); that as the *barangay* chairman, he had assured the complainants that he would address their concern by talking to Andres, the President of the Barangay Power Association (BAPA); that he had thus gone to see Andres at his house; that after airing the matter of selective lighting, Andres had appeared irritated and remarked that his decision as the BAPA President should prevail; and that because of the remarks of Andres, he had decided to leave after telling Andres that they would talk about the matter again the next day.[20]

The petitioner testified that as he was about to exit through the gate of Andres, he was alarmed because he saw a person some 15 to 20 meters away aiming and firing a gun at him; that fearing for his own life, he had drawn his .45 caliber firearm and fired twice at his assailant;[21] that after doing so, he had run home;[22] that he had not recognized his assailant at the time because the place was too dark because all the lights had been shut off; that upon reaching his house, he had sought out Gerardo Enrique, a *barangay kagawad*, to instruct the latter to bring a lamp and to use his motorboat to transport the assailant to the hospital;[23] that he had learned afterwards from one Michael Sombilon that the person he had shot was Amerilla;[24] and that he went to Looc, Romblon the next morning to surrender himself to the police.[25]

The Defense also presented Bienvenida Alam, Roque Ignacio and Rogelio Venus. Their collective testimony was that they were watching a movie at the house of the petitioner when they

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[20] Testimony of Antonio Sombilon, TSN dated December 19, 2000, pp. 13-19.

[21] *Id*. at 19-21.

[22] *Id*. at 25.

[23] *Id*. at 28.

[24] *Id.* at 29.

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

heard two gunshots followed by two more; and that after the last two gunshots, the petitioner had rushed inside the house and gone upstairs.[26]

Judgment of the RTC

On March 3, 2005, the RTC rendered its judgment finding and declaring the petitioner guilty of homicide mitigated by the circumstance of voluntary surrender,[27] decreeing:

> **WHEREFORE,** premises considered, accused **ANTONIO SOMBILON** is found **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE.** Appreciated in his favor is a mitigating circumstance of voluntary surrender and with no aggravating circumstance. He is hereby sentence[d] to suffer the penalty of Reclusion Temporal in its minimum period, which is **TWELVE YEARS (12) AND ONE (1) DAY to FOURTEEN (14) YEARS AND EIGHT MONTHS**. He is likewise ordered to pay actual damages in the amount of **SEVENTY FIVE THOUSAND PESOS (₱75,000.00)** and moral damages in the amount of **FIFTY THOUSAND PESOS (₱50,000.00)**.
>
> SO ORDERED.[28]

The RTC doubted the petitioner's plea of self-defense because the gun the victim had supposedly fired at him had not been recovered. It is considered to be contrary to human experience that the petitioner should run home instead of towards his fallen victim to find out who his assailant had been if he had really acted in self-defense, he being the *barangay* chairman of the place. It made the following cogent observations:

> A scrutiny of the evidences (sic) on record, it appeared that what actually transpired was that accused went to the house of Nelson

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[26] See testimony of Bienvenida Alam, TSN dated October 21, 1999, pp. 3-4; testimony of Roque Ignacio, TSN dated July 25, 2000, pp. 11-12; Rogelio Venus testified, however, that after he heard many shots, Sombilon came running towards his house and went up straight to the second floor (TSN dated December 18, 2000, p. 9).

[27] *Rollo,* pp. 103-109.

[28] *Id*. at 109.

Andres to confront him relative to the complaint of other residents who were not yet provided with electricity by the BAPA, the latter being the President thereof. A verbal tussle ensued. Accused fired his gun while walking back and forth of the house of Nelson Andres to scare the latter. The victim, after hearing gunshots, being a policeman, responded, and when he confronted the accused, he was shot twice.

If the victim was the one who shot the accused first, why is it that not one of the several witnesses testified that a gun was recovered at the scene of the crime. Likewise, if accused merely retaliated after he was shot once by the victim and acted in self-defense, why did he immediately run to his house and not to the fallen victim, which he claims, he did not recognize, he being the Brgy.Chairman of the place. He had to summon somebody else, to identify the man he shot and to bring him to the hospital if alive.[29]

Decision of the CA

On appeal, the CA upheld the judgment of the RTC because the petitioner had not established his plea of self-defense, particularly the existence of the primordial element of unlawful aggression on the part of the victim, cogently stating:

Unlawful aggression is the first and primordial element of self-defense. Of the three requisites, it is the most important. Without it, the justifying circumstance cannot be successfully invoked. If there is no unlawful aggression, there is nothing to prevent or repel. *Unlawful aggression* refers to an attack or a threat to attack, positively showing the intent of the aggressor to cause injury. It presupposes not merely a threatening or an intimidating attitude, but an actual, sudden and unexpected attack or an imminent danger thereof, which imperils one's life or limb. Thus, when there is no peril, there is no unlawful aggression.

It now becomes very material to ascertain whether or not the Victim was the unlawful aggressor? We answer this question in the negative. It bears stressing that, aggression, to be unlawful, must be actual and imminent, such that there is a real threat of bodily harm to the person resorting to self-defense. The recorded evidence in this case would depict clearly the absence of unlawful aggression on the part of the Victim.

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[29] *Id.* at 136-137.

Curiously, the Appellant did not even bother to discuss nor elucidate in his brief filed before this Court the existence of the elements of self-defense and their proper application in the instant case to justify his act.[30]

Nonetheless, the CA concluded that the RTC erred in ignoring the provisions of the *Indeterminate Sentence Law* in fixing the minimum of the indeterminate sentence, and revised the penalty to imprisonment of eight years of *prision mayor*, as the minimum, to 14 years and eight months of *reclusion temporal,* as the maximum.

Hence, this appeal, in which the petitioner submits that:

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW WHEN IT AFFIRMED THE CONVICTION OF THE PETITIONER, CONSIDERING THAT THE DEFENSE WAS ABLE TO PROVE THAT THE PETITIONER ACTED IN SELF-DEFENSE WHEN HE SHOT THE DECEASED.

The petitioner posits that he established the concurrence of the elements of self-defense; and that Amerilla's very act of aiming his gun and shooting at him without any reason clearly constituted unlawful aggression.

In contrast, the Office of the Solicitor General (OSG) maintains that the present recourse was inappropriate considering that the petitioner thereby raises factual questions that were not within the province of a petition for review on *certiorari* under Rule 45 of the *Rules of Court*; and that both the RTC and the CA correctly ruled out self-defense in view of the eyewitness account of Andres and the findings of Dr. Aguirre.

Did the petitioner prove his having acted in self-defense in fatally shooting Amerilla?

Ruling of the Court

The appeal lacks merit.

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

The petitioner's admission of fatally shooting Amerilla required him to establish his plea of self-defense with clear and convincing evidence. This is because his admission of the killing required him to rely on the strength of his own evidence, not on the weakness of the Prosecution's evidence, which, even if it were weak, could not be disbelieved in view of his admission.[31]

Thus, the petitioner had to prove that the following elements of self-defense were present, namely: (1) the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person claiming self-defense; (2) there was reasonable necessity in the means employed to prevent or repel the unlawful aggression; and (3) there was lack of sufficient provocation on the part of the person claiming self-defense or at least any provocation executed by the person claiming self-defense was not the proximate and immediate cause of the victim's aggression.[32]

In *People v. Nugas*,[33] the Court discoursed on the need for unlawful aggression to pose a real peril on the life or personal safety of the person defending himself, and its indispensability as an element of self-defense in the following manner:

> Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. **Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending**

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[31] *People v. Tanduyan,* G.R. No. 108784, September 13, 1994, 236 SCRA 433, 439; *People v. Quiño,* G.R. No. 105580, May 17, 1994, 232 SCRA 400, 403; *People v. Molina*, G.R. No. 59436, August 28, 1992, 213 SCRA 52, 64; *People v. Dorico*, G.R. No. L-31568, November 29, 1973, 54 SCRA 172, 184.

[32] *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 297; *Garong v. People*, G.R. No. 148971, November 29, 2006, 508 SCRA 446, 456.

[33] *Supra*, note 1, at 167-168.

himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (*a*) there must be a physical or material attack or assault; (*b*) the attack or assault must be actual, or, at least, imminent; and (*c*) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (*a*) actual or material unlawful aggression; and (*b*) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot. (Bold underscoring supplied for emphasis)

The petitioner manifestly did not discharge his burden. He did not persuasively show that Amerilla had committed unlawful aggression against him as to endanger his life and limb. The petitioner's insistence that Amerilla had been the first to aim and fire his gun remained uncorroborated, Verily, the claim of unlawful aggression on the part of the victim was also weak due mainly to the failure to recover the victim's alleged gun in the place where the shooting happened during the ensuing investigation.[34] Moreover, that the petitioner allegedly retaliated

[34] The petitioner sought to explain the non-recovery of the firearm by assuming that the investigation of the shooting incident by the police authorities could not have been fair towards him because the victim was a police officer. **But the CA, calling the assumption by the petitioner "self-serving," observed that the fact that the victim was a police officer himself did not sufficiently prove that police officers involved in the investigation were biased against the petitioner as to have "intentionally suppressed the gun," for bias and partiality could not be presumed; hence, the CA concluded that "said gun never existed, and this explains the failure of the defense to present it before the Court a quo**." (see *rollo*, pp. 42-44; the bold underscoring is supplied for emphasis).

in his defense by firing his own gun after the victim had supposedly fired at him once was rendered improbable by his immediately running away from the scene of the shooting and fleeing towards his house instead of going towards the victim whom he professed not to have then recognized. The improbability rested on his being the incumbent *barangay* chairman of the place, and, as such, had the heavy responsibility of keeping the peace and maintaining order thereat. More telling was the established fact that even before Amerilla came around the petitioner had already been firing his gun in order to scare Andres. The very reason for Amerilla's going to the house of Andres was to try to pacify the troublemaking of the petitioner. The belligerent conduct of the petitioner manifested a predisposition for aggressiveness on his part instead of on the part of the victim.

Bereft of the proof of unlawful aggression on the part of Amerilla, the petitioner's plea for self-defense, complete or incomplete, could not be accorded credence and weight.[35] Hence, the CA and the RTC justifiably rejected his plea.

Anent the penalty, both lower courts appreciated the mitigating circumstance of voluntary surrender in favor of the petitioner. Their appreciation is upheld considering that the petitioner voluntarily surrendered himself to the police authorities in Looc, Romblon on the morning following the shooting. Voluntary surrender is a mitigating circumstance in his favor, and reduces the penalty to the minimum period. Accordingly, the penalty of *reclusion temporal*, which Article 249 of the *Revised Penal Code* prescribes for homicide, is imposed in its minimum period, which ranges from 12 years and one day to 14 years and eight months. In its decision, however, the CA meted the indeterminate sentence of eight years of *prision mayor*, as the minimum, to 14 years and eight months of *reclusion temporal*, as the

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[35] *People v. Dano*, G.R. No. 117690, September 1, 2000, 339 SCRA 515, 531; *David v. Court of Appeals*, G.R. Nos. 111168-69, June 17, 1998, 290 SCRA 727, 743; *People v. Unarce*, G.R. No. 120549, April 4, 1997, 270 SCRA 756, 764.

maximum. Such imposition of the ceiling of the minimum period of *reclusion temporal* as the maximum without the CA explaining the reason why was unwarranted under the law. The explanation was necessary in order to comply with the *seventh rule* enunciated in Article 64 of the *Revised Penal Code* on the application of penalties containing three periods. As the Court has observed in *Ladines v. People*:[36]

> x x x although Article 64 of the *Revised Penal Code*, which has set the rules "for the application of penalties which contain three periods," requires under its first rule that the courts should impose the penalty prescribed by law *in the medium period* should there be neither aggravating nor mitigating circumstances, **its seventh rule expressly demands that *"[w]ithin the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime*." By not specifying the justification for imposing the ceiling of the period of the imposable penalty, the fixing of the indeterminate sentence became arbitrary, or whimsical, or capricious. In the absence of the specification, the maximum of the indeterminate sentence for the petitioner should be the lowest of the medium period of *reclusion temporal*, which is 14 years, eight months and one day of *reclusion temporal*.** (Bold underscoring supplied for emphasis; italicized portions are part of the original text)

Accordingly, the correct indeterminate sentence to be meted on the petitioner should be eight years of *prision mayor*, as the minimum, to 12 years and one day of *reclusion temporal*, as the maximum.

The RTC awarded ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages. The CA affirmed the awards. We hold, however, that such awards should conform to the policy pronouncements in *People v. Jugueta*,[37] which grants ₱50,000.00 each as civil indemnity and moral damages to the heirs of the victim in homicide. In addition, the lower courts

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[36] G.R. No. 167333, January 11, 2016, 778 SCRA 83, 93.

[37] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

should have granted temperate damages in lieu of actual damages incurred for the burial of the victim in default of reliable proof of the actual expenses incurred. That the heirs of the victim sustained pecuniary loss from his death but the exact amount could not be proved entitled them to temperate damages,[38] the amount for which shall be ₱25,000.00.[39] Based on Article 2224 of the *Civil Code*, temperate damages can be recovered when some pecuniary loss has been suffered but its amount cannot be proved with certainty.[40] The accused shall pay interest of 6% *per annum* on all such amounts from the time of finality of this decision until full satisfaction.

ACCORDINGLY, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on March 28, 2007 upholding with modification the decision rendered on March 3, 2005 by Regional Trial Court, Branch 82, in Odiongan, Romblon, subject to the further **MODIFICATION** that: (1) the indeterminate sentence of the petitioner is eight years of *prision mayor*, as the minimum, to 12 years and one day of *reclusion temporal*, as the maximum; (2) the petitioner shall pay to the heirs of the late Gerardo F. Amerilla the sums of ₱50,000.00 for civil indemnity; ₱50,000.00 for moral damages; and ₱25,000.00 as temperate damages, plus interest of 6% *per annum* on all such sums from the time of finality of this decision until full satisfaction; and (3) the petitioner shall pay the costs of suit.

SO ORDERED.

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

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[38] *People v. Surongon*, 554 Phil. 448, 458 (2007).

[39] *People v. Jugueta, supra*, note 37, at 380-381.

[40] *Ladines v. People*, *supra*, note 36, at 94-95.

FIRST DIVISION

[G.R. No. 211111. September 25, 2017]

C.F. SHARP CREW MANAGEMENT, INC., its President, and GULF ENERGY MARITIME, *petitioners, vs.* **NOEL N. ORBETA,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA STANDARD EMPLOYMENT CONTRACT; DISABILITY BENEFITS; MEDICAL ABANDONMENT; A SEAFARER IS GUILTY OF MEDICAL ABANDONMENT IF HE FAILS TO COMPLETE HIS TREATMENT BEFORE THE LAPSE OF 240-DAY PERIOD, WHICH PREVENTS THE COMPANY PHYSICIAN FROM DECLARING HIM FIT TO WORK OR ASSESSING HIS DISABILITY.— For a little over 120 days, or from February 10, 2010 to June 16, 2010, 126 days to be exact, respondent underwent treatment by the company-designated physician. On June 16, 2010, he was partially diagnosed with "lumbosacral muscular spasm with mild spondylosis L3-L4;" the company physician also concluded that there was no compression fracture, and respondent was told to return for a scheduled bone scan. However, instead of returning for further diagnosis and treatment, respondent opted to secure the opinion of an independent physician of his own choosing who, although arriving at a finding of permanent total disability, nonetheless required respondent to subject himself to further Bone Scan and Electromyography and Nerve Conduction Velocity tests "to determine the exact problem on his lumbar spine." x x x The company-designated physician and Dr. Escutin are one in recommending that respondent undergo at least a bone scan to determine his current condition while undergoing treatment, thus indicating that respondent's condition needed further attention. In this regard, petitioners are correct in arguing that respondent abandoned treatment, as under the law and the POEA contract of the parties, the company physician is given up to 240 days to treat him. On the other

hand, the fact that Dr. Escutin required the conduct of further tests on respondent is an admission that his diagnosis of permanent total disability is incomplete and inconclusive, and thus unreliable. It can only corroborate the company-designated physician's finding that further tests and treatment are required. In *New Filipino Maritime Agencies, Inc. v. Despabeladeras,* this Court held that a seafarer is guilty of medical abandonment for his failure to complete his treatment before the lapse of the 240-day period, which prevents the company physician from declaring him fit to work or assessing his disability. x x x Nevertheless, respondent might have treated the company-designated physician's June 16, 2010 temporary diagnosis as the final assessment of his condition, which prompted him to secure the opinion of Dr. Escutin and thereafter file the case prematurely. For this he cannot be completely blamed; indeed, he might have proceeded under the impression that he was being shortchanged. Given his position in the employment relation, his distrust for the petitioners is not completely unwarranted. Consequently, respondent is entitled only to compensation equivalent to or commensurate with his injury.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Justiniano B. Panambo, Jr. for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the October 18, 2013 Decision[2] and January 28, 2014 Resolution[3] of the Court of Appeals (CA) denying the Petition for *Certiorari* in CA-G.R. SP No. 125046 and affirming *in toto* the December

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[1] *Rollo*, pp. 3-36.

[2] *Id.* at 38-47; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia.

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

29, 2011 Decision[4] and April 30, 2012 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC LAC (OFW-M) No. 05-000371-11.

Factual Antecedents

On June 11, 2009, respondent Noel N. Orbeta was hired by petitioner C.F. Sharp Crew Management, Inc. (CF Sharp), on behalf of its foreign principal and co-petitioner herein, Gulf Energy Maritime (GEM), as Able Seaman on board the vessel "M/T Gulf Coral". He boarded on September 9, 2009 and thereupon commenced his work.

It appears that on January 3, 2010, while on duty, respondent, as he was closing the vessel's air valve, slipped and fell on his back, and landed on the vessel's metal floor.[6]

On February 8, 2010, while the vessel was docked in the United Arab Emirates, respondent was referred for medical examination after complaining of pain in his lower right abdomen, difficulty in passing urine, and slight irritation in the urinal area. After examination by a physician, he was diagnosed with acute lumbago and recommended for immediate repatriation.[7]

On February 10, 2010, respondent was repatriated and, upon arrival, he immediately reported for post-employment examination and treatment to the company-designated physician, to whom he disclosed the January 3, 2010 accident. He was placed under the care of an orthopedic surgeon, who found him to be suffering from "compression fracture, L1, minimal."[8] As a result, respondent underwent physical therapy to rehabilitate

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[4] *Id.* at 199-208; penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Joseph Gerard E. Mabilog. Commissioner Nieves Vivar-De Castro, dissented.

[5] CA *rollo*, pp. 48-49.

[6] *Rollo*, pp. 109, 145. The date indicated in other parts of the *rollo* was January 30, 2010, see *id.* at 39, 200.

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

[8] *Id.* at 54.

his back, and was advised to wear a lumbar corset and undergo magnetic resonance imaging (MRI) of the lumbosacral spine. For medication, he was given neuron enhancers and pain relievers.[9]

On June 16, 2010, after the MRI results came out, respondent was temporarily diagnosed with "lumbosacral muscular spasm with mild spondylosis L3-L4;"[10] the company-designated physician also concluded that there was no compression fracture, contrary to what was initially suspected. Respondent was thus given a Grade 10 partial disability rating pertaining to moderate rigidity of the truncal area.[11] He was scheduled to undergo a bone scan on July 16, 2010.

On July 16, 2010, respondent failed to appear before the company physician for the scheduled bone scan;[12] instead, it appears that he consulted with an independent orthopedic surgeon, Dr. Nicanor Escutin (Dr. Escutin), who prepared and signed a "Disability Report"[13] dated September 8, 2010 stating as follows:

FINAL DIAGNOSIS
➢COMPRESSION FRACTURE, L1
➢ LUMBAR SPONDYLOSIS
DISABILITY RATING:

Based on the physical examination and supported by laboratory examination, he had his injury on his LOW BACK while working. He fell on the deck when their ship swayed. The fall was strong enough which resulted in some injury on his lumbar spine. He had several months of physical therapy but his back pain persisted, so he had MRI studies. His MRI showed that there is a [sic] some defect on his L3 vertebra. He was advised to have Bone scanning test to determine what is causing the abnormality at L3. The spondylosis

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[9] *Id*. at 40, 54, 80-86.

[10] *Id*. at 87.

[11] *Id*. at 55, 87.

[12] *Id*. at 88.

[13] *Id*. at 121-122.

at L3/L4 showed that there is some structural defect at L3 which is maybe due to the fall he sustained last Jan '10. He should undergo Bone Scan and EMG-NCV to determine the exact problem on his lumbar spine. If nothing is done, his condition might worsen which can incapacitate him. He will [sic] is not capable of returning to his former job as a seaman since he has still on and off back pain.

He is given a PERMANENT DISABILITY. He is UNFIT FOR SEA-DUTY in whatever capacity as a SEAMAN.[14]

Notably, Dr. Escutin's findings included a recommendation for respondent to undergo Bone Scan and EMG-NCV[15] to determine the exact problem on his lumbar spine, which is consistent with the recommendations of the company-designated physician.

Ruling of the Labor Arbiter

Instead of following the respective medical opinions of his and the company-designated physician, as well as subjecting himself to the required bone scan and other tests to fully determine and treat his condition, respondent filed on July 20, 2010 a complaint for payment of permanent and total disability benefits, medical expenses, damages, and attorney's fees against petitioners before the NLRC NCR, Quezon City, docketed as NLRC-NCR Case No. (M) 07-09911-10.

In his Position Paper[16] and other pleadings,[17] respondent claimed that his work-related spinal injury entitles him to permanent and total disability and other benefits afforded him under his Philippine Overseas Employment Administration (POEA) Standard Employment Contract, as well as damages for the anxiety and stress he suffered as a result of petitioners' refusal to pay his claims. Thus, he prayed that petitioners be ordered to pay him a) permanent total disability benefits in the

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[14] *Id*. at 122.

[15] Electromyography and Nerve Conduction Velocity tests.

[16] *Rollo*, pp. 106-117.

[17] *Id*. at 123-127.

amount of US$89,000.00 or its peso equivalent; b) sickness benefit allowance of US$3,070.00; c) moral and exemplary damages at ₱500,000.00 each; and d) 10% attorney's fees.

In their joint Position Paper[18] and other pleadings,[19] petitioners sought dismissal of the complaint, arguing that respondent is not entitled to his claim of permanent total disability benefits, in view of the company-designated physician's final and binding Grade 10 assessment; that respondent abandoned his treatment, which was still ongoing when he filed the labor case; that respondent is entitled only to US$17,954.00 as compensation for his Grade 10 disability rating; yet by abandoning his treatment and violating the POEA contract, respondent should be held responsible and is not entitled to disability and other benefits, damages, and all other claims, and for this reason, respondent's case should be dismissed; that respondent's resort to an independent physician who arrived at a contrary finding entitled petitioners to secure the opinion of a third doctor, pursuant to Section 20-B(3) of the POEA contract,[20] which could no longer be done in view of the filing of the labor case, and for this reason, the opinion of the company-designated physician should instead prevail; that respondent's back pain does not deserve a Grade 1 rating under Section 32 of the POEA contract,[21] as it is not severe and did not render him completely immobile or

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[18] *Id*. at 51-74.

[19] *Id*. at 92-105, 123-142.

[20] Which provides, thus:

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 seafarer. The third doctor's decision shall be final and binding on both parties.

[21] Which states:

x x x x x x x x x

8. Injury to the spinal cord as to make walking impossible even with the aid of a pair of crutches …….. Grade 1

9. Injury to the spinal cord resulting to incontinence of urine and feces …… Grade 1

paralyzed; and, that respondent's other claims are thereby rendered unfounded and baseless. Petitioners prayed that they be held liable only for the total amount of US$17,954.00 which is equivalent to the Grade 10 disability rating given by the company-designated physician.

On February 23, 2011, a Decision[22] was rendered by Labor Arbiter Catalino R. Laderas granting disability benefits and attorney's fees in favor of respondent. The Decision decrees as follows:

> It appears from the foregoing facts, circumstances and arguments advanced by the opposing parties, the only issue is that of disability rating.
>
> After [a] careful evaluation of the positions of complainant and [respondents,] this Office finds the disability gradings issued by the company designated doctor and the independent Physician to be both inappropriate.
>
> It was established that the complainant suffered injury of [the] lumbar spine due to [an] accident while on board [the] MV Gulf Coral on January 3, 2010. He was subjected to [a] series of Medical examination and treatment for almost five (5) months by the company doctor and later on by an independent physician for having suffered intermiheat [sic] pains at the back.
>
> On June 16, 2010 the [sic] Dra. Susannah Ong-Salvador, [respondents'] Medical Coordinator prematurely issued a disability assessment of Grade 10 to the complainant x x x though the complainant has yet to undergo Bone Scan x x x. This to our mind is [an] inappropriate assessment of the disability grade of [the] complainant because he has not fully recovered. While it may be true that the assessment of the company designated physician has great probative value, it could not be said as [binding] and conclusive as the assessment issued to complainant was done prior to the termination of Medical examinations.
>
> Independent Doctor assessment of complainant's disability grading is likewise inappropriate as it was merely based on presumption. It was noted that from the disability rating issued by Dr. Nicanor F.

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[22] *Rollo*, pp. 144-151.

Escutin x x x is not yet certain to warrant issuance of disability rating. x x x

x x x x x x x x x

Considering therefore the degree of the injury suffered and the duration of complainant's Medical treatment this Office finds the disability rating stated in paragraph 4, Chest-Trunk-Spine, Section 32 of Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessel applicable which states:

'CHEST-TRUNK-SPINE

x x x x x x x x x

4. Fracture of the dorsal or lumbar spines resulting to [severe] or total rigidity of the trunk or total loss of lifting power of heavy objects ——— GR. 6

x x x x x x x x x

The [claim] for payment of Medical expenses and damages has no legal and factual bases hence the same must fail.

The claim for payment of attorney's fees is warranted in the light of the legal services rendered by the counsel for the complainant in protecting the rights and interest of his client by way of recovery of the disability benefits of the latter.

WHEREFORE, premised on the foregoing considerations, judgment is hereby rendered ordering the respondents

1. To pay complainant his disability benefits equivalent to Disability Grade 6 in the amount of US$44,550 or its peso equivalent at the time of payment.

2. To pay attorney's fee of ten (10%) percent of complainant's monetary award.

Other claims dismissed.

SO ORDERED.[23]

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[23] *Id.* at 148-151.

Ruling of the National Labor Relations Commission

Petitioners took the matter before the NLRC, via appeal docketed as NLRC LAC (OFW-M) No. 05-000371-11.

On December 29, 2011, the NLRC issued its Decision, declaring as follows:

> The appeal has no merit.
>
> It is an undisputed fact that complainant-appellee's work-related injury has not been resolved despite the extensive medical management undertaken by the company-designated physician for a period of more than 120 days or from February 11 to June 16, 2010. By reason thereof, both the company-designated physician and Dr. Escutin found it imperative for the complainant-appellee to undergo a Bone Scan for the purpose of determining the cause of the abnormality in his lumbar spine. As it remains unresolved, complainant-appellee continues to suffer intermittent pain on his back. Undeniably, this unstable condition of the complainant-appellee gave rise to the varying assessments on the extent of his disability by the two (2) doctors based on their own medical perspectives. It is worthy to underscore that both doctors are Orthopedic Surgeons, whose competence and expertise to address the medical condition of the complainant-appellee are definitely beyond question.
>
> We analyzed the disability ratings of the company-designated physician and Dr. Escutin for the purpose of resolving the issue pertaining to the extent of disability compensation and We are persuaded that the former had thoroughly examined complainant-appellee. Dr. Escutin however only saw him once and the basis of his disability report was not revealed, thus making his finding inconclusive. However, We cannot ignore the fact that the company doctor merely gave a provisional rating. Additionally, complainant-appellee was advised to undergo bone scan. We are convinced that these facts are articulate indicators that complainant-appellee's illness has not been resolved even after the lapse of 120 days.
>
> It bears to stress that it is not the medical significance of the illness that solely determines whether a seafarer is permanently or totally disabled. The nature of his job vis-à-vis his illness should also be considered. Complainant-Appellee worked as an Able Seaman. As such he is expected to be physically fit because agility and [strength] are requirements of his job. Complainant-Appellee has been found

to be suffering from spondylosis, which has been described as the degeneration of the spine caused by wear and tear on the joints. According to medical literature, deterioration involves the cartilages and bones in either the cervical spine (joints of the neck) sometimes referred to as cervical spondylosis or the lumbar spine sometimes referred to as lumbar degenerative disc disease x x x. With this kind of ailment, it is plain to see that complainant-appellee's seafaring career as an able seaman has come to an untimely end. It is for this reason that We resolve to grant him total and permanent disability benefit.

The concept of total and permanent disability has been expounded by the Supreme Court in this wise:

> *'To be entitled to Grade 1 disability benefits, the employee's disability must not only be total but also permanent.*
>
> *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 of his body.*
>
> *Total disability, on the other hand, does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity. Total disability does not require that the employee be absolutely disabled, or totally [paralyzed.] What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom.' x x x*

With regard to the amount of total and permanent disability benefit due complainant-appellee, the sum of US$89,100.00 is hereby awarded to him based on the benevolent provisions of the CBA and not on the POEA Standard Employment Contract x x x.

Finally, the award of attorney's fees to the complainant-appellee is hereby deleted considering the apparent lack of bad faith on the part of the respondents-appellants in dealing with the predicament of the complainant-appellee. Respondents-Appellants' disclaimer of liability for total and permanent disability benefits to the complainant-appellee is primarily anchored on their honest reliance on the assessment rendered by the company-designated physician. It is a well-settled principle that even if a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, attorney's fees may still not be awarded where no sufficient showing

of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause x x x.

WHEREFORE, premises considered, the appeal is DENIED. The Decision of Labor Arbiter Catalino R. Laderas dated February 23, 2011 is hereby MODIFIED as follows:

1) Complainant-Appellee is hereby awarded the sum of US$89,100.00 or its equivalent in Philippine Peso at the time of payment, representing his total and permanent disability benefits under the Collective Bargaining Agreement (CBA); and

2) The award of attorney's fees is DELETED.

SO ORDERED.[24] (Citations omitted)

Respondent moved to reconsider, but in its April 30, 2012 Resolution, the NLRC held its ground.

Ruling of the Court of Appeals

Petitioners thus filed a Petition for *Certiorari*, docketed as CA-G.R. SP No. 125046, questioning the NLRC's pronouncements and arguing that the award of permanent and total disability benefits was unwarranted; that the NLRC should have limited itself to determining which of the two medical opinions, that of the company-designated physician or the independent doctor, should prevail; and that mere incapacity to return to work after 120 days does not automatically entitle respondent to a Grade 1 disability rating, as his injury is specifically governed by the provisions of the POEA contract.

On October 18, 2013, the CA issued the assailed Decision which contains the following pronouncement:

In the case of *Iloreta vs. Philippine Transmarine Carriers, Inc.,* the Supreme Court has applied the Labor Code concept of permanent total disability to Filipino seafarers in keeping with the avowed policy of the State to give maximum aid and full protection to labor, it holding that the notion of disability is intimately related to the worker's

[24] *Id.* at 204-207.

capacity to earn, what is compensated being not his injury or illness but his inability to work resulting in the impairment of his earning capacity, hence, disability should be understood less on its medical significance but more on the loss of earning capacity.

Expounding on the matter, the Supreme Court has pronounced that 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 kind of work which a person of his mentality and attainment could do. It does not mean absolute helplessness. Verily, permanent disability has been defined as 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.

To be sure, in the case of *Valenzona vs. Fair Shipping Corporation,* the Supreme Court minced no words in ruling that the inability of a seafarer to perform any gainful occupation for a continuous period exceeding 120 days renders his disability total and permanent. x x x

x x x x x x x x x

In the case at bench, private respondent was medically repatriated on 10 February 2010 and yet, at the time of the filing of the present complaint on 20 July 2010, he has yet to obtain employment as a seafarer in any capacity. Evidently, more than 120 days had already lapsed form the time of his repatriation and the filing of the complaint. He was subjected to continued medical treatment and rehabilitation without any development.

Suffering from such illness as a result of his accident on-board, which illness has yet to be cured or medically resolved, private respondent is rendered unfit to work and resume his duties as an able seaman, a job that requires heavy lifting and involves strenuous tasks. Rightly so, the NLRC modified the Labor Arbiter Decision, considering that private respondent deserves a Grade 1 disability rating having failed to obtain employment for more than 120 days from his repatriation.

Emphatically, under the [POEA-SEC], two elements must concur for an injury or illness to be compensable: *First*, that the injury or illness must be work-related; and *Second*, that the work-related injury or illness must have existed during the term of the seafarer's employment contract. Both elements are availing in the present case

as the injury sustained by private respondent had been a direct result of his work-related accident on-board and while on-duty as a seafarer.

So viewed, private respondent's impediment is deemed total and permanent and thus warrants the award of disability benefits amounting to US$89,100.00 in accordance with the prevailing CBA between the parties. Petitioners' arguments being devoid of factual and legal basis, there is no cogent reason to warrant the issuance of a writ of certiorari and to deviate from the settled rule that findings of facts of the NLRC are deemed binding and conclusive upon the Court, when supported by substantial evidence, as in the case at bench.

WHEREFORE, the foregoing considered, the present petition is hereby DENIED and the assailed Decision dated 29 December 2011 and Resolution dated 30 April 2012 [are] AFFIRMED in toto.

SO ORDERED.[25] (Citations omitted)

Petitioners moved to reconsider, but the CA was unmoved. Hence, the present Petition.

Issues

Petitioners submit that –

x x x THE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT HELD THAT RESPONDENT IS ENTITLED TO PERMANENT TOTAL DISABILITY BENEFITS, CONSIDERING THAT:

A. RESPONDENT IS NOT AUTOMATICALLY ENTITLED TO TOTAL PERMANENT DISABILITY BENEFITS SIMPLY BECAUSE, THRU HIS OWN FAULT, HIS BACK CONDITION WAS NOT RESOLVED AFTER ONE HUNDRED AND TWENTY (120) DAYS.

B. RESPONDENT VIOLATED HIS OBLIGATIONS UNDER THE POEA-SEC BECAUSE HE INEXPLICABLY ABANDONED HIS TREATMENT WITH THE COMPANY-DESIGNATED DOCTORS.

C. IN THE ABSENCE OF A MEDICAL FINDING BY A THIRD DOCTOR, THE ASSESSMENT OF THE

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[25] *Id*. at 43-47.

COMPANY-DESIGNATED ORTHOPEDIC SURGEON IS CONTROLLING.[26]

Petitioners' Arguments

Praying that the assailed CA pronouncements be set aside and respondent's labor complaint be dismissed, petitioners maintain in their Petition and Reply[27] that the respondent's inability to work for more than 120 days is not tantamount to permanent total disability; that in fact, there was as yet no declaration with respect to his fitness to work or permanent total disability, as he required further medical treatment and yet he abandoned the same; that instead of undergoing the required treatment, respondent discontinued his medical visits to the company physician and thus prevented petitioners from resolving his condition; that by his own actions, respondent intentionally prevented his condition from being cured and caused the aggravation thereof, if any, in express violation of his POEA contract which requires him to submit himself to treatment by the company physician; that respondent was finally diagnosed by the company-designated physician with a Grade 10 disability rating, which diagnosis should prevail over that of respondent's appointed physician, especially in the absence of the required opinion from a third doctor chosen mutually by the parties; and, that respondent's claim for disability benefits is thus limited to the Schedule of Disability Allowances under Section 32 of the POEA standard contract.

Respondent's Arguments

In his Comment,[28] respondent counters that as between the diagnosis of the company physician and that of his appointed physician, Dr. Escutin, the latter prevails; that the evidence does not indicate that further medication or additional treatment was required for his condition, and as a matter of fact, no further

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[26] *Id*. at 10.

[27] *Id*. at 244-264.

[28] *Id*. at 229-240.

medical treatment was advised for his case after June 16, 2010; that there was no declaration of fitness for work by the company physician after more than 120 days of treatment, his illness was not cured, and he could not return to work as a seaman on account of his injury; that petitioners' claim that he abandoned his ongoing treatment deserves no consideration, as in fact he was never told of such further treatment after his last consultation on June 16, 2010; that petitioners' claim of further required treatment is a ploy to discredit him by precisely making it appear that he refused to undergo treatment with the company physician; that petitioners' claim that he called to inform them that he could not appear on July 16, 2010 for his scheduled bone scan is a lie; and that the opinion of a third physician is not mandatory, the labor tribunals may simply determine which of the conflicting medical opinions (company physician and independent physician) should prevail based on the evidence and circumstances.

Our Ruling

The Court grants the Petition in part.

'An employee's disability becomes permanent and total [only 1)] when so declared by the company-designated physician, or, [2)] in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120- or 240-day treatment periods, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability.' The 'mere lapse of the 120-day period itself does not automatically warrant the payment of permanent total disability benefits.' 'If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.'[29]

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[29] *Maersk-Filipinas Crewing, Inc. v. Jaleco*, 770 Phil. 50, 74-75 (2015).

For a little over 120 days, or from February 10, 2010 to June 16, 2010, 126 days to be exact, respondent underwent treatment by the company-designated physician. On June 16, 2010, he was partially diagnosed with "lumbosacral muscular spasm with mild spondylosis L3-L4;"[30] the company physician also concluded that there was no compression fracture, and respondent was told to return for a scheduled bone scan. However, instead of returning for further diagnosis and treatment, respondent opted to secure the opinion of an independent physician of his own choosing who, although arriving at a finding of permanent total disability, nonetheless required respondent to subject himself to further Bone Scan and Electromyography and Nerve Conduction Velocity tests "to determine the exact problem on his lumbar spine."[31]

Instead of heeding the recommendations of his own doctor, respondent went on to file the subject labor complaint. In point of law, respondent's filing of the case was premature.

The company-designated physician and Dr. Escutin are one in recommending that respondent undergo at least a bone scan to determine his current condition while undergoing treatment, thus indicating that respondent's condition needed further attention. In this regard, petitioners are correct in arguing that respondent abandoned treatment, as under the law and the POEA contract of the parties, the company physician is given up to 240 days to treat him. On the other hand, the fact that Dr. Escutin required the conduct of further tests on respondent is an admission that his diagnosis of permanent total disability is incomplete and inconclusive, and thus unreliable. It can only corroborate the company-designated physician's finding that further tests and treatment are required.

In *New Filipino Maritime Agencies, Inc. v. Despabeladeras*,[32] this Court held that a seafarer is guilty of medical abandonment

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[30] *Rollo*, p. 87.

[31] *Id*. at 122.

[32] 747 Phil. 626 (2014).

for his failure to complete his treatment before the lapse of the 240-day period, which prevents the company physician from declaring him fit to work or assessing his disability. Thus:

> As recited earlier, upon Michael's return to the country, he underwent medical treatment in accordance with the terms of the [POEA-SEC]. Upon his repatriation x x x, he was given medical attention supervised by x x x the company-designated physician. He was later on endorsed to an orthopedic surgeon. The company-designated specialist recommended that he continue with his physical therapy sessions. During his visit on February 10, 2010, he was required to return for a follow-up checkup x x x. For unknown reasons, he failed to return on the said date.
>
> It should be noted that on February 10, 2010 when Michael last visited the company-designated orthopedic surgeon, it had been 166 days since he was referred to the company-designated physician upon his repatriation x x x. During this time, Michael was under temporary total disability inasmuch as the 240-day period provided under the aforecited Rules had not yet lapsed. The CA, therefore, erred when it ruled that Michael's disability was permanent and total.
>
> x x x x x x x x x
>
> On the issue of abandonment, the Court agrees with petitioners' stance that Michael was indeed guilty of medical abandonment for his failure to complete his treatment even before the lapse of the 240 days period. Due to his willful discontinuance of medical treatment with Dr. Cruz, the latter could not declare him fit to work or assess his disability.
>
> Michael's claim that requiring him to await the medical assessment of Dr. Cruz would mean that his fate would unduly rest in the hands of the company doctor does not persuade. Worthy of note is that the company-designated physician is mandated under the law to issue a medical assessment within 240 days from the seafarer's repatriation. It is, therefore, incorrect to conclude that a seafarer is at the mercy of the company doctor.
>
> Thus, without any disability assessment from Dr. Cruz, Michael's claim for disability compensation cannot prosper. Section 20(D) of the POEA-SEC instructs that no compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional

breach of his duties. Michael was duty-bound to complete his medical treatment until declared fit to work or assessed with a permanent disability grading. It is undisputed that Michael did not undergo further treatment. x x x [S]uch a refusal negated the payment of disability benefits.

Michael's breach of his duties under the POEA-SEC was aggravated by the fact [that] he filed his complaint for permanent total disability benefits while he was under the care of the company-designated specialist and without waiting for the latter's assessment of his condition. x x x[33] (Citations omitted)

Identical rulings were arrived at in *Magsaysay Maritime Corporation v. National Labor Relations Commission*[34] and, more recently, in *Wallem Maritime Services, Inc. v. Quillao*,[35] where this *ponente* made the following pronouncement:

We agree with petitioners' contention that at the time of filing of the Complaint, respondent has no cause of action because the company-designated physician has not yet issued an assessment on respondent's medical condition; moreover, the 240-day maximum period for treatment has not yet lapsed. x x x

The records clearly show that respondent was still undergoing treatment when he filed the complaint. On November 12, 2009, the physiatrist even advised respondent to seek the opinion of an orthopedic specialist. Respondent, however, did not heed the advice[;] instead, he proceeded to file a Complaint on November 23, 2009 for disability benefits. And, it was only a day after its filing x x x that respondent requested from the company-designated doctor the latter's assessment on his medical condition.

Stated differently, respondent filed the Complaint within the 240-day period while he was still under the care of the company-designated doctor. x x x

Clearly, the Complaint was premature. Respondent has no cause of action yet at the time of its filing as the company-designated doctor

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[33] *Id.* at 638-641.

[34] 711 Phil. 614 (2013).

[35] G.R. No. 202885, January 20, 2016, 781 SCRA 477.

has no opportunity to definitely assess his condition because he was still undergoing treatment; and the 240-day period had not lapsed. x x x[36]

Nevertheless, respondent might have treated the company-designated physician's June 16, 2010 temporary diagnosis as the final assessment of his condition, which prompted him to secure the opinion of Dr. Escutin and thereafter file the case prematurely. For this he cannot be completely blamed; indeed, he might have proceeded under the impression that he was being shortchanged. Given his position in the employment relation, his distrust for the petitioners is not completely unwarranted.

Consequently, respondent is entitled only to compensation equivalent to or commensurate with his injury. In this regard, the Court finds the Labor Arbiter's findings to be correct and in point, even with respect to his ruling on respondent's entitlement to attorney's fees. As far as respondent is concerned, his work-related condition was serious enough to require further medical care, yet it could have been resolved if he had undergone the procedure prescribed by the company-designated physician and his own appointed doctor. For his omissions, he is only entitled to disability benefits consistent with his injury suffered.

WHEREFORE, the Petition is **GRANTED IN PART**. The assailed October 18, 2013 Decision and January 28, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 125046 are **REVERSED and SET ASIDE**. The February 23, 2011 Decision of Labor Arbiter Catalino R. Laderas is **REINSTATED and AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, and *Tijam, JJ.,* concur.

Jardeleza, J., on official leave.

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[36] *Id.* at 488-489.

SECOND DIVISION

[G.R. No. 214249. September 25, 2017]

HENRY E. YU, MARIANITO M. MARBAS, EDWIN R. BAYBAY, VICTOR RUALES, CEPRIANO J. DOSDOS, JR., REYNALDO C. GATO, PABLITO GRAME OLAYON, FELICITO G. DAAN, SR., EDGAR R. REBAGOS, SR., RONALDO T. LANSANG, MARIJUL O. ONDAP, ROGELIO M. UBOS, SR., ELANE M. AGAPAY, GERSON S. AGAPAY, SR., GENES S. CAPON, MARK DECYRL B. OSORIO, FREDDIE M. BELTRAN, ROBERT F. COLMINAS, WILLIAM M. ESTORQUE, SR., ERIC G. MARAON, LEONARD S. VILLAREN, JUNIFER QUITA, JEBRYAN QUITA, JOVANIE BANTILAN, GERRY A. QUITA, REY S. AGAPAY, ADOLITO S. BULTRON, JANIFER C. DAAN, ARNEL L. LUNASIN, JOSE CEPEDA SABIO, ROEL E. VALLESPIN, PETER JOHN D. CORDOVA, RONILO D. CORDOVA, CRISANTO D. DIAPOLET, ALDO D. DIAPOLET, VINSON M. ALEJANDRO, JERYLYNN Q. GALANG, JOVILITO MAESTRADO, JR., CONSTANCIO B. MADRONA, JR., JOHNNA D. LLEMIT, VIRGILIA A. EMPERON, JIMMY G. ALBER, JERRY L. LOPEZ, RONITO A. RAMA, EVELYN G. MANSAL, RUBEN MARAON, SELVERIO P. OMBICO, JR., and DIEGO GONZAGA, *petitioners, vs.* **SR METALS, INC. (SRMI), ELOISA E. SEGARRA, FRANCIS ERIC GUTIERREZ, JIMWELL ORPILLA and GODOFREDO NARDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MATERIAL DATES THAT MUST BE STATED; NON-COMPLIANCE MAY BE EXCUSED IF THE DATES ARE EVIDENT FROM THE RECORDS AND REASONABLE CAUSE PROFFERRED.— In particular,

there are three material dates that must be stated in a petition for *certiorari* brought under Rule 65: (a) the date when notice of the judgment or final order or resolution was received, (b) the date when a motion for new trial or for reconsideration when one such was filed, and, (c) the date when notice of the denial thereof was received. These dates should be reflected in the petition to enable the reviewing court to determine if the petition was filed on time. The reason being that, as a rule, the perfection of an appeal in the manner and within the period prescribed by law is jurisdictional and failure to perfect an appeal as required by law renders the judgment final and executory. Nonetheless, procedural rules are designed to promote or secure, rather than frustrate or override, substantial justice. x x x Thus, We have consistently held that failure to comply with the rule on a statement of material date(s) in the petition may be excused if the date(s) is (are) evident from the records. The more material date for purposes of appeal to the CA is the date of receipt of the order or resolution denying the motion for reconsideration. Yet concomitant to a liberal application of the rules of procedure should be an effort on the part of the party to at least explain its failure to comply with the rules. To merit liberality, a valid and compelling reason proffered for or underpinning it or a reasonable cause justifying non-compliance with the rules must be shown and must convince the court that the outright dismissal of the petition would defeat the administration of substantive justice.

2. ID.; ID.; ID.; FAILURE TO INDICATE THE SERIAL NUMBER OF THE NOTARY PUBLIC'S COMMISSION; LIBERAL APPLICATION OF THE RULES; PROCEDURAL LAPSES THAT DO NOT AFFECT THE MERITS OF THE PETITION, RELAXED TO SERVE SUBSTANTIAL JUSTICE.— The same liberality should be applied with respect to petitioners' failure to indicate the serial number of the notary public's commission. x x x The procedural lapses cited by the CA do not affect the merits of the petition; procedural rules should have been relaxed in order to serve substantial justice. What the CA should have done was to require petitioners' counsel to submit the lacking information instead of dismissing the case outright.

APPEARANCES OF COUNSEL

Jose Sonny G. Matula for petitioners.
Quiambao Rosas-Quiambao Law Office for respondents.

D E C I S I O N

PERALTA,[*] *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure *(Rules)* seeking to reverse and set aside the May 31, 2013 Resolution[1] and July 31, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA G.R. SP No. 07577, which dismissed outright, based on procedural grounds, the petition for *certiorari* that assailed the October 17, 2012 Decision[3] and December 28, 2012 Resolution[4] of the National Labor Relations Commission *(NLRC)*.

The Facts

SR Metals, Inc. Workers Union - FFW Chapter *(SRMIWU-FFW)* is a legitimate labor organization authorized to operate as a local chapter of the Federation of Free Workers[5] and certified as the sole and exclusive bargaining agent of all rank-and-file employees of SR Metals, Inc. *(SRMI)*. On the other hand, SRMI is a corporation duly organized and existing under the Philippine laws and engaged in mining business at La Fraternidad, Tubay, Agusan del Norte.

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[*] Acting Chairperson, per Special Order No. 2487 dated September 19, 2017.

[1] Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Pamela Ann Abella Maxino and Maria Elisa Sempio Diy concurring; *rollo*, pp. 96-99.

[2] Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Pamela Ann Abella Maxino and Marie Christine A. Jacob concurring; *id*. at 71-75.

[3] Penned by Presiding Commissioner Violeta Ortiz-Bantug, with Commissioners Julie C. Rendoque and Numeriano D. Villena concurring; *id*. at 170-207.

[4] *Rollo*, pp. 285-286.

[5] *Id.* at 323-324.

A. Illegal Dismissal Cases

From 2008 to 2010, a number of SRMI employees were terminated and replaced with workers of Asiapro Cooperative, who were non-Tubaynon. Subject of this petition are the fifteen (15) groups of employees who filed cases for illegal dismissal and money claims before the NLRC Regional Arbitration Branch No. XIII in Butuan City, Agusan del Norte. Their names, positions, and periods of employment are as follows:[6]

RAB-13-07-00170-10:

Name	Position	Employment Period
Genes C. Capon	Warehouseman to Logistic Supervisor (Warehouseman) (Logistic Supervisor)	3/16/06 – 11/1/08 (3/16/06 – 6/16/06) (7/7/07 – 4/30/09)
Mark Decyrl B. Osorio	Warehouse Aide (Warehouse Aide)	9/23/06 – 7/8/08 (6/27/08 – 7/26/08)
Freddie M. Beltran	Warehouse Aide (Warehouse Helper)	6/23/07 – 6/23/08 (3/29/08 – 6/28/08)
Robert F. Colminas	Bargeman (Bargeman)	8/24/07 – 5/15/10 (5/1/10 – 5/15/10)
William M. Estorque, Sr.	Mason/Carpenter (Mason/Carpenter)	3/20/06 – 6/10/06 and 3/23/07 – May 2008 (3/20/06 – 6/20/06)

RAB013-07-00171-10:

Name	Position	Employment Period
Reynaldo C. Gato	Drilling Aide/Logistic Supervisor (Drilling Aide)	5/25/07 – 10/23/08 (9/24/08 – 10/23/08)
Pablito G. Olayon	Animal Caretaker (Animal Caretaker)	11/11/06 – 11/30/07 (contract expiry on 9/19/07)

[6] Enclosed in parenthesis are the versions of fact of SRMI.

Felecito G. Daan, Sr.	Mason/Plumber/Master Carpenter (Mason/Plumber)	3/8/06 – 10/20/09 (9/1/06 – 10/1/06)
Edgar R. Rebagos, Sr.	Flagman (Flagman)	2007 – 7/8/08 (3/29/08 – 6/28/08)
Ronald T. Lansang	Company Nurse (Community Coordinator)	January 2007 – 10/27/09 (8/28/09 – 9/27/09)

RAB-13-07-00172-10:

Name	Position	Employment Period
Henry E. Yu	Company Driver (Service Driver)	4/21/06 – 11/28/08 (10/9/08 – 10/23/08)
Marianito M. Marbas	Pumpboat Operator (Laborer)	8/15/06 – 7/15/08 (1/15/08 – 7/15/08)
Edwin R. Baybay	Spotter (Spotter)	10/26/06 – 10/5/08 (9/5/08 – 10/5/08)
Victor S. Ruales	Survey Aide (Rodman)	3/26/06 – 10/23/08 (10/13/08 – 10/18/08)
Cepriano J. Dosdos, Jr.	Survey Aide (Survey Aide)	3/26/07 – October 2008 (9/29/08 – 10/4/08)

RAB-13-07-00175-10:

Name	Position	Employment Period
Remegildo P. Rodriguez	No employment record	N/A
Marijul O. Undap	Flagman/Barge Worker/ Laboratory Aide (Mason/Laborer)	3/26/07 – 6/23/08 (5/22/08 – 6/21/08)
Rogelio R. Ubbos, Jr.	Flagman/Barge Worker/ Laboratory Aide (Sample Prep Leadman)	11/15/06 – June 2008 (4/26/10 – 5/25/10)
Elane M. Agapay	Community Coordinator (Community Coordinator)	3/23/06 – 1/15/09 (12/16/08 – 1/15/09)

Gerson S. Agapay, Sr.	Survey Aide/Rodman (Rodman)	4/20/07 – 12/23/09 (11/23/09 – 12/22/09)

RAB-13-07-00188-10:

Name	Position	Employment Period
Eric G. Maraon	Spotter (Stockpile Spotter)	3/26/06 – 10/5/08 (9/6/08 – 10/5/08 and 12/14/08 – 7/7/09)
Leonard S. Villaren	Spotter/Road Maintenance (Spotter/Bargeman)	4/6/06 – 10/5/08 (9/6/08 – 10/5/08 and 12/14/08 – 10/17/10)
Junipher Quita	Flagman/Bargeworker	March 2007 – September 2008
Jebrayan Quita	Spotter/Flagman/ Bargeman	3/23/06 – 9/1/08
Jovanie Bantilan	Bargeman/Construction Helper	3/1/06 – 9/1/08

RAB-13-07-00189-10:

Name	Position	Employment Period
Vinson M. Alejandro	Utility Man (Office Utility)	3/10/07 – 7/9/07 and 7/16/09 – 12/15/09 (9/21/08 – 10/31/08 and 12/14/08 – 7/7/09)
Jerlynn Q. Galang	Data Encoder (Data Encoder)	6/26/07 – 10/31/08 and 3/8/09 – 12/15/09 (10/1/08 – 1/1/09)

RAB-13-08-00204-10:

Name	Position	Employment Period
Jovelito E. Maestrado, Jr.	Utility Worker(Barge Worker)	March 2007 – March 2009(2/3/09 – 2/19/09)
Constancio B. Madrona, Jr.	Laboratory Technician Lab Sample Prepman/Electrician)	July 2006 – March 2009 (5/26/09 – 6/25/09)

RAB-13-08-00223-10:

Name	Position	Employment Period
Gerry A. Quita	Watchman (Survey Aide)	11/11/05 – 8/4/10 (6/4/10 – 8/4/10)
Rey S. Agapay	Environmental Monitoring (Drilling Operator)	8/1/06 – 8/4/10 (6/4/10 – 8/4/10)
Adolito S. Bultron	Leadman (Sample Prep Leadman)	6/23/06 – 8/4/10 (6/4/10 – 8/4/10)

RAB-13-09-00227-10:

Name	Position	Employment Period
Arnel L. Lunasin	Mine Sampler (Mine Receiver)	3/26/06 – 3/24/10 (3/11/10 – 4/10/10)
Jose C. Sabio	Receiver (Mine Receiver)	February 2007 – 7/9/10 (7/10/10 – 7/24/10)

RAB-13-09-00234-10:

Name	Position	Employment Period
Jimmy G. Alber	Nursery & Mine Office Utility(Janitor)	5/9/07 – 7/8/08 (3/30/08 – 6/29/08)
Jerry L. Lopez	Construction Laborer (Laborer)	April 2006 – 7/31/ 08 (9/1/06 – 10/1/06)

RAB-13-09-00247-10:

Name	Position	Employment Period
Janifer C. Daan	Survey Aide (Rodman)	4/29/07 – 10/16/09 (9/22/08 – 9/27/08)

RAB-13-09-00266-10:

Name	Position	Employment Period
Ronito A. Rama	Laboratory Aide	11/5/05 – 8/30/10

RAB-13-09-00265-10:

Name	Position	Employment Period
Johna D. Llemit	Staff House Utility (Household Helper)	June 2007 – 2/1/08 (month-to-month basis)
Virgilia A. Empron	Staff House Utility (Household Helper)	June 2007 – 8/8/08 (month-to-month basis)

RAB-13-07-00176-10:

Name	Position	Employment Period
Roel E. Vallespin	(Spotter/ Barge Worker)	(9/6/08 – 10/5/08; 12/14/08 – 7/7/09; 10/11/09 – 10/17/09; 5/4/10 – 5/10/10; and 7/29/10 – 8/4/10)
Peter John D. Cordova	(Mine Sampler)	(8/13/09 – 9/12/09)
Ronilo D. Cordova	(Sampler Aide)	(8/24/08 – 10/8/08)
Crisanto D. Diapolet	(Dispatcher)	(8/6/08 – 10/5/08; 12/24/08 – 7 7/09; and 10/11/09 – 10/17/09)
Aldo D. Diapolet	(Dispatcher)	(9/6/08 – 10/5/08; 12/14/08 – 7/7/09; and 10/11/09 – 10/17/09)

RAB-13-07-00186-10:

Name	Position	Employment Period
Evelyn G. Mansal	Disbursing Officer (Cashier)	5/5/06 – 10/31/08 (7/7/07 – 4/30/09)
Rubin G. Maraon	Sample Prep Man/ Laboratory Aide (Laboratory Aide)	July 2006 – October 2006 and 1/15/09 – 4/15/10 (3/26/10 – 4/25/10)
Selverio P. Ombico, Jr.	Flagman/Barge Worker/ Nursery Aide (MEPEO Laborer)	11/15/06 – June 2008 (7/20/09 – 8/19/09)
Diego C. Gonzaga	Flagman/Barge Worker/ Laboratory Aide (Sampler Aide)	3/26/07 – 6/23/08 (4/13/08 – 7/12/08)

Sometime in February and March 2011, Executive Labor Arbiter *(ELA)* Noel Augusto S. Magbanua *(Magbanua)* issued separate rulings on the 15 cases. Except for Rodriguez whose case was dismissed for not signing the Position Paper, Capon *et al.* (RAB-13-07-00170-10), Gato *et al.* (RAB-13-07-00171-10), Yu *et al.* (RAB-13-07-00172-10), and Undap *et al.* (RAB-13-07-00175-10) were found to have been illegally dismissed because they were regular employees of SRMI. On the other hand, while granting some of their money claims, the labor arbiter did not find merit in the complaints for illegal dismissal of Maraon *et al.* (RAB-13-07-00188-10), Alejandro *et al.* (RAB-13-07-00189-10), Quita *et al.* (RAB-13-08-00223-10), Daan (RAB-13-09-00247-10), and Rama (RAB-13-09-00266-10), who were project or fixed-term employees; Madrona (RAB-13-08-00204-10), Lunasin *et al.* (RAB-13-09-00227-10), and Alber *et al.* (RAB-13-09-00234-10), who were contractual employees; Llemit *et al.* (RAB-13-09-00265-10), whose services as house helpers were not directly related to the mining business; Vallespin *et al.*[7] (RAB-13-07-00176-10) and Mansal *et al.* (RAB-13-07-

[7] Roel E. Vallespin, Peter John D. Cordova, Ronilo D. Cordova, Crisanto D. Diapolet, Silverio Ombico and Aldo D. Diapolet, together with Jerry L. Lopez (in RAB-13-09-00234-10), Jovanie Bantilan (in RAB-13-07-00188-

00186-10), who lacked interest to pursue the case for failure to submit Position Paper; and Maestrado, Jr. (RAB-13-08-00204-10), who was not an employee of SRMI but of SAN R Mining & Const. Corp. Both the aggrieved employees and the SRMI appealed to the NLRC 8th Division in Cagayan de Oro (CDO) City, Misamis Oriental.

Capon *et al.*, Gato *et al.*, Yu *et al.*, and Undap *et al.* were not reinstated, either actual or in payroll, by SRMI. Consequently, they filed a Motion for the Issuance of Writ of Execution with Motion to Compute Backwages. During the proceedings, Capon, Ruales, Osorio, Beltran, Gato, Yu, Rebagos, Sr., Baybay, and Olayon voluntarily agreed to a settlement and executed a Quitclaim and Release with Motion to Dismiss.[8] Subsequently, on February 23, 2012, ELA Nicodemus G. Palangan *(Palangan)* granted the motion and ordered the issuance of a writ of execution.[9]

SRMI challenged the February 23, 2012 Order by filing a Petition to Annul and/or Modify Order before the NLRC 8th Division.[10] SRMI argued that reinstatement of the illegally dismissed employees requires the issuance of a writ of execution as it is not self-executory; that complainants' claim for separation pay implied the abandonment of their prayer for reinstatement and manifested their intent to sever employment relationship with SRMI; and that the daily wage rate of the complainants existing immediately prior to their alleged illegal termination, not the present and updated daily wage rates, should be the basis in computing the salaries accruing to them during their reinstatement pending appeal. SRMI pointed out that the assailed decisions of ELA Magbanua only ruled that the computation

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10), Neri Hans Salas, Jerry Navarro, Bono Pan, Rolando Saflor, and Mark Khim Guzon, moved for case dismissal due to execution of compromise agreement (*Rollo*, p. 384).

[8] *Id.* at 175, 387-388, 397-398, 1836.

[9] *Id.* at 1831-1836.

[10] *Id.* at 1815-1829.

of the salaries should use the rate of ₱230/day starting on August 25, 2011. In contrast, ELA Palangan computed the salaries pending appeal using daily wage rate of ₱243/day from April 1, 2011 to November 10, 2011 and ₱258/day from November 11, 2011 to January 31, 2012.

B. Unfair Labor Practice Case

Meantime, while the illegal dismissal cases were pending, Angat Kalawakang Hanapbuhay, Inc. - Union of Filipino Workers (AKHSRMI-UFW) and SRMIWU-FFW – the two unions that were organized within SRMI – agreed to a consent election, which was eventually conducted on October 28, 2010. Out of the 107 voters, 25 were for "No Union" while 82 were "Challenged Votes" on the ground that the voters were no longer SRMI employees. The Med-Arbiter resolved that 75 of the challenged votes were qualified because the voters remain to be SRMI employees on the basis of their pending cases with the NLRC Regional Arbitration Branch No. XIII while the remaining 7 voters were disqualified as their pending cases were filed only after there had already been an agreement for the conduct of consent election. Upon opening and canvassing of the ballots, all 75 votes were for SRMIWU-FFW. On March 8, 2011, the Med-Arbiter rendered an Order proclaiming SRMIWU-FFW as the winner in the consent election. AKHSRMI-UFW appealed, but the Order was affirmed by the Department of Labor and Employment *(DOLE)* in a Resolution dated November 25, 2011, which became final and executory on December 26, 2011.

As the certified sole and exclusive bargaining agent of the rank-and-file employees of SRMI, SRMIWU-FFW demanded for the negotiation of a collective bargaining agreement *(CBA)*. The proposed CBA was sent to SRMI in May 2011,[11] but the latter did not act on the proposal to negotiate a CBA and agreed only to the drafting of guidelines and rules to be observed during the negotiation process. Consequently, SRMI received a Notice from the National Conciliation and Mediation Board *(NCMB)*

[11] *Id.* at 312-322.

of the DOLE directing it to attend a conciliation conference for the purpose of CBA. A number of conferences were held, but SRMI did not appear.

On August 3, 2011, SRMIWU-FFW filed a Notice of Strike before the NCMB-RB XIII on the ground of Unfair Labor Practice *(ULP)* for refusal to bargain in violation of Article 248 (g) in relation to Articles 250 (a), 251, and 252 of the Labor Code, as amended. Again, SRMI refused to appear in the conciliation conferences. On February 28, 2012, it received a notice from the DOLE for a conciliation and mediation conference scheduled on March 2, 2012. Still, SRMI did not participate therein and refused to bargain with SRMIWU-FFW.

SRMIWU-FFW conducted a strike vote, wherein majority of the union members agreed to go on strike. On February 14, 2012, it submitted the result to the NCMB-CARAGA.

Once more, conciliation and mediation conferences were conducted, but no appearance was made by SRMI or a mutually acceptable solution was reached by the parties.

On April 26, 2012, pursuant to Article 263 (g) of the Labor Code, as amended, then Secretary of Labor and Employment (SOLE) Rosalinda Dimapilis-Baldoz assumed jurisdiction over the ULP case, certified it for compulsory arbitration and immediate consolidation with the pending illegal dismissal cases before the NLRC, and issued a return to work (RTWO) to all SRMI workers.[12] Despite the RTWO, SRMI refused to accept the employees who went back to work.

For SRMIWU-FFW, the refusal of SRMI to bargain collectively is tantamount to a ULP act. All workers who are SRMIWU-FFW members are still considered by law as SRMI employees due to the pendency of the illegal dismissal cases and labor dispute between the union and the company. To question the March 8, 2011 Order of the Med-Arbiter proclaiming SRMIWU-FFW as the winner in the consent election is tantamount to collateral attack on the certification of SRMIWU-

[12] *Id.* at 287-288, 379, 399-400.

FFW as the sole and exclusive bargaining agent of the rank-and-file employees of SRMI, which already attained finality.

SRMI countered that it justifiably and in good faith refused to go through the process of entering into any collective bargaining agreement with SRMIWU-FFW because it does not recognize the legitimacy of the union, which was organized only in October 2010 or after the contracts of employment of its members ceased and only after they filed illegal dismissal cases against SRMI. To sit down with SRMIWU-FFW for negotiations would be tantamount to abandoning its stand that the union cannot, by all means, represent the rank-and-file employees of SRMI. Perusal of the employment records with the company showed that out of the 99 members of SRMIWU-FFW, 96 filed illegal dismissal cases: 4 were separated in 2007, on account of the end or completion of their project or fixed-term employment; 47 were separated in 2008, for the same reason; 21 in 2009; 22 in 2010; and 2 in 2011.[13] Further, out of the 96 complaints, 71 were dismissed by the labor arbiter but on appeal before the NLRC in CDO and Cebu, 13 obtained awards for reinstatement, and 12 were of unknown status but on appeal before the NLRC in CDO and Cebu.[14]

As to the RTWO, SRMI argued that it is anchored on the principle of *status quo ante*, *i.e.*, the employees must be re-admitted under the same terms and conditions prevailing prior to the Certification Order. In this case, the alleged union members were no longer connected with SRMI years prior to the issuance of the Certification Order. Since there is really no work post that they could return to, SRMI could not be blamed for not accepting them back. Moreover, it is wrong to equate the RTWO of the SOLE to the reinstatement order pending appeal. While the law says that they are both immediately executory, the first requires that the employee must be actually employed or in the company's roster of employees while the second requires that the employee must be illegally dismissed. None is present in this case.

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[13] *Id.* at 332-333, 381-383, 404.

[14] *Id.* at 333, 383-384, 404-405.

Finally, SRMI asserted that, being the employer, it cannot interfere with the consent election, much less attempt to alter or tamper with the consequence of such activity by appealing the results thereof or questioning the validity of the certification by the DOLE. While employers may rightfully be notified or informed of petitions for certification election, they should not be considered parties thereto with the concomitant right to oppose in view of the rule that they should maintain a strictly hands-off policy. In contrast, when SRMIWU-FFW sought to deal directly with the company, the situation has changed. It is now opportune for the latter to raise the issue of validity of the union's personality to represent SRMI rank-and-file employees for CBA negotiations.

Ultimately, SRMI maintained that its questioned acts were done in pursuit of its right to self-determination and self-preservation; hence, it is not liable for ULP, damages, and attorney's fees.

In view of Administrative Order No. 03-22 dated March 23, 2012 issued by the NLRC Chairman, the 15 appealed cases[15] were forwarded by the NLRC 8th Division to the Special 7th

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[15] Henry E. Yu, *et al.* (NLRC Case No. MAC-05-012044-11 [RAB-13-07-00172-10]); Reynaldo C. Gato, *et al.* (NLRC Case No. MAC-05-012045-11 [RAB-13-07-00171-10]); Remegildo P. Rodriguez, *et al.* (NLRC Case No. MAC-05-012046-11 [RAB-13-07-00175-10]); Genes C. Capon, *et al.* (NLRC Case No. MAC-05-012048-11 [RAB-13-07-00170-10]); Eric G. Maraon, *et al.* (NLRC Case No. MAC-05-012049-11 [RAB-13-07-00188-10]); Gerry A. Quita, *et al.* (NLRC Case No. MAC-05-012151-11 [RAB-13-08-00223-10]); Janifer C. Daan (NLRC Case No. MAC-05-012152-11 [RAB-13-09-00247-10]); Arnel L. Lunasin, *et al.* (NLRC Case No. MAC-07-012153-11 [RAB-13-09-00227-10]); Roel E. Vallespin, *et al.* (NLRC Case No. MAC-07-012154-11 [RAB-13-07-00176-10]); Vinson M. Alejandro, *et al.* (NLRC Case No. MAC-05-012060-11 [RAB-13-07-00189-10]); Jovelito E. Maestrado, Jr., *et al.* (NLRC Case No. MAC-06-0120110-11 [RAB-13-08-00204-10]); Johna D. Llemit, *et al.* (NLRC Case No. MAC-06-0120111-11 [RAB-13-09-00265-10]); Jimmy G. Alber, *et al.* (NLRC Case No. MAC-06-0120113-11 [RAB-13-09-00234-10]); Ronito A. Rama (NLRC Case No. MAC-06-0120112-11 [RAB-13-09-00266-10]); and Evelyn G. Mansal, *et al.* (NLRC Case No. MPRJC-06-012047-11 [RAB-13-07-00186-10]) (See *Rollo*, p. 455).

Division, which was created to deliberate and resolve the same.[16] Likewise, the Special 7th Division received SRMI's petition for extraordinary remedy. With the filing of the certified case, all cases involving the same parties already filed and are relevant to or proper incident of the certified case were considered subsumed thereto pursuant to Section 3 (b) of the 2011 NLRC Rules of Procedure.

Ruling of the NLRC

The NLRC held that there were valid fixed-term contracts that negated the regularity of petitioners' employment. The fixed period was knowingly and voluntarily agreed upon by the parties. In fact, petitioners were employed by San-R Mining and Construction Corporation and Galeo Equipment and Mining Co. even before they were engaged on fixed term contracts with SRMI. Thus, their employment must be considered contractual in nature ending upon the expiration of the term fixed in their respective letters of appointment or contracts or upon the completion of the specific project or undertaking for which their services were engaged.

Petitioners also failed to prove by substantial evidence its allegation that SRMI is guilty of ULP. Given the prevailing circumstances of this case, the SRMI did not commit ULP for refusal to negotiate with SRMIWU-FFW. It was opined:

> In declaring that the Union members were not illegally dismissed but that their employment naturally ended upon the expiration of the fixed terms in their employment contracts or upon the completion of the projects for which their services were engaged, the Union's contention then becomes largely inconsequential yet vastly dubious. Note must be taken that more than half of the number of Union members' employment with the company were severed as early as the years 2007, 2008 and 2009, while the cases for illegal dismissal were filed only in 2010, or long after their alleged dismissal from employment and around which time the Union was to conduct a certification election. A few others were separated from the company in 2010.

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[16] *Rollo*, p. 455.

Judging, however, from the rationalization posed by the Union, We give great consideration to the situation that the calculated use Article 212 of the Labor Code by the Union on the definition of "employees" and the attendant illegal dismissal cases filed was purposeful so much so that the Union furtively achieved access for union formation and its subsequent certification as the sole and exclusive bargaining agent of the SRMI rank-and-file employees. To Our mind, this scheme was carefully crafted and ultimately hoodwinked the company on union formation and consent election, a process in which the company was neither allowed to question nor take part in.

Clearly, under the circumstances, the company would have cried foul, as it did, on the legitimacy of the union membership and its personality to represent the entire rank-and-file, given that the members thereof were already separated from employment. Added to this is the fact that at the time the consent election was conducted and upon the certification of the Union as the sole and exclusive bargaining agent, illegal dismissal cases were already on the wheels of arbitration. Being the respondent in the copious illegal dismissal cases which covered the majority, if not the entire, membership of the Union, SRMI cannot be expected to sit down and negotiate for a CBA with a union whose members were already separated from the company due to expiration of contracts or completion of the projects for which they were hired, lest SRMI be misconstrued to have deserted its postulation on the validity of the separation from employment of the workers involved.[17]

For the NLRC, SRMIWU-FFW failed to rebut the presumption of good faith. It was not shown that SRMI was induced by malice, ill will, bad faith, or fraudulent intent when it refused to act on the CBA proposals of the union. Accordingly, it cannot be held liable for payment of damages.

It was ruled, however, that a writ of execution for the reinstatement of illegally dismissed employees is not necessary for the execution of judgment. According to the NLRC, to rule otherwise would betray and run counter to the very object and intent of Article 223 of the Labor Code, as amended. Without any restraining order, it was mandatory for SRMI to reinstate,

[17] *Id.* at 200-201.

actually or in the payroll, the employees concerned. For failure to do so, it was incumbent upon the labor arbiter to issue a writ of execution. The workers' entitlement to salaries occasioned by the company's unjustified refusal to reinstate would be effective from the time of the failure to reinstate and not reckoned from the issuance of the writ.

Nonetheless, the NLRC held that it was error for ELA Palangan to come up with a computation using a rate which is different from what was specified in the decisions of ELA Magbanua. It cited Section 9 Rule XI of the 2011 NLRC Rules of Procedure, which provides that the amount is one that is specified in the decision. Hence, ELA Palangan committed excess of jurisdiction when he ordered for the payment of reinstatement wages based on a new rate or a rate other than what was specified in the decision.

The dispositive portion of the NLRC decision reads:

WHEREFORE, premises considered, We find that complainants in the subsumed appealed cases were validly separated on account of the expiration of their fixed term contracts or the completion of the projects for which they were engaged. Thus, there is no illegal dismissal to speak of. SR Metals, Inc. is found not to have committed unfair labor practice and is not liable for payment of damages.

The petition of SRMI seeking to annul the Order of Executive Labor Arbiter Nicodemus Palangan dated 23 February 2012 and for the grant of injunctive relief is DENIED. However, ELA Palangan is directed to modify the computation of complainants' reinstatement wages basing the same on the rate previously specified in the decision below.

SO ORDERED.[18]

Ruling of the CA

The petition for *certiorari* was dismissed for failure to state the date of filing of the Motion for Reconsideration before the NLRC and to indicate the serial number of the notary public's

[18] *Id.* at 206.

commission in violation of Section 2 (b) and (d) of the 2004 Rules on Notarial Practice. Petitioners' motion for reconsideration was denied.

Our Ruling

The petition is partially granted.

The right to appeal is not a natural right or a part of due process but is merely a statutory privilege that should be exercised only in the manner prescribed by and in accordance with the provisions of the law and the requirements of the rules. For non-compliance, the right to appeal is lost.[19]

In particular, there are three material dates that must be stated in a petition for *certiorari* brought under Rule 65: (a) the date when notice of the judgment or final order or resolution was received, (b) the date when a motion for new trial or for reconsideration when one such was filed, and, (c) the date when notice of the denial thereof was received.[20] These dates should be reflected in the petition to enable the reviewing court to determine if the petition was filed on time.[21] The reason being that, as a rule, the perfection of an appeal in the manner and within the period prescribed by law is jurisdictional and failure to perfect an appeal as required by law renders the judgment final and executory.[22]

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[19] *Ramirez v. Court of Appeals, et al.,* 622 Phil. 782, 793 (2009).

[20] *Lapid v. Judge Laurea,* 439 Phil. 887, 895 (2002); *Cirineo Bowling Plaza, Inc. v. Sensing,* 489 Phil. 159, 168 (2005); *Suzuki v. De Guzman,*528 Phil. 1033, 1043 (2006); *Ramirez v. Court of Appeals, et al.,* 622 Phil. 782, 801 (2009); and *Barroga v. Data Center College of the Phils., et al.,* 667 Phil. 808, 816-817 (2011).

[21] *Lapid v. Judge Laurea,* 439 Phil. 887, 895 (2002); *Suzuki v. de Guzman,* 528 Phil. 1033, 1043 (2006); and *Barroga v. Data Center College of the Phils., et al.,* 667 Phil. 808, 816-817 (2011).

[22] *Lapid v. Judge Laurea,* 439 Phil. 887, 895-896 (2002); *Cirineo Bowling Plaza, Inc. v. Sensing,* 489 Phil. 159, 168 (2005); and *Suzuki v. De Guzman,*528 Phil. 1033, 1043-1044 (2006).

Nonetheless, procedural rules are designed to promote or secure, rather than frustrate or override, substantial justice.[23] In *Hadji-Sirad v. Civil Service Commission,*[24] this Court emphasized:

> Rules of procedure are tools designed to promote efficiency and orderliness as well as to facilitate attainment of justice, such that strict adherence thereto is required. However, technical rules of procedure are not designed to frustrate the ends of justice. The Court is fully aware that procedural rules are not to be belittled or simply disregarded, for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.
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> This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application. In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merit. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as basis of decisions. In that way, the ends of justice would be better served. For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.

In *Sanchez v. Court of Appeals*, the Court restated the reasons that may provide justification for a court to suspend a strict adherence to procedural rules, such as: (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

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[23] *Barroga v. Data Center College of the Phils., et al., supra* note 20, at 818.

[24] *Hadji-Sirad v. Civil Service Commission,* 614 Phil. 119 (2009).

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.[25]

Thus, We have consistently held that failure to comply with the rule on a statement of material date(s) in the petition may be excused if the date(s) is (are) evident from the records.[26] The more material date for purposes of appeal to the CA is the date of receipt of the order or resolution denying the motion for reconsideration.[27] Yet concomitant to a liberal application of the rules of procedure should be an effort on the part of the party to at least explain its failure to comply with the rules.[28] To merit liberality, a valid and compelling reason proffered for or underpinning it or a reasonable cause justifying non-compliance with the rules must be shown and must convince the court that the outright dismissal of the petition would defeat the administration of substantive justice.[29]

In this case, there is at least *a reasonable attempt at compliance with the Rules*.[30] In their motion for reconsideration before the

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[25] *Hadji-Sirad v. Civil Service Commission, supra,* at 134-135. (Citations omitted).

[26] *Great Southern Maritime Services Corp. v. Acuña*, 492 Phil. 518, 527 (2005); *Acaylar, Jr. v. Harayo,* 582 Phil. 600, 612 (2008); *Barroga v. Data Center College of the Phils., et al., supra* note 20, at 817; *Sy, et al. v. Fairland Knitcraft Co., Inc.,* 678 Phil. 265, 280 (2011); *Barra v. Civil Service Commission,* 706 Phil. 523, 526 (2013); and *Sara Lee Philippines, Inc. v. Macatlang,* 375 Phil. 71, 92 (2014).

[27] *Acaylar, Jr. v. Harayo,* 582 Phil. 600, 612 (2008); *Barroga v. Data Center College of the Phils., et al., supra* note 20, at 817; *Barra v. Civil Service Commission, supra,* at 527; and *Sara Lee Philippines, Inc. v. Macatlang, supra*.

[28] *Lapid v. Judge Laurea,* 439 Phil. 887, 896 (2002); *Cirineo Bowling Plaza, Inc. v. Sensing,* 489 Phil. 159, 168-169 (2005); *Suzuki v. de Guzman,* 528 Phil. 1033, 1044 (2006); and *Ramirez v. Court of Appeals, et al., supra* note 19, at 802.

[29] See *Ramirez v. Court of Appeals, et al., supra* note 19, at 803.

[30] See *Suzuki v. De Guzman,* 528 Phil. 1033, 1044 (2006).

CA, petitioners in fact pointed out that in their motion for reconsideration before the NLRC, a copy of which was attached as Annex "B" of their petition for *certiorari* before the CA, it was mentioned that their motion for reconsideration was timely filed on December 7, 2012.[31] As proof, they even attached in their motion for reconsideration before the CA, as Annex "A" thereof, the original copy of registry receipt no. 13543 issued by Robinson's Ermita Postal Station showing that the mail matter was posted on "Dec 7 2012."[32] These substantial compliance should have been sufficient for the CA to reverse its previous ruling and finally resolve the case on its merit. Certainly, petitioners made a persuasive explanation as to the inadvertence and were not obstinate in their non-observance of procedural rules. Such actuation is consistent with their plea for liberality in construing the rules on *certiorari*.

The same liberality should be applied with respect to petitioners' failure to indicate the serial number of the notary public's commission. In *In-N-Out Burger, Inc. v. Sehwani, Incorporated and/or Benita's Frites, Inc.,*[33] respondents impugned the validity of the notary public's certificate on Atty. Baranda's Verification/Certification attached to the Petition, noting the absence of (1) the serial number of the commission of the notary public; (2) the office address of the notary public; (3) the roll of attorneys number and the IBP membership number; and (4) a statement that the Verification/Certification was notarized within the notary public's territorial jurisdiction, as required under the 2004 Rules on Notarial Practice. In disregarding the challenge, We held:

> x x x [The] Court deems it proper not to focus on the supposed technical infirmities of Atty. Baranda's Verification. It must be borne in mind that the purpose of requiring a verification is to secure an assurance that the allegations of the petition has been made in good faith; or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and non-

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[31] *Rollo*, pp. 79, 285.

[32] *Id.* at 79, 84.

[33] 595 Phil. 1119 (2008).

compliance therewith does not necessarily render it fatally defective. Indeed, verification is only a formal, not a jurisdictional requirement. In the interest of substantial justice, strict observance of procedural rules may be dispensed with for compelling reasons. x x x.[34]

The procedural lapses cited by the CA do not affect the merits of the petition; procedural rules should have been relaxed in order to serve substantial justice. What the CA should have done was to require petitioners' counsel to submit the lacking information instead of dismissing the case outright. Petitioners, who are merely rank-and-file employees and are mostly, if not all, minimum wage earners, must not be penalized for the honest mistakes of their counsel. They deserve to have their case properly ventilated at the appellate court since what is at stake is their means of livelihood. The Court cannot allow it be taken away from them without giving a chance at a full and judicious review of the case. Indeed, a strict interpretation of technical rules of procedure that is unduly detrimental to the working class is contrary to the constitutional mandate of affording full protection to labor and enhancing social justice.

Our ruling in *Barra v. Civil Service Commission*[35] should guide the CA:

> Courts should not be unduly strict in cases involving procedural lapses that do not really impair the proper administration of justice. Since litigation is not a game of technicalities, every litigant should be afforded the amplest opportunity for the proper and just determination of his case, free from the constraints of technicalities. Procedural rules are mere tools designed to facilitate the attainment of justice, and even the Rules of Court expressly mandates that it "shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding."

The demands of justice require the CA to resolve the issues before it, considering that what is at stake is not only the petitioner's position, but her very livelihood. Dismissing the petitioner's appeal could give

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[34] *In-N-Out Burger, Inc. v. Sehwani, Incorporated and/or Benita's Frites, Inc.,* 595 Phil. 1119, 1140 (2008) (Citation omitted).

[35] 706 Phil. 523 (2013).

rise to the impression that the appellate court may be fostering injustice should the appeal turn out to be meritorious. Thus, it is far better and more prudent for the court to excuse a technical lapse and afford the parties a substantive review of the case on appeal, to attain the ends of justice than to dismiss said appeal on technicalities.

Let this case be a reminder to our courts, particularly to the CA, where the inordinate desire to lessen the case load or to clear the dockets may be at the expense of substantive justice; where a case appears to be substantively meritorious and the technical lapses are of the nature that they can be complied with without doing violence to the mandatory provisions of the Rules, the better recourse to follow is to apply the rule of liberality that the Rules of Court provides and to give the deficient party the opportunity to comply, particularly when the amounts and interests involved in the litigation are substantial.[36]

Ideally, the expeditious administration of justice would be subserved if the Court immediately resolves the substantive merits of this case. However, We are constrained to remand it to the CA based on two grounds: *First*, the cases of illegal dismissal and ULP involved matters that are not purely legal in nature. There are facts that need to be ascertained, established, and resolved in relation to the legal issues raised. Unfortunately for petitioners, this Court is not a trier of facts.[37] And *Second,* based on the records, the pleadings, and other evidence before Us, the determinative facts are not yet complete, hence, We are not yet in a position to resolve the dispute with finality.

Specifically, the CA is tasked to carefully look into the issues as follows:

1. Whether there is a need to pierce the corporate veil[38] of SRMI in relation to SAN R Mining & Const. Corp. and Galeo Equipment and Mining Company, Inc., all of which are allegedly run by the same Gutierrez family

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[36] *Barra v. Civil Service Commission,* 706 Phil. 523, 527 (2013) (Citations omitted).

[37] *3rd Alert Security and Detective Services, Inc. v. Navia,* 687 Phil. 610, 615 (2012).

[38] "x x x Under this doctrine, the court looks at the corporation as a

2. Whether SRMI observed the requisites of the law on contractual, project, fixed-term, and househelper/ domestic employments *vis-a-vis* the alleged employment contracts

3. Whether there is factual basis to support a conclusion that SRMI is guilty of bad faith in not complying with its statutory duty to bargain collectively with SRMIWU-FFW

4. Whether there is factual basis to make SRMI accountable for damages and attorney's fees

5. Whether there is factual basis to hold the corporate officers solidarily liable with SRMI

WHEREFORE, the petition is **GRANTED** in part. The May 31, 2013 Resolution and July 31, 2014 Resolution of the Court of Appeals in CA G.R. SP No. 07577, which dismissed the petition for *certiorari* assailing the October 17, 2012 Decision and December 28, 2012 Resolution of the National Labor Relations Commission, are **REVERSED** and **SET ASIDE**. CA G.R. SP No. 07577 is **REINSTATED** and **REMANDED** to the Court of Appeals for further proceedings that must be resolved with reasonable dispatch.

SO ORDERED.

Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

Carpio (Chairperson), J., on official leave.

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mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group. Another formulation of this doctrine is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same. The purpose behind piercing a corporation's identity is to remove the barrier between the corporation and the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities." (*Mayor v. Tiu*, G.R. No. 203770, [November 23, 2016]).

2. Whether SRMI observed the requisites of the law on contractual, project, fixed-term, and househelper/ domestic employments *vis-a-vis* the alleged employment contracts

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SO ORDERED.

Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

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mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group. Another formulation of this doctrine is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same. The purpose behind piercing a corporation's identity is to remove the barrier between the corporation and the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities." (*Mayor v. Tiu*, G.R. No. 203770, [November 23, 2016]).

EN BANC

[A.C. No. 8968. September 26, 2017]

MA. VILMA F. MANIQUIZ, *complainant, vs.* **ATTY. DANILO C. EMELO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; MUST ALWAYS DISCHARGE THEIR POWERS AND DUTIES, WHICH ARE IMPRESSED WITH PUBLIC INTEREST, WITH ACCURACY AND FIDELITY, AND WITH CAREFULNESS AND FAITHFULNESS.— Notarization is the act that ensures the public that the provisions in the document express the true agreement between the parties. Transgressing the rules on notarial practice sacrifices the integrity of notarized documents. The notary public is the one who assures that the parties appearing in the document are indeed the same parties who executed it. This obviously cannot be achieved if the parties are not physically present before the notary public acknowledging the document since it is highly possible that the terms and conditions favorable to the vendors might not be included in the document submitted by the vendee for notarization. Worse, the possibility of forgery becomes real. It should be noted that a notary public's function should not be trivialized; a notary public must always discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity, and with carefulness and faithfulness. Notaries must, at all times, inform themselves of the facts they certify to. And most importantly, they should not take part or allow themselves to be part of illegal transactions.

2. ID.; ID.; ONLY THOSE WHO ARE QUALIFIED OR AUTHORIZED MAY ACT AS NOTARIES PUBLIC, FOR NOTARIZATION IS INVESTED WITH SUBSTANTIVE PUBLIC INTEREST.— Where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. For one, performing a notarial act without such commission is a violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then,

too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. It cannot be overemphasized that notarization is not an empty, meaningless, routinary act. Notarization is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Hence, the requirements for the issuance of a commission as notary public are treated with a formality definitely more than casual.

3. ID.; ATTORNEYS; LEGAL PROFESSION; MEMBERSHIP THEREIN IS A PRIVILEGE THAT IS BESTOWED UPON INDIVIDUALS WHO ARE NOT ONLY LEARNED IN LAW, BUT ALSO KNOWN TO POSSESS GOOD MORAL CHARACTER.— The Court must reiterate that membership in the legal profession is a privilege that is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession. To declare that lawyers must at all times uphold and respect the law is to state the obvious, but such statement can never be overemphasized. Since of all classes and professions, lawyers are most sacredly bound to uphold the law, it is then imperative that they live by the law.

4. ID.; NOTARIES PUBLIC; THE LAWYER'S ACT OF NOTARIZING A DEED OF SALE WITHOUT ALL THE PARTIES PERSONALLY APPEARING BEFORE HIM AND IN THE ABSENCE OF A NOTARIAL COMMISSION IS A VIOLATION OF HIS DUTY TO OBSERVE FAIRNESS AND HONESTY IN ALL HIS DEALINGS AND TRANSACTIONS.— When Emelo was admitted to the Bar, he took an oath to obey the laws, do no falsehood, and conduct himself as a lawyer according to the best of his knowledge and discretion. After a review of the records of the case, however, the Court finds him guilty of deceit, gross misconduct, and dishonesty in notarizing the deed of sale without all the parties personally appearing before him and in the absence of a notarial commission. The public is led to expect that lawyers would always be mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. The lawyer is expected to maintain, at all times, a high standard of legal

> proficiency, and to devote his full attention, skill, and competence to his work. To this end, he is enjoined to employ only fair and honest means to attain lawful objectives. Emelo's failure to fulfill this basic undertaking constitutes a violation of his duty to observe fairness and honesty in all his dealings and transactions. Indubitably, he fell short of the demands required of him as a faithful member of the bar. His inability to properly discharge said duty makes him answerable, not just to the private complainant, but also to the Court, to the legal profession, and to the general public. Considering the crucial importance of his role in the administration of justice, his misconduct certainly diminished the confidence of the public in the integrity and dignity of the legal profession.

D E C I S I O N

PERALTA, *J.*:

This is an administrative complaint filed by Ma. Vilma Maniquiz against Atty. Danilo C. Emelo, for notarizing a fictitious Deed of Absolute Sale and in the absence of the required notarial commission.

The procedural and factual antecedents of the case are as follows:

Maniquiz alleged that Emelo violated his lawyer's oath and the Code of Professional Responsibility (*CPR*) when he willfully notarized a fictitious Deed of Absolute Sale containing a falsified signature of her sister-in-law, Mergelita Sindanom Maniquiz, as vendor of a parcel of land in favor of spouses Leonardo and Lucena Torres, as the vendees. Even worse, Emelo notarized said document without being authorized to act as a notary public for Cavite.

On January 11, 2011, a person connected with the Spouses Torres gave Maniquiz a copy of said deed of sale. When she showed it to Mergelita, the latter was surprised and denied that she ever signed the same. Also, they noticed that the document did not show the names of the witnesses but only their signatures and the purported vendees failed to present any government-

issued identification documents. Emelo's notarial commission and roll of attorneys number were likewise not indicated in the document. Thus, Maniquiz went to Emelo's residence to confirm if he indeed notarized said deed of sale. Emelo told them that he did notarize said document based on a photocopy of Mergelita's passport which was shown to him by his *kumpare*, Leonardo Torres, who personally appeared before him at that time.

Emelo, for his part, denied the accusations against him. In his belatedly filed Comment on July 26, 2012, he argued that he was not remiss in his obligations as a notary public when he notarized the subject deed of absolute sale since the parties actually appeared before him. He likewise attested that a woman introduced herself to him as Mergelita Maniquiz, as evidenced by her passport. As regards the issue of absence of notarial commission, he explained that for the year 2007, he could not retrieve orders of his commission as they may have been destroyed when his residential house was inundated by the typhoon Milenyo on September 28, 2006. He admitted the notarization of said document without notarial commission and begged for clemency, kind consideration, and forgiveness for the same.

On June 18, 2013, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended Emelo's suspension from the practice of law for two (2) years.[1] On October 10, 2014, the IBP Board of Governors passed Resolution No. XXI-2014-729,[2] which adopted and approved, with modification, the aforementioned recommendation, hence:

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 considering that Respondent is liable for deceit, gross misconduct and dishonesty,*

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[1] Report and Recommendation submitted by Commissioner Eldrid C. Antiquiera; *rollo*, pp. 141-142.

[2] *Rollo*, pp. 139-140.

Atty. Danilo C. Emelo is hereby ***SUSPENDED from the practice of law for two (2) years and his notarial commission, if presently commissioned, is REVOKED.*** *Further, he is* ***DISQUALIFIED from being commissioned as notary public for two (2) years.***

The Court's Ruling

The Court upholds the findings and recommendations of the IBP that Emelo should be held liable for the questioned act.

Notarization is the act that ensures the public that the provisions in the document express the true agreement between the parties. Transgressing the rules on notarial practice sacrifices the integrity of notarized documents. The notary public is the one who assures that the parties appearing in the document are indeed the same parties who executed it. This obviously cannot be achieved if the parties are not physically present before the notary public acknowledging the document since it is highly possible that the terms and conditions favorable to the vendors might not be included in the document submitted by the vendee for notarization. Worse, the possibility of forgery becomes real.[3] It should be noted that a notary public's function should not be trivialized; a notary public must always discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity, and with carefulness and faithfulness. Notaries must, at all times, inform themselves of the facts they certify to. And most importantly, they should not take part or allow themselves to be part of illegal transactions.[4]

Where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. For one, performing a notarial act without such commission is a violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate

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[3] *Anudon v. Atty. Cefra*, 753 Phil. 421, 430 (2015).

[4] *Sultan v. Atty. Macabanding*, 745 Phil. 12, 20 (2014).

falsehood, which the lawyer's oath similarly proscribes. It cannot be overemphasized that notarization is not an empty, meaningless, routinary act. Notarization is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Hence, the requirements for the issuance of a commission as notary public are treated with a formality definitely more than casual.[5]

These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the CPR. Canon 1 and Rule 1.01 of the CPR provide:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.0 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

x x x x x x x x x

Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. A lawyer, to the best of his ability, is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary to the same. A lawyer's personal deference to the law not only speaks of his character but it also inspires the public to likewise respect and obey the law. Rule 1.0, on the other hand, states the norm of conduct to be observed by all lawyers. Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is unlawful. Unlawful conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element. To be dishonest means the disposition to lie, cheat, deceive, defraud, or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness, and straightforwardness, while conduct that is deceitful means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used

[5] *Almazan, Sr. v. Atty. Suerte-Felipe*, 743 Phil. 131, 137 (2014).

upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.[6]

The Court must reiterate that membership in the legal profession is a privilege that is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession. To declare that lawyers must at all times uphold and respect the law is to state the obvious, but such statement can never be overemphasized. Since of all classes and professions, lawyers are most sacredly bound to uphold the law, it is then imperative that they live by the law.[7]

When Emelo was admitted to the Bar, he took an oath to obey the laws, do no falsehood, and conduct himself as a lawyer according to the best of his knowledge and discretion. After a review of the records of the case, however, the Court finds him guilty of deceit, gross misconduct, and dishonesty in notarizing the deed of sale without all the parties personally appearing before him and in the absence of a notarial commission.

The public is led to expect that lawyers would always be mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. The lawyer is expected to maintain, at all times, a high standard of legal proficiency, and to devote his full attention, skill, and competence to his work. To this end, he is enjoined to employ only fair and honest means to attain lawful objectives.[8]

Emelo's failure to fulfill this basic undertaking constitutes a violation of his duty to observe fairness and honesty in all his dealings and transactions. Indubitably, he fell short of the demands required of him as a faithful member of the bar. His

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[6] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 566 (2014).

[7] *Id*.

[8] *Pitcher v. Atty. Gagate*, 719 Phil. 82, 91 (2013).

inability to properly discharge said duty makes him answerable, not just to the private complainant, but also to the Court, to the legal profession, and to the general public. Considering the crucial importance of his role in the administration of justice, his misconduct certainly diminished the confidence of the public in the integrity and dignity of the legal profession.[9]

In the recent case of *De Jesus v. Atty. Sanchez-Malit*,[10] the respondent-lawyer notarized twenty-two (22) public documents even without the signatures of the parties on those documents. The Court suspended the lawyer from the practice of law for one (1) year and perpetually disqualified her from being a notary public. In *Anudon v. Atty. Arturo B. Cefra*,[11] wherein the lawyer notarized a Deed of Absolute Sale without requiring the presence of the affiants, the Court suspended the respondent-lawyer from the practice of law for two (2) years and likewise perpetually disqualified him from being commissioned as a notary public.

Therefore, pursuant to the aforecited principles, the Court finds Emelo guilty of violating the pertinent Canons of the CPR, for which he must necessarily be held administratively liable.

WHEREFORE, **IN VIEW OF THE FOREGOING**, the Court **SUSPENDS** Atty. Danilo C. Emelo from the practice of law for a period of two (2) years, **REVOKES** his notarial commission, if presently commissioned, and **PERPETUALLY DISQUALIFIES** him from being commissioned as a notary public. The Court further **WARNS** him that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this decision be included in the personal records of Atty. Danilo C. Emelo and entered in his file in the Office of the Bar Confidant.

Let copies of this Decision be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines, for their information and guidance.

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[9] *Rollon v. Atty. Naraval*, 493 Phil. 24, 32 (2005).

[10] 738 Phil. 480 (2014).

[11] *Supra* note 3.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Carpio, J., on official leave.

Jardeleza, J., on wellness leave.

EN BANC

[A.C. No. 11543. September 26, 2017]

SUSAN BASIYO and ANDREW WILLIAM SIMMONS, *complainants, vs.* **ATTY. JOSELITO C. ALISUAG,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY TO UPHOLD RESPECT FOR THE LAW AND PROTECT THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION; VIOLATED WHEN NOTARY PUBLIC ACKNOWLEDGED A DEED OF SALE WITH A MUCH LOWER PURCHASE PRICE DEPRIVING THE GOVERNMENT OF THE CORRECT AMOUNT OF TAXES.— Certainly, a member of the bar may be removed or suspended from his office for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or for any violation of the oath which he is required to take before the admission to practice. By notarizing another deed of sale with a much lower purchase price, which was later submitted to the BIR for the purpose of paying the capital gains tax, Alisuag clearly violated his duty of upholding the respect for the law and protecting the integrity and dignity of the legal profession. He allowed and acknowledged a

document which was meant to deprive the government of the correct amount of taxes.

2. ID.; ID.; LAWYER HAS THE DUTY TO RENDER THE NECESSARY ACCOUNTING AND TO RETURN THE REMAINING UNUTILIZED AMOUNT IN CASE AT BAR.— Alisuag's failure and inordinate refusal to render an accounting (of the alleged expenses incurred relative to the purchase of the subject property) and return the remaining money after numerous demands raises a reasonable presumption that he had converted it to his own use. The Court, therefore, agrees with the IBP Board's finding that Alisuag must be held administratively accountable for his actions. Corollarily, Alisuag must render the necessary accounting of expenses incurred and return the remaining unutilized amount. While it is true that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative, and not civil, liability, it must be clarified that said rule remains applicable only when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct from, and not intrinsically linked to, his professional engagement, as in the present case.

3. ID.; ID.; NOTARY PUBLIC; FAILURE TO OBSERVE THE UTMOST CARE IN PERFORMING THEIR DUTIES TO PRESERVE PUBLIC CONFIDENCE IN THE INTEGRITY OF NOTARIZED DOCUMENTS; WARRANTS PERPETUAL DISQUALIFICATION FROM BEING COMMISSIONED AS A NOTARY PUBLIC.— In recent jurisprudence, the Court has perpetually disqualified the lawyer-respondents from being commissioned as a notary public for failing to observe the utmost care in performing their duties to preserve public confidence in the integrity of notarized documents. The duty to public service is made more important when a lawyer is commissioned as a notary public. Like the duty to defend a client's cause within the bounds of law, a notary public has the additional duty to preserve public trust and confidence in his office by observing extra care and diligence in ensuring the integrity of every document that comes under his notarial seal, and seeing to it that only documents that he personally inspected and whose signatories he personally identified are recorded in his notarial books.

APPEARANCES OF COUNSEL

Rocamora Timbancaya Law Office for complainants.

D E C I S I O N

PERALTA, *J.*:

The instant case sprung from a complaint which Susan Basiyo and Andrew William Simmons filed against respondent Atty. Joselito C. Alisuag, for alleged deceit, falsification, and malpractice, in violation of the Code of Professional Responsibility.

The procedural and factual antecedents of the case are as follows:

Complainants Basiyo and Simmons, who are common-law husband and wife, put up a pension house called "*Rose Place*" located in Puerto Princesa, Palawan. Thereafter, they started looking for a piece of land since they needed a bigger place. That was the time when they met Alisuag, who recommended a lot in Bacungan. He told complainants that the vendors, Rogelio Garcia and Rosalina Talorong, had the full right to dispose of the same although the property was in the name of one Alejandro Castillo.

On January 12, 2008, Alisuag prepared and notarized a Deed of Absolute Sale covering the subject property with an area of 32,897 square meters for the total purchase price of ₱1,973,820.00. Basiyo signed said document as the Vendee. Previously, Alisuag also signed an Agreement dated January 12, 2008 between Basiyo and the same vendors, for the same purchase price. Said Agreement, however, was not duly notarized. For brokering the sale, and preparing and notarizing the documents, Alisuag received one percent (1%) of the total purchase price. Complainants likewise gave him ₱150,000.00 for capital gains tax, ₱70,000.00 for estate tax, ₱10,000.00 for publication, and ₱5,000.00 for documentary stamp tax. Also, since complainants were intending to use the property for business

purposes, Alisuag offered to make for them an Environmental Impact Study for a Wildlife Permit, for the amount of ₱300,000.00, and to file an application for said permit for another ₱300,000.00. Complainants, however, not only failed to get the title to the property, but were likewise subjected to a criminal charge by Trinidad Ganzon, who claimed real ownership over the land. Thus, complainants gave Alisuag ₱40,000.00 for the filing of their counter-affidavit in said case and ₱10,000.00 for the filing of a civil case against Ganzon.

After several months and attempts to contact Alisuag, complainants were still unable to acquire the title and fence the purchased lot, the environmental study and wildlife permit remained unaccomplished, and no case was filed against Ganzon. They then decided to consult another lawyer and told Alisuag's wife that they wanted an accounting of the expenses and return of any remaining money given in connection with the sale. After consulting their new lawyer, complainants discovered that no estate tax was paid, only ₱25,001.00 was paid for capital gains tax, and the purchase price was merely ₱120,000.00, as shown in the Bureau of Internal Revenue (*BIR*) Certificate Authorizing Registration and in the copy of the *Pagbabagong Labas sa Hukuman na May Bilihang Gawa o Lubusan sa Isang Bahagi ng Pirasong Lupa*, which Alisuag notarized and the Palawan Mirror published. They also found out that Alisuag did not present the document to the National Commission of Indigenous Peoples for approval, as required under the law since the vendors are native Tagbanuas. The vendors likewise informed complainants that they only received ₱300,000.00 as payment for the property. Lastly, they learned that the vendors were not the only heirs of the registered owner, Castillo. Thus, they incurred additional expenses when they had to enter into an Amended Extra-Judicial Settlement of Castillo's estate with the latter's other heirs. Hence, complainants filed a complaint against Alisuag.

For his part, Alisuag denied complainants' accusations. He contended that he was not part of the group of brokers who convinced Simmons to purchase the property. On January 19,

2008, the vendors Garcia and Talorong came to his office with an Extra-Judicial Partition and simultaneous sale written in Tagalog. He then reminded them that they had already signed a previous Deed of Sale with complainants. The vendors, however, told him that the new Deed of Sale reflected the real intention of the parties. Thus, Alisuag notarized the same. He also claimed that he had been actively handling the cases and proceedings covering the lot, including the case initiated by Ganzon, until complainants terminated his services as their counsel. He likewise claimed that the payment of the required taxes over the sale of the property was handled by the brokers and he denied any participation in the same. Complainants never demanded, formally or informally, for the return or accounting of any money. The first time that he came across said issue was when the affidavit complaint was sent to him.

On January 21, 2011, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP-CBD*) recommended that the administrative complaint against Alisuag be dismissed for lack of merit.[1] It ratiocinated that Alisuag's act of notarizing a subsequent deed of sale presented to him by the vendors did not constitute deceit; he was merely performing his duties as a notary public. On December 29, 2012, however, the IBP Board of Governors passed Resolution No. XX-2012-594,[2] which reversed the recommendation of the IBP-CBD, and found Alisuag guilty of deceit and falsification, and ordered his suspension from the practice of law for two (2) years, thus:

RESOLVED to REVERSE, as it is hereby unanimously REVERSED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and finding Respondent guilty of deceit and falsification, Atty. Joselito C. Alisuag is hereby ***SUSPENDED*** *from the practice of law for two (2) years.*

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[1] Report and Recommendation submitted by Commissioner Rebecca Villanueva-Maala; *rollo*, pp. 128-136.

[2] *Rollo*, p. 127.

On July 28, 2016, the IBP Board of Governors consequently issued an Extended Resolution.

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendations of the IBP Board of Governors.

The records show that on January 12, 2008, Alisuag prepared and notarized a Deed of Absolute Sale for the purchase price of ₱1,973,820.00, covering a lot registered under the name of Alejandro Castillo, with an area of 32,897 square meters. Prior to that, however, there had been a similar document, also dated January 12, 2008, but with Basiyo as the lone vendee. This had also been notarized by Alisuag sans the notarial document details. Yet another Deed of Sale, dated January 19, 2008, with Document Number 77, Page Number 16, Book XII, Series of 2008, was also signed and acknowledged by Alisuag as notary public, as published on the local newspaper, *Palawan Mirror*. Notably, the purchase price indicated in this document was only ₱120,000.00. According to Alisuag, he agreed to notarize the same because the vendors told him that the ₱120,000.00 was the purchase price the parties had eventually agreed on. However, six (6) days after Alisuag had notarized the deed of sale with the purchase price of ₱120,000.00, he gave complainants an estimate of ₱150,000.00 for capital gains tax. How he arrived at ₱150,000.00 perplexes the Court. Even if the purchase price used was ₱1,973,820.00 for the computation of the capital gains tax six percent (6%), the amount of ₱150,000.00 would still be excessive. Also, based on the BIR Certificate Authorizing Registration, no estate tax was either assessed or paid.

Moreover, despite receiving an additional ₱10,000.00 for the filing of a civil suit against Ganzon, Alisuag never filed said case. He likewise failed to secure the environmental clearance and the wildlife permit for which he had previously received ₱300,000.00. He also refused to render a complete accounting of the alleged expenses incurred relative to the purchase of the subject property.

Certainly, a member of the bar may be removed or suspended from his office for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or for any violation of the oath which he is required to take before the admission to practice.[3] By notarizing another deed of sale with a much lower purchase price, which was later submitted to the BIR for the purpose of paying the capital gains tax, Alisuag clearly violated his duty of upholding the respect for the law and protecting the integrity and dignity of the legal profession. He allowed and acknowledged a document which was meant to deprive the government of the correct amount of taxes. Additionally, he indubitably violated the following provisions of the Code of Professional Responsibility (*CPR*) when he failed to file the suit against Ganzon and secure the required environmental permits, and when he refused to account for the amounts given to him by complainants, to wit:

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

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

x x x x x x x x x

Rule 16.03 A lawyer shall deliver the funds and property of his client when due or upon demand. x x x

x x x x x x x x x

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

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x x x x x x

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[3] Section 27, Rule 138 of the Rules of Court.

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Alisuag's failure and inordinate refusal to render an accounting and return the remaining money after numerous demands raises a reasonable presumption that he had converted it to his own use.[4]

The Court, therefore, agrees with the IBP Board's finding that Alisuag must be held administratively accountable for his actions. Corollarily, Alisuag must render the necessary accounting of expenses incurred and return the remaining unutilized amount. While it is true that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative, and not civil, liability, it must be clarified that said rule remains applicable only when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct from, and not intrinsically linked to, his professional engagement, as in the present case.[5]

In recent jurisprudence, however, the Court has perpetually disqualified the lawyer-respondents from being commissioned as a notary public for failing to observe the utmost care in performing their duties to preserve public confidence in the integrity of notarized documents.[6] The duty to public service is made more important when a lawyer is commissioned as a notary public. Like the duty to defend a client's cause within the bounds of law, a notary public has the additional duty to preserve public trust and confidence in his office by observing extra care and diligence in ensuring the integrity of every document that comes under his notarial seal, and seeing to it

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[4] *Viray v. Atty. Sanicas*, 744 Phil. 247, 254 (2014).

[5] *Pitcher v. Atty. Gagate*, 719 Phil. 82, 94 (2013).

[6] *Orlando S. Castelo, et al. v. Atty. Ronald Segundino C. Ching*, A.C. No. 11165, February 6, 2017; *Mariano v. Atty. Echanez*, A.C. No. 10373, May 31, 2016; *Anudon v. Atty. Cefra,* 753 Phil. 421 (2015); *De Jesus v. Atty. Sanchez-Malit*, 738 Phil. 480 (2014).

that only documents that he personally inspected and whose signatories he personally identified are recorded in his notarial books.[7]

WHEREFORE, **IN VIEW OF THE FOREGOING**, the Court **SUSPENDS** Atty. Joselito C. Alisuag from the practice of law for two (2) years effective upon his receipt of this Decision, **REVOKES** his notarial commission, if presently commissioned, and **PERPETUALLY DISQUALIFIES** him from being commissioned as a notary public, **ORDERS** him to **RENDER** the necessary accounting of expenses incurred relative to the purchase of the property and **RETURN** to complainants Susan Basiyo and Andrew William Simmons the remaining unutilized amount within sixty (60) days from notice of this Decision, and **WARNS** him that a repetition of the same or similar offense, including the failure to render the necessary accounting and to return any remaining amount, shall be dealt with more severely.

Let copies of this decision be included in the personal record of Atty. Joselito C. Alisuag and entered in his file in the Office of the Bar Confidant.

Let copies of this decision be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines for its guidance.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Carpio, J., on official leave.

Jardeleza, J., on wellness leave.

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[7] *Orlando S. Castelo, et al. v. Ronald Segundino C. Ching*, A.C. No. 11165, February 6, 2017.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam, and *Reyes, JJ.,* concur.

Carpio, J., on official leave.

Jardeleza, J., on wellness leave.

EN BANC

[A.M. No. P-17-3754. September 26, 2017]
(Formerly OCA IPI No. 14-4285-P)

MARIA MAGDALENA R. JOVEN, JOSE RAUL C. JOVEN, and NONA CATHARINA NATIVIDAD JOVEN CARNACETE, *complainants, vs.* **LOURDES G. CAOILI, Clerk of Court, Municipal Trial Court in Cities, Branch 1, Baguio City, Benguet,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT FOR COURT PERSONNEL (AM NO. 03-06-13-SC); PROVISIONS ON FIDELITY OF DUTY, CONFLICT OF INTEREST AND PERFORMANCE OF DUTIES VIOLATED IN CASE AT BAR.— In this case, it was established during the investigation that respondent, using her employment in the Judiciary as stenographer, gave aid to Rillera with regard to her pending cases by procuring lawyers for the latter, securing a TSN and a purported advanced copy of the court's order on the case, and giving advice and updates to Rillera as regards the case. It was also established that respondent was receiving monthly remuneration from the latter for such aid. Also, because of such services, respondent's daughter was employed by Rillera as a private secretary, which

is another form of consideration and/or remuneration. x x x The following provisions of A.M. No. 03-06-13-SC, above-cited, are relevant, *viz.*: **CANON I FIDELITY TO DUTY** SECTION 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others. x x x **CANON III CONFLICT OF INTEREST** x x x SECTION 2. Court personnel shall not: x x x (b) Receive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary. **CANON IV PERFORMANCE OF DUTIES** x x x SECTION 5. Court personnel shall not recommend private attorneys to litigants, prospective litigants, or anyone dealing with the Judiciary. With the aforecited explicit provisions of the Code, respondent's acts are a clear stray from the straight and narrow, a transgression of the strict norm of conduct prescribed for and expected from court employees.

2. ID.; ID.; COURT EMPLOYEES; ACTS CONSTITUTIVE OF GRAVE MISCONDUCT, IMPROPRIETY, AND CONDUCT UNBECOMING OF A COURT EMPLOYEE; GRAVE OFFENSE THAT WARRANTS DISMISSAL FROM SERVICE.— Without doubt, respondent's actions damaged the integrity of the service, jeopardized the public's faith in the impartiality of the courts, and eroded the public's respect for the institution. Meeting with a party litigant, giving undue assistance thereto, and receiving consideration therefor, are acts definitely constitutive of grave misconduct, impropriety, and conduct unbecoming of a court employee, which altogether is a grave offense that entails an equally grave penalty. x x x **WHEREFORE,** premises considered, respondent x x x is meted the penalty of **DISMISSAL** from service, x x x.

APPEARANCES OF COUNSEL

Fernando M. Peña for complainants.
Amando B. Lawagan for respondent.

D E C I S I O N

***PER CURIAM*:**

A Complaint-Affidavit[1] dated May 16, 2014 was filed by Maria Magdalena R. Joven, Jose Raul C. Joven, and Nona Catharina Natividad Joven-Carnacete (complainants), charging Lourdes G. Caoili (respondent), Clerk of Court III, Branch 1, Municipal Trial Court in Cities (MTCC), Baguio City, with impropriety, conduct unbecoming a court employee, and grave misconduct.

This case was brought about by Margarita Cecilia Rillera's (Rillera) use of an "Unsigned Order of Dismissal" dated May 11, 2011 and transcript of stenographic notes (TSN) as documentary evidence in several cases filed by Rillera and the complainants against each other.[2] The said documents purportedly pertain to Civil Case No. 7577-R – an action for Accounting of Stocks and Shares and Production of Documents filed by complainants against Rillera's predecessors-in-interest, subject matter of which was the estate of complainants' predecessors-in-interest, before the Regional Trial Court (RTC) of Baguio City, Branch 5, which was eventually dismissed. According to the complainants, the said documents were non-existent and dubious and they only came to know of the same upon Rillera's use thereof as evidence in certain cases, which misled the courts and offices wherein the said cases were pending, resulting to rulings against complainants.[3]

This prompted the complainants to file criminal cases for perjury, use of falsified document, and falsification of public documents against Rillera. This is where it was discovered, through Rillera's Judicial Counter-Affidavit[4] dated October 8, 2013, that the source of the said spurious documents was respondent. As such, these criminal cases were all dismissed

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[1] *Rollo*, pp. 2-17.

[2] *Id.* at 638-639.

[3] *Id.* at 683.

[4] *Id.* at 27-35; 243-251.

in favor of Rillera. Nonetheless, the Joint Resolution[5] dated January 3, 2014 by Fiscal Elmer Manuel Sagsago, Deputy City Prosecutor, expressly stated that respondent was definitely the source of the said spurious documents.[6]

Simply put, complainants allege that respondent was giving improper services to aid Rillera in her cases such as securing court documents, releasing a copy of an unsigned court order, and procuring lawyers for the latter in exchange of monetary and other benefits such as giving respondent's daughter employment as Rillera's private secretary.

Hence, the instant administrative complaint.

In her Comment[7] dated June 27, 2014, respondent vehemently denied the allegations against her. Respondent, however, admitted having met Rillera and her husband when they came to the court supposedly to talk to the presiding judge, who was in the middle of a proceeding. While waiting, respondent eased up with Rillera when she learned that they might be distant relatives. Since then, Rillera visited respondent at her house and invited her to restaurants until they lost contact when Rillera became ill.[8]

As regards the unsigned order, respondent argues that Rillera pointed to her as the source thereof merely to avoid liability.[9] Respondent maintains that she had no knowledge of the said order until Rillera wrote her a letter sometime in September 12, 2013 asking her to explain the same. Perplexed as she claims to have no knowledge of the same, she tried to call Rillera but to no avail. She also avers that if there was such spurious order, she was not the one who gave it to Rillera. What happened, according to respondent, was on March 12, 2012, Rillera's

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[5] *Id.* at 18-25; 253-260.

[6] *Id*. at 638-639.

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

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

[9] *Id*. at 53.

husband called her up asking help in securing the TSN of a case before Branch 5 of Baguio City RTC. She then coordinated with a certain Ms. Panhon, a staff member of the said court. When Ms. Panhon notified respondent that the requested TSN was ready for pick up and the latter relayed the same to Rillera. Rillera's husband, however, requested that respondent be the one to hand him the documents. Respondent obliged and went to Branch 5, where Ms. Panhon handed a sealed brown envelope supposedly containing the requested TSN, which she immediately handed over to Rillera. Respondent maintains that she never opened the said sealed envelop. Anent the TSN, respondent argues that the same is not dubious, contrary to the complainants' argument, as evidenced by a certification issued by the Clerk of Court of Branch 5.[10]

In addition, respondent avers that there is nothing dishonest nor improper in her act of assisting Rillera in obtaining the TSN as she also extended help to the complainants one time in going to the Office of the Clerk of Court for the release of their cash bond in another case.[11]

The Office of the Court Administrator (OCA) recommended that the case be referred to the Executive Judge of RTC, Baguio City, Benguet for investigation, report and recommendation.[12]

On August 17, 2015, this Court resolved to refer the matter to Executive Judge Mia Joy O. Cawed (Investigating Judge) for investigation, report and recommendation within 60 days from receipt of the records.[13]

The case was then set for several hearings wherein the complainants and respondent presented their witnesses and other evidence. The Investigating Judge also subpoenaed additional witnesses to complete her investigation, to wit: Atty. Alejandro

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

[11] *Id*. at 58.

[12] *Id*. at 112.

[13] *Id*. at 113.

Epifanio Guerrero (Branch Clerk of Court, RTC, Baguio, Branch 5); Virginia Ramirez and Editha Panhon Villarubia (Stenographers, RTC, Baguio, Branch 5); Rillera; and Atty. Maita Cascolan-Andres (Rillera's counsel in the case where the subject counter-affidavit was filed). It was then found that the testimonies of the said additional witnesses supported the claim of the complainants.[14] The following facts were thus established, *viz.*:

1. That there is an unsigned Order dated May 11, 2011 which appears to have been issued by the [RTC], Branch 5, Baguio City in Civil Case No. 7577-R. That the said Order dismissed Civil Case No. 7577-R;

2. That the unsigned Order was not issued by RTC Branch 5, Baguio City;

3. That the unsigned Order came from the respondent, Lourdes G. Caoili;

4. That the respondent gave the unsigned Order to Margarita Cecilda B. Rillera [Rillera];

5. That the respondent told [Rillera] that the Order was the advance copy of the order that will be released by Judge Antonio Esteves, then Presiding Judge of RTC, Branch 5, Baguio City;

6. That the respondent had been giving updates or pieces of advice to [Rillera] in relation to Civil Case No. 7577-R;

7. That the respondent was the one who procured lawyers for MCR and that she even accompanied [Rillera] to the office of Atty. Maita Lourdes Cascolan-Andres for [Rillera] to engage the service[s] of Atty. Andres;

8. That the respondent made [Rillera] believe that they are distant relatives which made [Rillera] trust her;

9. That after the first meeting of the respondent and [Rillera] at the staff room of MTCC, Branch 1, Baguio City, the respondent made [Rillera] employ her daughter as [Rillera]'s private secretary;

10. That for the services of the respondent by way of procuring

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[14] *Id*. at 636-648.

lawyers for [Rillera], giving her updates, securing [TSN] and assuring her of the outcome of the case, the respondent demanded payment in the form of a monthly allowance in the amount of Seven Thousand Five Hundred Pesos (₱7,500.00) which includes expenses for her Globe bill;

11. That every month from March 2012 to October 2013, respondent demanded [Rillera] to pay her ₱7,500.00 monthly allowance;

12. That payments were done at the Solibao Restaurant, Burnham Park, Baguio City;

13. That consultations made by [Rillera] with the respondent, after their first meeting, were almost always done at the Solibao Restaurant, Baguio City where the respondent and [Rillera] dined at the expense of [Rillera];

14. That respondent pressured the stenographers of RTC Branch 5, Baguio City in the transcription and encoding of [the TSN] in Civil Case No. 7577-R which is the reason for the mistakes as to the case number and dates in the TSN of the hearing on May 11, 2012;

15. That the respondent attempted several times to talk to court employees Virginia Ramirez, Editha Panhon Villarubia and Atty. Alejandro Epifanio Guerrero, all from RTC Branch 5, Baguio City, to convince them to testify in her favor in the instant complaint telling them that their testimony should support her defense;

16. That the respondent prepared a Judicial Affidavit for Editha Panhon Villarubia which was read aloud to her by the respondent but which Editha did not sign because what were stated therein are not true.[15]

With the foregoing findings, the Investigating Judge found substantial evidence that respondent is guilty of violating A.M. No. 03-06-13-SC or the Code of Conduct for Court Personnel (the Code), specifically Section 1, CANON I to Fidelity of Duty, Section 2 (b), CANON III on Conflict of Interest, and Section 5, CANON IV on Performance of Duties of the said Code, which is constitutive of grave misconduct, warranting the penalty of dismissal from service. Hence, the Investigating Judge

[15] *Id*. at 644-646.

recommended the filing of an administrative case against respondent for impropriety, conduct unbecoming a court employee, grave misconduct and eventually, her dismissal from service with forfeiture of all benefits, except accrued leave benefits, and with prejudice to reemployment in any branch or instrumentality of the government including government-owned or controlled corporations.[16]

In Our September 14, 2016 Resolution[17], the said Investigation, Report and Recommendation was referred to the OCA for evaluation, report and recommendation.

In a Memorandum[18] dated April 3, 2017, the OCA adopted the Investigating Judge's findings and recommendation.

The Court is now called to finally rule upon the instant administrative complaint, the issue being: should respondent be held administratively liable for the acts imputed against her?

Time and again, We have emphasized "that the conduct required of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with the heavy burden of responsibility."[19] "Those who work in the judiciary must adhere to high ethical standards to preserve the court's good name and standing."[20] "All court personnel should be reminded that they have no business getting personally involved in matters directly emanating from court-proceedings, unless expressly so provided by law.[21] The reason is that the image of the courts of justice is reflected in the conduct, official

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[16] *Id*. at 646-648.

[17] *Id*. at 679.

[18] *Id*. at 682-691.

[19] *Palero-Tan v. Urdaneta, Jr.*, 578 Phil. 25, 38 (2008).

[20] *Id.*

[21] *Holasca v. Pagunsan, Jr.*,739 Phil. 315, 328 (2014) citing *RE: LETTER OF JUDGE LORENZA BORDIOS PACULDO, Municipal Trial Court,*

or otherwise, of even its minor employees."[22] Indeed, any conduct, act or omission on the part of those who violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[23] This ruling equally applies to the case at bar.

In this case, it was established during the investigation that respondent, using her employment in the Judiciary as stenographer, gave aid to Rillera with regard to her pending cases by procuring lawyers for the latter, securing a TSN and a purported advanced copy of the court's order on the case, and giving advice and updates to Rillera as regards the case. It was also established that respondent was receiving monthly remuneration from the latter for such aid. Also, because of such services, respondent's daughter was employed by Rillera as a private secretary, which is another form of consideration and/or remuneration.

The factual findings and conclusions of the Investigating Judge, as adopted by the OCA, are well-taken. It is noteworthy that the Investigating Judge did not settle with the witnesses and evidence presented by both parties, but instead, additional witnesses were called upon on her own initiative to be able to have all the necessary details and to conduct a complete investigation. Respondent, for her part, merely offered bare denial and allegations. With these, no doubt lingers that the Investigating Judge's findings of fact were supported by substantial evidence. We, thus, adopt the Investigating Judge's and the OCA's factual findings and recommendations.

Branch 1, San Pedro, Laguna, ON THE ADMINISTRATIVE LAPSES COMMITTED BY NELIA P. ROSALES, Utility Worker, Same Court, 569 Phil. 346, 354 (2008).

[22] *Id*.

[23] *Exec. Judge Loyao, Jr. v. Armecin*, 391 Phil. 715, 721 (2000) citing *Office of the Court Administrator v. Sheriff IV Julius G. Cabe, RTC, Branch 28, Catbalogan, Samar,* 389 Phil. 685, 689-699 (2000) and *Mendoza v. Judge Mabutas,* 295 Phil. 438, 447 (1993).

The following provisions of A.M. No. 03-06-13-SC, above-cited, are relevant, *viz.*:

CANON I
FIDELITY TO DUTY

SECTION 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.

x x x x x x x x x

CANON III
CONFLICT OF INTEREST

x x x x x x x x x

SECTION 2. Court personnel shall not:

x x x x x x x x x

(b) Receive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary.

CANON IV
PERFORMANCE OF DUTIES

x x x x x x x x x

SECTION 5. Court personnel shall not recommend private attorneys to litigants, prospective litigants, or anyone dealing with the Judiciary.

With the aforecited explicit provisions of the Code, respondent's acts are a clear stray from the straight and narrow, a transgression of the strict norm of conduct prescribed for and expected from court employees.

In an attempt to exculpate herself from liability, respondent averred that assisting Rillera in obtaining a TSN is not an act of dishonesty or impropriety as she, at one point, also assisted the complainants in withdrawing their cash bond.[24] According

[24] *Id*. at 360.

to her, extending assistance to party litigants is part of a public servant's job.[25]

We are not swayed. For one, it is not only her act of helping/assisting Rillera which was established. It was found that, with such assistance, a purported advanced court order was released, that she procured lawyers for a party litigant which is specifically prohibited by the Code, and that she gave updates and advice regarding the case in favor of a party litigant.[26] Meddling in a case pending before a court where she was not assigned and in which she had no relevance whatsoever is suspicious. Worse, it was also established that she was receiving consideration and/or remuneration therefor.

As correctly held by the Court in the case of *Holasca v. Pagunsan, Jr.*[27]:

> [This Court has always reminded court employees to] be wary when assisting persons with the courts and their cases. While they are not totally prohibited from rendering aid to others, they should see to it that the assistance, whether involving acts related to their official functions or not, does not in any way compromise the public's trust in the justice system.[28]

Without doubt, respondent's actions damaged the integrity of the service, jeopardized the public's faith in the impartiality of the courts[29], and eroded the public's respect for the institution. Meeting with a party litigant, giving undue assistance thereto, and receiving consideration therefor, are acts definitely constitutive of grave misconduct, impropriety, and conduct unbecoming of a court employee, which altogether is a grave offense that entails an equally grave penalty. What is more, it

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[25] *Id.* at 59.

[26] *Id.* at 644-648; 688-689.

[27] *Holasca v. Pagunsan, Jr.*, *supra* note 21.

[28] *Id.* at 329.

[29] *Id.*

did not escape this Court's notice that respondent had previously been held administratively liable in A.M. No. RTJ-14-2401[30] (Formerly OCA IPI No. 12-3841-RTJ) for falsification of official document with regard to her daily time record – another exhibition of respondent's dishonorable conduct, which has no place in the Judiciary.

WHEREFORE, premises considered, respondent Lourdes G. Caoili is hereby found **GUILTY** of **GRAVE MISCONDUCT and CONDUCT UNBECOMING OF A COURT PERSONNEL** and is meted the penalty of **DISMISSAL** from service, with prejudice to re-employment in any government office, branch or instrumentality, including government-owned or government-controlled corporations, with forfeiture of all benefits, except for accrued leave credits.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Carpio and *Jardeleza, JJ.,* on official leave.

EN BANC

[A.M. No. RTJ-17-2492. September 26, 2017]
(Formerly OCA IPI No. 13-4103-RTJ)

PROSECUTOR IVY A. TEJANO, *complainant, vs.* **PRESIDING JUDGE ANTONIO D. MARIGOMEN and UTILITY WORKER EMELIANO C. CAMAY,**

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[30] *Office of the Court Administrator v. Executive Judge Illuminada P. Cabato, et al.*, A.M. No. RTJ-14-2401, January 25, 2017.

JR.,[1] **both of Regional Trial Court (RTC), Branch 61, Bogo City, Cebu,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; VIOLATION OF ADMINISTRATIVE ORDERS IN CASE AT BAR IS VIOLATION OF SUPREME COURT RULES, DIRECTIVES AND CIRCULARS.— The civil case filed by Andrino against Tejano was assigned to Judge Himalaloan (of Branch 61, RTC, Bogo City) pursuant to Administrative Order No. 113-2011. However, Judge Marigomen granted Andrino's Motion to try the civil case, in violation of this Administrative Order. Assuming that Judge Himalaloan had repeatedly postponed hearings, Judge Marigomen should have instead sought the guidance of this Court on how to address the delay in the proceedings. After all, the Constitution grants this Court the power of administrative supervision over all courts and their personnel. Worse, despite the designation of Judge Trinidad as Assisting Judge (in Branch 61) under Administrative Order No. 137-2012, Judge Marigomen usurped Judge Trinidad's authority by failing to transfer the civil case to him. For violating Administrative Order Nos. 113-2011 and 137-2012, Judge Marigomen is guilty of violating Supreme Court rules, directives, and circulars, a less serious charge punishable by either suspension for not less than one (1) month but not more than three (3) months, or fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Under the circumstances, the fine of ₱20,000.00 is proper.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; BAIL IS FILED BEFORE THE COURT WHERE THE CASE IS PENDING; RULE IF BAIL CANNOT BE FILED BEFORE THE COURT WHERE THE CASE IS PENDING.— Bail, as defined in Rule 114, Section 1 of the Rules of Court, is "the security given for the release of a person in custody of the law, furnished by him [or her] or a bondsman, to guarantee his [or her] appearance before any court as required under the conditions hereinafter specified." Based on this definition, the accused

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[1] All pleadings refer to him as "Emiliano C. Camay, Jr." but his signed Comment shows "Emeliano C. Camay, Jr." See *Rollo*, pp. 56-58.

must be in custody of the law or otherwise deprived of his or her liberty to be able to post bail. Generally, bail is filed before the court where the case is pending. However, if bail cannot be filed before the court where the case is pending— as when the judge handling the case is absent or unavailable, or if the accused is arrested in a province, city, or municipality other than where the case is pending—Rule 114, Section 17(a) of the Rules of Court x x x shows that there is an order of preference with respect to where bail may be filed. In the absence or unavailability of the judge where the case is pending, the accused must first go to a judge *in the province, city, or municipality where the case is pending.* Furthermore, a judge of another province, city, or municipality may grant bail *only if* the accused has been *arrested* in a province, city, or municipality other than where the case is pending.

3. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GROSS IGNORANCE OF THE LAW; PRESENT WHERE A JUDGE NOT ASSIGNED TO THE PROVINCE, CITY OR MUNICIPALITY WHERE THE CASE IS PENDING APPROVES AN APPLICATION FOR BAIL FILED BY AN ACCUSED NOT ARRESTED.— A judge not assigned to the province, city, or municipality where the case is pending but approves an application for bail filed by an accused not arrested is guilty of gross ignorance of the law. The last sentence of Rule 114, Section 17(a) is clear that for purposes of determining whether or not the accused is in custody of the law, the mode required is arrest, not voluntary surrender, before a judge of another province, city, or municipality may grant a bail application. In the same vein, it is gross ignorance of the law if a judge grants an application for bail in a criminal case outside of his or her jurisdiction without ascertaining the absence or unavailability of the judge of the court where the criminal case is pending.

4. ID.; ID.; ID.; ID.; PENALTY MAY BE INCREASED WHERE THE JUDGE HAD BEEN PREVIOUSLY FOUND GUILTY OF GROSS IGNORANCE OF THE LAW.— Under Rule 140, Section 11(A) of the Rules of Court on the Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan, a serious charge such as gross ignorance of the law is punishable by a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. However, considering

that this was Judge Marigomen's second offense, as he had been previously found guilty of gross ignorance of the law in *Salazar v. Judge Marigomen,* this Court fines him with an amount more than ₱40,000.00, specifically, ₱100,000.00. This is allowed under Rule 140, Section 11(A), which uses the permissive "may" in enumerating the imposable sanctions for serious charges.

5. ID.; ID.; ID.; WITHDRAWAL OF ADMINISTRATIVE COMPLAINT DOES NOT DIVEST THE COURT OF ITS DISCIPLINARY AUTHORITY OVER COURT PERSONNEL.— While it is true that Tejano filed an Affidavit withdrawing her Complaint against Judge Marigomen, withdrawal of an administrative complaint "does not divest [this Court] of [its] disciplinary authority over court personnel." This Court "cannot be bound by the unilateral decision of a complainant to desist from prosecuting a case involving the discipline of parties subject to its administrative supervision." x x x This doctrine applies especially in this case where respondent is not just any other court personnel. Respondent is a judge, who is supposedly knowledgeable of the law but has been found grossly ignorant of it, not just once but twice.

R E S O L U T I O N

LEONEN, *J.*:

Without a standing warrant of arrest, a judge not assigned to the province, city, or municipality where the case is pending has no authority to grant bail. To do so would be gross ignorance of the law.

This resolves the Affidavit-Complaint[2] filed by Prosecutor Ivy A. Tejano (Tejano) against Presiding Judge Antonio D. Marigomen (Judge Marigomen) and Utility Worker Emeliano C. Camay, Jr. (Camay), both of Branch 61, Regional Trial Court, Bogo City, Cebu. Tejano charged Judge Marigomen with grave abuse of authority and gross ignorance of the law, and Camay with violating the Anti-Red Tape Act.

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[2] *Rollo,* pp. 1–5.

Pending before Branch 61, Regional Trial Court, Bogo City was a civil case[3] for declaration of absolute nullity of deed of absolute sale filed against Tejano by Jose Andrino (Andrino). This civil case was assigned to then Assisting Judge of Branch 61, Judge James Stewart Ramon E. Himalaloan (Judge Himalaloan),[4] pursuant to Administrative Order No. 113-2011.[5]

On July 19, 2012, Andrino moved[6] that Presiding Judge Marigomen instead try the civil case because hearings had been repeatedly postponed by Judge Himalaloan. Judge Marigomen granted the Motion in an Order[7] dated July 30, 2012.

On September 17, 2012, Administrative Order No. 137-2012[8] was issued where Judge Mario O. Trinidad (Judge Trinidad) of Branch 64, Regional Trial Court, Guihulngan City, Negros Oriental was designated as the new Assisting Judge of Branch 61, Regional Trial Court, Bogo City, Cebu. As Assisting Judge, Judge Trinidad was directed to take cognizance of all the cases handled by the former Assisting Judge, Judge Himalaloan. Judge Trinidad was likewise directed to take cognizance of cases where Presiding Judge Marigomen inhibited, those newly filed, and those where trial had not yet begun, i.e., where "the accused or any of the accused in a criminal case ha[d] not yet been arraigned," and civil cases where pre-trial had yet to be conducted or terminated.[9]

In 2013 and during the pendency of the civil case, Tejano filed a criminal complaint for violation of the Anti-Violence Against Women and Children Act against Andrino.[10] This

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[3] *Id*. at 26. Docketed as Civil Case No. Bogo-02753.

[4] *Id.* at 117.

[5] *Id.* at 121. OCA Report dated April 4, 2016.

[6] *Id*. at 48–49.

[7] *Id*. at 50.

[8] *Id*. at 8.

[9] *Id.*

[10] *Id*. at 2. Docketed as CBU-99648-49, see *rollo,* p. 11.

criminal case was raffled to Branch 20 of the Regional Trial Court of Cebu City presided by Judge Bienvenido R. Saniel, Jr. (Judge Saniel).[11]

On May 9, 2013 and with no standing warrant of arrest against him, Andrino posted bail before Branch 61, Regional Trial Court, Bogo City,[12] not before Branch 20 in Cebu City where the criminal case was pending. In posting bail, Andrino was assisted by Camay, who was assigned to Branch 61.[13]

On the same day that Andrino posted bail, Judge Marigomen ordered Andrino's release.[14]

Tejano filed before this Court an Affidavit-Complaint[15] against Judge Marigomen and Camay on June 21, 2013.

On her charge of grave abuse of authority, Tejano contended that Judge Marigomen refused to transfer the civil case to Judge Trinidad, the newly designated Assisting Judge of Branch 61, in violation of Administrative Order No. 137-2012. When this Administrative Order was issued on September 17, 2012,[16] trial in the civil case had not yet begun, with the pre-trial allegedly conducted only on January 7, 2013.[17]

On her charge of gross ignorance of the law, Tejano alleged that Judge Marigomen issued the Order of Release on May 9, 2013 with no standing warrant of arrest against Andrino, in violation of Rule 114, Section 1 of the Rules of Court. The Warrant of Arrest was issued by Judge Saniel only on May 30, 2013.[18]

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[11] *Id*. at 3.

[12] *Id*. at 9.

[13] *Id*. at 56.

[14] *Id*. at 10.

[15] *Id*. at 1–5.

[16] *Id.* at 8.

[17] *Id*. at 1–2.

[18] *Id*. at 2–3.

As for Camay, Tejano charged him with violating the Anti-Red Tape Act for allegedly fixing Andrino's bail application and facilitating police assistance to Andrino.[19] It was also Camay who allegedly convinced Andrino to file the civil case against her.[20]

Judge Marigomen and Camay filed their respective Comments[21] on September 17, 2013.

According to Judge Marigomen, he granted Andrino's Motion to try the civil case because the former Assisting Judge, Judge Himalaloan, had not been conducting hearings since 2012. He also did not anticipate that a new Assisting Judge would be assigned to Branch 61. Therefore, he continued on hearing the civil case.[22]

As to Andrino's bail bond, Judge Marigomen approved it in the exercise of his sound discretion. He argued that in applications for bail, the stringent application of the Rules of Court may be relaxed in favor of the accused.[23]

For his part, Camay admitted that he assisted Andrino in posting bail but only because he was a public employee obliged to do so. He denied that he was a fixer[24] and claimed that he had no personal interest in the outcome of the civil case filed by Andrino against Tejano.[25]

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[19] *Id.* at 3–4.

[20] *Id*. at 1.

[21] *Id.* at 20–24 and 56–58.

[22] *Id*. at 21.

[23] *Id*. at 23–24.

[24] Rep. Act No. 9485, Sec. 4(g) provides:

Section 4. *Definition of Terms*. – As used in this Act, the following terms are defined as follows:

. . . .

(g) "*Fixer*" refers to any individual whether or not officially involved in the operation of a government office or agency who has access to people working therein, and whether or not in collusion with them, facilitates speedy completion of transactions for pecuniary gain or any other advantage or consideration.

[25] *Id.* at 56–57.

The Office of the Court Administrator found Judge Marigomen guilty of gross ignorance of the law and of violating Supreme Court rules, directives, and circulars. However, it dismissed the complaint for violation of the Anti-Red Tape Act against Camay.[26]

According to the Office of the Court Administrator, Judge Marigomen violated Administrative Order Nos. 113-2011 and 137-2012 by taking cognizance of the civil case for declaration of absolute nullity of deed of sale cognizable only by Assisting Judge Himalaloan and, subsequently, by Judge Trinidad. That Judge Himalaloan had not been hearing cases since 2012 was not an excuse for granting Andrino's Motion to handle and try the case. The Office of the Court Administrator stated that Judge Marigomen could have sought guidance from this Court on how to remedy the continued delay in the proceedings. Furthermore, upon the designation of Judge Trinidad as the new Assisting Judge, Judge Marigomen should have transferred the civil case, considering that it was still at its pre-trial stage.[27]

For violating Supreme Court Administrative Order Nos. 113-2011 and 137-2012, Judge Marigomen was found guilty of an offense considered a less serious charge.[28] The Office of the Court Administrator recommended that Judge Marigomen be fined the amount of ₱10,000.00.[29]

In addition, Judge Marigomen was found guilty of improperly applying the rules on bail bond applications. Under Rule 114, Section 17(a)[30] of the Revised Rules of Criminal Procedure,

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[26] *Id*. at 123–124.

[27] *Id.* at 121–122.

[28] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, Sec. 9.

[29] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, Sec. 11(B).

[30] RULES OF COURT, Rule 114, Sec. 17(a) provides:

Section 17. *Bail, Where Filed.* — (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial

bail may be posted in another court only if the judge where the case is pending is absent or unavailable. The Office of the Court Administrator found that Judge Marigomen failed to prove that Judge Saniel, the judge of the court where the criminal case against Andrino was pending, was absent or unavailable. In addition, there was no standing warrant of arrest against Andrino at the time he posted bail on May 9, 2013. The Warrant of Arrest was issued only on May 30, 2013.[31]

For granting Andrino's bail despite the absence of a warrant of arrest, Judge Marigomen was found guilty of gross ignorance of the law. Considering that it was his second offense,[32] Judge Marigomen was fined with the maximum amount allowable, specifically, ₱40,000.00 and was sternly warned that repeating the same or similar offense shall be dealt with more severely.[33]

Without discussing the reasons for its finding, the Office of the Court Administrator found no merit in the Complaint against Camay, and hence, recommended its dismissal.[34]

In sum, the Office of the Court Administrator made the following recommendations in its Report[35] dated April 4, 2016:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

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judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein.

[31] *Rollo,* p. 122.

[32] See *Salazar v. Judge Marigomen*, 562 Phil. 620 (2007) [Per *J*. Carpio Morales, *En Banc*].

[33] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, Sec. 11(A).

[34] *Rollo,* p. 124.

[35] *Id*. at 117–124.

1. the instant administrative complaint against Hon. Antonio D. Marigomen, Presiding Judge, Branch 61, Regional Trial Court, Bogo City, Cebu, be **RE-DOCKETED** as a regular administrative matter;

2. respondent Judge Marigomen be found **GUILTY** of Violation of Supreme Court rules, directives, and circulars and Gross Ignorance of the Law and Procedure, and be meted the penalty of **FINE** in the amounts of Ten Thousand Pesos (Php 10,000.00) and Forty Thousand Pesos (Php 40,000.00), respectively, with a **STERN WARNING** that a repetition of the same or any similar offense shall be dealt with more severely; and

3. the instant administrative complaint against Mr. Emiliano C. Camay, Jr., Utility Worker, Branch 61, Regional Trial Court, Bogo City, Cebu, be **DISMISSED** for lack of merit.[36]

On June 14, 2017, Tejano filed an Affidavit[37] before this Court, stating that her filing of the Complaint is "only a product of miscommunication."[38] Thus, "in order to move on,"[39] she declared that she was withdrawing the Complaint she had filed against Judge Marigomen.

This Court notes the Office of the Court Administrator's Report dated April 4, 2016 and Tejano's Affidavit withdrawing her Complaint. The findings of fact and conclusions of law of the Office of the Court Administrator are adopted with modification that the fine for gross ignorance of the law is increased from ₱40,000.00 to ₱100,000.00.

I

The civil case filed by Andrino against Tejano was assigned to Judge Himalaloan pursuant to Administrative Order No. 113-2011. However, Judge Marigomen granted Andrino's Motion to try the civil case, in violation of this Administrative Order.

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[36] *Id*. at 123–124.

[37] *Id*. at 133–134.

[38] *Id*. at 133.

[39] *Id*.

Assuming that Judge Himalaloan had repeatedly postponed hearings, Judge Marigomen should have instead sought the guidance of this Court on how to address the delay in the proceedings. After all, the Constitution grants this Court the power of administrative supervision over all courts and their personnel.[40]

Worse, despite the designation of Judge Trinidad as Assisting Judge under Administrative Order No. 137-2012, Judge Marigomen usurped Judge Trinidad's authority by failing to transfer the civil case to him.

For violating Administrative Order Nos. 113-2011 and 137-2012, Judge Marigomen is guilty of violating Supreme Court rules, directives, and circulars, a less serious charge[41] punishable by either suspension for not less than one (1) month but not more than three (3) months, or fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[42] Under the circumstances, the fine of ₱20,000.00 is proper.

II

The charge of gross ignorance of the law against Judge Marigomen merits a more serious sanction.

Bail, as defined in Rule 114, Section 1 of the Rules of Court, is "the security given for the release of a person in custody of the law, furnished by him [or her] or a bondsman, to guarantee his [or her] appearance before any court as required under the conditions hereinafter specified." Based on this definition, the accused must be in custody of the law or otherwise deprived of his or her liberty to be able to post bail.

Generally, bail is filed before the court where the case is pending. However, if bail cannot be filed before the court where

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[40] CONST., Art. VIII, Sec. 6.

[41] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, Sec. 9.

[42] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, Sec. 11(B).

the case is pending— as when the judge handling the case is absent or unavailable, or if the accused is arrested in a province, city, or municipality other than where the case is pending— Rule 114, Section 17(a) of the Rules of Court provides:

> Section 17. *Bail, Where Filed*. — (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein. (Emphasis supplied)

The text of Rule 114, Section 17(a) of the Rules of Court shows that there is an order of preference with respect to where bail may be filed. In the absence or unavailability of the judge where the case is pending, the accused must first go to a judge *in the province, city, or municipality where the case is pending*. Furthermore, a judge of another province, city, or municipality may grant bail *only if* the accused has been *arrested* in a province, city, or municipality other than where the case is pending.

A judge not assigned to the province, city, or municipality where the case is pending but approves an application for bail filed by an accused not arrested is guilty of gross ignorance of the law. The last sentence of Rule 114, Section 17(a) is clear that for purposes of determining whether or not the accused is in custody of the law, the mode required is arrest, not voluntary surrender,[43] before a judge of another province, city, or municipality may grant a bail application. In the same vein, it is gross ignorance of the law if a judge grants an application for bail in a criminal case outside of his or her jurisdiction

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[43] See *Miranda v. Tuliao*, 520 Phil. 907, 919 (2006) [Per *J.* Chico-Nazario, First Division], citing *Paderanga v. Court of Appeals,* 317 Phil. 862 (1995) [Per *J.* Regalado, Second Division]; *Dinapol v. Baldado*, 296-A Phil. 81 (1993) [*Per Curiam, En Banc*].

without ascertaining the absence or unavailability of the judge of the court where the criminal case is pending.[44]

Judge Marigomen was *not* a judge in the province, city, or municipality where the case was pending. Neither was Andrino *arrested* in a province, city, or municipality other than where the case was pending precisely because no warrant of arrest had yet been issued when he posted bail on May 9, 2013. Judge Marigomen violated Rule 114, Section 17(a) and is guilty of gross ignorance of the law.

Moreover, Judge Marigomen did not ascertain the absence or unavailability of Judge Saniel. This duty to ascertain is a consequence of Judge Marigomen not being the judge of the place where the criminal case was pending and could have been satisfied by inquiring and coordinating with the court personnel belonging to Branch 20, where the criminal case was pending. Had Judge Marigomen done his duty, Judge Saniel would have already been informed of the grant of bail on May 9, 2013, and therefore, would not have superfluously issued a Warrant of Arrest 21 days later. Presumption of regularity in the performance of official duty[45] cannot be appreciated in favor of Judge Marigomen.

Under Rule 140, Section 11(A) of the Rules of Court on the Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan, a serious charge such as gross ignorance of the law[46] is punishable by a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[47] However, considering that this was Judge Marigomen's second offense, as he had been previously found guilty of gross ignorance of the law in *Salazar v. Judge Marigomen*,[48] this Court fines him with an amount more than ₱40,000.00, specifically, ₱100,000.00.

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[44] See *Adapon v. Judge Domagtoy,* 333 Phil. 696 (1996) [Per *J.* Padilla, First Division].

[45] RULES OF COURT, Rule 131, Sec. 3(m).

[46] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, Sec. 8.

[47] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, Sec. 11.

[48] 562 Phil. 620 (2007) [Per *J.* Carpio Morales, *En Banc*].

This is allowed under Rule 140, Section 11(A), which uses the permissive "may" in enumerating the imposable sanctions for serious charges.[49]

While it is true that Tejano filed an Affidavit withdrawing her Complaint against Judge Marigomen, withdrawal of an administrative complaint "does not divest [this Court] of [its] disciplinary authority over court personnel."[50] This Court "cannot be bound by the unilateral decision of a complainant to desist from prosecuting a case involving the discipline of parties subject to its administrative supervision."[51] As elaborated in *Nones v. Ormita*:[52]

> [T]he faith and confidence of the people in their government and its agencies and instrumentalities need to be maintained. The people should not be made to depend upon the whims and caprices of complainants who, in a real sense, are only witnesses. To rule otherwise would subvert the fair and prompt administration of justice, as well as undermine the discipline of court personnel.[53]

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[49] RULES OF COURT, Rule 140, Sec. 11(A), as amended by A.M. No. 01-8-10-SC, provides:

Section 11. *Sanctions.* — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1.Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

[50] *Casanova, Jr. v. Cajayon*, 448 Phil. 573, 582 (2003) [Per *J.* Ynares-Santiago, First Division].

[51] *Lapeña v. Pamarang*, 382 Phil. 325, 330 (2000) [Per *J.* Mendoza, Second Division] cited in *Casanova, Jr. v. Cajayon*, 448 Phil. 573, 582 (2003) [Per *J.* Ynares-Santiago, First Division].

[52] 439 Phil. 370 (2002) [Per *J.* Panganiban, Third Division] cited in *Casanova, Jr. v. Cajayon*, 448 Phil. 573, 582 (2003) [Per *J.* Ynares-Santiago, First Division].

[53] *Id.* at 379.

This doctrine applies especially in this case where respondent is not just any other court personnel. Respondent is a judge,[54] who is supposedly knowledgeable of the law but has been found grossly ignorant of it, not just once but twice.

In sum, the penalty recommended by the Office of the Court Administrator is increased. Instead of fining Judge Marigomen the amount of ₱40,000.00 for gross ignorance of the law, he is ordered to pay the amount of ₱100,000.00. Adding the ₱20,000.00 fine for his violation of Supreme Court rules, directives, and circulars, Judge Marigomen is liable in the total amount of ₱120,000.00.

III

This Court sustains the dismissal of the administrative charge for violation of the Anti-Red Tape Act against Camay. Tejano failed to allege and prove that he assisted with Andrino's application for bail in consideration of economic gain or any other advantage.[55]

WHEREFORE, this Court **NOTES** the Office of the Court Administrator's Report dated April 4, 2016 and Prosecutor Ivy A. Tejano's Affidavit withdrawing her Complaint against Presiding Judge Antonio D. Marigomen of Branch 61, Regional Trial Court, Bogo City, Cebu. Despite this Affidavit, this Court finds Presiding Judge Antonio D. Marigomen **GUILTY** of the less serious charge of violating Supreme Court rules, directives, and circulars, and of the serious charge of gross ignorance of

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[54] See *Dadap-Malinao v. Judge Mijares,* 423 Phil. 350 (2001) [Per *J.* Ynares-Santiago, First Division]; See also *Vasquez v. Judge Malvar*, 174 Phil. 274 (1978) [Per *J.* Makasiar, *En Banc*].

[55] Rep. Act No. 9485, Sec. 4(g) provides:

Section 4. *Definition of Terms*,— As used in this Act, the following terms are defined as follows:

. . . . . .

(g) "*Fixer*" refers to any individual whether or not officially involved in the operation of a government office or agency who has access to people working therein, and whether or not in collusion with them, facilitates speedy completion of transactions for pecuniary gain or any other advantage or consideration.

the law. He is meted the penalty of **FINE** on both charges in the total amount of ₱120,000.00.

The Complaint against Utility Worker Emeliano C. Camay, Jr. of Branch 61, Regional Trial Court, Bogo City, Cebu is **DISMISSED** for lack of merit.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Carpio, J., on official time.

Jardeleza, J., on official leave.

EN BANC

[G.R. No. 213953. September 26, 2017]

ENGR. OSCAR A. MARMETO, *petitioner, vs.* **COMMISSION ON ELECTIONS (COMELEC),** *respondent.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; LEGISLATIVE DEPARTMENT; ORIGINAL AND DERIVATIVE LEGISLATIVE POWER; DISCUSSED.— Initiative has been described as an instrument of direct democracy whereby the citizens directly propose and legislate laws. As it is the citizens themselves who legislate the laws, direct legislation through initiative (along with referendum) is considered as an exercise of original legislative power, as opposed to that of derivative

legislative power which has been delegated by the sovereign people to legislative bodies such as the Congress. Section 1 of Article VI of the Constitution recognizes the distinction between original and derivative legislative power by declaring that "legislative power shall be vested in the Congress x x x *except to the extent reserved to the people by the provision on initiative and referendum*." The italicized clause pertains to the original power of legislation which the sovereign people have reserved for their exercise in matters they consider fit. Considering that derivative legislative power is merely delegated by the sovereign people to its elected representatives, it is deemed subordinate to the original power of the people. The Constitution further mandated the Congress to "provide for a system of initiative and referendum, x x x whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof by the Congress or local legislative body x x x." x x x RA No. 6735 and the LGC are thus the pertinent laws on local initiative and referendum which the COMELEC is mandated to enforce and administer under Article IX-C, Section 2(1) of the Constitution.

2. ID.; COMMISSION ON ELECTIONS (COMELEC); THE COMELEC CANNOT DEFEAT THE EXERCISE OF THE PEOPLE'S ORIGINAL LEGISLATIVE POWER FOR LACK OF BUDGETARY ALLOCATION FOR ITS CONDUCT WHEN THERE IS A LINE ITEM APPROPRIATION FOR THAT PURPOSE.— In *Goh v. Hon. Bayron*, the Court has definitely ruled the question of **whether the COMELEC may prevent the conduct of a recall election for lack of specific budgetary allocation therefor**. x x x [T]he Court ruled that the FY 2014 GAA "actually expressly provides for a line item appropriation for the conduct and supervision of recall elections." x x x The Court added that **"[w]hen the COMELEC receives a budgetary appropriation for its 'Current Operating Expenditures,' such appropriation includes expenditures to carry out its constitutional functions** x x x" x x x There is no reason not to extend the *Goh* ruling to the present case. In fact, Marmeto's second initiative petition was also filed in 2014; in dismissing Marmeto's petition for lack of funds, the COMELEC was referring to its budget under the FY 2014 GAA. Although *Goh* involved the conduct of recall

elections, the ₱1.4 billion appropriation under the FY 2014 GAA was for the "conduct and supervision of **elections**, referenda, recall votes and plebiscites." The term "election" is comprehensive enough to include other kinds of electoral exercises, including initiative elections. x x x The Constitution further states that the "[f]unds certified by the [COMELEC] as necessary to defray the expenses for holding regular and special elections, plebiscites, initiatives, referenda, and recalls, shall be provided in the regular or special appropriations and, once approved shall be released automatically." x x x The COMELEC, therefore, committed grave abuse of discretion in dismissing Marmeto's second initiative petition on the ground that there were no funds allocated for the purpose.

3. ID.; ID.; ID.; THE COMELEC HAS THE POWER TO REVIEW WHETHER THE PROPOSITIONS IN AN INITIATIVE PETITION ARE WITHIN THE POWER OF THE *SANGGUNIANG PANLUNGSOD* TO ENACT.—Section 124(b) of the LGC provides that "[i]nitiatives shall extend only to subjects or matters which are within the legal powers of the *Sanggunian* to enact."Section 127 of the LGC gives the courts authority to declare "null and void **any proposition approved** pursuant to this Chapter for violation of the Constitution or **want of capacity of the *sanggunian* concerned to enact the said measure**." x x x Inasmuch as the COMELEC also has quasi-judicial and administrative functions, **it is the COMELEC which has the power to determine whether the propositions in an initiative petition are within the powers of a concerned *sanggunian* to enact**. x x x The COMELEC's power to review the substance of the propositions is also implied in Section 12 of RA No. 6735, which gives this Court appellate power to review the COMELEC's "findings of the sufficiency or insufficiency of the petition for initiative or referendum x x x."

4. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE (LGC); *SANGGUNIANG PANLUNGSOD*; THE LGC DOES NOT ALLOW THE CREATION OF A SEPARATE LOCAL LEGISLATIVE BODY.— Under the LGC, local legislative power within the city is to be exercised by the *sangguniang panlungsod,* which shall be comprised of *elected* district and sectoral representatives. The sectoral representatives,

moreover, shall be limited to three members, coming from enumerated/identified sectors. Significantly, nothing in the LGC allows the creation of another local legislative body that will enact, approve, or reject local laws either through the regular legislative process or through initiative or referendum.

5. ID.; ID.; ID.; REQUIRES LOCAL GOVERNMENT FUNDS AND MONIES TO BE SPENT SOLELY FOR PUBLIC PURPOSES, AND PROVIDES TRANSPARENCY AND ACCOUNTABILITY MEASURES TO ENSURE THIS END.— The fundamental principles in local fiscal administration provided in the LGC state that no money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law, and that local government funds and monies shall be spent solely for public purposes. x x x Our laws have put in place measures to ensure transparency and accountability in dealing with public funds, since "[p]ublic funds are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste." These measures may be subverted or rendered inapplicable when the management and utilization of the funds is turned over to private persons or entities.

APPEARANCES OF COUNSEL

Reynaldo A. Cardeño for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Before the Court is a Petition for *certiorari* and *mandamus*[1] seeking to annul the Resolution No. 14-0509 dated July 22, 2014[2] of the respondent Commission on Elections (COMELEC).

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[1] Filed under Rule 65 of the Rules of Court, *rollo*, pp. 3-16.

[2] *Id*. at 17-18, signed by COMELEC Chairman Sixto S. Brillantes, Jr., Commissioners Lucenito N. Tagle, Christian Robert S. Lim, Al A. Parreño, and Luie Tito F. Guia.

The assailed resolution declared that the power of initiative could not be invoked by the petitioner, Engr. Oscar A. Marmeto (Marmeto), for the passage of a proposed ordinance in Muntinlupa City, citing the lack of budgetary appropriation for the conduct of the initiative process.[3]

THE FACTS

On January 21, 2013, Marmeto filed in behalf of the Muntinlupa People Power[4] (MPP) a proposed ordinance with the *Sangguniang Panlungsod* of Muntinlupa.[5] The proposal sought the creation of a sectoral council and the appropriation of the amount of ₱200 million for the livelihood programs and projects that would benefit the people of Muntinlupa City.

For failure of the *Sanggunian Panlungsod* to act on the proposition within 30 days from its filing, Marmeto filed a petition for initiative with the same body to invoke the power of initiative under the Republic Act (RA) No. 7160, otherwise known as the Local Government Code of 1991 (LGC).

The secretary of *Sanggunian Panlungsod* of Muntinlupa wrote a letter dated June 11, 2013 to the COMELEC stating that the proposal could not be acted upon by the *Sanggunian* because the City's budget for FY 2013 had already been enacted. Thus, the secretary claimed that a new appropriation ordinance was needed to provide funds for the conduct of the initiative.

On July 31, 2013, the COMELEC issued **Resolution No. 13-0904** setting aside Marmeto's initiative petition because the propositions therein were beyond the powers of the *Sanggunian Panglunsod* to enact and were not in accordance with the provisions of existing laws and rules.[6]

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[3] *Id*. at 18.

[4] The MPP is an informal association of residents and registered voters of Muntinlupa City, and is represented by Marmeto, see *rollo*, p. 38.

[5] *Id.* at 4.

[6] *Id*. at 32.

Marmeto sought reconsideration[7] of COMELEC's Resolution No. 13-0904 by contending that the sectoral council sought to be created would not constitute as a legislative body separate from the *Sanggunian Panlungsod*. He clarified that the sectoral council would merely act as the people's representative, which would facilitate the exercise of the people's power of initiative and referendum.

However, the COMELEC did not find Marmeto's motion for reconsideration meritorious and issued **Resolution No. 13-1039** dated September 17, 2013,[8] affirming its earlier ruling dismissing the initiative petition. It ruled that the issues Marmeto raised in his motion were mere reiterations of his petition which it had already addressed. Nonetheless, it noted that Marmeto might opt to re-file his initiative petition, since the then newly-elected members of the *Sangguniang Panlungsod* of Muntinlupa might be more sympathetic to Marmeto's propositions.

Accordingly, on December 2, 2013, Marmeto filed a second proposed ordinance with the *Sangguniang Panlungsod* of Muntinlupa. Again, no favorable action was done by the *Sanggunian* within 30 days from the filing of the proposal, prompting Marmeto to file a **second initiative petition** with the Office of the City Election Officer on February 10, 2014.[9]

On April 1, 2014, Marmeto filed a Supplemental Petition to comply with the requirements of COMELEC Resolution No. 2300,[10] which provided the *Rules and Regulations Governing the Conduct of Initiative on the Constitution, and Initiative and Referendum on National and Local Laws*.

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[7] *Id*. at 33-35.

[8] *Id*. at 36-37.

[9] *Id*. at 38-40.

[10] Dated January 16, 1991.

The Assailed COMELEC Resolution

On July 22, 2014, the COMELEC issued the assailed **Resolution No. 14-0509**[11] which effectively dismissed Marmeto's second initiative petition for **lack of budgetary allocation**. The pertinent portion of the assailed resolution reads as follows:

> **Considering the absence of any provision in the Commission's FY 2014 budget for the expenses for local initiative or any other election activity** x x x the Commission RESOLVED, as it hereby RESOLVES, to adopt the foregoing recommendation x x x that **the power of local initiative cannot be invoked by Engr. Oscar A. Marmeto** x x x for the passage of an ordinance for the appropriation of funds for livelihood projects for the residents of Muntinlupa City since the setting up of signature stations, verification of signatures, the certification of the number of registered voters, and all other acts to be done in exercise thereof will entail expenses on the part of the Commission.[12] (Emphasis supplied)

Disagreeing with **Resolution No. 14-0509**, Marmeto filed the present *certiorari* and *mandamus* petition contending that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed his second initiative petition.

THE PARTIES' ARGUMENTS

Marmeto assails the COMELEC's Resolution No. 14-0509, contending that the denial of an initiative petition due to lack of appropriated funds constitutes a gross neglect and abandonment of the COMELEC's duties under the Constitution.[13]

Marmeto believes that the COMELEC has a ministerial duty to conduct the initiative proceedings under pertinent laws upon compliance with the legal requirements for the exercise of the

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[11] *Rollo*, pp. 17-18.

[12] *Id*. at 18.

[13] *Id*. at 8, 11.

right. He asserts that the COMELEC evaded its mandated duty by citing unavailability of funds as ground to frustrate the conduct of local initiative.[14]

The COMELEC, on the other hand, claims that the denial of Marmeto's initiative petition was proper, since the propositions therein were beyond the legal powers of the *Sangguniang Panlungsod* to enact.[15] Section 124(b) of the LGC provides that the "[i]nitiative shall extend only to subjects or matters which are within the legal powers of the *Sanggunian* to enact." According to the COMELEC, Marmeto's second initiative petition proposed the creation of a council composed of 12 sectoral representatives. This sectoral council will act as a legislative body that will directly propose, enact, approve, or reject any ordinance through the power of initiative and referendum.[16]

The COMELEC refers to Section 458 of the LGC which enumerates the powers and duties of the *Sangguniang Panlungsod*, noting that nothing in the provision grants the *Sanggunian* the power to create a separate local legislative body. Moreover, Section 457 of the LGC allows only *three* sectoral representatives to become members of the *Sangguniang Panlungsod*. These sectoral representatives are to be elected by the residents of the city as members of the *Sanggunian*, and cannot be appointed through an initiative election.

THE COURT'S RULING

The Court **dismisses** the Petition.

The COMELEC is mandated to enforce and administer the laws on local initiative and referendum

Initiative has been described as an instrument of direct democracy whereby the citizens directly propose and legislate

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[14] *Id.* at 13.

[15] *Id*. at 77.

[16] *Id*. at 79, 87-88.

laws.[17] As it is the citizens themselves who legislate the laws, direct legislation through initiative (along with referendum) is considered as an exercise of original legislative power,[18] as opposed to that of derivative legislative power which has been delegated by the sovereign people to legislative bodies such as the Congress.[19]

Section 1 of Article VI of the Constitution recognizes the distinction between original and derivative legislative power by declaring that "legislative power shall be vested in the Congress x x x *except to the extent reserved to the people by the provision on initiative and referendum.*" The italicized clause pertains to the original power of legislation which the sovereign people have reserved for their exercise in matters they consider fit. Considering that derivative legislative power is merely delegated by the sovereign people to its elected representatives, it is deemed subordinate to the original power of the people.[20]

The Constitution further mandated the Congress to "provide for a system of initiative and referendum, x x x whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof by the Congress or local legislative body x x x."[21] In compliance, the Congress enacted RA No. 6735 on August 4, 1989 which provided for a system of initiative and referendum on national and local laws. To implement RA No. 6735, the COMELEC promulgated Resolution No. 2300 on January 16, 1991, which provided the rules and regulations

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[17] Christopher A. Coury, *Direct Democracy through Initiative and Referendum: Checking the Balance*, 8 Notre Dame J Law, Ethics & Pub. Policy 573 (1994), available at http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1446&context=ndjlepp (last visited 11 September 2017).

[18] *Garcia v. Commission on Elections*, 307 Phil. 296, 303 (1994).

[19] *Id.*

[20] *Id*. at 303, 305.

[21] CONSTITUTION, Article VI, Section 32.

governing the conduct of initiative on the Constitution,[22] and initiative and referendum on national and local laws. Since the LGC codified all laws pertaining to local governments,[23] the provisions on local initiative and referendum found in RA No. 6735 were reiterated, with slight modifications, in Sections 120 to 127 of the LGC; all other provisions in RA No. 6735 not inconsistent within the Sections 120 and 127 of the LGC remained valid and in effect.

RA No. 6735 and the LGC are thus the pertinent laws on local initiative and referendum which the COMELEC is mandated to enforce and administer under Article IX-C, Section 2(1) of the Constitution. Naturally, the conduct of initiative and referendum (as with any election exercise) will entail expenses on the part of the government. The budget for the conduct of the exercise of political rights, specifically those on suffrage and electoral rights, is given to the COMELEC, whose approved annual appropriations are automatically and regularly released.[24]

The COMELEC cannot defeat the exercise of the people's original legislative power for lack of budgetary allocation for its conduct

In *Goh v. Hon. Bayron*,[25] the Court has definitely ruled the question of **whether the COMELEC may prevent the conduct of a recall election for lack of specific budgetary allocation**

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[22] The Supreme Court nullified the provisions on initiative on the amendment of the Constitution under Republic Act No. 6735 in *Santiago v. Commission on Elections*, 336 Phil. 848 (1997).

[23] Pursuant to Section 3, Article X of the Constitution.

[24] CONSTITUTION, Article IX-A, Section 5. See also Constitution, Article IX-C, Section 11, which states that:

Section 11. Funds certified by the Commission as necessary to defray the expenses for holding regular and special elections, plebiscites, initiatives, referenda, and recalls, shall be provided in the regular or special appropriations and, once approved, shall be released automatically upon certification by the Chairman of the Commission.

[25] 748 Phil. 282 (2014).

therefor. In as much as the issue resolved in *Goh* is similar to the present one before the Court, a brief summary thereof is necessary.

In 2014, Alroben Goh commenced the proceedings for the conduct of recall elections against Puerto Princessa City Mayor Lucilo Bayron. Although the COMELEC found Goh's petition sufficient in form and substance, it resolved to suspend the recall election because there was no appropriation provided for the conduct of recall elections in the FY 2014 General Appropriations Act (GAA). As there was no line item in the GAA for recall elections, there could likewise be no augmentation according to the COMELEC.

Contrary to the COMELEC's assertions, the Court ruled that the FY 2014 GAA "actually expressly provides for a line item appropriation for the conduct and supervision of recall elections."[26] Under the Program category of the COMELEC's 2014 budget,[27] the following amounts were provided:

XXXII. COMMISSION ON ELECTIONS

For general and administration support, and operations, including locally-funded projects, as indicated hereunder…….. ₱2,735,321,000

New Appropriations, by Programs/Activities/Projects, by Operating Units

		Current Operating Expenditures			
		Personnel Services	Maintenance and Other Operating Expenses	Capital Outlays	Totals
PROGRAMS					
100000000	General Administration and Support				
100010000	General management and supervision	₱ 454,457,000	₱276,749,000		₱731,206,000
	National Capital Region (NCR)	454,457,000	276,749,000		731,206,000
	Central Office	454,457,000	276,749,000		731,206,000
Sub-total,	General Administration and Support	454,457,000	276,749,000		731,206,000

[26] *Id*. at 305.

[27] Department of Budget and Management, FY 2014 GAA - Annex A: Details of the Budget, Volume 1, available at http://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2014%20ANNEXES/Vol%201/ COMELEC/OMELEC.pdf (last visited 11 September 2017). Emphasis ours.

300000000	Operations			
301000000	MFO 1: REGULATION OF ELECTIONS	1,483,087,000	174,188,000	1,657,275,000
301010000	**Management and supervision of elections and other electoral exercises**	**1,437,272,000**	**172,058,000**	**1,609,330,000**
301010001	Conduct of voter's education and information campaign thru print/radio/ television and social media	10,141,000	1,363,000	11,504,000
	National Capital Region (NCR)	10,141,000	1,363,000	11,504,000
	Central Office	10,141,000	1,363,000	11,504,000
301010002	Preparation of maps of territorial units of voting centers, the establishment of new voting centers, and the transfer, merger or abolition of existing ones	21,662,000	2,161,000	23,823,000
	National Capital Region (NCR)	21,662,000	2,161,000	23,823,000
	Central Office	21,662,000	2,161,000	23,823,000
301010003	Development of software system and procedures	6,432,000	5,674,000	12,106,000
	National Capital Region (NCR)	6,432,000	5,674,000	12,106,000
	Central Office	6,432,000	5,674,000	12,106,000
301010004	Monitoring the implementation on the conduct of election and other political exercises and development of measures to improve the registration and election systems including the dissemination of election results of previous elections	10,379,000	120,644,000	131,023,000
	National Capital Region (NCR)	10,379,000	120,644,000	131,023,000
	Central Office	10,379,000	120,644,000	131,023,000
301010005	**Conduct and supervision of elections, referenda, recall votes and plebiscites**	**1,360,975,000**	**40,526,000**	**1,401,501,000**
	National Capital Region (NCR)	67,917,000	6,439,000	74,356,000
	Central Office	67,917,000	6,439,000	74,356,000

Notably, for its Major Final Output (MFO) 1 on the Regulation of Elections, the COMELEC was provided with a total of ₱1,401,501,000 for the "**Conduct and supervision of elections, referenda, recall votes and plebiscites**," which amount was subdivided among the 15 administrative regions in the country.

The Court added that "**[w]hen the COMELEC receives a budgetary appropriation for its 'Current Operating Expenditures,' such appropriation includes expenditures to carry out its constitutional functions** x x x"[28] The Court considered the appropriation of ₱1.4 billion as specific enough to fund elections, which includes both regular and special elections, including recall elections.

Further, the allocation of a specific budget for the conduct of elections constituted as "a line item which can be augmented from the COMELEC's savings to fund the conduct of recall elections in 2014."[29] Thus, the Court concluded that —

> [c]onsidering that there is an existing line item appropriation for the conduct of recall elections in the 2014 GAA, we see no reason why the COMELEC is unable to perform its constitutional mandate to 'enforce and administer all laws and regulations relative to the conduct of x x x recall.' Should the funds appropriated in the 2014 GAA be deemed insufficient, then the COMELEC Chairman may exercise his authority to augment such line item appropriation from the COMELEC's existing savings, as this augmentation is expressly authorized in the 2014 GAA.[30]

There is no reason not to extend the *Goh* ruling to the present case. In fact, Marmeto's second initiative petition was also filed in 2014; in dismissing Marmeto's petition for lack of funds, the COMELEC was referring to its budget under the FY 2014 GAA.

Although *Goh* involved the conduct of recall elections, the ₱1.4 billion appropriation under the FY 2014 GAA was for the "conduct and supervision of **elections**, referenda, recall votes and plebiscites."[31] The term "election" is comprehensive enough to include other kinds of electoral exercises, including initiative

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[28] *Goh v. Hon. Bayron, supra* note 25 at 305. Emphasis ours.

[29] *Id*. at 316.

[30] *Id*. at 320.

[31] Department of Budget and Management, FY 2014 GAA - Annex A: Details of Budget, Volume 1, *supra* note 27.

elections. As earlier mentioned, the COMELEC's constitutional mandate is to enforce and administer all laws relative to the conduct of an election, plebiscite, initiative, referendum, and recall. The Constitution further states that the "[f]unds certified by the [COMELEC] as necessary to defray the expenses for holding regular and special elections, plebiscites, initiatives, referenda, and recalls, shall be provided in the regular or special appropriations and, once approved shall be released automatically."[32] Thus, the budgetary allocation for the "regulation of elections" identified as the COMELEC's MFO 1 should necessarily also cover expenses for the conduct of initiative elections.

The Court also notes that, aside from the ₱1.4 billion appropriation for the "conduct and supervision of elections, referenda, recall votes and plebiscites," the COMELEC was also given ₱1.6 billion in the FY 2014 GAA for the "management and supervision of elections and other electoral exercises."[33]

Thus, as in *Goh*, the COMELEC was provided with budgetary allocation for the conduct of initiative elections. The COMELEC, therefore, committed grave abuse of discretion in dismissing Marmeto's second initiative petition on the ground that there were no funds allocated for the purpose.

The COMELEC has the power to review whether the propositions in an initiative petition are within the power of the concerned Sanggunian to enact

The resolution of the present case, however, does not end in applying the Court's ruling in *Goh* to the present case. In its Comment and Memorandum, the COMELEC defends the dismissal of Marmeto's second initiative petition on the ground that the propositions raised therein were matters that were not

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[32] CONSTITUTION, Article IX-C, Section 11.

[33] Department of Budget and Management, FY 2014 GAA - Annex A: Details of the Budget, Volume 1, *supra* note 27.

within the powers of the *Sangguiang Panlungsod* to enact. This petition purportedly proposed the creation of another legislative body separate from the *Sanggunian*, composed of 12 appointive sectoral representatives. Not only does the LGC denies to the *Sanggunian* the power to create a separate legislative body, but it also limits the number of sectoral representatives in the *Sanggunian* itself to only three *elected* members.[34] For these reasons, the COMELEC argues that the dismissal of Marmeto's second initiative petition was proper.

Marmeto counters that the arguments the COMELEC now raises were not the grounds which the COMELEC cited in Resolution No. 14-0509 that is assailed in the present *certiorari* and *mandamus* petition. He points out that Resolution No. 14-0509 dismissed his second initiative petition solely for lack of specific budgetary allocation. There was no mention in the assailed resolution that the propositions in his second initiative petition were not within the powers of the *Sanggunian* to enact. This ground was instead cited by the COMELEC in its Resolution Nos. 13-0904 and 13-1039 which dismissed Marmeto's *first* initiative petition. Hence, he opines that the propriety of the propositions contained in his second initiative petition, not being covered by the assailed COMELEC resolution, cannot be reviewed in the present petition.

In several cases, this Court considered issues which were not raised by either party when these issues are necessary for the complete resolution of the cases.[35] If the Court can review unassigned errors which are necessary to arrive at a just resolution of the case, with all the more reason can it review a matter raised as a defense by a party to uphold the validity of a resolution assailed in the case.

Section 124(b) of the LGC provides that "[i]nitiatives shall extend only to subjects or matters which are within the legal

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

[35] See *Martinez v. Buen*, G.R. No. 187342, April 5, 2017; *Garcia v. Ferro Chemicals, Inc.*, 744 Phil. 590, 602-603 (2014); *Dinio v. Hon. Laguesma*, 339 Phil. 309, 318-319 (1997).

powers of the *Sanggunian* to enact." Section 127 of the LGC gives the courts authority to declare "null and void **any proposition approved** pursuant to this Chapter[36] for violation of the Constitution or **want of capacity of the *sanggunian* concerned to enact the said measure**."[37]

Significantly, the power of the courts to nullify propositions for being *ultra vires* extends only to those **already approved**, *i.e.* those which have been approved by a majority of the votes cast in the initiative election called for the purpose. In other words, **the courts can review the terms only of an *approved* ordinance**. It will be premature for the courts to review the propositions contained in an initiative petition that has yet to be voted for by the people because at that point, there is no actual controversy that the courts may adjudicate. This begs the question of which tribunal can review the sufficiency of an initiative *petition*?

Inasmuch as the COMELEC also has quasi-judicial and administrative functions, **it is the COMELEC which has the power to determine whether the propositions in an initiative petition are within the powers of a concerned *sanggunian* to enact**. In *Subic Bay Metropolitan Authority v. Commission on Elections*,[38] the Court ruled that —

> while regular courts may take jurisdiction over 'approved propositions' per said Sec. 18 of R.A. 6735, **the Comelec in the exercise of its quasi-judicial and administrative powers may adjudicate and pass upon such proposals insofar as their form and language are concerned x x x and** it may be added, **even as to content, where the proposals or parts thereof are patently and clearly outside the 'capacity of the local legislative body to enact.'** x x x (Emphasis supplied)

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[36] Referring to Chapter II – Local Initiative and Referendum of Title IX – Other Provisions Applicable to Local Government Units, Book I of the LGC.

[37] Emphasis ours.

[38] 330 Phil. 1082, 1111 (1996).

The COMELEC's power to review the substance of the propositions is also implied in Section 12 of RA No. 6735, which gives this Court appellate power to review the COMELEC's "findings of the sufficiency or insufficiency of the petition for initiative or referendum x x x."

Marmeto's propositions in his initiative petition are beyond the powers of the Sanggunian Panlungsod ng Muntinlupa to enact

Accordingly, a review of the propositions put forth by Marmeto in his second initiative petition becomes imperative.

Unfortunately, the records do not contain a copy of the proposed ordinance itself. Nevertheless, Marmeto's pleadings and the annexes thereto (particularly the Supplemental Petition[39]) refer to the significant propositions put forth in his second initiative petition.

The Court also notes that the propositions in Marmeto's second petition are closely related to those in his first petition, which are mentioned in the COMELEC Resolution Nos. 13-0904 and 13-1039. As Marmeto never denied that the propositions in his second initiative petition are completely different from those in his first petition,[40] it is not implausible to presume that the propositions contained in both petitions are more or less the same. Since the COMELEC had already ruled on the propriety of these propositions in its Resolution No. 13-0904 and to avoid a remand of the case that will prolong these proceedings, the Court will proceed to rule on the issue of whether Marmeto's propositions are within the power of the *Sanggunian* to enact and thus be valid subjects of an initiative petition.

Marmeto's initiative petitions propose the following:

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[39] *Rollo*, pp. 41-45.

[40] In fact, he refers to the second petition as the "re-filed proposed ordinance" (*id*. at 97), and done in compliance with the COMELEC's advise to file his petition anew with the *Sanggunian* (*id*. at 37).

(1) The creation of a sectoral council composed of 12 members from various sectors who will serve as the people's representatives for the implementation and management of livelihood programs and projects;[41]

(2) The sectoral council will also stand as the people's representatives that will directly propose, enact, approve, or reject ordinances through initiative or referendum;[42]

(3) An appropriation of ₱200 million to be allocated for livelihood projects of the people and other purposes. The net income from the projects will then be used for the delivery of basic services and facility for Muntinlupa residents;[43]

(4) The MPP will create the implementing guidelines and procedure for the utilization of the appropriated funds, and conduct programs and project feasibility studies. It shall comply with the prescribed accounting and auditing rules of, and submit monthly accomplishment report to the local government unit (LGU). It shall also observe transparency and accountability in fund management.[44]

These propositions, however, are either sufficiently covered by or violative of the LGC for reasons explained below.

***(A) The creation of a separate local legislative body is* ultra vires**

Under the LGC, local legislative power within the city is to be exercised by the *sangguniang panlungsod,*[45] which shall be

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[41] *Id*. at 30.

[42] *Id.* Although Marmeto claims that the Sectoral Council will only facilitate the electorate's exercise of the power of initiative and referendum, *id*. at 33, 122.

[43] *Id*. at 43.

[44] *Id.*

[45] LOCAL GOVERNMENT CODE, Article 48.

comprised of *elected* district and sectoral representatives.[46] The sectoral representatives, moreover, shall be limited to three members, coming from enumerated/identified sectors.[47]

Significantly, nothing in the LGC allows the creation of another local legislative body that will enact, approve, or reject local laws either through the regular legislative process or through initiative or referendum. Even Marmeto's claim that the sectoral council will not legislate but will merely "facilitate" the people's exercise of the power of initiative and referendum is rendered unnecessary by the task the COMELEC must assume under the LGC. Section 122(c) of the LGC provides that the COMELEC (or its designated representative) shall extend assistance in the formulation of the proposition.

(B) The sectoral council/MPP's proposed function overlaps with the Local Development Council

The law recognizes the right of the people to organize themselves and encourages the formation of non-governmental, community-based, or sectoral organizations that aim to promote the nation's welfare.[48] Even the LGC promotes relations between the LGUs and people's and non-governmental organizations (PO/NGOs), and provides various ways by which they can be active partners in pursuing local autonomy.[49]

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[46] LOCAL GOVERNMENT CODE, Article 41(a) and (b).

[47] LOCAL GOVERNMENT CODE, Article 41(c).

[48] CONSTITUTION, Article II, Section 23.

[49] LOCAL GOVERNMENT CODE, Sections 34 to 36 provide:

SECTION 34. Role of People's and Nongovernmental Organizations. - Local government units shall promote the establishment and operation of people's and nongovernmental organizations to become active partners in the pursuit of local autonomy.

SECTION 35. Linkages with People's and Non-Governmental Organizations. - Local government units may enter into joint ventures and such other cooperative arrangements with people's and nongovernmental organizations to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural

The LGC, moreover, requires the establishment in each LGU of a local development council, whose membership includes representatives of POs/NGOs operating within the LGU.[50] These local development councils are primarily tasked with developing a "comprehensive multi-sectoral development plan"[51] in their respective LGUs. City development councils are specifically tasked to exercise the following functions:

(1) Formulate long-term, medium-term, and annual socio-economic development plans and policies;

(2) x x x;

(3) Appraise and prioritize socio-economic development programs and projects;

(4) x x x;

(5) Coordinate, monitor, and evaluate the implementation of development programs and projects; and

(6) Perform such other functions as may be provided by law or competent authority.[52]

Given these functions of the city development council, there is a clear overlap with those proposed by Marmeto to be performed by the sectoral council and/or MPP.

(C) The LGC requires local government funds and monies to be spent solely for public purposes, and provides transparency and accountability measures to ensure this end

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industrialization, promote ecological balance, and enhance the economic and social well-being of the people.

SECTION 36. Assistance to People's and Nongovernmental Organizations. - A local government unit may, through its local chief executive and with the concurrence of the Sanggunian concerned, provide assistance, financial or otherwise, to such people's and nongovernmental organizations for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction.

[50] LOCAL GOVERNMENT CODE, Section 107.

[51] LOCAL GOVERNMENT CODE, Section 106.

[52] LOCAL GOVERNMENT CODE, Section 109(a).

The overlap in functions, by itself, does not suffice to turn down Marmeto's proposal to create a sectoral council or any similar organization. What the Court finds disturbing in Marmeto's initiative petitions is the authority of the proposed sectoral council to utilize, manage, and administer public funds as it sees fit.

The fundamental principles in local fiscal administration provided in the LGC state that no money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law,[53] and that local government funds and monies shall be spent solely for public purposes.[54]

Marmeto's petition proposes the appropriation of ₱200 million for the livelihood programs and projects of Muntinlupa residents. Significantly, **the utilization of this amount is subject to the guidelines to be *later* implemented by Marmeto's MPP**. That these guidelines will be drafted and implemented subsequent to the initiative elections denies the Muntinlupa residents of the opportunity to assess and scrutinize the utilization of local funds, and gives Marmeto and his organization an almost complete discretion in determining the allocation and disbursement of the funds. It is no justification that the funds will be used for public purposes on the claim these will be applied to programs and projects that will eventually redound to the benefit of the public.

Our laws have put in place measures to ensure transparency and accountability in dealing with public funds,[55] since "[p]ublic funds are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste."[56] These measures may be subverted or rendered inapplicable when the management and utilization of the funds is turned over to private persons or entities. Although comprised of Muntinlupa

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[53] LOCAL GOVERNMENT CODE, Section 305(a).

[54] LOCAL GOVERNMENT CODE, Section 305(b).

[55] These laws include Presidential Decree No. 1445 or the Government Accounting Code of the Philippines, and Sections 335 to 354 of the LGC.

[56] *Yap v. Commission on Audit*, 633 Phil. 174, 188 (2010).

residents and voters, Marmeto's MPP remains a private organization and its members cannot be considered as public officers who are burdened with responsibility for public funds and who may be held administratively and criminally liable for the imprudent use thereof.

CONCLUSION

Initiative and referendum are the means by which the sovereign people exercise their legislative power, and the valid exercise thereof should not be easily defeated by claiming lack of specific budgetary appropriation for their conduct. The Court reiterates its ruling in *Goh* that the grant of a line item in the FY 2014 GAA for the conduct and supervision of elections constitutes as sufficient authority for the COMELEC to use the amount for elections and other political exercises, including initiative and recall, and to augment this amount from the COMELEC's existing savings.

Nonetheless, as the Court ruled in *Subic Bay Metropolitan Authority*, the COMELEC is likewise given the power to review the sufficiency of initiative petitions, particularly the issue of whether the propositions set forth therein are within the power of the concerned *sanggunian* to enact. Inasmuch as a *sanggunian* does not have the power to create a separate local legislative body and that other propositions in Marmeto's initiative petition clearly contravene the existing laws, the COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the petition and cannot be ordered to conduct and supervise the procedure for the conduct of initiative elections.

WHEREFORE, the Petition for *certiorari* and *mandamus* is **DISMISSED**. The Resolution No. 14-0509 of the Commission on Elections dated July 22, 2014 is **AFFIRMED**.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Perlas-Bernabe, Leonen, Caguioa, Martires,Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Carpio and *Jardeleza, JJ.,* on official leave.

EN BANC

[G.R. No. 230744. September 26, 2017]

MARIO O. SALVADOR, *petitioner, vs.* **COMMISSION ON ELECTIONS and ALEXANDER S. BELENA,** *respondents.*

SYLLABUS

POLITICAL LAW; ELECTION LAWS; RA NO. 7166; SECTION 13 ON THE AUTHORIZED EXPENSES OF A CANDIDATE AND POLITICAL PARTIES; TO BE ALLOWED TO SPEND ₱5.00 (INSTEAD OF ₱3.00) FOR EVERY VOTER, A CANDIDATE MUST BE BOTH WITHOUT A POLITICAL PARTY "AND" WITHOUT SUPPORT FROM ANY POLITICAL PARTY.— Section 13 of R.A. No. 7166 provides: **Sec. 13. Authorized Expenses of Candidates and Political Parties.** - The aggregate amount that a candidate or registered political party may spend for election campaign shall be as follows: 1. For Candidates. - Ten pesos (₱10.00) for President and Vice President; and for other candidates Three Pesos (₱3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy; Provided, That a candidate without any political party and without support from any political party may be allowed to spend Five Pesos (₱5.00) for every such voter; and 2. For political parties. - Five pesos (₱5.00) for every voter currently registered in the constituency or constituencies where it has official candidates. x x x [A] distinction was made between a candidate without a political party and without support from any political party and a candidate with political party and who receives support from a political party. The former is allowed to spend the ₱5.00 cap while the latter is allowed to spend the ₱3.00 cap. x x x [I]n construing Section 13 of R.A. No. 7166, We treat the word "and" between "without political party" and "without support from any political party" as conjunctive. It means in addition to. The word "and", whether it is used to connect words, phrases or full sentences, must be accepted as binding together and as relating to one another. Applying the foregoing to Section 13,

the proper construction is that the allowable expenditure for candidates without any political party *and* without support from any political party is ₱3.00 x x x The law is clear — the candidate must both be without a political party and without support from any political party for the ₱5.00 cap to apply. In the absence of one, the exception does not apply.

APPEARANCES OF COUNSEL

Herbert C. Davis for petitioner.
The Solicitor General for respondents.

D E C I S I O N

TIJAM, *J.*:

In this Petition for *Certiorari*[1] under Rule 64, petitioner Mario O. Salvador (Salvador) challenges the Resolutions dated November 2, 2015[2] and March 8, 2017[3] of the Commission on Elections (COMELEC) *En Banc*, in E.O. Case No. 14-483, which found probable cause against him for violation of Section 100[4] in

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[1] *Rollo*, pp. 3-17.

[2] Penned by Chairman J. Andres D. Bautista, concurred in by Commissioners Christian Robert S. Lim, Luie Tito F. Guia, Ma. Rowena Amelia V. Guanzon, Al A. Parreño, Arthur D. Lim and Sheriff M. Abas; *id*. at 20-25.

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

[4] Sec. 100. *Limitations upon expenses of candidates.* - No candidate shall spend for his election campaign an aggregate amount exceeding one peso and fifty centavos for every voter currently registered in the constituency where he filed his candidacy: Provided, That the expenses herein referred to shall include those incurred or caused to be incurred by the candidate, whether in cash or in kind, including the use, rental or hire of land, water or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign: Provided, further, That where the land, water or aircraft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.

relation to Section 262[5] of Batasang Pambansa Blg. 881 or the Omnibus Election Code of the Philippines, as amended by Section 13[6] of Republic Act (R.A.) No. 7166 or An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

The Facts

Salvador, a member of the political party *Bagong Lakas ng Nueva Ecija*, was a mayoralty candidate in San Jose City, Nueva Ecija in 2010.[7] Marivic Violago-Belena, private respondent Alexander Belena's (Belena) wife, won over the petitioner in said mayoralty election.[8]

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[5] Sec. 262. *Other election offenses.* - Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute election offenses: Sections 9, 18, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 107, 108, 109, 110, 111, 112, 122, 123, 127, 128, 129, 132, 134, 135, 145, 148, 150, 152, 172, 173, 174, 178, 180, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 196, 197, 198, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 223, 229, 230, 231, 233, 234, 235, 236, 239 and 240.

[6] Sec. 13. *Authorized Expenses of Candidates and Political Parties.* - The aggregate amount that a candidate or registered political party may spend for election campaign shall be as follows:

(a) For Candidates. - Ten pesos (₱10.00) for President and Vice President; and for other candidates Three Pesos (₱3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy; Provided, That a candidate without any political party and without support from any political party may be allowed to spend Five Pesos (₱5.00) for every such voter; and

(b) For political parties. - Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.

Any provision of law to the contrary notwithstanding, any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, duly reported to the Commission shall not be subject to the payment of any gift tax.

[7] *Rollo*, p. 184.

[8] *Id*. at 5.

On December 4, 2014, Belena filed a Complaint-Affidavit for overspending or violation of Section 100 in relation to Section 262 of the Omnibus Election Code (OEC), as amended by Section 13 of R.A. No. 7166 against Salvador.[9]

According to Belena, Salvador exceeded the expenditure limit allowed by law for a mayoralty candidate. Citing Salvador's Statement of Election Contribution and Expenditure (SOCE), Belena averred that Salvador spent a total of ₱449,000.00 in the 2010 election, when the maximum expenditure allowed by law is ₱275,667.00.[10]

Belena averred that according to Section 13 of R.A. No. 7166, a candidate, other than for presidency and vice presidency, is allowed to spend an amount of ₱3.00 for every voter currently registered in the constituency where he filed his certificate of candidacy. However, if a candidate without any political party and without any support from any political party, he may be allowed to spend ₱5.00 for every such voter.[11]

Considering that the total number of registered voters in San Jose City, Nueva Ecija is 91,889 and that Salvador is a member of a political party, Belena contended that he was only allowed to spend ₱275,667.00 only.[12]

For his part, Salvador maintained that while he is a member of a political party, he argued that he did not receive any support from any political party. Hence, the exception under Section 13 of R.A. No. 7166 was applicable to him.[13]

In a Resolution[14] dated November 2, 2015, the COMELEC *En Banc* directed its Law Department to file the appropriate

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

[10] *Id*. at 21.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 22.

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

information against Salvador for overspending. The COMELEC *En Banc* disregarded the interpretation of Salvador and held that the ₱5.00 cap applies to a candidate who is not a member of a political party *and* who did not receive any support from any political party, using the principle *verba legis non est recedendum*. The *fallo* thereof reads:

> **WHEREFORE**, premises considered, the Commission (*En Banc*) **RESOLVED**, as it hereby **RESOLVES**, to **DIRECT** the Law Department to **FILE AN INFORMATION** against [Salvador] for violation of Section 100, in relation to Section 262 of the [OEC], as amended by Section 13 of [R.A.] No. 7166.
>
> **SO ORDERED.**[15]

Undeterred, Salvador filed a Motion for Reconsideration,[16] which was denied in a Resolution[17] dated March 8, 2017. The COMELEC *En Banc* reiterated its earlier ruling that the provisions of law under consideration require no interpretation as the law is clear and free from ambiguity. The dispositive portion of the COMELEC *En Banc* resolution reads:

> **WHEREFORE**, premises considered, the Commission *En Banc* **RESOLVED**, as it hereby **RESOLVES**, to deny the Motion for Reconsideration for lack of merit.
>
> **SO ORDERED.**[18]

Hence, this petition.

The Issue

Did the COMELEC *En Banc* commit grave abuse of discretion amounting to lack or in excess of jurisdiction when it recommended the filing of an appropriate information against Salvador?

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[15] *Id*. at 25.

[16] *Id*. at 26-32.

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

[18] *Id*. at 40.

Ruling of the Court

We rule in the negative.

Section 13 of R.A. No. 7166, a provision which provides for the allowable expenses of a candidate and political parties, is an amendment to Section 100 of the OEC. The pertinent provisions state:

Sec. 100. Limitations upon expenses of candidates. - No candidate shall spend for his election campaign an aggregate amount exceeding one peso and fifty centavos for every voter currently registered in the constituency where he filed his candidacy; Provided, That the expenses herein referred to shall include those incurred or caused to be incurred by the candidate, whether in cash or in kind, including the use, rental or hire of land, water, or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign; Provided, further, That where the land, water, aircraft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.

While Section 13 of R.A. No. 7166 provides:

Sec. 13. Authorized Expenses of Candidates and Political Parties. - The aggregate amount that a candidate or registered political party may spend for election campaign shall be as follows:

1. For Candidates. - Ten pesos (₱10.00) for President and Vice President; and for other candidates Three Pesos (₱3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy; Provided, That a candidate without any political party and without support from any political party may be allowed to spend Five Pesos (₱5.00) for every such voter; and

2. For political parties. - Five pesos (₱5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.

Any provision of law to the contrary notwithstanding any contribution in cash or in kind to any candidate or political party or

coalition of parties for campaign purposes, duly reported to the Commission shall not be subject to the payment of gift tax.

It could be found that Section 100 of the OEC is substantially lifted from Section 51 of Presidential Decree (P.D.) No. 1296 or the 1978 Election Code, which provides:

> **Sec. 51.** *Limitations upon expenses of candidates*. No candidate shall spend for his election campaign an amount more than the salary or the equivalent of the total emoluments for one year attached to the office for which he is a candidate: Provided, That the expenses herein referred to shall include those incurred by the candidate, his contributors and supporters,whether in cash or in kind, including the use, rental or hire of land, water or air craft, equipment, facilities, apparatus and paraphernalia used in the campaign: Provided, further, That, where the land, water or air craft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.
>
> In the case of candidates for the interim Batasang Pambansa, they shall not spend more than sixty thousand pesos for their election campaign.

Verily, Section 51 of P.D. No. 1296 and Section 100 of the OEC made a categorical declaration as to the allowable expenditure by *any kind* of candidate, whether a member of a political party or an independent candidate. With the amendment introduced by R.A. No. 7166, a distinction was made between a candidate without a political party and without support from any political party and a candidate with political party and who receives support from a political party. The former is allowed to spend the ₱5.00 cap while the latter is allowed to spend the ₱3.00 cap.

In enacting these provisions, the legislature intended to ensure equality between and among aspirants with deep pockets and those with less financial resources,[19] as the legislature understood

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[19] *Ejercito v. Hon. COMELEC, et al.*, 748 Phil. 205, 279 (2014).

the apparent disparity between candidates who are members of political parties and candidates who are not members of political parties. The political advantages which necessarily goes with a candidate's membership in a political party include the machinery,[20] goodwill, representation, and resources of the political party.[21] As said advantages are not enjoyed by non-members of a political party, it is necessary that an independent candidate, whose candidacy does not evoke sympathy from any political party or organized group, be afforded equal chances.[22]

Thus, in construing Section 13 of R.A. No. 7166, We treat the word "and" between "without political party" and "without support from any political party" as conjunctive. It means in addition to. The word "and", whether it is used to connect words, phrases or full sentences, must be accepted as binding together and as relating to one another.[23] Applying the foregoing to Section 13, the proper construction is that the allowable expenditure for candidates without any political party *and* without support from any political party is ₱3.00.

After all, the word "support," which is explicitly provided by the law, is not solely limited to financial aid. As aforementioned, political parties are designed to assist a candidate in his desire to win the vote of the populace. Political parties use its machinery and its resources to achieve such end. For example, political parties put up banners or give out leaflets containing the names of its members for the public to consider. In doing so, these organizations effectively support each candidate belonging to its unit.

The law is clear — the candidate must both be without a political party and without support from any political party for

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[20] *Occeña v. COMELEC*, 212 Phil. 368, 377 (1984).

[21] *See* Concurring and Dissenting Opinion of Justice Marvic M.V.F. Leonen in *Atong Paglaum v. COMELEC*, 707 Phil. 454 (2013).

[22] *Imbong v. Ferrer, etc., et al.*, 146 Phil. 30, 55 (1970).

[23] *Commissioner of Internal Revenue v. Ariete*, 624 Phil. 458, 467-468 (2010).

the ₱5.00 cap to apply. In the absence of one, the exception does not apply. Thus, We do not subscribe with petitioner's assertion that there is a room for different interpretation in terms of constructing the provision of Section 13 of R.A. No. 7166, as amended. To allow Salvador's contention is to deviate from the intention of the legislature in enacting the law, as the same would find all candidates on equal footing, whether member of a political party or not.

Coming to the present case, it is undisputed that the current number of registered voters in San Jose City, Nueva Ecija is 91,889. Following the provisions of the law and its proper interpretation, Salvador is entitled to spend the amount of ₱275,667.00, as he is allowed to spend ₱3.00 for each registered voter. However, Salvador spent the amount of ₱449,000.00 as declared in bis SOCE. Clearly, he exceeded the allowable limit provided by law. As such, it constitutes an election offense under Article 262[24] in relation to Article 263[25] of the OEC.

Hence, the COMELEC *En Banc* did not commit grave abuse of discretion amounting to lack or in excess of jurisdiction in ordering its Law Department to file the appropriate information against Salvador.

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[24] **Sec. 262. Other election offenses.** - Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute election offenses: Sections 9, 18, 74, 75, 76, 80, 81, 82, 83, 84,85,86,87,88, 89,95,96,97,98,99, 100, 101, 102, 103, 104, 105, 106 107, 108, 109, 110, 111, 112, 122, 123, 127, 128, 129, 132, 134, 135, 145, 148, 150, 152, 172, 173, 174, 178, 180, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 196, 197, 198, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 223,229, 230, 231, 233, 234, 235, 236, 239 and 240.

[25] **Sec. 263. Persons criminally liable.** - The principals, accomplices, and accessories, as defined in the Revised Penal Code, shall be criminally liable for election offenses. If the one responsible be a political party or an entity, its president or head, the officials and employees of the same, performing duties connected with the offense committed and its members who may be principals, accomplices, or accessories shall be liable, in addition to the liability of such party or entity.

WHEREFORE, premises considered, the petition is **DENIED**. The Resolutions dated November 2, 2015 and March 8, 2017 of the Commission on Elections *En Banc* in E.O. Case No. 14-483 are **AFFIRMED *in toto***.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, Reyes, Jr., and *Gesmundo, JJ.*, concur.

Carpio and *Jardeleza, JJ.*, on official leave.

THIRD DIVISION

[G.R. No. 196945. September 27, 2017]

DANILO REMEGIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.— Self-defense, when invoked as a justifying circumstance, implies the admission by the accused that he committed the criminal act. Generally, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. When the accused, however, admits killing the victim, it is incumbent upon him to prove any claimed justifying circumstance by clear and convincing evidence. Well-settled is the rule that in criminal cases, self-defense shifts the burden of proof from the prosecution to the defense. For self-defense to prosper, petitioner must prove by clear and convincing

evidence the following elements as provided under the first paragraph, Article 11 of the RPC: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

2. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION IS A PRIMORDIAL ELEMENT.— In self-defense, unlawful aggression is a primordial element. There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who defended himself. It presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person — not a mere threatening or intimidating attitude — at the time the defensive action was taken against the aggressor.

3. ID.; ID.; ID.; ID.; REASONABLE NECESSITY OF THE MEANS EMPLOYED; PERFECT BALANCE BETWEEN THE WEAPON USED BY THE ONE DEFENDING HIMSELF AND THAT OF THE AGGRESSOR IS NOT REQUIRED.— In *People v. Catbagan,* the Court ruled that the means employed by the person invoking self-defense is reasonable if equivalent to the means of attack used by the original aggressor. Whether or not the means of self-defense is reasonable depends upon the nature or quality of the weapon; the physical condition, the character, the size and other circumstances of the aggressor; as well as those of the person who invokes self-defense, and also the place and the occasion of the assault. x x x Perfect balance between the weapon used by the one defending himself and that of the aggressor is not required, because the person assaulted loses sufficient tranquility of mind to think, to calculate or to choose which weapon to use. x x x [T]he nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important *indicia*. x x x [A]s stated in the case of *People v. Boholst-Caballero*: The law on self-defense embodied in any penal system in the civilized world finds justification in man's natural instinct to protect, repel and save his person or rights from impending danger or peril; it is based on that impulse of self-preservation born to man and part of his nature as a human being. It would be wrong to compel petitioner to discern the legally defensible response to the victim's attack when he himself was staring at

the evil eye of danger. Our laws on self-defense are supposed to approximate the natural human responses to danger, and not serve as our inconvenient rulebook based on which we should acclimatize our impulses in the face of peril.

4. ID.; ID.; ID.; ID.; LACK OF SUFFICIENT PROVOCATION IN CASE AT BAR.— When the law speaks of provocation either as a mitigating circumstance or as an essential element of self-defense, it requires that the same be sufficient or proportionate to the act committed and that it be adequate to arouse one to its commission. It is not enough that the provocative act be unreasonable or annoying. Petitioner's act of telling the victim not to cut the trunk of the uprooted tree could hardly be considered provocation.

APPEARANCES OF COUNSEL

Pepin Joey Q. Marfil for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

MARTIRES, *J.*:

This is a Petition for Review on Certiorari assailing the Decision,[1] dated 16 September 2008, and Resolution,[2] dated 6 April 2011, of the Court of Appeals *(CA)* in CA-G.R. CR No. 00312, which affirmed with modification the Decision,[3] dated 16 September 2005, of the Regional Trial Court, Branch 13, Culasi, Antique *(RTC),* in Criminal Case No. C-358 finding petitioner Danilo Remegio *(petitioner)* guilty of homicide as defined and penalized under Article 249 of the Revised Penal Code *(RPC)*.

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[1] *Rollo*, pp. 23-42.

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

[3] Records, Vol. II, pp. 597-613; penned by Judge Antonio B. Bantolo.

THE FACTS

In an Information, dated 19 November 1999, petitioner was charged with homicide, committed as follows:

> That on or about the 12th day of December 1998, in the Municipality of Culasi, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the said accused, being then armed with an illegally possessed firearm, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with said firearm one Felix Sumugat, thereby inflicting upon the latter fatal wound on the vital part of his body which caused his instantaneous death.
>
> Contrary to the provisions of Article 249 of the Revised Penal Code.[4]

Petitioner pleaded not guilty to the crime charged. In the pre-trial conference, the parties stipulated on the fact that petitioner killed Felix Sumugat *(Sumugat)* on 12 December 1998, at Barangay Jalandoni, Culasi, Antique, without prejudice to petitioner's plea of self-defense.[5] As a result of petitioner's claim of self-defense, the order of trial was reversed.

Version of the Defense

The defense presented petitioner and Diosdado Bermudez *(Bermudez)* as its witnesses. Their combined testimony tended to establish the following:

Petitioner was the caretaker of a parcel of land belonging to his brother-in-law, Isidro Dubria. The said land was planted with various fruit-bearing trees as well as coconut, mahogany, and *ipil-ipil* trees.[6] On 12 December 1998, at around nine o'clock in the morning, petitioner heard the sound of a chainsaw. He then saw the victim, Sumugat, cutting the *ipil-ipil* tree which was uprooted during the typhoon that occurred on the previous day.[7]

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[4] Records, Vol. I, p. 60.

[5] *Id.* at 72-73.

[6] TSN, 5 October 2000, pp. 4-5.

[7] *Id.* at 7-8.

Petitioner approached Sumugat. He told him to cut only the branches of the *ipil-ipil* tree and not its trunk as it would be placed in the warehouse because his in-laws would be arriving from the United States. Sumugat became infuriated and shouted, *"You have nothing to do with this. You are only an in-law. I will kill you."* He then drew a revolver from his waist and aimed it at petitioner.[8]

Petitioner raised both of his hands and told Sumugat that he would not fight him, but Sumugat repeated that he would kill him. Fearing for his life, petitioner grappled with Sumugat for possession of the gun. He successfully took the gun from Sumugat but the latter picked up the chainsaw, turned it on, and advanced towards petitioner. Petitioner stepped back and shot at the ground to warn Sumugat, but the latter continued thrusting the chainsaw at him. Petitioner parried the chainsaw blade with his left hand, but he lost his balance and accidentally pressed the gun's trigger, thus firing a shot which hit Sumugat in the chest.[9]

Version of the Prosecution

The prosecution presented Bernardo Caduada *(Caduada)*, Hermie Magturo *(Magturo),* Rolando Dubria, and Dr. Feman Rene M. Autajay as its witnesses. Their combined testimony tended to establish the following:

Petitioner approached Sumugat who was cutting the *ipil-ipil* tree with the chainsaw.[10] He told Sumugat that if the latter did not desist from cutting the tree, he would shoot him. Sumugat answered that the tree was obstructing the way. Petitioner then drew his gun and fired at Sumugat's direction, but he missed.[11] Sumugat turned on the chainsaw, which provoked petitioner to shoot him on the left foot. Infuriated, Sumugat continued to brandish the chainsaw, but petitioner shot him in the chest.[12]

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

[9] *Id.* at 10-12.

[10] TSN, 24 January 2005, p. 16.

[11] *Id*. at 18-19.

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

Before he fell down, Sumugat swung the chainsaw, hitting petitioner in the palm. Petitioner then threw the gun into a canal.[13]

Magturo and Caduada executed a Joint Affidavit[14] on 2 February 1999, narrating the incident they witnessed on 12 December 1998. In his direct examination, however, Magturo stated that he did not understand the affidavit's contents at the time of signing.[15] Moreover, he testified that he was unfamiliar with the contents of the said affidavit because he did not witness the incident.[16] On the other hand, Caduada, on cross-examination, affirmed that he executed an Affidavit of Retraction[17] on 9 December 2002, because his conscience bothered him for telling a narration of facts which he did not actually witness.[18]

The RTC Ruling

In its Decision, dated 16 September 2005, the RTC found petitioner guilty beyond reasonable doubt of the crime of homicide. Accordingly, the trial court sentenced him to imprisonment of ten (10) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay the heirs of Sumugat the amount of ₱300,000.00.

The RTC ruled that the act of petitioner in telling the victim to stop cutting the tree was a provocation on his part. It added that from the moment petitioner wrested the firearm from the victim, his life was already free from any threat coming from the victim. It opined that the firing of the gun was no longer justified as the victim was already unarmed and was already crippled by the gunshot wound he sustained on his left foot. Hence, it concluded that petitioner's evidence in support of

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

[14] Records, Vol. I, pp. 9-10.

[15] TSN, 12 April 2005, pp. 12-13.

[16] *Id*. at 17.

[17] Records, Vol. II, p. 388.

[18] TSN, 6 September 2004, pp. 7-12.

his theory of self-defense did not meet the requirements of Article 11 of the RPC. The *fallo* reads:

> WHEREFORE, premises considered, having admitted the killing of Felix Sumugat, accused's evidence in the Record claiming self-defense, being not clear, not credible, not convincing, not justifiable, the Court found the accused guilty of the crime of Homicide which carries an imposable penalty of reclusion temporal, a penalty divisible by three (3) periods. Pursuant to Article 64, paragraph 2 of the Revised Penal Code, there being one mitigating circumstance of voluntary surrender, in relation to the Indeterminate Sentence Law, the Court hereby sentences the accused to an imprisonment of ten (10) years and one (1) day as minimum, to fourteen (14) years and eight (8) months as maximum. (same being the minimum of Reclusion Temporal) and the Court hereby, pursuant to Article 100 of the Revised Penal Code in relation to Section 1, Rule 111 of the Rules of Court, further orders the accused Danilo Remegio to indemnify the heirs of Felix Sumugat in the sum of ₱300,000.00.[19]

Aggrieved, petitioner appealed before the CA. Meanwhile, he was granted provisional liberty pending appeal after putting up a bail bond in the amount of ₱40,000.00.[20]

The CA Ruling

In a Decision, dated 16 September 2008, the CA affirmed the conviction of petitioner, but modified the penalty imposed to two (2) years and four (4) months of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor,* as maximum. It also ordered petitioner to pay the heirs of Sumugat the amounts of ₱50,000.00 as funeral expenses and ₱50,000.00 as civil indemnity instead of the ₱300,000.00 imposed by the trial court.

The CA held that the element of unlawful aggression was present. It observed that the testimonies of petitioner and Bermudez were consistent and supported by the medical certificate evidencing that petitioner sustained wounds in his left hand due to parrying the chainsaw which the victim thrust

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[19] Records, Vol. II, p. 613.

[20] *Id*. at 622.

at him. The appellate court declared that the prosecution's version was hardly believable considering that Caduada retracted his testimony and Magturo admitted that he was not around when the incident happened. It further noted that Rolando Dubria, a 13-year-old child, spoke only on 24 January 2005, or more than six years from the time the incident occurred; and that he was never made to give his account to the police authorities during the investigation stage. The CA also stated that the child admitted on cross-examination that Sumugat was able to inflict wounds on petitioner with the use of the chainsaw.

The appellate court, however, ruled that the element of reasonable necessity of the means employed to repel the aggression is absent. It reasoned that there could have been several ways for petitioner to repel the aggression without having to kill the victim, considering that the latter was already wounded and he held a chainsaw which was difficult to handle.

Finally, the CA adjudged that petitioner's act of telling the victim not to cut the trunk of the uprooted *ipil-ipil* tree could not be considered provocation. It disposed the case in this wise:

WHEREFORE, the **DECISION** of the Regional Trial Court Branch 13, Culasi, Antique in Criminal Case No. C-358, convicting accused-appellant of **HOMICIDE** is hereby **AFFIRMED** but with the following modifications:

1. **HE IS SENTENCED TO SUFFER THE INDETERMINATE PENALTY OF 2 YEARS AND 4 MONTHS OF PRISION CORRECCIONAL AS MINIMUM, TO 6 YEARS AND 1 DAY OF PRISION MAYOR AS MAXIMUM;**
2. **HE IS DIRECTED TO PAY THE HEIRS OF FELIX SUMUGAT THE FOLLOWING SUMS:**
    i. **FIFTY THOUSAND PESOS (₱50,000.00) AS FUNERAL EXPENSES;**
    ii. **FIFTY THOUSAND PESOS (₱50,000.00) AS CIVIL INDEMNITY.**[21] (emphasis in the original)

[21] *Rollo*, pp. 40-41.

Unconvinced, petitioner moved for reconsideration but the same was denied by the CA in a Resolution, dated 6 April 2011.

Hence, this petition.

ISSUE

WHETHER PETITIONER IS ENTITLED TO INVOKE THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE.

Petitioner argues, citing *U.S. v. Molina*,[22] that the person attacked is not duty bound to expose himself to be wounded or killed and while the damages to his person or life subsist, he has a perfect and indisputable right to repel such danger by wounding his adversary, to disable him completely, so that he may not continue the assault; and that from the inception of the incident, until it ended, the victim did not desist from attacking the petitioner, hence, the attending circumstance of reasonable necessity of the means employed is present.[23]

In its Comment,[24] the Office of the Solicitor General avers that the petition, anchored on the claim of self-defense, merely raises a pure question of fact which had already been rejected by both the trial and the appellate courts, hence, it should be denied outright.

In his Reply,[25] petitioner counters that reasonableness of the means employed does not depend on the harm done, but upon the reality and imminence of the danger or injury to the person defending himself; and that one who is persistently assaulted by another cannot be expected to act in a normal manner, and to follow the normal processes of reasoning, and weigh the necessity of employing a certain means of defense.

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[22] 19 Phil. 227, 232 (1911).

[23] *Rollo*, pp. 9 and 17-18.

[24] *Id*. at 62-69.

[25] *Id*. at 73-76.

THE COURT'S RULING

Self-defense, when invoked as a justifying circumstance, implies the admission by the accused that he committed the criminal act. Generally, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. When the accused, however, admits killing the victim, it is incumbent upon him to prove any claimed justifying circumstance by clear and convincing evidence.[26] Well-settled is the rule that in criminal cases, self-defense shifts the burden of proof from the prosecution to the defense.[27]

For self-defense to prosper, petitioner must prove by clear and convincing evidence the following elements as provided under the first paragraph, Article 11 of the RPC: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[28]

Unlawful aggression

In self-defense, unlawful aggression is a primordial element.[29] There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who defended himself.[30] It presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person — not a mere threatening or intimidating attitude — at the time the defensive action was taken against the aggressor.[31]

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[26] *People v. Delos Santos*, 739 Phil. 658, 666 (2014).

[27] *People v. Genosa*, 464 Phil. 680, 714 (2004).

[28] *People v. Galvez*, 424 Phil. 743, 751 (2002).

[29] *Cano v. People,* G.R. No. 155258, October 7, 2003, 459 Phil. 416, 430 (2003).

[30] *People v. Samson,* 768 Phil. 487, 496 (2015).

[31] *Cano v. People, supra* note 29.

The pertinent parts of the transcript of stenographic notes provide thus:

[Atty. Operiano:]

Q: What exactly did you tell Felix Sumugat when you went near him while he was sawing the ipil-ipil tree?
A: I told him. "Nong, please stop this first. We have to talk."

Q: And what was the tone of your voice when you uttered those words?
A: It was in a low voice because I still respect him being older than me, sir.

Q: What did Felix Sumugat do, if any when you uttered those words?
A: He stopped the engine of the chainsaw and then laid down on the ground and said, "What?"

Q: What did Felix Sumugat say to you, if any?
A: Felix Sumugat said, "So, what do you mean to say?" I told him, "Nong, just cut the branches and the main trunk will be placed in the bodega because my father-in-law and my brother-in-law will be arriving in March."

Q: And what did Felix Sumugat say, if any?
A: He said, "You have nothing to do with this. You are only an in-law. I will kill you."

Q: When Felix Sumugat uttered those words, what was the tone of his voice?
A: He was shouting, sir.

Q: And after he said, "I will kill you," what happened, if any?
A: He drew his revolver and aimed at me, sir.

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Q: While Felix Sumugat was pointing that gun at you, what did you do, if you did anything?
A: I raised both my hands, sir.

Q: And when you raised both your hands, what did you say, if any?
A: I said, "Nong, I will not fight you."

Q: What did Felix Sumugat do, if any after you said you will not fight him, at the same time raising both your hands?
A: He said, "I will kill you."

Q: How many times did he say, "I will kill you"?
A: Twice, sir.

x x x x x x x x x

Q: Now, after you were able to wrest the possession of that gun from Felix Sumugat, what did you intend to do with the same?
A: I stepped a little backward but he was fast in picking up the chainsaw and then started its engine.

Q: And what did Felix Sumugat do with the chainsaw after he picked it up and started the engine?
A: He thrust the chainsaw towards me, sir.

Q: And what did you do when Felix Sumugat made a forward thrust of that chainsaw directed to you?
A: I stepped backward a little and with the use of that firearm which I wrested from him, I fired a shot to the ground, sir.

Q: What was your intention in firing that gun on the ground?
A: Just to warn him that he will not assault me, sir.

Q: Now, after you fired that gun pointed on the ground, what did Felix Sumugat do, if any?
A: He insisted in trying to reach me with the chainsaw but I leaned backward, sir.

Q: Now, when you stepped backward and leaned backward to evade the blade of the chainsaw, what else happened, if any?
A: When I leaned backward at the same time parrying the chainsaw, accidentally, I pressed the trigger of that gun, sir.[32]

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Witness Bermudez, who was 40 meters away and saw what transpired, corroborated petitioner's account.[33] He remained steadfast and unwavering even on cross-examination. Moreover,

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[32] TSN, 5 October 2000, pp. 8-12.

[33] TSN, 7 September 2000, p. 18.

petitioner's narration of the events is supported by the medico-legal report[34] stating that he indeed suffered wounds in his left hand.

Doubtless, the utterance of Sumugat to kill petitioner coupled by his act of aiming a gun at him, and his continued thrusting of the chainsaw that hit petitioner's palm constitute unlawful aggression.

Reasonable necessity of the means employed

In *People v. Catbagan*,[35] the Court ruled that the means employed by the person invoking self-defense is reasonable if equivalent to the means of attack used by the original aggressor. Whether or not the means of self-defense is reasonable depends upon the nature or quality of the weapon; the physical condition, the character, the size and other circumstances of the aggressor; as well as those of the person who invokes self-defense, and also the place and the occasion of the assault.[36]

In ruling that the element of "reasonable necessity of the means employed" is absent, the appellate court opined that "[t]here could have been several ways for petitioner to repel the aggression without having to kill the victim, especially that the latter was already wounded on the foot and physically feebler than [petitioner]. More so, the victim only had a chainsaw, a crude weapon more difficult to handle x x x."[37]

The Court disagrees with the CA.

First, it must be noted that the gun which petitioner grabbed from the victim was the only weapon available to him and that the victim was continuing to thrust the chainsaw towards him. Indeed, a chainsaw is difficult to operate. It could be reasonably

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[34] Records, Vol. I, p. 180.

[35] 467 Phil. 1044, 1074 (2004).

[36] Luis B. Reyes, *THE REVISED PENAL CODE,* Book One, Seventeenth Edition (2008), p. 180.

[37] *Rollo*, p. 37.

inferred, however, that it was not the victim's first time to operate a chainsaw considering that he was previously using the same to cut the uprooted tree without any person assisting him for that matter. Also, the chainsaw was switched on when the victim was thrusting it towards petitioner. Hence, the danger that petitioner would be cut into pieces by the chainsaw was very real. Perfect balance between the weapon used by the one defending himself and that of the aggressor is not required, because the person assaulted loses sufficient tranquility of mind to think, to calculate or to choose which weapon to use.[38] Certainly, it would have been different if the victim assaulted petitioner using a blunt object for in that case, the use of a gun to repel such attack would undoubtedly be unreasonable. The ruling of the Court in *Cano v. People*[39] thus applies in this case, viz:

> x x x the reasonableness of the means employed to repel an actual and positive aggression should not be gauged by the standards that the mind of a judge, seated in a swivel chair in a comfortable office, free from care and unperturbed in his security, may coolly and dispassionately set down. The judge must place himself in the position of the object of the aggression or his defender and consider his feelings, his reactions to the events or circumstances. It is easy for one to state that the object of the aggression or his defender could have taken such action, adopted such remedy, or resorted to other means. But the defendant has no time for cool deliberation, no equanimity of mind to find the most reasonable action, remedy or means to. He must act from impulse, without time for deliberation. The reasonableness of the means employed must be gauged by the defender's hopes and sincere beliefs, not by the judge's.[40]

Second, the fact that the victim was older than petitioner is not an accurate gauge to declare that the former was weaker than the latter. Youth is not tantamount to strength as advanced age does not connote frailty. In this case, the victim, despite

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[38] Luis B. Reyes, *THE REVISED PENAL CODE*, Book One, Seventeenth Edition (2008), p. 180.

[39] *Cano v. People, supra* note 29.

[40] *Id.* at 436.

being 62 years of age at the time of the incident, was certainly not feeble considering that he was able to operate the chainsaw to cut the uprooted tree. Further, even if the victim's left foot was wounded by the first shot fired, it is not entirely impossible that he continued to assault petitioner using the chainsaw. In the same way that petitioner was impelled by the instinct of self-preservation, the victim, too, could have been driven by fury and adrenaline in continuing to attack petitioner.

Third, the nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important *indicia*.[41] It is worthy to note that petitioner did not immediately shoot the victim when he successfully took possession of the gun. He shot Sumugat only when the latter continued to attack him with the chainsaw. In addition, petitioner's first shot wounded the victim on the left foot. It was only when he was slashed by the chainsaw on his left hand that petitioner fired the fatal shot.

Finally, as stated in the case of *People v. Boholst-Caballero*:[42]

> The law on self-defense embodied in any penal system in the civilized world finds justification in man's natural instinct to protect, repel and save his person or rights from impending danger or peril; it is based on that impulse of self-preservation born to man and part of his nature as a human being.[43]

It would be wrong to compel petitioner to discern the legally defensible response to the victim's attack when he himself was staring at the evil eye of danger.[44] Our laws on self-defense are supposed to approximate the natural human responses to danger, and not serve as our inconvenient rulebook based on which we should acclimatize our impulses in the face of peril.[45]

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[41] *Nacnac v. People,* 685 Phil. 223, 234 (2012).

[42] 158 Phil. 827 (1974).

[43] *Id*. at 832.

[44] *Soplente v. People*, 503 Phil. 241, 258 (2005).

[45] *Id*.

Lack of sufficient provocation

When the law speaks of provocation either as a mitigating circumstance or as an essential element of self-defense, it requires that the same be sufficient or proportionate to the act committed and that it be adequate to arouse one to its commission. It is not enough that the provocative act be unreasonable or annoying.[46] Petitioner's act of telling the victim not to cut the trunk of the uprooted tree could hardly be considered provocation.

Under the law, a person does not incur any criminal liability if the act committed is in defense of his person. Thus, all the elements of self-defense having been established in this case, petitioner is entitled to an acquittal.

WHEREFORE, the petition is **GRANTED.** The 16 September 2008 Decision and 6 April 2011 Resolution of the Court of Appeals in CA-G.R. CR No. 00312 are **REVERSED** and **SET ASIDE**. Petitioner Danilo Remegio is hereby **ACQUITTED** of homicide. The bail bond posted for his temporary liberty is hereby cancelled and ordered released to petitioner or his duly authorized representative.

SO ORDERED.

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

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[46] *Cano v. People, supra* note 29 at 436-437.

FIRST DIVISION

[G.R. No. 198119. September 27, 2017]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN and JUAN[1] ROBERTO L. ABLING,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IN A RULE 65 PETITION, THE DEFENSE OF DOUBLE JEOPARDY WILL NOT LIE FOR A JUDICIAL REVIEW IN *CERTIORARI* PROCEEDINGS SHALL BE CONFINED TO THE QUESTION OF WHETHER THE JUDGMENT FOR ACQUITTAL IS *PER SE* VOID ON JURISDICTIONAL GROUNDS.— The general rule is that a judgment of acquittal rendered after trial on the merits shall be immediately final and unappealable because further prosecution will place the accused in double jeopardy. However, the defense of double jeopardy will not lie in a Rule 65 petition. Unlike in an appeal, this remedy does not involve a review of facts and law on the merits, an examination of evidence and a determination of its probative value, or an inquiry on the correctness of the evaluation of the evidence. Judicial review in *certiorari* proceedings shall be confined to the question of whether the judgment for acquittal is *per se* void on jurisdictional grounds. The court will look into the decision's validity—if it was rendered by a court without jurisdiction or if the court acted with grave abuse of discretion amounting to lack or excess of jurisdiction—not on its legal correctness. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty imposed by law, or to act in contemplation of law or where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. More specifically, to prove that an acquittal is tainted with grave abuse of discretion, the petitioner

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[1] Also referred to as "Jose" in some of the pleadings/documents/court processes.

must show that the prosecution's **right to due process was violated or that the trial conducted was a sham**.

2. ID.; ID.; ID.; ID.; MAY ONLY CORRECT ERRORS OF JURISDICTION INCLUDING THE COMMISSION OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— [The] averments directly question public respondent Sandiganbayan's appreciation of evidence. We have already ruled that, in *certiorari* proceedings, the court shall not examine and assess the evidence of the parties, weigh its probative value of the evidence, or inquire on the correctness of the evaluation of the evidence. Even if the court *a quo* committed an error in its review of the evidence or application of the law, these are merely **errors of judgment.** We reiterate that the extraordinary writ of *certiorari* may only correct **errors of jurisdiction** including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. For as long as the court acted within its jurisdiction, an error of judgment that it may commit in the exercise thereof is not correctable through the special civil action of *certiorari.* The review of the records and evaluation of the evidence anew will result in a circumvention of the constitutional proscription against double jeopardy.

3. ID.; ID.; ID.; ID.; FAILURE TO COMPLY WITH THE MANDATORY PROCEDURAL REQUIREMENT THAT THE PETITION BE ACCOMPANIED BY COPIES OF DOCUMENTS RELEVANT THERETO IS A GROUND FOR THE DISMISSAL OF THE PETITION.— [E]ven if we assume that public respondent Sandiganbayan's error in judgment resulted in a denial of due process or a sham trial and the same was properly alleged, the Court is still prevented from making a complete evaluation of this aspect because petitioner People did not even attach to the present Petition the very documents at the center of its argument, pursuant to Section 1, Paragraph 2, Rule 65 of the Rules of Court, as amended x x x. Considering that petitioner People impugned the veracity of the three memoranda supposedly signed by President Marcos, without copies of Exhibits "15," "16" and "17," the Court has no opportunity to examine its contents and verify the same as against petitioner People's averments. In fact, the Court has no factual basis upon which it could actually and completely dispose of the issue raised by petitioner People. Therefore, all

that is left before the Court are bare and unsubstantiated allegations that do not warrant the Court's consideration. Failure to comply with the dictates of x x x Section 1, *vis-á-vis* Section 3, Paragraph 3 of Rule 46, is a ground for the dismissal of the petition under the last paragraph of the same section x x x. That petitioner People failed to comply with this mandatory procedural requirement x x x justifies the dismissal of the present petition.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Espejo & Associates for private respondent Abling.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for *Certiorari* under Rule 65 of the Rules of Court,[2] as amended, assails the Decision[3] dated June 16, 2011 of public respondent Sandiganbayan in Criminal Case No. 22987, entitled "*People of the Philippines v. Juan Roberto Abling y Loyola*," acquitting herein private respondent Juan Roberto L. Abling (Abling) of the crime of malversation of public funds defined and penalized under Article 217 of the Revised Penal Code.

In an Information dated August 4, 1995, private respondent Abling was charged as follows:

That for the period from January 22, 1986 to February 4, 1986 or sometime prior or subsequent thereto, in Pasig, Metro-Manila,

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[2] Section 5, Rule 65 of the Rules of Court provides: "When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court[.]"

[3] *Rollo*, pp. 51-78; penned by Associate Justice Samuel R. Martires (now a member of this Court) with Presiding Justice Edilberto G. Sandoval and Associate Justice Teresita V. Diaz-Baldos concurring.

Philippines, and within the jurisdiction of this Honorable Court, J. Roberto L. Abling, a public officer, being then the Executive Director of the Economic Support Fund Secretariat, Office of the President of the Philippines and as such accountable for public funds received and/or entrusted to him by reason of his office, acting in relation to his office and taking advantage of the same, did then and there, willfully, unlawfully and feloniously take, misappropriate and convert to his personal use and benefit the amount of ₱22,000,000.00 from such public funds received by him by reason of his office to the damage of the government in the amount aforestated.[4]

The facts leading to the filing of the Information are:

Pursuant to Letter of Instruction (LOI) No. 1030 dated May 27, 1980, entitled "*Establishing the Implementing Machinery and Mechanism for the Utilization of Economic Assistance Proceeds from the Military Bases Agreement*," then President Ferdinand E. Marcos (President Marcos) directed the following:

1. The proceeds of the Economic Support Fund (ESF) made available to the Philippine Government under the Military Bases Agreement, as amended, shall be allocated and utilized for priority development programs and projects of the government particularly the Bagong Lipunan Sites and Services Program, subject to the approval of the President pursuant to Section 14, General Provisions of the General Appropriations Act of 1980.

2. The ESF proceeds shall be treated as a Special Account on the Treasury of the Philippines provided that pertinent provisions of P.D. No. 1177 (Sections 40, 50 and 51) and LOI 981 shall not apply.

3. There is hereby created a Management Advisory Committee (MAC) with the Minister of Human Settlements, as Chairperson, and with the Minister of Defense, Minister of Industry, Minister of Budget, Minister of Public Works, Minister of Education and Culture, Minister of Economic Planning and Minister of Agriculture as members, to advise the President on the allocation and utilization of the ESF. For this purpose the MHS shall serve as the Secretariat to the MAC.

4. The Management Advisory Committee shall

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[4] *Id*. at 51; as reproduced in the Sandiganbayan Decision.

(a) determine the eligible development programs and projects of the Government that may avail of the ESF;

(b) program the allocation of the ESF among the priority programs and projects;

(c) represent the Philippine Government in dealing with USAID or any instrumentalities of the USA dutifully authorized to handle ESF issues;

(d) submit to the President of the Philippines for final approval the utilization plan of the ESF;

(e) prepare and submit to the Minister of the Budget the Philippine Government counterpart requirements to implement the programs/projects for approval by the President; and

(f) submit regular accomplishment reports to the President of the Philippines.

Subsequent thereto, through LOI No. 1434 dated October 26, 1984 entitled "*Amending Letter of Instructions No. 1030 and Providing for the Reconstitution of the Management Advisory Committee*," President Marcos reorganized[5] and renamed the Management Advisory Committee into the "Economic Support Fund (ESF) Council" and placed the same directly under his office. Further, the ESF Secretariat (ESFS) was constituted, to be headed by an Executive Director. Under LOI No. 1434, the Executive Director had the following powers and responsibilities, *viz.*:

a) Upon clearance with the President and the Council, issue rules and regulations as may be necessary to implement the provisions of this LOI.

b) Reorganize the Secretariat directly under the ESF Council as a critical technical support staff of the Council and establish such working relationships with the National Economic and Development

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[5] As part of the reorganization of the MAC into the ESF Council, the head of the NEDA was appointed as Vice-Chairperson thereof; and the Ministers of Finance and Local Government, as well as the Presidential Assistant for Legal Affairs, were added as members of the ESF Council.

Authority and the Office of the Philippine Ambassador to the United States for purposes of coordinating and integrating U.S. foreign assistance program.

c) Approved the organizational and staffing structure and appoint the personnel of the Secretariat subject to confirmation of the Council.

d) Submit for the review and approval of the ESF Council program plans for the utilization of ESF allocations.

e) Undertake and conduct economic and financial studies for the effective and expanded utilization of the ESF to support priority basic needs programs and projects of the government.

f) Report directly to the Chairman of the Council and/or the President on all ESF matters requiring immediate action.

In 1983, President Marcos appointed private respondent Abling as Executive Director of the ESFS.[6]

On November 21, 1985, President Marcos signed LOI No. 1484, Series of 1985, establishing the policies and guidelines for the disbursements of ESF proceeds, to wit:

a) Joint Circular No. 1-85 dated September 19, 1985 of the Commission on Audit and the ESF Secretariat, prescribing procedures on the release and utilization of the funds as administered by the ESF Council and the ESF Secretariat, including the accounting treatment thereof, pursuant to Letter of Instructions No. 1379 dated February 5, 1984, including subsequent amendments or issuances related thereto, shall be strictly complied with.

b) The interest earnings of ESF proceeds in a Special Account of the Bureau of Treasury shall be utilized as follows: (1) Sixty (60%) percent of the total interest earnings to additionally fund the implementation of ESF projects, including newly identified projects, variation orders and price escalations, in accordance with such criteria as may be approved by the ESF Council, provided that such projects shall be approved by the President prior to their implementation; (2) Forty (40%) percent to support the operations of the ESF Secretariat, including personnel maintenance and operating expenditures insurance premiums and other contingency requirements of completed ESF projects.

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[6] *Rollo*, p. 140.

c) The National Treasurer of the Philippines shall submit to the President, through the ESF Secretariat, a periodic report on all ESF remittances, including the total amount representing the actual interest earnings of ESF proceeds.

In Joint Circular No. 1-85,[7] the Commission on Audit (COA) and ESFS established the guidelines and procedures on the release and utilization of amounts from the Fund, *e.g.*, all disbursements must be covered by duly approved vouchers in accordance with existing auditing and accounting regulations and supported by the required documents.[8] In turn, COA Circular No. 76-17[9] required all disbursements of national security, intelligence, and confidential funds to be supported by duly accomplished disbursement vouchers and receipts, bills, or commercial invoices of creditors.

In January 1986, ESFS issued five disbursement vouchers claimed to be "for the payment of miscellaneous expenses as per instruction of President Marcos."[10] As a result, five checks amounting to ₱35 million were issued to private respondent Abling as payee and drawn against ESFS's current account with the Land Bank of the Philippines (Land Bank), Makati Branch.

In February 1986, the EDSA People Power Revolution took place, which resulted in the ouster of former President Ferdinand E. Marcos and the assumption to power of former President Corazon C. Aquino.[11]

Subsequently, pursuant to Audit Assignment Order No. 86-207, then COA Chairman Teofisto Guingona authorized the

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[7] Entitled "*Procedures for Implementing Letter of Instructions No. 1379 entitled 'Establishing Fund Disbursement Guidelines to Govern the Efficient Utilization of the Development Projects Fund (Economic Support Fund).*'"

[8] *Id.*, Section 5.2.3.

[9] Dated February 16, 1976, with the subject "Audit of national security, intelligence and confidential funds."

[10] *Rollo*, p. 28.

[11] *Quintos v. Development Bank of the Philippines*, 766 Phil. 601, 610 (2015).

audit of the confidential funds held by 12 government agencies, including the ESFS. Thus, in March 1986, the COA, through Resident Auditor Fe Ramirez-Muñoz (Resident Auditor Muñoz), conducted a special audit of ESFS's confidential funds. Based on the special audit, it appeared that the ESFS made several cash advances amounting to ₱35 million to private respondent Abling from January to February 1986, the Executive Director of ESFS at the time. Of the ₱35 million, however, only ₱13 million was refunded to the ESFS.[12] Thus, the COA required private respondent Abling to liquidate the balance of ₱22 million, and to submit all supporting documents pertinent to said liquidation as required by COA Circular No. 76-17.[13]

In compliance to the aforementioned,[14] private respondent Abling referred to his letter dated February 11, 1986 addressed to COA Chairman Francisco S. Tantuico (Chairman Tantuico), through which he submitted the following documents: (a) **disbursement vouchers**; (b) **copy of Certificate of Interest Earnings of ESF Accounts**; (c) **Summary of Disbursements/ Expenses**; and (d) **Certificates of Disbursement and Delivery** duly certified by himself.

However, the COA considered the said documents as insufficient compliance with COA Circular No. 76-17.[15] In her affidavit,[16] Resident Auditor Muñoz insisted on the submission

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[12] *Rollo*, pp. 53-54.

[13] *Id*. at 96.

[14] Letter-Reply dated March 18, 1986; *rollo*, p. 103.

[15] COA Circular No. 76-17 requires that "[d]isbursement vouchers (General Form No. 5[A]) should be properly accomplished and adequately supported by receipts, bills, or commercial invoices of creditors. A summary of the nature of the expenses incurred may also be submitted as supporting paper to the voucher." It further provides that, "[c]redits to the accounts of the accountable officers are to be recorded in the books of accounts only on the basis of a credit memorandum issued by the Acting Chairman, Commission on Audit, or his authorized representative. This memorandum shall be based on audited disbursement vouchers."

[16] Dated May 7, 1986; *rollo*, pp. 109-115.

of the following documents: (a) a **certified list of projects undertaken by the ESF and its corresponding receipts**; and (b) **copies of receipts, indicating the identity and names of the recipients of the funds disbursed**.

Chairman Guingona also demanded that private respondent Abling liquidate the ₱22 million, and to submit the required documents.[17]

Private respondent Abling, however, failed to comply with the foregoing demand; thus, the COA filed a complaint for malversation against him before the Office of the Ombudsman (Ombudsman).[18]

The Ombudsman found probable cause to indict private respondent Abling for the crime of malversation before the Sandiganbayan.

Proceedings before the Sandiganbayan

During trial, the prosecution presented several pieces of documentary evidence, *i.e.*, (a) ESFS disbursement vouchers in favor of private respondent Abling amounting to ₱35 million, which he approved himself; (b) corresponding Land Bank checks also issued in the name of private respondent Abling and amounting to ₱35 million; (c) private respondent Abling's certification that he received the aforementioned amount, ₱13 million of which he had refunded, leaving a balance of ₱22 million; (d) copy of COA Circular No. 76-17; and (e) copy of Joint Circular No. 1-85.[19]

For his defense, private respondent Abling testified that he was instructed by President Marcos to withdraw ₱35 million from the Fund for the "payment of miscellaneous expenses." He admitted that upon withdrawing the ₱35 million, he personally delivered ₱22 million from said amount to President Marcos;

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[17] Letter dated March 31, 1986; *id*. at 106-107.

[18] Letter dated May 7, 1986; *id*. at 108.

[19] *Rollo*, pp. 61-66.

and the balance of ₱13 million was re-deposited to ESF's Land Bank account.[20]

As proof of said delivery to President Marcos, private respondent Abling presented three undated ESFS memoranda,[21] and testified on direct examination that:

ATTY. MAURICIO:

Q Mr. Witness, the last time you testified in this Honorable Court, specifically on July 8, 2004, you said that you delivered to then President Ferdinand Marcos the amount of twenty-two million pesos (₱22,000,000.00) pesos.

WITNESS:

A Yes, Sir.

ATTY. MAURICIO:

Q My question is: Do you have any proof that you delivered such amount to then President Ferdinand Marcos?

WITNESS:

A Yes, Sir.

ATTY. MAURICIO:

Q What proof do you have?

WITNESS:

A The... the amounts we delivered in separate... in three separate occasions, Your Honor, are total twenty million. And (each] time I delivered, I draft a memorandum showing that or for the President accepting the payment. This draft memorandum [was] left [on] the President's table. And after the... after I have delivered to him the twenty million, I was wondering why the memorandum is not... is not... signed. In other words, it's not been signed.

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[20] *Id*. at 186-197.

[21] Marked as Exhibits "15", "16" and "17" during his direct examination; TSN, September 24, 2004, pp. 11-12.

ATTY. MAURICIO:

We will ask another question.

Q Witness... Mr. Witness, you said that you wrote a memorandum to the... to then President Ferdinand Marcos.

WITNESS:

A Yes, Sir.

ATTY. MAURICIO:

Q If shown to you a copy of that memorandum, would you be able to identify the same?

WITNESS:

A Yes, Sir.

ATTY. MAURICIO:

Q I have here three (3) memorand [a] written [on] the stationery of the Economic Support... Support Fund Council, the Secretariat, ["]Memorandum for the President, Subject: Confidential Fund from one Jose Roberto L. Abling["]

Would you go over [these] memorand[a] and tell the Honorable Court if those are the memorand[a] you said you wrote the President?

WITNESS:

A Yes, Sir.[22]

Private respondent Abling testified that President Marcos signed the memoranda. When the documents were shown to him, he identified the signatures appearing with the word "Approved" as those belonging to President Marcos.[23]

The Ruling of the Sandiganbayan

In a Decision dated June 16, 2011, public respondent Sandiganbayan acquitted private respondent Abling, to wit:

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[22] TSN, September 24, 2004, pp. 8-11.

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

WHEREFORE, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, the accused, Juan Roberto Abling, is hereby ACQUITTED of the offense charged.

The cash bond posted by the accused to secure his provisional liberty is hereby ordered returned to him, subject to the usual accounting and auditing procedures.

The Hold Departure Order issued by this Court against the accused dated 10 October 1995 is lifted and set aside.[24]

Public respondent Sandiganbayan held that the first three elements of the crime of malversation as defined under Article 217 of the Revised Penal Code were present, *viz.*: (a) private respondent Abling, as the ESFS Executive Director, was a public officer at the time of the commission of the crime; (b) by reason of his position, he was in custody and control of ESFS's principal fund and interest earnings; and (c) these funds were public funds and private respondent Abling was accountable for it.[25] As such, only the presence of the last element—that private respondent Abling converted the funds to personal use—was at issue.

In this regard, the court *a quo* cited *Valle v. Sandiganbayan*,[26] *Felicilda v. Grospe*,[27] and *Zambrano v. Sandiganbayan*[28] where this Court ruled that a *prima facie* case of malversation exists when a public officer accountable for public funds fails to produce or explain the disposition of such funds upon demand by a duly authorized officer. Thus, a conviction for malversation may be sustained even if there is no direct evidence of personal misappropriation as long the public officer failed to explain satisfactorily the absence of the public funds involved.[29]

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[24] *Rollo*, p. 77.

[25] *Id*. at 71.

[26] 289 Phil. 137, 142 (1992).

[27] 286 Phil. 384, 388 (1992).

[28] 284 Phil. 146, 155 (1992).

[29] *Zambrano v. Sandiganbayan*, *id*., citing *De Guzman v. People*, 204 Phil. 663, 673-674 (1982); *Bacasnot v. Sandiganbayan*, 239 Phil. 362, 366 (1987).

However, public respondent Sandiganbayan considered private respondent Abling's testimony together with Exhibits "15," "16" and "17" — the three memoranda — and ruled that such evidence rebutted the above-stated presumption as they proved that private respondent Abling personally delivered the amount of ₱22 million to President Marcos.[30] It held that when the absence of funds was not due to the personal use of the accused, the presumption was completely destroyed.[31]

Public respondent Sandiganbayan noted that the prosecution should have presented direct evidence showing that private respondent Abling appropriated the amount in question for his personal use. Absent which, the testimony of private respondent Abling coupled with the three memoranda, cast reasonable doubt over the latter's guilt of the crime charged.[32]

Thus, petitioner People of the Philippines, through the Office of the Solicitor General, filed the present Petition.

The Issue

Petitioner People of the Philippines raises a lone issue —

PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION WHEN THEY ACCEPTED THE DEFENSE OF ABLING THAT HE FORWARDED THE FUNDS TO PRESIDENT MARCOS AS BEING SUFFICIENT TO OVERTURN THE LEGAL PRESUMPTION OF MALVERSATION

The Ruling of the Court

The Petition has no merit.

Petitioner People argues that Article 217[33] of the Revised Penal Code does not require the State to present proof that the

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[30] *Rollo*, p. 73.

[31] *Id*. at 76, citing *Agullo v. Sandiganbayan*, 414 Phil. 86, 98 (2001).

[32] *Id*. at 77.

[33] Art. 217. *Malversation of public funds or property. - Presumption of malversation*. - Any public officer who, by reason of the duties of his

accused actually appropriated, took, or misappropriated the public funds, or property. Instead, a showing that a public officer accountable for any public funds failed to have duly forthcoming such funds upon demand by any authorized officer, establishes a *prima facie* case of malversation. The accused must then overturn this presumption of law by presenting adequate evidence that he in fact did not put said funds to personal use. Petitioner People avers that, in the present case, public respondent Sandiganbayan committed grave abuse of discretion when it accepted private respondent Abling's bare explanation that he had forwarded the ₱22 million to President. Marcos and three undated memoranda purportedly evidencing such turnover. These are not strong and convincing proof and, thus, private respondent Abling fell short in overturning the presumption of malversation.[34]

Private respondent Abling counters that the present petition, insofar as it seeks to reconsider public respondent

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office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer: 1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos. 2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos. 3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos. 4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use. (As amended by R.A. No. 1060).

[34] *Rollo*, pp. 42-45.

Sandiganbayan's judgment of acquittal, places him twice in jeopardy. Further, petitioner People mainly questions public respondent Sandiganbayan's manner of appreciation and evaluation of evidence. This is an error of judgment that cannot be corrected by *certiorari*.[35]

At the outset, this Court recognizes that a judgment of acquittal rendered by the Sandiganbayan may be assailed via a petition for *certiorari* under Rule 65 of the Rules of Court on narrow grounds established in jurisprudence.[36]

The general rule is that a judgment of acquittal rendered after trial on the merits shall be immediately final and unappealable because further prosecution will place the accused in double jeopardy.[37] However, the defense of double jeopardy will not lie in a Rule 65 petition. Unlike in an appeal, this remedy does not involve a review of facts and law on the merits, an examination of evidence and a determination of its probative value, or an inquiry on the correctness of the evaluation of the evidence.[38] Judicial review in *certiorari* proceedings shall be confined to the question of whether the judgment for acquittal is *per se* void on jurisdictional grounds. The court will look into the decision's validity—if it was rendered by a court without jurisdiction or if the court acted with grave abuse of discretion amounting to lack or excess of jurisdiction—not on its legal correctness.[39] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty imposed by law, or to act in contemplation of law or where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[40]

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[35] *Id.* at 797.

[36] *People v. Sandiganbayan,* 681 Phil. 90, 110 (2012).

[37] See *People v. Nazareno*, 612 Phil. 753, 766 (2009); *People v. Tria-Tirona*, 502 Phil. 31, 37 (2005); *People v. Velasco*, 394 Phil. 517 (2000).

[38] *Ysidoro v. De Castro*, 681 Phil. 1, 16 (2012).

[39] *Id.*; *People v. Nazareno*, *supra* note 37.

[40] *People v. Sandiganbayan*, 524 Phil. 496, 523 (2006).

More specifically, to prove that an acquittal is tainted with grave abuse of discretion, the petitioner must show that the prosecution's **right to due process was violated or that the trial conducted was a sham**.[41]

Measured against the foregoing standard, the Court fmds that petitioner People has nonetheless failed to meet the exacting criteria required in availing of this exceptional legal remedy.

First, petitioner People accuses public respondent Sandiganbayan of committing grave abuse of discretion when it held that private respondent Abling's defense — that he forwarded the funds to President Marcos — sufficiently overturned the *prima facie* case of malversation against him. More specifically, it faults the court *a quo* for giving probative value to Exhibits "15", "16", and "17", the three ESFS memoranda that were undated and unsigned; thus, of questionable authenticity.[42]According to petitioner People, the documents failed to satisfactorily explain the deficit of ₱22 million. Hence, the totality of the defense's evidence was not at all sufficient to overcome the presumption of malversation.

These averments directly question public respondent Sandiganbayan's appreciation of evidence. We have already ruled that, in *certiorari* proceedings, the court shall not examine and assess the evidence of the parties, weigh its probative value of the evidence, or inquire on the correctness of the evaluation of the evidence.[43]

Even if the court *a quo* committed an error in its review of the evidence or application of the law, these are merely **errors of judgment**.[44] We reiterate that the extraordinary writ of *certiorari* may only correct **errors of jurisdiction** including

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[41] *People v. Court of Appeals*, 691 Phil. 783, 787-788 (2012), citing *People v. Sandiganbayan*, 661 Phil. 350, 355 (2011).

[42] *Rollo*, p. 43.

[43] *Ysidoro v. De Castro*, *supra* note 38.

[44] *People v. Sandiganbayan*, *supra* note 40.

the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. For as long as the court acted within its jurisdiction, an error of judgment that it may commit in the exercise thereof is not correctable through the special civil action of *certiorari*.[45] The review of the records and evaluation of the evidence anew will result in a circumvention of the constitutional proscription against double jeopardy.

Second, petitioner People failed to assail public respondent Sandiganbayan's jurisdiction by not substantiating the grave abuse of discretion that the latter supposedly committed when it acquitted private respondent Abling of the crime charged. In the petition, there is no allegation that public respondent Sandiganbayan acted with bias, partiality or bad faith when it rendered the assailed judgment. Moreover, the petition does not even aver that petitioner People's right to due process was violated or that the trial before the court *a quo* was a sham.

A petition for *certiorari* questioning a judgment of acquittal must at least allege these essential grounds.[46] Without these, the Petition must fail.

Third, even if we assume that public respondent Sandiganbayan's error in judgment resulted in a denial of due process or a sham trial and the same was properly alleged, the Court is still prevented from making a complete evaluation of this aspect because petitioner People did not even attach to the present Petition the very documents at the center of its argument, pursuant to Section 1, Paragraph 2, Rule 65 of the Rules of Court, as amended, which reads:

SECTION 1. *Petition for certiorari*. - x x x.

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. (Emphases supplied.)

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[45] *People v. Sandiganbayan*, 642 Phil. 640, 657 (2010).

[46] *Ysidoro v. De Castro*, *supra* note 38.

Considering that petitioner People impugned the veracity of the three memoranda supposedly signed by President Marcos, without copies of Exhibits "15," "16" and "17," the Court has no opportunity to examine its contents and verify the same as against petitioner People's averments. In fact, the Court has no factual basis upon which it could actually and completely dispose of the issue raised by petitioner People. Therefore, all that is left before the Court are bare and unsubstantiated allegations that do not warrant the Court's consideration.[47]

Failure to comply with the dictates of the above-quoted Section 1, *vis-a-vis* Section 3, Paragraph 3 of Rule 46,[48] is a ground for the dismissal of the petition under the last paragraph of the same section, *viz.*:

> SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements*. - x x x.
>
> x x x x x x x x x
>
> [A]nd shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, **such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. x x x**
>
> x x x x x x x x x
>
> The failure of the petitioner to comply with any of the foregoing requirements shall be **sufficient ground for the dismissal** of the petition. (Emphases supplied.)

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[47] See *LNS International Manpower Services v. Padua, Jr.*, 628 Phil. 223 (2010).

[48] The provisions of Rule 46 is made applicable to original actions of *certiorari* pursuant to Section 2 of Rule 56, which provides:

> SEC. 2. *Rules applicable*. - The procedure in original cases for *certiorari*, prohibition, *mandamus, quo warranto* and *habeas corpus* shall be in accordance with the applicable provisions of the Constitution, laws, and Rules 46, 48, 49, 51, 52 and this Rule, subject to the following provisions:
>
> a) All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court[.]

That petitioner People failed to comply with this mandatory procedural requirement likewise justifies the dismissal of the present petition.

In fine, the judgment of acquittal was rendered by public respondent Sandiganbayan within its jurisdiction; therefore, the issuance of a writ of *certiorari* is unwarranted in this case.

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

SO ORDERED.

Sereno, C.J. (Chairperson), Velasco, Jr.,[*] *del Castillo*, and *Tijam, JJ.*, concur.

FIRST DIVISION

[G.R. No. 198225. September 27, 2017]

TSM SHIPPING (PHILS.), INC., AND MST MARINE SERVICES PHILS., INC., *petitioners*, *vs.* **SHIRLEY G. DE CHAVEZ,**[1] *respondent.*

SYLLABUS

REMEDIAL LAW; APPEALS; COURT IS NOT A TRIER OF FACTS; EXCEPTION; WHEN FINDINGS OF THE COURT OF APPEALS AND THE NLRC CONFLICT; CASE AT BAR.— In general, the Court is not a trier of facts; however, an exception lies when the findings of the CA and the NLRC conflict with each other, as in this case, in which event this Court must go over the records to determine whether the CA had sufficient basis for overturning the NLRC. More

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[*] Per Raffle dated September 20, 2017.

[1] Also referrred to in other parts of the records as "Shirley G. DeChavez".

specifically, the Court must adjudge in this Rule 45 petition whether the CA correctly found that the NLRC had committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the seafarer committed suicide. The unbending precept that must guide this Court in resolving a petition of the character elevated before this Court is: "As claimant for death benefits, [the seafarer's heir] has the burden to prove by substantial evidence that [the seafarer's] death is work-related and that it transpired during the term of his employment contract." x x x Given the evidence on record, we hold that Ryan's death was due to his own deliberate act and deed.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for petitioners.
Guillermo V. Sebastian for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[2] assails the January 31, 2011 Decision[3] and the August 8, 2011 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 112898. The CA granted the Petition for *Certiorari* filed therewith and reversed and set aside the December 16, 2009 Decision[5] of the National Labor Relations Commission (NLRC) in NLRC LAC OFW (M) 09-000540-09, which affirmed the July 18, 2009 Decision[6] of

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[2] *Rollo*, pp. 38-67.

[3] CA *rollo*, pp. 213-229; penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Florito S. Macalino.

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

[5] NLRC records, pp. 127-136; penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog, III and Pablo C. Espiritu, Jr.

[6] *Id.* at 81-87; penned by Labor Arbiter Catalino R. Laderas.

the Labor Arbiter (LA) dismissing the complaint for payment of death benefits in NLRC-NCR OFW (M) 12-17395-08 for lack of merit.

Factual Antecedents

On August 23, 2005, petitioners hired Ryan Pableo DeChavez[7] (Ryan) as chief cook on board the oil tanker vessel Haruna Express for a period of nine months.[8] However, on February 26, 2006, Ryan was found dead inside his cabin bathroom hanging by the shower cord and covered with blood.[9] Thus, Ryan's surviving spouse, Shirley G. DeChavez (Shirley), filed a complaint[10] for death benefits.

In her Position Paper,[11] Reply,[12] and Rejoinder,[13] Shirley alleged that Ryan did not commit suicide considering that Ryan even submitted himself to a medical check up at a hospital in Ulsan, Korea a day prior to his death; that during their telephone conversation two days before his alleged suicide, Ryan informed her that the vessel would be discharging crude oil in Batangas and that they might see each other; that no suicide note was found; that Ryan died during the effectivity of his contract and while on board the vessel, hence, his heirs are entitled to death benefits; that petitioners did not clarify how Ryan could have committed suicide; that the presumption of regularity in the performance of duties is not accorded to foreign nationals, such as the Ulsan police authorities; that no evidence was adduced that the Ulsan Maritime Police indeed conducted an investigation into Ryan's death; that the imputation that Ryan took his own life because he was pressured by his mother to obtain a loan for a new house flies in the face of the fact that Ryan was recently

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[7] Also referred to as "De Chavez" in some parts of the records.

[8] NLRC records, p. 33.

[9] *Id.* at 10 and 18.

[10] *Id*. at 1-3.

[11] *Id*. at 9-15.

[12] *Id*. at 52-56.

[13] *Id.* at 59-66.

married and about to start a family, that he had acquired a new house and that he was recently promoted as chief cook; and, that the pictures taken when Ryan was found dead which tended to show that he was murdered was not at all explained in the Medical Certificate of Death issued by the Ulsan City Hospital of Korea.

On the other hand, petitioners claimed in their Position Paper,[14] Reply,[15] and Rejoinder[16] that Shirley is not entitled to death benefits under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) because the Medical Certificate of Death, the written statements of the Chief Mate, the Ship Master, and Messman Benjamin Melendres (Messman Melendres), and the investigation report prepared by International Inspection and Testing Corporation (INTECO), uniformly found Ryan's cause of death as suicide; that the Personnel Manager of Thome Ship Management Pte. Ltd. (Thome Ltd.) submitted an Investigation Report indicating that the possible reason for the suicide was Ryan's loss of direction or overwhelming despair after his mother virtually pushed him to take a huge loan to purchase a house; that the Ulsan Maritime police who investigated the incident did not notice any foul play; that Messman Melendres, who was the first person to break into Ryan's locked room, likewise observed that there was nothing in Ryan's cabin to suggest that there had been a fight or struggle; that the examination of Ryan's corpse revealed no signs of trauma; and, that Shirley could not testify on how Ryan died because she was not on board the vessel when the incident transpired.

Ruling of the Labor Arbiter

In a Decision dated July 18, 2009,[17] the LA dismissed the complaint on the ground that the evidence convincingly showed that Ryan's death was authored by Ryan himself, *viz.*:

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[14] *Id.* at 16-32.

[15] *Id.* at 45-50.

[16] *Id.* at 67-79.

[17] *Id.* at 81-87.

A careful perusal of [INTECO's Investigation Report] and [the] medical certificate reveals that the direct cause of [Ryan's death,] based on the autopsy findings of the Ulsan City Hospital, showed that the cause of death x x x was 'excessive bleeding from [Ryan's] cut wrist apparently by scissors', [even] the Medical Certificate of Death issued by the Ulsan City Hospital certified that the cause of death of the deceased was by 'Hanging, strangulation and suffocation'.[18]

Ruling of the National Labor Relations Commission

In its Resolution dated September 30, 2009,[19] the NLRC initially dismissed Shirley's appeal for failure to submit a certificate of non-forum shopping. However, on reconsideration the NLRC granted and reinstated her appeal.

On December 16, 2009,[20] the NLRC rendered its Decision denying Shirley's appeal and affirming the LA's ruling that petitioners succeeded in proving that Ryan died at his own hands, thus:

A careful and thorough reading of the appeal would show that the same is based more on assumptions and speculations rather than on facts. The fact that [Ryan] has x x x a new wife, [a] new home and recently was promoted as Chief Cook does not mean that he could not have committed suicide anymore [sic]. The fact that the medical certificate and the result of the autopsy appears to be contradictory to each other on the causes of death as detailed by [Shirley] does not mean that [Ryan] was murdered and did not commit suicide. And the fact that the comfort room has not been built for possible self suspension does not mean that [Ryan] was murdered.[21]

Ruling of the Court of Appeals

Shirley instituted before the appellate court a Petition for *Certiorari*,[22] contending that petitioners had not presented

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

[19] *Id*. at 114-116.

[20] *Id*. at 127-136.

[21] *Id*. at 134.

[22] CA *rollo*, pp. 3-29; erroneously captioned as Petition for Review on *Certiorari*.

substantial evidence to support the conclusion that Ryan indeed committed suicide and insisting that his death was compensable.

In its assailed January 31, 2011 Decision,[23] the CA reversed the NLRC and disposed as follows:

> WHEREFORE, in view of all the foregoing, the petition is GRANTED. The assailed Decision, dated December 16, 2009, and Resolution, dated September 30, 2009, in NLRC LAC OFW (M) 09-000540-09 (NLRC-NCR OFW (M) 12-17395-08) are hereby ANNULLED and SET ASIDE. The records of this case are remanded to the National Labor Relations Commission for the computation of the death benefits to be awarded to [respondent] Shirley G. De Chavez in behalf of [her] deceased husband Ryan Pableo De Chavez.
>
> SO ORDERED.[24]

The CA found no sufficient evidence that Ryan took his own life, hence it declared Shirley entitled to death benefits. The CA held that the cause of Ryan's death as stated in the Medical Certificate of Death issued by the Ulsan City Hospital was different from that set forth in the INTECO Report. It stressed that there was nothing in the records to show that INTECO had the authority to investigate into Ryan's death and to issue official findings at the conclusion of its investigation. We quote pertinent portions from the CA's disquisition:

> A perusal of the record of this case shows that the basis of the ruling of the Labor Arbiter and [the] NLRC was a Medical Certificate of Death, prepared by a certain Dr. Sung Yeoul Hung of the Ulsan City Hospital, and an Investigation Report of the International Inspections and Testing Corp. However, an examination x x x of the aforesaid evidence fails to conclusively convince the Court that the death of the [Shirley's] husband was due to his own hand.
>
> First, the findings under the said Medical Certificate and the said Investigation Report appear to be contradictory with one another. Under the Medical Certificate the cause of death [was] hanging by strangulation, thus:

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[23] *Id.* at 213-229.

[24] *Id.* at 228.

'Cause of death
1. Direct Cause of Death.
INTENTIONAL SELF-HARM BY [HANGING], STRANGULATION AND SUFFOCATION
2. Intermedicate Predisposing Cause of Death.
3. Predisposing Cause of Death.

BLOOD LOSS' (emphasis supplied)

However, under the Investigation Report the cause of death was found to be due to excessive bleeding from the cuts from the seafarer's wrist, thus:

'Autopsy on the Corpse of [Ryan] & Investigation by Ulsan Maritime Police:

The autopsy on the corpse of [Ryan] was performed at the Ulsan City Hospital x x x [witnessed by] all parties concerned including us & Mr. Leow Ai Hin, Senior Shipping Executive of Thome Ship Management Pte. Ltd., Singapore x x x and x x x the cause of death of [Ryan] was excessive bleeding from the cut wrist of [Ryan] apparently by scissors. The Ulsan Maritime Police requested handwritten statements of all remaining crews of "HARUNA EXPRESS" in the evening hours of Feb. 27th, which were prepared & submitted to the Police in the morning hours of Feb. 28th, and then "HARUNA EXPRESS" sailed off Ulsan Port at 12:30 hrs. of Feb. 28th. (Emphasis supplied)

Second, who is this 'International Inspection and Testing Corporation' that performed the autopsy and prepared the Investigation Report? Is this a corporation trained to perform an autopsy? More importantly, are its findings officially recognized? The Court has scoured the record and it could not see one iota of description, aside [from the fact] that it is a 'foreign corporation', that would tend to lend credence to itself as an investigtive body and to its findings. As it is, the said investigation report woefully pales in comparison as to what a real autopsy report should look like. An autopsy report should give an accurate account of the various marks found on the body such as ligature marks, cuts, the precise locations thereof, and other tell-tale signs that would lead an investigator to conclusively conclude as to the cause of death but the so[-]called investigation report only gives a vague account at best.

Third, why was there no official autopsy done on the body of the deceased seafarer by the Ulsan Maritime Police? And if there ever was an autopsy done by the Ulsan Maritime Police, where is the autopsy report of the police? The Court would think that the shipping company, understandably interested in avoiding paying any compensation, would prefer an autopsy done by the police rather than a private corporation. After all, the findings of the police are accorded respect and regularity by the courts but, curiously enough in this case, the shipping company decided to have the body examined instead by a private corporation whose credentials to perform an autopsy have not even been verified.[25]

In its August 8, 2011 Resolution,[26] the CA likewise denied petitioners' motion for reconsideration.

Hence, the instant Petition raising the following issue:

The Honorable Court of Appeals committed serious error of law in awarding [to Shirley] death compensation benefits under Section 20 (A) of the POEA contract despite undisputed evidence which clearly show that the seafarer died by his own hand. The award is not unjustified [sic] under the facts and evidence of the case, the same is likewise plainly contrary to Section 20 (D) of the governing POEA contract.[27]

Petitioners' Arguments

In their Petition,[28] Reply,[29] and Memorandum,[30] petitioners contend that under the governing POEA-SEC, a seafarer's death during the term of his contract is not automatically compensable particularly if the same was due to his willful act; that the LA's findings of fact, which were upheld by the NLRC, should not

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[25] *Id*. at 222-224.

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

[27] *Rollo*, pp. 47-48.

[28] *Id*. at 38-67.

[29] *Id*. at 480-495.

[30] *Id*. at 499-525.

have been disregarded by the CA because Shirley herself, whose duty was to establish her entitlement to the death benefits, has utterly failed to adduce any evidence to substantiate her bare allegation that Ryan was not responsible for his own death; that apart from her absolutely empty and hollow claim, Shirley presented no proof that Ryan was a victim of foul play; that the purported contradictory information about the cause of Ryan's death, whether he chose to hang himself or slash his wrist with scissors, did not negate the fact that his death was self-inflicted; that the Medical Certificate of Death[31] prepared by Dr. Sung Yeoul Hung of the Ulsan City Hospital, which listed "Intentional Self Harm by [Hanging], Strangulation and Suffocation" as the direct cause of death, and the INTECO's Report[32] which declared Ryan's death as "suicide," effectively meant the same thing; that although no official autopsy report was issued by the Ulsan Maritime Police, the latter allowed the vessel to sail on February 28, 2006 only after they had verified and were satisfied that there was no foul play in Ryan's death; that *Lapid v. National Labor Relations Commission*[33] is not applicable because the coroner's report therein was incomplete, whereas the Medical Certificate of Death of the Ulsan City Hospital and INTECO Report, gave a detailed account that Ryan was found hanging by a rope or cord while sitting on the toilet bowl with his wrist slashed and a pair of scissors nearby; that it is incumbent upon the Supreme Court to resolve this case because the CA's findings are not only diametrically opposed to the findings of both the LA and the NLRC, but the CA's findings are grounded entirely on speculation, surmises or conjectures; that it was Shirley's duty to prove by substantial evidence her entitlement to death benefits; that the CA erred in not giving credence to INTECO's Report as well as the Medical Certificate of Death issued by the Ulsan City Hospital; and that they have proven by substantial evidence that Ryan's death was self-inflicted, thus Shirley is

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[31] *Id*. at 308.

[32] *Id.* at 309-311.

[33] 366 Phil. 10 (1999).

not entitled to death compensation benefits pursuant to Section 20(D) of the governing POEA-SEC.

Respondent's Arguments

Shirley counters that a re-assessment of the propriety of the award of death compensation benefits involves an examination of the evidence, which is not proper in a Rule 45 petition; that petitioners failed to prove that Ryan committed suicide; that INTECO's Report has no credence at all; that Ryan's death should not be presumed to be self-inflicted and that compensability attaches by the mere fact that Ryan died in the course of his employment; that there was no indication that Ryan contemplated to commit suicide; that "if doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter;"[34] and, that the burden of proof that an employee's death is non-compensable always lies with his employer.

Issue

Is the CA correct in ruling that the NLRC committed grave abuse of discretion in denying Shirley's claim for death benefits?

Our Ruling

The Petition is meritorious.

In general, the Court is not a trier of facts; however, an exception lies when the findings of the CA and the NLRC conflict with each other, as in this case, in which event this Court must go over the records to determine whether the CA had sufficient basis for overturning the NLRC.[35] More specifically, the Court must adjudge in this Rule 45 petition whether the CA correctly found that the NLRC had committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the seafarer committed suicide.[36] The unbending precept that must

[34] Citing therein *Sy v. Court of Appeals*, 446 Phil. 404, 416 (2003).

[35] *Unicol Management Services, Inc. v. Malipot,* 751 Phil. 463, 473 (2015).

[36] *New Filipino Maritime Agencies, Inc. v. Datayan,* G.R. No. 202859, November 11, 2015, 774 SCRA 677, 687.

guide this Court in resolving a petition of the character elevated before this Court is: "As claimant for death benefits, [the seafarer's heir] has the burden to prove by substantial evidence that [the seafarer's] death is work-related and that it transpired during the term of his employment contract."[37]

Section 20(A) and (D) of the 2000 POEA-SEC provide that:

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) x x x at the exchange rate prevailing during the time of payment.

x x x x x x x x x

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

Given the evidence on record, we hold that Ryan's death was due to his own deliberate act and deed. Indeed the Medical Certificate of Death prepared by Dr. Sung Yeoul Hung of the Ulsan City Hospital, who, it is presumed, must have examined Ryan's cadaver, and the INTECO's Report which contained information involving the self-same death, must be deemed as substantial evidence of that fact. We are satisfied that the material facts set forth in the Decisions of both the LA and the NLRC constitute substantial evidence that Ryan took his own life, that he died by his own hands. "That [the seafarer's] death was a result of his willful act is a matter of defense. Thus, petitioners [as employers] have the burden to prove this circumstance by substantial evidence"[38] which is the quantum of proof in labor cases.

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[37] *Id*. at 688.

[38] *Id*.

In *Wallem Maritime Services, Inc. v. Pedrajas*,[39] this Court held that the seafarer's heirs were not entitled to any benefits since the employers were able to substantially prove that the seafarer who was found hanging on the vessel's upper deck with a rope tied to his neck had committed suicide. The employers therein presented the forensic report of the Medical Examiner appointed by the Italian Court from the Public Prosecutor's Office of Livorno, Italy which pointed out in detail that there were no other injuries in the seafarer's body and confirmed that the deceased himself "tied the rope to the metal pipe"[40] based on the evaluation of "the crime scene, the rope used for hanging, type of knot, temperature and position of the body when found."[41] Furthermore, two suicide notes written by the seafarer addressed to his wife and to the vessel's crew were also offered as evidence. Similarly, in *Unicol Management Services, Inc. v. Malipot*,[42] this Court found substantial evidence that the true cause of the seafarer's death was suicidal asphyxia due to hanging in the vessel's store room. These findings were based on the employers' submission of the Medico Legal Report issued by the Ministry of Justice of the United Arab Emirates (UAE) and the Death Certificate issued by the UAE Ministry of Health together with the Investigation Report, log book extracts, and Master's Report. The conclusion in said Medico Legal Report that the seafarer committed suicide drew support from an external examination of the cadaver which showed that the deep lacerated groove around the deceased's neck was vital, recent, and a result of hanging with a rope and that there were no other recent injuries.

To belabor a point, the resolution of whether herein petitioners have shown that Ryan committed suicide is based essentially on the examination of two pertinent documents.

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[39] 741 Phil. 67 (2014).

[40] *Id.* at 73.

[41] *Id.* at 75.

[42] *Supra* note 35.

The first document is the Ulsan City Hospital's Medical Certificate of Death[43] which was signed by one Dr. Sung Yeoul Hung with License No. 25028. It reads:

x x x x x x x x x

- Date and Time of Death: Date - 26th FEB. 2006
  Time - 03:00~04:00 at the break of the day
- Place of Death: B-DECK, HIS BATHROOM, THE BOARD, HARUNA EXPRESS
  - ON THE SEA 15km FROM ULSAN
- Cause of death
  1. Direct Cause of Death.
  INTENTIONAL SELF-HARM BY [HANGING], STRANGULATION AND SUFFOCATION
  2. Intermedicate Predisposing Cause of Death.
  3. Predisposing Cause of Death.
  BLOOD LOSS

THE ABOVE STATEMENT IS TRUE TO BEST OF MY KNOWLEDGE[44]

The second document is the INTECO Report[45] signed by one "S.M. Han, Rep. Director." It pertinently stated:

I) General Information:

x x x x x x x x x

b) Upon completion of the loading work, "HARUNA EXPRESS" sailed off Onsan Port at 06:35 hrs. of Feb. 26th bound for Nagoya. However, "HARUNA EXPRESS" deviated & returned to Ulsan Port due to the death of Chief Cook, [Ryan], x x x and sailed off Ulsan Port at 12:30 hrs. of Feb. 28th after completion of the investigation by Ulsan Maritime Police.

x x x x x x x x x

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[43] *Rollo*, p. 308.

[44] *Id.*

[45] *Id*. at 309-311.

IV) Circumstance/Cause of Accident:

Upon interviewing the Master, Chief Engineer, Third Officer & Mess Boy and also upon reviewing the statements of crews, our finding were as follows:

17:30 hrs. of Feb. 25th: Chief Cook instructed the mess boy x x x to bring provisions from the reefer for the breakfast of the next day and to cook the breakfast of Feb. 26th for the crew.

x x x x x x x x x

08:45 hrs. of Feb. 26th:
x x x [T]he mess boy went up the Chief Cook's cabin to inform him that he would leave the galley x x x he called the Chief Cook before opening the cabin door, but no response, and therefore, he opened the cabin door, but there was no Chief Cook in his cabin, and the bathroom door was closed and very quiet. The mess boy knocked [at] the bathroom door calling the Chief Cook's name, but no response, and the mess boy tried to open the bathroom door, but it was locked, and so, the mess boy opened the bathroom door using his (messboy's) key. Upon opening the bathroom door, considerable blood was found on the floor, and a part of the Chief Cook's feet was seen with the shower curtain partly closed.

09:00 hrs. of Feb. 26th:
The mess boy immediately notified x x x the Chief Officer [what he saw], and both mess boy & Chief Officer rushed to the Chief Cook's cabin and upon opening the shower curtain, they found the shower hose around the neck of the Chief Cook, and the Chief Officer instructed the mess boy not to touch anyt[h]ing.

09:01 hrs. of Feb. 26th:
Alerted all crews including the Master & Chief Engineer x x x after removing the shower hose from the Chief Cook's neck, first aid care was performed on him, and his left wrist was found cut about 5cm long & about 1cm max. deep, and a pair of sharp scissors was found in the bathroom x x x oxygen resuscitation & heart pressuring were performed x x x However, the Chief Cook was almost in a dead condition with his tongue hung out and the breathing stopped.

09:05 hrs. of Feb. 26th: x x x the ship's course altered back to Ulsan.

x x x x x x x x x

11:35 hrs. of Feb. 26th: Transferred the Chief Cook to Coast Guard Vessel "POLICE 307".

x x x x x x x x x

12:10 hrs. of Feb. 26th: Chief Cook was taken to City Hospital in Ulsan.

13:25 hrs. – 13:50 hrs of Feb. 26th.

The Chief Cook was examined under the witness of the ships' agent & the Ulsan Maritime Police, and the result was that the Chief Cook x x x was dead x x x 03:00 hrs. of Feb. 26th.

V) Autopsy on the Corpse of [Ryan] & Investigation by Ulsan Maritime Police:

The autopsy on the corpse of [Ryan] was performed at the Ulsan City Hospital under the witness of all parties concerned including us & Mr. Leow Ai Hin, Senior Shipping Executive of Thome Ship Management Pte Ltd., Singapore from 18:00 hrs. to 19:00 hrs. of Feb. 27th, and as a result of the autopsy, the cause of death of [Ryan] was excessive bleeding from the cut wrist of [Ryan] apparently by scissors. The Ulsan Maritime Police requested the handwritten statements of all remaining crews of "HARUNA EXPRESS" in the evening hours of Feb. 27th, which were prepared & submitted to the Police in the morning hours of Feb. 28th, and then "HARUNA EXPRESS" sailed off Ulsan Port at 12:30 hrs. of Feb. 28th.

VI) Cause of Death of Mr. Dechavez:

Based on x x x all [information] available as reported herein, the cause of death of [Ryan] was concluded to be suicide.[46]

Indeed, it is settled that:

In labor cases, [this Court's review power] under Rule 45 of the Rules of Court involves the determination of the legal correctness of the CA Decision. This means that [this] Court must ascertain whether the CA [had] properly determined the presence or absence of grave abuse of discretion in the NLRC Decision. Simply put, 'in testing for legal correctness, [this] Court views the CA Decision in the same context that the [Rule 65] petition for *certiorari* it

[46] *Id*.

[adjudicated] was presented' to [that court]. It entails a limited review of the acts of the NLRC, [*viz*.,] whether [the NLRC] committed errors of jurisdiction. It does not cover the issue of whether the NLRC committed any error of judgment, unless there is a showing that its findings and conclusions were arbitrarily arrived at or were not based on substantial evidence.[47]

In the present case, both the LA and the NLRC ruled that Shirley's claim for death benefits was without basis since Ryan committed suicide as principally established by the Medical Certificate of Death issued by Dr. Sung Yeoul Hung of the Ulsan City Hospital, who attested that the direct cause of Ryan's death was "Intentional Self-Harm by [Hanging], Strangulation and Suffocation."[48] Both the LA and the NLRC also adverted to the Report prepared by the INTECO which stated that —

The autopsy on the corpse of [Ryan] was performed at the Ulsan City Hospital under the witness of all parties concerned including us & Mr. Leow Ai Hin, Senior Shipping Executive of Thome Ship Management Pte Ltd., Singapore from 18:00 hours to 19:00 hours of February 27th, and as a result of the autopsy, the cause of death of [Ryan] was excessive bleeding from the cut wrist of [Ryan], apparently by scissors. The Ulsan Maritime Police requested the handwritten statements of all remaining crews of 'Haruna Express' in the evening of February 27, which were prepared & submitted to the police in the morning hours of February 28th, and then 'Haruna Express' sailed off Ulsan Port at 12:30 of February 28.

x x x x x x x x x

Based on x x x all [information] available as reported herein, the cause of death of [Ryan] was concluded to be suicide.[49]

Elaborating on the foregoing, Leow Ai Hin, Marine Personnel Manager of the Thome Ltd., stated in Attachment No. 4:

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[47] *New Filipino Maritime Agencies, Inc. v. Datayan, supra* note 36 at 687, citing *Agile Maritime Resources, Inc. v. Siador,* 744 Phil. 693 (2014).

[48] *Rollo*, p. 308.

[49] *Id.* at 311.

x x x x x x x x x

LATE C/COOK DECHAVEZ'S FAMILY HAS BEEN NOTIFIED AND INFORMED OF HIS DEATH. ON INVESTIGATION WITH THE FAMILY FOR POSSIBLE REASON OF HIS INTENDED SUICIDE, WE UNDERSTAND THAT THE MOTHER HAD ACTUALLY WANTED HIM TO TAKE A LOAN FOR A HOUSE INVESTMENT. THIS WAS SUPPORTED BY HIS WIFE, WE BELIEVE THAT X X X THIS BIG INVESTMENT AMOUNT HAS PUT A VERY HEAVY [RESPONSIBILITY] ON HIM THAT HE MAY HAVE LOST HIS DIRECTION AND PURSUE THE DEATH SOLUTION. BESIDES HE WAS JUST PROMOTED TO CHIEF COOK [IN] THIS CONTRACT AFTER SERVING 4 CONTRACTS BEFORE WITH US AS MESSMAN.

WE DO NOT SUSPECT ANY FOUL PLAY ON BOARD AS HE IS VERY WELL LIKED BY ALL CREWMEMBERS AND HAS NO DISPUTE OR ENEMIES WITH ANYONE ON BOARD. THE CREW STATEMENT GIVEN TO THE POLICE YESTERDAY CAN TESTIFY TO HIS STATUS [ON BOARD].[50]

We believe that the above-mentioned pieces of documentary evidence upon which both the LA and the NLRC erected their conclusions that Ryan's death was directly attributable to his own deliberate act and will, in other words, a suicide, constitute substantial evidence that Ryan was the author of his own death. In the absence, as in this case, of incontrovertible proof to the contrary, it must be presumed that the persons who prepared these documents acted in good faith to attest to the facts they saw or had personal knowledge of, even as it should also be presumed that these documents likewise spoke the truth. Indeed the facts and circumstances mentioned in said documents pointing to the fact that Ryan's death was a suicide, are spread all over the entire records of the case, indicating a purposeful and deliberate intent to bring out the core reality that Ryan was the author of his own death. What is more, the sum of such facts and circumstances had been recognized, appreciated and adopted by both the LA and the NLRC and was made the underpinning of the most critical and crucial basis of their Decisions which they rendered in the regular performance of their duties.

[50] *Id*. at 312.

By contrast, the question may be asked: What was the basis of the CA in granting the petition for the extraordinary writ of *certiorari* instituted before it by Shirley? According to the CA, the findings of the Medical Certificate of Death prepared by Dr. Sung Yeoul Hung of the Ulsan City Hospital which mentioned the direct cause of Ryan's death as Intentional Self-Harm by Hanging, Strangulation and Suffocation, are at war with the cause of death mentioned in the INTECO Report, which described "the cause of death of [Ryan as] excessive bleeding from the cut wrist of [Ryan] apparently by scissors".[51] If there is any difference between the two documents with respect to Ryan's suicidal death, it is a difference with hardly any distinction. In point of fact, however, the CA appeared to have overlooked that the INTECO Report stressed the cause of death of Ryan thus: "Based on [all the foregoing information] available as reported herein, the cause of death of [Ryan] was concluded to be suicide."[52] It is evident that the appellate tribunal had engaged in petty nitpicking in pitting the findings made in the two documents. This is so because death by intentional self-harm as stated in the Medical Certificate of Death prepared by Dr. Sung Yeoul Hung of the Ulsan City Hospital is the necessary equivalent of suicide mentioned in the INTECO Report.

The CA also asked the rhetorical question:

> [W]ho is this 'International Inspection and Testing Corporation' that performed the autopsy and prepared the Investigation Report? Is this a corporation trained to perform an autopsy? More importantly, are its findings officially recognized? The Court has scoured the record and it could not see one iota of description, aside [from the fact] that [it] is a 'foreign corporation' that would tend to lend credence to itself as an investigative body and to its findings.[53]

Such a rhetorical question by the CA need not merit a clear-cut answer if only because it is a rhetorical question. It suffices

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[51] *Id.* at 311.

[52] *Id.*

[53] CA *rollo*, p. 223.

to say, however, that both the LA and the NLRC took notice of the INTECO Report and both agencies were well in their right and power to do so. It is horn-book law that quasi-judicial agencies like the LA and the NLRC are not bound by the technical rules of evidence that are observed by the regular courts of justice.[54] Thus, in *Wallem Maritime Services, Inc. v. Pedrajas*,[55] this Court had occasion to observe:

> Apparent from the foregoing, the report of the Italian Medical Examiner, which stated that Hernani committed suicide is more categorical and definite than the uncertain findings of the PNP Crime Laboratory and the NBI that homicide cannot be totally ruled out. Excerpts from the PNP and NBI reports would disclose that both agencies were unsure if homicide or suicide was the underlying cause of Hernani's death. Hence, the Court agrees with the findings of the LA and his judgment to give weight and credence to the evidence submitted by the petitioners proving that Hernani committed suicide.[56]

The CA also asked another rhetorical question:

> Third, why was there no official autopsy done on the body of the deceased seafarer by the Ulsan Maritime Police? And if there ever was an autopsy done by the Ulsan Maritime Police, where is the autopsy report of the police? The Court would think the shipping company, understandably interested in avoiding paying any compensation, would prefer an autopsy done by the police rather than a private corporation. After all, the findings of the police are accorded respect and regularity by the courts, but curiously enough in this case, the shipping company decided to have the body examined by a private corporation whose credentials to perform an autopsy have not even been verified.[57]

This observation is of no consequence in this matter. For in point of fact, the INTECO's Report categorically stated that the Ulsan Maritime Police were present when the cadaver of

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[54] *Wallem Maritime Services, Inc. v. Pedrajas*, *supra* note 39 at 76.

[55] *Id*.

[56] *Id*. at 75.

[57] CA *rollo*, p. 224.

Ryan was being autopsied at the Ulsan Hospital. Moreover, it noted that the Ulsan Maritime Police had requested handwritten statements of all remaining crews of the Haruna Express in the evening of February 27, 2006 which were prepared and submitted to the police in the morning of February 28, 2006 after which the Haruna Express sailed off Ulsan Port at 12:30 of February 28, 2006.

What is more, it is not for the CA to substitute its own discretion for the discretion of the LA and the NLRC relative to labor relations cases that are within these agencies' peculiar expertise and jurisdiction. The CA apparently overlooked that the case instituted before it is a petition for *certiorari* under Rule 65 of the Rules of Court which addresses nothing more than the question of grave abuse of discretion amounting to lack or excess of jurisdiction. And, to repeat, we find nothing in the Decisions of both the LA and the NLRC that approximates grave abuse of discretion amounting to lack or excess of jurisdiction. The reason is that the Decisions of both the LA and the NLRC are grounded on substantial evidence which stemmed from the aforestated documentary evidence that were presented by the petitioners before the LA and the NLRC.

Almost on all fours with this case is our holding in *Unicol Management Services, Inc. v. Malipot*:[58]

> Normally, the Supreme Court is not a trier of facts. However, since the findings of the CA and the NLRC were conflicting, it is incumbent upon this Court to wade through the records to find out if there was enough basis for the CA's reversal of the NLRC decision.
>
> In this case, the CA ruled out the commission by seaman Glicerio of suicide on the ground that the evidence presented by petitioners, such as the Medico-Legal Report and Death Certificate, did not state the circumstances regarding the cause of seaman Glicerio's death. Also, the CA held that the Investigation Report, log book extracts, and Master's Report were submitted for the first time on appeal to the NLRC, and thus, should not have been admitted by the NLRC.

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[58] *Supra* note 35 at 473-479.

First, this Court would like to underline the fact that the NLRC may receive evidence submitted for the first time on appeal on the ground that it may ascertain facts objectively and speedily without regard to technicalities of law in the interest of substantial justice.

In *Sasan, Sr. v. National Labor Relations Commission 4th Division*, We held that our jurisprudence is replete with cases allowing the NLRC to admit evidence, not presented before the Labor Arbiter, and submitted to the NLRC for the first time on appeal. The submission of additional evidence before the NLRC is not prohibited by its New Rules of Procedure considering that rules of evidence prevailing in courts of law or equity are not controlling in labor cases. The NLRC and Labor Arbiters are directed to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law and procedure all in the interest of subsantial justice. In keeping with this directive, it has been held that the NLRC may consider evidence, such as documents and affidavits, submitted by the parties for the first time on appeal.

Moreover, among the powers of the Commission as provided in Section 218 of the Labor Code is that the Commission may issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and others. In addition, the Commission may, among other things, conduct investigation for the determination of a question, matter or controversy within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearings to any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice. From the foregoing, it can be inferred that the NLRC can receive evidence on cases appealed before the Commission, otherwise, its factual conclusions would not have been given great respect, much weight, and relevance when an adverse party assails the decision of the NLRC *via* petition for *certiorari* under Rule 65 of the Rules of Court before the CA and then to this Court *via* a petition for review under Rule 45.

Accordingly, if we take into consideration the Investigation Report, log book extracts and Master's Report submitted by petitioners, the same all strongly point out that seaman Glicerio died because he committed suicide.

Contrary to the findings of the CA, it appears that the Investigation Report submitted by Inchcape Shipping Services completely detailed the events that happened prior to seaman Glicerio's death, *i.e.*, from the last person who corresponded with him when he was still alive, the circumstances leading to the day he was discovered dead, to the person who discovered him dead. Based on the investigation, it appears that seaman Glicerio was cheerful during the first two months. However, he, thereafter, kept to himself after telling people that his family is facing problems in the Philippines and that he already informed petitioners to look for his replacement.

The result of the above investigations is even bolstered by the Medical Report issued by Dr. Sajeed Aboobaker who diagnosed seaman Glicerio with musculoskeletal pain and emotional trauma due to family problems, when the latter complained of chest pains and palpitations on December 10, 2008.

Second, both the Medico-Legal Report and Death certificate indicate that the actual cause of death of seaman Glicerio is 'suicidal asphyxia due to hanging.'

The Medico-Legal Report issued by the United Arab Emirates, Ministry of Justice states:

Medico-Legal Report on
Case No. 2/2009/Casualties

> In accordance with the letter of the Director of Fujairah Public Prosecution dated 09.07.2006 to carry out the external examination on the remains of Mr. Glicerio Ramirez [M]alipot, Filipino national, to show the reason of death and how death occurred, I, Prof. Dr. Osman Abdul Hameed Awad, medico-legal senior consultant in Fujairah, hereby certify that I carried out the external examination on the aforementioned body on 15.01.2009 at Fujairah Hospital Postmortem. I also reviewed the minutes of investigations. Moreover, I hereby decide the following:
>
> A) External Examination:
>
> > The body is for a man aging about 56 years, in a saprophytic state because of being in the refrigerator along with blood precipitation in the upper and lower limbs. I noticed a deep lacerated groove transverse in the front of the neck and [the upper] level of the thyroid gristle with

2 cm width, going up and to the two sides of the neck and disappears beneath the ear along with the emergence of the tongue outside the mouth. I did not notice any recent injuries in the body.

B) Opinion:

Based on the above, I decide the following:

1) Based on the external examination of the body of the aforementioned deceased a deep lacerated groove round the neck. It [*sic*] vital and recent. It occurs as a result of pressure and hanging with an elastic body such as a rope x x x

2) The death is due to suicidal Asphyxia due to hanging.

3) The time of death synchronizes with the given date.

From the foregoing, it can be inferred that there was no foul play regarding seaman Glicerio's suicide considering that an external examination of his body shows no violence or resistance or any external injuries. In fact, the post-mortem examination conclusively established that the true cause of death was suicidal asphyxia due to hanging.

All told, taking the Medico-Legal Report and the Death Certificate, together with the Investigation Report, log book extracts, and Master's Report, we find that petitioners were able to substantially prove that seaman Glicerio's death was attributable to his deliberate act of killing himself by committing suicide.

With that settled, we now resolve the issue of whether respondent is entitled to death compensation benefits under the POEA-Standard Employment Contract.

Section 20 of the POEA "*Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships*," provides:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x x x x x x

B. 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.

x x x x x x x x x

D No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, *provided*, *however*, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

Clearly, the employer is liable to pay the heirs of the deceased seafarer for death benefits once it is established that he died during the effectivity of his employment contract. However, the employer may be exempt from liability if it can successfully prove that the seaman's death was caused by an injury directly attributable to his deliberate or willful act. Thus, since petitioners were able to substantially prove that seaman Glicerio's death is directly attributable to his deliberate act of hanging himself, his death, therefore, is not compensable and his heirs not entitled to any compensation or benefits.

Finally, although this Court commiserates with the respondent, absent substantial evidence from which reasonable basis for the grant of benefits prayed for can be drawn, we are left with no choice but to deny her petition, lest an injustice be caused to the employer. While it is true that labor contracts are impressed with public interest and the provisions of the POEA Employment Contract must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment onboard ocean-going vessels, still the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.

WHEREFORE, the Petition is **GRANTED**. The challenged January 31, 2011 Decision and August 8, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 112898 are **ANNULLED and SET ASIDE**, and the December 16, 2009

Decision of the National Labor Relations Commission in NLRC LAC OFW (M) 09-000540-09 is hereby **REINSTATED and AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, and *Tijam, JJ.,* concur.

Jardeleza, J., on official leave.

FIRST DIVISION

[G.R. No. 199018. September 27, 2017]

ROLANDO DACANAY *y* LACASTE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIMITED TO QUESTIONS OF LAW.— [T]his Petition was filed under Rule 45 of the Revised Rules of Court, which should be limited to questions of law. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the litigants or any of them. x x x A re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court because this Court is not a trier of facts. This Court is not duty-bound to analyze and weigh again the evidence considered in the RTC. Further, this case does not fall under any of the exceptions recognized in jurisprudence.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF THE LOWER COURT AFFIRMED BY THE APPELLATE COURT, RESPECTED.— [I]t is settled that the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the

probative weight thereof, as well as its conclusions anchored on said findings are accorded respect, if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the findings of the trial court have been affirmed by the appellate court, said findings are generally binding upon this Court. The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— In prosecuting cases for illegal possession of dangerous drugs, the prosecution must establish the following elements: (1)the accused was in possession of an item or object, which was identified to be a prohibited or regulated drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the drug. Additionally, in the prosecution of criminal cases involving drugs, it is settled in our jurisprudence that the narcotic substance itself constitutes the *corpus delicti*, the body or substance of the crime, and the fact of its existence is a condition *sine qua non* to sustain a judgment of conviction. It is essential that the prosecution must prove with certitude that the narcotic substance confiscated from the suspect is the same drug offered in evidence before the court. As such, the presentation in court of the *corpus delicti* establishes the fact that a crime has actually been committed. x x x Notably, petitioner did not offer any evidence to prove that he had authority to possess the said drug, and it is well-entrenched that mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* of the prohibited drug, sufficient to convict an accused in the absence of satisfactory explanation.

4. REMEDIAL LAW; EVIDENCE; FRAME-UP; FAILS AS AGAINST THE PRESUMPTION OF REGULAR PERFORMANCE OF DUTY AND ABSENCE OF ILL MOTIVE.— Frame-up, like denial, has always been viewed with disfavor by the courts as it can be easily fabricated. x x x Petitioner miserably failed to present clear and convincing evidence to overcome the presumption that the TFAV Unit

members who arrested him, including Genguyon, performed their duties in a regular and proper manner, and that said TFAV Unit members were instead impelled by a sinister motive in charging petitioner with the serious offense of illegal possession of dangerous drugs. As between the positive declaration of the prosecution witness Genguyon that petitioner was caught in possession of a prohibited drug and petitioner's self-serving and unsubstantiated claim of frame-up by the TFAV Unit, the former deserves more weight and credence, just as the trial and appellate courts found.

5. **ID.; CRIMINAL PROCEDURE; WARRANTLESS ARREST; DEEMED WAIVED WHEN NOT OBJECTED TO.—** In this case, petitioner failed to raise any objection as to his warrantless arrest before he entered his plea of "not guilty." Petitioner likewise did not move to quash the information against him prior to his arraignment. Petitioner then actively participated in the trial of his case before the RTC. Therefore, petitioner is deemed to have voluntarily submitted himself to the jurisdiction of the RTC and waived any objection to the jurisdiction of the RTC based on a defect in his arrest, and he is estopped from raising such an objection to have the judgment of conviction rendered by the RTC reversed and set aside.

6. **ID.; ID.; ID.; WHEN LAWFUL; *IN FLAGRANTE DELICTO* ARRESTS, EXPLAINED.—** Rule 113, Section 5 of the Revised Rules of Court enumerates the exceptional circumstances when a warrantless arrest may be legally made: SEC. 5. *Arrest without warrant; when lawful*. - A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense[.] In *in flagrante delicto* arrests, the concurrence of two elements is necessary, to wit: (1) 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 (2) such overt act is done *in the presence or within the view* of the arresting officer. Petitioner's overt act of holding/possessing the plastic sachet with white crystalline substance in the presence and within the view of Genguyon, a TFAV Unit member and prosecution witness, satisfied both elements. By having a plastic sachet of *shabu* in his possession, petitioner was definitely committing an offense punishable under Republic Act No. 9165, which justified his warrantless arrest.

7. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL POSSESSION OF 0.03 GRAM OF *SHABU*; PENALTY.— [T]o conform to Article II, Section 11(3) of Republic Act No. 9165[,][p]etitioner, found guilty beyond reasonable doubt of illegally possessing 0.03 gram of methamphetamine hydrochloride or *shabu* (less than five [5] grams), is sentenced to suffer imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum. We sustain the fine imposed on petitioner by the trial and appellate courts in the amount of Three Hundred Thousand Pesos (₱300,000.00).

APPEARANCES OF COUNSEL

Florentino H. Garces for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, petitioner Rolando Dacanay *y* Lacaste assails the Decision[1] dated May 26, 2011 of the Court of Appeals in CA-G.R. CR. No. 30826, which affirmed the Decision[2] dated July 16, 2006 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 209, in Criminal Case No. MC02-6030-D, finding petitioner guilty beyond reasonable doubt of illegal possession of dangerous drugs, in violation of Article II, Section 11 of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

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[1] *Rollo*, pp. 39-45; penned by Associate Justice Mario L. Guariña III with Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios concurring.

[2] Records, pp. 189-195; penned by Presiding Judge Adelaida R. Crisostomo-Reyes.

In an Information dated October 24, 2002 filed before the RTC, petitioner was charged with illegal possession of dangerous drugs, allegedly committed as follows:

> That on or about the 23rd day of October 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously and knowingly have in his possession, custody and control one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, commonly known as "shabu", a dangerous drug without the corresponding license and prescription, in violation of the above-cited law.[3]

During his arraignment on December 11, 2002, petitioner pleaded not guilty to the crime charged against him. Thereafter, trial ensued.

Version of the Prosecution

The prosecution presented as witnesses Police Senior Inspector (P/Sr. Insp.) Annalee R. Forro (Forro), Forensic Chemist, Philippine National Police (PNP); Raylan G. Genguyon (Genguyon), a member of Task Force Anti-Vice (TFAV) Unit, Mandaluyong City Police Station; and Police Officer (PO) 3 Noli S. Cortes[4] (Cortes), the officer on case, Eastern Police District (EPD) Crime Laboratory Office.

The taking of PO3 Cortes's testimony was dispensed with after the defense admitted the following: that PO3 Cortes was a member of the PNP who conducted an investigation of the case; that PO3 Cortes could identify petitioner in court; that the specimen subject matter of the case was turned over to PO3 Cortes during the investigation; and that PO3 Cortes caused the preparation of the Request for Laboratory Examination, Genguyon's Sworn Statement, the Arrest Report, and the Endorsement of the EPD to the Office of the City Prosecutor

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[3] *Id*. at 1.

[4] Also referred in the record as Noli S. Cortez.

for inquest proceedings; and that the Inquest Prosecutor, after conducting an investigation, proposed the direct filing of the case.[5]

As gathered from the collective testimonies of the prosecution witnesses, at around 8:30 in the morning of October 23, 2002, a TFAV Unit consisting of Senior Police Officer (SPO) 2 Cirilo Maniego (Maniego), as team leader, and Carlos Gojo, Noel Bueva, and Genguyon, as members, were on board an unmarked multi-cab, patrolling the streets of Fernandez and Samat, Barangay Highway Hills, Mandaluyong City, when they noticed a male person, whom Genguyon later identified as petitioner, holding a plastic sachet in his right hand and a baseball cap in his left hand. The TFAV Unit already knew petitioner for the latter had been previously arrested several times by authorities for illegal drug possession. As the TFAV Unit neared petitioner, the latter scurried away. Petitioner tried to throw away the plastic sachet as he was boarding a tricycle but the members of the TFAV Unit caught up with him. Genguyon arrested petitioner and recovered the plastic sachet, containing white crystalline substance, from the latter's possession. Genguyon placed his initials "RG" on the plastic sachet. After informing petitioner of his constitutional rights, Genguyon gave the plastic sachet to their team leader, SPO2 Maniego. Thereafter, the TFAV Unit brought petitioner to the Mandaluyong City Medical Center and to the Criminal Investigation Unit for medical examination and investigation, respectively.

The plastic sachet, marked as "RG," was turned over to PO3 Cortes, assigned to investigate petitioner's case. PO3 Cortes made a written request for the laboratory examination of the contents of said plastic sachet.

P/Sr. Insp. Forro performed the laboratory examination of the contents of the plastic sachet, and per Chemistry Report No. D-2096-02E,[6] she confirmed the presence of Methamphetamine Hydrochloride or *shabu*, a dangerous drug.

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[5] Records, pp. 102-103.

[6] *Id.* at 137, Exh. "B".

In the meantime, Genguyon executed a Sworn Statement and an Arrest Report both dated October 23, 2002 relative to the apprehension of petitioner.

Together with Genguyon's Sworn Statement[7] and Arrest Report[8] dated October 23, 2002, PO3 Cortes's written request for laboratory analysis and P/Sr. Insp. Forro's Chemistry Report No. D-2096-02E, Police Chief Inspector (PC/Insp.) Plaridel V. Justo, Chief, Station Investigation Unit, forwarded petitioner's case to the Mandaluyong City Prosecutor for inquest proceeding.

On trial, Genguyon identified in court the plastic sachet that he marked as "RG." Likewise, P/Sr. Insp. Forro testified that she prepared the Chemistry Report No. D-2096-02E and identified her signature appearing thereon, as well as the signatures of PC/Insp. Leslie Chambers Maala (Maala), Chief of the Chemistry Section, and Police Superintendent (P/Supt.) Ma. Cristina B. Freyra (Freyra), Chief of the EPD Crime Laboratory. P/Sr. Insp. Forro stated that she was present when PC/Insp. Maala and P/Supt. Freyra signed the Chemistry Report.[9]

Version of the Defense

Petitioner was the sole witness for the defense.

According to petitioner, he worked as a tricycle driver. At around 8:30 in the morning of October 23, 2002, he was transporting a passenger from Crossing I to Fernandez Street. Upon arriving on Fernandez Street and while waiting for the passenger's tricycle fare, a member of the TFAV Unit passed by, telling petitioner that there was an on-going sale of *shabu* on Fernandez Street. After receiving the tricycle fare, petitioner proceeded to Samat Street where he was flagged down by the TFAV Unit. Petitioner alighted from his tricycle and five members of the TFAV Unit conducted a search of petitioner's person and his tricycle. A sixth member of the TFAV Unit, the

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[7] *Id.*, Exh. "C".

[8] *Id.*, Exh. "D".

[9] TSN, April 23, 2003, pp. 2-6.

driver, was standing near the TFAV vehicle. Petitioner then saw said sixth member of the TFAV Unit picking up a small plastic sachet about a meter away from where petitioner was. The sixth TFAV Unit member approached petitioner while holding the plastic sachet and said that the TFAV Unit recovered the plastic sachet from petitioner's tricycle. Petitioner denied that the plastic sachet was his but he was handcuffed. Petitioner offered to bring the TFAV Unit members to the passenger he dropped off on Fernandez Street but the TFAV Unit members said nothing and simply brought petitioner to Mandaluyong City Hall. At the Criminal Investigation Division, a person, who was not part of the TFAV Unit who arrested petitioner, asked him if he owned the plastic sachet. Petitioner denied ownership of the plastic sachet. Notwithstanding petitioner's denial, he was detained. Petitioner posted bail afterwards.

On July 16, 2006, the RTC promulgated its Decision finding petitioner guilty of the crime charged, thus:

> WHEREFORE, premises considered, judgment is hereby rendered finding [petitioner], ROLANDO DACANAY *y* LACASTE, guilty beyond reasonable doubt for violation of Section 11 of Article II of Republic Act 9165 and hereby sentencing him to suffer an indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal* as maximum and to pay a fine of three hundred thousand (₱300,000.00) [pesos]. [Petitioner] shall be credited in full of the period of his preventive imprisonment.
>
> The specimen consisting of 0.03 gram of methamphetamine hydrochloride is hereby confiscated in favor of the government. The evidence custodian is ordered to turn over the same to the Dangerous Drugs Board within 10 days from receipt for proper disposition.
>
> Pursuant to section 6, paragraph 4, Rule 120 of the Revised Rules on Criminal Procedure, the Clerk of this Court in charge of the records of criminal cases is ordered to record this judgment in criminal docket and to serve a copy thereof at the last known address of Rolando Dacanay *y* Lacaste or through his counsel.[10]

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[10] Records, pp. 194-195.

Petitioner's appeal before the Court of Appeals was docketed as CA-G.R. CR. No. 30826. The appellate court affirmed petitioner's conviction in its Decision dated May 26, 2011.

Hence, petitioner filed the instant Petition for Review, raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR INSOFAR AS IT FAILED TO RULE THAT PETITIONER WAS ILLEGALLY ARRESTED AND ILLEGALLY SEARCHED BY THE MEMBERS OF THE TASK FORCE ANTI-VICE UNIT.

II

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT FOUND PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME BEING IMPUTED AGAINST HIM.[11]

Petitioner refutes the findings of the Court of Appeals, maintaining that he was illegally arrested and searched without a warrant by the TFAV Unit. According to petitioner, he was arrested on mere suspicion of the TFAV Unit members who allegedly saw him holding a plastic sachet. Petitioner's alleged possession of a plastic sachet, previous criminal record, or act of running away from apprehending officers were not crimes, nor were they sufficient to raise suspicion or provide probable cause for warrantless arrest. Considering that petitioner's arrest did not fall under any of the instances identified under Rule 113, Section 5[12] of the Revised Rules of Court - as petitioner

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[11] *Rollo*, p. 17.

[12] Sec. 5. *Arrest without warrant; when lawful*. — A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) When an offense has 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

was not actually committing or attempting to commit an offense in the presence of the arresting officer, and no offense had just been committed that gave rise to a probable cause that he committed an offense — petitioner's arrest was illegal.

Petitioner also contends that the warrantless search of petitioner's person, which was neither incidental to a valid arrest nor based on probable cause that he had committed, was committing, or was attempting to commit a crime, violated his Constitutional right[13] against unreasonable search and seizures. As a consequence, any evidence, such as the plastic sachet, obtained as a result of the unlawful search by the TFAV Unit, should be inadmissible in evidence for any purpose in any proceeding for being the "fruit of the poisonous tree."

Petitioner lastly points out that the version of the prosecution of his arrest was based solely on Genguyon's self-serving testimony. Petitioner argues that the prosecution should have presented additional witnesses, such as the other TFAV Unit members, to corroborate Genguyon's testimony, as well as rebuttal evidence to disprove petitioner's defense of frame up. The reliance by the RTC and the Court of Appeals on the presumption of regularity in the performance of official duties was misplaced as such presumption could not override the presumption of innocence in petitioner's favor. Therefore, the quantum of proof required to convict petitioner, *i.e.*, proof beyond reasonable doubt, had not been satisfied.

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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.

[13] Article III. Bill of Rights.

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (The 1987 Constitution.)

We find no merit in the present Petition.

Questions of fact are not the proper subject of a petition for review under Rule 45; findings of fact of the RTC, affirmed by the Court of Appeals, are binding on the Court

We highlight, at the outset, that this Petition was filed under Rule 45 of the Revised Rules of Court, which should be limited to questions of law. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the litigants or any of them.[14]

The resolution of both issues raised in the Petition at bar requires us to sift through the records, and examine and inquire into the probative value of the evidence presented by the parties before the RTC. This is exactly the situation which Rule 45, Section 1 of the Revised Rules of Court prohibits by requiring that the petition raise only questions of law. A re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court because this Court is not a trier of facts. This Court is not duty-bound to analyze and weigh again the evidence considered in the RTC. Further, this case does not fall under any of the exceptions[15] recognized in jurisprudence.

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[14] *Oebanda v. People*, G.R. No. 208137, June 8, 2016, 792 SCRA 623, 630.

[15] Generally, questions of fact are beyond the ambit of a petition for review under Rule 45 of the Rules of Court as it is limited to reviewing only questions of law. The rule, however, admits of exceptions wherein the Court expands the coverage of a petition for review to include a resolution of questions of fact, to wit: (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 a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings 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

Moreover, it is settled that the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect, if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the findings of the trial court have been affirmed by the appellate court, said findings are generally binding upon this Court.[16] The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case.[17]

In the instant case, the RTC, after receiving and evaluating the respective evidence of the prosecution and the defense, adjudged:

> This court finds the prosecution adequate or sufficient to warrant conviction of the accused.
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> In a prosecution for illegal possession of dangerous drugs, the following facts must be proven with moral certainty.
>
> (1) That the accused is in possession of the object identified as prohibited or regulated drug; (2) That such possession is not authorized by law and, (3) That the accused freely and consciously possessed the said drug. To warrant conviction of the accused or that animus possidendi existed together with the possession or control of said articles x x x.
>
> In the instant case, the arresting officer, Raylan G. Genguyon who executed a Sworn Statement and confirmed in open court that on October 23, [2002] at 8:30 in the morning, while he and members of his team were patrolling along Fernandez Street, he saw a male person whom he knew for having been previously arrested by authorities

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petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. (*Verdadero v. People*, G.R. No. 216021, March 2, 2016, 785 SCRA 490, 499-500.)

[16] *People v. Santiago*, 564 Phil. 181, 198 (2007).

[17] *People v. Iroy*, 628 Phil. 145, 152 (2010).

for illegal possession of drugs, came out from an interior alley, stood at the corner of Samat and Fernandez Streets, a place notoriously known for buying and selling dangerous drugs, holding a small transparent plastic sachet containing suspected shabu which he immediately hide (sic) in his cap. When they stopped their patrol vehicle and approached [petitioner], the latter tried to run away and in the process, [petitioner] attempted to throw the plastic sachet. However, considering that witness was closed (sic) to the [petitioner], only three (3) meters distance, he was able to catch the [petitioner], got hold of his hand and recovered the small plastic sachet containing crystalline substance which yielded positive result to the test of methamphetamine hydrochloride called shabu. [Petitioner] was aware of his possession of said plastic sachet which he attempted to throw but was timely recovered by witness Genguyon. He was the only one who handcuffed and conducted the arrest of [petitioner]. As against these (sic) positive identification by the witness of [petitioner] from whom possession of the plastic sachet containing shabu was recovered as well as the positive results of the laboratory examination by the Forensic Chemist of the substance contained in the subject plastic sachet, [petitioner] put up the defense of denial amounting to frame up and illegal arrest.

Our Supreme Court in various cases has ruled that Denial and allegation of frame up are couple and standard defenses in the prosecution of violations of dangerous drug x x x.

The defense of frame up or denial, like alibi, has invariably been viewed by the court with disfavor for it can just be easily concocted and is a common defense play in most prosecution for violation of Dangerous Drug Act x x x.

Witness are to be weighed, not by numbered (sic), it is not uncommon to read a conclusion of guilt on the basis of the testimony of a single witness x x x.

Furthermore, it could be mentioned in passing that number (sic) of Task Force Anti-Vice are public officers who enjoy the privilege of the presumption of regularly (sic) in the performance of their duties in the absence of ill motive and bias.[18]

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[18] Records, pp. 193-194.

On appeal, the Court of Appeals affirmed the findings of the RTC and held that:

The central issue raised by [petitioner] in his appeal is the legality of his search and arrest, [Petitioner] contends that his arrest was illegal for not falling under the exceptions mentioned in Section 5, Rule 113 for a warrantless arrest. He was allegedly not committing or attempting to commit a crime, and the apprehending officer had no personal knowledge that a crime was just committed and that the accused had committed it. Anything that turns up in the course of the subsequent search should be inadmissible as the fruit of an unlawful arrest.

The defense makes capital of the admission of the arresting officer Genguyon that upon seeing [petitioner], he was prompted to think that [petitioner] was committing a crime. But Genguyon himself qualifies his admission with the statement that, at that juncture, he did not try to arrest [petitioner]. The continuing narrative of Genguyon reveals that [petitioner] was intercepted by his team only because they noticed him to be in possession of a plastic sachet and that he quickly fled to a tricycle. Unfortunately for him, the lawmen got hold of him before he could escape.

In the prosecution for illegal possession of dangerous drugs, it must be shown that [petitioner] was in possession of an object or item that is identified to be a prohibited drug and that his possession was not authorized by law. These elements have been satisfactorily established. Genguyon who apprehended [petitioner] testified that from three meters or thereabouts (sic), he sighted (sic) [petitioner] holding a plastic sachet on his right hand. When they approached him, he ran away to ride a tricycle and was about to throw the plastic sachet. But they caught up with him. Genguyon took the sachet from [petitioner] and told him that they were arresting him for violation of illegal possession of prohibited drugs. In *People vs. Suzuki*, 414 SCRA 43, the Supreme Court held that mere possession of a prohibited substance is a crime *per se* placing the burden of the evidence on the accused to prove that his possession was lawful. [Petitioner] denied that he was in possession of the shabu recovered by the Task Force Anti-Vice [Unit] and even went on to say that the men who arrested him merely picked up the plastic sachet from a distance of a meter from him. This is, for sure, a pat and convenient excuse. But without proof of any motive on the part of the arresting officers to falsely

impute a criminal charge against him, the presumption of regularity in the performance of official duty prevails. xxx.

[Petitioner] was caught *in flagrante delicto* in possession of illegal drugs. The arresting officer had reasonable ground to believe based on his own personal observation that the [petitioner] was holding on to a plastic sachet that he believed contained shabu, judging from the past record of [petitioner], and that his suspicions were heightened when [petitioner] ran away after seeing him. The warrantless arrest is lawful under the provisions of Section 5 (a) Rule 113 of the Rules of Court which provides that - a police officer may without a warrant arrest a person when in his presence the person to be arrested has committed, is actually committing or attempting to commit a crime. In the course of a lawful warrantless arrest, the person of the accused may be searched for dangerous or illegal objects. It follows that the prohibited object or item taken from him on the occasion is admissible in evidence. xxx.

In a word, we find no substantial reason to disturb the findings of the courts *a quo*.[19]

The consistent findings of the RTC and the Court of Appeals on petitioner's guilt deserve utmost respect and should no longer be disturbed. However, if only to put *finis* to this case and ensure that no material fact was missed or misappreciated by the trial and appellate courts, we will still proceed to address the issues raised by petitioner.[20]

The prosecution was able to establish by proof beyond reasonable doubt all the elements of the offense of illegal possession of dangerous drugs

Article II, Section 11 of Republic Act No. 9165 penalizes possession of dangerous drugs as follows:

SECTION 11. *Possession of Dangerous Drugs*. — 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)

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[19] *Rollo*, pp. 42-44.

[20] *Oebanda v. People*, *supra* note 14 at 631.

shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

(4) 10 grams or more of cocaine or cocaine hydrochloride;

(5) 50 grams or more of rnethamphetamine hydrochloride or "shabu";

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) 500 grams or more of marijuana; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamide (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride

or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3) **Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs** such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana. (Emphasis ours.)

In prosecuting cases for illegal possession of dangerous drugs, the prosecution must establish the following elements: (l)the accused was in possession of an item or object, which was identified to be a prohibited or regulated drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the drug.[21]

Additionally, in the prosecution of criminal cases involving drugs, it is settled in our jurisprudence that the narcotic substance itself constitutes the *corpus delicti*, the body or substance of the crime, and the fact of its existence is a condition *sine qua non* to sustain a judgment of conviction. It is essential that the prosecution must prove with certitude that the narcotic substance confiscated from the suspect is the same drug offered in evidence before the court. As such, the presentation in court of the *corpus*

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[21] *People v. De Jesus*, 703 Phil. 169, 189 (2013).

delicti establishes the fact that a crime has actually been committed.[22]

Evidence for the prosecution consists of the testimonies of its witnesses, chiefly that of Genguyon; documentary evidence, particularly, Genguyon's Sworn Statement and P/Sr. Insp. Forro's Chemistry Report No. D-2096-02E; and the *corpus delicti*, the plastic sachet of *shabu* confiscated from petitioner.

In his Sworn Statement,[23] which was offered in evidence and formed part of his testimony, Genguyon immediately recalled:

> We saw a male person whom we know for having been arrested by authorities for many times for illegal drug possession came out from an alley thereat and stood at the corner of Samat and Fernandez Sts., this city holding a **small transparent plastic sachet containing suspected *shabu*** which he immediately hide (sic) in his cap.
>
> xxx Since I was already closed (sic) to him at that time, I was able to catch him and got hold of his hand and recovered the **small transparent plastic sachet containing suspected *shabu***. xxx. (Emphases ours.)

During trial, Genguyon further testified as follows:

> Q: And while you were patrolling said area, could you please tell us if there was any unusual incident that happened in that area?
> A: Yes, Ma'am.
>
> Q: What is that?
> A: While we were patrolling the said area of Samat corner Fernandez St., we noticed a male person who is inside the interior street, ma'am.
>
> Q: And what is so unusual in that particular person, Mr. Witness?
> A: While we were looking at him while we were approaching him, we saw that he was holding a plastic sachet, ma'am.

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[22] *People v. Mirondo*, G.R. No. 210841, October 14, 2015, 772 SCRA 593, 603.

[23] Records, p. 4.

Q: How did you know that he was holding a plastic sachet?
A: He was quite near us, about three meters, ma'am.

Q: What is your position in relation to his position?
A: He was facing us, ma'am.

Q: How did he hold the plastic sachet?
A: He was holding it in his right hand and on his left hand, he was holding a baseball cap, ma'am.

Q: And what did you then (sic) when you saw him [with] a plastic sachet?
A: When we approached him, he tried to run away, ma'am.

Q: And what did you do then when he tried to run away?
A: We ran after him and we were able to catch him trying to ride a tricycle and he was trying to throw the plastic sachet, ma'am.

Q: Was he able to ride the tricycle?
A: No, ma'am almost.

Q: What was his reaction when you accosted him?
A: He was surprised, ma'am, because I was already holding him.

Q: What happened when you arrested him?
A: He did not resist when we told him that we are from the Task Force Anti-Vice, ma'am.

Q: What about the plastic sachet that you saw, what happened to that?
A: I got it from his possession and then I told him that we are arresting him for violation of section 11, ma'am.

Q: After apprising him of his constitutional rights, what else happened, if any?
A: After apprising him of his rights, I immediately gave the evidence to our team leader, SPO2 Cirilo Maniego, ma'am.

Q: You said that you were able to recover from him one plastic sachet with white crystalline substance?
A: **Yes, ma'am.**

Q: Could you please describe the size of that sachet?
A: It was a very, small plastic sachet. I cannot estimate the size, ma'am.

Q: If that will be shown to you will you be able to identify it?
A: Yes, ma'am.

Q: Why will you be able to identify it?
A: I put my markings, ma'am, my initials "RG."

Q: Showing to you this plastic sachet with markings "RG" and already marked as Exhibit "F-1" could you please tell us if that is the same plastic sachet recovered from the possession of the [petitioner]?
A: Yes, Ma'am this is the one.

Q: By the way, what does "RG" stands (sic) for?
A: "RG" stands for Raylan Genguyon, ma'am.[24] (Emphasis ours.)

The prosecution then submitted in evidence the Chemistry Report No. D-2096-02E, which confirmed that the white crystalline substance inside the plastic sachet recovered from petitioner was methamphetamine hydrochloride or *shabu*, a prohibited drug.

The totality of the evidence satisfactorily establishes all the necessary elements for the conviction of petitioner for illegal possession of prohibited drug.

Notably, petitioner did not offer any evidence to prove that he had authority to possess the said drug, and it is well-entrenched that mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* of the prohibited drug, sufficient to convict an accused in the absence of satisfactory explanation.[25]

Petitioner failed to present clear and convincing evidence of frame-up

Petitioner's defense of frame-up does not inspire belief. Frame-up, like denial, has always been viewed with disfavor by the courts as it can be easily fabricated. As we declared in *People v. De Guzman*[26]:

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[24] TSN, March 24, 2004, pp. 4-8.

[25] *People v. De Jesus*, *supra* note 21 at 189-190.

[26] 564 Phil. 282, 293 (2007).

The defense of denial or frame-up, like alibi, has been viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner. xxx.

Petitioner miserably failed to present clear and convincing evidence to overcome the presumption that the TFAV Unit members who arrested him, including Genguyon, performed their duties in a regular and proper manner, and that said TFAV Unit members were instead impelled by a sinister motive in charging petitioner with the serious offense of illegal possession of dangerous drugs. As between the positive declaration of the prosecution witness Genguyon that petitioner was caught in possession of a prohibited drug and petitioner's self-serving and unsubstantiated claim of frame-up by the TFAV Unit, the former deserves more weight and credence, just as the trial and appellate courts found.

Petitioner waived any objection to his warrantless arrest; in any case, petitioner was legally arrested without a warrant

Petitioner also assails his conviction on the ground that his arrest without a warrant did not fall among any of the exceptional circumstances enumerated in Rule 113, Section 5 of the Revised Rules of Court, so that the evidence obtained by the TFAV Unit during his unlawful arrest was inadmissible in evidence.

We disagree. Applicable herein are our pronouncements in *People v. Alunday*[27] that:

The Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information

[27] 586 Phil. 120, 133 (2008).

against him before his arraignment. And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submits to the jurisdiction of the trial court. We have also held in a number of cases that the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; such arrest does not negate the validity of the conviction of the accused.

In this case, petitioner failed to raise any objection as to his warrantless arrest before he entered his plea of "not guilty." Petitioner likewise did not move to quash the information against him prior to his arraignment. Petitioner then actively participated in the trial of his case before the RTC. Therefore, petitioner is deemed to have voluntarily submitted himself to the jurisdiction of the RTC and waived any objection to the jurisdiction of the RTC based on a defect in his arrest, and he is estopped from raising such an objection to have the judgment of conviction rendered by the RTC reversed and set aside.

Yet, even if we consider petitioner's objection to the legality of his arrest, we find the same unpersuasive.

Rule 113, Section 5 of the Revised Rules of Court enumerates the exceptional circumstances when a warrantless arrest may be legally made:

SEC. 5. *Arrest without warrant; when lawful.* - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense[.]

In *in flagrante delicto* arrests, the concurrence of two elements is necessary, to wit: (1) 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 (2) such overt act is done *in the presence or within the view* of the arresting officer.[28] Petitioner's overt act of holding/possessing the plastic

[28] *People v. Elamparo*, 385 Phil. 1052, 1064 (2000).

sachet with white crystalline substance in the presence and within the view of Genguyon, a TFAV Unit member and prosecution witness, satisfied both elements. By having a plastic sachet of *shabu* in his possession, petitioner was definitely committing an offense punishable under Republic Act No. 9165, which justified his warrantless arrest. This should negate any insinuation that petitioner was arrested simply because of his past criminal record or because he fled upon seeing the TFAV Unit.

The instant case is closely similar to the factual milieu in *Palo v. People*[29] where a police officer testified that he arrested therein petitioner Roberto Palo (Palo) who was holding a plastic sachet, which the police officer believed to be containing *shabu*:

> PO3 Capangyarihan, a member of the Valenzuela City Police, testified that at around 6:30 in the evening of July 24, 2002, he was walking along a dark alley at Mercado Street, Gen. T. De Leon in Valenzuela City. With him at that time was a boy who was a victim of a stabbing incident and right behind them, was PO1 Santos. While they were walking toward the petitioner's direction, at a distance of about five to seven meters, PO3 Capangyarihan saw [Palo] and Daguman talking to each other. PO3 Capangyarihan also noticed [Palo] holding a plastic sachet in his hand who was then showing it to Daguman. Believing that the plastic sachet contained *shabu*, from the manner by which [Palo] was holding the sachet, PO3 Capangyarihan immediately approached [Palo], held and recovered from his hand the said plastic sachet. Right there and then, [Palo] was arrested by PO3 Capangyarihan. Daguman was also arrested by PO1 Santos.
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> PO3 Capangyarihan further testified that [Palo] and Daguman were informed of their constitutional rights and that the two accused, together with the item seized, were brought to the police station where the confiscated item was marked by PO3 Capangyarihan with [Palo's] initials "RPD." During his cross-examination, PO3 Capangyarihan disclosed that there is a rampant selling of *shabu* at the place where the two accused were apprehended and that his suspicion was aroused by [Palo's] delicate way of handling the plastic sachet.

In the *Palo case*, the Court affirmed the judgments of the trial and appellate courts finding Palo's warrantless arrest lawful

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[29] G.R. No. 192075, February 10, 2016, 783 SCRA 557, 560-561.

as he was caught *in flagrante delicto* and convicting Palo for possession of dangerous drugs, and ratiocinated as follows:

> To secure a conviction for illegal possession of a dangerous drug, the concurrence of the following elements must be established by the prosecution: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.
>
> The Court finds that these elements were proven by the prosecution in the present case. PO3 Capangyarihan testified in a clear and straightforward manner that when he chanced upon [Palo], the latter was caught red-handed in the illegal possession of *shabu* and was arrested *in flagrante delicto*. On direct examination, the police officer positively identified [Palo] as the person holding, scrutinizing and from whom the plastic sachet was confiscated. After conducting a chemical analysis, the forensic chemical officer certified that the plastic sachet recovered from [Palo] was found to contain 0.03 gram of *shabu*. Nowhere in the records was it shown that [Palo] is lawfully authorized to possess the dangerous drug. Furthermore, Daguman admitted that [Palo] intentionally sought and succeeded in getting hold of *shabu*. Clearly, [Palo] knowingly possessed the dangerous drug, without any legal authority to do so, in violation of Section 11, Article II of R.A. No. 9165.
>
> The Court concurs with the trial court in attributing full faith and credence to the testimony of PO3 Capangyarihan. His detailed narration in court remained consistent with the documentary and object evidence submitted by the prosecution. As there is nothing in the record to indicate that PO3 Capangyarihan was impelled by improper motive when he testified against [Palo], the Court upholds the presumption of regularity in the apprehending officer's performance of official duty.[30]

The case of *Esquillo v. People*[31] is likewise analogous to the instant case. In *Esquillo*, the Court upheld the following actions of the police officer, despite the absence of a warrant: (a) approaching therein petitioner Susan Esquillo (Esquillo) after

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[30] *Id.* at 567-568.

[31] 643 Phil. 577 (2010).

observing from **three meters away** that Esquillo placed a plastic sachet with white substance inside a cigarette case; (b) inquiring from Esquillo about said plastic sachet; (c) restraining Esquillo who attempted to flee; (d) requesting Esquillo to take out the plastic sachet from the cigarette case; (e) confiscating the plastic sachet from Esquillo; and (f) arresting Esquillo. The Court held in the *Esquillo* case:

> On the basis of an informant's tip, PO1 Cruzin, together with PO2 Angel Aguas (PO2 Aguas), proceeded at around 4:00 p.m. on December 10, 2002 to Bayanihan St., Malibay, Pasay City to conduct surveillance on the activities of an alleged notorious snatcher operating in the area known only as "Ryan."
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> As PO1 Cruzin alighted from the private vehicle that brought him and PO2 Aguas to the target area, he glanced in the direction of [Esquillo] who was standing three meters away and seen placing inside a yellow cigarette case what appeared to be a small heat-sealed transparent plastic sachet containing white substance. While PO1 [Cruzin] was not sure what the plastic sachet contained, he became suspicious when [Esquillo] started acting strangely as he began to approach her. He then introduced himself as a police officer to [Esquillo] and inquired about the plastic sachet she was placing inside her cigarette case. Instead of replying, however, [Esquillo] attempted to flee to her house nearby but was timely restrained by PO1 Cruzin who then requested her to take out the transparent plastic sachet from the cigarette case.
>
> After apprising [Esquillo] of her constitutional rights, PO1 Cruzin confiscated the plastic sachet on which he marked her initials "SRE." With the seized item, [Esquillo] was brought for investigation to a Pasay City Police Station where P/Insp. Aquilino E. Almanza, Chief of the Drug Enforcement Unit, prepared a memorandum dated December 10, 2002 addressed to the Chief Forensic Chemist of the NBI in Manila requesting for: 1) a laboratory examination of the substance contained in the plastic sachet to determine the presence of *shabu*, and 2) the conduct of a drug test on the person of [Esquillo]. PO1 Cruzin and PO2 Aguas soon executed a Joint Affidavit of Apprehension recounting the details of their intended surveillance and the circumstances leading to [Esquillo's] arrest.
>
> x x x x x x x x x
>
> [Esquillo's] conviction stands.

[Esquillo] did not question early on her warrantless arrest — before her arraignment. Neither did she take steps to quash the Information on such ground. Verily, she raised the issue of warrantless arrest — as well as the inadmissibility of evidence acquired on the occasion thereof — for the first time only on appeal before the appellate court. By such omissions, she is deemed to have waived any objections on the legality of her arrest.

Be that as it may, the circumstances under which [Esquillo] was arrested indeed engender the belief that a search on her was warranted. Recall that the police officers were on a surveillance operation as part of their law enforcement efforts. **When PO1 Cruzin saw [Esquillo] placing a plastic sachet containing white crystalline substance into her cigarette case, it was in his plain view. Given his training as a law enforcement officer, it was instinctive on his part to be drawn to curiosity and to approach her. That [Esquillo] reacted by attempting to flee after he introduced himself as a police officer and inquired about the contents of the plastic sachet all the more pricked his curiosity.**

That a search may be conducted by law enforcers only on the strength of a valid search warrant is settled. The same, however, admits of exceptions, *viz.*:

> (1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; **(6) where the prohibited articles are in "plain view;"** (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and (8) **"stop and frisk" operations.** xxx.

In the instances where a warrant is not necessary to effect a valid search or seizure, the determination of what constitutes a reasonable or unreasonable search or seizure is purely a judicial question, taking into account, among other things, the uniqueness of the circumstances involved including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.[32] (Emphases supplied.)

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[32] *Id.* at 589-593.

Ultimately, the Court adjudged that the *Esquillo* case involved a valid **stop-and-frisk operation** as the police officer had to require the accused to take out the plastic sachet from the cigarette case. In contrast, there was no need to stop-and-frisk petitioner in this case because the plastic sachet with suspected *shabu* remained in Genguyon's **plain view** from the time Genguyon saw petitioner holding it, to the time petitioner tried to dispose of it, and up to the time he seized it from petitioner. Nevertheless, just as in *Esquillo*, Genguyon herein had a genuine reason to believe that petitioner was committing a crime as he saw petitioner holding the plastic sachet with suspected *shabu* from a distance of three meters. And, as pronounced in *Esquillo*, the unique circumstances of each case must be taken into account in determining whether or not a warrantless search or seizure is reasonable. Here, we see no reason to doubt the testimony of the prosecution witness that petitioner was seen holding a plastic sachet containing white crystalline substance or suspected *shabu*. Petitioner ran away, was about to board a tricycle, and throw away the sachet. The urgency of the situation called for Genguyon and the rest of the TFAV Unit to act immediately. Thus, even without a warrant, the TFAV Unit was authorized to arrest petitioner who was at that time violating Article II, Section 11 of Republic Act No. 9165.

Penalty modified in accordance with Republic Act No. 9165

Finally, the RTC, affirmed by the Court of Appeals, imposed on petitioner the penalty of six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal* as maximum. We modify the penalty imposed upon petitioner to conform to Article II, Section 11(3) of Republic Act No. 9165. Petitioner, found guilty beyond reasonable doubt of illegally possessing 0.03 gram of methamphetamine hydrochloride or *shabu* (less than five [5] grams), is sentenced to suffer imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum.[33]

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[33] *People v. Darisan*, 597 Phil. 479, 486 (2009); *People v. Dilao*, 555 Phil. 394, 410 (2007).

We sustain the fine imposed on petitioner by the trial and appellate courts in the amount of Three Hundred Thousand Pesos (₱300,000.00).

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**. The Decision dated May 26, 2011 of the Court of Appeals in CA-G.R. CR. No. 30826, affirming the Decision dated July 16, 2006 of the Regional Trial Court of Mandaluyong City, Branch 209, in Criminal Case No. MC02-6030-D, is **AFFIRMED** with the **MODIFICATION** that petitioner Rolando Dacanay *y* Lacaste is sentenced to an indeterminate sentence of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum.

SO ORDERED.

Sereno, C.J. (Chairperson), Peralta,[*] *del Castillo*, and *Tijam, JJ.*, concur.

FIRST DIVISION

[G.R. No. 202578. September 27, 2017]

HEIRS OF GILBERTO ROLDAN, NAMELY: ADELINA ROLDAN, ROLANDO ROLDAN, GILBERTO ROLDAN, JR., MARIO ROLDAN, DANNY ROLDAN, LEONARDO ROLDAN, ELSA ROLDAN, ERLINDA ROLDAN-CARAOS, THELMA ROLDAN-MASINSIN, GILDA ROLDAN-DAWAL and RHODORA ROLDAN-ICAMINA, *petitioners, vs.* **HEIRS OF SILVELA ROLDAN, NAMELY: ANTONIO R. DE GUZMAN,**

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[*] Per raffle dated September 18, 2017.

AUGUSTO R. DE GUZMAN, ALICIA R. VALDORIA-PINEDA, and SALLY R. VALDORIA, and HEIRS OF LEOPOLDO MAGTULIS, NAMELY: CYNTHIA YORAC-MAGTULIS, LEA JOYCE MAGTULIS-MALABORBOR, DHANCY MAGTULIS, FRANCES DIANE MAGTULIS, and JULIERTO MAGTULIS-PLACER, *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; FILIATION; BAPTISMAL CERTIFICATE AND MARRIAGE CONTRACT BY ITSELF, ARE INADEQUATE TO PROVE FILIATION.— In *Fernandez v. Court of Appeals*, x x x the Court explained that because the putative parent has no hand in the preparation of a baptismal certificate, x x x [it] is "no proof of the declarations in the record with respect to the parentage of the child baptized." x x x [I]n *Makati Shangri-La Hotel and Resort, Inc. v. Harper*, this Court clarified that a baptismal certificate has evidentiary value to prove kinship "if considered alongside other evidence of filiation." x x x In *Reyes v. Court of Appeals*, we held that even if the marriage contract therein stated that the alleged father of the bride was the bride's father, that document could not be taken as evidence of filiation, because it was not signed by the alleged father of the bride.

2. ID.; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION AND LACHES; PRESCRIPTION CANNOT BE APPRECIATED AGAINST THE CO-OWNERS OF A PROPERTY ABSENT CONCLUSIVE ACT OF REPUDIATION, AND LACHES REQUIRES PROOF THAT THEY SLEPT ON THEIR RIGHTS.— According to petitioners, prescription and laches have clearly set in given their continued occupation of the property in the last 42 years. Prescription cannot be appreciated against the co-owners of a property, absent any conclusive act of repudiation made clearly known to the other co--owners. x x x Aside from the mere passage of time, there was failure on the part of petitioners to substantiate their allegation of laches by proving that respondents slept on their rights. Nevertheless, had they done so, two grounds deter them from successfully claiming the existence of prescription

and laches. First, as demanded by the repudiation requisite for prescription to be appreciated, there is a need to determine the veracity of factual matters such as the date when the period to bring the action commenced to run. x x x The same is true in relation to finding the existence of laches. We held in *Crisostomo v. Garcia, Jr.* that matters like estoppel, laches, and fraud require the presentation of evidence and the determination of facts.

3. REMEDIAL LAW; APPEALS; NEW GROUND RAISED FOR THE FIRST TIME ON APPEAL, NOT PROPER.— [P]etitioners have alleged prescription and laches only before this Court. Raising a new ground for the first time on appeal contravenes due process, as that act deprives the adverse party of the opportunity to contest the assertion of the claimant.

APPEARANCES OF COUNSEL

Selwyn C. Ibarreta for petitioners.
Higino C. Macabales for respondents.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Petition for Review on Certiorari[1] assailing the Court of Appeals (CA) Decision[2] and Resolution,[3] which affirmed the Decision[4] of the Regional Trial Court (RTC).

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[1] *Rollo*, pp. 4-20; Petition for Review on *Certiorari* filed on 6 July 2012.

[2] *Id*. at 29-41; CA Decision dated 20 December 2011 in CA-G.R. CEB-CV No. 02327 was penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Myra V. Garcia-Fernandez and Victoria Isabel A. Paredes concurring.

[3] *Id*. at 47-48; CA Resolution dated 1 June 2012 was penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Ramon Paul L. Hernando and Victoria Isabel A. Paredes concurring.

[4] *Id*. at 21-28; the Decision dated 14 December 2007 in Civil Case No. 6844 was penned by Acting Presiding Judge Sheila Y. Martelino-Cortes, RTC, Kalibo, Aklan, Branch 8.

The RTC ruled that petitioner heirs of Gilberto Roldan, respondent heirs of Silvela Roldan,[5] and respondent heirs of Leopoldo Magtulis are co-owners of Lot No. 4696.

FACTS OF THE CASE

Natalia Magtulis[6] owned Lot No. 4696, an agricultural land in Kalibo, Aklan, which had an area of 21,739 square meters, and was covered by Original Certificate of Title No. P-7711.[7] Her heirs included Gilberto Roldan and Silvela Roldan, her two children by her first marriage; and, allegedly, Leopoldo Magtulis – her child with another man named Juan Aguirre.[8] After her death in 1961, Natalia left the lot to her children. However, Gilberto and his heirs took possession of the property to the exclusion of respondents.

On 19 May 2003, respondents filed before the RTC a Complaint for Partition and Damages against petitioners.[9] The latter refused to yield the property on these grounds: (1) respondent heirs of Silvela had already sold her share to Gilberto; and (2) respondent heirs of Leopoldo had no cause of action, given that he was not a child of Natalia.

During trial, petitioners failed to show any document evidencing the sale of Silvela's share to Gilberto. Thus, in its Decision dated 14 December 2007, the RTC ruled that the heirs of Silvela remained co-owners of the property they had inherited from Natalia. As regards Leopoldo Magtulis, the trial court concluded that he was a son of Natalia based on his Certificate of Baptism[10] and Marriage Contract.[11]

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[5] "Silveria Roldan" in some parts of the records.

[6] "Anatalia Magtulis" in some parts of the records.

[7] *Rollo,* p. 50.

[8] *Id.* at 33.

[9] Records, pp. 1-5; Complaint dated 16 May 2003.

[10] Folders of Exhibits of Plaintiffs (Civil Case No. 6844), p. 109; Certificate of Baptism signed by Rev. Fr. Joesel M. Quan, Parish of St. John the Baptist, Kalibo, Aklan, dated 22 March 2004.

[11] *Id.* at 112; Marriage Contract dated 9 June 1954.

Considering that Gilberto, Silvela, and Leopoldo were all descendants of Natalia, the RTC declared each set of their respective heirs entitled to one-third share of the property. Consequently, it ordered petitioners to account and deliver to respondents their equal share to the produce of the land.

Petitioners appealed to the CA. They reiterated that Silvela had sold her share of the property to her brother Gilberto. They asserted that the RTC could not have considered Leopoldo the son of Natalia on the mere basis of his Certificate of Baptism. Emphasizing that filiation required a high standard of proof, petitioners argued that the baptismal certificate of Leopoldo served only as evidence of the administration of the sacrament.

In its Decision dated 20 December 2011, the CA affirmed the ruling of the RTC that Gilberto, Silvela, and Leopoldo remained co-owners of Lot No. 4696. The appellate court refused to conclude that Silvela had sold her shares to Gilberto without any document evidencing a sales transaction. It also held that Leopoldo was the son of Natalia, since his Certificate of Baptism and Marriage Contract indicated her as his mother.

Petitioner heirs of Gilberto moved for reconsideration,[12] but to no avail. Before this Court, they reiterate that Silvela sold her shares to Gilberto, and that Leopoldo was not the son of Natalia. They emphasize that the certificates of baptism and marriage do not prove Natalia to be the mother of Leopoldo since these documents were executed without her participation.

Petitioners additionally contend that respondents lost their rights over the property, since the action for partition was lodged before the RTC only in 2003, or 42 years since Gilberto occupied the property in 1961. For the heirs of Gilberto, prescription and laches already preclude the heirs of Silvela and the heirs of Leopoldo from claiming co-ownership over Lot No. 4696.

In their Comment,[13] respondents assert that the arguments raised by petitioners involve questions of fact not cognizable

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[12] *Rollo*, pp. 42-46; Motion for Reconsideration filed on 19 January 2012.

[13] *Id.* at 64-73; Comment on Petition for Review filed on 26 December 2013.

by this Court. As regards the issue of prescription and laches, they insist that petitioners cannot invoke a new theory for the first time on appeal.

ISSUES OF THE CASE

The following issues are presented to this Court for resolution:

1. Whether the CA erred in affirming the RTC's finding that Silvela did not sell her share of the property to Gilberto

2. Whether the courts *a quo* correctly appreciated Leopoldo to be the son of Natalia based on his baptismal and marriage certificates

3. Whether prescription and laches bar respondents from claiming co-ownership over Lot No. 4696

RULING OF THE COURT

Sale of the Shares of Silvela to Gilberto

Petitioners argue before us that Silvela had a perfected contract of sale with Gilberto over her shares of Lot No. 4696. That argument is obviously a question of fact,[14] as it delves into the truth of whether she conveyed her rights in favor of her brother.

The assessment of the existence of the sale requires the calibration of the evidence on record and the probative weight thereof. The RTC, as affirmed by the CA, already performed its function and found that the heirs of Gilberto had not presented any document or witness to prove the fact of sale.

The factual determination of courts, when adopted and confirmed by the CA, is final and conclusive on this Court except if unsupported by the evidence on record.[15] In this case, the exception does not apply, as petitioners merely alleged that Silvela "sold, transferred and conveyed her share in the land

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[14] *Soriano v. Cortes*, 8 Phil. 459 (1907); *88 Mart Duty Free, Inc. v. Juan,* 592 Phil. 278 (2008).

[15] *Tan Shuy v. Spouses Maulawin*, 681 Phil. 599 (2012).

in question to Gilberto Roldan for a valuable consideration" without particularizing the details or referring to any proof of the transaction.[16] Therefore, we sustain the conclusion that she remains co-owner of Lot No. 4696.

Filiation of Leopoldo to Natalia

In resolving the issue of filiation, the RTC and the CA referred to Articles 172 and 175 of the Family Code, *viz.*:

Art. 172. The filiation of legitimate children is established by any of the following:

(1) The record of birth appearing in the civil register or a final judgment; or

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws.

Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

The parties concede that there is no record of Leopoldo's birth in either the National Statistics Office[17] or in the Office of the Municipal Registrar of Kalibo, Aklan.[18] The RTC and

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[16] *Rollo,* p. 12.

[17] Folders of Exhibits of Plaintiffs (Civil Case No. 6844), p. 111; letter from the Office of the Civil Registrar General indicating that it has no record of birth of Leopoldo dela Rosa Magtulis.

[18] Folders of Exhibits of Plaintiffs (Civil Case No. 6844), p. 112; letter from the Office of the Municipal Civil Registrar indicating that it could not

the CA then referred to other means to prove the status of Leopoldo: his Certificate of Baptism and his Marriage Contract. Since both documents indicate Natalia as the mother of Leopoldo, the courts *a quo* concluded that respondent heirs of Leopoldo had sufficiently proven the filiation of their ancestor to the original owner of Lot No. 4696. For this reason, the RTC and the CA maintained that the heirs of Leopoldo are entitled to an equal share of the property, together with the heirs of Gilberto and heirs of Silvela.

We disagree.

Jurisprudence has already assessed the probative value of baptismal certificates. In *Fernandez v. Court of Appeals,*[19] which referred to our earlier rulings in *Berciles v. Government Service Insurance System*[20] and *Macadangdang v. Court of Appeals*,[21] the Court explained that because the putative parent has no hand in the preparation of a baptismal certificate, that document has scant evidentiary value. The canonical certificate is simply a proof of the act to which the priest may certify, i.e., the administration of the sacrament. In other words, a baptismal certificate is "no proof of the declarations in the record with respect to the parentage of the child baptized, or of prior and distinct facts which require separate and concrete evidence."[22]

In cases that followed *Fernandez,* we reiterated that a baptismal certificate is insufficient to prove filiation.[23] But in *Makati*

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issue a certified true copy of the birth certificate of Leopoldo Magtulis because the Office of the Local Civil Registrar was razed by fire on 4 July 1995.

[19] 300 Phil. 131 (1994).

[20] 213 Phil. 48 (1984).

[21] 188 Phil. 192 (1980).

[22] *Supra* note 19, p. 137.

[23] *Ara v. Pizarro*, G.R. No. 187273, 15 February 2017; *Cercado-Siga v. Cercado, Jr.,* G.R. No. 185374, 11 March 2015, 752 SCRA 514; *Salas v. Matusalem,* 717 Phil. 731 (2013); *Dela Cruz v. Gracia*, 612 Phil. 167 (2009); *Herrera v. Alba*, 499 Phil. 185 (2005); *Acebedo v. Arquero,* 447 Phil. 76 (2003); *Labagala v. Santiago,* 422 Phil. 699 (2001); *Heirs of Cabais v.*

Shangri-La Hotel and Resort, Inc. v. Harper,[24] this Court clarified that a baptismal certificate has evidentiary value to prove kinship "if considered alongside other evidence of filiation."[25] Therefore, to resolve one's lineage, courts must peruse other pieces of evidence instead of relying only on a canonical record. By way of example, we have considered the combination of testimonial evidence,[26] family pictures,[27] as well as family books or charts,[28] alongside the baptismal certificates of the claimants, in proving kinship.

In this case, the courts below did not appreciate any other material proof related to the baptismal certificate of Leopoldo that would establish his filiation with Natalia, whether as a legitimate or as an illegitimate son.

The only other document considered by the RTC and the CA was the Marriage Contract of Leopoldo. But, like his baptismal certificate, his Marriage Contract also lacks probative value as the latter was prepared without the participation of Natalia. In *Reyes v. Court of Appeals,*[29] we held that even if the marriage contract therein stated that the alleged father of the bride was the bride's father, that document could not be taken as evidence of filiation, because it was not signed by the alleged father of the bride.

The instant case is similar to an issue raised in *Paa v. Chan.*[30] The claimant in that case relied upon baptismal and marriage certificates to argue filiation. The Court said:

Court of Appeals, 374 Phil. 681 (1999); *Jison v. Court of Appeals*, 350 Phil. 138 (1998).

[24] 693 Phil. 596 (2012).

[25] *Id*. at 616.

[26] *Heirs of Conti v. Court of Appeals*, 360 Phil. 536 (1998); *Ramos v. Ramos,* 45 Phil. 362 (1923); *Osorio v. Osorio,* 34 Phil. 522 (1916).

[27] *Trinidad v. Court of Appeals,* 352 Phil.12 (1998); *Castro v. Court of Appeals,* 255 Phil. 640 (1989).

[28] *Republic v. Mangotara*, 638 Phil. 353 (2010).

[29] 220 Phil. 116 (1985).

[30] 128 Phil. 815, 821 (1967).

As regards the baptismal and marriage certificates of Leoncio Chan, the same are not competent evidence to prove that he was the illegitimate child of Bartola Maglaya by a Chinese father. While these certificates may be considered public documents, they are evidence only to prove the administration of the sacraments on the dates therein specified - which in this case were the baptism and marriage, respectively, of Leoncio Chan - but not the veracity of the statements or declarations made therein with respect to his kinsfolk and/or citizenship.

All told, the Baptismal Certificate and the Marriage Contract of Leopoldo, which merely stated that Natalia is his mother, are inadequate to prove his filiation with the property owner. Moreover, by virtue of these documents alone, the RTC and the CA could not have justly concluded that Leopoldo and his successors-in-interest were entitled to a one-third share of the property left by Natalia, equal to that of each of her undisputed legitimate children – Gilberto and Silvela. As held in *Board of Commissioners v. Dela Rosa,*[31] a baptismal certificate is certainly not proof of the status of legitimacy or illegitimacy of the claimant. Therefore, the CA erred in presuming the hereditary rights of Leopoldo to be equal to those of the legitimate heirs of Natalia.

Prescription and Laches

According to petitioners, prescription and laches have clearly set in given their continued occupation of the property in the last 42 years. Prescription cannot be appreciated against the co-owners of a property, absent any conclusive act of repudiation made clearly known to the other co-owners.[32]

Here, petitioners merely allege that the purported co-ownership "was already repudiated by one of the parties" without supporting evidence. Aside from the mere passage of time, there was failure on the part of petitioners to substantiate their allegation of laches

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[31] 274 Phil. 1157 (1991).

[32] CIVIL CODE OF THE PHILIPPINES, Article 494; *Adille v. Court of Appeals*, 241 Phil. 487 (1988).

by proving that respondents slept on their rights.[33] Nevertheless, had they done so, two grounds deter them from successfully claiming the existence of prescription and laches.

First, as demanded by the repudiation requisite for prescription to be appreciated, there is a need to determine the veracity of factual matters such as the date when the period to bring the action commenced to run. In *Macababbad, Jr. v. Masirag,*[34] we considered that determination as factual in nature. The same is true in relation to finding the existence of laches. We held in *Crisostomo v. Garcia, Jr.*[35] that matters like estoppel, laches, and fraud require the presentation of evidence and the determination of facts. Since petitions for review on certiorari under Rule 45 of the Rules of Court, as in this case, entertain questions of law,[36] petitioners claim of prescription and laches fail.

Second, petitioners have alleged prescription and laches only before this Court. Raising a new ground for the first time on appeal contravenes due process, as that act deprives the adverse party of the opportunity to contest the assertion of the claimant.[37] Since respondents were not able to refute the issue of prescription and laches, this Court denies the newly raised contention of petitioners.

WHEREFORE, the Petition for Review on Certiorari filed by petitioner heirs of Gilberto Roldan is **PARTIALLY GRANTED**. The Court of Appeals Decision and Resolution in CA-G.R. CEB-CV No. 02327 are hereby **MODIFIED** to read as follows:

1. Only the heirs of Gilberto Roldan and Silvela Roldan are declared co-owners of the land covered by Original Certificate

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[33] *Heirs of Panganiban v. Dayrit*, 502 Phil. 612 (2005).

[34] 596 Phil. 76 (2009).

[35] 516 Phil. 743 (2006).

[36] *Our Lady of Lourdes Hospital v. Spouses Capanzana*, G.R. No. 189218, 22 March 2017.

[37] *Maxicare PCIB CIGNA Healthcare v. Contreras*, 702 Phil. 688 (2013).

of Title No. P-7711, which should be partitioned among them in the following proportions:

a. One-half share to the heirs of Gilberto Roldan; and

b. One-half share to the heirs of Silvela Roldan.

2. Petitioners are ordered to account for and deliver to the heirs of Silvela Roldan their one-half share on the produce of the land.

SO ORDERED.

Leonardo-de Castro, del Castillo, and *Tijam, JJ.,* concur.

Jardeleza, J., on official leave.

SECOND DIVISION

[G.R. No. 204663. September 27, 2017]

MUNICIPAL RURAL BANK OF LIBMANAN, CAMARINES SUR, *petitioner, vs.* **VIRGINIA ORDOÑEZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY; POSSESSION; CAN BE ACQUIRED BY JURIDICAL ACTS.— For one to be considered in possession, one need not have actual or physical occupation of every square inch of the property at all times. Possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right. Possession can be acquired by juridical acts. These are acts to which the law gives the force of acts of possession. In one case, this Court has considered a claimant's

act of assigning a caretaker over the disputed land, who cultivated the same and built a hut thereon, as evidence of the claimant's possession of the said land.

2. ID.; ID.; ID.; TAX DECLARATIONS OR REALTY TAX PAYMENTS ARE GOOD *INDICIA* OF POSSESSION IN THE CONCEPT OF OWNER.— [R]espondent and her predecessors-in-interest declared the disputed property for tax purposes and paid the realty taxes thereon, as early as 1949. Settled is the rule that although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they 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.

3. ID.; SPECIAL CONTRACTS; MORTGAGE; A BANKING INSTITUTION IS EXPECTED TO EXERCISE DUE DILIGENCE BEFORE ENTERING INTO A MORTGAGE CONTRACT.— [I]t is settled that a banking institution is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations. This Court has never failed to stress the remarkable significance of a banking institution to commercial transactions, in particular, and to the country's economy in general. The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required of it.

4. ID.; ID.; SALES; THE ISSUE OF GOOD FAITH OR BAD FAITH OF A BUYER IS RELEVANT ONLY WHERE THE SUBJECT OF THE SALE IS A REGISTERED LAND BUT NOT WHERE THE PROPERTY IS AN UNREGISTERED LAND.— As to whether or not petitioner was in good faith, the issue of good faith or bad faith of a buyer is relevant only

where the subject of the sale is a registered land but not where the property is an unregistered land. One who purchases an unregistered land does so at his peril. His claim of having bought the land in good faith, *i.e.*, without notice that some other person has a right to, or interest in, the property, would not protect him if it turns out that the seller does not actually own the property.

APPEARANCES OF COUNSEL

Simando and Associates for petitioner.
Gilbert P.E. Morandarte for respondent.

D E C I S I O N

PERALTA,[*] *J.*:

Assailed in the instant petition for review on *certiorari* are the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated March 30, 2012 and October 17, 2012, respectively, in CA-G.R. CV No. 94947.

The pertinent factual and procedural antecedents of the case are as follows:

On June 20, 2000, herein respondent filed with the Regional Trial Court (*RTC*) of Libmanan, Camarines Sur a Complaint[3] for Quieting of Title against herein petitioner bank. Subsequently, on September 2, 2002, the Complaint was amended[4] where respondent alleged that: she is the owner of a 2,174 square meter parcel of land in Fundado, Libmanan, Camarines Sur; she acquired the property through inheritance; she and her

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[*] Acting Chairperson, per Special Order No. 2487 dated September 19, 2017.

[1] Penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Noel G. Tijam and Edwin D. Sorongon, Annex "A" to Petition; *rollo,* pp. 31-57.

[2] Annex "B" to Petition, *rollo*, pp. 58-60.

[3] Records, pp. 1-3.

[4] See Amended Complaint, *id*. at 54-56.

predecessors-in-interest had been in open, peaceful, adverse, uninterrupted possession of the subject land in the concept of an owner since time immemorial; and petitioner's claim of ownership is unfounded, unmeritorious invalid and based upon an instrument which is null and void or, otherwise, unenforceable. Respondent prayed that she be declared the absolute owner and, thus, entitled to the lawful possession of the subject property. She also asked the trial court to order petitioner to pay attorney's fees and monthly rentals.

In its Answer with Counterclaim,[5] herein petitioner denied the material allegations of respondent's Amended Complaint contending that it is, in fact, the true and absolute owner of the subject land; and the property was previously owned by one Roberto Hermita (*Roberto*) who mortgaged the said land to petitioner but subsequently failed to satisfy his obligation causing petitioner to foreclose the mortgage and subsequently acquire the property and transfer title over it in its name. In its Counterclaim, petitioner prayed for the payment of moral damages and attorney's fees.

After the issues were joined, trial on the merits ensued.

On January 19, 2010, the RTC rendered its Decision[6] dismissing respondent's Amended Complaint as well as petitioner's Counterclaim.

The RTC ruled that, before entering into the contract of mortgage with Roberto Hermita, petitioner, through its manager, did its best to ascertain Roberto's claim of ownership and possession by conducting the requisite investigation. The RTC concluded that the weight of evidence preponderates in favor of herein petitioner.

Aggrieved, respondent filed an appeal with the CA.

On March 30, 2012, the CA promulgated its assailed Decision by ruling in respondent's favor and disposing as follows:

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[5] Records, pp. 8-9.

[6] *Id*. at 240-256.

WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE. The real estate mortgage contract dated March 23, 1995, covering the disputed property is hereby declared NULL and VOID and the plaintiff-appellant is declared owner thereof.

SO ORDERED.[7]

The CA held that: (1) respondent was able to prove that her predecessors-in-interest had possession of the subject land prior to that of petitioner's predecessor-in-interest; (2) they declared the property for tax purposes as early as 1949, as compared to petitioner's predecessor-in-interest who paid taxes thereon beginning only in 1970; and (3) contrary to the findings of the RTC, the evidence preponderates in favor of herein respondent. Thus, the CA declared respondent as owner of the subject lot and nullified the real estate mortgage executed between petitioner and Roberto.

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution dated October 17, 2012.

Hence, the present petition for review on *certiorari* with the following Assignment of Errors:

a) The Honorable Court of Appeals gravely erred when it held that respondent has prior possession over the property through her caretaker Roman Zamudio.

b) The Honorable Court of Appeals gravely erred when it ruled that acquisitive prescription cannot be made to apply to the possession of Roberto Hermita.

c) The Honorable Court of Appeals seriously erred when it pronounced that petitioner Municipal Rural Bank of Libmanan, Camarines Sur was utterly remiss in its duty to establish who the true owners and possessors of the subject property were.[8]

The petition is unmeritorious.

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[7] *Rollo*, p. 56.

[8] *Id*. at 17-18.

Before delving into the merits of the instant petition, the Court finds it apropos to restate the nature of an action for quieting of title. Citing the case of *Baricuatro, Jr. v. Court of Appeals,*[9] this Court, in *Herminio M. De Guzman, for himself and as Attorney-in-fact of: Nilo M. De Guzman, et al. v. Tabangao Realty Inc.,*[10] held, thus:

> Regarding the nature of the action filed before the trial court, quieting of title is a common law remedy for the removal of any cloud upon or doubt or uncertainty with respect to title to real property. Originating in equity jurisprudence, its purpose is to secure "x x x an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever afterward free from any danger of hostile claim." In an action for quieting of title, the competent court is tasked to determine the respective rights of the complainant and other claimants, "x x x not only to place *things in their proper place,* to make the one who has no rights to said immovable *respect and not disturb* the other, but also for the *benefit of both*, so that he who has the right would see every *cloud of doubt* over the property dissipated, and he could afterwards without fear *introduce the improvements* he may desire, to use, and even to *abuse* the property as he deems best x x x." (*Citation omitted.*)"[11]

The Court, then, went on to discuss that:

> Under the Civil Code, the remedy may be availed of under the following circumstances:
>
> > Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

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[9] 382 Phil. 15, 25 (2000).

[10] 753 Phil. 456 (2015).

[11] *Herminio M. De Guzman, for himself and as Attorney-in-fact of: Nilo M. De Guzman, et al. v. Tabangao Realty Inc., supra,* at 468.

> An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.
>
> Art. 478. There may also be an action to quiet title or remove a cloud therefrom when the contract, instrument or other obligation has been extinguished or has terminated, or has been barred by extinctive prescription.

Article 477 of the Civil Code further provides that the plaintiff in an action to quiet title must have legal or equitable title to or interest in the real property, which is the subject matter of the action, but need not be in possession of said property.

For an action to quiet title to prosper, two indispensable requisites must concur: (1) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting a cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[12]

In *Spouses Ragasa v. Spouses Roa,*[13] this Court has, likewise, ruled that:

> [I]t is an established rule of American jurisprudence (made applicable in this jurisdiction by Art. 480 of the New Civil Code) that actions to quiet title to property in the possession of the plaintiff are imprescriptible.
>
> The prevailing rule is that the right of a plaintiff to have his title to land quieted, as against one who is asserting some adverse claim or lien thereon, is not barred while the plaintiff or his grantors remain in actual possession of the land, claiming to be owners thereof, the reason for this rule being that while the owner in fee continues liable to an action, proceeding, or suit upon the adverse claim, he has a continuing right to the aid of a court of equity to ascertain and determine the nature of such claim and its effect on his title, or to assert any superior equity in his favor. He may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right. But the rule that the statute of limitations is not available as a defense to an action to remove a cloud from title can only be invoked

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[12] *Id*. at 468-469.

[13] 526 Phil. 587 (2006).

by a complain[ant] when he is in possession. One who claims property which is in the possession of another must, it seems, invoke his remedy within the statutory period.[14]

In the instant case, for reasons to be discussed hereunder, the Court agrees with the CA that herein respondent was able to prove by preponderance of evidence that she has a legal or equitable title or interest in the real property subject of the action and that the deed, claim, encumbrance, or proceeding claimed to be casting a cloud on her title is, in fact, invalid or inoperative, despite its *prima facie* appearance of validity or legal efficacy.

In its first assigned error, petitioner argues that the CA erred in holding that: (1) respondent's predecessors-in-interest designated a certain Roman Zamudio (Zamudio) as caretaker of the subject lot; and (2) respondent has prior possession over the said property through Zamudio.

The Court does not agree.

First, the Court finds no cogent reason to depart from the conclusion of the CA that the testimony of respondent's witness Perpetuo Parafina (*Parafina*), who is the owner of the land adjacent to the disputed property, is clear that Zamudio was indeed the person assigned by respondent's mother as caretaker of the questioned land.[15] In fact, the RTC, in its Decision dated January 19, 2010, likewise made a positive finding that Zamudio was, in fact, respondent's caretaker. Moreover, Parafina testified that, since 1960, he knows the property as owned by respondent's mother.[16]

The question that follows is whether Zamudio's occupation of the subject property as caretaker may be considered as proof of respondent's and her predecessors-in-interest's prior possession of the said land.

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[14] *Spouses Ragasa v. Spouses Roa, supra,* at 592-593.

[15] See TSN, December 11, 2003, pp. 2-3.

[16] See TSN, June 21, 2004, p. 2.

The Court rules in the affirmative.

For one to be considered in possession, one need not have actual or physical occupation of every square inch of the property at all times.[17] Possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right.[18] Possession can be acquired by juridical acts.[19] These are acts to which the law gives the force of acts of possession.[20] In one case,[21] this Court has considered a claimant's act of assigning a caretaker over the disputed land, who cultivated the same and built a hut thereon, as evidence of the claimant's possession of the said land.

In the present case, it has been established that respondent and her predecessors-in-interest authorized Zamudio as caretaker of the subject land. Thus, Zamudio's occupation of the disputed land, as respondent's caretaker, as early as 1975, is considered as evidence of the latter's occupation of the said property. Petitioner's argument that respondent's possession must not be a mere fiction but must, in fact, be actual is unavailing as this requirement is applicable only in proceedings for land registration under Presidential Decree 1529, otherwise known as the *Land Registration Decree*, which is not the case here. On the other hand, it was only in 1986 that petitioner's predecessor-in-interest started occupying the same property.

Moreover, respondent and her predecessors-in-interest declared the disputed property for tax purposes and paid the realty taxes thereon, as early as 1949. Settled is the rule that although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are

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[17] *Bunyi, et al. v. Factor,* 609 Phil. 134, 141 (2009).

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Heirs of Bienvenido & Araceli Tanyag v. Gabriel, et al*., 685 Phil. 517 (2012).

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.[22] On the other hand, it was only in 1970 that Roberto's father declared the subject property for taxation purposes.

As to petitioner's contention, in its second assignment of error, that Roberto acquired ownership of the subject property through prescription, the Court finds no cogent reason to depart from the ruling of the CA on this matter and, thus, quotes the same with approval, to wit:

> x x x Besides, Article 1134 of the Civil Code x x x states that "x x x (o)rdinary acquisitive prescription of things **requires** possession in good faith **and** with just title for the time fixed by law." In this case, however, it cannot be said that the possession of Roberto Hermita was in good faith. This is clear from the testimony of Roberto Hermita that, prior to mortgaging the subject property to the defendant-appellee bank, the mother of the plaintiff-appellant approached him and claimed ownership over the subject land as well. x x x
>
> x x x x x x x x x
>
> Neither can the Court agree with the trial court that extraordinary acquisitive prescription under Article 1137 of the Civil Code can be appreciated in favor of Sofronio Hermita, predecessor-in-interest of Roberto Hermita. As previously discussed, no evidence, testimonial or documentary, was ever presented by the defendant-appellee that Sofronio Hermita was ever in possession of the subject land. The trial court's conclusion that the uninterrupted possession of Sofronio Hermita since 1970 already ripened into a title by prescription, is therefore without any evidentiary basis. Hence, since it has not been shown that Sofronio Hermita acquired ownership over the subject property, it follows that he did not have the power to transfer the ownership of the subject property to his son Roberto Hermita when the latter allegedly bought the same.
>
> In fine, it cannot be said that Roberto Hermita had already acquired ownership over the subject land when he mortgaged the same to the defendant-appellee bank.[23]

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[22] *Villasi v. Garcia, et al.*, 724 Phil. 519, 530 (2014).

[23] *Rollo*, pp. 50-53. (Emphasis in the original)

Indeed, aside from tax declarations, petitioner failed to present evidence to prove that, prior to selling the subject lot to Roberto, his father exercised acts of ownership over the said property.

As to the third assigned error, it is settled that a banking institution is expected to exercise due diligence before entering into a mortgage contract.[24] The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.[25]

This Court has never failed to stress the remarkable significance of a banking institution to commercial transactions, in particular, and to the country's economy in general.[26] The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation.[27] Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence.[28] Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required of it.[29]

In the instant case, contrary to the findings of the RTC that petitioner's manager did his best to ascertain Roberto's claim of ownership over the disputed land, the Court agrees with the findings of the CA that petitioner was, in fact, remiss in exercising the required degree of diligence, prudence, and care before it entered into a mortgage contract with Roberto. With more reason should petitioner have practiced caution and mindfulness,

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[24] *Philippine National Bank v. Jumamoy, et al*., 670 Phil. 472, 481 (2011).

[25] *Id*.

[26] *Philippine National Bank v. Juan F. Villa*, G.R. No. 213241, August 1, 2016.

[27] *Id*.

[28] *Id*.

[29] *Id*.

considering that the questioned lot is not titled. Thus, the Court agrees with the CA that a simple check with the proper authorities would have shown that the same property has been previously declared as owned by respondent's predecessors-in-interest and that realty taxes had been paid thereon as early as 1949. Petitioner alleges in its present petition that its bank manager consulted the local assessor's office as to the existence of any other tax declaration covering the subject lot but a careful reading of the testimony of petitioner's manager shows that nothing therein would prove such allegation. Moreover, if petitioner's manager had indeed made an ocular inspection of the said property to determine its actual condition and verify the identity of the true owner and possessor thereof, he should have easily discovered that respondent's caretaker was also in possession of the said property and is actually occupying a portion of the same.

As to whether or not petitioner was in good faith, the issue of good faith or bad faith of a buyer is relevant only where the subject of the sale is a registered land but not where the property is an unregistered land.[30] One who purchases an unregistered land does so at his peril.[31] His claim of having bought the land in good faith, *i.e.*, without notice that some other person has a right to, or interest in, the property, would not protect him if it turns out that the seller does not actually own the property.[32] In the instant case, there is no dispute that at the time that petitioner entered into a contract of mortgage with Roberto and in subsequently buying the subject lot during the auction sale, the same was still an unregistered land. Thus, petitioner may not claim good faith and due diligence in dealing with Roberto. As a consequence, the CA did not commit error in nullifying the real estate mortgage contract between petitioner and Roberto and in declaring respondent as the owner of the disputed lot.

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[30] *Rural Bank of Siaton (Negros Oriental), Inc. v. Macajilos*, 527 Phil. 456, 471 (2006); *David v. Bandin*, 233 Phil. 139, 150 (1987).

[31] *Id*.

[32] *Id.*

WHEREFORE, the Court **AFFIRMS** the Decision of the Court of Appeals, promulgated on March 30, 2012, and its Resolution dated October 17, 2012, in CA-G.R. CV No. 94947.

SO ORDERED.

Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

Carpio, J., on official leave.

THIRD DIVISION

[G.R. No. 205695. September 27, 2017]

JESUS APARENTE *y* VOCALAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; A WARRANT IS REQUIRED TO BE ISSUED IN ORDER FOR A SEARCH AND SEIZURE TO BE DEEMED REASONABLE; EXCEPTION; A WARRANTLESS ARREST THAT PRECEDES A WARRANTLESS SEARCH MAY BE VALID AS LONG AS THESE TWO ACTS ARE SUBSTANTIALLY CONTEMPORANEOUS, AND THERE IS PROBABLE CAUSE IN THE FORM OF OVERT ACTS WHICH SHOW THAT A CRIME HAD BEEN COMMITTED, WAS BEING COMMITTED, OR WAS ABOUT TO BE COMMITTED.— Article III, Section 2 of the Constitution provides that the right of the people against unreasonable searches and seizures is inviolable x x x. In *People v. Cogaed*, this Court explained that while this rule generally requires a warrant to be issued in order for a search or seizure to be deemed reasonable, there

are situations where a search is reasonable even without a warrant x x x. [T]his Court explained that where a warrantless search preceded a warrantless arrest but was substantially contemporaneous with it, what must be resolved is whether or not the police had probable cause for the arrest when the search was made x x x. Further, probable cause may be in the form of overt acts which show that a crime had been, was being, or was about to be committed. Thus, a warrantless arrest that precedes a warrantless search may be valid, as long as these two (2) acts were substantially contemporaneous, and there was probable cause. x x x In this case, the arrest and the search were substantially contemporaneous. Thus, what must be evaluated is whether or not the arresting officers had probable cause for petitioner's arrest when they made the search. Here, the arresting officers saw a man hand petitioner a small plastic sachet, which petitioner then inspected by flicking it against the light of a lamp post in an alley. Upon the officers' approach, these two (2) men fled. These overt acts and circumstances were observed personally by the arresting officers and, taken together, constitute reasonable suspicion that these two (2) men were violating Republic Act No. 9165. Thus, that the search preceded the arrest does not render invalid the search and arrest of petitioner.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS; WHERE A MINISCULE AMOUNT OF NARCOTICS IS INVOLVED, A MORE EXACTING COMPLIANCE WITH THE REQUIREMENTS THEREOF IS NECESSARY.— Section 21 of Republic Act No. 9165 provides for the handling of dangerous drugs after its seizure and confiscation x x x. In *People v. Holgado y Dela Cruz*, this Court explained in depth the significance of meeting the requirements under the law and the implications of the failure to meet them, especially where the amount of narcotics seized is miniscule. This Court stressed that trial courts must carefully consider the intricacies of cases involving Republic Act No. 9165 and employ heightened scrutiny. Thus, this Court considered several factors in determining that violation of Republic Act No. 9165 was not proven beyond reasonable doubt.

> x x x [I]t appears from the record that the seized drugs were not marked by the apprehending team but by an investigating officer at the police station, an act which is not in accordance with Republic Act No. 9165. Further, no justifiable reason for this was presented by the prosecution. This Court stresses that where miniscule amounts of drugs are involved, trial courts should require more exacting compliance with the requirements under Section 21 of Republic Act No. 9165. Consequently, the trial court and the Court of Appeals should have considered the failure of the apprehending team to mark the seized drugs immediately after seizure and confiscation. They should also have considered that it was the investigating officer at the police station who marked the same and not the arresting officers. The failure of the prosecution to address this issue and to provide a justifiable reason for this are enough to cast a shadow of doubt on the integrity of the operation.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Where the amount of narcotics seized is miniscule, a stricter adherence to the requirements of Section 21 of Republic Act No. 9165 is required to preserve the evidentiary value of the seized drugs.

This is a Petition for Review on Certiorari,[1] assailing the June 1, 2012 Decision[2] and January 24, 2013 Resolution[3] of

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[1] *Rollo*, pp, 11-32.

[2] *Id*. at 34-46. The Decision was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Rosmari D. Carandang and Ricardo R. Rosario of the Sixth Division, Court of Appeals, Manila.

[3] *Id*. at 48-48-A. The Resolution was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Rosmari D. Carandang

the Court of Appeals in CA-G.R. CR No. 32853, which dismissed the appeal of Jesus Aparente y Vocalan (Aparente).

An Information dated February 14, 2006 was filed with the Regional Trial Court of Binangonan, Rizal against Aparente, charging him with violating Republic Act No. 9165.[4] The case was docketed as Criminal Case No. 06-080.[5] It read:

> That on or about the 13th day of February 2006, in the Municipality of Binangonan, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law to possess any dangerous drug, did, then and there willfully, unlawfully[,] feloniously and knowingly possess and have in his custody and control 0.01 gram of white crystalline substance contained in one (1) heat[-]sealed transparent plastic sachet, which was found positive to the test for Methylamphetamine (sic) hydrochloride, also known as shabu, a dangerous drug, in violation of the above-cited law.
>
> CONTRARY TO LAW.[6]

Upon arraignment, Aparente pleaded not guilty. After the pre-trial conference, trial on the merits ensued.[7]

The prosecution's version of the events was as follows:

Prosecution witnesses PO1 Virgilio Dela Cruz (PO1 Dela Cruz) and PO1 Gem Pastor testified that on the evening of February 13, 2006, they were at Barangay Pantok, Binangonan., Rizal patrolling the area as part of surveillance operations in relation to illegal drugs and "Video Karera" activities. They saw two (2) men, one of whom was later identified as Aparente, in an alley around three (3) meters away. They watched as the

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and Ricardo R. Rosario of the Former Seventh Division, Court of Appeals, Manila.

[4] *Id.* at 35.

[5] *Id.* at 66.

[6] *Id.*

[7] *Id.* at 36.

other man handed Aparente a small plastic sachet. They saw Aparente inspect the sachet, flicking it against the light emitted from a street light and a lamp from a house nearby. When the police officers approached, the two (2) men fled. Only Aparente was caught.[8] PO1 Dela Cruz told Aparente to open his hands. They found a small sachet with a white crystalline substance,[9] which the police officers confiscated. They brought Aparente to the Binangonan Police Station where a police investigator marked the confiscated sachet with Aparente's initials. PO1 Dela Cruz then submitted the sachet, together with its contents, to the Philippine National Police Crime Laboratory at Camp Crame. Prosecution witness Police Inspector and Forensic Chemical Officer Antonieta Abillonar issued a Laboratory Report that stated that the contents of the sachet tested positive for methamphetamine hydrochloride.[10]

The defense's version of the events was as follows:

Aparente testified that on the evening of February 13, 2006, he was watching television with his mother, brother, and niece when five (5) persons forcibly entered the house. They handcuffed him and searched the house. Afterwards, the intruders told him they found shabu, which he was coerced to admit possessing.[11]

The Regional Trial Court found the prosecution witnesses' testimonies credible and gave them full faith.[12] It found Aparente's denial unbelievable and noted that his demeanor during his testimony did not inspire credibility.[13] Thus, in its Decision[14] dated July 30, 2009, the trial court found Aparente

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[8] *Id*.

[9] *Id*. at 37.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 66-67.

[13] *Id*. at 67.

[14] *Id*. at 66-67. The Decision was penned by Presiding Judge Dennis Patrick Z. Perez.

guilty of violating Section 11 of Republic Act No. 9165. The dispositive portion of this Decision read:

> In view of this, we find accused Jesus Aparente **GUILTY** beyond reasonable doubt of violating Section 11, Article II, R.A. No. 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" and illegally possessing a total of 0.01 grams of Methylamphetamine (sic) Hydrochloride or shabu and accordingly sentence him to suffer an indeterminate penalty of 12 years and 1 day as minimum to 13 years as maximum and to pay a fine of ₱300,000.00.
>
> Let the drug samples in this case be forwarded to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Furnish PDEA with a copy of this Decision per OCA Circular No. 70-2007.
>
> SO ORDERED.[15] (Emphasis in the original)

Aparente appealed the foregoing Decision to the Court of Appeals, arguing that the evidence against him was obtained from an illegal warrantless arrest. He also contended that the prosecution failed to establish that the rules on chain of custody were followed and that his guilt was proven beyond reasonable doubt.[16]

In its Decision[17] dated June 1, 2012, the Court of Appeals affirmed the Regional Trial Court Decision. It found that since Aparente was in the middle of violating the law at the time he was searched, the warrantless arrest was lawfully conducted upon probable cause.[18] The Court of Appeals also held that the evidentiary value of the confiscated drugs was preserved, considering that the police officers went to the police station and immediately turned over the seized evidence, which was then marked and submitted to the Philippine National Police Crime Laboratory at Camp Crame.[19] Thus, the witnesses

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[15] *Id*. at 67.

[16] *Id*. at 51.

[17] *Id*. at 34-46.

[18] *Id*. at 42.

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

established an unbroken chain of custody from the arresting officer, to the investigating officer, and to the forensic chemist.[20] Further, the Court of Appeals found that Aparente failed to submit convincing evidence to overcome the presumption of regularity of the police officers' performance of official duties.[21] The dispositive portion of this Decision read:

> WHEREFORE, the foregoing considered, the instant appeal is hereby DISMISSED and the appealed Decision dated 30 July 2009 AFFIRMED in toto. No costs.
>
> SO ORDERED.[22]

Aparente filed his Motion for Reconsideration of the Court of Appeals June 1, 2012 Decision, which was denied in a Resolution dated January 24, 2013.[23]

Thus, on March 26, 2013, Aparente filed this Petition for Review on Certiorari before this Court.[24] Thereafter, on September 24, 2013, the Office of the Solicitor General filed its Comment.[25] On February 26, 2014, petitioner filed his Reply.[26]

This Court resolves the following issues:

First, whether or not the circumstances of petitioner Jesus Aparente's warrantless arrest violated his constitutional rights; and

Second, whether or not the failure to explain the lack of inventory and photographing at the place of petitioner's arrest or at the nearest police station negates the evidentiary value of the allegedly seized narcotics.

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[20] *Id*. at 43.

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

[22] *Id*. at 45.

[23] *Id*. at 48.

[24] *Id*. at 11.

[25] *Id*. at 106-116.

[26] *Id*. at 122-130.

This Court grants the petition.

I

Article III, Section 2 of the Constitution provides that the right of the people against unreasonable searches and seizures is inviolable:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

In *People v. Cogaed*,[27] this Court explained that while this rule generally requires a warrant to be issued in order for a search or seizure to be deemed reasonable, there are situations where a search is reasonable even without a warrant:

> This provision requires that the court examine with care and diligence whether searches and seizures are "reasonable." As a general rule, searches conducted with a warrant that meets all the requirements of this provision are reasonable. This warrant requires the existence of probable cause that can only be determined by a judge. The existence of probable cause must be established by the judge after asking searching questions and answers. Probable cause at this stage can only exist if there is an offense alleged to be committed. Also, the warrant frames the searches done by the law enforcers. There must be a particular description of the place and the things to be searched.
>
> However, there are instances when searches are reasonable even when warrantless. In the Rules of Court, searches incidental to lawful arrests are allowed even without a separate warrant. This court has taken into account the "uniqueness of circumstances involved including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured."

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[27] 740 Phil. 212 (2014) [Per *J.* Leonen, Third Division].

The known jurisprudential instances of reasonable warrantless searches and seizures are;

1. *Warrantless search incidental to a lawful arrest*. . .;

2. Seizure of evidence in "plain view," ...;

3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;

4. *Consented* warrantless search;

5. Customs search;

6. Stop and frisk; and

7. *Exigent and emergency circumstances*.[28] (Emphasis in the original, citations omitted)

Despite the foregoing circumstances, petitioner insists that his search and arrest violated his constitutional rights. He cites *People v. Tudtud*[29] to argue that assuming the prosecution's version of events were true, his warrantless arrest preceded his warrantless search, and this is a violation of the right against unreasonable searches and seizures.[30] This argument cannot be sustained.

While it is true that in *Tudtud* this Court noted that, generally, a warrantless arrest must precede a warrantless search, this statement was qualified:

It is significant to note that the search in question preceded the arrest. Recent jurisprudence holds that the arrest must precede the search; the process cannot be reversed. **Nevertheless, a search substantially contemporaneous with an arrest can precede the**

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[28] *Id*. at 227-228.

[29] 458 Phil. 752 (2003) [Per *J*. Tinga, Second Division].

[30] *Rollo*, pp. 19-21.

arrest if the police have probable cause to make the arrest at the outset of the search.[31] (Emphasis supplied, citations omitted)

Thus, this Court explained that where a warrantless search preceded a warrantless arrest but was substantially contemporaneous with it, what must be resolved is whether or not the police had probable cause for the arrest when the search was made:

> The question, therefore, is whether the police in this case had probable cause to arrest appellants, Probable cause has been defined as:
>
> > an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith of the peace officers making the arrest.
>
> The long-standing rule in this jurisdiction, applied with a great degree of consistency, is that "reliable information" alone is not sufficient to justify a warrantless arrest under Section 5 (a), Rule 113. The rule requires, in addition, that the accused perform some overt act that would indicate that he "has committed, is actually committing, or is attempting to commit an offense."[32] (Emphasis supplied, citation omitted)

Further, probable cause may be in the form of overt acts which show that a crime had been, was being, or was about to be committed. Thus, a warrantless arrest that precedes a warrantless search may be valid, as long as these two (2) acts were substantially contemporaneous, and there was probable cause.

Accordingly, this Court held that the arrest in *People v. Tudtud* was invalid, since the appellants in that case were not performing any such overt acts at the time:

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[31] *People v. Tudtud*, 458 Phil. 752, 772-773 (2003) [Per *J.* Tinga, Second Division].

[32] *Id.* at 773.

Appellants in this case were neither performing any overt act or acting in a suspicious manner that would hint that a crime has been, was being, or was about to be, committed. If the arresting officers' testimonies are to be believed, appellants were merely helping each other carry a carton box. Although appellant Tudtud did appear "afraid and perspiring," "pale" and "trembling," this was only after, not before, he was asked to open the said box.[33] (Citations omitted)

In this case, the arrest and the search were substantially contemporaneous. Thus, what must be evaluated is whether or not the arresting officers had probable cause for petitioner's arrest when they made the search.

Here, the arresting officers saw a man hand petitioner a small plastic sachet, which petitioner then inspected by flicking it against the light of a lamp post in an alley. Upon the officers' approach, these two (2) men fled. These overt acts and circumstances were observed personally by the arresting officers and, taken together, constitute reasonable suspicion that these two (2) men were violating Republic Act No. 9165. Thus, that the search preceded the arrest does not render invalid the search and arrest of petitioner.

II

Section 21 of Republic Act Mo. 9165 provides for the handling of dangerous drugs after its seizure and confiscation:

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

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[33] *Id*. at 780.

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[.]

In relation to the foregoing requirements, Section 21 of the Implementing Rules and Regulations of Republic Act No. 9165 provides:

(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[.]

In *People v. Holgado y Dela Cruz*,[34] this Court explained in depth the significance of meeting the foregoing requirements under the law and the implications of the failure to meet them, especially where the amount of narcotics seized is miniscule. This Court stressed that trial courts must carefully consider the intricacies of cases involving Republic Act No. 9165 and employ heightened scrutiny. Thus, this Court considered several factors in determining that violation of Republic Act No. 9165 was not proven beyond reasonable doubt. This Court noted that non-compliance with Section 21 of Republic Act No. 9165

[34] 741 Phil. 78 (2014) [Per *J*. Leonen, Third Division].

produces doubt as to the origins of any seized narcotics. It further noted that where a miniscule amount of narcotics is seized, a more exacting compliance with the requisites of Republic Act No. 9165 is necessary. Additionally, although non-compliance with Republic Act No. 9165 upon justifiable grounds does not render void and invalid the seizure of the narcotics, this Court noted that no justifiable grounds were presented to explain non-compliance with the requisites.

Here, respondent failed to squarely address this matter of its compliance with Republic Act No. 9165 in its Comment. Thus, it becomes necessary to examine its arguments before the Court of Appeals, where it argued:

> As to when and how the markings "JBA" was (sic) placed on the recovered plastic sachet PO1 Dela Cruz testified:
>
> Q: How many plastic sachets did you recover from the hand of the accused?
> A: Only one (1)[,] ma'am.
>
> Q: And what did you do with the plastic sachet you recovered from him?
> A: We brought it to the crime laboratory for examination[,] ma'am.
>
> Q: Were there markings placed on the specimens when you forwarded it (sic) to the crime laboratory?
> A: Yes, ma'am.
>
> Q: What markings were placed on the specimens?
> A: JBA[,] ma'am.
>
> Q: Who put the markings on the specimen?
> A: The investigator, ma'am.
>
> (TSN dated 5 December 2007, page 7)

On cross-examination, PO1 Dela Cruz was straightforward and candid, when he testified on how the specimen confiscated from the appellant came into the hands of the PNP Crime Laboratory. Thus:

Q: And thereafter you recovered the plastic sachet?
A: Yes[,] ma'am.

Q; What markings were put on the plastic sachet?
A: JBA, ma'am.

Q: But you were not the one who put the markings on the plastic sachet?
A: Yes, ma'am,

Q: And it is a Standard Operating Procedure in your office that the markings you put on the specimens are the initials of the accused[,] is that correct?
A: Yes, ma'am.

Q: Who forwarded the specimen to the crime lab, Mister Witness
A: I was the one who forwarded it, ma'am

(Ibid, page 12)

... ...

Contrary to what appellant wants to portray, the chain of custody of the seized prohibited drug was not broken. The initials of appellant, "JBA" were placed in the transparent plastic sachet containing white crystalline substance suspected to be shabu immediately after seizure, as an incident to a valid warrantless arrest. This was placed by the investigator in the Binangonan Police Station where the appellant was brought for investigation. The fact that this investigator was not identified and presented in court does not in any way cast doubt on the integrity of the chain of custody. After all, not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such a requirement. As long as the chain of custody of the seized drug was clearly established to have not been broken, as in this case, and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.[35]

Thus, the Court of Appeals found that the integrity of the seized narcotics had been preserved;

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[35] *Rollo*, pp. 83-85.

In like manner, there is no merit in appellant's assertion that the arresting officers had failed to preserve the integrity and the evidentiary value of the confiscated drugs. The factual antecedents of the case reveal that the police officers immediately went to the police station to turn over appellant and the evidence seized from. him. The police investigator at the station then marked the confiscated plastic sachet with appellant's initials. The plastic sachet and its contents were then submitted by PO1 Dela Cruz to the PNP Crime Laboratory at Camp Crame, Quezon City for examination, which was conducted by PIAFCO Abillonar.

As duly supported by the testimonies of its witnesses, an unbroken chain of custody of the seized drags had been established by the prosecution from the arresting officer, to the investigating officer, and finally to the forensic chemist. There is no doubt that the items seized from the appellant at the scene of the crime were also the same items marked by the investigating officer, sent to the Crime Laboratory, and later on tested positive for rnethamphetamine hydrochloride.[36]

However, it appears from the record that the seized drugs were not marked by the apprehending team but by an investigating officer at the police station, an act which is not in accordance with Republic Act No. 9165. Further, no justifiable reason for this was presented by the prosecution.

This Court stresses that where miniscule amounts of drugs are involved, trial courts should require more exacting compliance with the requirements under Section 21 of Republic Act No. 9165. Consequently, the trial court and the Court of Appeals should have considered the failure of the apprehending team to mark the seized drugs immediately after seizure and confiscation. They should also have considered that it was the investigating officer at the police station who marked the same and not the arresting officers. The failure of the prosecution to address this issue and to provide a justifiable reason for this are enough to cast a shadow of doubt on the integrity of the operation.

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

WHEREFORE, the petition is **GRANTED**. The Court of Appeals Decision dated June 1, 2012, and Resolution dated January 24, 2013 in CA-G.R. CR No. 32853 are **REVERSED** and **SET ASIDE**. Petitioner JESUS APARENTE y VOCALAN is **ACQUITTED** of violating Article II, Section 11 of Republic Act No. 9165. Let entry of judgment be issued immediately.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 207946. September 27, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO REYES *alias* "BOY REYES,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GUIDELINES.— In *People v. Pareja*, the Court reiterated the guidelines that have over time been established in jurisprudence, and which have been observed when the issue pertains to the credibility of witnesses, viz: First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts

and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded. And third, the rule is even more stringently applied if the CA concurred with the RTC. The recognized rule in this jurisdiction is that the "assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts-and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court." x x x

2. **ID.; ID.; ID.; NOT AFFECTED BY DELAY IN REPORTING THE CRIME BECAUSE OF FEAR OF ACCUSED'S THREAT.—** Charmaine's delay in reporting what had happened to Lerma is insignificant and does not affect the veracity of the charge against Reyes. At Charmaine's tender age and having witnessed the sordid incident on 13 February 1998, it is expected that she would believe that Reyes had the capability to make good his threat to kill her and her parents. Charmaine credibly explained that she executed her sworn statement only after a year from the time of the incident because she was still in shock and fearful of Reyes' threat. She even had to stop going to school and was brought by her parents to Bukidnon in order that she may forget what happened on that day in February 1998.

3. **ID.; ID.; ID.; NOT AFFECTED BY THE ALLEGED UNUSUAL REACTION TO THE CRIME.—** Credible witness and credible testimony are the two essential elements for the determination of the weight of a particular testimony. "Verily, the issue of credibility, when it is decisive of the guilt or innocence of the accused, is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances." x x x Different people react differently to a given stimulus or type of situation, and there is no standard form of behavioural response that can be expected from those who are confronted with a strange, startling or frightening experience. x x x Indeed, Charmaine could not be expected to act and to react to what had happened like an adult would.

4. ID.; ID.; ID.; NOT AFFECTED BY DISCREPANCIES ON MINOR DETAILS AND COLLATERAL MATTERS.— [T]he alleged discrepancies raised by Reyes refer only to minor details and collateral matters, not to the central fact of the crime, that do not affect the veracity or detract from the essential credibility of the witness' declarations. It must be stressed that for a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged.

5. ID.; ID.; ID.; IN THE ABSENCE OF PROOF OF ILL WILL, THE TESTIMONY OF WITNESS IS WORTHY OF CREDENCE.— Reyes failed to attribute any improper motive to Charmaine to falsely testify against him for so grave a charge if it were not true. Record is bereft of any showing that Charmaine had harboured any ill will against him enough for her to concoct falsehood before the trial court. Charmaine was a child when the crime transpired in her presence on 13 February 1998, and was still a minor when she was called to the witness stand. Before the incident, she even called Reyes "Lolo Boy" to show him respect. At her tender age, it was beyond her mental capacity to fabricate the details as to how Lerma was raped and killed. Clearly, in the absence of proof to the contrary, the presumption is that the witness was not moved by any ill will and was untainted by bias, and thus worthy of belief and credence.

6. ID.; ID.; ALIBI AND DENIAL ARE INHERENTLY WEAK DEFENSES AS AGAINST POSITIVE IDENTIFICATION OF ACCUSED.— Well-settled is the rule that alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. It is axiomatic that positive testimony prevails over negative testimony. The Court laid down the following ruling relative to alibi, viz: For alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the crime scene during its commission. x x x It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law.

7. CRIMINAL LAW; SPECIAL COMPLEX CRIME OF RAPE WITH HOMICIDE; ELEMENTS.— The felony of rape with homicide is a special complex crime, that is, two or more crimes

that the law treats as a single, indivisible and unique offense for being the product of a single criminal impulse. x x x In the special complex crime of rape with homicide, the following elements must concur: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman.

8. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT REQUIRED IN CRIMINAL CASES.—** Rule 133, Section 2 of the Revised Rules on Evidence specifies the requisite quantum of evidence in criminal cases: Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

9. **CRIMINAL LAW; SPECIAL COMPLEX CRIME OF RAPE WITH HOMICIDE; PROPER PENALTY AND DAMAGES.—** Existing jurisprudence imparts that the damages to be awarded to the heirs of a victim of the special complex crime of rape with homicide where the penalty to be imposed upon the accused is death, but reduced to *reclusion perpetua* upon enactment of R.A. No. 9346, shall be as follows: civil indemnity – ₱100,000.00; moral damages – ₱100,000.00; exemplary damages – ₱100,000,00; and ₱50,000.00 as temperate damages. In addition, the civil indemnity, moral damages, exemplary damages, and temperate damages payable by the appellant are subject to interest at the rate of six percent (6%) per annum from the finality of this decision until fully paid. Accordingly, the Court applies this in modifying damages to be awarded to the heirs of Lerma.

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

MARTIRES, *J.*:

This is a Petition[1] taken pursuant to Section (*Sec.*) 2, Rule 125 in relation to Sec. 3, Rule 56 of the Rules of Court from the Decision[2] of the Court of Appeals (*CA*), Twenty-Second Division, Cagayan de Oro City, in CA-G.R. CR-HC No. 00779-MIN affirming, although with modification as to the award of damages, the 28 October 2009 Decision[3] of the Regional Trial Court (*RTC*), Branch 26, Surallah, South Cotabato, finding Alfredo Reyes, alias "Boy Reyes" (*Reyes*), guilty of Rape with Homicide.

THE FACTS

Reyes was charged before the RTC of Surallah, South Cotabato, with rape with homicide committed as follows:

> That on or about the 13th day of February 1998, at about 4:00 o'clock in the morning thereof, at Zone V, Barangay Poblacion, Municipality of Surallah, Province of South Cotabato, Philippines and within the jurisdiction of the Honorable Court, the above-named accused after having entered the house of LERMA LEONORA, by the use of force upon things, with lewd design, did then and there wilfully, unlawfully and feloniously, with a piece of stone, strike and hit said Lerma Leonora on the forehead knocking her unconscious and thereafter in pursuance of his lewd design or motive and to satisfy his lust, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the unconscious Lerma Leonora who died thereafter because of the injuries she sustained on her forehead.[4]

Reyes pleaded not guilty when the Information, docketed as Crim. Case No. 2146-S and raffled to the RTC, Branch 26,

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[1] CA *rollo*, pp. 79-82. Notice of Appeal was filed by the Public Attorney's Office.

[2] *Id*. at 65-78.

[3] *Id.* at 28-41.

[4] *Id*. at 28.

was read to him; thus, trial proceeded. The prosecution presented Dr. Rolando Arrojo (*Dr. Arrojo*), SPO2 Pablo L. Lapiad (*Lapiad*), and Charmaine Leonora (*Charmaine*), as its witnesses.

The Version of the Prosecution

Dr. Arrojo, the Health Officer of Surallah, South Cotabato, stated that he conducted a post-mortem examination on 13 February 1998, at 10:30 a.m., on the victim, Lerma Leonora (*Lerma*), a 28-year old, single female.[5] His post-mortem examination report contained the following findings:

IV. FINDINGS: Body is in stage of Primary Flaccidity.

1. Contusion, Forehead, right lateral portion with fracture of underlying skull.
2. Hematoma right eye.
3. Fresh Blood oozing from left Ear.
4. Hymen: Multiple Fresh lacerations at 6:00. 3:00 & 9:00 with bleeding.

V. CONCLUSION: POSSIBLE CAUSE OF DEATH – Massive Intracranial Hemorrhage resulting to shock then Cardiac Arrest due to Traumatic Injury in the Head.[6]

Dr. Arrojo explained that a hard blunt object could have possibly caused the contusion on the forehead and the fracture on the underlying skull of Lerma. The hematoma on the right eye and the fresh blood oozing from the ear could have been due to the wound inflicted on the forehead. The fresh lacerations on the hymen could have been caused by the penetration of a penis or any hard object, or forceful sexual intercourse. On the possible cause of death of Lerma, he explained that the traumatic injury on her head resulted in hemorrhage and shock that led to cardiac arrest. The sperm analysis[7] by the laboratory of the South Cotabato Provincial Hospital confirmed as spermatozoa the substance taken inside Lerma's vagina.[8]

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[5] TSN, 16 December 2003, pp. 11-12.

[6] Exhibit Folder, p.1; Exh. "A".

[7] *Id*. at 2; Exh "B".

[8] TSN, 16 December 2003, pp. 22-24.

Lapiad, a police officer, testified that the police station received on 13 February 1998 an incident report from the family of Lerma. Shortly, he and the other police officers proceeded to the house of the Leonora family where they found inside one of the rooms scattered bed sheets, pillows, a jacket, a pair of pants, and a stone. A photographer took pictures[9] of these articles. Lapiad was able to interview the eight-year old child named Charmaine who identified the suspect as a certain Boy Reyes. But he no longer wrote down his interview because she was trembling with fear. He was also able to interview Susan Leonora (*Susan*)[10] and Angelina Leonora (*Angelina*),[11] the sister and mother, respectively, of Lerma.[12]

Charmaine, who was already fifteen years old at the time she was called to the witness stand, testified that she was only eight years old and a grade one student at the time of the incident. She knew Reyes, whom she called "Lolo Boy" out of respect, because his house was just across hers at Purok Sison, Surallah, South Cotabato. She claimed that Lerma was her aunt, being the sister of her father.[13]

While she and Lerma were sleeping inside their house at early dawn on 13 February 1998, she was awakened when Reyes entered the room. She saw Lerma grapple with Reyes who struck Lerma's head with a stone causing the latter to lose consciousness. When Reyes dragged Lerma to the kitchen, she followed them and hid beside the refrigerator. Reyes removed Lerma's shorts, took off his jacket and pants, and thereafter mounted Lerma making push and pull movements. When Reyes caught sight of her, he warned her not to tell anyone, otherwise, he would kill her and her parents. He ordered her to go back to sleep.

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[9] Exhibit Folder, p. 4; Exhs. "D", "D-1", "D-2", "D-3", "E", "E-1", "F", "F-1", "F-2", and "G".

[10] *Id.* at 5-6; Exhs. "H" and "H-1".

[11] *Id.* at 7-8; Exhs. "I" and "I-1".

[12] TSN, 15 August 2005, pp. 17-18, 22-33, 37-42, and 54.

[13] TSN, 6 December 2005, pp. 8-12.

When a truck passed by, Reyes, who was then only in his briefs, ran outside, leaving his jacket and pants behind.[14]

When Charmaine woke up, she went to her Lola Nena, Lerma's mother, and reported that Lerma's nose and ears were bleeding. She did not tell her Lola Nena that it was Reyes who caused Lerma's nose and ears to bleed because she was afraid that Reyes would make good on his promise to kill her and her parents.[15]

On 6 May 1999, she executed her sworn statement[16] before the Provincial Prosecutor.[17]

The Version of the Accused

To prove his innocence, Reyes took the witness stand. He said that he knew Susan, whose house in Surallah was about fifteen meters away from his house, but claimed he did not know who Lerma was even while he was testifying.[18]

He was asleep in his house on the night of 12 February 1998 with his son Alfredo Reyes III, whom he calls Boboy (*Boboy*). He woke up the following day at about 8:00 a.m. and found his wallet and all its contents scattered around the house. That morning, Jun Sison (*Jun*), his friend, came to his house to inform him that an unfortunate event happened at the house of the Leonoras and that among the evidence found were a green jacket and a pair of pants. It was at that instance that he realized that his house had been robbed the night before and that his pants and his son's green jacket were missing.[19]

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[14] *Id*. at 13-32; TSN, 27 February 2007, pp. 8-15.

[15] *Id.* at 32-35.

[16] Exhibit Folder, pp. 11-14; Exhs. "L" to "L-3".

[17] TSN, 6 December 2005, pp. 36-37.

[18] TSN, 8 January 2009, pp. 6-7.

[19] *Id*. at 8-15.

That same day, he and his son went to the police station to report[20] the missing pants and jacket. He then proceeded to his sister's house where a few minutes later a policeman came to invite him to the police station. He obliged, thinking that the invitation was in relation to his earlier report about the missing jacket and pants. At the police station, however, he was detained inside a room. He admitted that he knew Charmaine when she was still a child but claimed he didn't see her on the 12th and 13th of February 1998.[21]

The Ruling of the RTC

On 28 October 2009, the RTC[22] resolved the case as follows:

> WHEREFORE, premises all considered, the court finds the evidence of the prosecution sufficient to establish the guilt of the accused beyond reasonable doubt.
>
> Consequently, accused Alfredo Reyes alias "Boy Reyes" is hereby found guilty of the crime of Rape with Homicide as he is charged in this case beyond reasonable doubt.
>
> Accordingly, he is hereby sentenced to undergo the penalty of imprisonment of *reclusion perpetua*. He is further ordered to pay the heirs of his deceased victim, Lerma Leonora, the amount of ₱75,000.00 as indemnity for her death and the amount of ₱30,000.00 as reasonable expenses for her wake and burial.[23]

The Ruling of the CA

Aggrieved with the decision of the RTC, Reyes appealed to the CA, Cagayan de Oro City, raising the sole issue on whether he was appropriately convicted of rape with homicide.[24]

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[20] Exhibit Folder, p. 1; Exh. "2".

[21] TSN, 8 January 2009, pp. 18-26.

[22] CA *rollo,* pp. 28-41; penned by Judge Roberto L. Ayco.

[23] *Id*. at 41.

[24] *Id*. at 14-27. The Brief for Reyes was filed by the Public Attorney's Office.

The CA, through its Twenty-Second Division, accorded respect to the findings of fact of the trial court in the absence of clear and convincing evidence that the latter ignored facts and circumstances which, if considered on appeal, would have reversed or modified the outcome of the case. It ruled that, although Charmaine was only a child, the determination of her competence and capability as a witness rested primarily with the trial judge. On the other hand, it found that the defense proffered by Reyes that his house was robbed was but a make-believe scenario to deny his responsibility for the crime done to Lerma. Thus, the appeal of Reyes was resolved[25] as follows:

> FOR THESE REASONS, the appeal is DENIED. The 28 October 2009 Decision in Criminal Case No. 2146-S is MODIFIED insofar as the penalty and the award of damages are concerned. Accordingly, accused Alfredo Reyes alias "Boy Reyes" is sentenced to an imprisonment of *reclusion perpetua* without eligibility for parole. Further, he is ordered to pay the heirs of the victim, Lerma Leonora, the amount of ₱100,000.00 as civil indemnity, ₱25,000.00 as temperate damages, and ₱75,000.00 as moral damages.[26]

THE RULING OF THE COURT

The petition has no merit.

Charmaine was a credible witness with a credible testimony.

Reyes primarily assailed the credibility of Charmaine on the following grounds: (a) she revealed her knowledge of the incident only a year after it had happened;[27] (b) her testimony was replete with serious improbabilities which cast doubts on the veracity of her allegations;[28] (c) she was not questioned by police officers

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[25] *Rollo*, pp. 3-16; penned by Associate Justice Edgardo A. Camello, and concurred in by Associate Justices Marilyn B. Lagura-Yap and Renato C. Francisco.

[26] *Id*. at 15.

[27] CA *rollo*, p.19.

[28] *Id*. at 21.

and relatives as to her knowledge of the incident considering that she was with Lerma at the time the incident transpired;[29] (d) granting that he was the author of the crime, it was impossible that he would still allow her to remain where she was after having witnessed the fatal incident;[30] (e) she was not sure where the incident happened;[31] and (f) she gave opposing testimony on the mental and physical condition of Lerma during the incident.[32]

In *People v. Pareja*,[33] the Court reiterated the guidelines that have over time been established in jurisprudence, and which have been observed when the issue pertains to the credibility of witnesses, viz:

> First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.
>
> Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.
>
> And third, the rule is even more stringently applied if the CA concurred with the RTC.
>
> The recognized rule in this jurisdiction is that the "assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts-and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court."
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[29] *Id.* at 21-22.

[30] *Id*. at 22.

[31] *Rollo,* pp. 30-32.

[32] *Id*. at 32-35.

[33] 724 Phil. 759, 773 (2014).

The Court sees no valid reason to depart from these guidelines in this case.

Charmaine was only eight years of age at the time Reyes entered her and Lerma's room at dawn of 13 February 1998. She saw how Lerma grappled with Reyes, and how Reyes eventually hit Lerma on the head with the use of a stone ten inches in diameter. She saw Reyes drag the unconscious Lerma to the kitchen, remove Lerma's shorts, take off his pants and jacket, and ride on top of Lerma making push and pull movements. When Reyes saw she was witness to the scene, he threatened that he would kill her and her parents once she told somebody what she saw.

Charmaine positively identified Reyes when she gave her sworn statement before the Provincial Prosecutor and during the trial. She could not have been mistaken as to the identity of Reyes since she knew Reyes, whom she called Lolo Boy, because his house was just across the street from hers. The fluorescent light outside the room where she and Lerma were sleeping was on; thus, she was able to clearly see that it was Reyes who entered the room and grappled with Lerma. Moreover, Reyes confronted her after he saw her hiding beside the refrigerator.

Charmaine's delay in reporting what had happened to Lerma is insignificant and does not affect the veracity of the charge against Reyes. At Charmaine's tender age and having witnessed the sordid incident on 13 February 1998, it is expected that she would believe that Reyes had the capability to make good his threat to kill her and her parents. Charmaine credibly explained that she executed her sworn statement only after a year from the time of the incident because she was still in shock and fearful of Reyes' threat.[34] She even had to stop going to school[35] and was brought by her parents to Bukidnon in order that she may forget what happened on that day in February 1998.[36]

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[34] TSN, 26 February 2007, p. 23.

[35] TSN, 11 September 2006, p. 6.

[36] TSN, 27 February 2007, pp. 38-39.

Reyes denigrated the testimony of Charmaine by claiming that there were improbabilities in her testimony. He asserted that Charmaine appeared not to have been distressed that he had entered their room and struck Lerma on the head; that she even followed when he dragged Lerma to the kitchen; that she did not seek help from relatives; and that she stayed inside her room even after he had left.[37]

Credible witness and credible testimony are the two essential elements for the determination of the weight of a particular testimony.[38] "Verily, the issue of credibility, when it is decisive of the guilt or innocence of the accused, is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances. It has been appropriately emphasized that '[w]e have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance'."[39]

Different people react differently to a given stimulus or type of situation, and there is no standard form of behavioural response that can be expected from those who are confronted with a strange, startling or frightening experience.[40] Charmaine was a reluctant witness to a crime that transpired on that fateful day. Contrary to the claim of Reyes, Charmaine admitted that she was both surprised and afraid when he entered her and Lerma's room.[41] Despite her fear,[42] Charmaine, at her young age, could have been inquisitive on what would eventually happen

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

[38] *People v. Mangune*, 698 Phil. 759, 769 (2012).

[39] *Medina v. People*, 724 Phil. 226, 238 (2014).

[40] *People v. De Guzman*, 644 Phil. 229, 247 (2010).

[41] TSN, 11 September 2006, p. 16.

[42] *Id*. at 42.

to Lerma after she was rendered unconscious by Reyes; thus, was undaunted to follow them to the kitchen. Charmaine explained that she did not run outside the house after Reyes had pulled Lerma to the kitchen because she was afraid that Reyes might have a companion waiting outside.[43] To her mind, it was improbable for her to go out of the house and seek help from her relatives. Indeed, Charmaine could not be expected to act and to react to what had happened like an adult would.[44]

Reyes averred that the police officers and Charmaine's relatives failed to question her about the incident.[45] Contrary to the averment of Reyes, Lapiad testified that he was able to interview Charmaine when he and the other police officers were summoned by the family of Lerma to the scene of the crime. During the interview, Charmaine admitted to him that it was a certain Boy Reyes who was the culprit. He was not able to write down his interview with Charmaine because she was trembling with fear.[46]

To stress, Charmaine was only eight years old at the time the incident happened. It can be reasonably expected that her relatives firmly believed that Charmaine was still in shock and in fear after having observed the gory details that led to Lerma's death. It is safe to conclude that Charmaine's relatives did not want to add to her suffering being, unfortunately, in the company of Lerma that dreadful day; thus, they were constrained not to question her anymore about the incident or to make her recount the harrowing specifics of Lerma's tragedy.

Moreover, it would appear from the sworn statement of Susan,[47] taken a day after the incident happened, that she already knew the cause of Lerma's death and who could be the probable

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[43] *Id*. at 36, 39-41and 46.

[44] *People v. Esugon,* 761 Phil. 300, 312 (2015).

[45] CA *rollo*, pp. 21-22.

[46] TSN, 15 August 2005, p. 54.

[47] Exhibit Folder, pp. 5-6; Exhs. "H" and "H-1".

suspect. It must be stressed that on 13 February 1998, a post-mortem examination was conducted by Dr. Arrojo on Lerma's body and that "multiple fresh lacerations on the hymen at 6:00, 3:00 and 9:00 with bleeding" and "traumatic injury in the head" were among his findings. According to Susan, a jacket which was green on one side and violet, red, and white on the other side, and a pair of grey pants with red, green, blue, and brown stripes were also found at the scene of the crime. Susan knew that the jacket was owned by Reyes because she would see him wearing it whenever he bought cigarettes from her store. She saw Reyes wearing the jacket two days before the incident.

On the one hand, Susan's mother Angelina admitted in her sworn statement[48] that after having been informed by Charmaine that Lerma's nose and mouth were bleeding, she went to her son's house and found Lerma with "blood coming out of her nose, mouth, and ears with contusion on the right portion of her forehead and her panty and skirt already removed from her with bloodstain, and the position of her hands were up and her both legs were spreading." She also saw a jacket and a pair of pants which she later came to know were owned by Reyes after the latter claimed their ownership.

With the information given by Lerma's relatives, i.e., that she was raped and that the possible culprit was Reyes, they deemed it unnecessary to make Charmaine undergo her traumatic experience again by asking her to narrate to them what she had witnessed.

Reyes asserted it was improbable that, if he were the author of the crime, he would still allow Charmaine to remain where she was after witnessing the fatal incident.[49]

The catena of cases brought before this Court will confirm that not in all instances would the perpetrator of the crime have the temerity to kill his victim or the witness to his crime. The Court has observed that even in rape cases, the perpetrators, in

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[48] *Id.* at 7-8; Exhs. "I" and "I-1".

[49] CA *rollo*, p. 22.

most situations, would simply threaten their victims, especially if they are minors, that they or their loved ones would be killed once they told anyone of what happened. This case is no different. Indeed, Reyes' threat was effective considering that it took Charmaine almost a year to finally gather strength to execute her sworn statement detailing the crime she had witnessed.

As opposed to Reyes' claim, Charmaine was certain that the incident happened at the house of her parents.[50] Her subsequent confirmation that she was at Lerma's house was not totally incorrect considering that Lerma likewise stayed with Charmaine's parents. Notwithstanding the alleged inconsistencies, if these may be considered as such, the Court must stress that the place of the commission of rape with homicide is not an element of the crime.

The contention of Reyes that Charmaine gave conflicting testimony as to whether Lerma had struggled with Reyes,[51] fails to convince. Certainly, struggling against a rapist is neither an element of rape with homicide nor is it required for the successful prosecution of this crime.

More significantly, the alleged discrepancies raised by Reyes refer only to minor details and collateral matters, not to the central fact of the crime, that do not affect the veracity or detract from the essential credibility of the witness' declarations. It must be stressed that for a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged.[52]

Charmaine had no motive in pointing to Reyes as the perpetrator of the crime.

Reyes failed to attribute any improper motive to Charmaine to falsely testify against him for so grave a charge if it were

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[50] TSN, 6 December 2005, p. 13, TSN 11 September 2006, pp. 9-10.

[51] *Rollo*, pp. 34-35.

[52] *People v. Antonio,* 739 Phil. 686, 700 (2014).

not true. Record is bereft of any showing that Charmaine had harboured any ill will against him enough for her to concoct falsehood before the trial court. Charmaine was a child when the crime transpired in her presence on 13 February 1998, and was still a minor when she was called to the witness stand. Before the incident, she even called Reyes "Lolo Boy" to show him respect. At her tender age, it was beyond her mental capacity to fabricate the details as to how Lerma was raped and killed. Clearly, in the absence of proof to the contrary, the presumption is that the witness was not moved by any ill will and was untainted by bias, and thus worthy of belief and credence.[53]

The alibi and denial of Reyes are inherently weak defenses.

The defenses of alibi and denial offered by Reyes did not convince the RTC and the CA; neither does the Court find any cogent reason to think otherwise.

Well-settled is the rule that alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. It is axiomatic that positive testimony prevails over negative testimony.[54] The Court laid down the following ruling relative to alibi, viz:

> For alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the crime scene during its commission. Physical impossibility refers to distance and the facility of access between the scene of the crime and the location of the accused when the crime was committed. In other words, the accused must demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed.[55]

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[53] *People v. Jalbonian*, 713 Phil. 93, 104 (2013).

[54] *People v. Sumagdon*, G.R. No. 210434, 5 December 2016.

[55] *People v. Lastrollo*, G.R. No. 212631, 7 November 2016.

Only the road separated the house of Reyes from that of the Leonoras;[56] thus, it was not improbable for him to be at the crime scene during its commission. Moreover, Reyes did not present anyone to fortify his alibi, not even Boboy, who he claimed to be with him at his house on the night of 12 February 1998 till morning of the following day.

In an apparent attempt to justify the recovery of his pair of pants and his son's jacket at the scene of the crime, Reyes proffered the feeble defense that his house was robbed.

It strains credulity why a robber would take only a pair of pants and a jacket from Reyes' house and thereafter leave them after committing rape with homicide. The hopelessness of his defense becomes even more obvious with the fact that no one substantiated his claim that robbery took place in his house. True, he had a police blotter[57] showing that his house was allegedly robbed on the night of 12 February 1998 but as he himself testified, he reported the incident only after he was told by Jun that a pair of pants and a jacket were found at the scene of the crime. It was clear that his act of reporting that a robbery took place at his house was his last-ditch effort to escape liability for the crime he had committed. It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law.[58] In contrast to Reyes' defense, the Court finds more convincing the testimony of Charmaine on why the pair of pants and jacket were found at the Leonoras' house, i.e., Reyes, then wearing only his briefs after committing his bestial acts, ran outside the house after he heard a truck pass by.

Reyes was positively identified by Charmaine in her straightforward testimony despite the lengthy and rigid cross-examination. Significantly, her credible testimony finds support in the post-mortem examination findings of Dr. Arrojo and the objects found at the scene of the crime.

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[56] Exhibit Folder, p. 13; Exh. "L-1".

[57] *Id*. at 1; Exh. "2".

[58] *People v. Mangune*, *supra* note 38 at 771.

The evidence on record proved the guilt of Reyes beyond reasonable doubt.

The felony of rape with homicide is a special complex crime, that is, two or more crimes that the law treats as a single, indivisible and unique offense for being the product of a single criminal impulse.[59] The Revised Penal Code pertinently provides:

Art. 266-A. Rape, When and How Committed. - Rape is committed

1. By a man who shall have **carnal knowledge** of a woman under any of the following circumstances:

   a. Through **force, threat or intimidation**;

   b. When the offended party is deprived of reason or is otherwise unconscious;

   c. By means of fraudulent machination or grave abuse of authority

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In the special complex crime of rape with homicide, the following elements must concur: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman.[60] On the one hand, Rule 133, Section 2 of the Revised Rules on Evidence specifies the requisite quantum of evidence in criminal cases:

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

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[59] *People v. Balisong*, G.R. No. 218086, 10 August 2016.

[60] *Id*.

The Court sustains the finding of the RTC that the guilt of the accused was established beyond reasonable doubt. Charmaine had testified that she vividly saw Reyes entering her and Lerma's room at dawn on 13 February 1998; that Lerma struggled with Reyes who, with the use of a stone, hit Lerma on her head rendering her unconscious; that Reyes dragged Lerma to the kitchen; that Reyes removed the shorts of Lerma and his own pants and jacket; that Reyes rode on Lerma using push and pull movements; and that Dr. Arrojo declared that Lerma's hymen had "fresh lacerations at 6:00, 3:00 & 9:00 with bleeding"; that the substance taken inside Lerma's vagina was confirmed as spermatozoa; and that the cause of her death was "massive intracranial hemorrhage resulting to shock then cardiac arrest due to traumatic injury in the head."

The damages to be awarded to the heirs of Lerma must be modified to conform to existing jurisprudence.

Article 266-B[61] of the RPC reads:

> Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua:*
>
> x x x x x x x x x
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> **When by reason or on the occasion of the rape, homicide is committed**, **the penalty shall be death**. (emphasis supplied)

With the passage of Republic Act (*R.A.*) No. 9346,[62] the death penalty can no longer be imposed. The pertinent provisions of the Act read:

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[61] Pursuant to Republic Act No. 8353 entitled "*An Act Expanding The Definition Of The Crime Of Rape, Reclassifying The Same As A Crime Against Persons, Amending For The Purpose Act No. 3815, As Amended, Otherwise Known As The Revised Penal Code, And For Other Purposes*" dated 30 September 1997.

[62] Entitled "*An Act Prohibiting The Imposition Of Death Penalty In The Philippines*" dated 24 June 2006.

Section 2. In lieu of the death penalty, the following shall be imposed.

(a) **the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code**; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Section 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended. (emphasis supplied)

Existing jurisprudence[63] imparts that the damages to be awarded to the heirs of a victim of the special complex crime of rape with homicide where the penalty to be imposed upon the accused is death, but reduced to *reclusion perpetua* upon enactment of R.A. No. 9346, shall be as follows: civil indemnity – ₱100,000.00; moral damages – ₱100,000.00; exemplary damages – ₱100,000.00; and ₱50,000.00 as temperate damages. In addition, the civil indemnity, moral damages, exemplary damages, and temperate damages payable by the appellant are subject to interest at the rate of six percent (6%) per annum from the finality of this decision until fully paid.[64] Accordingly, the Court applies this in modifying the damages to be awarded to the heirs of Lerma.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA G.R. CR.-H.C. No. 00779-MIN finding Alfredo Reyes alias "Boy Reyes" guilty of Rape with Homicide is hereby **AFFIRMED with MODIFICATIONS.** Alfredo Reyes alias "Boy Reyes" is sentenced to suffer the penalty of imprisonment of *reclusion perpetua* without eligibility for parole, and is ordered to pay the heirs of Lerma Leonora ₱100,000.00

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[63] *People v. Jugueta*, G.R. No. 202124, 5 April 2016, 788 SCRA 331, 372-373 and 380-381.

[64] *Id*. at 388.

for civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. The award of monetary damages shall be subject to interest at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 209306. September 27, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **HEDCOR SIBULAN, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; VALUE-ADDED TAX (VAT); REFUNDS OF UNUTILIZED INPUT VAT; THE 120+30-DAY PERIODS ARE MANDATORY AND JURISDICTIONAL, SUCH THAT THE NON-OBSERVANCE OF WHICH IS FATAL TO THE FILING OF A JUDICIAL CLAIM WITH THE COURT OF TAX APPEALS; EXCEPTION.— Under Section 112(C) of the NIRC of 1997, as amended, the CIR is given a period of 120 days within which to grant or deny a claim for refund. Upon receipt of the CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA. x x x [T]he Court in *Aichi* clarified that the 120+30-day periods are mandatory and jurisdictional, the non-observance of which is

fatal to the filing of a judicial claim with the CTA. Subsequently, however, the Court, in *San Roque,* recognized an exception to the mandatory and jurisdictional nature of the 120+30-day periods. The Court held that BIR Ruling No. DA-489-03, issued prior to the promulgation of *Aichi,* which explicitly 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," furnishes a valid basis to hold the CIR in estoppels because the CIR had misled taxpayers into prematurely filing their judicial claims with the CTA x x x. Here, records show that HSI filed its judicial claim for refund on March 30, 2010, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though HSI's claim was filed 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*. BIR Ruling No. DA-489-03 effectively shielded the filing of HSI's judicial claim from the vice of prematurity.

2. ID.; ID.; BUREAU OF INTERNAL REVENUE; COMMISSIONER OF INTERNAL REVENUE (CIR); POWER TO INTERPRET TAX LAWS; THE DEPUTY COMMISSIONER HAS THE AUTHORITY TO ISSUE INTERPRETATIVE RULES BECAUSE THE DELEGATION OF THE CIR'S POWER IS NOT PROHIBITED.— In the Court *En Banc's* Resolution in *San Roque* dated October 8, 2013, the Court upheld the authority of a Deputy Commissioner to issue interpretative rules. The Court said that the NIRC does not prohibit the delegation of the CIR's power under Section 4 thereof. The CIR may delegate the powers vested in him under the pertinent provisions of the NIRC to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the CIR.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Salvador & Associates for respondent.

RESOLUTION

CAGUIOA, *J.*:

Assailed in this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, filed by petitioner Commissioner of Internal Revenue (CIR), are the Amended Decision[2] dated May 30, 2013 and Resolution[3] dated September 17, 2013 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 890. The CTA *En Banc* reversed and set aside its earlier Decision[4] dated December 6, 2012, which affirmed the CTA Third Division's (CTA Division) dismissal of respondent Hedcor Sibulan, Inc.'s (HSI) judicial claim on the ground of prematurity, in CTA Case No. 8051; and remanded the case to the CTA Division for the determination of HSI's entitlement to a refund of its alleged unutilized input value-added tax (VAT) for the first quarter of calendar year 2008, if any.

The Facts

HSI is a domestic corporation duly organized and existing under Philippine laws and is principally engaged in the business of power generation through hydropower and subsequent sale

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[1] *Rollo*, pp. 8-49.

[2] *Id*. at 50-59. Penned by Associate Justice Esperanza R. Fabon-Victorino with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas concurring, Associate Justice Caesar A. Casanova dissenting, and Presiding Justice Roman G. Del Rosario, no part.

[3] *Id*. at 62-66. Penned by Associate Justice Esperanza R. Fabon-Victorino with Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castaneda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban concurring.

[4] *Id*. at 67-78. Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castaneda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas concurring and Associate Justice Lovell R. Bautista dissenting.

of generated power to the Davao Light and Power Company, Inc.[5]

On April 21, 2008, HSI filed with the BIR its Original Quarterly VAT Returns for the first quarter of 2008.[6]

On May 20, 2008, HSI filed with the BIR its Amended Quarterly VAT Returns for the first quarter of 2008, which showed that it incurred unutilized input VAT from its domestic purchases of goods and services in the total amount of ₱9,379,866.27, attributable to its zero-rated sales of generated power.[7] Further, HSI allegedly did not have any local sales subject to VAT at 12%, which means that HSI did not have any output VAT liability against which its unutilized input VAT could be applied or credited.[8]

On March 29, 2010, HSI filed its administrative claim for refund of unutilized input VAT for the first quarter of taxable year 2008 in the amount of ₱9,379,866.27.[9]

On March 30, 2010, or one day after filing its administrative claim, HSI filed its judicial claim for refund with the CTA, docketed as CTA Case No. 8051.[10]

In its Answer, the CIR argued, *inter alia*, that the HSI's judicial claim was prematurely filed and there was likewise no proof of compliance with the prescribed requirements for VAT refund pursuant to Revenue Memorandum Order (RMO) No. 53-98.[11]

Meanwhile, on October 6, 2010, while HSFs claim for refund or issuance of tax credit certificate (TCC) was pending before

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[5] *Id*. at 68.

[6] *Id*. at 69.

[7] *Id.*

[8] *Id*.

[9] *Id.*

[10] *Id*.

[11] *Id*. at 69, 71.

the CTA Division, this Court promulgated *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[12] (*Aichi*) where 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 (NIRC) of 1997, as amended, is mandatory and jurisdictional in filing an appeal with the CTA.

Following *Aichi*, the CTA Division, in its Decision[13] dated January 5, 2012, dismissed HSI's judicial claim for having been prematurely filed.[14]

HSI filed a motion for reconsideration which the CTA Division denied for lack of merit, in its Resolution[15] dated March 28, 2012.

Aggrieved, HSI elevated the matter to the CTA *En Banc* arguing that (1) its Petition for Review was not prematurely filed with the CTA Division; (2) the periods under Section 112(C) of the NIRC of 1997, as amended, are not mandatory in nature; and (3) the Court's ruling in Aichi should not be given a retroactive effect.[16]

On December 6, 2012, the CTA *En Banc* rendered a Decision[17] affirming the CTA Division's Decision and Resolution. The CTA *En Banc* emphasized that following the principle of *stare decisis et non quieta movere*, the principles laid down in *Aichi* needed to be applied for the purpose of maintaining consistency in jurisprudence.[18]

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[12] 646 Phil. 710 (2010).

[13] *Id*. at 79-90. Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justice Amelia R. Cotangco-Manalastas concurring and Associate Justice Lovell R. Bautista dissenting.

[14] *Id*. at 89.

[15] *Id*. at 98-102.

[16] *Id*. at 73-74.

[17] *Id*. at 67-78.

[18] *Id*. at 77.

On January 2, 2013, HSI filed a Motion for Reconsideration.[19]

On February 12, 2013, during the pendency of said motion with the CTA *En Banc*, the 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*[20] (*San Roque*), where BIR Ruling No. DA-489-03 was recognized as an exception to the mandatory and jurisdictional nature of the 120-day waiting period under Section 112(C) of the NIRC of 1997, as amended.

In view of this Court's pronouncements in *San Roque*, the CTA *En Banc*, on May 30, 2013, rendered the assailed Amended Decision reversing and setting aside its December 6, 2012 Decision[21] and remanding the case to the CTA Division for a complete determination of HSI's full compliance with the other legal requirements relative to its claim for refund or tax credit of its alleged unutilized input VAT for the first quarter of calendar year 2008.

The CIR filed a motion for reconsideration, which the CTA *En Banc* denied in the assailed Resolution[22] dated September 17, 2013.

Hence, this petition, raising the following issues:

Whether HSI timely filed its judicial claim for refund/credit on March 30, 2010, a day after filing its administrative claim.

Whether HSI is entitled to its claim for refund/credit representing the alleged unutilized input VAT for the first quarter of calendar year 2008 amounting to ₱9,379,866.27.[23]

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[19] *Id*. at 289.

[20] 703 Phil. 310 (2013).

[21] *Rollo*, pp. 50-59.

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

[23] *Id*. at 18-19.

The Court's Ruling

The petition lacks merit.

Under Section 112(C) of the NIRC of 1997, as amended, the CIR is given a period of 120 days within which to grant or deny a claim for refund. Upon receipt of the CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA.

As earlier stated, the Court in *Aichi* clarified that the 120+30-day periods are mandatory and jurisdictional, the non-observance of which is fatal to the filing of a judicial claim with the CTA. Subsequently, however, the Court, in *San Roque*, recognized an exception to the mandatory and jurisdictional nature of the 120+30-day periods. The Court held that BIR Ruling No. DA-489-03, issued prior to the promulgation of *Aichi*, which explicitly 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,"[24] furnishes a valid basis to hold the CIR in estoppel because the CIR had misled taxpayers into prematurely filing their judicial claims with the CTA:

> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. **The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.**

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[24] *Cargill Philippines, Inc. v. Commissioner of Internal Revenue*, 755 Phil. 820, 829 (2015).

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BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.[25] (Emphasis and underscoring supplied)

In *Taganito Mining Corporation v. Commissioner of Internal Revenue*,[26] the Court reconciled the pronouncements in *Aichi* and *San Roque* in this wise:

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 (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.**[27] (Emphasis and underscoring supplied)

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[25] *Supra* note 20, at 373-376.

[26] 736 Phil. 591 (2014).

[27] *Id.* at 600; See also *CE Luzon Geothermal Power Co., Inc. v. Commissioner of Internal Revenue*, 767 Phil. 782, 790 (2015).

Here, records show that HSI filed its judicial claim for refund on March 30, 2010, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though HSI's claim was filed 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*. BIR Ruling No. DA-489-03 effectively shielded the filing of HSI's judicial claim from the vice of prematurity.[28] The CTA *En Banc* was therefore correct in setting aside its earlier Decision dismissing HSI's claim on the ground of prematurity; and remanding the case to the CTA Division for a complete determination of HSI's entitlement to the claimed VAT refund, if any.

The CIR, however, impugns the validity of BIR Ruling No. DA-489-03 asserting that (1) it was merely issued by a Deputy Commissioner, and not the CIR, who is exclusively authorized by law to interpret tax matters; and (2) it was already repealed and superseded on November 1, 2005 by Revenue Regulations 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.

The Court is not persuaded.

In the Court *En Banc's* Resolution in *San Roque* dated October 8, 2013,[29] the Court upheld the authority of a Deputy Commissioner to issue interpretative rules. The Court said that the NIRC does not prohibit the delegation of the CIR's power under Section 4 thereof. The CIR may delegate the powers vested in him under the pertinent provisions of the NIRC to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the CIR.[30]

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[28] See *Republic v. GST Philippines, Inc.*, 719 Phil. 728, 744 (2013).

[29] *Commissioner of Internal Revenue v. San Roque Power Corp.*, 719 Phil. 137 (2013).

[30] *Id*. at 164.

Moreover, in *Procter and Gamble Asia Pte, Ltd. v. Commissioner of Internal Revenue*,[31] the Court, reiterating its ruling in *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*,[32] hold 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*.[33] The Court further ruled 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*.[34]

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED**. The Amended Decision dated May 30, 2013 and the Resolution dated September 17, 2013 of the CTA *En Banc* in CTA EB No. 890 are hereby **AFFIRMED**.

SO ORDERED.

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

Carpio, J., on official leave.

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[31] G.R. No. 205652, September 6, 2017.

[32] G.R. No. 211072, November 7, 2016.

[33] *Id*. at 9.

[34] *Id*.

[*] Per Special Order No. 2487 dated September 19, 2017.

SECOND DIVISION

[G.R. No. 209969. September 27, 2017]

JOSE SANICO AND VICENTE CASTRO, *petitioners, vs.* **WERHERLINA P. COLIPANO**, *respondent.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; COMMON CARRIERS; IN A CONTRACT OF CARRIAGE, THE ONLY PARTIES ARE THE PASSENGER, THE BUS OWNER AND OPERATOR.—** Here, it is beyond dispute that Colipano was injured while she was a passenger in the jeepney owned and operated by Sanico that was being driven by Castro. x x x Since the cause of action is based on a breach of a contract of carriage, the liability of Sanico is direct as the contract is between him and Colipano. Castro, being merely the driver of Sanico's jeepney, cannot be made liable as he is not a party to the contract of carriage. x x x Since Castro was not a party to the contract of carriage, Colipano had no cause of action against him and the complaint against him should be dismissed. Although he was driving the jeepney, he was a mere employee of Sanico, who was the operator and owner of the jeepney. The obligation to carry Colipano safely to her destination was with Sanico. In fact, the elements of a contract of carriage existed between Colipano and Sanico: *consent*, as shown when Castro, as employee of Sanico, accepted Colipano as a passenger when he allowed Colipano to board the jeepney, and as to Colipano, when she boarded the jeepney; *cause or consideration*, when Colipano, for her part, paid her fare; and, *object*, the transportation of Colipano from the place of departure to the place of destination.

2. **ID.; ID.; ID.; REQUISITES TO OBSERVE EXTRAORDINARY DILIGENCE IN SAFELY TRANSPORTING THEIR PASSENGERS; IN CASE OF DEATH OF OR INJURY TO THEIR PASSENGERS, COMMON CARRIERS ARE PRESUMED TO HAVE BEEN AT FAULT OR NEGLIGENT.—** Specific to a contract of carriage, the Civil Code requires common carriers to observe extraordinary

diligence in safely transporting their passengers. x x x This extraordinary diligence, following Article 1755 of the Civil Code, means that common carriers have the obligation to carry passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances. In case of death of or injury to their passengers, Article 1756 of the Civil Code provides that common carriers are presumed to have been at fault or negligent, and this presumption can be overcome only by proof of the extraordinary diligence exercised to ensure the safety of the passengers.

3. ID.; ID.; ID.; COMMON CARRIERS MAY ALSO BE LIABLE FOR DAMAGES WHEN THEY CONTRAVENE THE TENOR OF THEIR OBLIGATIONS; THE LIABILITY DOES NOT CEASE BY PROOF OF EXTRAORDINARY DILIGENCE EXERCISED IN THE SELECTION AND SUPERVISION OF EMPLOYEES.— [C]ommon carriers may also be liable for damages when they contravene the tenor of their obligations. x x x In *Magat v. Medialdea*, the Court ruled: "The phrase 'in any manner contravene the tenor' of the obligation includes any illicit act or omission which impairs the strict and faithful fulfillment of the obligation and every kind of defective performance." There is no question here that making Colipano sit on the empty beer case was a clear showing of how Sanico contravened the tenor of his obligation to safely transport Colipano from the place of departure to the place of destination as far as human care and foresight can provide, using the utmost diligence of very cautious persons, and with due regard for all the circumstances. Sanico's attempt to evade liability by arguing that he exercised extraordinary diligence when he hired Castro, x x x are not enough to exonerate him from liability —because the liability of common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees. This is the express mandate of Article 1759 of the Civil Code: x x x The **only** defenses available to common carriers are (1) proof that they observed extraordinary diligence as prescribed in Article 1756, and (2) following Article 1174 of the Civil Code, proof that the injury or death was brought about by an event which "could not be foreseen, or which, though foreseen, were inevitable," or a fortuitous event.

4. ID.; ID.; ID.; THE LIABILITY OF COMMON CARRIERS CANNOT BE EXONERATED BY AN AFFIDAVIT OF DESISTANCE AND RELEASE OF CLAIM THAT IS LACKING THE ESSENTIAL REQUISITES OF A VALID WAIVER.— Sanico cannot be exonerated from liability under the Affidavit of Desistance and Release of Claim and his payment of the hospital and medical bills of Colipano amounting to ₱44,900.00. x x x For there to be a valid waiver, the following requisites are essential: (1) that the person making the waiver possesses the right, (2) that he has the capacity and power to dispose of the right, (3) that the waiver must be clear and unequivocal although it may be made expressly or impliedly, and (4) that the waiver is not contrary to law, public policy, public order, morals, good customs or prejudicial to a third person with a right recognized by law. x x x For the waiver to be clear and unequivocal, the person waiving the right should understand what she is waiving and the effect of such waiver. Both the CA and RTC made the factual determination that Colipano was not able to understand English and that there was no proof that the documents and their contents and effects were explained to her. These findings of the RTC, affirmed by the CA, are entitled to great weight and respect. x x x Colipano could not have clearly and unequivocally waived her right to claim damages when she had no understanding of the right she was waiving and the extent of that right. Worse, she was made to sign a document written in a language she did not understand. x x x The fourth requirement for a valid waiver is also lacking as the waiver, based on the attendant facts, can only be construed as contrary to public policy. x x x [I]n instances of injury or death, a waiver of the right to claim damages is strictly construed against the common carrier so as not to dilute or weaken the public policy behind the required standard of extraordinary diligence.

5. ID.; DAMAGES; COMPENSATORY DAMAGES; TESTIMONIAL EVIDENCE FOR LOSS OF EARNING CAPACITY CANNOT BE OBJECTED TO ON THE GROUND OF BEING SELF-SERVING AS THE SAME WAS SWORN AND SUBJECT TO CROSS-EXAMINATION.— Sanico argues that Colipano failed to present documentary evidence to support her age and her income, so that her testimony is self-serving and that there was no basis for the award of

compensatory damages in her favor. Sanico is gravely mistaken. The Court has held in *Heirs of Pedro Clemeña y Zurbano v. Heirs of Irene B. Bien* that testimonial evidence cannot be objected to on the ground of being self-serving, thus: "Self-serving evidence" is not to be taken literally to mean any evidence that serves its proponent's interest. The term, if used with any legal sense, refers only to acts or declarations made by a party in his own interest at some place and time *out of court*, and it does not include testimony that he gives as a witness in court. Evidence of this sort is excluded on the same ground as any hearsay evidence, that is, lack of opportunity for cross-examination by the adverse party and on the consideration that its admission would open the door to fraud and fabrication. **In contrast, a party's testimony in court is sworn and subject to cross-examination by the other party, and therefore, not susceptible to an objection on the ground that it is self-serving.**

6. ID.; ID.; ID.; AS A RULE, DOCUMENTARY EVIDENCE IS REQUIRED TO PROVE LOSS OF EARNING CAPACITY; EXCEPTIONS; WHEN THE VICTIM WAS EMPLOYED AS A DAILY WAGE WORKER EARNING LESS THAN THE MINIMUM WAGE UNDER CURRENT LABOR LAWS.—[A]lthough as a general rule, documentary evidence is required to prove loss of earning capacity, Colipano's testimony on her annual earnings of ₱12,000.00 is an allowed exception. There are two exceptions to the general rule and Colipano's testimonial evidence falls under the second exception, *viz.*: By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws. The CA applied the correct formula for computing the loss of Colipano's earning capacity: Net earning capacity = Life expectancy x [Gross Annual Income - Living Expenses (50% of gross annual income)], where life expectancy = 2/3 (80 - the age of the deceased).

7. ID.; ID.; INTEREST; PROPER AT THE RATE OF 6% TO THE AWARD OF DAMAGES FOR BREACH OF

CONTRACT OF CARRIAGE FROM THE DATE OF THE RTC DECISION.— Interest is a form of actual or compensatory damages as it belongs to Chapter 2 of Title XVIII on Damages of the Civil Code. Under Article 2210 of the Civil Code, "[i]nterest may, in the discretion of the court, be allowed upon damages awarded for breach of contract." Here, given the gravity of the breach of the contract of carriage causing the serious injury to the leg of Colipano that resulted in its amputation, the Court deems it just and equitable to award interest from the date of the RTC decision. Since the award of damages was given by the RTC in its Decision dated October 27, 2006, the interest on the amount awarded shall be deemed to run beginning October 27, 2006. x x x [T]he applicable rate of interest to the award of damages to Colipano is 6%.

APPEARANCES OF COUNSEL

Bonghanoy & Bonghanoy Law Firm for petitioner Jose Sanico.
Public Attorney's Office 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 petitioners Jose Sanico (Sanico) and Vicente Castro (Castro), assailing the Decision[2] dated September 30, 2013 of the Court of Appeals (CA) in CA-G.R. CEB-CV No. 01889. The CA affirmed with modification the Decision[3] dated October 27, 2006 of the Regional Trial Court, Branch 25, Danao City (RTC) which found Sanico and Castro liable for breach of contract of carriage and

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[1] *Rollo,* pp. 13-122 (inclusive of Annexes).

[2] *Id.* at 37-49. Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Edgardo L. Delos Santos and Maria Elisa Sempio Diy concurring.

[3] *Id*. at 50-56. Penned by Presiding Judge Sylva G. Aguirre-Paderanga.

awarded actual and compensatory damages for loss of income in favor of respondent Werherlina P. Colipano (Colipano). The CA reduced the compensatory damages that the RTC awarded.

Antecedents

Colipano filed a complaint on January 7, 1997 for breach of contract of carriage and damages against Sanico and Castro.[4] In her complaint, Colipano claimed that at 4:00 P.M. more or less of December 25, 1993, **Christmas Day**, she and her daughter were paying passengers in the jeepney operated by Sanico, which was driven by Castro.[5] Colipano claimed she was made to sit on an empty beer case at the edge of the rear entrance/exit of the jeepney with her sleeping child on her lap.[6] And, at an uphill incline in the road to Natimao-an, Carmen, Cebu, the jeepney slid backwards because it did not have the power to reach the top.[7] Colipano pushed both her feet against the step board to prevent herself and her child from being thrown out of the exit, but because the step board was wet, her left foot slipped and got crushed between the step board and a coconut tree which the jeepney bumped, causing the jeepney to stop its backward movement.[8] Colipano's leg was badly injured and was eventually amputated.[9] Colipano prayed for actual damages, loss of income, moral damages, exemplary damages, and attorney's fees.[10]

In their answer, Sanico and Castro admitted that Colipano's leg was crushed and amputated but claimed that it was Colipano's fault that her leg was crushed.[11] They admitted that the jeepney

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[4] *Id*. at 57-63 (inclusive of Annexes).

[5] *Id*. at 57.

[6] *Id*. at 50, 58.

[7] *Id*. at 58.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 59.

[11] See *id*. at 64, 66.

slid backwards because the jeepney lost power.[12] The conductor then instructed everyone not to panic but Colipano tried to disembark and her foot got caught in between the step board and the coconut tree.[13] Sanico claimed that he paid for all the hospital and medical expenses of Colipano,[14] and that Colipano eventually freely and voluntarily executed an Affidavit of Desistance and Release of Claim.[15]

After trial, the RTC found that Sanico and Castro breached the contract of carriage between them and Colipano but only awarded actual and compensatory damages in favor of Colipano. The dispositive portion of the RTC Decision states:

> **WHEREFORE**, premises considered, this Court finds the defendants **LIABLE** for breach of contract of carriage and are solidarily liable to pay plaintiff:
>
> 1. Actual damages in the amount of ₱2,098.80; and
> 2. Compensatory damages for loss of income in the amount of ₱360,000.00.
>
> No costs.
>
> **SO ORDERED**.[16]

Only Sanico and Castro appealed to the CA, which affirmed with modification the RTC Decision. The dispositive portion of the CA Decision states:

> IN LIGHT OF ALL THE FOREGOING, the instant appeal is PARTIALLY GRANTED. The Decision dated October 27, 2006 of the Regional Trial Court, Branch 25, Danao City, in Civil Case No. DNA-418, is AFFIRMED with MODIFICATION in that the award for compensatory damages for loss of income in paragraph 2 of the dispositive portion of the RTC's decision, is reduced to ₱200,000.00.

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[12] *Id*. at 66.

[13] *Id*.

[14] *Id*. at 66-67.

[15] *Id*. at 67.

[16] *Id*. at 56.

SO ORDERED.[17]

Without moving for the reconsideration of the CA Decision, Sanico and Castro filed this petition before the Court assailing the CA Decision.

Issues

a. Whether the CA erred in finding that Sanico and Castro breached the contract of carriage with Colipano;

b. Whether the Affidavit of Desistance and Release of Claim is binding on Colipano; and

c. Whether the CA erred in the amount of damages awarded.

The Court's Ruling

The Court partly grants the petition.

Only Sanico breached the contract of carriage.

Here, it is beyond dispute that Colipano was injured while she was a passenger in the jeepney owned and operated by Sanico that was being driven by Castro. Both the CA and RTC found Sanico and Castro jointly and severally liable. This, however, is erroneous because only Sanico was the party to the contract of carriage with Colipano.

Since the cause of action is based on a breach of a contract of carriage, the liability of Sanico is direct as the contract is between him and Colipano. Castro, being merely the driver of Sanico's jeepney, cannot be made liable as he is not a party to the contract of carriage.

In *Soberano v. Manila Railroad Co.*,[18] the Court ruled that a complaint for breach of a contract of carriage is dismissible as against the employee who was driving the bus because the parties to the contract of carriage are only the passenger, the bus owner, and the operator, *viz.*:

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

[18] 124 Phil. 1330 (1966).

The complaint against Caccam was therefore properly dismissed. He was not a party to the contract; he was a mere employee of the BAL. The parties to that contract are Juana Soberano, the passenger, and the MRR and its subsidiary, the BAL, the bus owner and operator, respectively; and consequent to the inability of the defendant companies to carry Juana Soberano and her baggage and personal effects securely and safely to her destination as imposed by law (art. 1733, in relation to arts. 1736 and 1755, N.C.C.), their liability to her becomes direct and immediate.[19]

Since Castro was not a party to the contract of carriage, Colipano had no cause of action against him and the complaint against him should be dismissed. Although he was driving the jeepney, he was a mere employee of Sanico, who was the operator and owner of the jeepney. The obligation to carry Colipano safely to her destination was with Sanico. In fact, the elements of a contract of carriage existed between Colipano and Sanico: *consent*, as shown when Castro, as employee of Sanico, accepted Colipano as a passenger when he allowed Colipano to board the jeepney, and as to Colipano, when she boarded the jeepney; *cause or consideration*, when Colipano, for her part, paid her fare; and, *object*, the transportation of Colipano from the place of departure to the place of destination.[20]

Having established that the contract of carriage was only between Sanico and Colipano and that therefore Colipano had no cause of action against Castro, the Court next determines whether Sanico breached his obligations to Colipano under the contract.

Sanico is liable as operator and owner of a common carrier.

Specific to a contract of carriage, the Civil Code requires common carriers to observe extraordinary diligence in safely transporting their passengers. Article 1733 of the Civil Code states:

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[19] *Id*. at 1336.

[20] See *Peralta de Guerrero v. Madrigal Shipping Co., Inc.,* 106 Phil. 485, 487 (1959).

ART. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in Articles 1734, 1735 and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in Articles 1755 and 1756.

This extraordinary diligence, following Article 1755 of the Civil Code, means that common carriers have the obligation to carry passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.

In case of death of or injury to their passengers, Article 1756 of the Civil Code provides that common carriers are presumed to have been at fault or negligent, and this presumption can be overcome only by proof of the extraordinary diligence exercised to ensure the safety of the passengers.[21]

Being an operator and owner of a common carrier, Sanico was required to observe extraordinary diligence in safely transporting Colipano. When Colipano's leg was injured while she was a passenger in Sanico's jeepney, the presumption of fault or negligence on Sanico's part arose and he had the burden to prove that he exercised the extraordinary diligence required of him. He failed to do this.

In *Calalas v. Court of Appeals*,[22] the Court found that allowing the respondent in that case to be seated in an extension seat, which was a wooden stool at the rear of the jeepney, "placed [the respondent] in a peril greater than that to which the other passengers were exposed."[23] The Court further ruled that the

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[21] CIVIL CODE, Art. 1756.

[22] 388 Phil. 146 (2000).

[23] *Id*. at 149, 153.

petitioner in *Calalas* was not only "unable to overcome the presumption of negligence imposed on him for the injury sustained by [the respondent], but also, the evidence shows he was actually negligent in transporting passengers."[24]

Calalas squarely applies here. Sanico failed to rebut the presumption of fault or negligence under the Civil Code. More than this, the evidence indubitably established Sanico's negligence when Castro made Colipano sit on an empty beer case at the edge of the rear entrance/exit of the jeepney with her sleeping child on her lap, which put her and her child in greater peril than the other passengers. As the CA correctly held:

> For the driver, Vicente Castro, to allow a seat extension made of an empty case of beer clearly indicates lack of prudence. Permitting Werherlina to occupy an improvised seat in the rear portion of the jeepney, with a child on her lap to boot, exposed her and her child in a peril greater than that to which the other passengers were exposed. The use of an improvised seat extension is undeniable, in view of the testimony of plaintiff's witness, which is consistent with Werherlina's testimonial assertion. Werherlina and her witness's testimony were accorded belief by the RTC. Factual findings of the trial court are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of the witnesses while testifying.[25]

The CA also correctly held that the defense of engine failure, instead of exonerating Sanico, only aggravated his already precarious position.[26] The engine failure "hinted lack of regular check and maintenance to ensure that the engine is at its best, considering that the jeepney regularly passes through a mountainous area."[27] This failure to ensure that the jeepney

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[24] *Id*. at 153.

[25] *Rollo*, p. 45.

[26] See *id*.

[27] *Id.*

can safely transport passengers through its route which required navigation through a mountainous area is proof of fault on Sanico's part. In the face of such evidence, there is no question as to Sanico's fault or negligence.

Further, common carriers may also be liable for damages when they contravene the tenor of their obligations. Article 1170 of the Civil Code states:

> ART. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

In *Magat v. Medialdea*,[28] the Court ruled: "The phrase 'in any manner contravene the tenor' of the obligation includes any illicit act or omission which impairs the strict and faithful fulfillment of the obligation and every kind of defective performance."[29] There is no question here that making Colipano sit on the empty beer case was a clear showing of how Sanico contravened the tenor of his obligation to safely transport Colipano from the place of departure to the place of destination as far as human care and foresight can provide, using the utmost diligence of very cautious persons, and with due regard for all the circumstances.

Sanico's attempt to evade liability by arguing that he exercised extraordinary diligence when he hired Castro, who was allegedly an experienced and time-tested driver, whom he had even accompanied on a test-drive and in whom he was personally convinced of the driving skills,[30] are not enough to exonerate him from liability —because the liability of common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees. This is the express mandate of Article 1759 of the Civil Code:

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[28] 206 Phil. 341 (1983).

[29] *Id.* at 349, citing *Arrieta v. National Rice and Corn Corp.*, 119 Phil. 339, 347 (1964).

[30] *Rollo*, pp. 25-26.

ART. 1759. Common carriers are liable for the death of or injuries to passengers through the negligence or willful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.

This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.

The **only** defenses available to common carriers are (1) proof that they observed extraordinary diligence as prescribed in Article 1756,[31] and (2) following Article 1174 of the Civil Code, proof that the injury or death was brought about by an event which "could not be foreseen, or which, though foreseen, were inevitable," or a fortuitous event.

The Court finds that neither of these defenses obtain. Thus, Sanico is liable for damages to Colipano because of the injury that Colipano suffered as a passenger of Sanico's jeepney.

The Affidavit of Desistance and Release of Claim is void.

Sanico cannot be exonerated from liability under the Affidavit of Desistance and Release of Claim[32] and his payment of the hospital and medical bills of Colipano amounting to ₱44,900.00.[33]

The RTC ruled that "the Affidavit of Desistance and Release of Claim is not binding on plaintiff [Colipano] in the absence of proof that the contents thereof were sufficiently translated and explained to her."[34] The CA affirmed the findings of the RTC and ruled that the document was not binding on Colipano, as follows:

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[31] CIVIL CODE, Art. 1756.

[32] See *rollo*, p. 52.

[33] *Id*. at 67.

[34] *Id*. at 55.

Finally, We sustain the RTC's finding that the affidavit of desistance and release of claim, offered by defendants-appellants, are not binding on Werherlina, quoting with approval its reflection on the matter, saying:

> *x x x* this Court finds that the Affidavit of Desistance and Release of Claim is not binding on plaintiff in the absence of proof that the contents thereof were sufficiently explained to her. It is clear from the plaintiff's circumstances that she is not able to understand English, more so stipulations stated in the said Affidavit and Release. It is understandable that in her pressing need, the plaintiff may have been easily convinced to sign the document with the promise that she will be compensated for her injuries.[35]

The Court finds no reason to depart from these findings of the CA and the RTC.

For there to be a valid waiver, the following requisites are essential:

> (1) that the person making the waiver possesses the right, (2) that he has the capacity and power to dispose of the right, (3) that the waiver must be clear and unequivocal although it may be made expressly or impliedly, and (4) that the waiver is not contrary to law, public policy, public order, morals, good customs or prejudicial to a third person with a right recognized by law.[36]

While the first two requirements can be said to exist in this case, the third and fourth requirements are, however, lacking.

For the waiver to be clear and unequivocal, the person waiving the right should understand what she is waiving and the effect of such waiver. Both the CA and RTC made the factual determination that Colipano was not able to understand English and that there was no proof that the documents and their contents and effects were explained to her. These findings of the RTC,

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[35] *Id.* at 47-48.

[36] Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW CIVIL CODE OF THE PHILIPPINES*, Vol. 1 (1967 3rd Ed.), p. 13.

affirmed by the CA, are entitled to great weight and respect.[37] As this Court held in *Philippine National Railways Corp. v. Vizcara*[38]:

> It is a well-established rule that factual findings by the CA are conclusive on the parties and are not reviewable by this Court. They are entitled to great weight and respect, even finality, especially when, as in this case, the CA affirmed the factual findings arrived at by the trial court.[39]

Although there are exceptions to this rule,[40] the exceptions are absent here.

Colipano could not have clearly and unequivocally waived her right to claim damages when she had no understanding of the right she was waiving and the extent of that right. Worse, she was made to sign a document written in a language she did not understand.

The fourth requirement for a valid waiver is also lacking as the waiver, based on the attendant facts, can only be construed as contrary to public policy. The doctrine in *Gatchalian v. Delim*,[41] which the CA correctly cited,[42] is applicable here:

> Finally, because what is involved here is the liability of a common carrier for injuries sustained by passengers in respect of whose safety a common carrier must exercise *extraordinary diligence*, we must construe any such purported waiver most strictly against the common

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[37] See *British Airways v. Court of Appeals,* 349 Phil. 379, 390 (1998), citing *Meneses v. Court of Appeals*, 316 Phil. 210, 222 (1995).

[38] 682 Phil. 343 (2012).

[39] *Id*. at 353, citing *Cebu Shipyard & Eng'g Works, Inc. v. William Lines, Inc.*, 366 Phil. 439, 451 (1999), further citing *Meneses v. Court of Appeals*, *supra* note 37; *Tay Chun Suy v. Court of Appeals*, 299 Phil. 162, 168 (1994); *First Philippine International Bank v. CA*, 322 Phil. 280, 319 and 335-337 (1996); *Fortune Motors (Phils.) Corp. v. CA*, 335 Phil. 315, 330 (1997).

[40] See *Medina v. Asistio, Jr.,* 269 Phil. 225, 232 (1990).

[41] 280 Phil. 137 (1991).

[42] *Rollo*, p. 48.

carrier. For a waiver to be valid and effective, it must not be contrary to law, morals, public policy or good customs. To uphold a supposed waiver of any right to claim damages by an injured passenger, under circumstances like those exhibited in this case, would be to dilute and weaken the standard of extraordinary diligence exacted by the law from common carriers and hence to render that standard unenforceable. **We believe such a purported waiver is offensive to public policy.**[43]

"[P]ublic policy refers to the aims of the state to promote the social and general well-being of the inhabitants."[44] The Civil Code requires extraordinary diligence from common carriers because the nature of their business requires the public to put their safety and lives in the hands of these common carriers. The State imposes this extraordinary diligence to promote the well-being of the public who avail themselves of the services of common carriers. Thus, in instances of injury or death, a waiver of the right to claim damages is strictly construed against the common carrier so as not to dilute or weaken the public policy behind the required standard of extraordinary diligence.

It was for this reason that in *Gatchalian*, the waiver was considered offensive to public policy because it was shown that the passenger was still in the hospital and was dizzy when she signed the document. It was also shown that when she saw the other passengers signing the document, she signed it without reading it.

Similar to *Gatchalian*, Colipano testified that she did not understand the document she signed.[45] She also did not understand the nature and extent of her waiver as the content of the document was not explained to her.[46] The waiver is therefore void because it is contrary to public policy.[47]

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[43] *Supra* note 41, at 144-145; italics in original, emphasis supplied.

[44] Caguioa, *supra* note 36, at 14.

[45] See *rollo*, pp. 47-48, 55.

[46] *Id*.

[47] CIVIL CODE, Art. 1409 (1).

The Court reiterates that waivers executed under similar circumstances are indeed contrary to public policy and are void.[48] To uphold waivers taken from injured passengers who have no knowledge of their entitlement under the law and the extent of liability of common carriers would indeed dilute the extraordinary diligence required from common carriers, and contravene a public policy reflected in the Civil Code.

Amount of compensatory damages granted is incorrect.

On the amount of damages, the RTC awarded ₱2,098.80 as actual damages and ₱360,000.00 as compensatory damages for loss of income, as follows:

> [T]his Court can only award actual damages in the amount that is duly supported by receipts, that is, ₱2,098.80 and not ₱7,277.80 as prayed for by plaintiff as there is no basis for the amount prayed for. However, considering that plaintiff has suffered the loss of one leg which has caused her to be limited in her movement thus resulting in loss of livelihood, she is entitled to compensatory damages for lost income at the rate of ₱12,000.00/year for thirty years in the amount of ₱360,000.00.[49]

The CA, on the other hand, modified the award of the RTC by reducing the compensatory damages from ₱360,000.00 to ₱200,000.00, thus:

> By virtue of their negligence, defendants-appellants are liable to pay Werherlina compensatory damages for loss of earning capacity. In arriving at the proper amount, the Supreme Court has consistently used the following formula:
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> | | | |
> |---|---|---|
> | Net Earning Capacity | = | Life Expectancy x [Gross Annual Income - Living Expenses (50% of gross annual income)] |
> | where life expectancy | = | 2/3 (80 - the age of the deceased). |

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[48] *Id*.

[49] *Rollo,* pp. 55-56.

Based on the stated formula, the damages due to Werherlina for loss of earning capacity is:

Net Earning Capacity = [2/3 x (80-30)] x (₱12,000.00 x 50%)
= (2/3 x 50) x ₱6,000.00
= 33.33 x ₱6,000.00
= ₱200,000.00

The award of the sum of ₱200,000.00 as compensatory damages for loss of earning capacity is in order, notwithstanding the objections of defendants-appellants with respect to lack of evidence on Werherlina's age and annual income.[50]

Sanico argues that Colipano failed to present documentary evidence to support her age and her income, so that her testimony is self-serving and that there was no basis for the award of compensatory damages in her favor.[51] Sanico is gravely mistaken.

The Court has held in *Heirs of Pedro Clemeña y Zurbano v. Heirs of Irene B. Bien*[52] that testimonial evidence cannot be objected to on the ground of being self-serving, thus:

"Self-serving evidence" is not to be taken literally to mean any evidence that serves its proponent's interest. The term, if used with any legal sense, refers only to acts or declarations made by a party in his own interest at some place and time *out of court*, and it does not include testimony that he gives as a witness in court. Evidence of this sort is excluded on the same ground as any hearsay evidence, that is, lack of opportunity for cross-examination by the adverse party and on the consideration that its admission would open the door to fraud and fabrication. **In contrast, a party's testimony in court is sworn and subject to cross-examination by the other party, and therefore, not susceptible to an objection on the ground that it is self-serving**.[53]

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

[51] *Id*. at 20-23.

[52] 533 Phil. 57 (2006).

[53] *Id*. at 68; emphasis and underscoring supplied, citations omitted.

Colipano was subjected to cross-examination and both the RTC and CA believed her testimony on her age and annual income. In fact, as these are questions of facts, these findings of the RTC and CA are likewise binding on the Court.[54]

Further, although as a general rule, documentary evidence is required to prove loss of earning capacity, Colipano's testimony on her annual earnings of ₱12,000.00 is an allowed exception. There are two exceptions to the general rule and Colipano's testimonial evidence falls under the second exception, *viz.*:

> By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[55]

The CA applied the correct formula for computing the loss of Colipano's earning capacity:

> Net earning capacity = Life expectancy x [Gross Annual Income - Living Expenses (50% of gross annual income)], where life expectancy = 2/3 (80 - the age of the deceased).[56]

However, the CA erred when it used Colipano's age at the time she testified as basis for computing the loss of earning capacity.[57] The loss of earning capacity commenced when Colipano's leg was crushed on December 25, 1993. Given that Colipano was 30 years old when she testified on October 14, 1997, she was roughly 27 years old on December 25, 1993

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[54] *Philippine National Railways Corp. v. Vizcara*, *supra* note 38, at 353.

[55] *Serra v. Mumar,* 684 Phil. 363, 374 (2012); citations omitted.

[56] *Smith Bell Dodwell Shipping Agency Corp. v. Borja,* 432 Phil. 913, 924 (2002).

[57] See *rollo,* p. 46.

when the injury was sustained. Following the foregoing formula, the net earning capacity of Colipano is ₱212,000.00.[58]

Sanico is liable to pay interest.

Interest is a form of actual or compensatory damages as it belongs to Chapter 2[59] of Title XVIII on Damages of the Civil Code. Under Article 2210 of the Civil Code, "[i]nterest may, in the discretion of the court, be allowed upon damages awarded for breach of contract." Here, given the gravity of the breach of the contract of carriage causing the serious injury to the leg of Colipano that resulted in its amputation, the Court deems it just and equitable to award interest from the date of the RTC decision. Since the award of damages was given by the RTC in its Decision dated October 27, 2006, the interest on the amount awarded shall be deemed to run beginning October 27, 2006.

As to the rate of interest, in *Eastern Shipping Lines, Inc. v. Court of Appeals,*[60] the Court ruled that "[w]hen 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."[61] Further, upon finality of the judgment awarding a sum of money, the rate of interest shall be 12% per annum from such finality until satisfaction because the interim period is considered a

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[58] Computed as follows:

Net Earning Capacity	=	Life expectancy x [Gross Annual Income - Living Expenses (50% of gross annual income)], where life expectancy = 2/3 (80 - the age of the deceased)
	=	[2/3 x (80 - 27)] x (₱12,000.00 x 50%)
	=	(2/3 x 53) x P6,000.00
	=	35.33 x ₱6,000.00
	=	₱212,000.00

[59] Actual or Compensatory Damages, Arts. 2199 to 2215.

[60] 304 Phil. 236 (1994).

[61] *Id.* at 253; italics in original.

forbearance of credit.[62] Subsequently, in *Nacar v. Gallery Frames,*[63] the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments was lowered from 12% to 6%. Thus, the applicable rate of interest to the award of damages to Colipano is 6%.

WHEREFORE, premises considered, the petition for review is hereby **PARTLY GRANTED.** As to petitioner Vicente Castro, the Decision of the Court of Appeals dated September 30, 2013 is **REVERSED** and **SET ASIDE** and the complaint against him is dismissed for lack of cause of action. As to petitioner Jose Sanico, the Decision of the Court of Appeals is hereby **AFFIRMED with MODIFICATIONS**. Petitioner Jose Sanico is liable and ordered to pay respondent Werherlina Colipano the following amounts:

1. Actual damages in the amount of ₱2,098.80;
2. Compensatory damages for loss of income in the amount of ₱212,000.00;
3. Interest on the total amount of the damages awarded in 1 and 2 at the rate of 6% per annum reckoned from October 27, 2006 until finality of this Decision.

The total amount of the foregoing shall, in turn, earn interest at the rate of 6% per annum from finality of this Decision until full payment thereof.

SO ORDERED.

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

Carpio, J., on official leave.

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[62] *Id*. at 254.

[63] 716 Phil. 267 (2013).

[*] Per Special Order No. 2487 dated September 19, 2017.

FIRST DIVISION

[G.R. No. 218425. September 27, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILSON CACHO *y* SONGCO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CIRCUMSTANCES WHICH EXEMPT FROM CRIMINAL LIABILITY; INSANITY; REQUISITES.— When the accused raised the defense of insanity, he is tried on the issue of sanity alone, and if found to be sane, a judgment of conviction is rendered without any trial on the issue of guilt, because the accused had already admitted committing the crime. However for the defense of insanity to be successfully invoked as a circumstance to evade criminal liability, it is necessary that insanity must relate to the time immediately preceding or simultaneous with the commission of the offense with which the accused is charged. Otherwise, he can be held guilty for the said offense. In short, in order for the accused to be exempted from criminal liability under a plea of insanity, he must successfully show that: (1) he was completely deprived of intelligence; and (2) such complete deprivation of intelligence must be manifest at the time or immediately before the commission of the offense.

2. ID.; ID.; ID.; TO ASCERTAIN A PERSON'S MENTAL CONDITION AT THE TIME OF THE ACT, EVIDENCE AS TO HIS MIND CONDITION IS NECESSARY; CASE AT BAR.— In *People v. Estrada,* We held that to ascertain a person's mental condition at the time of the act, evidence as to his mind condition is necessary, thus: To ascertain a person's 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. Here, while Dr. Sagun testified that accused-appellant was confined at the NCMH in 1996 and that accused-

appellant was diagnosed with Major Depression with Psychosis which progressed to Chronic Schizophrenia, no other evidence was presented to show that accused-appellant was insane immediately prior to or at the very moment that the crime was committed. Mere prior confinement into a mental institution does not automatically exonerate the accused-appellant from criminal liability in the absence of any evidence showing that accused-appellant was completely deprived of reason immediately prior or at the time of the commission of the crime. If at all, there is no evidence showing that the mental illness of the accused-appellant, as narrated by Dr. Sagun, constitutes insanity, in that, there is complete deprivation of his intelligence in committing the act.

3. ID.; HOMICIDE COMMITTED FOR FAILURE OF THE PROSECUTION TO PROVE ANY OF THE QUALIFYING CIRCUMSTANCES CHARGED IN THE INFORMATION, EVEN WITH THE ADMISSION OF THE CRIME IN DEFENSE OF INSANITY.— We hold that accused-appellant can only be convicted of the crime of Homicide for failure of the prosecution to prove the existence of any of the qualifying circumstance provided for under the Revised Penal Code (RPC), as charged in the Information. x x x [I]n order that a person can be convicted of the crime of murder, the prosecution must establish (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. x x x In the present case, all the elements of the crime of murder does not exist. It is well-settled that the qualifying circumstances must be specifically alleged in the Information and duly proven with equal certainty as the crime itself. While the qualifying circumstances of treachery, evident premeditation and nighttime were alleged in the Information, the prosecution failed to prove the same during the trial. x x x The mere fact that the accused-appellant pleaded the defense of insanity and as a consequence admitted the commission of the crime, the same should not be construed as an abdication of the prosecution's duty to prove with certainty the existence of the qualifying circumstances alleged in the Information.

4. ID.; ARSON; TO DETERMINE WHETHER THE CRIME COMMITTED IS ARSON ONLY, OR MURDER, OR

ARSON AND HOMICIDE OR MURDER, AS THE CASE MAY BE, THE MAIN OBJECTIVE OF THE ACCUSED IS TO BE EXAMINED.— In order to determine whether the crime committed is arson only, or murder, or arson and homicide or murder, as the case may be, the main objective of the accused is to be examined. If the main objective is the burning of the building or edifice, but death results by reason or on the occasion of arson, the crime is simply arson, and the resulting homicide is absorbed. If, on the other hand, the main objective is to kill a particular person who may be in a building or edifice, when fire is resorted to as the means to accomplish such goal the crime committed is murder only. Lastly, if the objective is, likewise, to kill a particular person, and in fact the offender has already done so, but fire is resorted to as a means to cover up the killing, then there are two separate and distinct crimes committed — homicide/murder and arson. x x x [Here,] the prosecution was able to sufficiently prove that the accused-appellant burned the house of the victim in order to hide or conceal the commission of the crime. It was established that accused-appellant first beheaded the victim before setting the latter's house on fire. Therefore, two separate crimes were committed by the accused-appellant, homicide and arson.

5. **ID.; HOMICIDE AND DESTRUCTIVE ARSON; PENALTY AND DAMAGES.—** Article 249 of the RPC, a person convicted of the crime of homicide shall be punished with *reclusion temporal.* In this case, due to the absence of any mitigating or aggravating circumstance, the penalty shall be imposed in its medium period, which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and for (4) months. x x x [A]pplying the Indeterminate Sentence Law, accused-appellant should be sentenced to an indeterminate penalty of **eight (8) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum** for the crime of Homicide. Insofar as the crime of Destructive Arson under Article 320 of the RPC as amended by R.A. No. 7659, accused-appellant should be sentenced with the penalty of *reclusion perpetua* in view of the R.A. No. 9346, prohibiting the imposition of the death penalty. x x x In view of the prevailing jurisprudence, in Criminal Case No. 7522 (Homicide), accused-appellant is directed to pay the heirs of the victim with ₱50,000.00 as civil indemnity and ₱50,000.00

as moral damages. In Criminal Case No. 7523 (Destructive Arson), the accused-appellant is directed to pay the heirs of the victim with ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages. Further, We impose a six percent (6%) legal interest on the total amounts awarded to the heirs of the victim counted from the date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

For automatic review is the Decision[1] dated July 1, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06123 which affirmed the Decision[2] dated October 8, 2012 of the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 76, in Criminal Case Nos. 7522 and 7523 finding Wilson Cacho *y* Songco (accused-appellant) guilty of the crimes of Murder and Destructive Arson.

Accused-appellant is charged with the crime of Murder under the following Information, to wit:

Criminal Case No. 7522

That on or about the 1st day of January 2004, in the Municipality of Rodriguez, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed deadly weapon, with intent to kill, and with attendant qualifying circumstance of treachery, evident premeditation and

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[1] Penned by Associate Justice Amelita G. Tolentino, concurred in by Associate Justices Leoncia R. Dimagiba and Carmelita Salandanan-Manahan; *rollo,* pp. 2-9.

[2] Penned by Judge Josephine Zarate-Fernandez; CA *rollo*, pp. 42-49.

nighttime which changes the nature of the felony to a Heinous crime of Murder, did then and there willfully, unlawfully, and feloniously attack, assault and hack with said weapon and behead one MARIO BALBAO Y ADAMI, which resulted in his death soon thereafter.

CONTRARY TO LAW.[3]

Likewise, accused-appellant is charged with the crime of Destructive Arson under the following Information:

Criminal Case No. 7523

That on or about the 1st day of January 2004, in the Municipality of Rodriguez, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the deliberate intent to cause destruction to the house of MARIO BALBAO Y ADAMI, did then and there willfully, unlawfully, and feloniously set fire to and burn the said house causing its total destruction for the purpose of concealing or destroying evidence of the commission of the crime of Murder with attendant special aggravating circumstance that the offender was motivated by spite or hatred towards the owner of the property in the commission of the felony.

CONTRARY TO LAW.[4]

Upon arraignment, the accused-appellant pleaded not guilty to the crimes charged. Trial ensued.

The following undisputed facts as summarized by the CA are as follows:

On January 2, 2004, at around 8:10 o'clock in the morning, PO2 Emelito Salen (PO2 Salen) and SPO4 Onofre Tavas (SPO4 Tavas) of the Rodriguez Police Station received a report from a certain Willy Cacho about a fire in Sitio Catmon, Brgy. San Rafael, Rodriguez, Rizal. PO2 Salen and SPO4 Tavas, who were accompanied by members of the Bureau of Fire Protection, namely: SFO1 Damasa Viscara and FO2 Casiple, went to Sitio Catmon to verify said report.

Upon arriving in Sitio Catmon, the police officers saw a burned house, which was owned by a certain Boy who was later identified

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[3] *Id.* at 42.

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

as Mario Balbao. Upon investigation, they discovered a burned body of a headless man underneath an iron sheet. Willy Cacho informed the police officers that it was his brother, [accused-appellant], who killed Boy. [Accused-appellant's] wife likewise told the police officers that her husband was a patient of [the] National Center for Mental Health and has a recurring mental illness.

Thereafter, the police officers went to the house of [accused-appellant] where they saw a shallow pit measuring one (1) foot in diameter and five (5) inches deep with a steel peg standing at the center, which they believed was used to bum a head because there were traces of ash and a human skull on top of the heap of charcoal. The police officers then saw [accused-appellant] in his backyard. Upon introducing themselves as police officers, [accused-appellant] acted strangely and exhibited signs of mental illness. According to SPO4 Tavas, [accused-appellant] admitted killing Boy and burning the latter's house but did not say why he did it.

When they tried to arrest him, [accused-appellant] became wild. The police officers sought help from other people to subdue [accused-appellant] and to place him inside the mobile car. [Accused-appellant] was then brought to the prosecutors [sic] office for inquest proceedings. After the inquest, [accused-appellant] was brought to the National Center for Mental Health for confinement.[5]

After trial, the RTC found accused-appellant guilty of the crimes of Murder and Destructive Arson, in its Decision[6] dated October 8, 2012, thus:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. 7522, finding [accused-appellant] **GUILTY** beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code, as amended and sentencing him to suffer the penalty of *Reclusion Perpetua* and to indemnify the heirs of the victim in the amount of ₱50,000.00 as death indemnity and ₱50,000.00 as moral damages. No pronoucement as to cost.

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[5] *Rollo,* pp. 2-3.

[6] CA *rollo,* pp. 42-49.

2. In Criminal Case No. 7523, finding [accused-appellant] **GUILTY** beyond reasonable doubt of the crime of Destructive Arson (Article 320 par[.] 5 RPC as amended by Sec[.] 10 of R[.]A[. No.] 7659) and sentencing him to suffer the penalty of *Reclusion Perpetua.* No pronouncement as to cost.

[Accused-appellant] is hereby ordered to be committed to the National Bilibid Prisons, Muntinlupa City for service of sentence.

[Accused-appellant] is to be credited for the time spent for his preventive detention in accordance with Art[.] 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. 214.

SO ORDERED.[7]

The RTC only dealt with the issue of insanity. Since the accused-appellant raised the defense of insanity, the RTC ruled that he already admitted the commission of the crime. Thus, accused-appellant was tried on the issue of insanity alone.

Upon appeal, the CA affirmed the judgment of conviction of the accused-appellant of the crimes charged in its Decision[8] dated July 1, 2014, to wit:

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The decision dated October 8, 2012 of the [RTC] of San Mateo, Rizal, Branch 76 is **AFFIRMED**.

SO ORDERED.[9]

Issues

The issues to be resolved in this case are: 1) whether the accused-appellant sufficiently proved his defense of insanity; and 2) whether the crimes of Murder and Destructive Arson were sufficiently proved.

Ruling of the Court

At the outset, appeal in criminal cases throws the whole open for review and it is the duty of the appellate court to correct,

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

[8] *Rollo,* pp. 2-9.

[9] *Id*. at 8.

cite and appreciate errors in the appealed judgment whether they are assigned or unassigned.[10] After a careful review and scrutiny of the records, We hold that the accused-appellant can only be convicted of Homicide and Destructive Arson.

Accused-appellant was not able to sufficiently prove his defense of insanity.

Accused-appellant alleges that he was diagnosed with Major Depression with Psychosis in 1996 for which he was admitted at the National Center for Mental Health (NCMH) for two (2) months. Thereafter, he was discharged when there were no longer any symptom that was observed. Then on January 7, 2004, he was again admitted to the NCMH and it was discovered that his Major Depression with Psychosis had already progressed to Chronic Schizophrenia. Thus, his defense of insanity was sufficiently proved by his medical record with the NCMH as well as the expert testimony of Dr. Sagun.[11]

In the case of *People v. Isla,*[12] it stated that:

> Article 12 of the [RPC] provides for one of the circumstances which will exempt one from criminal liability which is when the perpetrator of the act was an imbecile or insane, unless the latter has acted during a lucid interval. This circumstance, however, is not easily available to an accused as a successful defense. Insanity is the exception rather than the rule in the human condition. Under Article 800 of the Civil Code, the presumption is that every human is sane. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence. It is in the nature of confession and avoidance. An accused invoking insanity admits to have committed the crime but claims that he or she is not guilty because of insanity. x x x.[13] (Citation omitted)

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[10] *People v. Dahil, et al.,* 750 Phil. 212, 225 (2015).

[11] CA *rollo,* p. 27.

[12] 699 Phil. 256 (2012).

[13] *Id*. at 226-267.

When the accused raised the defense of insanity, he is tried on the issue of sanity alone, and if found to be sane, a judgment of conviction is rendered without any trial on the issue of guilt, because the accused had already admitted committing the crime.[14]

However for the defense of insanity to be successfully invoked as a circumstance to evade criminal liability, it is necessary that insanity must relate to the time immediately preceding or simultaneous with the commission of the offense with which the accused is charged. Otherwise, he can be held guilty for the said offense. In short, in order for the accused to be exempted from criminal liability under a plea of insanity, he must successfully show that: (1) he was completely deprived of intelligence; and (2) such complete deprivation of intelligence must be manifest at the time or immediately before the commission of the offense.[15]

Accused-appellant having invoked the defense of insanity, he is deemed to have admitted the commission of the crime. As such, he is bound to establish with certainty that he is completely deprived of intelligence because of his mental condition or illness.

After the careful review of the records of the case, We found that the accused-appellant failed to prove that he is insane immediately prior or at the time of the commission of the crime.

Dr. Sagun testified as to accused-appellant's mental condition as follows:

Atty. Censon:

x x x x x x x x x

Q. Madam Witness, do you know one Wilson Cacho or have you happened to know a person named Wilson Cacho?
A. Yes, sir.

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[14] *People of the Philippines v. Christopher Mejaro Roa,* G.R. No. 225599, March 22, 2017.

[15] *Verdadero v. People,* G.R. No. 216021, March 2, 2016, 785 SCRA 490, 502, citing *People v. Isla, supra* note 12.

Q. On what occasion did you meet this person named Wilson Cacho?

A. I was able to examine the said patient on July 23 on his third consult at the forensic pavilion and then I was the one who admitted the patient on November 23, 2007, sir.

x x x x x x x x x

Q. What was on your finding on Wilson Cacho when he consulted you on July 23, 2007?

A. As per our records, the patient had been ill since he was 17 years old. His first consult was on July 15, 1996 and was admitted for two (2) months and was discharged on September 1996. A follow- up after a month, he was in the out-patient and then he was lost for follow-up for eight (8) years. He consulted again on January 7, 2004 where he was admitted and confined for five (5) days and after that two (2) years again, he consulted at the out-patient, now at the forensic pavilion. This was in November 24, 2006 and another consultation at our forensic pavilion on December 18, 2006. And on July 23, was our first consult in the out-patients and in November 24, that was the time we admitted the patient, sir.

x x x x x x x x x

Q. Madam Witness, you said that Mr. Wilson Cacho has been consulting with the National Center for Mental Health since he was 17 years of age, and do you know what was the finding that made him to be admitted for two (2) months?

A. Based on our records, he was diagnosed with major depression with psychosis in 1996 and then after three (3) months, his first consult at the out-patient, he was diagnosed now with psychosis and in the second admission in January 7, 2004, he was diagnosed with schizophrenia, sir.

x x x x x x x x x

Q. You said that accusd Wilson Cacho was admitted for two (2) months in the year 1996 and you said he was discharged, for what reason he was [sic] discharged?

A. Basing from the presenting complaint when he was admitted there where remissions, there were no symptoms seen or observed so he was discharged and was requested to have regular follow-ups, sir.

Q. In his history was he given or recommended to take medicines?
A. Yes, sir.

Q. So, what medicine was recommended for him to take when he was discharged for the first time in 1996?
A. He was given anti-psychotic and anti-depressant, sir.

x x x x x x x x x

Q. Awhile ago I asked you what will happen to a person who have been prescribed these medicines and he fails to take them?
A. Most of them will have relapse. The symptoms would go back, sir.

Q. Do you know the cost of these medicines if you take it regularly?
A. At that time I cannot recall but at this present time, halluperidol can cost from ₱20.00 to ₱50.00 a day and the anti-depression can cost ₱20.00 to ₱100.00 a day, sir.

Q. Can you consider that affordable to persons who even fails to eat three (3) times a day?
A. No, sir.

Q. Can you please tell the date again when this patient consulted again to your hospital?
A. He came back on January 7, 2004 after eight (8) years of follow-up, sir.

Q. For what reason was he made to consult your hospital?
A. Based on our records, the presenting complaint is that "nagwawala, nanghahabol ng itak," sir.[16]

In *People v. Estrada,*[17] We held that to ascertain a person's mental condition at the time of the act, evidence as to his mind condition is necessary, thus:

To ascertain a person's 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

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[16] TSN, March 24, 2011, pp. 4-7.

[17] 389 Phil. 216 (2000).

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.[18]

Here, while Dr. Sagun testified that accused-appellant was confined at the NCMH in 1996 and that accused-appellant was diagnosed with Major Depression with Psychosis which progressed to Chronic Schizophrenia, no other evidence was presented to show that accused-appellant was insane immediately prior to or at the very moment that the crime was committed. Mere prior confinement into a mental institution does not automatically exonerate the accused-appellant from criminal liability in the absence of any evidence showing that accused-appellant was completely deprived of reason immediately prior or at the time of the commission of the crime. If at all, there is no evidence showing that the mental illness of the accused-appellant, as narrated by Dr. Sagun, constitutes insanity, in that, there is complete deprivation of his intelligence in committing the act.

We therefore find no cogent reason to reverse the RTC and the CA in its finding that accused-appellant was not able to prove his defense of insanity. However, We hold that accused-appellant can only be convicted of the crime of Homicide for failure of the prosecution to prove the existence of any of the qualifying circumstance provided for under the Revised Penal Code (RPC), as charged in the Information.

Accused-appellant is liable for the crime of Homicide.

Article 248 of the RPC provides that:

Art. 248. *Murder.* — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

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[18] *Id*. at 233.

1. **With treachery,** taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. **With evident premeditation.**
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Under the above provision in order that a person can be convicted of the crime of murder, the prosecution must establish (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.[19]

In the Information, it was alleged that the circumstances of treachery, and evident premeditation qualified the crime to murder.

In *People v. Zulieta,*[20] the Court held that:

"There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording

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[19] *People v. Lagman,* 685 Phil. 733, 743 (2012).

[20] 720 Phil. 818 (2013).

the hapless, unarmed, and unsuspecting victim no chance to resist or escape." Otherwise stated, an unexpected and sudden attack which renders the victim unable and unprepared to put up a defense is the essence of treachery.[21]

While, in *Isla,*[22] the Court ruled that for evident premeditation to be considered as a qualifying circumstance, it is necessary that:

> (1) a previous decision by the accused to commit the crime; (2) overt act/acts manifestly indicating that the accused clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of his acts. x x x The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment. x x x.[23]

In the present case, all the elements of the crime of murder does not exist. It is well-settled that the qualifying circumstances must be specifically alleged in the Information and duly proven with equal certainty as the crime itself.[24] While the qualifying circumstances of treachery, evident premeditation and nighttime were alleged in the Information, the prosecution failed to prove the same during the trial. In fact, the prosecution failed to present any evidence showing the existence of the circumstances which would qualify the crime to murder. The mere fact that the accused-appellant pleaded the defense of insanity and as a consequence admitted the commission of the crime, the same should not be construed as an abdication of the prosecution's duty to prove with certainty the existence of the qualifying circumstances alleged in the Information.

Since the prosecution was not able to prove the existence of the qualifying circumstances of treachery, evident premeditation

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[21] *Id*. at 826.

[22] *People v. Isla, supra* note 12.

[23] *Id*. at 270.

[24] *People v. Garcia,* 722 Phil. 60, 73 (2013).

and nighttime, accused-appellant can only be convicted of the crime of Homicide and not murder.

Accused-appellant is liable for a separate crime of Destructive Arson.

Accused-appellant further claims that he should have been convicted only of the crime of murder and not both crimes of murder and arson since the finding that the burning of the house was an attempt to conceal the killing has no factual basis.

Arson is the malicious burning of property. Under Article 320 of the RPC, as amended, and Presidential Decree (P.D.) No. 1613,[25] Arson is classified into two kinds: (1) Destructive Arson (Article 320); and (2) other cases of arson (P.D. No. 1613).

Article 320 of the RPC, as amended by Republic Act (R.A.) No. 7659,[26] contemplates the malicious burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories and other military, government or commercial establishments by any person or group of persons.

In order to determine whether the crime committed is arson only, or murder, or arson and homicide or murder, as the case

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[25] AMENDING THE LAW ON ARSON. Approved on March 7, 1979.

[26] **Section 10.** Article 320 of the same Code is hereby amended to read as follows:

Art. 320. Destructive Arson. - The penalty of *reclusion perpetua* to death shall be imposed upon any person who shall burn;

1. One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, committed on several or different occasions.
2. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to, official governmental function or business, private transaction, commerce, trade, workshop, meetings and conferences, or merely incidental to a definite purpose such as but not limited to hotels, motels, transient dwellings, public conveyances or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and regardless also of whether the building is actually inhabited or not.

may be, the main objective of the accused is to be examined. If the main objective is the burning of the building or edifice, but death results by reason or on the occasion of arson, the crime is simply arson, and the resulting homicide is absorbed. If, on the other hand, the main objective is to kill a particular person who may be in a building or edifice, when fire is resorted to as the means to accomplish such goal the crime committed is murder only. Lastly, if the objective is, likewise, to kill a particular person, and in fact the offender has already done so, but fire is resorted to as a means to cover up the killing, then there are two separate and distinct crimes committed — homicide/murder and arson.[27]

Aside from the fact that accused-appellant already admitted to the commission of the crime of destructive arson due to his

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3. Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.

4. Any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service of public utilities.

5. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

Irrespective of the application of the above enumerated qualifying circumstances, the penalty of *reclusion perpetua* to death shall likewise be imposed when the arson is perpetrated or committed by two (2) or more persons or by a group of persons, regardless of whether their purpose is merely to burn or destroy the building or the burning merely constitutes an overt act in the commission or another violation of law.

The penalty of *reclusion perpetua* to death shall also be imposed upon any person who shall burn:

1. Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordinance, storehouse, archives or general museum of the Government.

2. In an inhabited place, any storehouse or factory of inflammable or explosive materials. If as a consequence of the commission of any of the acts penalized under this Article, death results, the mandatory penalty of death shall be imposed.

[27] *People v. Baluntong,* 629 Phil. 441, 446-447 (2010).

plea of insanity, which as We discussed above was not successfully proven, the prosecution was able to sufficiently prove that the accused-appellant burned the house of the victim in order to hide or conceal the commission of the crime. It was established that accused-appellant first beheaded the victim before setting the latter's house on fire.[28] Therefore, two separate crimes were committed by the accused-appellant, homicide and arson.

Penalty

Article 249[29] of the RPC, a person convicted of the crime of homicide shall be punished with *reclusion temporal.* In this case, due to the absence of any mitigating or aggravating circumstance, the penalty shall be imposed in its medium period, which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and for (4) months.

Under the Indeterminate Sentence Law,[30] if the offense is punished by the RPC, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the RPC, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense without first considering any modifying circumstances attendant to the commission of the crime. The determination of the minimum penalty is left

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[28] Records, p. 10.

[29] Art. 249. *Homicide.* — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal.*

[30] Section 1, Act No. 4103

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall

by the law to the sound discretion of the court and can be anywhere within the range of the penalty next lower in degree without considering the periods into which it might be subdivided.[31]

The penalty next lower in degree is *prision mayor.* Hence, applying the Indeterminate Sentence Law, accused-appellant should be sentenced to an indeterminate penalty of **eight (8) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum** for the crime of Homicide.

Insofar as the crime of Destructive Arson under Article 320 of the RPC as amended by R.A. No. 7659, accused-appellant should be sentenced with the penalty of *reclusion perpetua* in view of the R.A. No. 9346,[32] prohibiting the imposition of the death penalty.

Damages

In view of the prevailing jurisprudence,[33] in Criminal Case No. 7522, accused-appellant is directed to pay the heirs of the victim with ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

In Criminal Case No. 7523, the accused-appellant is directed to pay the heirs of the victim with ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages.

Further, We impose a six percent (6%) legal interest on the total amounts awarded to the heirs of the victim counted from the date of finality of this judgment until fully paid.

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sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[31] *Sim, Jr. v. CA,* 472 Phil. 503, 516-517 (2004).

[32] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Approved on June 24, 2006.

[33] *People v. Jugueta,* G.R. No. 202124, April 15, 2016, 788 SCRA 331.

WHEREFORE, the foregoing considered, the Decision dated July 1, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 06123 is hereby **AFFIRMED with MODIFICATIONS**, as follows:

1. In Criminal Case No. 7522, accused-appellant Wilson Cacho *y* Songco is found **GUILTY** beyond reasonable doubt of the crime of Homicide and sentenced to suffer an indeterminate penalty of **eight (8) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum**. Accused-appellant is further ordered to pay the heirs of the victim Mario Balbao *y* Adami the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. A legal interest of six percent (6%) *per annum* is likewise imposed on the total amount of damages counted from the finality of this Decision until fully paid.

2. In Criminal Case No. 7523, accused-appellant Wilson Cacho *y* Songco is found **GUILTY** beyond reasonable doubt of the crime of Destructive Arson and sentenced to suffer the penalty of ***reclusion perpetua.*** Accused-appellant is further ordered to pay the heirs of the victim Mario Balbao *y* Adami the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages. A legal interest of six percent (6%) *per annum* is likewise imposed on the total amount of damages counted from the finality of this Decision until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), *Leonardo-de Castro,* and *del Castillo, JJ.,* concur.

Carpio,[*] *J.,* on official leave.

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[*] Designated additional Member per Raffle dated August 23, 2017 *vice* Associate Justice Francis H. Jardeleza.

SECOND DIVISION

[G.R. No. 223679. September 27, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILFREDO LAYUG, NOEL BUAN and REYNALDO LANGIT,** *accused,* **WILFREDO LAYUG and NOEL BUAN,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.— Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.

2. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS.— What is important is that the prosecution was able to prove the existence of all the elements of the crime. x x x In *People v. De Jesus*, this Court had the occasion to meticulously expound on the nature of the crime of Robbery with Homicide, thus: x x x For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is *animo lucrandi*; and (4) by reason of the robbery or on the occasion thereof, homicide is committed.

3. ID.; ID.; TREACHERY IN THIS CRIME IS CONSIDERED A GENERIC AGGRAVATING CIRCUMSTANCE AS TO

THE KILLING.— In *People v. Baron*, this Court reiterated that treachery is not considered as a qualifying circumstance in the crime of robbery with homicide but as a generic aggravating circumstance, the presence of which merits the imposition of the higher penalty, x x x [R]obbery with homicide is classified as a crime against property. Nevertheless, treachery is a generic aggravating circumstance in said crime if the victim of homicide is killed treacherously. Thus, the aggravating circumstance of treachery is appreciated in the crime of robbery with homicide only as to the killing but not as to the robbery. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus, insuring its commission without risk to the aggressor and without any provocation on the part of the victim.

4. ID.; ID.; EVIDENT PREMEDITATION IS INHERENT IN THE CRIME.— Evident premeditation cannot be appreciated as an aggravating circumstance in the crime of robbery with homicide because the elements of which are already inherent in the crime. Evident premeditation is inherent in crimes against property.

5. ID.; ID.; PENALTY AND DAMAGES.— As to the penalty imposed, the RTC was correct in imposing the penalty of *reclusion perpetua* instead of Death considering that the latter penalty has been suspended by Republic Act No. 9346. As to the award of damages, this Court deems it proper to award exemplary damages in the amount of ₱100,000.00 per *People v. Jugueta,* in addition to the award of damages ordered by the RTC and the CA. Being corrective in nature, exemplary damages, therefore, can be awarded not only due to the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender.

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

PERALTA,[*] *J.*:

For consideration of this Court is the appeal of the Decision[1] dated April 23, 2015 of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 03500 affirming with modification the Decision[2] dated December 20, 2007 of the Regional Trial Court (*RTC*), Branch 5, Dinalupihan, Bataan in Criminal Case No. DH-1204-01, finding appellants Wilfredo Layug and Noel Buan guilty beyond reasonable doubt of the crime of robbery with homicide.

The facts follow.

According to Analiza L. Paule (*Analiza*), a state witness, around 7 o'clock in the evening of June 1, 2001, she was at the plaza in *Barangay* Luacan, Dinalupihan, Bataan talking with Ramil Ambrosio alias Janice (*Ramil*) and they were talking about her supposed "date" with the victim Victorino Paule (*Victorino*). Thereafter, she went to the house of appellant Wilfredo Layug (*Wilfredo*), located in the same *barangay* where they had a *shabu* session together with appellant Noel Buan (*Noel*). Afterwards, they went to the house of accused Reynaldo Langit (*Reynaldo*) where they continued their *shabu* session. During the said *shabu* session, Analiza overheard accused Reynaldo giving instructions to appellants Wilfredo and Noel about a "hold-up," but did not hear the name of the person intended to be held-up. After the *shabu* session, Analiza asked permission to go back to the public plaza of Dinalupihan as per her agreement with Ramil that she will meet her customer there. Upon arriving at the plaza, Ramil was already with the victim Victorino. Analiza was introduced to Victorino and they agreed that the latter will bring her to Benzi Lodge to have sex

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[*] Acting Chairperson, per Special Order No. 2487 dated September 19, 2017.

[1] Penned by Associate Justice Ramon A. Cruz, with the concurrence of Associate Justices Marlene Gonzales-Sison and Danton Q. Bueser; *rollo,* pp. 2-20.

[2] Penned by Executive Judge Jose Ener S. Fernando; CA *rollo,* pp. 8-22.

with her for ₱500.00. After reaching an agreement, Analiza and Victorino left Ramil at the plaza and went in front of the Dinalupihan Parish Church to look for a ride. They boarded a tricycle driven by Analiza's brother-in-law Jesus Ronquillo (*Jesus*). Thereafter, Analiza and Victorino checked-in at Benzi Lodge, while Jesus waited outside. After three hours, Analiza and Victorino went back to the plaza riding the same tricycle driven by Jesus. Victorino then talked to Ramil in the plaza and, thereafter, gave Analiza her ₱500.00 service fee. Since Victorino still wanted to have a good time with her, Analiza brought Victorino to the house of appellant Wilfredo. Analiza joined appellants Wilfredo and Noel, and accused Reynaldo in their *shabu* session, while Victorino waited inside the tricycle with Jesus. After fifteen to thirty minutes, appellants Wilfredo and Noel, and accused Reynaldo, asked Analiza to go with them to their hideout. Victorino went with them because the former knew them as fellow residents of *Barangay* Luacan. They all boarded the tricycle driven by Jesus and upon reaching Sitio Bucia, Pangalanggang, Dinalupihan, Bataan, appellant Noel asked Jesus to stop the tricycle. Analiza asked appellant Noel where they are going and the latter replied that they have to walk because the tricycle cannot enter the place. Appellant Noel alighted first and, thereafter, asked Victorino to also alight from the tricycle. Appellant Wilfredo and accused Reynaldo also alighted from the tricycle. After more or less three steps from the tricycle, appellant Noel held the shoulder of Victorino and stabbed him twice in front of his body which led the latter to lean forward. Appellant Wilfredo and accused Reynaldo surrounded Victorino and helped appellant Noel in stabbing Victorino. Victorino shouted "*Tulungan ninyo ako,*" as accused Reynaldo took his wallet, wristwatch and necklace. Because of fear, Analiza and Jesus remained in the tricycle, while Victorino was being stabbed and robbed. Thereafter, the three boarded the tricycle, and warned Analiza and Jesus not to report the incident to anybody or else they will also get killed. Analiza then alighted at the public plaza of Dinalupihan and proceeded to the house of her live-in partner for five days. Thereafter, she went to the Municipal Station of Dinalupihan because her

sister told her that Jesus was incarcerated at the Municipal Station of Dinalupihan, Bataan. She then executed a sworn statement regarding the incident.

Thus, the following information was filed against the appellants Wilfredo and Noel, and accused Reynaldo:

> That on or about June 1, 2001 in Dinalupihan, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to gain and intent to kill, with treachery, evident premeditation and taking advantage of superior strength, that is by stabbing Victorino L. Paule with bladed weapons on the different parts of his body, did then and there wilfully, unlawfully and feloniously take, steal, and carry away a necklace, wristwatch and wallet containing cash money [sic] amounting to ₱20,000.00 more or less, belonging to Victorino Paule, and as a result or on occasion of the said robbery, the said victim sustained mortal wounds which were the direct and immediate cause of his death thereafter, to the damage and prejudice of the heirs of the said Victorino Paule.
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> CONTRARY TO LAW.[3]

Aside from Analiza, testimonies of Dr. Roberto Castañeda, a Municipal Health Officer of Dinalupihan, Bataan, who conducted the medico-legal examination on the body of the victim, and Ramil Ambrosio were also presented during the trial on the merits. Based on the findings of Dr. Castañeda, the victim sustained a total of nineteen (19) stab wounds on the different parts of his body and that the cause of death was a massive hemorrhage due to multiple stab wounds at the front and back part of the victim's body. Ramil corroborated some parts of the testimony of Analiza.

Appellants and accused Reynaldo denied that they had any participation in the incident. Noel Buan claimed that around 7:00 p.m. of June 1, 2001, he was in the house of Councilor Boy Timog (*Boy*) where Noel was working as a houseboy. According to him, on that night, he was with Boy and his live-

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[3] CA *rollo,* pp. 8-9.

in partner, Emelita Lubag (*Emelita*). He then saw the victim, Victorino and Emelita seated together and that they were holding hands. When Boy woke up, he saw Victorino and Emelita holding hands. Boy, thereafter, asked Noel to invite Victorino for a drink which the latter accepted. They then had a drink, together with a certain Boy Nacu and when they were already a little bit drunk, Boy raised the issue of Victorino and Emelita holding hands. They continued drinking, when suddenly, Victorino and Boy had a heated confrontation. During the commotion, Boy picked up a knife and stabbed Victorino twice. Victorino ran away, but Boy was able to catch him. Victorino once again tried to run away, but Boy was able to intercept and the latter stabbed him, too. After the incident, Boy Nacu brought Noel to the house of Emelita. It was there that Boy Timog talked to Noel and told the latter to implicate Wilfredo and Reynaldo as the ones responsible for the killing of Victorino because Reynaldo and Emelita had a misunderstanding. Noel did not follow Boy Timog's instruction and the former got arrested after Analiza implicated him for the death of Victorino. Wilfredo, on the other hand, testified that he was at his home in Luacan, Dinalupihan, Bataan, at the time of the incident and denied that he knew Analiza.

The RTC found appellants and accused Reynaldo guilty beyond reasonable doubt of the crime of robbery with homicide. The dispositive portion of the decision reads as follows:

> WHEREFORE, premises considered, this court finds the accused Wilfredo Layug @ Aswang, Noel Buan @ Dadoy/Kuluping/Voltron, and Reynaldo Langit @ Rebong GUILTY beyond reasonable doubt of the crime of Robbery with Homicide, aggravated by treachery, evident premeditation and taking advantage of superior strength, and hereby sentences said accused to suffer the penalty of reclusion perpetua.
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> In addition, the said accused are hereby ORDERED to pay jointly and severally the heirs of the victim Victorino Paule, the amount of ₱75,000 by way of civil indemnity, ₱50,000 by way of temperate damages and the cost of litigation.

SO ORDERED.[4]

According to the RTC, all the elements of the crime of robbery with homicide are present. It also held that the prosecution was able to prove the existence of treachery, evident premeditation and taking advantage of superior strength, thus, the penalty imposed should be death, however, in view of Republic Act No. 9346, the penalty of *reclusion perpetua* is imposed.

A notice of appeal was filed and the RTC gave such due course. Accused Reynaldo filed a motion to withdraw his appeal which was granted by the RTC.

The CA dismissed the appeal of the appellants and affirmed the decision of the RTC with modifications, thus:

> WHEREFORE, in view of the foregoing, the assailed Decision dated December 20, 2007 of the Regional Trial Court of Dinalupihan, Bataan, Branch 5 in Criminal Case No. DH-1204-01 is hereby AFFIRMED WITH MODIFICATION as against accused-appellant Wilfredo Layug @ Aswang and Noel Buan @ Daboy/Kuluping/ Voltron.
>
> Accordingly, accused-appellants Wilfredo Layug and Noel Buan are hereby found GUILTY beyond reasonable doubt of the crime of Robbery with Homicide aggravated by treachery and evident premeditation, and are sentenced to suffer the penalty of reclusion perpetua. They are further ORDERED to pay, jointly and severally, the heirs of Victorino L. Paule the amounts of One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, One Hundred Thousand Pesos (₱100,000.00) as moral damages, Fifty Thousand Pesos (₱50,000.00) as temperate damages, and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.
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> In accordance with Our Resolution dated June 1, 2012 which granted Reynaldo Langit's request to withdraw his appeal, the Decision dated December 20, 2007 stands and shall not be disturbed as against Reynaldo Langit.
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> SO ORDERED.[5]

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[4] *Id.* at 22.

[5] *Rollo,* pp. 17-18.

The CA ruled that the prosecution was able to establish the guilt of all the accused beyond reasonable doubt. It also held that treachery and evident premeditation may be appreciated, but abuse of superior strength is absorbed by treachery. It further ruled that the award of moral damages is proper even in the absence of any allegation and proof of the heirs' emotional suffering.

Hence, the present appeal with both the appellants and the Office of the Solicitor General manifesting to this Court that they are adopting their respective Briefs instead of filing Supplemental Briefs.

Appellants raise the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT; AND

II.

ASSUMING THAT THE ACCUSED-APPELLANTS KILLED THE VICTIM, THE TRIAL COURT GRAVELY ERRED IN FINDING THAT TREACHERY, EVIDENT PREMEDITATION AND ABUSE OF SUPREIOR STRENGTH ATTENDED ITS COMMISSION.[6]

The appeal must fail.

In arguing that the prosecution failed to prove their guilt beyond reasonable doubt, the appellants pointed out the questionable credibility of the witnesses who testified against them. Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation.[7] This is because the trial

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[6] CA *rollo,* pp. 246-247.

[7] *Medina, Jr. v. People*, 724 Phil. 226, 234 (2014), citing *People v. Malicdem*, 698 Phil. 408, 416 (2012), *People v. Dumadag*, 667 Phil. 664, 674 (2011).

court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.[8] As aptly ruled by the CA:

> We agree with the RTC in giving full credence to the accounts of the eyewitnesses for the prosecution, particularly Analiza and Ambrosio's testimonies, as no evidence was adduced to refute them or to show why said witnesses would testify falsely against appellants. In the face of the positive identification by Analiza and Ambrosio, accused-appellants' defense of denial and alibi must fail. The said rule is that denials, as negative and self-serving evidence, do not deserve as much weight in law as positive and affirmative testimonies. Time and again, case law has held that positive identification of the accused, when categorical and consistent and without any showing of ill motive on the part of the eyewitnesses testifying, should prevail over the alibi and denial of the appellant whose testimony is not substantiated by clear and convincing evidence.[9]

What is important is that the prosecution was able to prove the existence of all the elements of the crime. The crime of robbery with homicide has been thoroughly discussed in *People v. Ebet*,[10] thus:

> In *People v. De Jesus*, this Court had the occasion to meticulously expound on the nature of the crime of Robbery with Homicide, thus:
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> Article 294, paragraph 1 of the Revised Penal Code provides:
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> Art. 294. *Robbery with violence against or intimidation of persons - Penalties.* - Any person guilty of robbery with the use of violence against or any person shall suffer:
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> The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have

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[8] *People v. Villacorta*, 672 Phil. 712, 719-720 (2011).

[9] *Rollo,* p. 12.

[10] 649 Phil. 181 (2010).

been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements:

(1) the taking of personal property is committed with violence or intimidation against persons;

(2) the property taken belongs to another;

(3) the taking is *animo lucrandi*; and

(4) by reason of the robbery or on the occasion thereof, homicide is committed.

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery

is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner. The prosecution is not burdened to prove the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment because the motive for robbery can exist regardless of the exact amount or value involved.

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the *situs* of the robbery.[11]

In this case, all the elements were proven by the prosecution beyond reasonable doubt. As correctly ruled by the CA:

In this case before Us, all the essential ingredients of robbery with homicide have been established by the prosecution with proof

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[11] *Id*. at 188-190, citing *People v. Pedroso*, 391 Phil. 43 (2000), *People v. Salazar*, 342 Phil. 745 (1997), *People v. Abuyen*, 288 Phil. 450 (1991), *People v. Ponciano*, 281 Phil. 694 (1991), *People v. Mangulabnan*, 99 Phil. 992 (1956), *People v. Puloc*, 279 Phil. 190 (1991), *People v. Corre, Jr.,* 451 Phil. 386 (2001), *People v. Carrozo*, 396 Phil. 764 (2000), *People v. Verzosa*, 355 Phil. 890 (1998), and *People v. Palijon*, 397 Phil. 545 (2000).

beyond reasonable doubt through the convincing testimony of Analiza. Through her testimony, it was established that personal properties and cash belonging to Victorino were taken by the appellants by means of force, and with an obvious intent to gain. Moreover, during the heist, Victorino was mercilessly and repeatedly stabbed by the appellants which resulted to his immediate death.[12]

Also, treachery was adequately proven by the prosecution and aptly appreciated by the RTC and the CA. In *People v. Baron,*[13] this Court reiterated that treachery is not considered as a qualifying circumstance in the crime of robbery with homicide but as a generic aggravating circumstance, the presence of which merits the imposition of the higher penalty, thus:

> As thoroughly discussed in *People v. Escote, Jr.*, treachery is not a qualifying circumstance but "a generic aggravating circumstance to robbery with homicide although said crime is classified as a crime against property and a single and indivisible crime". Corollarily, "Article 62, paragraph 1 of the Revised Penal Code provides that in diminishing or increasing the penalty for a crime, aggravating circumstances shall be taken into account. However, aggravating circumstances which in themselves constitute a crime especially punishable by law or which are included by the law in defining a crime and prescribing a penalty therefor shall not be taken into account for the purpose of increasing the penalty". In the case at bar, "treachery is not an element of robbery with homicide". Neither is it "inherent in the crime of robbery with homicide". As such, treachery may be properly considered in increasing the penalty for crime.[14]

Again, robbery with homicide is classified as a crime against property. Nevertheless, treachery is a generic aggravating circumstance in said crime if the victim of homicide is killed treacherously.[15] Thus, the aggravating circumstance of treachery is appreciated in the crime of robbery with homicide only as to the killing but not as to the robbery. The essence of treachery

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[12] *Rollo,* pp. 11-12.

[13] 635 Phil. 608 (2010).

[14] *People v. Baron, supra,* at 625-626. (Citations omitted)

[15] *People v. Escote, Jr.*, 448 Phil. 749, 788 (2003).

is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus, insuring its commission without risk to the aggressor and without any provocation on the part of the victim.[16] The CA, therefore, is correct in appreciating the aggravating circumstance of treachery in imposing the higher penalty as it was shown that the killing of the victim was done treacherously, thus:

> The RTC was correct in appreciating the aggravating circumstance of treachery. Treachery was established through Analiza's testimony that upon reaching the secluded place, Victorino was asked to alight from the tricycle and without any provocation on his part, was repeatedly stabbed and kicked by the accused-appellants. Here, Victorino was caught by surprise when he was immediately stabbed by Buan a few steps after they alighted from the tricycle. It shows that the victim was caught completely off-guard, which supports the existence of the first element of treachery, *i.e.,* a **sudden attack giving the victim no opportunity to defend himself or retaliate**. The second element is likewise present as the accused-appellants consciously and deliberately stabbed the victim as evidenced by the fact that all of them had knives in their possession when the stabbing incident happened.[17]

Evident premeditation, on the other hand, cannot be appreciated as an aggravating circumstance in the crime of robbery with homicide because the elements of which are already inherent in the crime. Evident premeditation is inherent in crimes against property.[18]

As to the penalty imposed, the RTC was correct in imposing the penalty of *reclusion perpetua* instead of Death considering that the latter penalty has been suspended by Republic Act No. 9346.

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[16] *People v. Calara*, 710 Phil. 477, 488 (2013).

[17] *Rollo,* p. 14. (Emphasis ours)

[18] *People v. Guiapar, et al.*, 214 Phil. 475, 490 (1984), citing *People v. Daos*, 60 Phil. 143, 155 (1934).

As to the award of damages, this Court deems it proper to award exemplary damages in the amount of ₱100,000.00 per *People v. Jugueta*,[19] in addition to the award of damages ordered by the RTC and the CA. Being corrective in nature, exemplary damages, therefore, can be awarded not only due to the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender.[20]

WHEREFORE, the Decision dated April 23, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 03500 affirming with modification the Decision dated December 20, 2007 of the Regional Trial Court, Branch 5, Dinalupihan, Bataan, in Criminal Case No. DH-1204-01 convicting appellants Wilfredo Layug and Noel Buan of the crime of Robbery with Homicide, as defined and penalized under Article 294 of the Revised Penal Code, is **AFFIRMED.** The same appellants are also **ORDERED** to **PAY,** jointly and severally, the heirs of the victim, the amount of ₱100,000.00 as exemplary damages per *People v. Jugueta*,[21] including all the damages awarded by the Court of Appeals, with legal interest on all the said damages awarded at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid**.**

SO ORDERED.

Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

Carpio, J., on official leave.

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[19] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[20] *Id*.

[21] *Id*.

SECOND DIVISION

[G.R. Nos. 224308-09. September 27, 2017]

FABRICATOR PHILIPPINES, INC., *petitioner, vs.* **JEANIE ROSE Q. ESTOLAS,**[*] *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; JUST CAUSES; SERIOUS MISCONDUCT; ELEMENTS.—** Article 297 (formerly Article 282) of the Labor Code, as amended, lists serious misconduct as one of the just causes for an employee's dismissal from work, pertinent portions of which read: Article 297 [282]. *Termination by Employer*. — An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; x x x Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for the dismissal within the text and meaning of the foregoing provision, the following elements must concur: (*a*) the misconduct must be serious; (*b*) it must relate to the performance of the employee's duties, showing that the employee has become unfit to continue working for the employer; and (*c*) it must have been performed with wrongful intent.

2. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF LABOR TRIBUNALS, RESPECTED.—** It is settled that "where the factual findings of the labor tribunals or agencies conform to, and are affirmed by the CA, the same are accorded respect and finality and are binding upon this Court," as in this case.

3. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; RELIEFS OF**

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[*] Referred to herself as "Jeanie Rose Estolas-Sacdalan" in her *Sinumpaang Salaysay* dated February 28, 2012. See *rollo*, pp. 84-88.

BACKWAGES AND REINSTATEMENT OR PAYMENT OF SEPARATION PAY.— As the fact of illegal dismissal has already been established, respondent is entitled to two (2) separate and distinct reliefs, namely: (*a*) backwages; and (*b*) reinstatement or the payment of separation pay if the reinstatement is no longer viable. As to backwages, the Court upholds the CA's award of the same in respondent's favor, as "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." x x x Anent the issue of reinstatement or payment of separation pay, it must be stressed that "[r]einstatement is a restoration to a state from which one has been removed or separated." However, "[u]nder the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust."

APPEARANCES OF COUNSEL

Cacho & Chua Law Offices for petitioner.
Legal Advocates for Workers Interest (LAWIN) for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated September 14, 2015 and the Resolution[3] dated May 2, 2016 of the Court of Appeals (CA) in CA-G.R. SP Nos. 133794 and 133833, which, *inter alia*, ruled that petitioner

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[1] *Id*. at 8-26.

[2] *Id*. at 31-42. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Florito S. Macalino and Zenaida T. Galapate-Laguilles concurring.

[3] *Id*. at 58-59.

Fabricator Philippines, Inc. (petitioner) illegally dismissed respondent Jeanie Rose Q. Estolas (respondent).

The Facts

The instant case arose from a complaint[4] for illegal dismissal with claims for moral damages, exemplary damages, and attorney's fees filed before the National Labor Relations Commission (NLRC) by respondent against petitioner, a domestic corporation engaged in the manufacture and sale of motorcycle parts,[5] and its President, Victor Lim (Lim).

Respondent alleged that petitioner hired her as a welder.[6] Before break time of July 2, 2011, while waiting for a replacement part she requested to be installed on the welding machine she was using, respondent took a seat and rested.[7] At that time, another employee, Rosario Banayad (Banayad), passed by and saw her sitting, then uttered "*Ayos ka ha*." The matter was brought to the attention of Assembly Action Team Leader, Warlito Abaya (Abaya), who confronted respondent about the said incident.[8] Thereafter, while Abaya and Banayad were talking to each other, respondent told the latter in the vernacular "*Ang kitid ng utak mo[.] [B]akit hindi mo muna ako tinanong kung bakit ako nakaupo[?] [B]akit hindi mo muna tinanong kung ano [ang] nasa likod ng nakita mo?*" Banayad retorted, saying, "*Matapang ka ha! Matapang ka!*" Respondent replied, "*Candy, ikaw pa naman ang nagdadasal araw-araw, tapos ganyan ang ugali mo!*"[9]

Consequently, Abaya directed respondent to see Lim in his office. During their meeting, the latter allegedly asked what

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[4] See Position Paper for the Complainant dated February 28, 2012; *id.* at 65-82.

[5] *Id*. at 92.

[6] *Id*. at 66.

[7] *Id*. at 32.

[8] *Id*.

[9] *Id*.

she would feel if he would hit her ear, then proceeded to hit her ear.[10] Respondent reasoned out that she did not hit Banayad's ear and that it was the latter who provoked her. However, Lim insisted that respondent was rude towards Banayad.[11] Thus, on July 13, 2011, respondent was issued a suspension order effective the following day for a period of three (3) days. While she was in the locker area, the company guard on duty informed respondent to report for work the following day.[12]

A few months later, or on October 17, 2011, Lim told respondent to resign and that his lawyer will see her on October 19, 2011.[13] On November 25, 2011, respondent was again instructed not to report for work until she and Lim have talked. On November 28, 2011, Lim directed respondent to sign a paper, which she refused as it pertained to the promotion of Banayad as Strategy and Control Group-Senior Assistant 1. On November 30, 2011, respondent received a letter[14] from Lim directing her to seek the assistance of a lawyer for the hearing on December 7, 2011. At the scheduled hearing, respondent was required to sign the statements of Banayad and other witnesses, which she refused to follow.[15] Thereafter, on December 16, 2011, respondent was served a notice[16] of termination effective December 17, 2011, finding her guilty of serious misconduct. Hence, respondent filed the aforementioned complaint.[17]

For their part,[18] petitioner and Lim maintained that respondent was validly dismissed for gross misconduct, as: (*a*) she was

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[10] *Id*.

[11] *Id*. at 33.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 109.

[15] *Id*. at 33.

[16] *Id*. at 112.

[17] *Id*. at 33.

[18] See Respondent's Position Paper dated February 9, 2012; *id.* at 91-102.

caught sitting down during office hours; and (*b*) she insulted and uttered offensive language towards her superior, Banayad.[19] They further pointed out that they sent respondent various memoranda regarding the incident, but the latter refused to receive the same. Thus, they were constrained to terminate her employment.[20]

The Labor Arbiter's Ruling

In a Decision[21] dated September 17, 2012, the Labor Arbiter (LA) ruled in favor of respondent, and accordingly, ordered petitioner and Lim to pay her separation pay with full backwages in the total amount of ₱167,324.29.[22]

The LA found that while respondent may have indeed committed acts of misconduct, the same were not willful and intentional in character. The LA added that there was no wrongful intent, but a mere spur of the moment incident prompted by a simple miscommunication among workmates.[23] As such, the penalty meted on respondent, *i.e.*, dismissal, was not commensurate to the offense charged against her.[24]

Aggrieved, petitioner and Lim appealed[25] to the NLRC.

The NLRC Ruling

Initially, the NLRC issued a Resolution[26] dated January 31, 2013 dismissing the appeal on technical grounds. Upon

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[19] *Id*. at 93.

[20] *Id*. at 34.

[21] *Id*. at 156-164. Penned by Labor Arbiter Michelle P. Pagtalunan.

[22] *Id*. at 164.

[23] *Id*. at 162.

[24] *Id*. at 163.

[25] See Appeal dated November 10, 2012; *id*. at 166-180.

[26] *Id*. at 184-189. Penned by Commissioner Dolores M. Peralta-Beley with Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap concurring.

reconsideration, however, the NLRC promulgated a Decision[27] dated August 30, 2013 modifying the LA ruling by deleting the award of separation pay and backwages, and in lieu thereof, ordered respondent's reinstatement to her former position without loss of seniority rights.[28]

The NLRC agreed with the LA's finding that while respondent indeed committed an act of misconduct, the same was not of a serious and grave character so as to warrant respondent's dismissal for a just cause.[29] However, the NLRC found it appropriate to delete the award of backwages in respondent's favor, opining that this is a commensurate penalty for the latter's act of professional misconduct.[30]

Both parties moved for reconsideration,[31] which were, however, denied in a Resolution[32] dated November 29, 2013. Dissatisfied, they elevated the matter to the CA *via* their respective petitions for *certiorari*.[33]

The CA Ruling

In a Decision[34] dated September 14, 2015, the CA reinstated the LA ruling with modifications: (*a*) ordering petitioner to pay respondent backwages from the time she was illegally dismissed until finality of the ruling less her salary for fifteen

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[27] *Id*. at 196-204.

[28] *Id*. at 204.

[29] *Id*. at 201-202.

[30] *Id*. at 201-204.

[31] See Partial Motion for Reconsideration filed by petitioner dated September 18, 2013; *id*. at 206-211. Respondent's Motion for Reconsideration is not attached to the *rollo*.

[32] *Id*. at 213-220.

[33] See *Certiorari* filed by petitioner dated February 3, 2014 (*id*. at 222-230) and Petition for *Certiorari* filed by respondent dated January 30, 2014 (*id*. at 234-263).

[34] *Id*. at 31-41.

(15) days corresponding to her suspension, and separation pay computed from the time respondent was hired until finality of the decision, plus legal interest of six percent (6%) per annum from finality of the decision until fully paid; (*b*) absolving Lim from any personal liability arising from respondent's illegal dismissal; and (*c*) ordering the LA to make a recomputation of the total monetary benefits awarded and due respondent.[35]

Agreeing with the findings of the labor tribunals *a quo*, the CA held that respondent's acts did not amount to gross misconduct that would have justified her termination from work.[36] In this regard, it found that the NLRC gravely abused its discretion in deleting the award of backwages, pointing out that respondent was already suspended for three (3) days for her misconduct, and thus, a second disciplinary proceeding, which resulted in her dismissal, as well as the consequent filing of the instant case, was no longer warranted.[37] Nonetheless, the CA opined that respondent's infraction was minor, for which a fifteen (15)-day suspension would have sufficed.[38]

Anent respondent's claim for moral damages, exemplary damages, and attorney's fees, the CA pointed out that she never appealed the LA ruling which did not grant her such monetary awards, rendering the same final as to her.[39] Moreover, she failed to present competent evidence to support her claims.[40]

Finally, the CA absolved Lim from any personal liability as it was not shown that he acted with malice and bad faith in dismissing respondent from service.[41]

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[35] *Id*. at 41.

[36] *Id*. at 36.

[37] *Id*. at 37.

[38] *Id*. at 35-37.

[39] *Id*. at 37.

[40] *Id*.

[41] *Id*. at 38.

Undaunted, petitioner moved for reconsideration,[42] but the same was denied in a Resolution[43] dated May 2, 2016; hence, this petition.[44]

The Issue Before the Court

The issue for the Court's Resolution is whether or not the CA correctly ruled that respondent was illegally dismissed.

The Court's Ruling

The petition is without merit.

Article 297 (formerly Article 282)[45] of the Labor Code,[46] as amended, lists serious misconduct as one of the just causes for an employee's dismissal from work, pertinent portions of which read:

> Article 297 [282]. *Termination by Employer*. – An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> x x x x x x x x x

[42] See Entry of Appearance with Motion for Reconsideration dated October 12, 2015; *id*. at 44-53.

[43] *Id*. at 58-59.

[44] *Id*. at 8-26.

[45] See Department of Labor and Employment Department Advisory No. 01, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED." See also Section 5 of Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011.

[46] Presidential Decree No. 442 entitled "A DECREE INSTITUTING A LABOR CODE, THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE," approved on May 1, 1974.

Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for the dismissal within the text and meaning of the foregoing provision, the following elements must concur: (*a*) the misconduct must be serious; (*b*) it must relate to the performance of the employee's duties, showing that the employee has become unfit to continue working for the employer; and (*c*) it must have been performed with wrongful intent.[47]

In this case, the tribunals *a quo* aptly observed that while respondent indeed committed some sort of misconduct when she engaged in a verbal tussle with Banayad during work hours and in front of their superior, Abaya, the same was not serious enough to warrant respondent's dismissal. Neither was it shown that respondent performed such act of misconduct with wrongful intent nor did the same render her unfit to continue working for petitioner. As such, the tribunals *a quo* correctly concluded that petitioner illegally dismissed respondent. It is settled that "where the factual findings of the labor tribunals or agencies conform to, and are affirmed by the CA, the same are accorded respect and finality and are binding upon this Court,"[48] as in this case.

Moreover, it is well to stress that on July 13, 2011, petitioner already issued an order suspending respondent for a period of three (3) days on account of her misconduct.[49] Thus, petitioner could no longer subject respondent to another disciplinary proceeding based on the same act of misconduct. Clearly, respondent could not have been validly terminated from work.

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[47] See *Imasen Philippine Manufacturing Corporation v. Alcon*, 746 Phil. 172, 181 (2014); citations omitted.

[48] *Centennial Transmarine, Inc. v. Quiambao*, 763 Phil. 411, 424 (2015), citing *Superior Packaging Corporation v. Balagsay*, 697 Phil. 62, 68-69 (2012).

[49] See *rollo*, pp. 33 and 37.

As the fact of illegal dismissal has already been established, respondent is entitled to two (2) separate and distinct reliefs, namely: (*a*) backwages; and (*b*) reinstatement or the payment of separation pay if the reinstatement is no longer viable.[50]

As to backwages, the Court upholds the CA's award of the same in respondent's favor, as "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal."[51] However, the CA erred in imposing on respondent a fifteen (15)-day suspension for the latter's acts, with the equivalent monetary value corresponding to such suspension to be deducted from respondent's award of backwages. To reiterate, respondent was already meted a three (3)-day suspension for her act of misconduct and hence could no longer be further penalized for the same,[52] which thus renders such further penalty from the CA without any legal basis. In this light, the Court deems it appropriate to delete the aforesaid erroneous imposition, and consequently, award full backwages to respondent.

Anent the issue of reinstatement or payment of separation pay, it must be stressed that "[r]einstatement is a restoration to a state from which one has been removed or separated."[53] However, "[u]nder the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no

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[50] See *Reyes v. RP Guardians Security Agency, Inc.*, 708 Phil. 598, 604 (2013); citations omitted.

[51] *Id.*; citation omitted.

[52] See *rollo*, pp. 33 and 37.

[53] See *Reyes v. RP Guardians Security Agency, Inc.*, *supra* note 50; citation omitted.

longer trust."[54] In this case, while the LA and the CA did not discuss the basis for awarding separation pay in lieu of reinstatement, the Court nonetheless deems such award proper, considering that the underlying circumstances which led to respondent's unlawful termination, which had certainly created an atmosphere of animosity and antagonism between the employer and the employee, and hence, warrants the application of the doctrine of strained relations.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated September 14, 2015 and the Resolution dated May 2, 2016 of the Court of Appeals (CA) in CA-G.R. SP Nos. 133794 and 133833 are hereby **AFFIRMED** with **MODIFICATION,** deleting the deduction of salary/wages for fifteen (15) days from the award of backwages in favor of respondent Jeanie Rose Q. Estolas. The rest of the CA ruling **STANDS**.

SO ORDERED.

Peralta[**] *(Acting Chairperson)*, *Caguioa,* and *Reyes, Jr., JJ.,* concur.

Carpio, J., on official time.

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[54] See *Sumifru (Philippines) Corporation v. Baya*, G.R. No. 188269, April 17, 2017, citing *Dreamland Hotel Resort v. Johnson*, 729 Phil. 384, 400-401 (2014).

[**] Acting Chairperson per Special Order No. 2487 dated September 19, 2017.

SECOND DIVISION

[G.R. No. 224973. September 27, 2017]

GINA LEFEBRE, joined by her husband, DONALD LEFEBRE, *petitioners, vs.* **A BROWN COMPANY, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; HOUSING AND LAND USE REGULATORY BOARD (HLURB) RULES; THE DECISION OF THE HLURB BOARD OF COMMISSIONERS (BOC) SHALL BE FINAL AND EXECUTORY WITHIN 15 DAYS AFTER RECEIPT THEREOF UNLESS AN APPEAL HAS BEEN FILED TO THE OFFICE OF THE PRESIDENT.— Section 60 (b), Rule 17 of the 2011 Revised Rules of Procedure of the HLURB (HLURB Rules) provides that the decision or resolution of the HLURB BOC shall become final and executory within 15 days after receipt thereof unless an appeal has been filed: x x x In this relation, Section 2, Rule XXI of HLURB Resolution No. 765, Series of 2004 prescribes that the decisions of the HLURB-BOC may be appealed to the Office of the President.

2. ID.; ID.; ID.; ID.; PETITION FOR *CERTIORARI* FILED BEFORE THE CA INSTEAD OF APPEAL FILED BEFORE THE OFFICE OF THE PRESIDENT IS A VIOLATION OF THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.— [R]espondent did not interpose an appeal before the Office of the President as it proceeded to file a petition for *certiorari* before the CA; hence, respondent clearly violated the doctrine of exhaustion of administrative remedies. In *Teotico v. Baer*, the Court upheld the dismissal of therein petitioner's appeal on the ground of failure to exhaust the same administrative remedy before the HLURB: x x x As a general rule therefore, "[t]he rules of procedure must be faithfully followed, **except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply within the prescribed procedure**." However, case law states

that "**[c]oncomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules**." In this case, not only did respondent fail to adequately explain its failure to abide by the rules; more significantly, there is also no palpable persuasive reason to relax the rules of procedure considering that the HLURB-BOC actually rendered a correct ruling in this case.

3. **ID.; ID.; REALTY INSTALLMENT BUYER PROTECTION ACT (RA 6552); CANCELLATION OF CONTRACT; THE CONTRACT TO SELL REMAINED VALID AND SUBSISTING FOR FAILURE TO REFUND FULL PAYMENT OF THE CASH SURRENDER VALUE.—** As the HLURB-BOC aptly pointed out, the Contract to Sell between the parties remained valid and subsisting in view of respondent's failure to observe the proper procedure in cancelling the said contract, particularly on the full payment of the cash surrender value to Lefebre as prescribed under Section 3 (b) of RA 6552, x x x In *Active Realty & Development Corp. v. Daroya*, the Court held that the failure to cancel the contract in accordance with the provisions of Section 3 of RA 6552 renders the contract to sell between the parties valid and subsisting. The Court emphasized that the mandatory requirements of notice of cancellation and payment of cash surrender value is needed for a "valid and effective cancellation" under the law.

4. **ID.; ID.; THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE (PD 957); FOR FAILURE OF THE DEVELOPER IN ITS OBLIGATION ON COMPLETION, THE BUYER HAS THE OPTION TO DEMAND REIMBURSEMENT OF THE TOTAL AMOUNT PAID TO THE DEVELOPER, DESPITE THE DELINQUENCY OF THE BUYER (A GROUND TO CANCEL THE CONTRACT BUT WHICH WAS NOT PROPERLY INVOKED).—** [A]s the Contract to Sell remained valid, Lefebre was well within her right to invoke Section 20 (Time of Completion), in relation to Section 23 (Non-Forfeiture of Payments), of PD 957 x x x In *Tamayo v. Huang*, the Court explained that: In case the developer of a subdivision or condominium fails in its obligation under Section 20, Section 23 gives the buyer the option to demand reimbursement of the total amount paid, or to wait for further development of the

subdivision, and when the buyer opts for the latter alternative, he may suspend payment of installments until such time that the owner or developer had fulfilled its obligation to him. In this case, both the HLU Arbiter and HLURB-BOC observed that respondent could not anymore deliver on its promise of developing a Manresa 18-Hole All Weather Championship Golf Course, as advertised in its various promotion materials. Accordingly, Lefebre, as the buyer, may exercise her option to be reimbursed of the total amount she had paid to the developer, less penalties or surcharges, x x x Also, notwithstanding Lefebre's failure to abide by her own obligation to timely pay the amortizations due, the fact remains that respondent also had its own obligation to deliver on its promise. x x x Unfortunately for respondent, it failed to properly invoke Lefebre's delinquency as a ground to cancel their contract, whereas Lefebre was able to properly invoke her ground against respondent.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE PARTY WHO SEEKS TO AVAIL OF THE RIGHT TO APPEAL MUST COMPLY WITH THE REQUIREMENTS OF THE RULES; *CERTIORARI* IS NOT A SUBSTITUTE FOR A LOST APPEAL.— Jurisprudence dictates that the "perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. **The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.**" Notably, "[t]he right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost." x x x Apropos thereto, the well-settled rule is that "*[c]ertiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy. [Verily,] *[c]ertiorari* is not a substitute for a lost appeal."

APPEARANCES OF COUNSEL

Sapalo Velez Bundang & Bulilan for petitioners.
Soriano Saarenas & Associates for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 8, 2015 and the Resolution[3] dated May 24, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 04582-MIN, which set aside the Decision[4] dated May 10, 2011 of the Housing and Land Use Regulatory Board (HLURB)-Board of Commissioners (BOC) in HLURB Case No. REM-A-110224-01374 and, instead, reinstated the Decision[5] dated January 5, 2011 of the Housing and Land Use (HLU) Arbiter in HLURB Case No. REM-x-33010-001 ordering respondent A Brown Company, Inc. (respondent) to comply with the provisions of Republic Act No. (RA) 6552[6] on the prior payment of cash surrender value before the actual cancellation of the contract to sell subject of this case could be effected.

The Facts

Sometime in 1998, petitioner Gina Lefebre (Lefebre) made a reservation to buy a residential lot in Xavier Estates developed by respondent in view of the latter's representation that a Manresa 18-Hole All Weather Championship Golf Course would be

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[1] *Rollo*, pp. 8-32.

[2] *Id.* at 34-45. Penned by Associate Justice Edgardo A. Camello with Associate Justices Henri Jean Paul B. Inting and Rafael Antonio M. Santos concurring.

[3] *Id*. at 47-49. Penned by Associate Justice Edgardo A. Camello with Associate Justices Rafael Antonio M. Santos and Perpetua T. Atal-Paño concurring.

[4] *Id*. at 270-273. Signed by Representative, DILG *Ex-Officio* Commissioner Domnina T. Rances and Commissioners Luis A. Paredes and Ria Corazon A. Golez-Cabrera.

[5] *Id*. at 149-152. Signed by HLU Arbiter Gonzalo CH. Tumulak.

[6] Entitled "*AN ACT TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS,*" otherwise known as the "Realty Installment Buyer Protection Act," approved on August 26, 1972.

developed. From the original reservation for a 576-square meter parcel of land, Lefebre upgraded her reservation to a 1,107-square meter lot that was priced at ₱5,313,600.00 as her husband, petitioner Donald Lefebre (collectively, petitioners), a Belgian businessman, plays golf.[7] Thus, a Contract to Sell[8] was executed with the following stipulations: (*a*) 30% down payment of ₱1,594,080.00 which included the ₱10,000.00 reservation fee paid on December 31, 1998; and (*b*) the balance to be amortized equally in 84 months.[9] However, contrary to respondent's representation, the golf course was not developed and the Contract to Sell was cancelled for failure of Lefebre to pay the remaining balance which the latter offered to settle in a period of six (6) months.[10]

Consequently, Lefebre filed a Complaint[11] for Misleading and Deceptive Advertisement, Annulment of Rescission of Contract to Sell, Damages and Other Relief against respondent before the HLURB, Regional Office No. X. She claimed that she had already paid a total of ₱8.1 million including interests and surcharges and that her unpaid balance was only ₱1,345,722.18.[12] Thus, Lefebre prayed that respondent comply with its obligation to develop the golf course or refund in full their payments with interest, among others.[13]

For its part,[14] respondent countered that as early as 2001, Lefebre had already been remiss in her monthly obligations and that despite the grace periods accorded, she still failed to settle the same, prompting respondent to cancel the reservation

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[7] See *rollo*, pp. 34-35 and 149-150.

[8] *Id.* at 80-83.

[9] See *id.* at 10 and 80.

[10] See *id.* at 35 and 150-151.

[11] Dated September 1, 2009. *Id*. at 66-77.

[12] See *id*. at 69.

[13] See *id*. at 75.

[14] See Answer dated May 13, 2010; *id*. at 99-105.

application and contract to sell. Respondent further claimed that the misleading and deceptive advertisement regarding the golf-course was never raised by Lefebre and was merely brought up as an afterthought to justify her default.[15]

The HLU Arbiter's Ruling

In a Decision[16] dated January 5, 2011, the HLU Arbiter ruled in favor of respondent, holding that the claim of misleading and deceptive advertisement of the promised golf-course was only raised by Lefebre after she failed to settle her obligations, and after several notices of cancellation have been sent. Thus, the HLU Arbiter held that Lefebre cannot find refuge in Section 23 of Presidential Decree No. (PD) 957[17] relative to the non-forfeiture of installment payments since the latter failed to give prior notice of the decision to discontinue payment due to non-development of the golf course. However, the HLU Arbiter stated that Lefebre was entitled to the cash surrender value of the payments made before the Contract to Sell may be actually cancelled pursuant to Section 3 of RA 6552. Lastly, in view of respondent's admission that it had not developed the advertised golf course, the case was indorsed to the Monitoring Section for further investigation and evaluation so that appropriate sanctions, if any, may be imposed.[18]

Dissatisfied, Lefebre filed an appeal.[19]

The HLURB BOC Ruling

In a Decision[20] dated May 10, 2011, the HLURB BOC set aside the HLU Arbiter's decision.[21] It ruled that the Contract

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[15] See *id.* at 36 and 103-105.

[16] *Id.* at 149-152.

[17] Entitled "REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF," otherwise known as "The Subdivision And Condominium Buyers' Protective Decree," dated July 12, 1976.

[18] See *rollo*, pp. 151-152.

[19] See Complainant's Memorandum of Appeal dated February 15, 2011; *id*. at 153-165.

[20] *Id*. at 270-273.

[21] *Id.* at 273.

to Sell was not validly cancelled for failure of the respondent to tender the cash surrender value of the payments made, and therefore, still subsists. With the contract still in effect, Lefebre had the right to continue with it.[22] However, since respondent already averred that it no longer intends to develop the promised golf course, Lefebre is entitled to a full refund of the payments made in the amount of ₱8.1 Million with interest, less penalties or surcharges. Respondent was further ordered to pay ₱20,000.00 each as moral damages and attorney's fees, plus the cost of suit, as well as the administrative fine of ₱10,000.00 for failure to provide the said amenity.[23]

Respondent moved for reconsideration,[24] which was, however, denied in a Resolution[25] dated August 26, 2011. Hence, respondent filed a petition for *certiorari*[26] under Rule 65 of the Rules of Court before the CA.

The Proceedings Before the CA

In a Resolution[27] dated February 6, 2012, the CA dismissed the *certiorari* petition for failure of respondent to exhaust the available administrative remedy,[28] *i.e.*, an appeal to the Office of the President, among other procedural grounds. On motion for reconsideration,[29] the dismissal of the petition was vacated, holding that the doctrine of exhaustion of administrative remedies

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[22] See *id*. at 272.

[23] See *id*. at 272-273.

[24] See motion for reconsideration dated June 27 (no year indicated); CA *rollo*, pp. 26-30.

[25] *Id*. at 33-36. Signed by Commissioners Ria Corazon A. Golez-Cabrera and Luis A. Paredes, and Undersecretary, DILG *Ex-Officio* Commissioner Austere A. Panadero.

[26] Dated October 2011. *Rollo*, pp. 241-258.

[27] *Id*. at 261. Signed Division Clerk of Court Atty. Ma. Theresa Aban-Camannong.

[28] *Id*.

[29] Dated February 28, 2012. *Id*. at 262-267.

was not ironclad and may be dispensed with when such requirement would be unreasonable and given that there were circumstances indicating the urgency of judicial intervention.[30]

In a Decision[31] dated July 8, 2015, the CA set aside the HLURB BOC's decision and reinstated the HLU Arbiter's decision.[32] It held that while respondent did not tender the cash surrender value of the payments made in view of the post-cancellation negotiations initiated by Lefebre, the rescission of the Contract to Sell was not invalid *per se* considering that Lefebre's failure to settle her outstanding obligations was a valid ground to rescind the Contract to Sell. Moreover, the CA opined that Lefebre was estopped from claiming that the non-payment of her amortizations was due to the failed golf-course given that from 2001 to 2008, Lefebre never informed respondent that she was withholding payment unless the golf course be developed. Thus, it ruled that Lefebre was only entitled to the cash surrender value provided under Section 3 of RA 6552.[33]

Aggrieved, Lefebre filed a motion for reconsideration,[34] which was, however, denied in a Resolution[35] dated May 24, 2016; hence, the instant petition.

The Issues Before the Court

The essential issue for the Court's resolution is whether or not the CA's reinstatement of the HLU Arbiter's Decision was proper, despite respondent's direct filing of a petition for *certiorari* before the CA.

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[30] See Resolution dated November 8, 2012 penned by Associate Justice Edgardo A. Camello with Associate Justices Renato C. Francisco and Oscar V. Badelles concurring; *id*. at 316-318.

[31] *Id*. at 34-45.

[32] *Id*. at 44.

[33] See *id*. at 41-44.

[34] See Respondent's Motion for Reconsideration dated August 11, 2015; *id*. at 50-55.

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

The Court's Ruling

The petition is meritorious.

Section 60 (b), Rule 17 of the 2011 Revised Rules of Procedure of the HLURB[36] (HLURB Rules) provides that the decision or resolution of the HLURB BOC shall become final and executory within 15 days after receipt thereof unless an appeal has been filed:

> Rule 17
> FINALITY OF JUDGMENT
>
> Section 60. *Finality of Judgment*.- Decisions or orders of the Arbiter and the Board of Commissioners shall be deemed final and executory in accordance with the following:
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> x x x x x x x x x
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> (b) Decisions, resolutions or orders of the Board of Commissioners shall become final and executory fifteen (15) days after the receipt thereof by the parties and no appeal has been filed within the said period.

In this relation, Section 2, Rule XXI of HLURB Resolution No. 765, Series of 2004 prescribes that the decisions of the HLURB-BOC may be appealed to the Office of the President:

> Section 2. Appeal. - Any party may, upon notice to the Board and the other party, appeal a decision rendered by the Board of Commissioners to the Office of the President within fifteen (15) days from receipt thereof, in accordance with P.D. No. 1344 and A.O. No. 18 Series of 1987.[37]

In this case, it is undisputed that respondent did not interpose an appeal before the Office of the President as it proceeded to file a petition for *certiorari* before the CA; hence, respondent clearly violated the doctrine of exhaustion of administrative

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[36] HLURB BOC Resolution No. 871, Series of 2011, approved on April 19, 2011.

[37] Cited in *San Lorenzo Ruiz Builders and Developers Group, Inc. v. Bayang*, 758 Phil. 368, 373-374 (2015).

remedies. In *Teotico v. Baer*,[38] the Court upheld the dismissal of therein petitioner's appeal on the ground of failure to exhaust the same administrative remedy before the HLURB:

> The HLURB is the sole regulatory body for housing and land development. It is charged with encouraging greater private sector participation in low-cost housing through liberalization of development standards, simplification of regulations and decentralization of approvals for permits and licenses. The HLURB has established rules of procedure in the adjudication of the cases before it. Any party who is aggrieved by its decision "may file with the Regional Office a verified petition for review of the arbiter's decision within 30 calendar days from receipt thereof." The regional officer shall then elevate the records to the Board of Commissioners together with the summary of proceedings before the arbiter within 10 calendar days from receipt of the petition. If the party is still dissatisfied with the decision of the Board, he may appeal to the Office of the President within 15 calendar days from receipt of the decision.
>
> Under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted. If remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts. It is settled that non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.
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> Here, **petitioner failed to exhaust her administrative remedies when she directly elevated to the CA the HLURB arbiter's decision without appealing it first to the Board and then later, the Office of the President**. She has failed to convince us that her case is one of those exempted from the application of the doctrine of exhaustion of administrative remedies. Her petition must necessarily fall.[39] (Emphasis and underscoring supplied)

Notably, while there are exceptions to the above-discussed doctrine, respondent's motion for reconsideration before the

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[38] 523 Phil. 670 (2006).

[39] *Id.* at 675-677.

CA did not raise any of the same. Thus, the CA erred in considering two of these exceptions[40] upon respondent's mere general invocation of the doctrine of equity jurisdiction, which should not even apply in this case.

The doctrine states that "where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction."[41] As a general rule therefore, "[t]he rules of procedure must be faithfully followed, **except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply within the prescribed procedure**."[42] However, case law states that "**[c]oncomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules**."[43]

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[40] In its Resolution dated November 8, 2012 vacating its initial dismissal of respondent's *certiorari* petition, the CA cited *Spouses Chua v. Ang* (614 Phil. 416, 425 [2009]) enumerating the exceptions to the exhaustion doctrine. The exceptions highlighted below were stated to excuse respondent's direct resort to the CA:

> [P]rior exhaustion of administrative remedies may be dispensed with and judicial action may be validly resorted to immediately: (a) when there is a violation of due process; (b) when the issue involved is purely a legal question; (c) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (d) when there is estoppel on the part of the administrative agency concerned; (e) when there is irreparable injury; (f) when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter**;** ***(g) when to require exhaustion of administrative remedies would be unreasonable***; (h) when it would amount to a nullification of a claim; (i) when the subject matter is a private land in land case proceedings; (j) when the rule does not provide a plain, speedy and adequate remedy; or ***(k) when there are circumstances indicating the urgency of judicial intervention***. (*Rollo*, p. 317; emphases supplied.)

[41] *Al-Amanah Islamic Investment Bank of the Philippines v. Celebrity Travel and Tours, Inc.*, 479 Phil. 1041, 1052 (2004).

[42] *Ong v. Philippine Deposit Insurance Corporation*, 642 Phil. 557, 568 (2010).

[43] *Id*.

In this case, not only did respondent fail to adequately explain its failure to abide by the rules; more significantly, there is also no palpable persuasive reason to relax the rules of procedure considering that the HLURB-BOC actually rendered a correct ruling in this case.

As the HLURB-BOC aptly pointed out, the Contract to Sell between the parties remained valid and subsisting in view of respondent's failure to observe the proper procedure in cancelling the said contract, particularly on the full payment of the cash surrender value to Lefebre as prescribed under Section 3 (b) of RA 6552, which reads:

> 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:
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> x x x x x x x x x
>
> (b) *If the contract is canceled, 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 instalment payments made.

In *Active Realty & Development Corp. v. Daroya*,[44] the Court held that the failure to cancel the contract in accordance with

[44] 431 Phil. 753 (2002).

the provisions of Section 3 of RA 6552 renders the contract to sell between the parties valid and subsisting. The Court emphasized that the mandatory requirements of notice of cancellation and payment of cash surrender value is needed for a "valid and effective cancellation" under the law.[45] In *Leaño v. CA*,[46] it was ruled that there is no actual cancellation of the contract to sell between the parties as the seller did not give to the buyer the cash surrender value of the payments that the buyer made,[47] as in this case.

Thus, as the Contract to Sell remained valid, Lefebre was well within her right to invoke Section 20, in relation to Section 23, of PD 957 which respectively read:

> Section 20**.** *Time of Completion.* – Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, within one year from the date of the issuance of the license for the subdivision or condominium project or such other period of time as may be fixed by the Authority.
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> x x x x x x x x x
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> Section 23. *Non-Forfeiture of Payments.* – No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. **Such buyer may, at his option, be reimbursed the total amount paid including amortization interests but excluding delinquency interests, with interest thereon at the legal rate.**

In *Tamayo v. Huang*, the Court explained that:[48]

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[45] See *id*. at 761-762.

[46] 420 Phil. 836 (2001).

[47] See *id*. at 845-848.

[48] 515 Phil. 788 (2006).

In case the developer of a subdivision or condominium fails in its obligation under Section 20, Section 23 gives the buyer the option to demand reimbursement of the total amount paid, or to wait for further development of the subdivision, and when the buyer opts for the latter alternative, he may suspend payment of installments until such time that the owner or developer had fulfilled its obligation to him.[49]

In this case, both the HLU Arbiter and HLURB-BOC observed that respondent could not anymore deliver on its promise of developing a Manresa 18-Hole All Weather Championship Golf Course, as advertised in its various promotion materials. Accordingly, Lefebre, as the buyer, may exercise her option to be reimbursed of the total amount she had paid to the developer, less penalties or surcharges, pursuant to the above cited provisions of PD 957.

To be sure, Lefebre could not have exercised the first option of withholding further payments upon prior notice considering that respondent had ceased with its intention to develop the promised golf course. Moreover, it should be noted that Lefebre was not estopped in invoking the ground of misrepresentation considering that she never conceded to respondent the non-development of the said golf course as in fact, the same was the motivation behind the purchase. Besides, while it was only in 2008 that respondent raised the same, it cannot be denied that respondent's obligation to develop the project in accordance with its published representations was a continuing one and, hence, should not be affected by respondent's belated insistence on the same.

Also, notwithstanding Lefebre's failure to abide by her own obligation to timely pay the amortizations due, the fact remains that respondent also had its own obligation to deliver on its promise. As the HLURB-BOC correctly observed, respondent had indeed represented in its advertisements that the golf course was one of its amenities and as such, formed part of the warranties

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[49] *Id*. at 799-800.

under Section 20 of PD 957. Unfortunately for respondent, it failed to properly invoke Lefebre's delinquency as a ground to cancel their contract, whereas Lefebre was able to properly invoke her ground against respondent.

In any event, the HLURB-BOC's ruling in favor of Lefebre had already attained finality in view of respondent's failure (in addition to its violation of the exhaustion doctrine) to avail of the proper mode of elevating its case to the CA. Records show that it did not file an appeal before the CA as prescribed under Rule 43 of the Rules of Court. Instead, it resorted to an original action for *certiorari* under Rule 65 of the Rules of Court.

Jurisprudence dictates that the "perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. **The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case**."[50] Notably, "[t]he right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost."[51]

While there are indeed exceptions to this rule, the reasons above-discussed clearly militate against the liberal application of the rules. Thus, there being no appeal taken by respondent from the adverse judgment of the HLURB-BOC, its Decision has become final and can no longer be reviewed, much less reversed, by the CA. Finality of a judgment or an order becomes a fact upon the lapse of the reglementary period to appeal if no appeal is perfected,[52] as in this case. Apropos thereto, the well-

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[50] *China Banking Corp. v. City Treasurer of Manila*, 762 Phil. 509, 521-522 (2015).

[51] *Villanueva v. CA*, G.R. No. 99357, 282 Phil. 555, 561 (1992).

[52] See *Palileo v. Planters Development Bank*, 745 Phil. 144, 158 (2014); citation omitted.

settled rule is that "[*c*]*ertiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy. [Verily,] [*c*]*ertiorari* is not a substitute for a lost appeal."[53]

WHEREFORE, the petition is **GRANTED**. The Decision dated July 8, 2015 and the Resolution dated May 24, 2016 of the Court of Appeals in CA-G.R. SP No. 04582-MIN are hereby **REVERSED** and **SET ASIDE**. The Decision dated May 10, 2011 of the Housing and Land Use Regulatory Board - Board of Commissioners in HLURB Case No. REM-A-110224-01374 is **REINSTATED**.

SO ORDERED.

Peralta[*] *(Acting Chairperson)*, *Caguioa,* and *Reyes, Jr., JJ.,* concur.

Carpio, J., on official time.

SECOND DIVISION

[G.R. No. 226213. September 27, 2017]

G. HOLDINGS, INC., *petitioner, vs.* **CAGAYAN ELECTRIC POWER AND LIGHT COMPANY, INC. (CEPALCO) and FERROCHROME PHILIPPINES, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; COMPULSORY COUNTERCLAIM; NO PAYMENT OF

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[53] *Indoyon, Jr. v. Court of Appeals*, 706 Phil. 200, 213 (2013).

[*] Acting Chairperson per Special Order No. 2487 dated September 19, 2017.

DOCKET FEES REQUIRED.— CEPALCO's counterclaim and prayer for rescission of the Deed of Assignment can only be viewed, as it is indeed, a compulsory counterclaim because it "arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." Being a compulsory counterclaim, the CA was correct when it ruled that as of the filing of CEPALCO's Answer with Compulsory Counterclaim and Cross-Claim on April 26, 2004, it was not liable to pay filing fees on its compulsory counterclaim.

2. **CIVIL LAW; CONTRACTS; DEFECTIVE CONTRACTS (OR MORE APPROPRIATELY CATEGORIZED AS FORMS OF INEFFICACY OF CONTRACTS), ENUMERATED.—** Under the Civil Code, there are four defective contracts, namely: (1) rescissible contracts; (2) voidable contracts; (3) unenforceable contracts; and (4) void or inexistent contracts. However, it has been opined that, strictly speaking, only the voidable and unenforceable contracts are defective contracts and are the only ones susceptible of ratification unlike the rescissible ones which suffer from no defect and the void or inexistent contracts which do not exist and are absolute nullity. Thus, the four may be more appropriately categorized as species or forms of the inefficacy of contracts.

3. **ID.; ID.; ID.; RESCISSIBLE CONTRACTS; REQUISITES.—** Rescission has been defined as a remedy to make ineffective a contract validly entered into and which is obligatory under normal conditions by reason of external causes resulting in a pecuniary prejudice to one of the contracting parties or their creditors. Rescission, which is a specie or form of the inefficacy of contracts and operates by law and not through the will of the parties, requires the following: (1) a contract initially valid and (2) a lesion or pecuniary prejudice to someone.

4. **ID.; ID.; ID.; ID.; CONTRACTS THAT ARE RESCISSIBLE; RESCISSION PROPER ONLY WHEN THE PARTY SUFFERING DAMAGE HAS NO OTHER LEGAL MEANS TO OBTAIN REPARATION FOR THE SAME.—** Under Article 1381 of the Civil Code, the following contracts are rescissible: (1) those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object

thereof; (2) those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number; (3) those undertaken in fraud of creditors when the latter cannot in any manner collect the claims due them; (4) those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority; and (5) all other contracts specially declared by law to be subject to rescission. It is further provided under Article 1383 that the action for rescission is a subsidiary one, and cannot thus be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.

5. **ID.; ID.; ID.; VOID OR INEXISTENT CONTRACTS; THESE CONTRACTS CANNOT BE RATIFIED, AND THE DEFENSE OF ITS ILLEGALITY CANNOT BE WAIVED AND IT DOES NOT PRESCRIBE.—** [V]oid or inexistent contracts are those which are *ipso jure* prevented from producing their effects and are considered as inexistent from the very beginning because of certain imperfections. Under Article 1409 of the Civil Code, the following contracts are inexistent and void from the beginning: (1) those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy; (2) those which are absolutely simulated or fictitious; (3) those whose cause or object did not exist at the time of the transaction; (4) those whose object is outside the commerce of men; (5) those which contemplate an impossible service; (6) those where the intention of the parties relative to the principal object of the contract cannot be ascertained; and (7) those expressly prohibited or declared void by law. These contracts cannot be ratified and the right to set up the defense of illegality cannot be waived. Further, the action or defense for the declaration of the inexistence of a contract does not prescribe.

6. **ID.; ID.; ID.; RESCISSION AND NULLITY OF CONTRACTS; DISTINGUISHED.—** Rescission and nullity can be distinguished in the following manner: (a) by reason of the basis — rescission is based on prejudice, while nullity is based on a vice or defect of one of the essential elements of a contract; (2) by reason of purpose — rescission is a reparation of damages, while nullity is a sanction; (3) by reason of effects — rescission affects private interest while nullity affects public interest; (4) by reason of nature of action — rescission is subsidiary while

nullity is a principal action; (5) by reason of the party who can bring action — rescission can be brought by a third person while nullity can only be brought by a party; and (6) by reason of susceptibility to ratification — rescissible contracts need not be ratified while void contracts cannot be ratified. They can likewise be distinguished as follows: (1) [*A*]*s to defect*: In rescissible contracts, there is damage or injury either to one of the contracting parties or to third persons; while in void or inexistent contracts, one or some of the essential requisites of a valid contract are lacking in fact or in law; (2) *As to effect*: The first are considered valid and enforceable until they are rescinded by a competent court; while the latter do not, as a general rule, produce any legal effect; (3) *As to prescriptibility of action or defense*: In the first, the action for rescission may prescribe; while in the latter, the action for declaration of nullity or inexistence or the defense of nullity or inexistence does not prescribe; (4) *As to susceptibility of ratification*: The first are not susceptible of ratification, but are susceptible of convalidation; while the latter are not susceptible of ratification; (5) *As to who may assail contracts*: The first may be assailed not only by a contracting party but even by a third person who is prejudiced or damaged by the contract; while the latter may be assailed not only by a contracting party but even by a third party whose interest is directly affected; (6) *As to how contracts may be assailed*: the first may be assailed directly, and not collaterally; while the latter may be assailed directly or collaterally. The enumerations and distinctions above indicate that rescissible contracts and void or inexistent contracts belong to two mutually exclusive groups. A void or inexistent contract cannot at the same time be a rescissible contract, and *vice versa*. The latter, being valid and until rescinded, is efficacious while the former is invalid. There is, however, a distinction between inexistent contracts and void ones as to their effects. Inexistent contracts produce no legal effect whatsoever in accordance with the principle "*quod nullum est nullum producit effectum.*" In case of void contracts where the nullity proceeds from the illegality of the cause of object, when executed (and not merely executory) they have the effect of barring any action by the guilty to recover what he has already given under the contract.

7. ID.; ID.; SIMULATION OF A CONTRACT: ABSOLUTELY SIMULATED OR FICTITIOUS CONTRACT AND

RELATIVELY SIMULATED CONTRACT, DISTINGUISHED. — Under Article 1345 of the Civil Code, simulation of a contract may be absolute, when the parties do not intend to be bound at all, or relative, when the parties conceal their true agreement. The former is known as *contracto simulado* while the latter is known as *contracto disimulado*. An absolutely simulated or fictitious contract is void while a relatively simulated contract when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.

APPEARANCES OF COUNSEL

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Atencia and Associates Law Office for respondent CEPALCO.
Siguion Reyna Montecillo & Ongsiako for respondent Ferrochrome Philippines, Inc.

D E C I S I O N

CAGUIOA, *J.*:

This is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated April 14, 2016 of the Court of Appeals[3] (CA) in CA-G.R. CV No. 03366-MIN and the Resolution[4] dated July 25, 2016 denying the motion for reconsideration filed by petitioner, G. Holdings, Inc. (GHI). The CA Decision denied the appeal and affirmed the Decision[5] dated July 22, 2013 of the Regional Trial Court of Misamis Oriental, 10th Judicial Region, Branch 38, Cagayan de Oro City (RTC-CDO) in Civil Case No. 2004-111.

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[1] *Rollo* (Vol. I), pp. 33-80 (exclusive of Annexes).

[2] *Id*. at 9-22. Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño concurring.

[3] Twenty-Second Division.

[4] *Rollo* (Vol. I), pp. 24-25.

[5] *Rollo* (Vol. III), pp. 1035-1045. Penned by Judge Emmanuel P. Pasal.

Facts and Antecedent Proceedings

From March 1990, Cagayan Electric Power and Light Company, Inc. (CEPALCO), which operates a light and power distribution system in Cagayan de Oro City, supplied power to the ferro-alloy smelting plant of Ferrochrome Philippines, Inc.[6] (FPI) at the PHIVIDEC Industrial Estate in Tagoloan, Misamis Oriental.[7] When FPI defaulted in the payment of its electric power bills amounting to ₱16,301,588.06 as of March 1996, CEPALCO demanded payment thereof.[8] FPI paid CEPALCO on three separate dates the total amount of ₱13,161,916.44, leaving a balance of ₱2,899,859.15.[9] FPI failed again to pay its subsequent electricity bills, thereby increasing its unpaid electric bills to ₱29,509,240.89 as of May 1996.[10] For failure to pay FPI's outstanding bills, CEPALCO disconnected the electric power supply to FPI in May 1996.[11] After sending a statement of account with ₱30,147,835.65 unpaid bills plus 2% monthly surcharge, CEPALCO filed a collection suit (Civil Case No. 65789) against FPI in July 1996 before the Regional Trial Court of Pasig City, Branch 264 (RTC-Pasig).[12]

RTC-Pasig rendered a Decision (Partial Summary Judgment) dated April 22, 1999 in favor of CEPALCO, ordering FPI to pay CEPALCO ₱25,608,579.98.[13] On January 19, 2004, RTC-Pasig rendered its Decision[14] in favor of CEPALCO, affirming

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[6] In the Certificate of Filing of Amended Articles of Incorporation dated November 15, 1995, the name of the corporation is Ferro-Chrome Philippines, Inc. *Rollo* (Vol. I), p. 361.

[7] *Rollo* (Vol. I), p. 10.

[8] *Id*.

[9] *Id*.

[10] *Id.*

[11] *Id.*

[12] *Id*.

[13] *Id*. at 10-11.

[14] *Id*. at 128-147. Penned by Judge Leoncio M. Janolo, Jr.

the ₱25,608,579.98 award for basic cost of energy consumed (given in the Partial Summary Judgment), and ordering the payment of ₱2,364,703.80 for contracted energy or energy differential and surcharges, PHIVIDEC royalty and franchise tax.[15]

On February 27, 2004, FPI appealed the Decision of the RTC-Pasig to the CA (CA G.R. CV No. 86228 [CEPALCO collection case]).[16]

CEPALCO moved for execution pending appeal, which was granted by RTC-Pasig.[17] The writ of execution was issued on March 30, 2004.[18] FPI filed before the CA a *certiorari* petition with prayer for temporary restraining order (TRO) and preliminary injunction (CA G.R. SP No. 83224 [CEPALCO execution case]).[19]

In the meantime, Sheriff Renato B. Baron (Baron) of RTC-Pasig issued notices of levy upon personal and real properties dated April 1 and 2, 2004 and notices of sale on execution of personal and real properties dated April 1, 2004.[20]

In CA G.R. SP No. 83224 (CEPALCO execution case), the CA issued an initial TRO in its Resolution dated April 6, 2004 and then a writ of preliminary injunction in its Resolution dated June 11, 2004, enjoining the implementation of the Order granting execution pending appeal.[21]

On April 5, 2004, GHI filed a case (Civil Case No. 2004-111) against Sheriff Baron, CEPALCO and FPI for Nullification

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[15] *Id*. at 11-12, 146-147.

[16] *Id*. at 12.

[17] Pursuant to the Order dated March 22, 2004 of RTC-Pasig, *id*. at 148-152.

[18] *Rollo* (Vol. I), pp. 153-155.

[19] *Id*. at 13.

[20] *Id*. at 157-174.

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

of Sheriff's Levy on Execution and Auction Sale, Recovery of Possession of Properties and Damages before the RTC-CDO.[22] GHI claimed that the levied ferro-alloy smelting facility, properties and equipment are owned by it as evidenced by a Deed of Assignment[23] dated March 11, 2003 (the Deed of Assignment) executed by FPI in consideration of ₱50,366,926.71.[24]

In the unilateral Deed of Assignment, FPI, as the assignor, through its stockholders and Board of Directors' duly authorized representative and Acting President, Juanito E. Figueroa, in consideration of obligations amounting to ₱50,366,926.71 as of December 31, 2002, inclusive of the interest charges, assigned, transferred, ceded and conveyed **absolutely** in favor of GHI, as the assignee, "**all of the [assignor's] properties, equipment and facilities, located in Phividec Industrial Estate, Tagoloan, Misamis Oriental** and more particularly described in the attached schedules ***as Annexes 'I', 'II', 'III', 'IV***['] ***and 'V'***."[25]

Prior to the Deed of Assignment, FPI sent to GHI a letter[26] dated February 28, 2003 wherein the manner by which the obligation of FPI amounting to ₱50,366,926.71 (as of December 31, 2002) would be addressed per their earlier discussions was confirmed, to wit:

1. The obligation of ***FPI to G. Holdings*** amounting ***to ₱50,366,926.71 (as of December 31, 2002)*** shall be covered by assignment of certain ***FPI*** assets sufficient to cover the obligations even at today's depressed metal prices.
2. The right to the work process owned by ***FPI*** shall be made available to ***G. Holdings*** under the following options[:]

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[22] *Id*. at 14.

[23] *Id.* at 87-88.

[24] *Rollo* (Vol. III), p. 1035.

[25] *Rollo* (Vol. I), p. 87; emphasis and underscoring supplied.

[26] Exhibit "R" of G. Holdings, Inc., *id*. at 411-412.

Option A

As soon as metal prices and major costs justify, ***FPI*** shall at its capital and expense operate the plant including the assets transferred to ***G. Holdings***. Revenue ***shall be shared with G. Holdings at the rate of 20% of EBITDA (Earnings Before Interest*[,] *Taxes, Depreciation and Amortization.)***

A minimum of ***₱10.0 million*** annually shall be shared by ***G. Holdings***.

The [c]ost of maintenance and upkeep of assets shall be covered by ***FPI***.

Option B

[***G.***] ***Holdings*** shall be the entity to operate the plant and business with its capital and expense.

As owner of the rights to the work process, ***FPI*** shall be entitled to a share of ***10%*** in the ***EBITDA*** with ***a minimum of ₱7.5 million per year.***

This arrangement shall be for ***a minimum of 8 years*** after which ***G. Holdings*** can acquire the rights for an amount equal to ***₱36.0 M.***

All financial requirements shall be shouldered by ***G. Holdings*** x x x.

3. The option shall be decided by ***G. Holdings*** within a ***three***[**-**]***year period*** beyond which the choice shall be made by ***FPI*** within a ***3***[**-**] ***year period***. The cycle will be repeated if the plant has not operated for six years from assignment.[27]

The letter bears the conformity of GHI.[28]

CEPALCO filed its answer with compulsory counterclaim and cross-claim.[29] In its counterclaim, CEPALCO assailed the validity of the Deed of Assignment executed by FPI in favor

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[27] *Id*.

[28] *Id*. at 412.

[29] *Id*. at 14.

of GHI in payment of alleged advances from GHI (sister company of FPI) from 1998 to 2002 amounting to ₱50,366,926.71, inclusive of interest, as of December 2002. CEPALCO contended that the Deed of Assignment was null and void for being absolutely simulated and, as a *dacion en pago*, it did not bear the conformity of the creditor. GHI and FPI have substantially the same directors. The Deed of Assignment was in fraud of FPI's creditors as it was made after the RTC-Pasig had already rendered a partial judgment in favor of CEPALCO and was, therefore, rescissible.[30]

In the meantime, the CA rendered its Decision dated August 14, 2008 in CA G.R. CV No. 86228 (CEPALCO collection case) granting FPI's appeal in part and the RTC-Pasig Decision was affirmed but modified by deleting the award of the PHIVIDEC royalty of 1%.[31] FPI elevated the CA Decision to the Court and was docketed as G.R. No. 185892.[32] In April 2010, the Court denied FPI's petition in its Resolution dated April 21, 2010 for failure of FPI to sufficiently show that the CA committed any reversible error in the challenged decision and resolution to warrant the Court's discretionary appellate jurisdiction.[33]

In CA G.R. SP No. 83224 (CEPALCO execution case), the CA dismissed FPI's petition for lack of merit and affirmed the assailed orders of the RTC-Pasig, and FPI's motion for reconsideration was likewise denied.[34]

The RTC-CDO Ruling

Going back to the RTC-CDO case (Civil Case No. 2004-111), the origin of the present case, a Decision[35] dated July 22,

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[30] *Rollo* (Vol. III), pp. 1036, 1037.

[31] *Rollo* (Vol. I), p. 14.

[32] *Id*.

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

[34] *Id*. at 15.

[35] *Rollo* (Vol. III), pp. 1035-1045.

2013 was rendered in favor of CEPALCO and against GHI: (1) rescinding the Deed of Assignment; (2) ordering GHI to pay CEPALCO actual and exemplary damages as well as attorney's fees; and (3) lifting the writ of preliminary injunction.[36]

The rescission of the Deed of Assignment by the RTC-CDO was anchored on the presence of several badges of fraud, to wit: (a) the consideration of the assignment was ₱50 million while the value of the assets of FPI amounted to ₱280 million; (b) the existence of the "Outokumpo" work process of smelting (which was allegedly more valuable than the smelting facility subject of the assignment and without which the smelting facility could not be operated), as well as its value, were not sufficiently established; (c) the assignment of all or substantially all of FPI's assets was made when FPI was suffering financially and after the rendition of the partial judgment in favor of CEPALCO; and (d) GHI did not take exclusive possession of the assets assigned to it.[37]

The dispositive portion of the RTC-CDO Decision states:

WHEREFORE, judgment is hereby rendered in favor of defendant CEPALCO against G Holdings Inc. as follows:

1. Rescinding the Deed of Assignment dated March 11, 2003 between G Holdings Inc. in favor of Ferrochrome Philippines Inc.;

2. Ordering G [H]oldings Inc. to pay defendant CEPALCO the following:

2.a Actual damages in the amount of Php256,587.48;

2.b Exemplary damages in the amount of Php1,000,000.00; and

2.c Attorney's Fees in the amount of Php500,000.00

3. Lifting the Writ of Preliminary Injunction and finding G. [H]oldings Inc. and Oriental Assurance Corporation liable on the Php1 Million Preliminary Injunction Bond to partially satisfy the foregoing sums.

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[36] *Rollo* (Vol. I), p. 15; *id*. at 1045.

[37] *Id*. at 1040-1044.

4. Costs against G Holdings, Inc.

SO ORDERED.[38]

GHI appealed the RTC-CDO Decision to the CA.[39] The appeal was docketed as CA-G.R. CV No. 03366-MIN.[40]

The CA Ruling

In its Decision[41] dated April 14, 2016, the CA denied the appeal and affirmed the RTC-CDO Decision. The CA ruled that the RTC-CDO correctly found the existence of fraud or deliberate intent on the part of FPI and GHI to defraud CEPALCO. The agreement between GHI and FPI where GHI was given the option to operate the smelting facility using the alleged "Outokumpo" work process which FPI retained, subject to payment of an agreed amount to FPI as owner of the rights of the work process, was designed to keep the smelting facility intact and insulated against execution in satisfaction of CEPALCO's judgment credit. The CA also ruled that the Deed of Assignment was absolutely simulated and having been executed after the Partial Summary Judgment rendered by the RTC-Pasig, it was done in anticipation of the adverse final outcome of the RTC-Pasig case. Regarding GHI's contention that CEPALCO failed to pay the filing fees, the CA noted that CEPALCO filed its Answer with Compulsory Counterclaim and Cross-claim on April 26, 2004. At that time, the CA reasoned that CEPALCO was not yet liable to pay filing fees. Under Rule 141, Section 7, as amended by A.M. No. 04-2-04-SC, docket fees were required to be paid for compulsory counterclaims and cross-claims effective only on August 16, 2004.[42]

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[38] *Id*. at 1045.

[39] See *rollo* (Vol. I), pp. 9, 16.

[40] See *id*. at 9.

[41] *Id*. at 9-22.

[42] *Id*. at 17-21.

The dispositive portion of the CA Decision states:

WHEREFORE, the instant appeal is **DENIED**. The Decision dated 22 July 2013 of the Regional Trial Court, 10th Judicial Region, Branch 38, Cagayan de Oro City, in Civil Case No. 2004-111 is hereby **AFFIRMED**.

SO ORDERED.[43]

GHI filed a motion for reconsideration, which was denied in a Resolution[44] dated July 25, 2016.

Hence, this Petition. CEPALCO filed its Comment[45] dated May 12, 2017.

Issues

Whether the CA erred in not dismissing CEPALCO's permissive counterclaim for non-payment of docket fees.

Whether the CA erred in holding that the Deed of Assignment was absolutely simulated.

Whether the CA erred in rescinding the Deed of Assignment absent an independent action for rescission.

Whether the CA erred in holding that the Deed of Assignment was done in fraud of creditors and badges of fraud accompanied its execution.

Whether GHI is entitled to its claims for damages.[46]

The Court's Ruling

Filing Fees of CEPALCO's Counterclaim

In justifying the non-payment of filing fees on the counterclaim of CEPALCO, the CA ruled:

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[43] *Id*. at 21.

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

[45] *Rollo* (Vol. III), pp. 1179-1219.

[46] *Rollo* (Vol. I), pp. 46-47.

As for the absence of filing fees, it is noteworthy that CEPALCO filed its Answer with Compulsory Counterclaim and Cross-Claim on 26 April 2004. At that time, CEPALCO was not yet liable to pay filing fees. The Supreme Court stressed, however, that effective 16 August 2004 under Rule 141, Section 7, as amended by A.M. No. 04-2-04-SC, docket fees are required to be paid for compulsory counterclaims and cross-claims.[47]

As to the cause of action of GHI in its Complaint in Civil Case No. 2004-111 (RTC-CDO case), the caption states that it is for: "FOR INJUNCTION AND NULLIFICATION OF SHERIFF'S LEVY ON EXECUTION AND AUCTION SALE; RECOVERY OF POSSESSION OF PROPERTIES; AND DAMAGES, WITH PRAYER FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER AND WRIT OF PRELIMINARY INJUNCTION."[48] In its second cause of action, GHI alleges that it is "entitled to the immediate return and restitution of said [transportation and] mobile equipment."[49] In the Complaint's prayer, GHI seeks the return of the possession of such properties to GHI, "the rightful owner thereof."[50] As basis of its claim of ownership, GHI alleges in the Complaint that:

> x x x The smelter facility/properties subject of sheriff's Notice of Levy Upon Personal Property and Notice of Levy Upon Real Property are owned by GHI, having acquired the same through a Deed of Assignment of March 11, 2003 executed by FPI in favor of GHI, in consideration of x x x [₱]50,366,926.71 x x x paid by GHI. x x x[51]

In light of the foregoing, CEPALCO's counterclaim and prayer for rescission of the Deed of Assignment can only be viewed,

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[47] *Id*. at 21; citation omitted.

[48] *Id*. at 113.

[49] These are: 2 units Payloader W90 (Komatsu), 2 units Forklifts (Toyota & Komatsu), 1 unit small Payloader, and 1 Truck (Isuzu ICCB 437). *Id*. at 118, 122.

[50] *Rollo* (Vol. I), p. 126.

[51] *Id*. at 117.

as it is indeed, a compulsory counterclaim because it "arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction."[52] Being a compulsory counterclaim, the CA was correct when it ruled that as of the filing of CEPALCO's Answer with Compulsory Counterclaim and Cross-Claim on April 26, 2004, it was not liable to pay filing fees on its compulsory counterclaim. Thus, on the first issue, the CA committed no reversible error when it did not order the dismissal of CEPALCO's counterclaim, which is compulsory, for non-payment of docket fees.

Efficacy of the Deed of Assignment

Since the second, third and fourth issues concern the legal effect or efficacy, if any, of the Deed of Assignment between GHI and FPI, they will be discussed together. It is noted, however, that the legality or efficacy of the Deed of Assignment is attacked in the second issue as being absolutely simulated, while, in the third and fourth issues, it is claimed to be rescissible for having been undertaken in fraud of creditors, given the presence of badges of fraud in its execution.

Under the Civil Code, there are four defective contracts, namely: (1) rescissible contracts; (2) voidable contracts; (3) unenforceable contracts; and (4) void or inexistent contracts. However, it has been opined that, strictly speaking, only the voidable and unenforceable contracts are defective contracts and are the only ones susceptible of ratification unlike the rescissible ones which suffer from no defect and the void or inexistent contracts which do not exist and are absolute nullity.[53] Thus, the four may be more appropriately categorized as species or forms of the inefficacy of contracts.[54]

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[52] RULES OF COURT, Rule 6, Sec. 7.

[53] Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW CIVIL CODE OF THE PHILIPPINES*, Vol. IV (1983 Rev. 2nd Ed.), p. 596.

[54] See *id*. at 597.

Since the Deed of Assignment is being questioned for being both rescissible and, at the same time, an absolute simulation, it may be *apropos* to compare rescissible contracts with void or inexistent contracts.

Rescission has been defined as a remedy to make ineffective a contract validly entered into and which is obligatory under normal conditions by reason of external causes resulting in a pecuniary prejudice to one of the contracting parties or their creditors.[55] Rescission, which is a specie or form of the inefficacy of contracts and operates by law and not through the will of the parties, requires the following: (1) a contract initially valid and (2) a lesion or pecuniary prejudice to someone.[56]

Under Article 1381 of the Civil Code, the following contracts are rescissible: (1) those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof; (2) those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number; (3) those undertaken in fraud of creditors when the latter cannot in any manner collect the claims due them; (4) those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority; and (5) all other contracts specially declared by law to be subject to rescission.

It is further provided under Article 1383 that the action for rescission is a subsidiary one, and cannot thus be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.

On the other hand, void or inexistent contracts are those which are *ipso jure* prevented from producing their effects and are considered as inexistent from the very beginning because of certain imperfections.[57]

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[55] *Id.* at 596, citing 20 Mucius Scaevola, p. 866.

[56] *Id.* at 596-597, citing 1 Castan, 8th ed., Part II, p. 655.

[57] *Id.* at 636, citing 3 Castan, 8th ed., pp. 438-440.

Under Article 1409 of the Civil Code, the following contracts are inexistent and void from the beginning: (1) those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy; (2) those which are absolutely simulated or fictitious; (3) those whose cause or object did not exist at the time of the transaction; (4) those whose object is outside the commerce of men; (5) those which contemplate an impossible service; (6) those where the intention of the parties relative to the principal object of the contract cannot be ascertained; and (7) those expressly prohibited or declared void by law.

These contracts cannot be ratified and the right to set up the defense of illegality cannot be waived.[58] Further, the action or defense for the declaration of the inexistence of a contract does not prescribe.

Rescission and nullity can be distinguished in the following manner: (a) by reason of the basis — rescission is based on prejudice, while nullity is based on a vice or defect of one of the essential elements of a contract; (2) by reason of purpose — rescission is a reparation of damages, while nullity is a sanction; (3) by reason of effects — rescission affects private interest while nullity affects public interest; (4) by reason of nature of action — rescission is subsidiary while nullity is a principal action; (5) by reason of the party who can bring action — rescission can be brought by a third person while nullity can only be brought by a party; and (6) by reason of susceptibility to ratification — rescissible contracts need not be ratified while void contracts cannot be ratified.[59]

They can likewise be distinguished as follows: (1) *as to defect:* In rescissible contracts, there is damage or injury either to one of the contracting parties or to third persons; while in void or inexistent contracts, one or some of the essential requisites of a valid contract are lacking in fact or in law; (2) *As to effect:*

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[58] CIVIL CODE, Art. 1409, last par.

[59] Caguioa, *supra* note 53, at 597 and 638.

The first are considered valid and enforceable until they are rescinded by a competent court; while the latter do not, as a general rule, produce any legal effect; (3) *As to prescriptibility of action or defense:* In the first, the action for rescission may prescribe; while in the latter, the action for declaration of nullity or inexistence or the defense of nullity or inexistence does not prescribe; (4) *As to susceptibility of ratification:* The first are not susceptible of ratification, but are susceptible of convalidation; while the latter are not susceptible of ratification; (5) *As to who may assail contracts:* The first may be assailed not only by a contracting party but even by a third person who is prejudiced or damaged by the contract; while the latter may be assailed not only by a contracting party but even by a third party whose interest is directly affected; (6) *As to how contracts may be assailed:* the first may be assailed directly, and not collaterally; while the latter may be assailed directly or collaterally.[60]

The enumerations and distinctions above indicate that rescissible contracts and void or inexistent contracts belong to two mutually exclusive groups. A void or inexistent contract cannot at the same time be a rescissible contract, and *vice versa*. The latter, being valid and until rescinded, is efficacious while the former is invalid. There is, however, a distinction between inexistent contracts and void ones as to their effects. Inexistent contracts produce no legal effect whatsoever in accordance with the principle "*quod nullum est nullum producit effectum*."[61] In case of void contracts where the nullity proceeds from the illegality of the cause of object, when executed (and not merely executory) they have the effect of barring any action by the guilty to recover what he has already given under the contract.[62]

The RTC-CDO ruled the Deed of Assignment as a rescissible contract and ordered its rescission. However, the CA, while

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[60] Desiderio P. Jurado, *COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS* (1987 9th Rev. Ed.), pp. 488-489 and 490.

[61] *Id*. at 566, citing 3 Castan, 7th Ed., p. 409.

[62] *Id.*

affirming the RTC-CDO Decision, stated that it "agree[d] with the RTC[-CDO] that the Deed of Assignment was absolutely simulated"[63] and, at the same time, noted that "the RTC-CDO correctly found the existence of fraud or deliberate intent on the part of FPI and GHI to defraud CEPALCO."[64] Unfortunately, however, and contrary to what the CA declared, nowhere is it ruled in the RTC-CDO Decision that the Deed of Assignment was absolutely simulated.

Given a seemingly conflicting finding or ruling by the RTC-CDO and the CA as to the classification of the Deed of Assignment — whether rescissible or inexistent, it behooves the Court to resolve the conflict.

Under Article 1345 of the Civil Code, simulation of a contract may be absolute, when the parties do not intend to be bound at all, or relative, when the parties conceal their true agreement. The former is known as *contracto simulado* while the latter is known as *contracto disimulado*.[65] An absolutely simulated or fictitious contract is void while a relatively simulated contract when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.[66]

In *Vda. de Rodriguez v. Rodriguez*,[67] the Court, speaking through the renowned civilist, Justice J.B.L. Reyes, stated that:

> x x x the characteristic of simulation is the fact that the apparent contract is not really desired or intended to produce legal effects or in any way alter the juridical situation of the parties. Thus, where a person, in order to place his property beyond the reach of his creditors, simulates a transfer of it to another, he does not really intend to

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[63] CA Decision dated April 14, 2016, *rollo* (Vol. I), p. 18.

[64] *Id*. at 19.

[65] Caguioa, *supra* note 53, at 552.

[66] CIVIL CODE, Art. 1346.

[67] 127 Phil. 294 (1967).

divest himself of his title and control of the property; hence, the deed of transfer is but a sham. x x x[68]

The Court, in *Heirs of Spouses Intac v. CA,*[69] reiterated that:

> In absolute simulation, there is a colorable contract but it has no substance as the parties have no intention to be bound by it. "The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties." "As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract."[70]

In the Deed of Assignment, did FPI intend to divest itself of its title and control of the properties assigned therein?

The lack of intention on the part of FPI to divest its ownership and control of "all of [its] properties, equipment and facilities, located in Phividec Industrial Estate, Tagoloan, Misamis Oriental"[71] — in spite of the wordings in the Deed of Assignment that FPI "assigned, transferred, ceded and conveyed [them] x x x absolutely in favor of [GHI]"[72] — **is evident from the letter dated February 28, 2003 which reveals the true intention of FPI and GHI**.

In the letter dated February 28, 2003, it is there provided that the right to the work process, otherwise known as "Outokumpo," was to be retained by FPI and would only be made available to GHI under two options. One option even gave FPI the option to operate the assigned assets with the obligation to pay GHI a guaranteed revenue. While GHI was given the first crack to choose which of the two options to

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[68] *Id.* at 301-302.

[69] 697 Phil. 373 (2012).

[70] *Id.* at 384; citations omitted.

[71] *Rollo* (Vol. I), p. 87.

[72] *Id.*

take, such chosen option would only last for three years, and subsequently, FPI would make the choice and the option chosen by FPI would last for the next three years. The cycle would then be repeated if the ferro-alloy plant would not be operated for six years from assignment.[73] What is evident, therefore, in the delineation of the different options available to FPI and GHI in the settlement of FPI's obligations to the latter is that FPI did not intend to really assign its assets "absolutely" to GHI. Stated differently, this letter belies the wordings of the Deed of Assignment that, it should be emphasized, was executed a mere 11 days after the letter, that is, on March 11, 2003.

That there was no intention to absolutely assign to GHI all of FPI's assets was confirmed by the finding of the RTC-CDO that, according to FPI's Acting President, Juanito E. Figueroa, "GHI cannot operate the [equipment, machinery and smelting facilities] without the patented 'Outokumpo' process and GHI has not been operating the same."[74] Moreover, the equipment and machinery remain physically in the plant premises, slowly depreciating with the passage of time, and, worse, there also appears to be no effective delivery as the premises on which these are located remain under the control of FPI which continues to employ the security and skeletal personnel in the plant premises.[75]

Thus, in executing the Deed of Assignment, FPI's intention was not to transfer absolutely the assigned assets (admittedly valued at about ₱280 Million[76]) to GHI in payment of FPI's obligations to GHI amounting to ₱50,366,926.71.[77] FPI, as shown above, did not really intend to divest itself of its title and control of the assigned properties. FPI's real intention was, borrowing the words of Justice J.B.L Reyes in *Rodriguez*, to place them

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[73] *Id*. at 411-412.

[74] RTC-CDO Decision dated July 22, 2013, *rollo* (Vol. III), p. 1043.

[75] *Id*.

[76] *Id*. at 1042 and 1044.

[77] See *id*. at 1042.

beyond the reach of its creditor CEPALCO. This was astutely observed by the CA Decision, *viz.*:

> x x x The Deed of Assignment was executed while Civil Case No. 65789 was already pending with the RTC-Pasig and after the Partial Summary Judgment was rendered on 22 April 1999. In anticipation of the adverse final outcome of Civil Case No. 65789 as promulgated in the 19 January 2004 Decision of the RTC-Pasig, GHI and FPI executed the Deed of Assignment. Hence, the presumption of fraud set in by operation of the law against the sister companies, FPI, then already the judgment debtor, and GHI.[78]

As to the presence of badges of fraud, which the RTC-CDO found to have existed and affirmed by the CA, they do, in fact, confirm the intention of FPI to defraud CEPALCO. But these findings do not thereby render as rescissible the Deed of Assignment under Article 1381(3). Rather, they fortify the finding that the Deed of Assignment was "not really desired or intended to produce legal effects or in any way alter the juridical situation of the parties" or, put differently, that the Deed of Assignment was a sham, or a *contracto simulado*.

Thus, given the foregoing, the Deed of Assignment is declared inexistent for being absolutely simulated or fictitious. Accordingly, the CA correctly ruled that the Deed of Assignment was absolutely simulated, although it was in error in affirming the rescission ordered by the RTC-CDO because, as explained above, rescissible contracts and void or inexistent contracts belong to two mutually exclusive groups. This error, however, does not justify the granting of the Petition.

Entitlement to Damages

The Court's declaration of the inexistence of the Deed of Assignment renders the resolution of the fifth issue — on GHI's entitlement to damages — superfluous. Instead, the dismissal of its complaint for lack of cause of action is warranted.

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[78] CA Decision dated April 14, 2016, *id.* at 18-19.

WHEREFORE, the Petition is hereby **DENIED** for lack of merit. The Court of Appeals' Decision dated April 14, 2016 and Resolution dated July 25, 2016 in CA-G.R. CV No. 03366-MIN as well as the Decision dated July 22, 2013 of the Regional Trial Court of Cagayan de Oro City, Branch 38 in Civil Case No. 2004-111 are hereby **AFFIRMED** with **MODIFICATIONS**. The Deed of Assignment dated March 11, 2003 executed by respondent Ferrochrome Philippines, Inc. in favor of petitioner G. Holdings, Inc. is declared inexistent for being absolutely simulated; the complaint of petitioner G. Holdings, Inc. is dismissed for lack of cause of action; and pursuant to *Nacar v. Gallery Frames*,[79] the total amount awarded in the RTC-CDO Decision shall earn 6% interest per year from the date of finality of this Decision until fully paid.

SO ORDERED.

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

Carpio, J., on official leave.

SECOND DIVISION

[G.R. No. 226766. September 27, 2017]

ORIENTAL SHIPMANAGEMENT CO., INC. and/or MOL TANKSHIP MANAGEMENT (EUROPE) LTD. and/or RAMON S. HERRERA, *petitioners, vs.* **WILLIAM DAVID P. OCANGAS,** *respondent.*

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[79] 716 Phil. 267 (2013).

[*] Per Special Order No. 2487 dated September 19, 2017.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; OVERSEAS FILIPINO WORKERS; PERMANENT AND TOTAL DISABILITY BENEFITS; APPLICATION OF THE 120-DAY RULE AND THE 240-DAY RULE.— [T]he Court clarified and delineated in *Kestrel Shipping Co. Inc. v. Munar*, that if the complaint for maritime disability compensation was filed prior to October 6, 2008, the 120-day rule enunciated in *Crystal Shipping* applies. However, if such complaint was filed from October 6, 2008 onwards, as in the case at bar where the Complaint was filed by the Respondent on January 24, 2013, the 240-day rule provided in the case of *Splash Philippines, Inc*. and clarified in the case of *Vergara v. Hammonia Maritime Services Inc*., applies. Insofar as cases covered by the 240-day rule, the Court has repeatedly emphasized that the determination of the rights of seafarers to compensation for disability benefits depends not solely on the provisions of the POEA-SEC but likewise by the parties' contractual obligations set forth under their CBA, the attendant medical findings, and relevant Philippine laws and rules.

2. ID.; ID.; ID.; WHEN AN ILLNESS MAY BE CONSIDERED AS PERMANENT AND TOTAL.— Harmonizing the provisions of the POEA-SEC, Labor Code, and the Rules on Employee Compensation, the Court discussed in the case of *Vergara v. Hammonia Maritime Services, Inc*. x x x [where] it can be deduced that upon repatriation, the seafarer is regarded to be on temporary total disability, which then becomes permanent when a) it so declared by the company-designated physician; or b) when 120 days has elapsed from the onset of disability and there is *no need* for further medical treatment, and the company-designated physician fails to make a declaration either of fitness or permanent partial or total disability; or c) when even after the 120-day period further medical attention becomes necessary and continues after the maximum 240-day medical treatment period without any declaration of fitness or permanent disability. Simply stated, a seafarer is conclusively presumed to be totally and permanently disabled when the company-designated physician fails to make a declaration regarding the seafarer's fitness or status of disability within the specified 120 or 240-day periods. "On the other hand, if

the company-designated physician declares the seaman fit to work within the said periods, such declaration should be respected unless the physician chosen by the seaman and the doctor selected by both the seaman and his employer declare otherwise."

3. ID.; ID.; PHILIPPINE OVERSEAS EMPLOYMENT AGENCY STANDARD EMPLOYMENT CONTRACT (POEA-SEC); PROCEDURE WHEN THE SEAFARER DISAGREES WITH THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN; FAILURE TO FOLLOW RENDERS CONCLUSIVE THE DISABILITY RATING ISSUED BY THE COMPANY-DESIGNATED PHYSICIAN.— The Court is bound by the Grade 11 disability grading and assessment by the company-designated physician rendered within the specified period, as Respondent never questioned such diagnosis in accordance with the procedure set forth under the POEA-SEC nor contested the company-designated physician's competence. x x x The POEA-SEC clearly provides that when the seafarer disagrees with the findings of the company-designated physician, he has the opportunity to seek a second opinion from the physician of his choice. If the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, the parties may agree to jointly refer the matter to a third doctor, whose decision shall be binding between them. Ultimately, the failure of the Respondent to follow this procedure is fatal and renders conclusive disability rating issued by the company-designated physician.

APPEARANCES OF COUNSEL

Nolasco & Associates Law Offices for petitioners.
R. Go, Jr. Law Office for respondent.

D E C I S I O N

REYES, JR., *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside

the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 135103 dated March 9, 2016, and its and Resolution[2] dated August 31, 2016, denying the motion for reconsideration thereof. The assailed decision granted the petition for *certiorari* filed by the petitioners, reversed and set aside the Decision[3] dated January 15, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 09-000805-13, and reinstated the Decision[4] dated July 23, 2013 issued by the Labor Arbiter (LA) in NLRC NCR Case No. (M) 01-01253-13.

The Antecedent Facts

Respondent William David P. Ocangas was hired by Petitioner MOL Tankship Management (Europe) Ltd., through its local manning agency in the Philippines-Petitioner Oriental Shipmanagement Co., Inc.

Under the employment contract, Respondent was hired as a Pumpman on board the vessel M/T Phoenix Admiral, for a period of nine (9) months, with a basic monthly salary of US$599.00.[5]

Prior to his employment, Respondent underwent a pre-employment medical examination (PEME) and was declared fit to work.[6]

Respondent was deployed on November 29, 2011. His tasks on board include the rebuild and repair of the valves, pumps, and leaks within the cargo system and extended to the

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[1] Penned by Associate Justice Noel G. Tijam (now a Member of this Court), and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr.; *rollo*, pp. 33-45.

[2] *Id*. at 47-48.

[3] Penned by Commissioner Perlita B. Velasco, with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go concurring; *id.* at 58-70.

[4] Rendered by Labor Arbiter Eduardo J. Carpio; *id*. at 50-56.

[5] *Id*. at 34.

[6] *Id*. at 51.

maintenance and lubrication of all parts therein, such as glands, bearing, and the breach rods.[7]

On July 12, 2012, while on duty, Respondent suffered a broken spine and felt extreme pain on his lower back and numbness on his lower extremities, as a result of him having to lift the cover of the ballast pump manually, which he is then preparing for inspection and maintenance.[8] He was then advised to rest and given pain relievers.[9]

On August 16, 2012, Respondent was brought to Kozmino, Russia where he was diagnosed to be suffering from "Osteochondrosis, Regiolumbalis." He was then given proper medication and was advised to seek medical treatment in his home country.[10]

Respondent's condition did not improve despite medical attention. Thus, on August 20, 2012, Respondent was recommended to be repatriated to obtain further medical treatment.[11]

Upon his repatriation on September 4, 2012, Respondent immediately reported to Petitioner Oriental Shipmanagement Co., Inc., which then referred him to the company's accredited physician at the Marine Medical Services of the Metropolitan Medical Center. After a series of tests, Respondent was found to be suffering from "Central Disc Protrusions L4-L5 and L5-S1, and Minimal Osteophytes, Lumbar vertebrae."[12] Respondent then underwent a series of treatments supervised by company-designated physicians.

On January 23, 2013, Respondent was declared by Dr. William Chuasuan, a company-designated and accredited physician, to

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[7] *Id*.

[8] *Id*. at 34, 51.

[9] *Supra* note 6.

[10] *Id*.

[11] *Id*.

[12] *Id*.

have reached the maximum medical cure with Grade 11 disability impediment for 1/3 loss of lifting power and per the Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC) Schedule of Benefits, entitled to US$ 7,465.[13]

On January 24, 2013, Respondent filed a Complaint against Petitioner for recovery of permanent total disability benefits, refund of medical expenses, sickness allowance, and claim for damages.[14]

On March 25, 2013, Respondent sought the medical opinion of Dr. Marcelino Cadag, orthopedic surgeon of the Loyola International Multi Specialty Clinics. Dr. Cadag recommended that the Respondent undergo further therapy and diagnosed him to be suffering from "Herniated Nucleus Pulposus L4-L5, L5-S1 with Nerve Root Compression; Lumbar Spondylosis,"[15] and as such no longer fit for sea duty or for any work aboard seafaring vessel given his medical condition.

The LA's Decision

On July 23, 2013, the LA rendered his Decision[16] granting the Complaint, *to wit*:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the Complainant entitled to permanent and total disability benefit and, therefore, holding all the Respondents jointly and severally liable to pay the Complainant his full disability benefit in the amount of US$100,000.00 or their peso equivalent at the time of payment plus attorney's fee equivalent to 10% of the total judgment award.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[17]

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[13] *Id*. at 53, 60.

[14] *Id*. at 35.

[15] *Id*.

[16] *Id*. at 50-56.

[17] *Id*. at 56.

In his Decision, the LA held that contrary to the allegation of the Petitioners, the company-designated physician does not have the exclusive prerogative in the determination and assessment of the illness and/or injury of the seafarer. As such, the findings of the company-designated physician should not be taken as the only primary consideration, especially where there is a contrary opinion as in the instant case.[18]

All told, the LA ruled that the Respondent was rendered unfit to work as seaman for more than 120 days, by itself, already constitutes permanent total disability and entitles the latter to US$ 100,000.00 pursuant to their collective bargaining agreement (CBA).[19]

However, the LA denied the Respondent's claim for medical expenses for failure to substantiate the same. Likewise, finding that the petitioners merely relied on the certification issued by the company-designated physician, the LA denied the claim for moral and exemplary damages.[20]

Petitioners appealed the July 23, 2013 Decision of the LA to the NLRC, asserting that while they admit liability for Respondent's disability, the latter is entitled only to benefits corresponding to permanent partial disability (Grade 11) as determined by the company-designated physician.[21]

Petitioners insisted that under the POEA-SEC, the company-designated physician has the primary if not the exclusive authority to assess the seafarer's disability.[22]

The NLRC's Decision

On January 15, 2014, the NLRC rendered its Decision[23]

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[18] *Id*. at 55.

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

[20] *Id*. at 56.

[21] *Id*. at 61.

[22] *Id.*

[23] *Id*. at 58-70.

granting the appeal, and accordingly reversed and set aside the July 23, 2013 Decision of the LA.

The NLRC stated that initially, the Respondent's complaint for permanent and total disability should have been dismissed for lack of cause of action as at the time it was filed the only assessment that was existing was that of permanent partial disability (Grade 11) as determined by the company-designated physician. It noted that the Respondent secured a certification from Dr. Marcelino Cadag attesting to his permanent total disability two (2) months after the filing of the Complaint.[24]

Furthermore, the NLRC claimed that even if it considers the medical certificate issued by the Respondent's doctor, it is still bound to uphold the Grade 11 disability assessment of the company-designated physician, as the latter is in a far better position to assess the Respondent who has been under his care and treatment from the time of the latter was repatriated on September 4, 2012 until January 23, 2012 when the assessment was issued.[25]

The NLRC also ruled that contrary to the LA's determination, the mere fact that more than 120 days elapsed since the Respondent's repatriation without him resuming from work as a seafarer does not automatically warrant the award of permanent total (Grade 1) disability benefits.[26]

Respondent filed motion for reconsideration of the said Decision but the same was denied by the NLRC in its March 24, 2014 Resolution.[27]

Respondent then filed a petition for *certiorari* with the CA alleging that the NLRC committed grave abuse of discretion in ruling that he has no cause of action, in finding that he is merely entitled to Grade 11 disability benefits, and in not awarding attorney's fees and damages.

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[24] *Id*. at 66-67.

[25] *Id*. at 67.

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

[27] *Id*. at 72-73.

The CA's Decision

On March 9, 2016, the CA rendered the herein assailed Decision[28] which granted the petition for *certiorari* filed by the Respondent. The CA held that the primordial consideration in determining whether the disability is total and permanent rests on evidence establishing that the seafarer's continuous inability to work due to a work-related illness is for a period of more than 120 days.[29]

According to the CA, the NLRC closed its eyes to the fact that since Respondent was repatriated on September 4, 2012 up to the time he filed his complaint on January 24, 2013, more than 120 days has elapsed during which the Respondent was medically treated and unable to perform his duties as pumpman on board any sea vessel.[30]

Moreover, the CA declared that the NLRC erred in relying fully with the company-designated physician's assessment, as it is settled that the latter's findings are not binding on the labor tribunals and the courts.[31]

Petitioners sought a reconsideration of the March 9, 2016 Decision but the CA denied it in its Resolution[32] dated August 31, 2016.

Issues

In the instant petition, Petitioners submit the following issues for this Court's resolution:

DID THE COURT OF APPEALS COMMIT SERIOUS, GRAVE AND PATENT ERRORS IN REVERSING AND SETTING ASIDE THE DECISION OF THE NLRC AND REINSTATING THE LA'S

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[28] *Supra* note 1.

[29] *Id*. at 41.

[30] *Id*. at 42.

[31] *Id*. at 43.

[32] *Supra* note 2.

ERRONEOUS AWARD IN FAVOR OF RESPONDENT OCANGAS OF FULL DISABILITY BENEFITS, CONTRARY TO THE RELEVANT LAW, RULE AND JURISPRUDENCE?[33]

The Court's Ruling

The petition is meritorious.

It bears to stress at the outset that there is no issue as to the compensability of Respondent's injury as the parties do not dispute that the same is work-related. What remains to be resolved in the instant petition is whether Respondent is entitled to the payment of permanent total disability benefits or to that which corresponds to Grade 11 disability in accordance with the assessment of the company-designated physician.

The CA, in ruling that the Respondent suffered permanent total disability relied primarily on the cases of *Crystal Shipping, Inc. v. Natividad,*[34] *Philimare, Inc. v. Suganob,*[35] *Micronesia Resources v. Cantomayor,*[36] and *United Philippine Lines, Inc. and/or Holland America Line, Inc. v. Beseril.*[37] The last three cases were decided within the purview of the doctrine laid down in *Crystal Shipping* that permanent and total disability consists mainly in the inability of the seafarer to perform his customary work for more than 120 days.

Notably, as elucidated in the case of *Splash Philippines Inc., et al. v. Ruizo*,[38] the ruling in *Crystal Shipping* has already been modified in that the doctrine laid down therein cannot simply be lifted and applied as a general rule for all cases in all contexts.

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[33] *Rollo,* p. 10.

[34] 510 Phil. 332 (2005).

[35] 579 Phil. 706 (2008).

[36] 552 Phil. 130 (2007).

[37] 521 Phil. 380 (2006).

[38] 730 Phil. 162 (2014).

Thus, the Court clarified and delineated in *Kestrel Shipping Co. Inc. v. Munar,*[39] that if the complaint for maritime disability compensation was filed prior to October 6, 2008, the 120-day rule enunciated in *Crystal Shipping* applies. However, if such complaint was filed from October 6, 2008 onwards, as in the case at bar where the Complaint was filed by the Respondent on January 24, 2013, the 240-day rule provided in the case of *Splash Philippines, Inc.* and clarified in the case of *Vergara v. Hammonia Maritime Services Inc.,*[40] applies.

Insofar as cases covered by the 240-day rule, the Court has repeatedly emphasized that the determination of the rights of seafarers to compensation for disability benefits depends not solely on the provisions of the POEA-SEC but likewise by the parties' contractual obligations set forth under their CBA, the attendant medical findings, and relevant Philippine laws and rules.[41]

Pertinent to the entitlement of a seafarer to permanent and total disability benefits, Section 20(A) of the POEA-SEC provides:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated

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[39] 702 Phil. 717 (2013); *Montierro v. Rickmers Marine Agency Phils., Inc.*, 750 Phil. 937 (2013).

[40] 588 Phil. 895 (2008).

[41] *Alpha Shipmanagement Corporation v. Calo,* 724 Phil. 106 (2014).

physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x x x x x x

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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer**.** 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.

x x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid**.** (Emphasis supplied)

The provisions of the POEA-SEC notwithstanding, in light of the definition provided for under Article 192[42] of the Labor

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[42] Art. 192. Permanent total disability. – x x x

(c) The following disabilities shall be deemed total and permanent:

1.Temporary total disability lasting continuously for more than one hundred twenty days, <u>except as otherwise provided for in the Rules</u>;

Code as well as that under Rule X, Section 2[43] of the Amended Rules on Employees Compensation, the Court clarified in *Alpha Shipmanagement Corporation v. Calo,*[44] that apart from illnesses that are classified as Grade 1 under the POEA-SEC, an illness may be considered as permanent and total, thus:

> [W]hen so declared by the company-designated physician, or, in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120 or 240-day treatment period, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability. This is true "regardless of whether the employee loses the use of any part of his body."[45] (Citations omitted)

Harmonizing the provisions of the POEA-SEC, Labor Code, and the Rules on Employee Compensation, the Court discussed in the case of *Vergara v. Hammonia Maritime Services, Inc.*[46] that:

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2. Complete loss of sight of both eyes;

3. Loss of two limbs at or above the ankle or wrist;

4. Permanent complete paralysis of two limbs;

5. Brain injury resulting in incurable imbecility or insanity; and

6. Such cases as determined by the Medical Director of the System and approved by the Commission. [Emphasis and underscoring supplied.]

[43] RULE X - TEMPORARY TOTAL DISABILITY

SECTION 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.

x x x x x x x x x

[44] 724 Phil. 106 (2014).

[45] 724 Phil. 107, 106 (2014).

[46] *Supra* 40.

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 because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[47] (Citations Omitted)

From the foregoing, it can be deduced that upon repatriation, the seafarer is regarded to be on temporary total disability, which then becomes permanent when a) it so declared by the company-designated physician; or b) when 120 days has elapsed from the onset of disability and there is *no need* for further medical treatment, and the company-designated physician fails to make a declaration either of fitness or permanent partial or total disability; or c) when even after the 120-day period further medical attention becomes necessary and continues after the maximum 240-day medical treatment period without any declaration of fitness or permanent disability.

Simply stated, a seafarer is conclusively presumed to be totally and permanently disabled when the company-designated physician fails to make a declaration regarding the seafarer's fitness or status of disability within the specified 120 or 240-day periods. "On the other hand, if the company-designated physician declares the seaman fit to work within the said periods, such declaration should be respected unless the physician chosen by the seaman and the doctor selected by both the seaman and his employer declare otherwise."[48]

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[47] 588 Phil. 897, 895 (2008).

[48] *Kestrel Shipping v. Munar*, 702 Phil. 717 (2013).

In this case, immediately after he was medically repatriated on September 4, 2012, Respondent reported to Petitioner Oriental Shipmanagement, which then referred him to the company-designated and accredited physicians. Thereupon, he was subjected to a series of tests and was initially diagnosed to be suffering from "Central Disc Protrusions L4-L5 and L5-S1, and Minimal Osteophytes, Lumbar vertebrae" for which he underwent medication, therapy sessions, and medical consultations, all of which under the supervision of company-designated physicians, until he reached maximum medical cure and was diagnosed a final disability impediment Grade 11 per Medical Report dated January 23, 2013. Clearly, from the time of repatriation, Respondent was diagnosed within the 240-day period of treatment, as only 141 days has lapsed.

The Court is bound by the Grade 11 disability grading and assessment by the company-designated physician rendered within the specified period, as Respondent never questioned such diagnosis in accordance with the procedure set forth under the POEA-SEC nor contested the company-designated physician's competence.[49]

Here, instead of expressing his disagreement to the findings of the company-designated physician, the Respondent filed a Complaint for permanent total disability benefits, without any corresponding medical certificate in support thereof but that of the Grade 11 disability assessment by the company-designated physician. In fact, it took Respondent two (2) months after the filing of the Complaint before he submitted himself for examination by a physician of his choice, who then issued a permanent and total disability (Grade 1) rating.

The POEA-SEC clearly provides that when the seafarer disagrees with the findings of the company-designated physician, he has the opportunity to seek a second opinion from the physician of his choice. If the physician appointed by the seafarer disagrees with the assessment of the company-designated

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[49] *Jebsens' Maritime, Inc., Sea Chefs Ltd., and Aboitiz v. Florvin Rapiz*, G.R. No. 218871, January 11, 2017.

physician, the parties may agree to jointly refer the matter to a third doctor, whose decision shall be binding between them. Ultimately, the failure of the Respondent to follow this procedure is fatal and renders conclusive disability rating issued by the company-designated physician.[50]

While it is true that the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seamen in pursuit of their employment on board ocean-going vessels[51] consistent with the State's policy to afford full protection to labor,[52] the same must be weighed in accordance with the prescribed laws, procedure, and provisions of contract freely agreed upon by the parties, and with utmost regard as well of the rights of the employers.

In the instant case, compelling the Court to consider the opinion rendered by Respondent's physician of choice, submitted two (2) months after the filing of the complaint, would undermine the right of the Petitioners to refute the findings and avail of the option to jointly refer with the Respondent the disputed diagnosis to a third doctor of the parties' choice, as agreed upon by the parties under the POEA-SEC.

Furthermore, the NLRC's reliance on the assessment of the company-designated physician was justified not only by the law governing the parties under the contract, but as well by the time and resources spent as well as the effort exerted by the company-designated physician in the examination and treatment of the Respondent while still on board and as soon as he was repatriated in the Philippines.[53]

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[50] *Supra* note 40.

[51] *Panganiban v. Tara Trading Shipmanagement, Inc. and Shinline SDN BHD*, 647 Phil. 675 (2010).

[52] Section 3, Article XIII, 1987 Constitution.

[53] See *Wilhemsen-Smith Bell Manning/Wilhemsen Ship Management, LTD./ Preysler, Jr. v. Suarez*, 758 Phil. 540 (2015).

The Court's ruling in the fairly similar case of *Vergara v. Hammonia Maritime Services, Inc.,*[54] is enlightening. The Court therein stated:

> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. **We do so mindful that the company had exerted real effort to provide the petitioner with medical assistance,** such that the petitioner finally ended with a 20/20 vision. The company-designated physician, too, monitored the petitioner's case from the beginning and we cannot simply throw out his certification, as the petitioner suggested, because he has no expertise in ophthalmology. Under the facts of this case, it was the company-designated doctor who referred the petitioner's case to the proper medical specialist whose medical results are not essentially disputed; who monitored the petitioner's case during its progress; and who issued his certification on the basis of the medical records available and the results obtained. This led the NLRC in its own ruling to note that:
>
> > x x x more weight should be given to the assessment of degree of disability made by the company doctors because they were the ones who attended and treated petitioner Vergara for a period of almost five (5) months from the time of his repatriation to the Philippines on September 5, 2000 to the time of his declaration as fit to resume sea duties on January 31, 2001, and they were privy to petitioner Vergara's case from the very beginning, which enabled the company-designated doctors to acquire a detailed knowledge and familiarity with petitioner Vergara's medical condition which thus enabled them to reach a more accurate evaluation of the degree of any disability which petitioner Vergara might have sustained. **These are not mere company doctors. These doctors are independent medical practitioners who passed the rigorous requirements of the employer and are more likely to protect the interest of the employer against fraud.**

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[54] *Supra* note 40.

> **Moreover, as between those who had actually attended to petitioner Vergara throughout the duration of his illness and those who had merely examined him later upon his recovery for the purpose of determining disability benefits, the former must prevail**.[55] (Emphasis supplied)

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition for review on *certiorari* is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. SP No. 135103 dated March 9, 2016, and its Resolution dated August 31, 2016, are hereby **REVERSED and SET ASIDE.** The Decision dated January 15, 2014 of the National Labor Relations Commission in NLRC LAC No. (OFW-M) 09-000805-13 is hereby **REINSTATED.**

SO ORDERED.

Peralta[*] *(Acting Chairperson)*, *Perlas-Bernabe,* and *Caguioa*, *JJ.,* concur.

Carpio, J., on official leave.

SECOND DIVISION

[G.R. No. 227185. September 27, 2017]

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

SYLLABUS

1. CRIMINAL LAW; QUALIFIED RAPE; WHEN AND HOW COMMITTED; PENALTY.— The statutory provisions relevant to the case are Article 266-A and Article 266-B of the

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[55] 588 Phil. 914-915, 895 (2008).

* Acting Chairperson per Special Order No. 2487 dated September 19, 2017.

Revised Penal Code, which provide: 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 Article 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances: 1. **when the victim is under eighteen (18) years of age and the offender is a** parent, ascendant, **step-parent**, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim x x x.

2. ID.; ID.; ELEMENTS.— For a conviction of qualified rape, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, (3) by force and without consent; and in order to warrant the imposition of the death penalty, the additional elements that (4) the victim is under eighteen years of age at the time of the rape, and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.

3. REMEDIAL LAW; FINDINGS OF THE TRIAL COURTS, RESPECTED.— We do not find any reason to depart from the findings of the courts below that the prosecution was able to establish all the elements of the crime beyond reasonable doubt. x x x Certainly, the trial judge is in the best position to assess whether the witness was telling the truth as he had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying. x x x As a rule, factual findings of the trial court and the conclusions based on these factual findings are to be given the highest respect. As well, factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion.

4. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; A FINDING THAT THE ACCUSED IS GUILTY OF RAPE MAY BE BASED SOLELY ON THE VICTIM'S TESTIMONY IF SUCH TESTIMONY MEETS THE TEST OF CREDIBILITY.— [T]he CA rightly opined that AAA

withstood the cross-examination and was unequivocal on how the rape was committed by her stepfather. Time and again, the Court has held that in resolving rape cases, primordial consideration is given to the credibility of the victim's testimony. A finding that the accused is guilty of rape may be based solely on the victim's testimony if such testimony meets the test of credibility. This is because rape is a crime that is almost always committed in isolation, usually leaving only the victim to testify on the commission of the crime. Moreover, no woman, much less a child of such tender age, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.

5. ID.; ID.; DENIAL AND ALIBI; MERE DENIAL CANNOT PREVAIL OVER POSITIVE TESTIMONIES, AND FOR ALIBI TO PROSPER, ACCUSED MUST PROVE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE SCENE OF THE CRIME DURING ITS COMMISSION.— With regard to EEE's defenses of denial and alibi, the same deserve scant consideration. Treated as the most common defenses in rape cases, alibi and denial are inherently weak and easily fabricated; thus, they are generally rejected. As a rule, mere denial cannot prevail over the positive testimony of an eyewitness to the crime. Here, AAA's testimony, which was bolstered by BBB, is logical, consistent, and convincing; hence, EEE may be convicted solely on the basis thereof. x x x For the defense of alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime during its commission. "Physical impossibility" means the distance and the facility of access between the *situs* of the crime and the location of the accused when the crime was committed; it must be demonstrated that the accused was so far away and could not have been physically present at the crime scene and its immediate vicinity upon its commission. If there is the least possibility of his presence at the *locus criminis*, the defense of alibi will not prosper.

6. CRIMINAL LAW; QUALIFIED RAPE; PENALTY AND CIVIL LIABILITY.— [W]ith respect to the penalty imposed, the courts below were correct in imposing the penalty of *reclusion perpetua*, instead of death by virtue of Republic Act No. 9346, as the rape is qualified by AAA's minority and her relationship

to EEE. On the award of damages, consistent with *People v. Jugueta*, the amounts of damages shall be ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. Further, six percent (6%) interest *per annum* is imposed on all the amounts awarded reckoned 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

PERALTA,[*] *J.*:

This is an appeal from the June 3, 2016 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CEB-CR-HC. No. 01972, which affirmed with modification the November 24, 2014 Decision[2] of the Regional Trial Court *(RTC)* Branch 45, Bais, Negros Oriental, finding accused-appellant EEE guilty beyond reasonable doubt of qualified rape committed against his minor stepdaughter, AAA.

The Information for rape,[3] dated August 31, 2006, alleged:

That on or about the month of June 28, 2006, at Bais City, 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 [had] carnal knowledge with his own step-daughter, a thirteen (13) year old minor child, one

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[*] Acting Chairperson, per Special Order No. 2487 dated September 19, 2017.

[1] Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Gabriel T. Ingles and Edward B. Contreras concurring (*Rollo,* pp. 5-14; CA *rollo,* pp. 54-63).

[2] CA *rollo,* pp. 20-24; Records, pp. 84-88.

[3] Under Article 266-A Paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Republic Act No. 7610.

[AAA], against her will, to the damage and prejudice of the offended party.

That the commission of the crime was attended with the qualifying and aggravating circumstance of relationship and minority as the victim [AAA] was still thirteen (13) years old when the accused sexually molested her.[4]

EEE pleaded "Not Guilty" in his arraignment.[5] At the pre-trial, both parties mutually stipulated on the following facts:

1. That accused admits his identity, that whenever his name is mentioned in the proceedings, he is the same accused in this case.

2. That accused admits that the victim is [his] stepdaughter, the latter being the offspring of [BBB] with her first husband.[6]

Trial ensued while EEE was under detention.[7] The witnesses for the prosecution were AAA, her mother BBB, and medical examiner Dr. Ma. Corazon Cablao. The defense presented EEE, his brother-in-law (husband of his sister) FFF, and his father GGG.

AAA testified that around 7:00 a.m. on June 28, 2006, she was about to take a bath and already preparing her things when her stepfather, accused appellant EEE, pulled her and brought her to the bedroom. He took off her clothes and undressed himself. He then inserted his penis into her vagina. He threatened her not to tell BBB about the incident, saying that BBB would scold and send them to prison.

When the rape incident transpired, BBB left the house, while AAA's brother was instructed by EEE to go outside. However, BBB almost caught them in the act. She confronted EEE and inquired on what they were doing inside the bedroom. Afraid, AAA said that nothing happened. Days after, AAA and her mother lived separately from EEE. BBB was mad at him as she already had doubts on what actually happened.

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[4] Records, p. 3.

[5] *Id*. at 21.

[6] *Id*. at 30.

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

BBB, the legal wife of EEE since 1999, narrated that about 7:00 a.m. on June 28, 2006, she was on her way to work in Sitio Camuyugan, Sto. Niño, Tanjay City, when she noticed that she forgot to bring her gloves. Upon arriving at their house in Sitio Biso, Cambagahan, Bais City *(Biso)*, she saw that the basin was full of AAA's dirty uniforms. She called her twice, but there was no reply. After, she saw EEE and AAA coming out of the bedroom. He was putting on the zipper of his short pants while AAA was dressed but hugging a blanket. When she asked EEE what AAA was doing there, he told her that she was arranging her uniforms. Puzzled, she retorted that AAA usually prepares her uniform in the evening. EEE reasoned out that she was keeping the bedding they used the night before. As to which, BBB asserted that it was already taken care of before she left the house. When she asked AAA what happened, the latter did not answer. EEE then went to the farm. AAA was not able to go to school and was brought by BBB to her workplace instead.

At work, BBB confronted AAA on what occurred, but the latter did not give an answer and just cried. Thereafter, BBB noticed that AAA would not respond whenever she would call her and that every time she would ask her about the incident, she would reply that nothing happened. In the evening of August 6, 2006, BBB once more asked AAA whether she was molested by EEE. The latter finally admitted that she was raped but did not immediately apprise her because she was threatened. She was crying and shaking. The following day, BBB brought AAA in Bais City for medical examination and reported the incident to the police. They left the house and lived separately with EEE.

The testimony of Dr. Cablao was dispensed with in view of the admission by the defense counsel on the existence of her medical findings, which indicated the presence of old hymenal lacerations at 6 o'clock and 9 o'clock positions.[8]

For the defense, EEE contended that it was highly impossible for him to have raped AAA because on June 28, 2006 she and

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[8] *Id*. at 8, 45.

BBB were no longer residing in their house in Biso and that the reason BBB filed the case against him was that they were regularly fighting. He admitted that AAA is his stepdaughter and that BBB is his legal wife. He was previously engaged in a bakery business, which went bankrupt when it was sold due to the hospitalization of AAA and BBB. By reason thereof, he engaged himself in farming in Biso. He and BBB were always quarreling as she consistently nagged him, complaining of their poor economic condition. In April 2006, BBB left him and brought with her AAA and their son. Later, he found them staying in the house of Calixto Casipong *(Casipong)* in Dawis, Bayawan City. Casipong is a rich man and owner of a big store in that place. Meanwhile, AAA was a stay-in working student in the videoke house of a certain Nimfa in Dawis. EEE tried to convince BBB to live with him again, but she just insulted him. Thus, he continued to reside in their house in Biso and usually ate with his parents in Sitio Gintuangan, Cambagahan, Bais City *(Gintuangan)*.

EEE denied having any sexual relationship with AAA while they were still in one roof. He claimed that he loves his stepdaughter like his very own. There were occasions, however, that he punished her with a whip whenever he would send her to an errand but would come back late. As to his relationship with BBB, he affirmed that they constantly argue when they lived together and that there were times that, by reason thereof, they did not sleep in the same place. Despite this, there was no instance that he slept in the room of AAA.

To support EEE, FFF testified that he was with EEE for three days, with the first one on June 28, 2006. They worked in a ricefield together with his father-in-law, GGG. They arrived there around 6:00 a.m. to 6:30 a.m. and started to work by 7:00 a.m. until afternoon. They ate lunch at Jessie's house, which is 30-50 meters away from the ricefield. FFF knew that prior to the date of the alleged rape incident, EEE was staying in Jessie's house due to his (EEE) frequent altercations with BBB. EEE told him this as they would see each other on market day, every Thursday in Dawis. He also knew that AAA was with BBB in the house of Casipong, who is his neighbor in Dawis. BBB was as an employee of Casipong, while AAA

was a student of Dawis High School working and staying at Nimfa's place.

Finally, on his part, Jessie denied the charges of AAA because his son EEE was living with him from April to June 2006. In particular, EEE was working with him and FFF in a ricefield on June 28, 2006 at about 7:00 a.m. He added that EEE and BBB separated sometime in April 2006; before that, the spouses resided in Biso while his place is situated in Gintuangan, which is about three kilometers away; it takes almost an hour of walking to travel between both *sitios*; EEE was into bakery business, which was closed after he had to spend for the hospitalization of AAA and BBB; when the couple broke up, EEE worked for free in his ricefield in Gintuangan from April to June 2006, while BBB and the children lived in Dawis; and he personally delivered his son to the police station on October 5, 2006 because a case was filed against him.

On November 24, 2014, EEE was convicted by the RTC of the crime charged. The *fallo* of the Decision reads:

> WHEREFORE, all premises considered, the prosecution having established the guilt of the accused beyond reasonable doubt, accused EEE is hereby sentenced to RECLUSION PERPETUA and to pay the victim the amount of ₱100,000.00 moral damages and ₱50,000.00 indemnity.
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> SO ORDERED.[9]

The trial court opined that it was not impossible for EEE to be at the *locus criminis* because to cover the distance of three kilometers would surely not consume one hour of normal walking and even much less when done in a hurry. It ruled that where an accused person's alibi is established only by himself, his relatives, and friends, the denial of culpability should be accorded the strictest scrutiny as they are necessarily suspect and cannot prevail over the testimonies of the more credible witnesses for the prosecution. To the court's mind, the threat of EEE to AAA – that she would be scolded by BBB and that both of them

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[9] *Id*. at 88; CA *rollo,* p. 24.

would go to jail – is serious enough to silence her and surrender her womanhood. Furthermore, it was held that courts are seldom, if at all, convinced that a mother would stoop so low as to subject her daughter to physical hardship and shame concomitant to a rape prosecution just to assuage her own hurt feelings against the accused. Finally, the court noted that AAA was crying when EEE was testifying in the witness stand; her tears added poignancy to verity born out of human nature and experience.

EEE elevated the case to the CA, arguing that: the crime of rape could not be committed considering that he and BBB, together with AAA, no longer lived together since April 2006; the aggravating circumstance of force, threat or intimidation was not proven because the consent to perform sexual congress was given before the alleged threat was made towards AAA; even assuming that such remark was made, it could qualify only as a mere precaution or advice to her after the consensual sex was already consummated; and, if at all, he is only guilty of qualified seduction under Article 337 of the RPC.

Convinced that sufficient proof was presented by the prosecution to support the conviction of EEE, the CA dismissed the appeal. It ruled that: AAA did not deny that they were living separately from him but such separation happened after the commission of the crime; EEE failed to disprove that his father's ricefield was near their house and that it was possible for him to traverse these places within a span of an hour; his threat was enough to instill fear on AAA, silencing her on the rape committed; and there is no credence in his assertion that AAA filed the case just because he scolded and whipped her when she returned late after he sent her for an errand. The assailed decision was affirmed with modification as to the penalty imposed. Thus:

WHEREFORE, this appeal is **DENIED**. The 24 November 2014 Decision of Branch 45 of the Regional Trial Court of Bais City in Criminal Case No. F-06-00132-B is **AFFIRMED with MODIFICATION**. Appellant is sentenced to *reclusion perpetua* without eligibility for parole. He is further directed to pay AAA the following: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00

as exemplary damages. The total amount of damages shall earn six percent (6%) interest from finality of judgment until fully paid.

SO ORDERED.[10]

Before Us, both the People, as represented by the Office of the Solicitor General, and EEE, through the Public Attorney's Office, manifested that they would dispense with the filing of a Supplemental Brief, considering that the issues raised by accused-appellant had already been extensively discussed and refuted in the Appellee's Brief, and that it would only result to a reiteration of all the arguments already exhaustively discussed in the Appellant's Brief, filed before the CA.[11]

The appeal must fail.

The statutory provisions relevant to the case are Article 266-A and Article 266-B of the Revised Penal Code,[12] which provide:

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

Article 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. **when the victim is under eighteen (18) years of age and the offender is a** parent, ascendant, **step-parent**, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim x x x

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[10] *Rollo,* pp. 13-14; CA *rollo,* pp. 62-63. (Emphasis in the original)

[11] *Rollo,* pp. 31-32; *id*. at 25-27.

[12] As amended by Republic Act No. 7659 and Republic Act No. 8353.

For a conviction of qualified rape, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, (3) by force and without consent; and in order to warrant the imposition of the death penalty, the additional elements that (4) the victim is under eighteen years of age at the time of the rape, and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[13]

In this case, We do not find any reason to depart from the findings of the courts below that the prosecution was able to establish all the elements of the crime beyond reasonable doubt. As borne by the records, the fourth and fifth elements of minority and relationship were sufficiently proven by AAA's birth certificate and EEEs own admission during the trial.[14] As for the first three elements, the Court agrees that the testimonies of the prosecution witnesses deserve full faith and credence. The trial court did not hesitate to throw out the testimonies of EEE's relatives in view of the more credible witnesses for the prosecution. Certainly, the trial judge is in the best position to assess whether the witness was telling the truth as he had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying.[15]

Also, the CA rightly opined that AAA withstood the cross-examination and was unequivocal on how the rape was committed by her stepfather. Time and again, the Court has held that in resolving rape cases, primordial consideration is given to the credibility of the victim's testimony.[16] A finding that the accused is guilty of rape may be based solely on the victim's testimony if such testimony meets the test of credibility.[17] This is because

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[13] See *People v. Villamor,* G.R. No. 202187, February 10, 2016, 783 SCRA 697, 710.

[14] Records, pp. 9, 30; TSN, April 1, 2009, p. 3.

[15] *People v. Villamor, supra* note 13, at 711.

[16] *Id.* and *People v. Perez,* G.R. No. 208071, March 9, 2016, 787 SCRA 219, 229.

[17] *People v. Pangilinan,* 676 Phil. 16, 32 (2011).

rape is a crime that is almost always committed in isolation, usually leaving only the victim to testify on the commission of the crime.[18] Moreover, no woman, much less a child of such tender age, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.[19]

With regard to EEE's defenses of denial and alibi, the same deserve scant consideration. Treated as the most common defenses in rape cases, alibi and denial are inherently weak and easily fabricated; thus, they are generally rejected.[20] As a rule, mere denial cannot prevail over the positive testimony of an eyewitness to the crime.[21] Here, AAA's testimony, which was bolstered by BBB, is logical, consistent, and convincing; hence, EEE may be convicted solely on the basis thereof. Notably, AAA even broke down in tears in more than one instance during the trial.[22] The display of such emotion, which indicates the pain that she had felt in recalling her traumatic experience, is evidence of the truth of the rape charges and serves to strengthen the credibility of her testimony.[23]

EEE's claim that the element of force, threat or intimidation is wanting in his case has no merit.

x x x A person accused of a serious crime such as rape will tend to escape liability by shifting the blame on the victim for failing to manifest resistance to sexual abuse. However, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim

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[18] *People v. Perez, supra* note 16.

[19] *People v. Pangilinan, supra* note 17.

[20] *People v. Villamor, supra* note 13, at 713.

[21] *People v. Bernardino Peralta y Morillo, et al.,* G.R. No. 208524, June 1, 2016.

[22] See TSN, May 21, 2008, p. 5 and TSN, April 1, 2009, p. 11.

[23] See *People v. Laurian, Jr.,* 723 Phil. 699, 720 (2013); *People v. Vidaña,* 720 Phil. 531, 541 (2013); and *People v. Tamano,* 652 Phil. 214, 231 (2010).

to shout or seek help does not negate rape. Even lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused. In cases where the rape is committed by a relative such as a father, stepfather, uncle, or common-law spouse, moral influence or ascendancy takes the place of violence.[24]

For the defense of alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime during its commission.[25] "Physical impossibility" means the distance and the facility of access between the *situs* of the crime and the location of the accused when the crime was committed; it must be demonstrated that the accused was so far away and could not have been physically present at the crime scene and its immediate vicinity upon its commission.[26] If there is the least possibility of his presence at the *locus criminis*, the defense of alibi will not prosper.[27]

In an effort to exculpate EEE, the defense professed that he and BBB, together with AAA, no longer lived together in Biso since April 2006 and that on the date and time of the alleged rape he was working in a ricefield in Gintuangan together with GGG and FFF. Both the RTC and the CA found that these excuses failed to prove the physical impossibility of his being at the scene of the crime at the approximate time of its commission. As a rule, factual findings of the trial court and the conclusions based on these factual findings are to be given the highest

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[24] *People v. Jesus Mayola y Picar,* G.R. No. 214470, December 7, 2016.

[25] *People v. Jeffrey Macaranas y Fernandez,* G.R. No. 226846, June 21, 2017.

[26] See *People v. Roman Espia,* G.R. No. 213380, August 10, 2016 and *People v. Dione Barberan, et al.,* G.R. No. 208759, June 22, 2016.

[27] *People v. Bernardino Peralta y Morillo,* G.R. No. 208524, June 1, 2016.

respect.[28] As well, factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion.[29]

Lastly, with respect to the penalty imposed, the courts below were correct in imposing the penalty of *reclusion perpetua*, instead of death by virtue of Republic Act No. 9346, as the rape is qualified by AAA's minority and her relationship to EEE. On the award of damages, consistent with *People v. Jugueta,*[30] the amounts of damages shall be ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. Further, six percent (6%) interest *per annum* is imposed on all the amounts awarded reckoned from the date of finality of this judgment until fully paid.

WHEREFORE, the June 3, 2016 Decision of the Court of Appeals in CA-G.R. CEB-CR-HC. No. 01972, which affirmed with modification the November 24, 2014 Decision of the Regional Trial Court, Branch 45, Bais, Negros Oriental, finding accused-appellant EEE guilty beyond reasonable doubt of qualified rape, is **AFFIRMED**. He is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. All monetary awards for damages shall earn an interest rate of six percent (6%) *per annum* to be computed from the finality of this Decision until fully paid.

SO ORDERED.

Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

Carpio, J., on official leave.

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[28] *People v. Jeffrey Hirang y Rodriguez,* G.R. No. 223528, January 11, 2017.

[29] *People v. Jeffrey Macaranas y Fernandez,* G.R. No. 226846, June 21, 2017.

[30] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

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the period to appeal to the CA is 15 days from receipt of the decision; since Art. 262-A of the Labor Code expressly provides that the award or decision of the voluntary arbitrator shall be final and executory after ten (10) calendar days from receipt of the decision by the parties, the appeal of the voluntary arbitrator's decision to the CA must be filed within 10 days. (*Id.*)

Appeal from the National Labor Relations Commission — In the case of the decisions of the NLRC, there is no law stating that the aggrieved party may appeal the decision before the court; while there is no appeal from an NLRC decision, this does not mean that NLRC decisions are absolutely beyond the powers of review of the court; NLRC decisions may be reviewed by the CA through a petition for certiorari under Rule 65; an NLRC decision is final and not subject to appeal or review by the courts; an exception to this, which is a review by the CA only in cases where there is grave abuse of discretion; when the CA reviews an NLRC decision, it is necessarily limited to the question of whether the NLRC acted arbitrarily, whimsically, or capriciously, in the sense that grave abuse of discretion is understood under the law, the rules, and jurisprudence; it does not entail looking into the correctness of the judgment of the NLRC on the merits. (PNB *vs.* Gregorio, G.R. No. 194944, Sept. 18, 2017) p. 321

Appeal in criminal cases — An appeal of a criminal conviction that opens the entire records of the trial to review, the court is not limited to reviewing errors of law and it may also examine any error even if not assigned by the accused. (Casona *vs.* People, G.R. No. 179757, Sept. 13, 2017) p. 76

Factual findings of administrative agencies — Being the government agency entrusted with the regulation of activities coming under its special and technical forte, and possessing the necessary rule-making power to implement its objectives, is in the best position to interpret its own rules, regulations and guidelines; the Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own

on the presence or absence of grave abuse of discretion on the part of the NLRC. (PNB *vs*. Gregorio, G.R. No. 194944, Sept. 18, 2017) p. 321

— Direct resort to the Supreme Court by way of petition for review on *certiorari* is permitted when only questions of law are involved; there is a question of law when there is doubt as to which law should be applied to a particular set of facts; questions of law do not require that the truth or falsehood of facts be determined or evidence be received and examined. (Lao, Jr. *vs.* LGU of Cagayan de Oro City, G.R. No. 187869, Sept. 13, 2017) p. 92

— Findings of fact of the trial court, especially when affirmed by the CA, are accorded great weight and respect and will not be disturbed on appeal. (Coson *vs.* People, G.R. No. 218830, Sept. 14, 2017) p. 271

— In general, the Court is not a trier of facts; however, an exception lies when the findings of the CA and the NLRC conflict with each other. (TSM Shipping (Phils.), Inc. *vs.* De Chavez, G.R. No. 198225, Sept. 27, 2017) p. 861

— Should be limited to questions of law; for a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the litigants or any of them. (Dacanay *y* Lacaste *vs.* People, G.R. No. 199018, Sept. 27, 2017) p. 885

— The issue of the genuineness of a deed of sale is essentially a question of fact; it is settled that this Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below; this is especially true where the trial court's factual findings are adopted and affirmed by the CA. (Almeda *vs.* Heirs of Ponciano Almeda, G.R. No. 194189, Sept. 14, 2017) p. 239

— The proper remedy to reverse a decision or resolution of the Court of Appeals even if the error assigned is grave abuse of discretion in the findings of fact or of law; the existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements

filed; in the absence or unavailability of the judge where the case is pending, the accused must first go to a judge in the province, city, or municipality where the case is pending; furthermore, a judge of another province, city, or municipality may grant bail only if the accused has been arrested in a province, city, or municipality other than where the case is pending. (*Id*.)

BILL OF RIGHTS

Rights of the accused — Conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution; this is premised on the constitutional presumption that the accused is innocent unless his guilt is proven beyond reasonable doubt. (People *vs.* Rodriguez *y* Hermosa, G.R. No. 211721, Sept. 20, 2017) p. 625

— Where there is reasonable doubt as to the guilt of the accused, he must be acquitted even though his innocence may be doubted since the constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt. (*Id*.)

CERTIORARI

Petition for — A special civil action for certiorari under Rule 65 is not the same as an appeal; in an appeal, the appellate court reviews errors of judgment; on the other hand, a petition for certiorari under Rule 65 is not an appeal but a special civil action, where the reviewing court has jurisdiction only over errors of jurisdiction; a special civil action for certiorari and an appeal are mutually exclusive and not alternative or successive. (PNB *vs.* Gregorio, G.R. No. 194944, Sept. 18, 2017) p. 321

— Failure to comply with the mandatory procedural requirement that the petition be accompanied by copies of documents relevant thereto is a ground for dismissal of the petition. (People *vs.* Sandiganbayan, G.R. No. 198119, Sept. 27, 2017) p. 843

— In certiorari proceedings, the court shall not examine and assess the evidence of the parties, weigh its probative

COMMISSION ON AUDIT (COA)

discretion "to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds" and has the power to ascertain whether public funds were utilized for the purpose for which they had been intended by law. (Nayong Pilipino Foundation, Inc. *vs.* Chairperson Ma. Gracia M. Pulido Tan, G.R. No. 213200, Sept. 19, 2017) p. 406

— The Constitution vests the broadest latitude in the COA in discharging its role as the guardian of public funds and properties by granting it exclusive authority, subject to the limitations, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. (Miralles *vs.* COA, G.R. No. 210571, Sept. 19, 2017) p. 380

— The guardian of public funds and the Constitution has vested it with the mandate to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned and held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters. (Bangko Sentral ng Pilipinas *vs.* COA, G.R. No. 213581, Sept. 19, 2017) p. 429

— The power, authority and duty of the COA to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities; the COA's power and authority to disallow upon audit can only be exercised over transactions deemed as irregular, unnecessary, excessive, extravagant, illegal or unconscionable expenditures or uses of government funds and property. (*Id.*)

extraordinary diligence as prescribed in Art. 1756; and (2) following Art. 1174 of the Civil Code, proof that the injury or death was brought about by an event which could not be foreseen, or which, though foreseen, were inevitable, or a fortuitous event. (Sanico *vs.* Colipano, G.R. No. 209969, Sept. 27, 2017) p. 981

— For there to be a valid waiver, the following requisites are essential: (1) that the person making the waiver possesses the right; (2) that he has the capacity and power to dispose of the right; (3) that the waiver must be clear and unequivocal although it may be made expressly or impliedly; and (4) that the waiver is not contrary to law, public policy, public order, morals, good customs or prejudicial to a third person with a right recognized by law; for the waiver to be clear and unequivocal, the person waiving the right should understand what she is waiving and the effect of such waiver; in instances of injury or death, a waiver of the right to claim damages is strictly construed against the common carrier so as not to dilute or weaken the public policy behind the required standard of extraordinary diligence. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Among the new approaches was the incorporation of affirmative safeguards to deny wayward law enforcers apprehending violators any opportunity for tampering with the confiscated evidence and to ensure the preservation of the integrity of the evidence from the moment of seizure until the ultimate disposal thereof upon order of the trial court; this approach was a true recognition of the value as evidence of guilt of the seized illegal substances themselves which are no less the *corpus delicti* in the drug-related offenses of illegal sale and illegal possession so essential to the conviction and incarceration of the offenders. (Casona *vs.* People, G.R. No. 179757, Sept. 13, 2017) p. 76

— As a general rule, the prosecution must endeavour to establish four links in the chain of custody of the

— The prosecution's failure to show that the police officers did the required physical inventory and to present any photograph of the evidence confiscated pursuant to the said guidelines is not fatal and does not automatically render accused's arrest illegal or the items seized/ confiscated from him inadmissible; such liberality could only be applied for justifiable grounds and only when the evidentiary value and integrity of the illegal drug are properly preserved. (*Id.*)

— Where miniscule amounts of drugs are involved, trial courts should require more exacting compliance with the requirements under Sec. 21 of Republic Act No. 9165. (Aparente *y* Vocalan *vs.* People, G.R. No. 205695, Sept. 27, 2017) p. 935

Illegal possession of dangerous drugs — In prosecuting cases for illegal possession of dangerous drugs, the prosecution must establish the following elements: (1) the accused was in possession of an item or object, which was identified to be a prohibited or regulated drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the drug. (Dacanay *y* Lacaste *vs.* People, G.R. No. 199018, Sept. 27, 2017) p. 885

— To ensure conviction in illegal possession of dangerous drugs, the following elements must be established: (1) the accused was in possession of the dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the dangerous drugs. (People *vs.* Del Mundo y Abac, G.R. No. 208095, Sept. 20, 2017) p. 575

Illegal sale of dangerous drugs — In order to sustain a conviction for the illegal sale of dangerous drugs, these two (2) elements must be established by the prosecution: (1) proof that the transaction or sale took place; and (2) the presentation in court of the corpus delicti or the illicit drug as evidence. (People *vs.* Cabellon y Cabañero, G.R. No. 207229, Sept. 20, 2017) p. 561

DAMAGES

Actual damages — Before actual damages may be awarded, it is imperative that the claimant proves its claims first; the issue on the amount of actual or compensatory damages is a question of fact and except as provided by law or by stipulation, one is entitled to adequate compensation only for pecuniary loss duly proven. (Dept. of Public Works and Highways *vs.* CMC/Monark/Pacific/Hi-Tri Joint Venture, G.R. No. 179732, Sept. 13, 2017) p. 27

Award of — In rape cases where the imposable penalty is reclusion perpetua to death, the Court generally awards three kinds of damages: civil indemnity, moral damages, and exemplary damages; civil indemnity proceeds from Art. 100 of the RPC, which states that "every person criminally liable is also civilly liable"; its award is mandatory upon a finding that rape has taken place; moral damages are awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings, and social humiliation; in rape cases, once the fact of rape is duly established, moral damages are awarded to the victim without need of proof, in recognition that the victim necessarily suffered moral injuries from her ordeal; finally, exemplary damages may be awarded against a person to punish him for his outrageous conduct; it serves to deter the wrongdoer and others like him from similar conduct in the future. (People *vs.* Ronquillo, G.R. No. 214762, Sept. 20, 2017) p. 641

Loss of earning capacity — As a general rule, documentary evidence is required to prove loss of earning capacity; damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor

ELECTION LAWS

Election campaign — The aggregate amount that a candidate or registered political party may spend for election campaign shall be as follows: 1. for Candidates; Ten pesos (₱10.00) for President and Vice President; and for other candidates Three Pesos (₱3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy; provided, that a candidate without any political party and without support from any political party may be allowed to spend Five Pesos (₱5.00) for every such voter; and 2. for political parties; Five pesos (₱5.00) for every voter currently registered in the constituency or constituencies where it has official candidates; a distinction was made between a candidate without a political party and without support from any political party and a candidate with political party and who receives support from a political party; the former is allowed to spend the ₱5.00 cap while the latter is allowed to spend the ₱3.00 cap. (Salvador *vs.* COMELEC, G.R. No. 230744, Sept. 26, 2017) p. 818

EMPLOYMENT, TERMINATION OF

Illegal dismissal — As the fact of illegal dismissal has already been established, respondent is entitled to two (2) separate and distinct reliefs, namely: (a) backwages; and (b) reinstatement or the payment of separation pay if the reinstatement is no longer viable. (Fabricator Phils., Inc. *vs*. Estolas, G.R. Nos. 224308-09, Sept. 27, 2017) p. 1035

Serious misconduct — Defined as an improper or wrong conduct; it is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment; to constitute a valid cause for the dismissal within the text and meaning of the foregoing provision, the following elements must concur: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties, showing that the employee has become unfit to continue working for

Burden of proof — An allegation of forgery must be proved by clear, positive and convincing evidence, and the burden of proof lies on the party alleging forgery. (Almeda *vs.* Heirs of Ponciano Almeda, G.R. No. 194189, Sept. 14, 2017) p. 239

— Self-serving statements are inadequate to establish one's claims; proof must be presented to support the same. (*Id.*)

— The burden of proof to overcome the presumption of due execution of a notarial document lies on the party contesting the same; a notarized Deed of Absolute Sale has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution; it is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face. (*Id.*)

— The parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent; this rule holds true especially when the latter has had no opportunity to present evidence because of a default order; if the plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner facts on which he bases his claim, the defendant is under no obligation to prove his exception or defense. (*Id.*)

— To establish forgery, the extent, kind and significance of the variation in the standard and disputed signatures must be demonstrated; it must be proved that the variation is due to the operation of a different personality and not merely an expected and inevitable variation found in the genuine writing of the same writer; and it should be shown that the resemblance is a result of a more or less skillful imitation and not merely a habitual and characteristic resemblance which naturally appears in a genuine writing. (*Id.*)

Circumstantial evidence — Circumstantial evidence is sufficient for conviction if: (a) there is more than one circumstance;

— The lack of a certification against forum shopping, unlike that of verification, is generally not cured by its submission after the filing of the petition; exception is if it is more prudent to resolve the case on its merits than dismiss it on purely technical grounds. (*Id.*)

Concept of — Exists when a party avails himself 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 courts; the test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. (Sps. Reyes, Jr. *vs.* Sps. Chung, G.R. No. 228112, Sept. 13, 2017) p. 225

HOUSING AND LAND USE REGULATORY BOARD (HLURB)

Revised Rules of Procedure of the HLURB (HLURB Rules) — Section 60 (b), Rule 17 provides that the decision or resolution of the HLURB BOC shall become final and executory within 15 days after receipt thereof unless an appeal has been filed. (Lefebre *vs.* A Brown Co., Inc., G.R. No. 224973, Sept. 27, 2017) p. 1046

INDETERMINATE SENTENCE LAW

Application of — Article 64 of the Revised Penal Code, which has set the rules for the application of penalties which contain three periods, requires under its first rule that the courts should impose the penalty prescribed by law in the medium period should there be neither aggravating nor mitigating circumstances, its seventh rule expressly demands that within the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime; by not specifying the justification for imposing the ceiling of the period of the imposable

— The means employed by the person invoking self-defense is reasonable if equivalent to the means of attack used by the original aggressor; whether or not the means of self--defense is reasonable depends upon the nature or quality of the weapon; the physical condition, the character, the size and other circumstances of the aggressor; as well as those of the person who invokes self-defense, and also the place and the occasion of the assault. (Remegio *vs.* People, G.R. No. 196945, Sept. 27, 2017) p. 827

— When the law speaks of provocation either as a mitigating circumstance or as an essential element of self-defense, it requires that the same be sufficient or proportionate to the act committed and that it be adequate to arouse one to its commission; it is not enough that the provocative act be unreasonable or annoying. (*Id.*)

Unlawful aggression — Bereft of the proof of unlawful aggression, the petitioner's plea for self-defense, complete or incomplete, could not be accorded credence and weight. (Sombilon *vs.* People, G.R. No. 177246, Sept. 25, 2017) p. 695

LABOR LAWS

Voluntary arbitration — Distinguishing between commercial arbitration, voluntary arbitration under Art. 219(14) of the Labor Code and construction arbitration; commercial arbitral tribunals are purely ad hoc bodies operating through contractual consent, they are not quasi-judicial agencies; voluntary arbitration under the Labor Code and construction arbitration derive their authority from statute in recognition of the public interest inherent in their respective spheres; voluntary arbitration under the Labor Code and construction arbitration exist independently of the will of the contracting parties; voluntary arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining Agreements; unlike purely commercial relationships, the relationship between capital and labor are heavily impressed with public interest; commercial relationships covered by our commercial arbitration laws are purely

of an owner, and when coupled with continuous possession, it constitutes strong evidence of title. (*Id.*)

— Public lands may be disposed of through confirmation of imperfect or incomplete titles; confirmation of title may be done judicially or through the issuance of a free patent; when a person applies for judicial confirmation of title, he or she already holds an incomplete or imperfect title over the property being applied for, after having been in open, continuous, exclusive, and notorious possession and occupation from June 12, 1945 or earlier; the date "June 12, 1945" is the reckoning date of the applicant's possession and occupation, and not the reckoning date of when the property was classified as alienable and disposable. (*Id.*)

— The burden of proving that the property is an alienable and disposable agricultural land of the public domain falls on the applicant, not the State; the Office of the Solicitor General, however, has the correlative burden to present effective evidence of the public character of the land; in order to establish that an agricultural land of the public domain has become alienable and disposable, an 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. (*Id.*)

— The declaration of alienability must be through executive fiat, as exercised by the Secretary of the Department of Environment and Natural Resources. (*Id.*)

— The Public Land Act is a special law that applies only to alienable agricultural lands of the public domain and not to forests, mineral lands, and national parks; alienable and disposable lands into: (a) patrimonial lands of the State, or those classified as lands of private ownership under Art. 425 of the Civil Code, without limitation; and (b) lands of the public domain, or the public lands as provided by the Constitution, but with the limitation that the lands must only be agricultural. (*Id.*)

— When an applicant is shown to have been in open, continuous, exclusive, and notorious possession of a land for the period required by law, he or she has acquired an imperfect title that may be confirmed by the State; the State may not, for the simple reason that an applicant failed to show documents which the State is in the best position to acquire, indiscriminately take an occupied property and unjustly and self-servingly refuse to acknowledge legally recognized rights evidenced by possession, without violating due process; the burden of evidence lies on the party who asserts an affirmative allegation. (*Id*.)

PUBLIC OFFICERS AND EMPLOYEES

De facto officers — One who is in possession of an office and is discharging his duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent is not a mere volunteer; where there is no *de jure* officer, a *de facto* officer who, in good faith, has possession of the office and discharges the duties pertaining thereto, is legally entitled to the emoluments of the office, and may in an appropriate action recover the salary, fees and other compensations attached to the office. (CSC *vs.* Unda, G.R. No. 213237, Sept. 13, 2017) p. 185

Disallowance of benefits — The refund of the disallowed payment of a benefit granted by law to a covered person, agency or office of the Government may be barred by the good faith of the approving official and of the recipient. (Nayong Pilipino Foundation, Inc. *vs*. Chairperson Ma. Gracia M. Pulido Tan, G.R. No. 213200, Sept. 19, 2017) p. 406

Gross negligence — Insofar as the disallowance of benefits and allowances of government employees, recipients or payees need not refund these disallowed amounts in the absence of proof to rebut the presumption that they received the same in good faith; however, officers who participated in the approval of the disallowed allowances or benefits are required to refund the disallowed benefits when in

incapacity to discharge his or her duties; the new law provided for survivorship benefits in favor of the surviving spouses of justices and judges who were "retired" or eligible for optional retirement and died after the effectivity of R.A. No. 9946; by virtue of the retroactivity clause in Sec. 3-B, the "benefits" under R.A. No. 9946 are made to apply to justices and judges who died prior to the effectivity of R.A. No. 9946. (Re: Requests for Survivorship Pension Benefits of Spouses of Justices and Judges Who Died Prior to the Effectivity of Republic Act No. 9946, A.M. No. 17-08-01-SC, September 19, 2017) p. 344

— Even though the lump sum gratuity is equivalent to 5 years of salary, the payment of survivorship pension should commence only after the lapse of 10 years, not 5 years; otherwise, with a shorter waiting period of only 5 years, the surviving spouses of justices or judges who died in service but with less than 15 years of service would be placed in a more advantageous position compared to those whose deceased spouses were retired due to disability but with at least 15 years of service. (*Id.*)

— For purposes of survivorship benefits, it is more consistent with logic and reason that we read into the law the inclusion of such benefits in favor of the surviving spouses of justices or judges who, regardless of age, died while in service; in the case of a justice or judge who, by reason of his death while in actual service, is considered retired due to permanent disability, his/her legitimate surviving spouse is entitled to survivorship benefit, the amount of which shall be determined by the length of service of the deceased justice or judge: that is, full monthly pension if the length of service is at least 15 years, or *pro rata* monthly pension if less than 15 years; it must be clarified, however, that the survivorship benefit, which is on top of the death benefits granted under Sec. 2 of R.A. No. 9946, is conditioned on the survival by the surviving spouse of the gratuity period of 10 years provided for total permanent disability; this should cover those who died in service but with less than 15 years of service. (*Id.*)

such interpretation is more in keeping with the beneficent purposes of R.A. No. 9946 which, in the first place, was enacted to benefit the surviving legitimate spouses of justices and judges. (*Id.*)

— The surviving spouses of justices and judges who died or were killed while in actual service are entitled to survivorship benefits based on total permanent disability; had the justice or judge not died, but merely became incapacitated to discharge the duties of his/her office, he/she would have been entitled to a full monthly pension after the 10-year gratuity period if the length of service is at least 15 years, or *pro rata* monthly pension if otherwise; in case of subsequent death, he/she would have been substituted by the surviving spouse who will receive the same amount as survivorship benefit. (*Id.*)

— The term "retirement" may be understood either in its strict sense or broad sense; when used in a strict legal sense, the term refers to mandatory or optional retirement; when used in a more general sense, "retire" may encompass the concepts of both disability retirement and death; it also refers to justices and judges who "retire" due to permanent disability, whether total or partial, and justices or judges who died or were killed while in actual service. (*Id.*)

— Upon the death of a Justice or Judge of any court in the Judiciary, if such Justice or Judge has retired, or was eligible to retire optionally at the time of death, the surviving legitimate spouse shall be entitled to receive all the retirement benefits that the deceased Justice or Judge would have received had the Justice or Judge not died. (*Id.*)

TAXATION

National Internal Revenue Code — The CIR may delegate the powers vested in him under the pertinent provisions of the NIRC to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under

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